

## Position paper on Work-life Balance Directive

**Position paper on the proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU – COD 2017/0085. This position is endorsed by the Malta Business Bureau; the Malta Chamber of Commerce, Enterprise and Industry; and the Malta Hotels and Restaurants Association.**

In 2017, the European Commission presented a new legislative initiative on work-life balance. We would like to express our views on the most relevant issues of the proposal.

### **Key messages**

- **The EU is already a global leader in the field of social policy and legislation**
- **Labour market challenges and equal opportunities are addressed by creating incentives to work and long-term solutions for parents and carers, not through additional leave entitlements**
- **Decisions on leave entitlements are best decided at national level, preferably through social dialogue agreements or directly at company level**
- **The proposals in this Directive will have a disproportionate impact on small and medium enterprises (SMEs) impacting competitiveness, productivity, investment decisions and job creation**
- **We estimate that the paternity leave measure will cost around €3.3m annually. Costs for the parental leave directive on the economy may vary between €13million to €53million yearly, while the financial cost incurred by private sector employers can vary between €8.5million to €28.5million, depending on level and frequency of leave taken**
- **The European Commission estimates in its impact assessment covering benefits over a 40-year period are unrealistic and underestimate the short-term costs**

## **General preliminary remarks**

We support the objectives of promoting equality between men and women, increasing female labour market participation, and promoting a good work-life balance, but consider the approach taken by the European Commission is the wrong one and will create serious obstacles for growth and job creation, particularly in SMEs.

The European Union is one of the best places to live, to work, and to do business. Notably, in the realm of social policy the EU is already a global leader. The European social model is known for a high level of redistribution and for a high level of social spending. The EU also has more than 70- legislative acts in the social field, thus, it already provides a wide range of rights to employees.

The EU is facing demographic challenges, particularly due to an ageing population and a declining birth rate. Therefore, a set of actions are required to address labour market requirements of the future; among others by continuing to improve female participation in the labour market<sup>1</sup>, and investing in lifelong learning, active ageing and the promotion of STEM skills through national education systems.

The Commission claims that with the proposal for a Directive on work-life balance, it will address the principle of equality between men and women with regards to labour market opportunities and treatment at work. We do not share the view that additional leave entitlements are the solution to address equality issues. On the contrary, the measures seem to be detrimental to society and the economy.

We recommend a shift in the EU's approach to promote more investment in childcare and elderly care facilities<sup>2</sup> and fiscal incentives for working parents. This will give parents and carers the

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<sup>1</sup> Malta has seen a steady progress in the female employability rate increasing from 39.4% in 2008 to 55.5% in 2016. *Source: Eurostat*

<sup>2</sup> The Maltese Government introduced free childcare for working parents in April 2014. The female employability rate since the commencement of this scheme has risen from 51.9% in 2014 to 55.5% in 2016. *Source: Eurostat*

confidence that their dependents are well cared for, while they focus on their careers and professional development.

Decisions relating to leave entitlements for working parents and carers should be decided at a national level according to the respective member state's traditions and economic circumstances.

We are extremely concerned about the disproportionate impact that the proposed measures will have on small and medium enterprises (SMEs) and particularly on micro-enterprises. Operators employing a small number of employees will face numerous burdens to process requests for additional leaves and make alternative arrangements for the operations to continue running efficiently. Colleagues will be faced with additional work-related stress while they take-over the responsibilities of the employee/s on additional leaves as proposed by this directive. Where it is not possible to transfer responsibilities to other colleagues, companies will be required to incur a cost of employing temporary workers and invest in training, which considering the limited assignment, it may not yield a return on investment in terms of productivity and performance. Other costs may be incurred to upgrade payroll systems to adjust for the new provisions of this directive.<sup>3</sup> These additional burdens will ultimately make companies less competitive, some operationally unsustainable, will affect investment decisions and may jeopardise the creation of employment.

