

SECOND STAGE OF CONSULTATION OF EUROPEAN SOCIAL PARTNERS ON RECONCILIATION OF PROFESSIONAL, PRIVATE AND FAMILY LIFE

1. INTRODUCTION

The aim of this paper is to launch the second phase consultation of the social partners at European level on the issue of reconciliation of work, private and family life (hereinafter referred to as "reconciliation") and, in particular, on the content of possible proposals in this area, pursuant to Article 138(3) of the EC Treaty.

On 12 October 2006, the Commission adopted a document concerning the consultation of the social partners on reconciliation¹. In accordance with Article 138(2) of the EC Treaty, the social partners were invited to give their opinions on the need for, and the possible direction of, Community action on reconciliation. Specifically, the Commission consulted the social partners on (i) whether there is a need for further action on reconciliation, and, if there is, whether this action should be undertaken at Community, national, enterprise or sectoral level; (ii) the main areas in which improvements might be needed, in particular as regards working time and flexible working arrangements, new possibilities offered by information technologies, availability and quality of childcare and care services for the elderly and other dependants and leave; (iii) the means by which better reconciliation could be achieved; (iv) the adequacy of existing Community legislation, notably on parental leave and maternity protection; and (v) how a balance could be struck between costs and benefits.

2. RESPONSES OF THE SOCIAL PARTNERS AT COMMUNITY LEVEL TO THE FIRST PHASE OF CONSULTATION

The Commission has received thirteen replies from social partners at European level and closely examined them all. All of the social partners that replied² acknowledge the importance of reconciliation and the majority of organisations consider that further action is needed in this area. However, views differ on what needs to be done and at what level.

¹ SEC(2006)1245

² ETUC (European Trade Union Confederation),
BUSINESSEUROPE – the Confederation of European business (formerly UNICE),
CEEP (European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest),
Eurocadres (The Council of European Professional and Managerial Staff)
UEAPME (European Association of Craft and Small and Medium-Sized Enterprises),
CEC (European Confederation of Executives and Managerial Staff),
CEMR (Council of European Municipalities),
CoESS (Confederation of European Security Services),
HOTREC (Hotels, Restaurants and Cafes in Europe),
PEARLE (Performing Arts Employers' Associations League Europe),
EuroCommerce (Retail, Wholesale and International Trade Representation in the EU),
EPSU (European Federation of Public Service Unions),
CESI (European Confederation of Independent Trade Unions)

Level of action

Some organisations (ETUC³, CESI, EPSU) consider that action should be taken at all appropriate levels including EU level, while other organisations (BUSINESSEUROPE⁴, EuroCommerce, CEMR, CEEP) feel that action is necessary at national, sectoral, regional and/or company level.

Many organisations (BUSINESSEUROPE, CEEP, UEAPME, CEC, EuroCommerce, CEMR) consider that the Social Partners' Framework of Actions on Gender Equality agreed between UNICE (now BUSINESSEUROPE), UEAPME, CEEP and ETUC (hereinafter referred to as the 'Framework of Actions on Gender Equality') is the appropriate means of dealing with the issue of reconciliation. CEEP asks the Commission to await the implementation and evaluation of the Framework of Actions on Gender Equality prior to assessing the need for further action in this field. BUSINESSEUROPE indicates that actions need to be taken in the Member States and notes the need for co-operation between employees, employers and the State, and UEAPME notes that solutions need to be found at company level. CEMR considers that new approaches to reconciliation should primarily be developed at sectoral or workplace level, using a social partnership approach but that the work-life balance measures agreed upon by the social partners should be backed by adequate levels of social security benefits as well as by sufficient financial support for the provision of reliable public care facilities in order to enable employees to make effective use of possibilities for reconciliation.

