

New DRAFT European Council Directive on safety and health at work for pregnant workers, workers who have recently given birth or are breastfeeding

The current Council directive on maternity protection at work dates back to 1992 and is entitled “Council directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding”. For several years there has been discussion concerning amending it and since 2008 there have been steps in this direction. In 2008 a new draft was proposed and in October 2010 a counter proposal was made. In December 2010 it was decided that negotiations had to continue before finalizing the text. Below we explain this in more detail.

What are EU directives?

Directives are used to bring different national laws into line with each other. They lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so.

Each directive specifies the date by which the national laws must be both adopted and adapted - giving national authorities the room to maneuver within the deadlines necessary to take account of differing national situations. Some directives, such as this one on maternity protection, contain minimum agreements leaving national countries the possibility to go further.

Adopting the new directive on maternity protection, 2008-2010

The text of a draft directive is prepared by the European Commission after consultation with its own and national experts. The draft is presented to the Parliament and the Council (of responsible Ministers of member governments) for evaluation and comment, and then for approval or rejection.

“Council directive on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding”

So far there have been several steps in the process of reviewing the old 1992 directive and proposing the text of a new one:

- Step 1:** Following consultation between EU members, lobby groups, trade unions, employers’ associations, NGOs and other interested parties, a draft directive aiming to replace Council directive 92/85/EEC was prepared by the **European Commission** in Brussels (October 2008).
- Step 2:** Discussion concerning the Draft then began at various official and unofficial levels and continued for approximately two years. The **European Parliament** Women’s Rights and Gender Equality Committee took the lead and other EP Committees produced their own opinions. In October 2010 the European Parliament adopted in plenary its position vis-à-vis the Commission draft (the Parliament finally voted several amendments to the original draft towards strengthening the directive for mothers).
NGOs such as Initiativ Liewensufank and IBFAN-GIFA were active in proposing new wording at the early stages of this process. For example, in the Commission draft there is no mention of breastfeeding breaks which we lobbied to get back into the text.
- Step 3:** In December 2010 the **European Council** met to discuss the EP document. It concluded that the EP proposal “did not constitute an appropriate basis for negotiations” and voted in favour of using the original Commission draft as a basis for discussion.

This is problematic. On 6-7 December, by simply disregarding the EP draft amendments in favour of the Commission draft, the Council of Ministers blatantly disregarded the normal legislative procedure: it cannot simply dismiss the EP proposal because it does not like it. This seems to announce difficult negotiations between the Council and the EP in future (See Debate, Annex).

Next steps – Our action

1) The European Parliament and the European Council now have to negotiate together the wording of the new directive. This will take place in the more or less close future, either under the presidency of Hungary (Jan-June 2011) or of Poland (July-Dec 2011), or even possibly later.

2) **This means that there is still room for NGOs to lobby their relevant Ministers as well as EU Parliamentarians so as to influence the final text.**

It is therefore important that those of you living in the European Union contact your relevant national persons at Ministry levels and ministers (concerned ministries are: Labour, Social Security, Health, Family, Economy, Industry....) and obtain information concerning their opinion and discuss the issue with them.,. The same should be done with national European parliamentarians

Comparing drafts

Below are shown a few points comparing the 1992 directive, the Commission draft (2008) and the European Parliament amendments (2010). In column 3 comments are in **colour** and can be used as arguments for you to discuss the various provisions with members of the European Parliament and/or Ministries.

Element	1992 Directive	DRAFT: European Commission proposal 2008	DRAFT: European Parliament proposal, 2010
Scope	Pregnant worker, Workers who has recently given birth + Worker who is breastfeeding	Pregnant worker, Workers who has recently given birth + Worker who is breastfeeding	Pregnant worker (worker who has recently given birth and worker who is breastfeeding) as well as worker having recently adopted a child, employed in any type of contract including domestic work. (Wider scope, important to maintain)
Maternity leave	14 weeks	18 weeks before and/or after confinement	20 continuous weeks before and/or after confinement (longer leave is important to establish breastfeeding and for 6 months exclusive breastfeeding)
Paternity leave	2 weeks compulsory leave before/after confinement None	6 weeks compulsory leave after confinement None	6 weeks compulsory leave after birth for all working women At least 2 weeks to be taken during maternity leave (important move forward to include

