

Common position for amendments

on the directive 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

This document was adopted by the Steering Group of Social Platform on February 19, 2009.

1. **Extending maternity leave to 24 weeks.** After giving birth, mothers need adequate recovery time. As recommended by WHO and UNICEF, they should be given the opportunity to breastfeed their child for up to six months. (Article 1.1)
2. **No discrimination in remuneration as stated by European law (Directive 2006/54/EC) - Payment of maternity leave must be equivalent to the last monthly salary without any ceiling.** (Article 1.1): According to Directive 2006/54/EC on equal treatment between men and women in employment, it is discriminatory to remunerate less favourably a worker because she is on maternity leave. Therefore to avoid contradicting Directive 2006/54/EC, any new European legislation on maternity leave must stipulate that the payment of maternity leave is to be equivalent to the last monthly salary without any ceiling.
3. **Removing eligibility criteria to give all women the same entitlement to paid maternity leave and allow true mobility in the EU and implementation of Flexicurity principles.** (original 1992 Article 11.4)
4. **Giving women better legal protection from dismissal and working time arrangements when returning to their jobs after maternity leave.** (Articles 1.2 and 1.3.d)

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Extend maternity leave to 24 weeks

Proposal for amendment Proposal for a directive amending act Article 1.1 Directive 92/85/EEC Article 8 – paragraph 1	
Text proposed by the Commission	
1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 18 weeks allocated before and/or after confinement.	1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 24 weeks allocated before and/or after confinement.

Justification for our proposal:

- **It will improve the health and security of mothers and children.** The World Health Organisation and UNICEF recommend that all babies be exclusively breastfed for six months (24 weeks) for the following reasons:
 - Babies who are breast-fed have fewer infections and allergies during the first year of life than babies who are fed formula
 - Breastfeeding reduces incidence and severity of infectious diseases, thereby lowering infant morbidity and mortality. It provides ideal nutrition for infants and contributes to their healthy growth and development
 - Breastfeeding contributes to women's health by reducing the risk of breast and ovarian cancer. Using detailed analysis of 47 published studies, the World Cancer Research Fund found that breastfeeding lowers the mother's risk of breast cancer by 4.3 per cent for every year of breastfeeding. If every child in Britain were breastfed for an extra six months there would be around 1,000 fewer cases of the disease every year. Currently 39,000 breast cancer cases are diagnosed in Britain each year and 13,000 women die from the disease.
- **It will facilitate the management of human resources in companies.** It is easier for businesses to find a replacement for six months than for a shorter period. In the latter case, companies would instead opt to burden other employees with additional work. In the current economic crisis, this provides an opportunity for people to work.
- **When most EU countries are failing to respond to the needs for childcare facilities, it provides enough time for parent to find one.** Most countries have missed the targets for much needed childcare provision – for 33% of children under three – that EU leaders set themselves at Barcelona in 2002, according to a report issued by the European Commission in October 2008 ([Read report](#) page 6).

No discrimination in remuneration as stated by European law (Directive 2006/54/EC) - Payment of maternity leave must be equivalent to the last monthly salary without any ceiling

**Proposal for amendment
Proposal for a directive amending act
Article 1. point 3. Subpoint c
Directive 92/85/EEC Article 11.3**

Text proposed by the Commission

"3. the allowance referred to in point 2(b) shall be deemed adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary, **subject to any ceiling laid down under national legislation. Such a ceiling may not be lower than the allowance received by workers within the meaning of Article 2 in the event of a break in activity on grounds connected with the worker's state of health. The Member States may lay down the period over which this average monthly salary is calculated.**"

3. the allowance referred to in point 2(b) shall be deemed adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary.

Justification for our proposal:

- **No discrimination in remuneration as stated by European law (Directive 2006/54/EC) - Payment of maternity leave must be equivalent to the last monthly salary without any ceiling.** Amending Directive 92/85/EEC cannot go against Directive 2006/54/EC on equal treatment of men and women in matters of employment and occupation

Since the adoption of the maternity leave directive in 1992, the European Parliament and the Council adopted in 2006 the [directive 2006/54/EC on equal treatment of men and women in matters of employment and occupation](#). According to Directive 2006/54/EC it is discriminatory to remunerate less favourably a worker because she is on maternity leave. Therefore to avoid contradicting Directive 2006/54/EC, any new European legislation on maternity leave must stipulate that the **payment of maternity leave is to be equivalent to the last monthly salary without any ceiling.**

Why?