Type of action

As to what action is needed, there is a good degree of consensus. Several organisations (ETUC, BUSINESSEUROPE, CEEP, UEAPME, CEC, EPSU and CEMR) refer to the need to encourage men to make use of possibilities for improving work-life balance, including parental leave. A considerable number of organisations (ETUC, BUSINESSEUROPE, UEAPME, CEC, EuroCommerce, CEMR) recommend information campaigns and/or exchanges of good practice at European and/or national levels and several organisations note that the EU has a valuable role to play in supporting the transnational exchange of experience and helping to identify good transferable practices. Eurocadres notes that highly qualified men can experience discrimination when they want to take up family leave. It also notes that, if measures that are intended to facilitate reconciliation are taken up by women only, they will lead both to a segregation within the organisation and discrimination against those using the measures.

Most organisations (ETUC, BUSINESSEUROPE, CEEP, UEAPME, CEC, EPSU) refer to the need for a mix of policy measures, namely leave, childcare and other care facilities and flexible working arrangements, tailored to the needs of workers and employers. EPSU notes that leave arrangements are useful, but cannot be effective if basic working conditions are not conducive to reconciliation. Eurocadres notes that the long hours' culture among professionals and managers is one of the biggest problems for work-life balance and, generally speaking, the best way for both women and men to reconcile work, private and family life would be to work fewer hours.

³ Eurocadres indicates that it fully agrees with the position of ETUC, therefore any references to ETUC should be taken as also referring to Eurocadres

⁴ Pearle indicates that the position of employers generally is set out in BUSINESSEUROPE's response to the consultation document, therefore any reference to BUSINESSEUROPE should be taken as also referring to Pearle

Care of children and other dependants

Most organisations (ETUC, BUSINESSEUROPE, UEAPME, CEC, CESI, EPSU, CEMR, CEEP,) stress the importance of adequate childcare facilities and facilities for the care of the elderly and other dependants and refer to the central role of the State in this area. ETUC suggests that a new target for the provision of elderly person's care and care for dependants could be added to the Lisbon goals. Some organisations (ETUC, EuroCommerce, CEMR) call on the Commission to monitor implementation of EU initiatives launched since 2000 as part of the Lisbon Strategy, for example ETUC calls on the Commission to take a proactive approach against Member States which are clearly not taking sufficient and appropriate action to achieve the Barcelona targets. CEMR calls on the Commission to monitor Member States' efforts in promoting good quality and affordable care services for children and the elderly, including by providing local and regional authorities with adequate levels of financial resources to maintain or develop existing care networks. ETUC also suggests that the social partners could be asked to develop recommendations on how to increase the availability, accessibility and quality of childcare.

BUSINESSEUROPE also notes that the targets set by the European Council in Lisbon and Barcelona are crucial, but point out that the specific measures needed to meet these targets have to be taken in the Member States. CEEP indicates that the Integrated Guidelines ought to continue to emphasise the importance of the provision of care services, and should place more emphasis on the provision of care services for the elderly. UEAPME indicates that the provision of appropriate care facilities is the responsibility of public authorities and suggests that companies which offer/support childcare facilities need to be supported e.g. through financial incentives and tax relief. Pearle notes the difficulties of balancing work and private and family life in the live arts sector which involves working in the evening and over the weekend when available childcare services are mostly closed. Eurocadres notes the need for a range of childcare services, for example for female managers during business trips.

ETUC and EPSU add that the issue of working conditions for those working in the care sector needs to be examined.

Flexible working arrangements

It is generally agreed that working arrangements need to meet the individual requirements of workers and employers, and so the social partners have an important role to play in this area. However, ETUC and EPSU also believe that maximum working hours and minimum protection should be regulated at EU level. ETUC stresses that flexible working arrangements need to provide workers with genuine options for combining a full-time job with family responsibilities. It expresses the view that both excessive and very short working hours as well as irregular and unpredictable working hours are issues that need to be tackled and flexible working arrangements must provide workers with flexibility in the context of mainstream employment arrangements. It also states that the option of availing of part-time work should be reversible and should not be seen as a panacea for meeting work-life balance needs.

Information technologies

A number of organisations (UEAPME, ETUC, CEMR, CEC) feel that information technologies can help facilitate reconciliation. ETUC indicates that the possibilities offered by information technologies should be further explored and developed, bearing in mind that they should be encouraged as voluntary options.