<p>Parental leave</p>	<p>None but regulated by Council Directive 96/34/EC</p>	<p>None but regulated by Council Directive 2010/18/EU</p>	<p>paternity leave as an issue of gender equality, sharing of parental responsibilities. So, we welcome this but would prefer it in a separate directive .The danger is that the 2 weeks be taken from the women's leave, if it stays here.</p> <p>The last 4 weeks of maternity leave can be "family-related leave" (This is a "passerelle clause" (clause de compromis) to make it easier for countries to adopt this directive so they can count already existing paid parental leave under the new directive. This means no real change or improvement.)</p>
<p>Adoption leave</p>	<p>None</p>	<p>None</p>	<p>Same as maternity and paternity leave (improvement)</p>
<p>Payment</p> <p>Paid by:</p>	<p>Unclear (100% salary in some cases)</p> <p>State</p>	<p>During maternity leave: 100% or a ceiling</p> <p>State</p>	<p>100% for full period, including salary increase, pension rights, etc. (more benefits)</p> <p>State</p>
<p>Health protection</p>	<p>Prohibition of dangerous work (long list)</p>	<p>Prohibition of dangerous work (long list)</p>	<p>Prohibition of dangerous work (longer list) + night work + overtime</p> <p>Assessment of health risks including reproductive risks for male and female workers (longer, more detailed and stronger provisions)</p>
<p>Non-discrimination</p>		<p>Burden of proof on employer</p> <p>Non-victimisation</p> <p>Equal treatment of all persons without discrimination on grounds of sex</p>	<p>None (taken out of previous draft – burden of proof on employer is in ILO C183 and is considered an improvement to earlier texts where not included. Consider lobbying to get it back in?)</p> <p>Equal opportunities for pregnant women regarding recruitment if they meet all requirements</p> <p>Effective measures against discrimination on grounds of pregnancy, maternity leave, adoption leave</p> <p>Equality of men and women when formulating legislation (more precise and stronger)</p>

Job protection	No dismissal during pregnancy till end of maternity leave	No dismissal during pregnancy till end of maternity leave Return to same position, same benefits	No dismissal during pregnancy till 6 months after end of maternity leave (stronger than European Commission draft) Possibility to work part-time for one year after leave Return to same position, same salary, same benefits after leave as before (all provisions are more detailed and stronger than previous draft)
Breastfeeding breaks	None	None	2 x 60 minutes per day, paid (essential! And new in EU directives!)
Childcare facilities	None	None	Employers encourage to set up facilities for children under 3 years (very important including for breastfeeding and gender equality-sharing family responsibilities)

It is interesting to note that in the Preamble to the Parliament proposal (3rd column), reference is made to the WHO *Global Strategy on infant and young child feeding* (2002). On the other hand, reference to the ILO Convention No. 183 has been removed.

Further information

For more information on the process, the documents produced (comparisons) and the discussions that took place, see **Annex 1** below and:

<http://www.europarl.europa.eu/oeil/file.jsp?id=5697042>

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/118254.pdf

ANNEX 1: Summary of Debate, 6-7 December 2010, European Council

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Directive on maternity leave

On the basis of a presidency progress report (16509/10 + 16509/10 COR 1) and a questionnaire (16510/10) the Council held a policy debate on the draft directive aimed at improving the protection of pregnant workers and workers who have recently given birth or are breastfeeding.

A very large majority of ministers considered that the amendments adopted by the European Parliament at first reading, notably the requested extension of the minimum maternity leave to 20 weeks on full pay, did not constitute an appropriate basis for negotiations. They expressed concerns regarding the cost implications and emphasised that a directive should set minimum standards while respecting the principle of subsidiarity and the diversity of situations in the different member states.

Many ministers were reluctant to include paternity leave within the scope of the draft directive on maternity leave, of which the main purpose was to improve the health and safety at work of pregnant women and workers who had recently given birth or were breastfeeding, and not to reconcile work, family and private life, which was covered by other EU rules. Some delegations, however, considered that the draft directive should also cover fathers.

Many ministers were open to the idea of including a "passerelle" clause in the draft directive, allowing the member states to take into account forms of leave other than maternity leave offered to the mother which fulfilled certain conditions.

Many ministers stressed the need to carefully reflect on the draft directive, and some of them called for a further impact assessment.

The Belgian Presidency concluded that the Commission's original proposal aiming to extend the minimum length of maternity leave from 14 to 18 weeks could be a more acceptable basis for a compromise than the European Parliament's amendments. It also stressed the need to examine this issue carefully, including with the social partners, in order to achieve a balanced outcome.

