

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending 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'**

**COM(2008) 637 final — 2008/0193 (COD)**

(2009/C 277/22)

Rapporteur: **Ms HERCZOG**

On 7 November 2008 the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community on the

*Proposal for a Directive of the European Parliament and of the Council amending 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*

COM(2008) 637 final - 2008/0193 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 April 2009. The rapporteur was Ms HERCZOG.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee adopted the following opinion by 82 votes to 37 with 2 abstentions.

## **1. Conclusions and recommendations**

1.1. The Committee supports the Commission's proposal for a new directive to improve the protection offered to pregnant workers and workers who have recently given birth and/or are breastfeeding.

1.2. The Committee sees this initiative as an opportunity to strengthen legislation that not only enables women to recover adequately following confinement, but also encourages them to breastfeed and helps them to forge a strong bond with their newborn child.

1.3. Unsafe working conditions during pregnancy and breastfeeding are unacceptable to the Committee. In this sense, women should be encouraged to make their pregnancy known as soon as they are aware of it so that any risk regarding health and safety can be assessed and eliminated. Special attention should be paid to risks to both women's and men's fertility, as well as for the embryo.

1.4. The Committee also pleads for extra support for parents and infants with special needs or who find themselves in special circumstances, like premature, disabled or sick babies, multiple births or hospitalisation, as well as adoption and fostering, etc.

1.5. The Committee agrees with the Commission that a minimum paid maternity leave of 18 weeks should be guaranteed to all pregnant employees. However, the Committee requests the Commission to consider the recommendation of the Social Platform <sup>(1)</sup>, - including the European Women's Lobby -, as well as those given by the WHO <sup>(2)</sup> and the UNICEF <sup>(3)</sup>, which are based on the benefit for children to be exclusively breastfed during their first six months of life, as a health prevention measure for both mother and child. It therefore recommends seeking for additional legal and practical solutions, which, in terms of space and time, can facilitate breastfeeding.

1.6. On the other hand, the Committee considers that sick leave during pregnancy should not have any impact on the whole duration of maternity leave, but urges the Commission to precise which exact period before confinement is meant.

<sup>(1)</sup> Common position of the Steering group of Social Platform on amendments on the directive amending Directive 92/85/EEC on maternity leave, 19 February 2009.

<sup>(2)</sup> 'As a global public health recommendation, infants should be exclusively breastfed for the first six months of life to achieve optimal growth, development and health' (Global Strategy on Infant and Young Child Feeding - A55/15, paragraph 10), in: [http://www.who.int/nutrition/topics/infantfeeding\\_recommendation/en/index.html](http://www.who.int/nutrition/topics/infantfeeding_recommendation/en/index.html). See also Michael S. Kramer, Ritsuko Kakuma: *The optimal duration of exclusive breastfeeding - A systematic review*, World Health Organisation, 2002, in: [http://www.who.int/nutrition/topics/optimal\\_duration\\_of\\_exc\\_bfeeding\\_review\\_eng.pdf](http://www.who.int/nutrition/topics/optimal_duration_of_exc_bfeeding_review_eng.pdf).

<sup>(3)</sup> See: <http://www.unicef.org>.

1.7. The Committee welcomes the suggestion that Member States should take the necessary measures to protect pregnant or breastfeeding workers, within the meaning of article 2 <sup>(4)</sup> of the original directive, from consequences of unlawful dismissal.

1.8. The Committee agrees that women have the right to return to employment, to the same or an equivalent post retaining the same terms and conditions, and to benefit from any improvements in working conditions to which they would have been entitled during the period of their absence.

1.9. The Committee strongly supports that payment during maternity leave be equal to the previous salary. This provision is not only a necessity, but also a way of recognising of the value of mothering.

1.10. In conformity with the flexicurity common principles and lifecycle approach, the Committee believes that the proposal has to be seen in the context of difficulties with the care needs of children under the age of two <sup>(5)</sup>. The use of flexible working hours for parents negotiated by all partners has proven its worth in this context.

1.11. Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding and bonding between the mother and the newborn child. The Committee highlights the importance of parental leave as an opportunity for both parents to spend adequate time with their children, but believes that parental leave should follow on from maternity leave and enable fathers to benefit from this possibility as well.

<sup>(4)</sup> See: Council Directive 92/85/EEC of 19 October 1992, Article 2, 'Definitions': For the purposes of this Directive:

- (a) pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice;
- (b) worker who has recently given birth shall mean a worker who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;
- (c) worker who is breastfeeding shall mean a worker who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice.