Adequacy of existing Community legislation

ETUC suggests that the current framework of legislative provisions and policies should be evaluated to assess where improvements are necessary and that efforts must be made to standardise leave arrangements and payment. ETUC also proposes that the social partners should evaluate the parental leave agreement, which was the basis for the Parental Leave Directive, and improve its provisions especially with regard to the right to paid parental leave.

EPSU indicates that existing legislation needs to be built on and strengthened and that stronger implementation of equal pay and improvement of women's wages are central to achieving a good work/life balance. Following the ECJ judgement in the Cadman case⁵, European legislation should clarify how the principle of equal pay for equal work is to be understood.

With regard to the Parental Leave and Maternity Protection Directives, trade unions (ETUC, EPSU) believe the Directives need to be amended and some, notably ETUC, make suggestions for specific amendments.

ETUC and EPSU call for the introduction of paternity leave. In addition ETUC, CESI and CEMR suggest that leave for the care of elderly persons or other dependants should be considered. It is also suggested that leave for adoption purposes, to facilitate temporary or permanent foster care, or for other reasons e.g. educational leave (ETUC and CEMR) could be considered.

On the other hand, employers' organisations think the existing EU legislation is adequate. CEC also considers that the existing legislation is adequate and, moreover, that diversity among Member States, in terms of employment policies and social protection systems, precludes a unique solution and 'hard law'. CEMR considers that efforts to harmonise policies adopted by Member States in order to enhance reconciliation should be made through mainstreaming work-life balance concerns in national employment policies and occupational social security systems, in the framework of the Open Method of Coordination, rather than by means of further legislation in this field. CoESS is not in a position to consider the adequacy of current Community legislation on parental leave or maternity protection. UEAPME expressed concern that the national implementation of the parental leave directive does not take sufficient account of the situation of SMEs.

3. COMMISSION RESPONSE AND PROPOSED FOLLOW-UP

The Commission welcomes the continued importance which the social partners attach to measures to support reconciliation. This was the subject of the pioneering 1995 Framework

⁵ Case C-17/05, Cadman vs. Health and Safety Executive

Agreement and, a decade later, work-life balance was one of the four priority areas for action during the period 2005 to 2010 in the Framework of Actions on Gender Equality⁶. The first follow-up report⁷ on the implementation of this Framework of Actions shows that the highest number of initiatives reported by social partners at national level is in the area of work-life balance. Nevertheless, the responses to the first stage consultation show that the social partners in general believe more can be done. However, in general, they also agree that it is important that any improvement of reconciliation policies should be in line with the growth and jobs strategy, and should be conducive to employment. Any possible introduction of more generous leave policies should not result in a disproportionate increase in the cost of hiring workers, as SMEs in particular would be affected by such higher labour costs. In any case, the costs and benefits of any possible new leave shall be assessed.

In considering what further actions might be taken regarding reconciliation, it is necessary to bear in mind that Member States have reached different institutional balances, with different instruments to help parents to reconcile their professional, private and family life. The family policy mixes are very different across countries, it is necessary therefore to consider the whole spectrum of circumstances and policies (inter alia labour market instruments, the availability of affordable childcare and/or inter-generational informal support) which facilitate reconciliation. The Commission considers the following components are necessary for an efficient approach to promoting better reconciliation between work, private and family life:

i. Childcare and care facilities for other dependants

The Commission shares the view of the social partners that the provision of affordable and accessible childcare facilities as required by the Barcelona targets is a fundamental component of reconciliation policy. The quality of childcare services in terms of the child's well-being, development and learning stimulation is also important. It is also closely linked to the creation of growth and jobs via the Lisbon strategy, whose employment guidelines underline the need to promote a lifecycle approach to work (guideline 18) notably through the provision of accessible and affordable childcare facilities and care for other dependants, as part of the effort to attract and retain more people in employment and increase labour supply. In addition, the Member States can use the Structural Funds, including the European Social Fund and the Rural Development Fund to facilitate access to childcare and care for other dependants. The Commission intends to propose, in 2008, a Communication on the availability, quality and affordability of childcare.

