



EUROPEAN PARLIAMENT

2009 - 2014

Session document

A7-0032/2010

5.3.2010

*****I**

SECOND REPORT

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)0637 – C6-0340/2008 – 2008/0193(COD))

Committee on Women's Rights and Gender Equality

Rapporteur: Edite Estrela

Rapporteur for the opinion(*): Rovana Plumb, Committee on Employment and Social Affairs

(*) Associated committee - Rule 50 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	4
EXPLANATORY STATEMENT	4
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS	4
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (*).....	4
PROCEDURE.....	4

(*) Associated committee - Rule 50

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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)0637 – C6-0340/2008 – 2008/0193(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0637),
 - having regard to Article 251(2) and Articles 137(2) and 141(3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0340/2008),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(3) and Articles 153(2) and 157(3) of the Treaty on the Functioning of the EU,
 - having regard to the opinion of the European Economic and Social Committee of 13 May 2009¹,
 - after consulting the Committee of Regions,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 37, 55 and 175 of its Rules of Procedure,
 - having regard to the first report of the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (A6-0267/2009),
 - having regard to the second report of the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (A7-0032/2010),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

¹ OJ C 277, 17.11.2009, p. 102.

3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

Amendment 1

Proposal for a directive – amending act Title of the Directive

Text proposed by the Commission

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

Amendment

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 ***and on the introduction of measures to support workers in balancing work and family life***

Justification

The extension of the scope of the directive is possible due to the combined legal basis, which includes Article 141(3) of the EC Treaty. The simultaneous treatment reinforces the message to business that human reproduction must concern men and women.

Amendment 2

Proposal for a directive – amending act Recital 4

Text proposed by the Commission

(4) Equality between men and women is a fundamental principle of the European Union. Articles 21 and 23 of the Charter of Fundamental Rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas.

Amendment

(4) Equality between men and women is a fundamental principle of the European Union. Articles 21 and 23 of the Charter of Fundamental Rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas, ***including in the achievement of a work-life balance.***

Amendment 3

Proposal for a directive – amending act Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) In the judgment of the Court of Justice of the European Communities of 26 February 2008 in Case C-506/06 Mayr v Flöckner¹, the Court held that direct discrimination on grounds of sex occurs if a female employee is placed at a disadvantage on account of absence in connection with IVF treatment.

¹ [2008] ECR I-01017.

Amendment 4

Proposal for a directive – amending act Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) The entitlement of a woman on maternity leave to return, after the end of that leave, to her job or to an equivalent post is laid down in Article 15 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)¹.

¹ OJ L 204, 26.7.2006, p. 23

Justification

The list of proposals in the act amending Directive 92/85/EEC contains no reference to Article 15 of Directive 2006/54/EC of the European Parliament and of the Council, which regulates the entitlements to be accorded to a woman returning to work after maternity leave.

Amendment 5

Proposal for a directive – amending act Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The revised Framework Agreement on Parental Leave signed on 18 June 2009 by the European social partners, does not adequately cover remuneration issues and specific types of family-related leave, and therefore does not fulfil its role as an important measure to improve the balance between private and working life for parents.

Justification

The Framework Agreement on Parental Leave is an important aspect of equal opportunities policy supporting reconciliation of professional, private and family life, however it sets out only minimum requirements, so it can only be regarded as a first step measure.

Amendment 6

Proposal for a directive – amending act Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) The objectives set out in the Presidency Conclusions of the Barcelona European Council of 15 and 16 March 2002 stated that Member States should remove disincentives to women's involvement in the labour market and aim to provide by 2010 childcare facilities for at least 90% of children between the age of three and the compulsory school age and for at least 33% of children under the age of three, and that such children should have equal access to such facilities in towns and rural areas.

Amendment 7

Proposal for a directive – amending act Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) The Commission Communication of 4 July 2006 entitled "Towards an EU Strategy on the Rights of the Child" states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals.

Justification

The communication states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals. With reference to this directive, this means ensuring that all children may be breastfed and receive appropriate care in accordance with their needs as regards development and access to adequate quality care.

Amendment 8

Proposal for a directive – amending act Recital 6 d (new)

Text proposed by the Commission

Amendment

(6d) The World Health Organisation Global strategy on infant and young child feeding of 16 April 2002, endorsed by Resolution 55.25 of the 55th World Health Assembly states that exclusive breastfeeding during the first six months of a child's life guarantees optimum growth and development. On the basis of

this resolution, the Member States should encourage the provision of leave designed to fulfil this purpose.

Amendment 9

Proposal for a directive – amending act Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) All parents have the right to care for their child.

Amendment 10

Proposal for a directive – amending act Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) The provisions of this Directive concerning maternity leave should not conflict with Member States' other rules on parental leave and this Directive should not undermine those rules. Maternity leave, paternity leave and parental leave are complementary and when used in combination can promote a better work-life balance.

Justification

In its explanatory memorandum the Commission draws an artificial distinction between maternity leave and parental leave. Both models complement each other, and using them in combination can promote a better work-life balance.

Amendment 11

**Proposal for a directive – amending act
Recital 8 c (new)**

Text proposed by the Commission

Amendment

(8c) A worker who has adopted a child should have the same rights as a natural parent and be able to take maternity leave on the same conditions.

Justification

Even though the scope of this Directive refer to the natural maternity becoming a mother through adoption imposes the same scope of the duties, responsibilities and difficulties in balancing work and family life

Amendment 12

**Proposal for a directive – amending act
Recital 9**

Text proposed by the Commission

Amendment

(9) The vulnerability of pregnant workers and of workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least **18** continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least six weeks allocated after confinement.

(9) The vulnerability of pregnant workers and of workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least **20** continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least six weeks allocated after confinement.

Amendment 13

**Proposal for a directive – amending act
Recital 9 a (new)**

Text proposed by the Commission

Amendment

(9a) The care of disabled children presents a particular challenge for working mothers, which should be recognised by society. The increased vulnerability of working mothers of disabled children means that they should

be granted additional maternity leave; this Directive should lay down the minimum period of such leave.

Amendment 14

Proposal for a directive – amending act Recital 10

Text proposed by the Commission

Amendment

(10) The International Labour Organization recommends a minimum duration of maternity leave of 18 weeks remunerated at the full amount of the woman's previous earnings. The ILO Maternity Protection Convention of 2000 provides for a period of six weeks' compulsory leave after childbirth.

deleted

Amendment 15

Proposal for a directive – amending act Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In order to be considered maternity leave within the meaning of this Directive, family-related leave which is available at national level should extend beyond the periods provided for in Directive 96/34/EC; should be remunerated as provided for in this Directive; and the guarantees laid down in this Directive in relation to dismissal, return to the same job or an equivalent post, and discrimination, should apply.

Justification

It is important that Member States which already have provision for longer periods of parental leave for both parents can keep their generous conditions, without this affecting other Member States or diminishing the effect of this proposal for a directive prolonging the maternity leave across the EU.

Amendment 16

Proposal for a directive – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) A post termed ‘equivalent’ pursuant to Article 11(2)(c) should mean a post that is the same as the former post, as regards both the salary paid and the duties to be performed or where this is not possible, a similar post corresponding to the worker’s qualifications and existing salary.

Justification

The employer should make any effort to restore employee to the previous working conditions but in a case that it is objectively not possible the flexibility should be applicable, thus working rights preserved.

Amendment 17

Proposal for a directive – amending act Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) In view of demographic trends in the European Union, it is necessary to promote an increase in the birth-rate by means of specific legislation and measures to combine work, private life and family life more effectively.

Amendment 18

Proposal for a directive – amending act Recital 13

Text proposed by the Commission

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection

Amendment

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection, ***in order to safeguard their rights to decent working conditions and a better balance between family life and work.***

Amendment 19

Proposal for a directive – amending act Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life¹, Member States were encouraged to consider whether, under their respective legal systems, working men might be granted a non-transferable individual right to paternity leave, without any loss of employment rights.

¹ OJ C 218, 31.7.2000, p. 5.

Justification

In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life, Member States were encouraged to consider whether, under their respective legal systems, working men might be granted a non-transferrable individual right to paternity leave, without any loss of employment rights; most Member States have responded favourably.

Amendment 20

**Proposal for a directive – amending act
Recital 13 b (new)**

Text proposed by the Commission

Amendment

(13b) For the purposes of helping workers reconcile their professional and family life, it is essential to provide for longer maternity and paternity leave, including in the event of adoption of a child under the age of 12 months. The worker who has adopted a child under the age of 12 months should have the same rights as a natural parent and be able to take maternity and paternity leave on the same conditions.

Amendment 21

**Proposal for a directive – amending act
Recital 13 c (new)**

Text proposed by the Commission

Amendment

(13c) For the purposes of helping workers to reconcile their professional and family life and to achieve true gender equality it is essential for men to be entitled to paid paternity leave, granted on an equivalent basis – except with regard to its duration – to maternity leave with a view to gradually establishing the conditions required. This entitlement should also be given to unmarried couples. Member States are encouraged to consider whether, under their respective legal systems, working men might be granted a non-transferable individual right to paternity leave, without any loss of employment rights.