With Malta experiencing near full employment in the last years, and a positive economic performance confirming a similar outlook for the short to medium term, the proposed additional leaves will create substantial pressures on companies searching for labour in a market with a limited supply. The lack of supply will make the cost of hiring temporary labour more expensive. Furthermore, the supply of temporary labour will also become more limited, and as a result a skills gap is created which renders service by new and temporary labour less productive and

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<sup>3</sup> This was experienced by Maltese companies with the introduction of the Maternity Leave Trust Fund whereby employers were required to upgrade payroll systems to adjust for the new system.

impact the companies' performance negatively. This risk undermining the economic competitiveness of domestic companies in the international market, as well as Malta's attractiveness to new foreign direct investment.

On a more practical note, with Malta's economy characterized by 99.8% of SMEs employing 81% of the local private sector workforce<sup>4</sup>, the impact of additional leave will be detrimental to many operations particularly to industries characterised by peak demands. By way of example, retailers, catering establishments and office operations that in most situations are made up of companies accounting to ten employees or less, should one take a conservative estimate that between 1 to 2 employees make use of such additional leave entitlements every year, the operations would face a disruption of 10 to 20% of its workforce at any given time. If a majority of female employees avail themselves of parental leave as a continuation from the maternity leave and annual vacation leave, this would add up to an approximate one year away from the workplace. This may have adverse hiring prospects for women particularly in smaller operations, and possibly contribute to the widening of the income pay gap.

The same goes for medium companies, which largely define manufacturing operators in Malta. Taking a conservative assumption where 50% of employees in a given medium sized company is in the 20 to 45 age brackets, and thus in the phase where one starts and is in the process of growing a family; it can be easily be the case where the majority of half of the workforce of a medium sized company would be availing itself of periodical parental leave on an annual basis, which will create substantial disruption to the operations, considering that this is availed of in stretches of 1 to 2-month periods at a time.

One should also not underestimate the impact of additional leave entitlements availed by employees working in public services such as healthcare and education; crucial sectors for the economy and society.

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<sup>4</sup> Malta SBA Fact Sheet 2016

We strongly believe that in a modern labour market, work-life balance measures are most effective if dealt at company level and in consultation with employees and their representatives. A one-size-fits-all solution at EU level neither responds to labour market and economic challenges in individual member states, nor to the aspirations of working parents and carers that require permanent solutions for their responsibilities, not short-term benefits.

The proposed directive also suggests that paternity leave, parental leave and carers leave should be paid at least at the level of sick leave. It is unclear whether companies will be required to compensate for the additional leave requirements directly to the employee or indirectly through higher social contributions.<sup>5</sup> Alternatively, if the onus is taken by the member states directly, leave compensation will still be an additional burden on public budgets.

Based on the average yearly births and average national basic salary in Malta, we calculate that the paternity leave proposal will cost around €3.3million on an annual basis. In a scenario assuming all annual live births are dependents to both working fathers and mothers, and where compensation is claimed by all, the parental leave cost on the economy will vary between €13million and €53million, depending on whether it will be (i) availed of in a single year, or (ii) multiple years. More specifically, the cost on private sector employers will vary from €8.5million if availed of in a single year to €28.5million if availed of over multiple years.<sup>6 7</sup>

If compensation is granted according to wage regulation orders, it is unclear what mechanism will be adopted to determine what rates will apply when parental leave is availed of over multiple years and when employee mobility takes place.

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<sup>5</sup> The 'Maternity Leave Trust Fund' was introduced in Malta in 2015 whereby employers contribute 0.3% of the basic weekly wage for each employee capped at Eur65 per employee per annum. The contributions are collected in a Trust Fund that in turn pay for maternity leave taken up by new working mothers. In sum therefore, the 18-week maternity leave period is funded in full by employers. Maltese employers are concerned that ultimately, they will end up carrying the burden of paying for higher social contributions to cover new leave entitlements through vehicles such as the 'Maternity Leave Trust Fund'.

<sup>6</sup> The parental leave calculation takes an assumption that all fathers and mothers are gainfully employed as there is no data on the percentage of mothers that are gainfully employed.

<sup>7</sup> For detailed calculations on cost of measures see Pgs.10-12 below.