The Commission also agrees that the provision of services that meet the care needs of the elderly, people with disabilities and other dependants is a very important aspect of reconciliation. The Commission is also planning initiatives on support to the elderly and aged workers through the use of information and communication technologies (ICT); a Communication on "ageing well in the information society"; and a proposal for a European Parliament and Council Decision on a joint research and development programme aimed at enhancing the quality of the lives of elderly people. ICT have significant potential to support "independent living" of elderly and other dependent persons, thus easing the burden on persons caring for relatives.

⁶ http://ec.europa.eu/employment_social/news/2005/mar/gender_equality_en.pdf

⁷ http://ec.europa.eu/employment_social/social_dialogue/docs/fram_actions_gender_1streport06_en.pdf

The Commission would welcome the views of the social partners on how to increase the availability, affordability, accessibility and quality of childcare.

The Commission would also welcome the views of the social partners on how to promote and increase the availability, affordability, accessibility and quality of social services and care facilities for the elderly, people with disabilities and other dependants.

ii. Exchange of good practices

The Commission notes that many organisations consider that there is a need for the exchange of good practices and some organisations acknowledge that the EU could usefully support the transnational exchange of experience and help identify good transferable practices. The Commission has for example given a commitment to support the exchange of good practices in the field of work/life balance in the Roadmap for Equality between Women and Men⁸. With effect from 2008, the Commission will, in collaboration with the High Level Group on Gender Mainstreaming, organise the exchange and dissemination of good practices in relation to gender equality, including in the area of reconciliation of work, private and family life. The social partners have shown a similar commitment by adopting the Framework of Actions on Gender Equality.

The Commission would welcome proposals of the social partners on how to enhance the dissemination at all levels of experience gained in the context of the Framework of Actions on Gender Equality, and on how to reinforce the exchange of good practices on reconciliation in the European Union.

iii. Encouraging men to take up reconciliation measures

The Commission agrees that it is important that measures aimed at facilitating reconciliation are not only equally available to both women and men, but that they are also availed of by men as well as women. Member States endorsed this view in the European Pact for Gender Equality⁹ which specified the need to promote parental leave for both women and men and to combat gender stereotypes in the labour market.

The Commission has highlighted this area in its reports on equality between women and men 2006¹⁰ and 2007¹¹. In the most recent report, the Commission pointed out that numerous constraints restrict the free choice of individuals to effectively reconcile their professional and private lives and it proposed that arrangements for leave should be reviewed in this respect. It also stressed that action to combat stereotypes should be intensified at all levels by all parties involved and should be aimed, in particular, at men and companies. In parallel, it is also stressed that employees who take parental leave should be supported by measures to ensure that they maintain their skills and have access to training insofar as it guarantees a continued career advancement.

⁸ COM(2006)92

⁹ Adopted by the European Council in March 2006

¹⁰ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on equality between women and men – 2006 (COM(2006) 71 final)

¹¹ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on equality between women and men – 2007 (COM(2007) 49 final)

The Commission would welcome the views of the social partners on how to encourage men to avail themselves of measures aimed at reconciliation. Views on ways of changing the culture in organisations, where men may experience discrimination when they want to avail themselves of family leave, would also be welcome.

iv. New ways of working

The Commission believes a reconciliation policy should include the promotion, dissemination and application of innovative and adaptable work arrangements that facilitate work-life balance and take into account the different needs at different stages of life, as indicated in the 2006 annual report on equality between women and men. These work arrangements should meet the needs of workers and employers and should be available on a voluntary basis. They should be considered to be part of the corporate social responsibility. The Commission calls therefore on enterprises to step up their relevant CSR activities. Furthermore, the development of information and communication technologies may contribute to reconciliation by fostering innovative work arrangements and facilitating telework. Furthermore, it is recommended that workforce development programmes with a strong technology support should be set up so as to provide decisive support for any work arrangements that may promote or reinforce reconciliation.