Amendment 22

Proposal for a directive – amending act Recital 13 d (new)

Text proposed by the Commission

Amendment

(13d) In the context of the European Union's ageing population and the Commission Communication of 12 October 2006 entitled "The demographic future of Europe – from challenge to opportunity", every effort will need to be made to ensure the effective protection of motherhood and fatherhood.

Justification

In view of demographic changes and the importance of having more children, the necessary steps must be taken to ensure effective maternal and paternal leave.

Amendment 23

Proposal for a directive – amending act Recital 13 e (new)

Text proposed by the Commission

Amendment

(13e) The Commission Green paper entitled "Confronting demographic change: a new solidarity between the generations" refers to the fact that the Member States have low fertility rates, which are insufficient for the replacement of the population. Measures are therefore needed for the improvement of conditions at the workplace for workers before, during and after pregnancy. It is recommended that the best practices from those Member States with high fertility

rates and which ensure the continued participation of women in the labour market be followed.

Amendment 24

Proposal for a directive – amending act Recital 13 f (new)

Text proposed by the Commission

Amendment

(13f) In the December 2007 conclusions of the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on “Balanced roles for women and men for jobs, growth and social cohesion”, the Council recognised reconciliation of work and family and private life as being a key area as regards the promotion of gender equality in the labour market.

Justification

In the December 2007 conclusions of the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on “Balanced roles for women and men for jobs, growth and social cohesion”, the Council recognised reconciliation of work and family and private life to be a key area as regards the promotion of gender equality in the labour market.

Amendment 25

Proposal for a directive – amending act Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Provision concerning maternity leave would serve no purpose unless accompanied by the maintenance of all rights linked to the employment contract, including maintenance of full pay and entitlement to an equivalent allowance.

Justification

Entitlements must be based on full pay so as to prevent women losing out financially because they are mothers.

Amendment 26

Proposal for a directive – amending act Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Member States are urged to introduce into their national legal systems measures to ensure real and effective compensation or reparation, as they consider to be appropriate, for any harm caused to a worker by any breach of the obligations under this Directive, in a way which is dissuasive, effective and proportionate to the damage suffered.

Amendment 27

Proposal for a directive – amending act Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Victims of discrimination should have adequate means of legal protection. To provide more effective protection, it should be possible for associations, organisations and other legal entities to engage, as Member States consider to be appropriate, in proceedings on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 28

**Proposal for a directive – amending act
Recital 19 b (new)**

Text proposed by the Commission

Amendment

(19b) It will be necessary for Member States to encourage and promote active participation by the social partners to ensure better information for those concerned and more effective arrangements. Through encouraging dialogue with the abovementioned bodies, Member States could obtain more feedback and a greater insight into the implementation of this Directive in practice, and of problems likely to arise, with a view to eradicating discrimination.

Justification

Participation by social partners is extremely important in efforts to eradicate discrimination. Their data networks could provide additional information channels for workers about their rights and a source of feedback for the Member States, given that they have greater experience regarding the various problems likely to arise. We therefore consider it important to ensure their active participation and establish an open dialogue.

Amendment 29

**Proposal for a directive – amending act
Recital 20**

Text proposed by the Commission

Amendment

(20) This Directive lays down minimum requirements and thus offers the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation prevailing in each Member State.

(20) This Directive lays down minimum requirements and thus offers the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation prevailing in each Member State, ***in particular national laws which, by combining parental leave and maternity leave, provide for an entitlement to the mother of at least 20 weeks of leave allocated before and/or after confinement, and remunerated at least at the level provided for in this***

Directive.

Justification

According to the World Health Organisation recommendation of 16 April 2002 on a global strategy on infant and young child feeding, exclusive breastfeeding during the first six months of a child's life guarantees optimum growth and development. In view of this a period of 20 weeks is set as a minimum requirement.

Amendment 30

**Proposal for a directive – amending act
Recital 20 a (new)**

Text proposed by the Commission

Amendment

(20a) Member states should encourage dialogue between social partners and with NGOs, in order to be aware of and to fight against different forms of discrimination.

Amendment 31

**Proposal for a directive – amending act
Article 1 – point -1 b (new)
Directive 92/85/EEC
Article 1 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

-1b. In Article 1 the following paragraph 1a is inserted:

“1a. This Directive also aims to improve the conditions for pregnant workers and workers who have recently given birth to remain in, or return to, the labour market and to ensure better reconciliation of professional, private and family life.”

Justification

Given the addition of Article 141 of the EC Treaty to the legal basis of this proposal, the additional point aims at widening the scope of the directive and allows for including issues such as flexible working arrangements and paternity leave.

Amendment 32

Proposal for a directive – amending act

Article 1 – point -1 c (new)

Directive 92/85/EEC

Article 2

Text proposed by the Commission

Amendment

-1c. Article 2 is replaced by the following:

“Article 2

Definitions

For the purposes of this Directive:

(a) pregnant worker shall mean a pregnant worker *employed under any type of contract, including in domestic work*, 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 *employed under any type of contract, including in domestic work*, 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; *for the purpose of this Directive it shall also mean a worker who recently adopted a child;*

(c) worker who is breastfeeding shall mean a worker *employed under any type of contract, including in domestic work*, 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; ”

Amendment 33

Proposal for a directive – amending act

Article 1 – point -1 d (new)

Directive 92/85/EEC

Article 3

Text proposed by the Commission

Amendment

-1d. Article 3 is replaced by the following:

“Article 3

Guidelines

1. In consultation with the Member States and assisted by the Advisory Committee on Safety, Hygiene and Health Protection at Work, the Commission shall draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous *for the reproductive health of male and female workers and* for the safety or health of workers within the meaning of Article 2. *These guidelines shall be reviewed and shall, from 2012, be updated at least every five years.*

The guidelines referred to in the first subparagraph shall also cover movements and postures, mental and physical fatigue and other types of physical and mental stress connected with the work done by workers within the meaning of Article 2.

2. The purpose of the guidelines referred to in paragraph 1 is to serve as a basis for the assessment referred to in Article 4(1).

To this end, Member States shall bring these guidelines to the attention of all employers and all *male and female workers and/or their representatives and the social partners* in the respective Member State.”

Justification

It is important to keep the guidelines up to date with recent developments and knowledge. Furthermore, health and safety risks exist for both men and women, and should be taken into account more generally, as they are important even before the moment of conception.

Amendment 34

Proposal for a directive – amending act

Article 1 – point -1 e (new)

Directive 92/85/EEC

Article 4

Text proposed by the Commission

Amendment

-1e. Article 4 is replaced by the following:

“Article 4

**Assessment, information and
consultation**

1. In the risk assessment carried out under Directive 89/391/EEC the employer shall include an assessment of the reproductive risks for male and female workers.

2. For all activities liable to involve a specific risk of exposure to the agents, processes or working conditions of which a non-exhaustive list is given in Annex I, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned, of workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2, either directly or by way of the protective and preventive services referred to in Article 7 of Directive 89/391/EEC, in order to:

- assess any risks to the safety or health and any possible effect on the pregnancy or breastfeeding of workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2,

- decide what measures should be taken.

3. Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2 in the undertaking and/or establishment concerned and/or their representatives and the relevant social partners shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work.

4. Appropriate measures shall be taken to ensure that workers and/or their representatives in the undertaking or establishment concerned may monitor the application of this Directive or may be involved in its application, in particular with regard to the measures determined by the employer which are referred to in paragraph 2, without prejudice to the employer's responsibility for determining those measures.

5. Consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance with Article 11 of Directive 89/391/EEC."

Justification

It is essential to promote a preventive approach providing proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 35

Proposal for a directive – amending act

Article 1 – point -1 f (new)

Directive 92/85/EEC

Article 5

Text proposed by the Commission

Amendment

-1f. Article 5 is amended as follows:

(a) Paragraph 2 is replaced by the following:

“2. If the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible [...] the employer shall take the necessary measures to move the worker concerned to another job.”

(b) Paragraph 3 is replaced by the following:

“3. If moving her to another job is not technically and/or objectively feasible [...] the worker concerned shall be granted leave in accordance with national legislation and/or national practice for the whole of the period necessary to protect her safety or health.”

Justification

The current text of paragraphs 2 and 3 gives a far too wide opportunity to employers to argue that they cannot adapt the workplace or offer an alternative job. By deleting the part ‘or cannot reasonably be required on duly substantiated grounds’ the protection of the employment opportunities for women is increased, since less scope remains for the employer to argue that offering such alternatives is not technically or objectively feasible.

Amendment 36

Proposal for a directive – amending act

Article 1 – point -1 g (new)

Directive 92/85/EEC

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

-1g. The following paragraph is added to Article 6:

"2a. pregnant women shall, in addition, not be required to perform tasks such as carrying and lifting heavy weights or

tasks that are dangerous or exhausting or which pose health risks."

Justification

Pregnant workers should be exempted not only from activities exposing them to high risks but also from tasks that involve major physical effort or pose health risks.