<sup>(5)</sup> See: Lamb, M.E. Ahnert, L. (2006): *Nonparental child care: Context, concepts, correlates and consequences*, in: W. Damon, R.M. Lerner, K.A. Renninger, T.E. Sigel (eds): *Handbook of Child Psychology (Vol.4) Child Psychology in Practice*, pp. 950-1016, Hoboken, N.J. and Chichester, Wiley.

1.12. The Committee takes this opportunity to suggest that initiatives be envisaged enabling grandparents and other close family members to care for the children if working parents so wish as well and provided this is in the child's interest. Such a measure would help to address labour market needs, as well as the reconciliation of working and private/family life. This temporary additional care provided by family members does not replace the State's responsibility to provide adequate day care, in terms of quantity and quality.

1.13. The Committee acknowledges the importance of a holistic and comprehensive approach to these matters, to see the whole picture and achieve economic and social progress. In this context, policy makers should consider different needs, competing values and conflicts of interest in the following issues:

- demographic issues (including low birth rate and fast growing number of pensioners);
- labour market needs;
- education and life long learning;
- equal opportunities for men and women;
- reconciliation of working, family and private life;
- accessible, affordable and high quality child care;
- active citizenship;
- solidarity between generations;
- fight poverty and social exclusion;
- and the best interest of the child <sup>(6)</sup>.

The Committee therefore urges the European institutions and the Member States to consider the necessity to take an integrated approach to this legislative proposal, and to avoid narrowing its scope and implications.

1.14. The Committee thinks that if the proposal aims to support reconciliation, maternity leave cannot be seen in isolation from the range of other existing instruments in the above mentioned areas.

1.15. The role of the social partners as main actors in the labour market is crucial in this respect. In the Committee's view, civil society too has to take an active part in the process, both in ensuring that Member States are implementing the directive and in supporting by all means the above mentioned comprehensive approach.

<sup>(6)</sup> In the context of the Commission's strategy *Towards a Strategy on the Rights of the Child*, launched on 04/07/2006 (in: <http://europa.eu/scadplus/leg/en/lvb/r12555.htm>).

## 2. Background

2.1. The proposal of a directive amending Directive 92/85/EEC seeks to improve the protection offered to pregnant workers and workers who have recently given birth and/or are breastfeeding. Protection is needed for several reasons. The length of maternity leave is influenced by many factors that should be considered when regulated. The former directive provides for a minimum of 14 continuous weeks maternity leave and also lays down requirements on health and safety in the workplace to protect pregnant women and those who have recently given birth or are breastfeeding. A woman cannot be dismissed during maternity leave. According to Article 2(7) of a previous legal instrument - the Directive 76/207/EEC -, after maternity leave, a woman has the right to return to the same or an equivalent post. Any less favourable treatment of a woman constitutes discrimination.

In the Roadmap for equality between women and men 2006-2010 <sup>(7)</sup> commitment was made to reviewing the existing EU legislation. Directive 92/85/EEC was not included in the recasting exercise and is therefore to be reviewed now.

2.2. In March 2006 the European Council stressed the need for better balance between work and private life in order to achieve economic growth, prosperity and competitiveness and approved the European Pact for Gender Equality <sup>(8)</sup>. The European Parliament called on several occasions for improvements to the existing legislation relating to pregnant workers and the granting of parental leave, and for measures to improve the reconciliation of professional, private and family life. On 21 February 2008, in its resolution on the demographic future of Europe <sup>(9)</sup>, the Parliament called on the Member States to adopt best practices as regards the length of maternity leave and its possible influence on the birth rate through coordinated public policies, by creating a family and child friendly material and emotional environment. In an earlier resolution of 27 September 2007 <sup>(10)</sup>, the Parliament had already urged the Member States to mutualise the costs of maternity and parental leave and welcomed the consultation with social partners. It urged Member States to combat discrimination

against pregnant women in the labour market and to ensure high level of protection for mothers. In March 2008 European Council reiterated that further efforts should be made to reconcile work with private and family life for both women and men <sup>(11)</sup>.

The directive is the tenth individual directive covered by article 16(1) of the Framework Directive 89/391/EEC on health and safety at work. Its now proposed revision includes an extension of the legal base to article 141 of the EC Treaty regarding equal treatment.

2.3. Citizens and civil society representatives consulted by the Commission expressed their concern with the fact that having children has a much higher impact on women's job prospects than on men's. The employment rate of women with dependent children is only 65 % compared to 91,7 % for men. Women have to face the consequences of stereotypical assumptions about their domestic responsibilities and their aptitude to employment <sup>(12)</sup>. This can lead to less women returning to the labour market after having a child.