The Belgian Presidency announced that it would consider how best to continue dealing with the file over the coming weeks, in coordination with Hungary and Poland, the two forthcoming presidencies.

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This was the first time that the Council had discussed this issue since the adoption of the European Parliament's first-reading position on 20 October 2010 which asked that the minimum maternity leave be extended to 20 weeks on full pay (<http://www.europarl.europa.eu/en/pressroom/content/20101020IPR88388>). The last time that this draft directive was on the agenda of the Council was 8 June 2009, when the EPSCO Council took note of a progress report by the Czech Presidency [10064/1/09](#) + [10064/1/09 COR 1](#)).

The main objective of the Commission's proposal is to extend the minimum length of maternity leave from 14 to 18 weeks of which at least six weeks must be taken after childbirth. Other elements of the proposal include the principle of full pay during the 18 weeks, with a possibility for member states to introduce a ceiling that must not be below sickness pay; the right for women coming back from maternity leave or already during maternity leave to ask their employer to adapt their working patterns and hours; and the right to return to the same job or an equivalent post.

The proposal forms part of the Commission's work-life balance package which aims to contribute to a better reconciliation of work, private and family life. Another part of the package was a proposal for a directive on the equal treatment of the self-employed and their assisting spouses which was adopted by the Council on 24 June 2010 ([11299/10](#)) following a second-reading agreement with the European Parliament.

In this context, it should be recalled that on 8 March 2010 the Council adopted a directive extending workers' rights to parental leave from three to four months for each parent ([16945/09](#) + [5922/1/10 REV 1](#)). At least one of the four months cannot be transferred to the other parent (i.e. it is lost if not taken), encouraging fathers to take the leave.

ANNEX 2: Comments by some of the European Parliamentarians during December discussions to give a flavor of the discussion and the variety of opinions, in preparation for your lobbying.

Parvanova Antonyia (Liberal)

...When we speak of sharing parental responsibilities between men and women, of a society that is more equal and of promoting the best interests of the child we must remember that we, here, represent the citizens of Europe and not the Council. We must not forget this...It is true that an extension (of maternity leave) will cost more but I've calculated that cost, it is 0.01 of the BNP, that is two billion euros. I've compared that with the military budget of the countries who are countering this proposal, and in one year their military budget has increased by 3 billion; this was never questioned here in the EU Parliament nor in the various national parliaments....

Romeva Rueda Raul (Green)

Some people here consider that having babies is only a woman's business...but having children is a social responsibility that has to be borne collectively. That is what we are talking about today. The cost of having children – our future – is not the responsibility of women alone...We need more rights for pregnant women. Fathers have to take on their responsibilities also...Yes there is an economic crisis but why would only women have to bear the brunt of it. We must not speak of costs but of investing in the future, of a society that is in better condition, healthier...

Edith Estrela (PS) who led the Committee responsible for drafting a counter proposal

There is an ideological resistance concerning this matter, coming from the fact that the European Parliament represents people from different origins, cultures and countries that have different experiences and ways of thinking, including concerning the fact that women should stay at home. There is financial resistance from those who bring forth the cost of this new directive. The preceding one is 18 years old....It would be a very bad signal for European countries and for Europe if the new directive did not improve the present situation. And we have to be coherent. On the one hand the European Commission and the European Council are the first to cry out about our demographic deficit, but when we find ways to improve birth rates, they start counting measly cents.

What results from low birth rates? The children of today are tomorrow's taxpayers. They will guarantee the sustainability of our social security systems. We need an active population. We must support the idea not only that maternity is not an illness, but also that it is not a problem or a weight, but a service to society. Women should not have to choose between having children and, for example, having to take on a managerial position. We must adopt more measures that aim to balance professional and public and family responsibilities. I am for paternity leave, that does not yet exist in European law though many countries have adopted it. It should serve to fight the idea that the education and care of children is only the woman's responsibility.

Another opinion: Christine de Veyra (PPE)

Extending maternity leave to 20 weeks at 100% salary is a bad "good idea". Such legislation will end up playing against women's employment in enterprises as they will consider it too costly to support women in the case of maternity. The same goes for reintegrating the worker in the same position and post. Lastly, paying 100% of the salary over a long period is costly for social security systems. For these reasons I cannot support this report.