The Commission would welcome the views of the social partners on the various ways innovative, adaptable and flexible work arrangements could be further developed and promoted, using, as the case may be, the contribution of new technologies in this context and/or the support of eLearning policies and techniques.

v. Equal pay

The importance of the principle of equal pay has also been referred to in the responses to the consultation. In the Roadmap for gender equality, the Commission identifies the elimination of the gender pay gap as a priority area for action, and announces that a Communication on the gender pay gap will be adopted in 2007. The Commission intends to adopt this Communication in July 2007.

vi. Updating the regulatory framework

In view of demographic challenges and the significant changes in the European labour market, notably the increased participation of women, in the last decades, the Commission takes the view that in order to facilitate reconciliation between work, private and family life it is necessary to set minimum entitlements for workers and that action at Community level should be considered in order to improve existing legislation in this area. The first stage of the consultation showed that there is a need for action at national, regional, sectoral and company level in order to take the circumstances in individual Member States and the individual needs of workers and employers into account. The social partners play an important role in this context.

As already indicated, most trade unions are of the opinion that existing Community legislation could be improved, while organisations representing employers as well as CEC consider that the existing legislation is adequate.

Any legislative changes should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings and negatively impact on job creation.

It should be recalled that the current legislative framework comprises on the one hand the Pregnant Workers Directive 92/85/EEC and on the other hand the framework agreement on parental leave concluded by UNICE, CEEP and ETUC annexed to Directive 96/34/EC.

a. New types of leave

The Commission takes the view that there are areas where new forms of leave could better meet the needs of workers in reconciling professional, private and family life, bearing in mind the important societal changes in recent decades, notably the increasing participation of women in employment, the need to reduce gender gaps in the labour market, the ageing population and the broader recognition of the value of a more equal sharing of private responsibilities between men and women. Policies aimed at facilitating reconciliation of work, private and family life should not be focused solely on parents with young children but should also take account of the needs of workers with elderly and other dependants, for example a child or other family member with a disability or with a terminal illness.

The Commission has identified the following types of leave which could help address these challenges:

(i) Paternity leave

An entitlement to paternity leave (i.e. a short period of leave for fathers around the time of the birth or adoption of a child) could be introduced. This leave would allow for the development of a first close bond between child and father and so should encourage men and women to take a more equal share of caring responsibilities. This leave, which would be in addition to the entitlement to parental leave under Directive 96/34/EC, would enable fathers to take a short period of leave following the birth or adoption of a child. Issues relating to the duration of such leave, payment, employment rights, etc., would have to be further considered.

(ii) Leave to care for dependent family members

As a supplement to the provision of affordable professional care, an entitlement to leave, similar to parental leave, to enable workers to care for an elderly parent or a family member with a disability or with a terminal illness could be considered. This should enable workers to combine the provision of care for dependent family members with paid work.

(iii) Adoption leave

An entitlement to adoption leave could be considered. There are a number of issues that would need to be examined if it is decided to bring forward a proposal for adoption leave, for example:

- 1) whether it should be an individual right for fathers and for mothers or should be shared between them;
- 2) the duration of leave and whether parents should be entitled to take some of it prior to the date of adoption;

- 3) issues relating to payment and employment rights during adoption leave, etc. .

b. Maternity protection

There are three main areas where the Commission considers that the Pregnant Workers Directive (92/85/EEC)¹² could be improved, namely:

(i) Duration of leave

The Directive requires Member States to ensure that workers are entitled to a continuous period of maternity leave of at least 14 weeks (Article 8).

Many Member States already provide for maternity leave in excess of 14 weeks. An increase in the duration of maternity leave could therefore be considered. Any proposal to increase the duration of leave could accordingly take into account the existing, but varied, provisions in the Member States¹³.

(ii) Level of payment

The Directive provides that a worker on maternity leave is entitled to a payment or an allowance which guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation. In addition, entitlement to pay or an allowance may be subject to eligibility criteria, which cannot, in any circumstances, provide for periods of previous employment in excess of 12 months (Article 11).

As regards the level of payment during maternity leave, a number of options could be considered. They will be subject to further analysis as to measure their potential positive impact.

(iii) Protection of women returning from maternity leave

Article 2(7), second paragraph, of Directive 76/207/EEC, as amended by Directive 2002/73/EC lays down that a woman on maternity leave shall be entitled, after the end of her leave, to return to her job or an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvements in working conditions to which she would be entitled during her absence.