## 3. General remarks

3.1. The Commission in its communication of 2006 <sup>(13)</sup> expressed that children's rights are a priority for the EU and that the Member States are bound to respect the UNCRC and its Optional Protocols, as well as the Millennium Development Goals. In March 2006, the European Council requested Member States 'to take necessary measures to rapidly and significantly reduce child poverty, giving all children equal opportunities, regardless of their social background' <sup>(14)</sup>. In the context of the current subject, this means to provide all children the opportunity to be breastfed and taken proper care of in accordance with their developmental needs by their primary caregiver, and, when appropriate, the access to accessible, flexible, high quality and affordable day care.

3.2. The EU employment policy promotes a life-cycle approach to work, acknowledging that workers have different needs and priorities at different stage of their lives. The directive on protection during pregnancy, maternity leave and breastfeeding has to be reflective of this life-cycle approach.

<sup>(7)</sup> A Roadmap for equality between women and men 2006-2010 (COM(2006) 92 final).

<sup>(8)</sup> See Annex II to the Presidency Conclusions of the Brussels European Council of 23/24 March 2006 in: [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/89013.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/89013.pdf).

<sup>(9)</sup> European Parliament resolution of 21 February 2008 on the demographic future of Europe (2007/2156 (INI) (A6-0024/2008), in: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0066&language=EN>.

<sup>(10)</sup> European Parliament resolution of 27 September 2007 on equality between women and men in the European Union - 2007 (2007/2065(INI) (P6\_TA(2007)0423) in: <http://www.europarl.europa.eu/oel/FindByProcnum.do?lang=2&procnum=INI/2007/2065>.

<sup>(11)</sup> See Presidency Conclusions of the Brussels European Council of 13/14 March 2008 in: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/99410.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/99410.pdf).

<sup>(12)</sup> Communication from the Commission: 'Citizen's Summary - Better maternity leave provisions designed to promote reconciliation of family and working life' ([ec.europa.eu/social/BlobServlet?docId=611&langId=en](http://ec.europa.eu/social/BlobServlet?docId=611&langId=en)); Common position on the revision of the Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave by the Social Platform, January 2009.

<sup>(13)</sup> Towards an EU Strategy on the Rights of the Child (COM(2006) 367 final).

<sup>(14)</sup> See paragraph 72 of the Presidency Conclusions - 23/24 March 2006 (ref. in footnote 8 above).

3.3. As the European Women's Lobby has put it, '*Maternity provisions are specific to women. The physicality of giving birth and the subsequent afterbirth and breastfeeding processes need to be recognised and supported by policy makers, employers and society as a whole*' <sup>(15)</sup>. As stated above, Europe has indeed a legal framework which prohibits gender discrimination through a range of legislative measures. However, women often reduce their working hours or take longer leaves from work to care for their children, which leads to lower pay and lower pensions. A better enforcement of current legislation in equality issues is therefore required.

3.4. Women should have the flexibility to choose when they will take their maternity leave. On the other hand, employers should be able to plan their human resources' needs to compensate for their absence. In their planning a minimum leave (of at least six weeks after birth) should be taken into account <sup>(16)</sup>.

3.5. The proposal would give women returning from maternity leave the right to request a flexible working time arrangement with the requirement for the employer to consider the request taking account of the needs of both the employer and the worker. The Committee agrees with this provision.

3.6. To be achieved, the different goals of the EU strategies on the implementation of the Lisbon Strategy, on the Barcelona targets, but also on the demographic situation, on solidarity between generations, on equal opportunities for men and women and on a better work-life balance need further clarification and harmonisation.

3.7. The EU, in its attempt to increase the number of working women <sup>(17)</sup>, should promote opportunities for the reconciliation of work, family and private life, so that the different needs, competing values and conflicts of interest are handled and monitored in a transparent way.

3.8. A large proportion of Member States have developed sets of measures to promote a better reconciliation of professional, private and family life, which reflect the different national labour market needs and the diversity of traditions and cultures present in Europe. If this proposal aims to support reconciliation, maternity leave cannot be seen in isolation of the range of other existing instruments in this area. These include childcare, flexible working arrangements, parental leave and other forms of leave, which are, in many cases, more relevant in providing a better reconciliation of work and family life.