Amendment 37

Proposal for a directive – amending act

Article 1 – point -1 h (new)

Directive 92/85/EEC

Article 7

Text proposed by the Commission

Amendment

-1h. Article 7 is replaced by the following:

“Article 7

Night work and overtime

- 1. Member States shall take the necessary measures to ensure that workers referred to in Article 2 are not obliged to perform night work and are not obliged to work overtime:**
 - (a) during the 10 weeks prior to the due date of childbirth;***
 - (b) during the remainder of the pregnancy should it be necessary for the health of the mother or the unborn child;***
 - (c) during the entire period of breastfeeding.***
- 2. The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of:**
 - (a) transfer to compatible daytime work;***
 - or***
 - (b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible [...].***
- 3. Workers wishing to be exempted from night work shall, in accordance with rules**

laid down by the Member States, inform their employer and, in the case referred to in paragraph 1(b), submit a medical certificate to the employer.

4. For single parents and parents of children with severe disabilities, the periods referred to in paragraph 1 may be extended in accordance with the procedures laid down by the Member States".

Amendment 38

Proposal for a directive – amending act

Article 1 – point 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

Amendment

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.

continuous period of maternity leave of at least **20** weeks allocated before and/or after confinement.

Justification

Maternity leave of 20 weeks is long enough to enable women to breastfeed in comfort - which should be the only feeding method as recommended by the WHO - and it would give enough time to recover from confinement and enable a mother to forge a strong bond with her child.

It is important that Member States which already have provision for longer periods of parental leave for both parents can keep their generous conditions, without this affecting other Member States or diminishing the effect of this proposal for a directive prolonging the maternity leave across the EU.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. With regard to the last four weeks of the period referred to in paragraph 1, an existing scheme of family-related leave available at national level may be considered to be maternity leave for the purposes of this Directive, on condition that it provides overall protection to workers within the meaning of Article 2 of this Directive that is adequate as regards the level set out in this Directive. In this case, the total period of leave granted must exceed the period of parental leave provided for in Directive 96/34/EC.

Justification

Maternity leave of 20 weeks is long enough to enable women to breastfeed in comfort - which should be the only feeding method as recommended by the WHO - and it would give enough time to recover from confinement and enable a mother to forge a strong bond with her child.

It is important that Member States which already have provision for longer periods of parental leave for both parents can keep their generous conditions, without this affecting other Member States or diminishing the effect of this proposal for a directive prolonging the

maternity leave across the EU.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The maternity leave stipulated in paragraph 1 shall include compulsory ***fully paid maternity*** leave of at least six weeks after childbirth, ***without prejudice to existing national laws which provide for a period of compulsory maternity leave before 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. ***The six-week period of compulsory maternity leave shall apply to all working women regardless of the number of days worked prior to confinement.***

Amendment 41

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This period may be shared with the father, in accordance with the legislation of the Member State concerned if the couple agrees and so requests.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. To protect the health of both mother and child, Member States shall take the necessary measures to ensure that workers can decide freely and without compulsion whether or not to take the non-compulsory period of maternity leave before childbirth.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC.

Article 8 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. The worker must indicate her chosen period of the non-compulsory portion of the maternity leave no later than one month before the date of commencement of such leave.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. For multiple births the compulsory period of maternity leave referred to in paragraph 2 shall be increased for each additional child in accordance with national legislation.

Amendment 45

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

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.

4. Member States shall take the necessary measures to ensure that ***fully paid*** additional ***maternity*** leave is granted ***in specific situations justified on medical grounds, such as*** in the case of premature childbirth, children with disabilities, ***mothers with disabilities, teenage mothers***, multiple births ***or births occurring within 18 months of the previous birth***. The duration of the additional ***maternity*** leave ***after confinement*** should be proportionate and allow the special needs of the mother and the child/children to be accommodated. ***Where national legislation and/or practice provide for maternity leave or parental leave in excess of 20 weeks this can be counted towards any additional periods of maternity leave provided for under***

paragraphs 3 and 4.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5

Text proposed by the Commission

Amendment

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.

deleted

Amendment 47

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall protect mothers' and fathers' rights by ensuring that there are special working conditions so as to help the parents of children with disabilities.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. This Directive also applies to self-employed workers, and Member States shall make the necessary adjustments to their respective laws in order to guarantee equal employment rights, as regards maternity leave.

Justification

Self-employed workers should not be treated differently from nor enjoy fewer rights than employees.

Amendment 49

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5c. Member States shall adopt suitable measures for the recognition of postnatal depression as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on the illness and correcting the prejudices and possible stigmatisation which it can still attract.

Justification

The aim of this amendment is to raise Member States' awareness of the need for official recognition of postnatal depression as an illness, given that it affects 10-15% of women and has significant repercussions for work and family life.

Amendment 50

Proposal for a directive – amending act
Article 1 – point 1 a (new)
Directive 92/85/EEC
Article 8 a (new)

Text proposed by the Commission

Amendment

1a. The following Article 8a is inserted

"Article 8a

Paternity leave

1. Member States shall take the necessary measures to ensure that workers whose life partner has recently given birth are entitled to a continuous period of non-transferable fully paid paternity leave of at least two weeks, to be taken after the confinement of the worker's spouse or partner within the period of the maternity leave;

Member States that have not already introduced non-transferable fully paid paternity leave to be taken within the period of the maternity leave on a compulsory basis for a continuous period of at least two weeks after the confinement of the worker's spouse or partner, are strongly encouraged to implement it in order to promote equal participation of both parents in balancing family rights and responsibilities;

2. Member States shall take the necessary measures to ensure that workers whose life partner has recently given birth are granted a period of special leave including the unused portion of maternity leave in the case of death or physical incapacity of the mother."

Amendment 51

Proposal for a directive – amending act

Article 1 – point 1 b (new)

Directive 92/85/EEC

Article 8 b (new)

Text proposed by the Commission

Amendment

1b. The following Article 8b is inserted:

“Article 8b

Adoption leave

Member States shall take the necessary measures to ensure that the provisions of this Directive concerning maternity and paternity leave also apply in the event of adoption of a child of less than 12 months old.”

Amendment 52

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – point 1

Text proposed by the Commission

Amendment

1. The Member States shall take the

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.

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 ***at least six months following*** the end of the maternity leave provided for in Article 8(1). ***Dismissal during that period shall be duly justified in writing***, 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.

Amendment 53

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – point 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall take the necessary measures to prohibit discrimination against pregnant women in the labour market by creating equal opportunities for them with regard to recruitment, should they meet all the requirements for the applicable position.

Justification

The Member States should guarantee the equal access to the labour market for pregnant women, so that the pregnancy does not jeopardise the career and chances for professional

development of women only because hiring a pregnant worker presents an additional burden to the employer.

Amendment 54

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – point 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall take the necessary measures to ensure that during paternity /co-maternity leave, workers enjoy the same protection from dismissal afforded in Article 1 to workers within the meaning of Article 2.

Amendment 55

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Member States shall be encouraged to adopt measures that ensure that a worker may choose to work part time for a period of no longer than one year, with full protection from the possibility of dismissal and full rights to recover their full-time position and pay at the end of this period.

Justification

This measure can contribute to a more successful reconciliation of private, family and professional life, by allowing the worker to adapt better and more smoothly to her new situation.

Amendment 56

Proposal for a directive – amending act

Article 1 – point 3 - point - a (new)

Directive 92/85/EEC

Article 11 – point 1

Text proposed by the Commission

Amendment

(-a) Point 1 is replaced by the following:

“1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an *equivalent* allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;”

Justification

Entitlements should be based on full pay, to prevent women losing out financially because they are mothers.

Amendment 57

Proposal for a directive – amending act

Article 1 – point 3 – point a

Directive 92/85/EEC

Article 11 – paragraph 1a

Text proposed by the Commission

Amendment

1a. ***workers***, within the meaning of Article 2, who ***are*** excluded from work by ***their*** employer who considers ***them*** not fit for work without medical indication supplied by the worker, ***shall***, until the beginning of the maternity leave in the sense of Article 8(2), ***receive a payment equivalent to their full salary.***

1a. ***a worker***, within the meaning of Article 2, who ***is*** excluded from work by ***her*** employer who considers ***her*** not fit for work without medical indication supplied by the worker, ***may consult a doctor on her own initiative. If the doctor certifies the woman as fit to work, either the employer must employ her again as previously, or she shall receive a payment equivalent to her full salary.***until the beginning of the maternity leave in the

sense of Article 8(2),⁰

Justification

If the woman consults a doctor of her choice, this ensures clarity as to whether she is actually sick or not. Only after clarifying the situation should further measures be taken.

Amendment 58

Proposal for a directive – amending act

Article 1 – point 3 – point a a (new)

Directive 92/85/EEC

Article 11 – point 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States shall take appropriate measures to ensure the health and safety of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job), work intensity, and increasing protection against specific infectious agents and ionising radiation.

Justification

Protecting the health and safety of pregnant workers should be an important concern of this directive.