¹² Council Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16(1) of Directive 86/391/EEC)

¹³ The duration of maternity leave varies from 14 weeks in a small number of Member States to 28 weeks in others (e.g. Czech Republic and Slovenia); in certain circumstances it is possible to take 52 weeks' maternity leave, only some of which attracts a payment, in the UK. Report on Pregnancy, Maternity, Parental and Paternity Rights, Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women, November 2006, http://ec.europa.eu/employment_social/gender_equality/legislation/bulletin_en.html.

For legal clarity, this provision could be integrated into the Pregnant Workers Directive. This would not change the existing level of protection, but would merely involve the transfer of the existing provision of Directive 76/207/EEC in order to clarify and make more effective the provisions relating to the protection of women on maternity leave.

The Commission calls on social partners to become more involved in the ways and means of reconciling work, family and private life as they are key players in this area. The Commission strongly encourages social partners to initiate the negotiation process on the basis of the proposals put forward in this document, in accordance with article 138(4) and Article 139 of the EC treaty. Failing that, the Commission would request social partners to forward an opinion or, where appropriate, a recommendation on the objectives and content of the envisaged proposals under 3(vi) sections a to b, in accordance with Article 138(3) of the EC Treaty.

c. Parental leave

The framework agreement on parental leave annexed to Directive 96/34/EC¹⁴ (hereinafter referred to as the framework agreement) is intended to "*facilitate reconciliation of work and family life*" and "*promote equal opportunities and treatment between men and women*". More than 10 years after the adoption of the framework agreement concluded by UNICE, CEEP and the ETUC, the Commission considers that improvements to Community provisions in relation to parental leave could be considered in order to better achieve these aims.

Clause 4.7 of the framework agreement provides that the signatory parties '*shall review the application of the agreement five years after the date of the Council decision giving effect to the agreement if requested by one of the parties to the agreement*'. The social partners did not carry out such a review. The Commission produced a report in 2003 on the implementation of the framework agreement, on which the social partners were consulted¹⁵. The Commission believes that the social partners can play a fundamental role in considering whether the parental leave legislation is still up to date.

The Commission has identified six areas where provisions in relation to parental leave could be improved, as follows:

i. Incentives for fathers to take parental leave

The framework agreement provides that the right to parental leave should, in principle, be non-transferable (clause 2.2).

Women continue to be the main carers of children and other dependent persons and, as a result, are more affected by the tensions arising when trying to combine participation in the labour market with private responsibilities.

¹⁴ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC

¹⁵ Report from the Commission on the Implementation of Council Directive 96/34/EC of 3rd June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (COM(2003) 358 final).

Statistics for 2005 show a 15-point drop in the employment rate of women aged between 20 and 49 in the EU-25 who have children (from 76% to 61.1%) compared with women in the same age group who do not have children, while that of men increases by six points (from 85.6% to 91.5%)¹⁶.

Similarly, the average number of hours worked by women is lower if they have children (31.43 hours per week in 2004, compared to 34.94 hours for women without children) while the average number of hours worked by men who have children is higher (42.71 hours per week compared to 41.53 hours)¹⁷. Evidence also shows that the majority of fathers do not avail of their entitlements to parental leave; for example, data from the European Foundation's Establishment Survey 2004-2005¹⁸ show that, on average, 30% of the establishments with recent experience of parental leave reported that one or more male employees were among those who took parental leave. It would therefore appear desirable to introduce incentives to encourage men to take parental leave.

There are a number of options which could be considered in this area, as follows:

- 1) parental leave could be made strictly non-transferable between the parents (i.e. strengthen the existing clause by making it mandatory);
- 2) a general clause requiring Member States to adopt provisions which encourage fathers to avail of their entitlements to parental leave could be adopted;
- 3) fathers could be encouraged to avail of their entitlements to leave by reserving a minimum period of parental leave for the father in situations where the entitlement to leave is a family one¹⁹;
- 4) fathers could be encouraged to avail of their entitlements to parental leave by providing that the parents/each parent will get an additional period of parental leave if the father takes a specified minimum period of leave²⁰.

ii. Employment rights and prohibition of discrimination

The framework agreement provides that at the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job. Rights acquired or in the process of being acquired on the date on which parental leave starts shall be maintained as they stand until the end of the leave.