#### 4. Specific remarks

4.1. The main legal basis for this proposal is the health and safety of pregnant and breastfeeding women. However, there is a logical link between health and safety issues and i) the right of the child to adequate care, ii) the reconciliation of family and

working life, and iii) employment and career opportunities. Furthermore, the demographic situation of Europe demands a policy that encourages and supports higher birth rates. The issues dealt with in this proposal for a directive are not standing alone. They have to be viewed as a complex matter as presented in the recommendations.

4.2. Special attention should be paid to risks to both women's and men's fertility. Both men and women should be protected from the factors involved in genetic mutations that lead to infertility and, what is worse, can cause malformations in the embryo.

4.3. Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding. While supporting this approach, the Committee calls for the identification of additional legal and practical solutions which make breast-feeding or expressing milk at work easier for mothers, in order to provide them with adequate time for exclusive breastfeeding, in line with the WHO and UNICEF recommendations <sup>(18)</sup> (e.g. the right to count breaks for breastfeeding as working time).

4.4. In special cases – premature, disabled or sick babies, multiple births or hospitalisation, the Commission proposes that Member States be able to provide a longer paid leave, considering the need for special care. The Committee believes that this list of cases should not be exhaustive but should also give individual Member States the opportunity to take into account other cases such as caesareans or postnatal complications. In cases of adoption and fostering of new born children, parental leave should also be guaranteed.

4.5. In line with the ILO Convention 183 <sup>(19)</sup>, the Committee accepts the proposal that, at least, six weeks of leave be taken after giving birth, but it would like to stress that this should be the minimum amount. This minimum period is essential to enable women to recover adequately following confinement, encourage breastfeeding and help forge a strong bond between mother and child.

4.6. Having in mind the UN Convention on the Rights of the Child <sup>(20)</sup>, the Commission should conduct a parallel study which considers the impact on the child of the proposed measures. The child must be well nurtured and his/her personal well being accounted for. The wellbeing of children and the value of childhood during this extremely important stage of life is decisive in itself, but, at the same time, children constitute the workforce of the future and the lack of care and support in this early period of life might lead to failures in school and later integration in society.

<sup>(15)</sup> Proposals from the European Women's Lobby on the Commission's proposal on the directive amending Directive 92/85/ECC January, 2009, p. 2.

<sup>(16)</sup> See pt. 4.5 of the 'Specific remarks'.

<sup>(17)</sup> Namely through the above mentioned Lisbon Strategy for Growth and Jobs.

<sup>(18)</sup> See footnotes 2 and 3.

<sup>(19)</sup> See: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>.

<sup>(20)</sup> *Convention on the Rights of the Child*, adopted by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990, in accordance with article 49. In: <http://www2.ohchr.org/english/law/crc.htm>.



4.7. The Committee agrees with the new provision, according to which sick leave during pregnancy due to illness or pregnancy complications should not have any impact on the duration of maternity leave, but urges the Commission to precise which period before confinement is meant. The provision in the directive which covers this issue must not be ambiguous <sup>(21)</sup>.

4.8. The Committee agrees that Member States should take the necessary measures to protect pregnant or breastfeeding workers, within the meaning of article 2 <sup>(22)</sup> of the proposal, from consequences of unlawful dismissal.

4.9. Being aware of the fact that in some countries there is a ceiling to payment during maternity leave corresponding to the amount of sick leave, the Committee would like to highlight that a lower payment than the previous salary has a detrimental effect and penalises women for their biological role of being mothers and does not take into account the value of mothering. A lower payment also impacts in the longer run, namely on their pension rights.

4.10. Job protection is an opportunity to ensure a growing number of births, adequate length of leave and increased participation of women in the labour market. In connection with this, flexible working hours and arrangements are required. According to the Directive's explanatory memorandum: *'(...) it is possible to influence birth rate curves favourably through co-ordinated public policies, by creating a family and child-friendly material and emotional environment'* <sup>(23)</sup>.

4.11. The role of grandparents and wider family members as carers and childminders who support working parents should be given greater consideration. The role other family members could

help retaining family structures, involving the elderly and reducing the stress of the working parents, as well as address labour market needs and the reconciliation of working and private/family life. Positive parenting initiatives and programs supported by all EU Member States, just like the many national programs available <sup>(24)</sup>, should also be taken into consideration in this respect. This temporary additional care provided by family members does not replace the State's responsibility to provide adequate day care, in terms of quantity and quality.

4.12. Childcare provision is a form of employment opportunity for women, but its quality and standards must be guaranteed. The Barcelona targets aim to achieve by 2010 at least 33 % day-care placement for children under the age of 3 and 90 % for the ones between 3 years old and the mandatory school age, but there is no special provision for the different forms of child care. Furthermore, even if 33 % could be placed in day-care centres, what happens to the other 2/3?

