



## Closing note on the Strategic Initiative on the leave rights of certain EU staff members and the best interests of the child (SI/1/2019/AMF)

Correspondence - 01/10/2019

**Case SI/1/2019/AMF - Opened on 08/05/2019 - Decision on 01/10/2019 - Institutions concerned** European Parliament | European Commission | European Council |

This strategic initiative aimed at assisting the EU institutions in protecting the best interests of children in their staff policies. To this end, the Ombudsman asked the European Parliament, the Council of the EU and the European Commission to inform her about their internal policies regarding the leave rights of staff members who become parents through surrogacy.

Based on the replies received, the Ombudsman encourages all EU institutions to adapt their internal rules so that the leave rights of staff members who become parents through surrogacy are clearly defined and aligned with those of other staff members who become parents.

### Background

1. The Ombudsman received information from EU staff members regarding inconsistencies between the different EU institutions in the area of leave rights for same-sex parents or staff becoming parents through surrogacy.
2. The EU institutions have rightly acknowledged the obligation not to discriminate amongst its staff, such as on the basis of sexual orientation [1].
3. The Ombudsman is aware of the complex and diverse legal situation at Member State level as regards surrogacy. However, the fact is that children come into the care of EU staff members through surrogacy, and the best interests of the child must be a primary consideration. The EU Charter of Fundamental Rights of the European Union [2] sets out that "*[c]hildren shall have the right to such protection and care as is necessary for their well-being*" and that "*[i]n all actions relating to children, whether taken by public authorities or private institutions, the child's best interest must be a primary consideration*".
4. In this context, the Ombudsman considered how to assist the EU institutions in protecting the interests of children in their staff policies by ensuring a consistent approach to the



related leave available to staff members across the EU civil service.

## Strategic Initiative

5. On 8 May 2019, the Ombudsman wrote to the European Parliament, the Council of the EU and the European Commission and asked them to provide her office with the following information [3] :

**a) If a woman in a same-sex couple becomes pregnant through artificial insemination and gives birth, what leave rights are provided to the non-biological mother of the child (assuming she is a staff member of your institution)?**

**b) What is the current policy in your institution regarding leave made available to staff members who become parents through surrogacy? Please include, in your answer, details of the duration of the leave per parent, how such leave is approved and how relevant information is made available to staff. Please provide a copy of the relevant policy/policies.**

6. All three institutions replied that the non-biological mother of a child in a same-sex couple would get the 10 days [4] of special leave for the birth of a child that are granted to all civil servants becoming parents, aside from the pregnant woman [5] .

7. Regarding the second question, the Commission replied that since 2012 its standard practice has been to grant, on an *ad hoc* basis, leave equivalent to the 20-week adoption leave [6] to staff that become parents through surrogacy [7] . This allows the concerned staff members to dedicate their time fully to take care of and bond with the new-born child in the same way as staff members who are entitled to maternity or adoption leave. The Commission informed the Ombudsman that it will adopt a new decision on leave for staff in which the *ad hoc* practice of granting leave to surrogate parents will be formalised. The new decision will be published by administrative notice as soon as it is adopted and staff will be informed about it through the relevant internal channels.

8. The Council replied that, if it ever received a request from a staff member becoming a parent through surrogacy, it would grant him or her *ad hoc* leave in the same way as described by the Commission.

9. Parliament replied that in cases of surrogacy, it would grant the 10 days of special leave for the birth of a child (see paragraph 6 above) to the parent who has a biological link with the child as recognised by national legislation. If the other member of the couple is legally recognised as parent of the child, or has adopted it, he or she will also benefit from 10 days of special leave. Parliament is ready to engage in an inter-institutional dialogue to find a common approach among all EU institutions. Until such an agreement has been found, "*Parliament will make a case-by-case assessment of each request in order to ensure that article 24 of the Charter is respected*".



## Conclusion

**10.** The Ombudsman stresses the importance of protecting the best interests of the child in all actions taken by the EU institutions. Children that come into the care of EU civil servants have the same rights to be taken care of and to bond with their parents as any other child.

**11.** The Ombudsman welcomes Parliament's readiness to engage in an inter-institutional dialogue to find a common approach across the EU civil service. She encourages all EU institutions to adapt their internal rules so that the leave rights of staff members who become parents through surrogacy are clearly defined and aligned with those of other staff members who become parents.

Emily O'Reilly

European Ombudsman

Strasbourg, 01/10/2019

[1] See article 1d of the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (the EU Staff Regulations):

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501>

[2] See article 24, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

[3] The replies received are published on the Ombudsman's website:

<https://www.ombudsman.europa.eu/en/correspondence/en/116013>

[4] 12 in the case of multiple births.

[5] In accordance with article 6 of Annex V to the EU Staff Regulations. This special leave is different from the 20 weeks of maternity leave that are granted to pregnant women (24 in case of premature or multiple births) in accordance with article 58 of the EU Staff Regulations.

[6] 24 weeks in the case of multiple adoptions or if the child is disabled or seriously ill.

[7] In accordance with article 57 and article 6 of Annex V to the EU Staff Regulations.