Amendment 59

Proposal for a directive – amending act

Article 1 – point 3 – point a b (new)

Directive 92/85/EEC

Article 11 – point 2 – point b

Text proposed by the Commission

Amendment

(ab) In point 2, point (b) is replaced by the following:

“(b) maintenance of a payment to,

and/or entitlement to an *equivalent* allowance for, workers within the meaning of Article 2;”

Justification

Entitlements should be based on full pay, to prevent women losing out financially because they are mothers.

Amendment 60

Proposal for a directive – amending act

Article 1 – point 3 – point a c (new)

Directive 92/85/EEC

Article 11 – point 2 – point b a (new)

Text proposed by the Commission

Amendment

(ac) In point 2, the following point (ba) is inserted:

“(ba) the right of workers on maternity leave to receive automatically any increase of salary, where applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase.”

Justification

If there is a wage increase for the position of workers on maternity leave, it should come into force automatically for them, so they will not have to interrupt their maternity leave just to get the higher salary and after that resume the leave. The administrative work of the employer in that respect will also be reduced and simplified.

Amendment 61

Proposal for a directive – amending act

Article 1 - point 3 - point b

Directive 92/85/EEC

Article 11 – point 2 – point c

Text proposed by the Commission

Amendment

"c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions

"c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions

that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence;"

that are no less favourable to them, ***with the same pay, professional category and duties as they enjoyed prior to the period of maternity leave***, and to benefit from any improvement in working conditions to which they would have been entitled during their absence; ***and in exceptional situations relating to the restructuring or substantial reorganisation of the production process, that the worker can discuss with her employer the impact of such changes on her work situation and, indirectly, her personal situation;***"

Justification

A post considered "equivalent" must offer the same pay, professional category and duties as before.

This point is important because, should special circumstances arise (e.g. financial crises) which may be harmful to the situation of women on maternity leave and cause them to lose their entitlements, their position at work may be threatened unless they examine with the employer the implications of restructuring measures.

Amendment 62

Proposal for a directive – amending act

Article 1 – point 3 – point b a (new)

Directive 92/85/EEC

Article 11 – point 2 – point c a (new)

Text proposed by the Commission

Amendment

(ba) In point 2, following point (ca) is added:

"(ca) the maintenance for workers within the meaning of Article 2 of opportunities for career development through education along with ongoing professional and additional training with a view to consolidating their career prospects;"

Justification

This is to ensure that the fact that women are mothers does not adversely affect their career prospects. Employers should, in consultation with the workers concerned, take the necessary education and training measures to ensure that the workers' career prospects are maintained.

Amendment 63

Proposal for a directive – amending act

Article 1 – point 3 – point b b (new)

Directive 92/85/EEC

Article 11 – point 2 – point c b (new)

Text proposed by the Commission

Amendment

(bb) In point 2, the following point (cb) is added:

"(cb) a period of maternity leave must not be prejudicial to the worker's pension rights and must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave."

Justification

It is important to ensure that allowances paid to workers during maternity leave do not adversely affect their pension entitlements. Member States should prevent this from happening and provide compensation for any loss of pension rights.

Amendment 64

Proposal for a directive – amending act

Article 1 – point 3 – point c

Directive 92/85/EEC

Article 11 – point 3

Text proposed by the Commission

Amendment

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

3. the allowance referred to in point 2(b) shall be deemed ***equivalent*** if it guarantees income equivalent to the last monthly salary or an average monthly salary. ***Workers on maternity leave shall be paid their full salary and the allowance shall be 100% of the last monthly salary or the average monthly salary.*** The Member States may lay down the period over which this average monthly salary is calculated.

down the period over which this average monthly salary is calculated.

Amendment 65

Proposal for a directive – amending act

Article 1 – point 3 – point c a (new)

Directive 92/85/EEC

Article 11 – point 3 a (new)

Text proposed by the Commission

Amendment

(ca) The following point 3a is inserted:

"3a. the allowance received by workers within the meaning of Article 2 shall 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."

Justification

Stating that the allowance cannot be lower than health allowance ensures that the directive takes into consideration those mothers who have very low salaries, as is particularly the case in new Member States.

Amendment 66

Proposal for a directive – amending act

Article 1 – point 3 – point c b (new)

Directive 92/85/EEC

Article 11 – point 3 3 a (new)

Text proposed by the Commission

Amendment

(cb) The following point 3b is inserted:

"(3b) Member States shall ensure that workers on maternity leave are entitled to

receive automatically any increase of salary, if applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase."

Justification

If there is a wage increase for the position of workers on maternity leave, it should come into force automatically for them, so they will not have to interrupt their maternity leave just to get the higher salary and after that resume the leave. The administrative work of the employer in that respect will also be reduced and simplified

Amendment 67

Proposal for a directive – amending act

Article 1 – point 3 – point c c (new)

Directive 92/85/EEC

Article 11 – point 4

Text proposed by the Commission

Amendment

(cc) Point 4 is repealed.

Justification

It is essential to remove the eligibility criterion of Article 11(4) of Directive 92/85/EEC if all women are to have the same right to paid maternity leave, in such a way as to comply with worker mobility and the EU's common principles of "flexicurity".

It makes no sense for the Commission proposal to recognise the right to maternity leave yet permit women to leave their jobs and lose their income if they do not meet the conditions for paid maternity leave under national law.

68

Proposal for a directive – amending act

Article 1 – point 3 – point d a (new)

Directive 92/85/EEC

Article 11 – point 5 a (new)

Text proposed by the Commission

Amendment

(da) The following point 5a is inserted:

"5a. Member States shall take the necessary measures to encourage employers and to promote dialogue between the social partners to provide for reintegration and training support for workers returning to work after maternity leave, where necessary and/or where requested by the worker and in line with national legislation."

Amendment 69

Proposal for a directive – amending act

Article 1 – point 3 – point d b (new)

Directive 92/85/EEC

Article 11 – point 5 b (new)

Text proposed by the Commission

Amendment

(db). The following point 5b is inserted:

"5b. The employer shall ensure that the working time of pregnant workers takes account of the need for regular and extraordinary medical check-ups."

Justification

The medical check-ups are obligatory for pregnant women and extremely important for the normal development of the foetus, therefore, the employer must take that into consideration and ensure flexibility in the working hours of the pregnant workers.

Amendment 70

Proposal for a directive – amending act

Article 1 – point - 3 – point d c (new)

Directive 92/85/EEC

Article 11 – point 5 c (new)

Text proposed by the Commission

Amendment

(dc) The following point 5c is inserted:

"5c. Member States shall encourage employers to set up childcare facilities for children of employees who are younger than three years old."

Justification

The lack of childcare facilities is an undeniable reality in the EU. This provision is essential for preventing women from giving up employment because of having small children to take care of.

Amendment 71

Proposal for a directive – amending act

Article 1 – point 3 a (new)

Directive 92/85/EEC

Article 11 a (new)

Text proposed by the Commission

Amendment

3a. The following Article 11a is inserted:

“Article 11a

Time off for breastfeeding

1. A mother who is breastfeeding her child shall be entitled to a period of leave for that purpose that shall be taken in two separate periods, each of which shall be of one hour, unless another arrangement has been agreed with the employer, without losing any privileges connected to her employment.

2. In the case of multiple births, the leave referred to in paragraph 1 shall be increased by 30 minutes for each additional child.

3. In the case of part-time work, the leave referred to in paragraph 1 shall be reduced in proportion to the normal working hours, but shall not be less than 30 minutes.

4. In the case referred to in paragraph 3, the leave shall be taken for a period not exceeding one hour and, where applicable, for a second period to cover

the remaining duration, unless another arrangement has been agreed with the employer".

Amendment 72

Proposal for a directive – amending act

Article 1 – point 3 b (new)

Directive 92/85/EEC

Article 11 b (new)

Text proposed by the Commission

Amendment

3b. The following Article 11 b is inserted:

"Article 11b

Prevention of discrimination and gender mainstreaming

Member States shall encourage employers through collective agreements or practice, to take effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.

Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive."

Amendment 73

Proposal for a directive – amending act

Article 1 – point 4

Directive 92/85/EEC

Article 12 a

Text proposed by the Commission

Amendment

4. The following Article 12a is inserted:

deleted

Article 12a

Burden of proof

(1) Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider that their rights under this Directive have been breached establish, before a court or other competent authority, facts from which it may be presumed that there has been such a breach, it shall be for the respondent to prove that there has been no breach of the Directive.

(2) Paragraph 1 shall not prevent the Member States from introducing rules of evidence which are more favourable to plaintiffs.

(3) Paragraph 1 shall not apply to criminal proceedings.

(4) Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.

(5) Paragraphs 1 to 4 shall also apply to any legal proceedings commenced according to Article 12.

Justification

Discrimination on grounds of pregnancy already fulfils the criteria for sex discrimination. The existing reversal of the burden of proof enshrined in Directive 2006/54/EEC can also be brought to bear.