The European Commission predicts a positive Eur840 million impact on GDP by 2055 and contribution towards the creation of 1.4 million jobs by 2050. We find the arguments listed in the impact assessment leading to these predictions in 40 years' time as unrealistic, and do not consider the short-term direct and indirect costs for employers.

### **Specific remarks:**

#### **Article. 4 on paternity leave**

Due to the heterogeneity amongst member states when it comes to paternity leave, we disagree with the introduction of an additional EU-wide entitlement to paternity leave. This should remain a member state prerogative.

One must also recognize that a father's responsibility should not be attributed solely to additional paid leave entitlement, but rather as a personal commitment towards his family, partner, and the child. Fathers can make use of alternative leave entitlements, such as annual personal leave to be close to the child and of support to the partner. This can be planned well in advance.

While being against a harmonised paternity leave entitlement, we favour arrangements between employer and employee at company level.

#### **Article 5 on parental leave**

We disagree with the fact that as a result of this proposal the 2010 Parental Leave Directive will be repealed. The directive was the outcome of European Social Partner agreement that created a balance between the interests of employers and employees.

The European Commission proposal suggests that the period in which working parents can avail the parental leave of at least four months per parent shall be extended from 8 to 12 years of age. Considering that the caring responsibilities are more needed at a younger age and that children become less dependent the more they grow, there is no valid reason to extend the time period.

We agree with the provision allowing Member States to make the right to parental leave subject to a period of work qualification or a length of service qualification which shall not exceed one year.

Nevertheless, we oppose a one-size-fits-all imposition of an EU-wide parental leave entitlement against compensation. As stated before, we consider this best decided at member state level according to the respective labour market and economic circumstances.

#### **Article 6 on carers' leave**

We consider an annual 5-day carers leave entitlement as a disproportionate burden on companies, while at the same time this benefit does little to solve the concern of employees caring for elderly family members with long-term serious illness or dependency.

#### **Article 8 on adequate income**

As aforementioned, a compensation for people on leave as high as the sick pay means a high cost for companies, less productivity, and a budgetary burden.

The decision on how high the allowances, if any, for additional leave entitlements referred to in Articles 4, 5 or 6 should be the prerogative of member states, and best suited to be decided and granted at company level.

#### **Article 9 on flexible working arrangements**

The proposed directive provides working parents of children of at least 12 years of age, with the right to request flexible working arrangements, such as for the reduction in working hours, flexible work schedules, and remote working possibilities.

If the European Commission is serious about its intention to divide the care responsibilities more evenly between men and women, and taking into consideration the fact that reduced working hours are usually taken up more by women, then to provide such an extended period up to which

flexible working arrangements can be made risks being counterproductive and leads to the widening of the income gap. The merits of flexible work arrangement requests are best analysed on a case by case basis at company level.

Employees' right to request flexible working arrangements and the employer's obligation to respond will create additional bureaucratic burden for enterprises. While supporting in principle that employees undertaking flexible work arrangements that are limited in duration should be able to return to the original working pattern, such an arrangement should be pre-agreed between the employer and the employee.

Considering the administrative burden for companies to acknowledge and replying to requests by employees, the frequency by which the employees request flexible work arrangements should be reasonable and takes place once there is a significant change in the operational circumstances of the company.

### **Cost of measures on the Maltese economy:**

Based on Malta's National Statistics Office (NSO) figures depicting total labour force and average salary and a calculation of 219 working days per year, the following calculations depict the average daily cost to an employer for every person in employment, which includes the employers national insurance contribution and maternity leave trust fund contribution. On a normal working day, the average private sector employment cost per employee is €90.80

#### **Average Cost of Employment in Malta per day per employee**

Average basic salary + National Insurance + Maternity Leave Contribution / Working Days

$$€18,029 + €1,803 + €54 / 219 = \underline{€90.80}$$

### Sickness Benefit in Malta<sup>8</sup>

In 2016, the sickness benefit rate in Malta was €20.09 for Single person or Married person maintaining spouse in a full-time employment