- **It is discriminatory to treat a worker less favourably because she is on maternity leave.** Article 2.2.c of Directive 2006/54/EC states that discrimination includes “any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of directive 92/85/EEC”.
- **A worker on maternity leave cannot be paid less than her last monthly salary.** Article 4 of Directive 2006/54/EC states that “*direct and indirect discrimination on grounds of sex* with regards to all aspects and *conditions of remuneration shall be eliminated*”.
- **Full pay during maternity leave ensures the economic stability of the household.** Having a child represents an increase in costs for any household (e.g. paediatricians, infant sanitary products and new furniture). It is not economically feasible to expect families to spend more while earning less.

Proposal for amendment Proposal for a directive amending act Article 1.1 Directive 92/85/EEC Article 8 paragraph 2	
Text proposed by the Commission <p>2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth.</p>	<p>2. The maternity leave stipulated in paragraph 1 shall include compulsory <i>paid</i> leave <i>equivalent to the last month salary</i> of at least six weeks after childbirth. <i>The compulsory leave of six weeks shall be applied to all workers whether employees, self-employed, assisting spouses, unemployed women regardless of the number of days worked previously.</i> The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the <i>extent and the</i> time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth.</p>

Justification for our proposal:

- **No discrimination in remuneration as stated by European law (Directive 2006/54/EC) - Payment of maternity leave must be equivalent to the last monthly salary without any ceiling.** Amending Directive 92/85/EEC cannot go against Directive 2006/54/EC on equal treatment of men and women in matters of employment and occupation. (see justification above)
- **The compulsory leave is granted on the ground of motherhood only and is regardless of their employment status.** The Commission proposal requests a

compulsory leave after the childbirth for all women for health and safety reasons. Consequently the compulsory paid leave of six weeks shall be applied to all workers whether employees, self-employed, assisting spouses, unemployed women regardless of the number of days worked previously.

Proposal for amendment Proposal for a directive amending act Article 1.1 Directive 92/85/EEC Article 8 – paragraph 4	
Text proposed by the Commission <p>4. Member States shall take the necessary measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.</p>	<p>4. Member States shall take the necessary measures to ensure that additional leave is granted <i>and fully paid equivalent to last monthly salary</i> in the case of premature childbirth, children hospitalised at birth, children with disabilities, <i>mothers with disabilities, teenage mothers</i>, multiple births <i>and birth occurring less than 18 months after the previous birth</i>. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.</p>

Justification for our proposal:

- **No discrimination in remuneration as stated by European law (Directive 2006/54/EC) - Payment of maternity leave must be equivalent to the last monthly salary without any ceiling.** Amending Directive 92/85/EEC cannot go against Directive 2006/54/EC on equal treatment of men and women in matters of employment and occupation. (see justification above)
- **Vulnerable mothers need additional leave.** Due to additional challenges experienced by women with disabilities in society (difficulties to access building and transport services, as well as health and social services), many mothers with disabilities would need additional leave in order to get used to and to adapt themselves to their new situation, and in order to achieve a good development of family life.
- **Same challenges should mean the same rights.** The challenges arising from caring for a birth occurring less than 18 months after previous birth are the same as in the context of multiple births. Since the Commission proposal grants additional leave for multiple births, additional leave should be granted for birth occurring less than 18 months after the previous one.

Remove eligibility criteria to give all women the same entitlement to paid maternity leave and allow true mobility in the EU and implementation of Flexicurity principles.