Amendment 74

Proposal for a directive – amending act

Article 1 – point 4 a (new)

Directive 92/85/EEC

Article 12 a a (new)

Text proposed by the Commission

Amendment

4a. The following Article 12aa is inserted:

"Article 12 aa

Prevention of discrimination

Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners at appropriate levels with a view to putting in place effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave."

Amendment 75

Proposal for a directive – amending act

Article 1 – point 5

Directive 92/85/EEC

Article 12 b

Text proposed by the Commission

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive.

Amendment

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals ***including witnesses*** from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive.

Justification

Extending protection from reprisals to witnesses makes it possible to ensure that they are free to give reliable testimony in complaints proceedings without fear of any discrimination against them.

Amendment 76

Proposal for a directive – amending act

Article 1 – point 6

Directive 92/85/EEC

Article 12 c

Text proposed by the Commission

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation, ***which may not be limited by the fixing of a prior upper limit***, and must be effective, proportionate and dissuasive.

Amendment

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation and must be effective, proportionate and dissuasive.

Justification

An EU ban on limiting compensation claims disproportionately restricts Member States' freedom to adopt their own rules and forces them to adopt detailed provisions that are not in line with their own judicial law.

Amendment 77

Proposal for a directive – amending act

Article 1 – point 7

Directive 92/85/EEC

Article 12 d

Text proposed by the Commission

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2002/73/EC as recast by Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not to the worker's health and safety.

Amendment

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2002/73/EC as recast by Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not ***solely*** to the worker's health and safety.

Amendment 78

Proposal for a directive – amending act Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States may adopt preventive and monitoring measures for the protection and safety at work of pregnant workers and mothers of newly-born children.

Justification

Workplace stress can have an adverse psychological affect on pregnant women and mothers of newly-born infants and can have repercussions for the foetus or infant.

Amendment 79

Proposal for a directive – amending act Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The provisions laid down in this Directive shall be incorporated into the text of collective and individual work contracts in the Member States.

Justification

Women workers very often do not avail themselves of their rights because they do not know they are protected by the law. If those rights are referred to in their contracts, the nature of the applicable legislation becomes more transparent.

Amendment 80

Proposal for a directive – amending act Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States and national equality bodies shall communicate to the

1. Member States and national equality bodies shall communicate to the

Commission, by [**five** years after adoption] at the latest and every **five** years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of Directive 92/85/EEC as amended by this Directive.

Commission, by [**three** years after adoption] at the latest and every **three** years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of Directive 92/85/EEC as amended by this Directive.

Amendment 81

Proposal for a directive – amending act

Article 4 – paragraph 2

Text proposed by the Commission

2. The Commission's report shall take account, as appropriate, of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, the report shall *inter alia* provide an assessment of the impact on women and men of the measures taken. In the light of the information received, the report shall, where necessary, include proposals to revise and update Directive 92/85/EEC as amended by this Directive.

Amendment

2. The Commission's report shall take account, as appropriate, of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, the report shall *inter alia* provide an assessment of the impact on women and men of the measures taken. ***It shall also include an impact study analysing the social and economic effects, in the European Union as a whole, of a further increase in the duration of maternity leave and of the implementation of paternity leave.*** In the light of the information received, the report shall, where necessary, include proposals to revise and update Directive 92/85/EEC as amended by this Directive.

Justification

The costs and benefits entailed, for both women and society, in substantially longer maternity leave need to be gauged accurately. Facilitating breastfeeding could, among other things, lead to savings in health spending and have a beneficial impact on the environment and household purchasing power.

EXPLANATORY STATEMENT

1. Introduction

The Commission proposal amending Directive 92/85/EEC is intended to guarantee better safety and health for pregnant workers and those who have recently given birth or are breastfeeding. This legislative initiative, which forms part of the Commission's 'work-life balance package' is one of the measures aimed at promoting gender equality on the labour market.

The revision of Directive 92/85/EEC can be endorsed, although the Commission's proposed reworking of the text falls short of what would be desirable both from the point of view of reducing the inequalities between men and women on the labour market and as regards actively promoting a work-life balance; the main shortcoming lies in the failure to encourage parenting based on shared responsibilities.

The addition of Article 141 of the EC Treaty to the legal basis in the proposal now under consideration – the proposal thus has a combined legal basis consisting of Article 137(2), providing for workers' safety and health to be protected, and Article 141(3) of the TEC, relating to the promotion of equal opportunities for men and women – makes the directive conceptually better balanced. The broader legal basis can, in addition, encompass provisions to protect mothers and fathers, their roles being of paramount social value.

The amendments made by the proposal relate specifically to longer minimum maternity leave, which is increased from 14 to 20 weeks; the principle that the allowance paid to a worker on maternity leave should be equivalent to her full salary; workplace safety and health requirements; and a ban on dismissal.

2. Parenting based on shared responsibilities

One of the priorities laid down in the EU's social agenda is the need to promote policies to facilitate a work-life balance, aimed at women and men alike. A better work-life balance is also one of the six priority areas of action set out in the 2006-2010 'Roadmap for equality between women and men'.

The EU is at present facing a demographic challenge arising from low birth rates and the growing proportion of older people. Better provisions to promote a work-life balance are also a way of coping with a dwindling population.

However, gender stereotypes in society are proving to be long lived and consequently denying women access to employment and, above all, good jobs. Women, and not men, are still considered to be those primarily responsible for looking after children and other dependants; quite often they are forced to choose between motherhood and career success. In many cases they are perceived to be 'high-risk' or 'second-rate' workers, or as 'nuisances', given that they are highly likely to become pregnant and make use of their entitlement to maternity leave. It is essential, therefore, that the new leave arrangements should break with, rather than reinforcing, the stereotypes existing in society.

Legislation on maternity, paternity and parental leave already exists in several Member States, however at EU level there is a Directive on maternity (Directive 92/85/EEC) and one on parental leave (Directive 96/34/EC) but no legislation has been produced on paternity leave.

Motherhood and fatherhood are fundamental rights and central to social stability. Directive 92/85/EEC should accordingly be revised for the benefit of working women by protecting the roles of mothers and fathers, not least through measures to encourage men to shoulder family responsibilities.

The involvement of parents in a child's life, right from the start, is vital for the child's healthy physical, emotional, and mental development. That is why Community legislation should also provide specifically for non-transferrable paid paternity leave, to be taken at the same time as maternity leave. Adoption should likewise carry an entitlement to leave, which the two partners in the couple concerned should split between them.

3. Duration of maternity leave

Given that 18 weeks' maternity leave is already granted in many Member States, the four-week increase (from the present 14 weeks to the proposed 18) amounts to a modest change that is unlikely to have a great impact on the Member States' current legislation. The Advisory Committee on Equal Opportunities for Women and Men is recommending that the leave be increased to 24 weeks.

The rapporteur believes that 20 weeks' leave would be appropriate to the extent that it would give women time to recover from their confinement, encourage breastfeeding, and enable a mother to forge a strong bond with her child. A longer period might diminish women's prospects of returning to the labour market.

The minimum post-natal leave should likewise be raised to six weeks so as to encourage women to breastfeed for as long as possible.

As it happens, the Commission proposal does not contain any provisions on breastfeeding. Bearing in mind WHO recommendation A55/15, which points to the importance of breastfeeding in the first months of life, and Article 10 of ILO Convention No 183, dating back to 2000, which recommends that, to allow time for breastfeeding, a woman should be entitled to one or more breaks a day or to shorter working hours, the rapporteur maintains that working time should be reduced in order to accommodate breastfeeding, without entailing any loss of privileges.

4. Pay

As laid down in the Commission proposal, women on maternity leave should be paid their full salary, that is to say, an amount equivalent to their last monthly salary or the average monthly salary. That provision, however, is not mandatory.

Payment of their full salary to those on leave is a way of ensuring that women will not lose out financially because they have decided to have children. The salary in question should be not less than 85% of the last or average monthly salary. This constitutes an appropriate ceiling protecting families – especially those headed by a single parent – from the risk of poverty and

social exclusion.

5. No dismissal

The changes relating to the ban on dismissal and to workers' rights are welcome on the whole. The same entitlements should extend to fathers on paternity leave.

Under the Commission proposal, a worker may not be dismissed in the time-span from the start of her pregnancy to six months after the end of her maternity leave; the latter period should be increased to a year, given that women will in many cases have to adapt to a new work situation and will need time to do so.

The rapporteur supports the changes made in this area, including the right for a worker to return to the same job or an equivalent post and benefit from any improvements brought about in her absence. On the other hand, she takes the view that safeguards will be required in order to ensure that a post termed 'equivalent' will be essentially the same as the former job, both as regards the salary paid and as regards the duties to be performed.

6. Flexible working patterns

The rapporteur believes it to be important that a worker, once she has come back from maternity leave, should be allowed to ask her employer to change her working hours or form of work. Employers will be required not just to consider such requests, but to approve them when they are justified.

The same right should be applied to fathers so as to encourage women and men to share family responsibilities. The fact that more women than men make use of these provisions creates an imbalance between the sexes, leading to adverse repercussions in terms of women's situation at work and their economic dependence.