### Gainfully Occupied March 2017<sup>9</sup>

Total number of employees: 187,977

Public Sector employees: 45,222

Private Sector employees: 142,755

### Live Births in Malta<sup>10</sup>

| 2010  | 2011  | 2012  | 2013  | 2014  | 2015  | 2016  |
|-------|-------|-------|-------|-------|-------|-------|
| 3,898 | 4,165 | 4,130 | 4,032 | 4,191 | 4,325 | 4,476 |

Average live births between 2010 -2016 – 4,174 births

### Paternity Leave

#### **Cost of paternity leave proposal based on 10 working days (2 weeks) per working father**

|  |                            |
|--|----------------------------|
| Average cost of employment per day per employee x by the number of days suggested in the directive (10 days) x average live births per year x percentage of fathers gainfully occupied |                            |
| (€90.80 x 10) x 4,174 x 87%  | <b>€3,297,293 per year</b> |
| NSO statistics show that of the total live births in 2013, 87% of fathers gainfully occupied <sup>11</sup>   |                            |

<sup>8</sup> <http://socialsecurity.gov.mt/en/international-affairs/documents/benefit%20rates%202016.pdf>

<sup>9</sup> [https://nso.gov.mt/en/News\\_Releases/View\\_by\\_Unit/Unit\\_C2/Labour\\_Market\\_Statistics/Documents/2017/News2017\\_180.pdf](https://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C2/Labour_Market_Statistics/Documents/2017/News2017_180.pdf)

<sup>10</sup> [https://nso.gov.mt/en/News\\_Releases/View\\_by\\_Unit/Unit\\_C5/Population\\_and\\_Migration\\_Statistics/Documents/2017/News2017\\_111.pdf](https://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C5/Population_and_Migration_Statistics/Documents/2017/News2017_111.pdf) - pg.5

<sup>11</sup> Source: NSO

[https://nso.gov.mt/en/publicatons/Publications\\_by\\_Unit/Documents/C5\\_Population%20and%20Migration%20Statistics/Demographic\\_Review\\_2013.pdf](https://nso.gov.mt/en/publicatons/Publications_by_Unit/Documents/C5_Population%20and%20Migration%20Statistics/Demographic_Review_2013.pdf) pg.44

## Parental Leave

### Direct financial cost on the economy:

|                   | <b>Scenario 1</b>  | <b>Scenario 2</b>   |
|-------------------|--|---|
| Level of payment  | 4 months availed of in one year compensated as follows:<br>15 working days at 100% pay, 15 working days at 50% pay   | 4 months availed of in 4 batches of 1 month each and compensated as follows:<br>15 working days at 100% pay, 5 working days at half pay (making up 1 month), multiplied by 4 (to make up a total of 4 months)         |
| Methodology       | Sum of (Average cost of employment per day per employee x 15working days full pay + 15working days on half pay) x average live births per year x by two working parents. <sup>12</sup> | Sum of (Average cost of employment per day per employee x 15working days full pay + 5 working days on half pay) x number of months proposed by the directive x average live births per year x by two working parents. |
| Calculation       | $(€90.80 \times 15 + €45.40) \times 4,174 \times 2$  | $(€90.80 \times 15 + Eur45.40 \times 5) \times 4 \times 4,174 \times 2$   |
| <b>Total Cost</b> | <b>€17,054,964</b>   | <b>€53,059,888</b>  |
|                   | <b>*Annual total cost of measure if availed of in the same year of live child birth</b>  | <b>*Annual total cost of measure subsequently availed of in four segments over a maximum period of 12 years</b>   |

<sup>12</sup> Wage Regulation Orders in Malta define the amount of sick days to be paid in full and at half pay. Source: Department of Industrial Relations pp.19-24 - [https://dier.gov.mt/en/About-DIER/Publications-and-Archives/Other%20Publications/Documents/Resource\\_Pack\\_2017.pdf](https://dier.gov.mt/en/About-DIER/Publications-and-Archives/Other%20Publications/Documents/Resource_Pack_2017.pdf)