¹⁶ COM(2007) 49 final

¹⁷ COM(2006) 71 final

¹⁸ Working time and work-life balance in European companies, Establishment Survey on Working Time 2004-2005, European Foundation for the Improvement of Living and Working Conditions

¹⁹ For example, in Sweden each parent is entitled to 240 days' cash benefit in connection with childbirth or adoption. A parent may transfer up to 180 days of his or her benefit (in effect, therefore, leave) to the other parent, thus reserving a minimum of 60 days' benefit for each parent. Similarly, the recently introduced Act on "Elterngeld" (parental benefit) in Germany (Gesetz zur Einführung des Elterngeldes), which grants parental benefit for 14 months, provides that parents will forfeit two months of their possible benefit if only one of them claims parental time.

²⁰ For example, in Italy the parents are entitled to a total of 10 months leave. The mother or the father can take a maximum of six months leave. If the father takes at least three months leave, his entitlement is increased to seven months and the maximum total length of leave is increased to 11 months

At the end of the leave, these rights, including any changes arising from national law, collective agreements or practice, shall apply. All matters relating to social security are for determination by Member States (clauses 2.5, 2.6 and 2.8).

By way of contrast Directive 92/85/EEC provides that during maternity leave, the rights connected with the employment contract of the worker, other than the right to remuneration, must be ensured (Article 11.2). Directive 76/207/EEC as amended by Directive 2002/73/EC²¹ provides that a woman on maternity leave shall be entitled after the end of her leave to return to her job or an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvements in working conditions to which she would be entitled during her absence (Article 2.7).

The Commission is of the opinion that one or more of the following improvements to existing parental leave provisions could be considered:

- parental leave counts for the purposes of all rights connected with the employment contract of the worker, except for the right to pay;
- parental leave counts for social security purposes;
- workers who have exercised, are exercising or are entitled to exercise the right to parental leave are not treated less favourably in terms of their working conditions.

iii. Duration of parental leave

The framework agreement provides for an individual right for men and women workers to three months parental leave (clause 2.1).

Many Member States already provide for parental leave in excess of the three months provided for in the Directive. An increase in the duration of parental leave could therefore be considered. In any case, it will be essential to ensure that the length and modalities of parental leave do not create incentives to drop out of the labour market for very long periods.

The option of providing for a longer period of leave for parents of a child with a disability could also be considered.

iv. Flexibility in relation to the taking of leave

The framework agreement provides that the conditions of access and detailed rules for applying parental leave are matters for Member States and/or the social partners. Member States and/or management and labour may, in particular, decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system (clause 2.3).

In order to make it easier for parents to avail of their entitlements to parental leave and to enable them to take parental leave in a way that best reconciles their work and childcare needs, provisions on flexibility in relation to how parental leave is taken could be introduced.

²¹ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

The availability of leave in a piecemeal way or on a part-time basis might be a compromise between not taking parental leave at all and a long period of full-time leave. Such an intermediate solution could also encourage men to avail of leave. Furthermore, it would allow for a better sharing of care duties between the parents. Finally it could be less damaging to the career prospects of either parent if the leave is shared between them. The following types of flexibility in relation to the taking of parental leave could therefore be considered:

- 1) a general article giving employees the right to ask for flexible arrangements in connection with parental leave;
- 2) employees could be given an entitlement to take parental leave in a piecemeal way e.g. in periods of one month;
- 3) employees could be given an entitlement to take parental leave on a part-time basis, unless it is not possible for the employer to grant part-time leave.

v. Age of the child in respect of which parental leave can be taken

The framework agreement provides for parental leave to enable parents to take care of a child until a given age up to 8 years to be defined by Member States and/or management and labour (clause 2.1).