The rapporteur considers it essential to add a provision whereby pregnant workers and those who had recently given birth or were breastfeeding, along with fathers on paternity leave, would be entitled to refuse to work overtime.

7. Health and safety

Risk assessment is central to this proposal. However, there are no preventive measures aimed at eliminating such risks as might be posed to reproduction. Employers do not have to take any steps until they have been informed that a worker is pregnant, which normally happens in about the seventh or eighth week. However, the risk of foetal malformation is greatest during the first weeks of gestation.

Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo.

The rapporteur considers this to be a cause of concern and takes the view that pregnant workers and those who have recently given birth or are breastfeeding cannot be dealt with in isolation. It is essential to promote a preventive approach providing for proper risk assessment

at any workplace at which the employees are women and men of fertile age.

8. Impact study

The rapporteur believes that the costs and benefits entailed, for both women and society, in substantially longer maternity leave need to be gauged accurately. Facilitating breastfeeding could, among other things, lead to savings in health spending and have a beneficial impact on the environment and household purchasing power.

The rapporteur considers paternity leave as a benefit which is provided for the fathers, however in effect it is shared by the entire family, in particular the child who benefits most from the presence of both parents. The provision of paternity leave ensuring a shared responsibility of childcare in the early stages of a child's life could have a favourable effect on health spending by improving the quality of life and well-being of the mother and the child.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

29.1.2010

Ms Eva-Britt Svensson
Chair
Committee on Women's Rights and Gender Equality
BRUSSELS

Subject: Opinion on the legal basis of 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)0637 – C6-0340/2008– 2008/0193(COD))

Dear Ms Svensson,

By letter of 12 January 2010 you asked the Committee on Legal Affairs pursuant to Rule 37(2) to consider whether the legal basis of the above Commission proposal was appropriate.

The committee considered the above question at its meeting of 28 January 2010.

The legal basis proposed by the Commission for the proposed directive is Article 137(2) EC combined with Article 141(3). Following the entry into force of the Lisbon Treaty, that legal basis becomes Article 153(2) and Article 157(3) TFEU.

Certain members of the lead committee have tabled amendments deleting the reference in the preamble to the proposed directive to Article 157(3). Accordingly, the question is whether the proposed directive may be based on Article 153 alone.

From the procedural point of view, the combination of the two articles does not raise any problems, since the ordinary legislative procedure applies in each case. The fact that Article 153(2) requires both the Economic and Social Committee and the Committee of the Regions to be consulted whereas Article 157 requires only consultation of the former committee is not a problem.

I. The relevant articles of the TFEU

Article 157

1. Each Member State shall ensure that the principle of equal pay for male and female

workers for equal work or work of equal value is applied.

2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

4. ...

Article 153

1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:

(a) improvement in particular of the working environment to protect workers' health and safety;

(b) working conditions;

(c) social security and social protection of workers;

(d) protection of workers where their employment contract is terminated;

(e) the information and consultation of workers;

(f) representation and collective defence of the interests of workers and employers, including codetermination, subject to paragraph 5;

(g) conditions of employment for third-country nationals legally residing in Union territory;

(h) the integration of persons excluded from the labour market, without prejudice to Article 166;

(i) equality between men and women with regard to labour market opportunities and treatment at work;

(j) the combating of social exclusion;

(k) the modernisation of social protection systems without prejudice to point (c).

2. To this end, the European Parliament and the Council:

(a)

(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions.

.....

3. ...

II. Choice of legal basis by the Commission

It is noted that the Commission justifies its recourse to a dual legal basis in the following terms: *The proposal is based on Articles 153(2) and 157(3) of the TFEU. Although Directive 92/85/EEC is based on ... [what is now Article 153 TFEU] and is an individual Directive under the framework of the Directive on Health and Safety (Directive 89/391/EEC), Article 157 EC is added to the legal base of this proposal. Maternity leave is essential for the protection of the health and safety of pregnant workers or workers who have recently given birth. The protection from dismissal or discrimination due to pregnancy or motherhood is instrumental for the protection of women's health and safety, as well as the remuneration of maternity leave. But the rules pertaining to maternity leave, its length, remuneration and the rights and obligations of women taking maternity leave or returning from it are also intrinsically linked to the application of the principle of equal opportunities and equal treatment between women and men as established in Article 157(3). Therefore the legal bases for this proposal are combined¹.*

III. Analysis

The proposal for a directive under consideration seeks to amend an earlier directive (98/85/EEC), which was based on Article 118a, the precursor of the Article 153 TFEU. At that time the question of equality as between men and women was not present in Article 118a but tackled in Article 119, where, however, it was dealt with only in terms of equal treatment from the point of view of pay.

Since the Treaty of Amsterdam, equality as between men and women has found its place in the Treaties. On the one hand, it is now set out as a general principle in the second

¹ The Treaty references have been updated to take account of the entry into force of the Lisbon Treaty.

subparagraph of Article 3(3) TEU, which provides that the Union “*shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between men and women, solidarity between generations and protection of the rights of the child*”. This is reinforced by Article 8 TFEU: “*In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women*”. The principle finds expression in the field of social policy in Articles 153(1)(i) (“*equality between men and women with regard to labour market opportunities and treatment at work*”) and 157, in particular paragraph 3 (adoption of measures to “*ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value*”).

In the proposal for a directive, the Commission has added to the original legal basis of what is now Article 153 TFEU, dealing *inter alia* with workers’ health and safety and equality between men and women with regard to treatment at work, Article 157(3), which relates specifically to equal treatment of men and women in matters of employment and occupation. Consequently, the Commission seeks to show that the proposed directive concerns, not only the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding, as mentioned in the title, but also the rules pertaining to maternity leave, its length, remuneration and the rights and obligations of women taking maternity leave or returning from it, which in its view are also intrinsically linked to the application of the principle of equal opportunities and equal treatment between women and men as established in Article 157(3). This is reflected in recital 2 of the proposed directive, which justifies the additional legal basis in the following terms: “*Since this Directive addresses not only the health and safety of workers who are pregnant, or have recently given birth or are breastfeeding, but also, inherently, issues of equal treatment, such as the right to return to the same or an equivalent working place, the rules on dismissal and employment rights, or on better financial support during the leave, Article 153 and 157 are combined to form the legal base for this Directive*”.

The relevant amendments tabled in the Committee on Women’s Rights and Gender equality are justified as follows:

“*Directive 92/85/EEC is concerned – given the biological condition of women during and after pregnancy and in the light of established ECJ case law – with improving legal provisions to protect the health at work of pregnant workers and workers who have recently given birth or are breastfeeding. No one other than a working mother can take leave to give birth. This directive does not thus affect the issues of equal opportunities and equal treatment in matters of employment and occupation or of achieving a balance between work and private and family life. Article [157] should not be cited*” (Amendments 74 and 77, Anna Záborská).

“*Le choix de la base juridique fondée sur l'article [157] du Traité ... pose problème. La directive de 1992 était fondée sur l'article [153] du Traité CE relatif à la protection de la santé et de la sécurité des travailleurs. L'article [157] concerne le principe de l'égalité de traitement et de l'égalité des chances entre hommes et femmes. Or ajouter cette base juridique justifie l'extension du champ d'application de la directive au-delà du congé maternité (et notamment au congé parental, de paternité, d'adoption, etc.) et réduit les questions relatives au congé maternité à un strict respect du principe d'égalité hommes-femmes*” (Amendments 75 and 78, Philippe Juvin).

Two questions arise with regard to these arguments. First, it is necessary to determine whether or not there exists a direct link between the notion of equality as between men and women and the object of the directive.

If this question is answered in the affirmative, it will then be necessary to determine whether it is appropriate to add Article 157(3) to Article 153(2) given that the question of equality as between men and women as regards employment and work is present in both those articles.

Is there a link between the object of the directive and the question of equality as between men and women?

The directive in question is intended to protect women workers when they are pregnant, have recently given birth or are breastfeeding. Since, in the nature of things, those situations are peculiar to female biology, the directive concerns only women or contains provisions solely intended for women. At first glance, the argument that the directive does not deal with questions of male/female equality seems tenable, but this is not the case.

According to the case-law, the choice of legal basis for a measure "*may not depend simply on an institution's conviction*"¹ but "*must be based on objective factors which are amenable to judicial review Those factors include in particular the aim and content of the measure*"². Indeed, having regard to a large range of evidence found both in the directive itself and in its general context, it is manifestly clear that the directive is profoundly linked to the question of male/female equality. To hold the contrary would make no sense and would amount to a misunderstanding of the sense and aim of the proposed directive.

1. Definitions and general framework

It seems that the misunderstanding is rooted in the notion of equality. Article 157(3) provides for the adoption of measures "*to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*". The very formulation of that article indicates that equality may assume several forms. In this case, it is a question of equality of treatment and equality of opportunity. Men and women must not only be treated equally, they must also be afforded the same opportunities, or not be disadvantaged or have lesser or greater opportunities on account of the fact that they belong to a particular sex.