4.13. As regards the quality of childcare, there is scarce information relating to informal childcare services provided in the home by nannies, babysitters and 'au-pairs'; many of whom are unqualified, are not formally registered, and remain outside of recognised monitoring systems. These workers do not fall into formal employment structures, and thus lack proper workplace protection. Member States and local authorities should commit themselves to ensure quality care in all of its forms. Social partners should plead for regulations and transparency not only in professional childcare but also in all forms of home-based and informal care by supporting and requiring professional training and supervision. Tax incentives could contribute to the setting up of more high quality care facilities. Given the high number of women active in the care sector, improving working conditions and qualifications in this sector would also contribute to the EU overall strategy in this area.

Brussels, 13 May 2009.

The President  
of the European Economic and Social Committee  
Mario SEPI

<sup>(21)</sup> New article 8, pt. 5, refers to 'four weeks or more' (COM(2008)637 final, p. 15).

<sup>(22)</sup> See footnote 4.

<sup>(23)</sup> COM(2008) 637 final, p. 1.

<sup>(24)</sup> See: [http://www.coe.int/t/dg3/youthfamily/enfance/parenting\\_en.asp](http://www.coe.int/t/dg3/youthfamily/enfance/parenting_en.asp).

## APPENDIX I

**to the opinion  
of the European Economic and Social Committee**

The following amendments, which were supported by at least a quarter of the votes cast, were defeated in the course of the debate (Rule 54(3) of the Rules of Procedure):

**Point 1.5**

Amend as follows:

*'The Committee agrees with the Commission that a minimum paid maternity leave of 18 weeks should be guaranteed to all pregnant employees. However, the Committee requests the Commission to consider the recommendation of the Social Platform, – including the European Women's Lobby –, as well as those given by the WHO and the UNICEF, which are based on the benefit for children to be exclusively breastfed during their first six months of life, as a health prevention measure for both mother and child. It therefore recommends seeking for additional legal and practical solutions, which, in terms of space and time, can facilitate breastfeeding. As far as a minimum paid maternity leave is concerned, the Committee recommends to the European Commission to base its proposal to go beyond 14 weeks on concrete statistics. There is no concrete evidence on health and safety grounds that the current provision of 14 week maternity leave is insufficient.'*

<b>Result of the voting:</b>	For: 40	Against: 83	Abstentions: 5
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**Point 1.9**

Amend as follows:

*'The Committee strongly supports that payment during maternity leave be equal to the previous salary. This provision is not only a necessity, but also a way of recognising of the value of mothering. The Committee, while noting that payment during maternity leave be equal to the previous salary, asks the EC to bear in mind the significant extra costs not only for Member States but also for companies, particularly SMEs, whose survival in the present economic climate is crucial.'*

<b>Result of the voting:</b>	For: 39	Against: 79	Abstentions: 3
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**Point 1.11**

Amend as follows:

*'Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The maternity leave proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding and bonding between the mother and the newborn child. The Committee highlights the importance of parental leave as an opportunity for both parents to spend adequate time with their children, but believes that parental leave should follow on from maternity leave and enable fathers to benefit from this possibility as well.'*

<b>Result of the voting:</b>	For: 41	Against: 79	Abstentions: 3
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**Point 4.3**

Amend as follows:

*'Maternity leave as a means to protect pregnancy and maternity has to be clearly distinguished from parental leave. The maternity leave proposed period of 18 weeks aims primarily at enabling the recovery of women after giving birth and to ensure a minimum period of breastfeeding. While supporting this approach, the Committee calls for the identification of additional legal and practical solutions which make breast-feeding or expressing milk at work easier for mothers, in order to provide them with adequate time for exclusive breastfeeding, in line with the WHO and UNICEF recommendations (e.g. the right to count breaks for breastfeeding as working time).'*

<b>Result of the voting:</b>	For: 41	Against: 79	Abstentions: 3
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**Point 4.9**

Amend as follows:

*'Being aware of the fact that in some countries there is a ceiling to payment during maternity leave corresponding to the amount of sick leave, the Committee would like to highlight that a lower payment than the previous salary has a detrimental effect and penalises women for their biological role of being mothers and does not take into account the value of mothering. A lower payment also impacts in the longer run, namely on their pension rights. On the other hand, the EC should bear in mind the significant extra costs not only for Member States but also for companies, particularly SMEs, whose survival in the present economic climate is crucial.'*

<b>Result of the voting:</b>	For: 39	Against: 79	Abstentions: 3
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