Proposal for amendment Directive 92/85/EEC Article 11 – paragraph 4	
Text of directive 92/85/EEC 4. Member States may make entitlement to pay or the allowance referred to in points 1 and 2 (b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation.	<i>Deleted</i>

Justification for our proposal:

- **This article goes against two European economics objectives: mobility of workers and common flexicurity principles.** The Commission proposal acknowledges that the maternity leave is compulsory, (i.e. women must leave their job for health and safety reason). The text cannot at the same time request women to leave their job and lose their incomes when they do not fulfil national legislation conditions for paid maternity leave. These women are trapped in an income void where they would not receive any allowance because they do not fulfil the eligibility criteria but are not allowed to go back to work to make a living due to health and safety reason.

As it stands, the article goes against the mobility of workers in the following cases:

- female workers moving from one Member State to another (entitlement in one Member State not being recognised in another),
- for the ones who just have taken a position (not enough days in work but still have to give birth),
- for the ones who transit from one employment status to another (self employed to employee).

Give women better legal protection from dismissal and working time arrangements when returning to their jobs after maternity leave

Proposal for amendment Proposal for a directive amending act Article 1 point 2 Directive 92/85/EEC Article 10 – point 1	
<p>Text proposed by the Commission</p> <p>1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to the end of the maternity leave provided for in Article 8(1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.</p>	<p>1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to the end of the maternity leave provided for in Article 8(1), save in exceptional cases not connected with their condition <i>duly substantiated in writing and</i> which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.</p>

Proposal for amendment Proposal for a directive amending act Article 1.2 Directive 92/85/EEC Article 10 – point 2	
<p>Text proposed by the Commission</p> <p>2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs within six months following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing at the request of the worker concerned.</p>	<p>2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs within <i>one year</i> following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing [<i>Delete:</i> at the request of the worker concerned.]</p>

Justification for our proposal:

- **The proposed article as it stands goes against European anti-discrimination Directive 2006/54/EC.** A six month period could be used by employers as a *de-facto* trial period to test the newly returned worker's ability to adapt to the (rapidly) changing working environment. Therefore, a year is necessary in order to avoid potential indirect discrimination banned by article 2.1.b of Directive 2006/54/EC.
- Justifying the substantiated grounds for dismissal in writing, **regardless of whether the worker concerned requests it** should be a standard practice of all contracts that are terminated during the course of and before the end of the working contract period agreed initially between employer and employee.

Give women better legal protection from dismissal and working time arrangements when returning to their jobs after maternity leave. Whether or not the concerned worker so requests, a substantiated written statement of the ground for dismissal which cannot be linked to pregnancy and maternity must be provided.

Proposal for amendment Proposal for a directive amending act Article 1 point 1 Directive 92/85/EEC Article 8 – paragraph 5	
Text proposed by the Commission 5. Member States shall ensure that any period of sick leave due to illness or complications arising out of pregnancy occurring four weeks or more before confinement does not impact on the duration of maternity leave."	5. Member States shall ensure that any period of sick leave due to illness or complications arising out of pregnancy or not [...] before confinement does not impact on the duration of maternity leave.

Justification for our proposal:

- **The proposed article as it stands goes against European anti-discrimination Directive 2006/54/EC** which states in article 2.2.c that discrimination includes "any less favorable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC". Without impinging on their right to maternity leave, sick pregnant workers are entitled by law to the right to sick leave or any other absence permitted by labour law, collective agreements and any other agreement recognised as such in national law and practices.

**Proposal for amendment
Proposal for a directive amending act
Article 1 point 3 subpoint d**

Text proposed by the Commission

(d) The following point 5 is added:
"5. Member States shall take the measures necessary to ensure that workers, within the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account. "

5. Member States shall take the measures necessary to ensure that workers, within the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account ***to ensure greater reconciliation between professional, private and family life. An employer may refuse such a request only if the organisational disadvantages for the employer are disproportionately greater than the benefit to the worker.***

Justification for our proposal:

- **The article as it stands is not in line with European Parliament position on Working time directive** (adopted on 17 December 2008). Parliament amendment 11 to the Council Common Position states that employer cannot refuse such a request except if the burden is disproportionate.
- **The proposed article as it stands makes no reference to the common European Flexicurity principles.** The current proposal on the maternity Directive "*should support gender equality*" and "*offer measures to reconcile work, family and private life*".