The concept of equality is therefore closely connected to that of discrimination or, rather, of non-discrimination. In an article entitled *La notion de discrimination dans le droit français et le droit européen*, Daniel Lochak provides an interesting definition of the neighbouring but yet different notions of inequality and discrimination. He states in the first place that the two notions are indissociable in so far as the question of discrimination is to be seen in the broader context of the will to combat discrimination³. He argues that inequality is a "fact situation"

¹ Case 45/86 *Commission v. Council ("Generalised Tariff Preferences")* [1987] ECR 1493, at para. 11.

² Case C-300/89 *Commission v. Council ("Titanium Dioxide")* [1991] ECR I-2867, at para. 10.

³ D, Lochak, "La notion de discrimination dans le droit français et le droit européen" in *Egalité des sexes : la discrimination positive en question*, p. 40.

resulting either from factors inherent to individuals or to external factors. For its part, discrimination is related to an “act of another” and is the “doing of an agent”. In this case, by protecting a specific category, namely women who are pregnant, have just given birth or are breastfeeding, the directive prevents the emergence of discriminatory conduct by making it possible for women not to suffer a disadvantage on account of their biological condition.

The Court of Justice defines discrimination as “*the application of different rules to comparable situations or the application of the same rule to different situations*”¹. On the basis of that same definition, the Court found against the general ban in France on night work for women on the ground that men and women were in the same situation as regards the potential detrimental consequences of night work. As a result, having regard to the principle of equality, women could not be dispensed from night working on the sole ground of their sex. On the other hand, the Court held that the ban was valid in the case of pregnant or breastfeeding workers since, during that time, those women were in a situation different from that of their male colleagues.

On that reasoning, owing to their biological situation, women when they are pregnant, have recently given birth or are breastfeeding are in a different situation from that of men. Consequently, it can be seen that it is the application of similar rules to different situations that is discriminatory, whilst the application of rules specific to women at those times is justified by the fact that they are in a different situation from that of men. Far from causing it to be remote from the principle of equality, the fact that the directive concerns only women testifies to the fact that it applies the principle of equality in so far as it enables women, thanks to its specific rules, not to be disadvantaged on account of their specific situation. The directive is a response to discrimination and to the *de facto* inequality springing from the biological condition of women workers, as compared with men. By specifically protecting women who are pregnant, have recently given birth or are breastfeeding, the directive seeks to enable women to receive treatment equal to that of men and to be afforded more genuine equality of opportunities.

Whilst inequality is akin to a fact situation, equality may correspond to a *de facto* or a *de jure* situation, that is to say to substantive or formal equality. The argument that there is no link between the directive and male/female equality is based on the concept of formal equality. According to that argument, a measure is taken by virtue of male/female equality only where it imposes the same conduct toward both sexes or prohibits the adoption of different conduct on account of the sex of the person concerned. Paragraph 1 of Article 157 falls into this category by laying down the principle of “*equal pay for male and female workers*”. Today, there are numerous provisions laying down the principle of formal equality between men and women and prohibiting, in particular in the sphere of employment and work, any form of discrimination on the basis of sex.

However, the statistics clearly show that whilst legal equality has been plainly prescribed, there exists flagrant inequality between men and women, as regards employment, treatment and pay. Equality between men and women at work has therefore far from been attained. It is for this reason that both national and European policies have been observed to shift towards

¹ Case C-342/93 *Gillespie and Others v. Northern Health and Social Services Boards* [1996] ECR I-475, para. 16; Case C-394/96 *Brown v. Rentokil Ltd* [1998] ECR I-4185, para. 30.

seeking, not only formal equality, but also real, substantive equality. Some have observed that, as a result, there has been a shift from equal treatment to equal opportunities, from a principle of strict equality to the promotion of positive actions. That need was set out in General Recommendation No 25, on Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures:

“[A] purely formal legal or programmatic approach is not sufficient to achieve women’s de facto equality with men, ... substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.”¹

It is in this context of social policy that the rules laid down by the directive have to be understood as protecting women who are pregnant, have just given birth or are breastfeeding. Admittedly, the directive contains rules which, by their nature, are applicable only to women, but those rules satisfy a imperative, on the one hand, of non-discrimination and, on the other, of achieving substantive equality, while also helping to protect the health and safety of the women workers concerned.

2. Evidence from the content of the directive

(a) From the recitals

The recitals clearly indicate that the adoption of the directive is to be seen in the context of the protection of women who are pregnant, have just given birth or are breastfeeding against any discrimination linked to their condition and seeks in this way to help to achieve the principle of male and female equality in the sphere of employment and work.

In this way, recital 3 states that the directive addresses *“inherently, issues of equal treatment”*. Recitals 4 and 5 point out that equality between men and women is a fundamental principle which has to guide and permeate the actions of the EU. Recital 7 includes the directive in the category of legislation on *“gender equality”*. As for recitals 11 to 17, they refer to the case-law of the Court of Justice on the protection of pregnant women against discrimination pursuant to the principle of equality of treatment. Having regard to the recitals as a whole, it is certain from the point of view of their content that they demonstrate that the directive is directly connected with the promotion of sex equality at work.

(b) From the enacting terms

Since the proposal for a directive under consideration is intended to amend an existing directive, this analysis should take account not only of the articles added or amended but also of such articles of Directive 92/85/EEC as will remain in application.

¹ UN Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No 25 - thirtieth session, 2004 Article 4 paragraph 1 - Temporary special measures.

Some of the articles are directly connected to workers' health and safety. This is the case of Articles 3 to 8. These are concerned with the assessment of hazardous chemical, physical and biological agents (Art. 3), the obligation to assess risks and provide information about them (Art. 4), action further to assessment (Arts 5 and 6), the ban on night work (Art. 7) and maternity leave (Art. 8).

On the other hand, the following articles relate directly to the protection of women against discrimination resulting from their status as women who are pregnant, have recently given birth or are breastfeeding. Accordingly, Article 9 protects women workers against loss of pay when they take time off for ante-natal examinations, Article 10 prohibits dismissal during pregnancy and maternity leave, Article 11 guarantees the worker her rights and advantages flowing from her contract of employment and Article 12 deals with the defence of the rights described above.

This specific analysis of the content of the enacting terms suggests that the directive has in fact a dual aim, that of protecting the health and safety of women workers and of guaranteeing them equal treatment.

(3) Evidence from the documents not forming part of the directive

All the documents accompanying the proposal for a directive include it wholeheartedly amongst measures for promoting male/female equality at work.

(a) Explanatory statement

In order to justify the adoption of the new directive, the Commission takes care to call to mind its context, namely Union action designed to reconcile work and private and family life, equal opportunities of men and women on the employment market and combating discrimination suffered by pregnant women as regards employment and work. In this connection, it lists the various instruments existing in this area, such as the Roadmap for equality between women and men 2006-2010, and a number of resolutions of the European Parliament. Mention is also made of the fact that the Advisory Committee on Equal Opportunities for Women and Men was consulted.

(b) Impact assessment

The impact assessment provides us with interesting details of the type of equality targeted by the range of measures contained in the proposal for a directive. It indicates that:

"the objectives of any action would be to achieve more gender equality in labour market participation rates and a better reconciliation of professional, private and family lives."

This statement conflicts directly with the justification for the various amendments tabled to the effect that *"This directive does not thus affect the issues of equal opportunities and equal treatment in matters of employment and occupation or of achieving a balance between work and private and family life."*

The measures designed to protect women when they are pregnant, have recently given birth or are breastfeeding are directly concerned with reconciling work with family and private life. Those measures allow a woman to choose to occupy herself with her family life without her working life suffering. Logically and formally, it may be said that this question also concerns men; however, statistics show that the development of a family life disadvantages men much less in their professional lives, since women assume a significantly greater part of the responsibility for family life. The impact assessment quotes in this connection a Commission communication concerned with countering the pay gap between women and men:

*"Parenthood permanently reduces the employment rate of women but not that of men. As a result women have careers which are more disjointed, slower and shorter and thus less financially regarding."*¹

Consequently, in order to establish male/female equality at work and equality of opportunities in careers, measures to promote reconciliation of professional and family life – even if some of them are addressed only to women – directly assist in creating a substantive equality, which has not yet been achieved.

The measures set out in the proposal for a directive will therefore help, according to the impact assessment, to produce equality of the sexes as regards their rate of participation in the employment market. Indeed, it is argued that lengthening maternity leave may secure women greater stability in the job which they held before pregnancy². Thus the impact assessment predicts that a four-week increase in maternity leave may result in women being obliged less often to prolong their absence by taking parental leave. The grant of those additional weeks will enable mother and child to create a stronger bond while also enabling the mother more readily to make child-care arrangements. The impact assessment states in this regard that *"a longer maternity leave period could be a helpful way to bridge the time before childcare is available"*³.