**Direct financial cost on employers (public and private combined):**

|                   | <b>Scenario 1</b>   | <b>Scenario 2</b>  |
|-------------------|---|--|
| Level of payment  | 4 months availed of in one year and compensated as follows:<br>15 working days at 100% pay of which 3 days are paid in full by employer and remaining 12 days paid in full partly by employer and partly through sickness benefit; and 15 working days at 50% pay of which part is paid by employer and part through sickness benefit | 4 months availed of in four segments and compensated as follows:<br>15 working days at 100% pay of which 3 days are paid in full by employer and remaining 12 days paid in full partly by employer and partly through sickness benefit; 5 working days at 50% pay of which part is paid by employer and part through sickness benefit; multiplied by four months |
| Formula adopted   | Sum of ((Average cost of employment per day per employee x 3 working days compensated by employer in full + 12working days full pay (less rate of sickness benefit) + 15working days on half pay (less rate of sickness benefit)) x average live births per year x by two working parents. <sup>13</sup>                              | Sum of (Average cost of employment per day per employee x 3 working days compensated by employer in full + 12working days full pay (less rate of sickness benefit) + 5 working days on half pay (less rate of sickness benefit)) x number of months proposed by the directive x average live births per year x by two working parents.                           |
| Calculation       | $€90.80 \times 3 + (€90.80 - €20.09 \times 12) + (€45.40 - €20.09 \times 15) \times 4,174 \times 2$   | $€90.80 \times 3 + (€90.80 - €20.09 \times 12) + (€45.40 - €20.09 \times 5) \times 4 \times 4,174 \times 2$  |
| <b>Total Cost</b> | <b>€12,526,758</b>  | <b>€41,655,518</b>   |

<sup>13</sup> Wage Regulation Orders in Malta define the amount of sick days to be paid in full and at half pay. Source: Department of Industrial Relations pp.19-24 - [https://dier.gov.mt/en/About-DIER/Publications-and-Archives/Other%20Publications/Documents/Resource\\_Pack\\_2017.pdf](https://dier.gov.mt/en/About-DIER/Publications-and-Archives/Other%20Publications/Documents/Resource_Pack_2017.pdf)

|  |  |   |
|--|--|---|
|  | <b>*Annual total cost of measure if availed of in the same year of child birth</b> | <b>*Annual total cost of measure subsequently availed of in four segments over a maximum period of 12 years</b> |
|--|--|---|

**Cost incurred by public and private sector employers separately:**

|                                  |                                   |                                 |                                     |
|----------------------------------|-----------------------------------|---------------------------------|-------------------------------------|
| Gainfully Occupied<br>April 2017 | Total no of employees:<br>187,977 | Public Sector:<br>45,222        | Private Sector:<br>142,755          |
|                                  |                                   | 31.7%                           | 68.3%                               |
| <b>Scenario</b>                  | <b>Total cost</b>                 | <b>Cost for Public Employer</b> | <b>Cost Private Sector Employer</b> |
| Scenario 1                       | €12,526,758                       | €3,970,982                      | €8,555,776                          |
| Scenario 2                       | €41,655,518                       | €13,204,799                     | €28,450,719                         |

**Assumptions and notes:**

- It is being assumed that 4 months translate into 16 working weeks or 80 working days
- Sectoral wage regulation orders establish the amount of days of sick leave are paid in full and at half pay. The Department of Industrial Relations (DIER) classifies the Maltese labour market in different sectors. For the purpose of calculating the first and second scenario of parental leave constituting of mixed compensation levels, an average was considered and rounded to 15 days of full pay and 15 days of half pay.
- The first 3 days of sick leave are paid entirely by the employer and sickness benefit does not apply.
- The live birth figure accounts for both Maltese residents and foreign residents.

- NSO statistics calculate that 87% of fathers are gainfully occupied, and this figure was used to calculate the cost of paternity leave. However, there are no statistics on the number of gainfully occupied mothers for the total live births, which is why the full cost was calculated taking a scenario where all live births are dependents to working fathers and mothers, and the compensation is claimed by all.
  
- The live birth figures do not consider the growing trend in the Maltese economy as a result of immigration to address gaps in the labour market. Because of this trend, the number of births per year are expected to increase over the next decade.
  
- Calculations are only based on live birth figures and do not consider child adoptions.