

OPINION

**OF THE SENATE OF THE REPUBLIC OF POLAND
of 22 June, 2017**

**on incompatibility of 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 with the principle of subsidiarity**

COM(2017)253

Having considered 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 (COM(2017) 253), the Senate of the Republic of Poland considers the Proposal to be incompatible with the principle of subsidiarity referred to in Article 5(3) of the Treaty on the European Union.

The Senate of the Republic of Poland emphasizes that the objectives of the proposed Directive, i.e. ensuring work-life balance for parents and carers and equal treatment and opportunities for women and men in the labour market, should be supported.

At the same time the Senate is of the opinion that the European Commission excessively interferes in the legal systems of Member States by imposing numerous detailed regulations, without taking into account the existence of national systemic solutions aimed at achieving the same purpose. The Polish legal system includes numerous regulations ensuring a high level of parenthood protection. This concerns i.a. paternity leave (Article 4), parental leave (Article 5), extension of employment rights – maintenance of rights acquired during the leaves, guarantee of return to work (Article 10), non-discrimination (Article 11), protection from dismissal and burden of proof (Article 12). Therefore, the Senate believes that such detailed regulations on this subject at the European Union level are unjustified and constitute no added value.

In the opinion of the Senate, a particularly striking example of excessive interference in the legal systems of Member States is the provision prohibiting the transfer of at least four months of parental leave to the other parent (Article 5). This means that during the first year after birth of a child the parents cannot freely change in taking care of their child. If the father does not use the four months of leave, his part of the leave will be lost. As a result of the new regulations, the mother will be able to use less than 9 months of paid leave (under current Polish law she can use even 12 months of such leave). The Polish regulations on parental leave ensure a lot of freedom and flexibility in using this entitlement by both parents (only in the case of maternity leave the first 14 weeks can be used solely by the mother). Therefore, the regulations are compliant with the principle of protection of family and professional life laid down in Article 33 of the EU Charter of Fundamental Rights. According to the Senate, by imposing the obligation that at least four months of parental leave must be used by fathers the

Directive interferes in family life and deprives parents of the right to decide on how they want to take care of their child and plan their professional life.

The Senate points out that the Commission has not met the obligation to prove that the objectives of the Directive will be better achieved at the European Union level and has not presented specific data or reliable analyses demonstrating the need to harmonise the national regulations to such far-reaching extent. Nor has the Commission provided information about the predicted cost of introducing the proposed solutions. In the opinion of the Senate, the implementation of some of them will entail high costs for both the state budget and employers.

The Senate also has doubts regarding the assumption of the Commission, which constitutes the foundations of the regulations proposed in the Directive, that a high percentage of women working on a full-time basis in the labour market is one of the aspects of equality between men and women. In the opinion of the Senate, the imposition of solutions based on this assumption constitutes excessive interference in personal life choices of citizens.

Therefore, it should be concluded that the proposed regulations are in breach of the principle of subsidiarity.