The increase of the maximum age of a child determining parents' entitlement to parental leave could be considered. The following options could be examined:

- 1) the age could be increased to the end of the primary school cycle;
- 2) the age could be increased to the national compulsory school age (around 16 in many Member States);
- 3) a higher age could apply in respect of a child with a disability²².

vi. Payment

The framework agreement does not contain any provisions in relation to payment in respect of parental leave. According to the information available to the Commission, parental leave attracts some form of payment (subject to limitations in some cases e.g. means tests, only part of the leave attracts a payment, only one parent receives a payment) in 16 Member States. Data from the European Foundation's Establishment Survey reveal wide variations from country to country in the take-up of family-related leave. Parental leave is a much more common choice in countries where such leave is paid at a high replacement rate in terms of previous income. In Sweden, for example, where parents receive compensation amounting to 80% of their previous salary, 89% of the establishments surveyed reported recent experiences of parental leave compared to 25% in Spain where such leave is unpaid.

The Commission notes that parental leave is more likely to be taken up if it attracts some form of payment or allowance. The level of payment is important too in order to encourage fathers, who tend to earn more than mothers, to take parental leave.

²² For example, in the UK parents are entitled to parental leave until the child reaches five years of age (or in the five years following an adoption). The age limit is increased to 18 years in the case of a child with a disability.

Thus, relating the payment to the worker's salary would appear to be a good incentive for men's take-up of leave²³. For example, the recently introduced Act on parental benefit in Germany provides for a benefit based on former earnings, subject to a maximum ceiling.

The Commission encourages the European social partners to assess the provisions of their framework agreement on parental leave with a view to its review. The Commission also invites the social partners to continue their ongoing work to promote work-life balance in the context of their framework of actions on gender equality adopted in 2005. The Commission will monitor the work of the social partners and expects them to report on progress made by the 2008 Tripartite Social Summit.

4. CONCLUSION

Evaluations²⁴ of the various approaches to reconciliation mentioned above have shown that priority should be given to better sharing of family responsibilities between men and women and the care of dependent persons in an ageing society. From this point of view, incentives for fathers to take parental leave, the payment of parental leave, paternity leave, and possibilities for leave to care for the elderly and other dependent family members seem to be priorities.

The social partners have a crucial role to play in ensuring that reconciliation policies are effective, notably in the area of parental leave, and the Commission strongly urges them to take up negotiations under Article 139 including looking at the possibility of adapting the Framework Agreement.

Depending on the outcome of this second stage consultation, of negotiations between the social partners, and of a detailed impact assessment, the Commission will consider bringing forwards proposals to complement the existing legislation in the area of reconciliation.

Questions to the social partners

The Commission requests the social partners:

- to forward an opinion or, where appropriate, a recommendation on the objectives and content of the envisaged proposals under 3(vi) sections a and b in accordance with Article 138(3) of the EC Treaty;

²³ Report on Pregnancy, Maternity, Parental and Paternity Rights, Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women

²⁴ Reconciliation of work and private life – report of the group of experts on gender, social inclusion and employment, 2005

Studies Babies and Bosses of OECD – 2002-2005

TLM.net project –Managing social risks through transitional labour markets: Working Paper What can conservative welfare states learn from the Nordic experience? Transitions between family work and employment from a comparative perspective: Andrea Leitner and Angela Wroblewski, Institute for Advanced Studies Vienna (May 2005)

Transitions project: Gender, Parenthood and the Changing European Workplace: Young Adults Negotiating the Work-Family Boundary", Suzan Lewis and Janet Smithson, with contributions from the other members of the Transitions team

A blessing or a boomerang? The Danish welfare state and the labour market careers of women, Nina Smith, Aarhus School of Business, 13 – 15 November 2003

- to notify the Commission, where applicable, of their intention to initiate the negotiation process on the basis of the proposals put forward under 3(vi) sections a and b of this document, in accordance with Article 138(4) and Article 139 of the EC Treaty;
- to assess the provisions of their framework agreement on parental leave with a view to its review and to report on progress by March 2008.

The Commission would also welcome the opinions of the social partners on the items outlined under 3 (i) to (v).