Lastly, the provision of the proposal for a directive which will enable the worker to ask her employer to make changes to her working hours and patterns⁴ following her maternity leave should enable women to go back to full-time work and avoid being obliged to work part time⁵. The employer is not obliged to grant the worker's request, but it has been found that this type of provision – currently in force in the United Kingdom – has had a positive impact on keeping women in the job which they had before their child was born.⁶

3. Conclusion of the analysis

The analysis of both the proposal for a directive and the accompanying documents clearly identifies the link between the proposed directive and the principle of equality between men

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 18 July 2007 entitled "Tackling the pay gap between women and men" (COM(2007) 424 final), point 2-1.

² Impact assessment report - SEC(2008) 2596, p. 31. See also p. 34.

³ Impact assessment report - SEC(2008) 2596, p.35

⁴ Article 11(5) (added by the proposal for a directive).

⁵ Most part-time workers are women.

⁶ Impact assessment report - SEC(2008) 2596, p.33

and women. Whilst that link exists, it remains nonetheless that it may seem hard to classify the directive on the protection of women who are pregnant, have recently given birth or are breastfeeding. This is because in substance it does not lay down measures applying both to men and women, but only to the latter. On the other hand, it is not in the nature of a positive measure of the kind authorised by Article 157(4) TFEU. Positive measures enable specific measures to be taken to assist the under-represented sex in enjoying effective equality. However, such measures are temporary in nature and must cease to be when equality is attained. But equality between men and women with regard to pregnancy will never be attained since the biological condition of women puts them in a different situation than men. Some commentators classify such protective measures as exceptions to the principle of equality, but it seems more correct to describe them as measures enabling effective equality to be achieved between men and women in so far as they prevent discrimination against women (through the ban on dismissal, etc) and enable women through the obligations they impose (right to return to their job and to benefit by all the advantages linked to their contract of employment) to benefit *de facto* from equal treatment and not to suffer the disadvantage of their condition as women, while granting them rights related to their specific needs (maternity leave). This is more correct because it emerges from the case-law of the Court of Justice in its interpretation of Article 2(3) of Directive 76/207¹, which provides as follows:

"3. This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity."

In its judgment in *Hoffmann*² and as consistently held thereafter³, the Court indicated, with particular reference to that provision, that it recognised *"the legitimacy, in terms of the principle of equal treatment, of protecting a woman's needs in two respects. First, it is legitimate to ensure the protection of a woman's biological condition during pregnancy and thereafter until such time as her physiological and mental functions have returned to normal after childbirth; secondly, it is legitimate to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth."*⁴

By indicating that that protection of women is legitimate *"in terms of the principle of equal treatment"*, the Court undeniably locates the proposal for a directive under consideration in the context of the principle of equality, from which it cannot - unlike the authors of the amendments suggest - be dissociated.

IV. Since Article 153(2)(b) already provides for the promotion of male/female equality, is the addition of Article 157(3) necessary?

Ever since the entry into force of the Treaty of Amsterdam, equal treatment in the field of social policy has appeared in two articles: what are now Article 153(1)(i) and Article 157(3) TFEU, which mention, respectively, *"equality between men and women with regard to labour market opportunities and treatment at work"* and *"the principle of equal opportunities and*

¹ Council Directive 76/207/EEC of 9 February 1976 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, OJ 1976 L 39, p. 40.

² Case 184/83 *Hoffmann v. Barmer Ersatzkasse* [1984] ECR 3047.

³ See, for example, Case C-32/93 *Webb v. EMO Air Cargo* [1994] ECR I-3567.

⁴ *Hoffmann*, para. 25.

equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value": Although those articles are similar in content, it is generally considered that Article 157 deals with the question of equality specifically and more fully - from the question of equal pay (paras 1 and 2) to the legality of positive actions in favour of the underrepresented sex with a view to "*ensuring full equality*" (para. 4). For its part, Article 153 establishes a catalogue of fields in which the Union has competence to act.

V. Conclusion

In the light of the foregoing, it is considered that there is every justification for maintaining the two legal bases of Article 153 and 157(3).

At its meeting of 28 January 2010 the Committee on Legal Affairs accordingly decided, unanimously, by 21 votes in favour with no abstentions¹, to recommend to you as follows: 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 should be based on the dual legal basis of Article 153 and 157(3) of the Treaty on the functioning of the European Union.

Yours sincerely,

Klaus-Heiner Lehne

¹ The following were present for the final vote: Klaus-Heiner Lehne (Chair), Raffaele Baldassarre (Vice-Chair), Sebastian Valentin Bodu (Vice-Chair), Evelyn Regner (Vice-Chair), Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Antonio Masip Hidalgo, Bernhard Rapkay, Alexandra Thein, Diana Wallis, Cecilia Wikström, Christian Engström, Zbigniew Ziobro, Jiří Maštálka, Francesco Enrico Speroni, Piotr Borys, Vytautas Landsbergis, Kurt Lechner, Arlene McCarthy, Eva Lichtenberger, Sajjad Karim.

28.1.2010

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (*)

for the Committee on Women's Rights and Gender Equality

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)0637 – C6-0340/2008 – 2008/0193(COD))

Rapporteur(*): Rovana Plumb

(*) Associated committee - Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

The proposal is based on Articles 137(2) and 141(3) of the EC Treaty. Although Directive 92/85/EEC is based on Article 118a of the EC Treaty (now Article 137) and is an individual Directive within the framework of the Directive on Health and Safety (Directive 89/391/EEC), Article 141 EC has been added to the legal basis of the proposal.

This proposal stems from the need to establish solid reconciliation measures whose end goal is to achieve a higher percentage of women on the labour market, less segregation on the labour market and an end to wage differences between women and men, by increasing opportunities with regard to maternity leave. The European Union needs more women to participate in the labour market, not just to solve the problem of an ageing society but also to increase competitiveness at the global level.

At present, the impact of births on women's participation in the labour market is very marked, with a difference of 26% being recorded in 2007 between women who had given birth to a child and men. There reasons for this are various, but they can be eliminated by overhauling the rules on maternity leave, its length, remuneration and the rights and obligations of women taking maternity leave or returning from it, all of which are intrinsically linked to the application of the principle of equal opportunities and equal treatment between women and men as established in Article 141(3).

Sharing responsibilities

The sharing of responsibilities between the two parents from the time of birth is of additional benefit for the psychological and physical well-being of the child. A separate directive is needed in that respect, since the present directive does not include provisions relating to

parental leave, but focuses on the health and safety of women who are pregnant or breastfeeding.

Employment rights of pregnant workers

The Committee on Employment and Social Affairs is convinced that the proposed amendment of Directive 92/85/EEC will provide support for the employment rights of pregnant women.

However, we are also convinced that without the amendments proposed below by the Committee on Employment and Social Affairs and the supplementary measures adopted by the social partners at European level, the amended text will not fully contribute to enhancing the reconciliation of work with private and family life or to helping women to return to employment.

Extension of the minimum length of maternity leave and possibility of working part time

The Committee on Employment and Social Affairs takes the view that the option of extending the length of maternity leave from 14 to 20 weeks and the provision of incentives is an obvious means of enhancing the potential for women to reconcile pregnancy with remaining on the labour market. The extension will allow mothers an appropriate period of time for returning to work following pregnancy and to bond with their children.

What is more, the fears of some Member States surrounding the costs of financing that extension are unfounded, with the study by ECORYS showing that an extension to 18 weeks or even beyond will have minor economic impact, but will guarantee better health conditions for pregnant workers.

Employers need to take into consideration applications from workers to switch from full-time to part-time working in the first 12 months following a birth. Such a provision would be in line with the recommendations of WHO report A55/15.

Safeguarding career prospects

The Committee on Employment and Social Affairs supports the amendments to Directive 92/85/EEC made in Article 1(3)(b) in accordance with which workers who have given birth to a child have a right to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

That provision is closely tied in with job security and is an important step towards ending discrimination on the grounds of pregnancy.

Rights of self-employed workers

Although the proposal for a directive only protects employees, with a view to combating discrimination and guaranteeing equal opportunities, Member States will need to ensure that self-employed women also enjoy the rights laid down in the directive, with the Committee on Employment and Social Affairs having amended the Commission proposal to that effect.

Role of the social partners

On 14 December 1995, the social partners at European level (BusinessEurope (UNICE), CEEP and ETUC) concluded an agreement on parental leave, which was implemented by Council Directive 96/34/EC of 3 June 1996. That directive lays down minimum rules on

parental leave, as an important means of reconciling working life with family life and promoting equal opportunities and treatment for men and women.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC¹ lays down minimum requirements to help working parents reconcile their work and parental responsibilities. The social partners did, however, reach an agreement on 18 June 2009 and a draft directive is currently being considered.

¹ OJ L 145, 19.6.1996, p. 4.

Justification

Council Directive 96/34/EC is a framework agreement between BusinessEurope (UNICE), CEEP and the ETUC on parental leave and is an important addendum to the proposal amending Directive 92/85/EEC as it lays down minimum requirements to help working parents reconcile their work and parental responsibilities. It should, however, be emphasised that the social partners did reach an agreement on 18/06/09 and a draft directive is currently being considered which would update the aforementioned framework agreement.

Amendment 2

Proposal for a directive – amending act Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) The agreement concluded by Member States at the Barcelona Summit in 2002 aimed at achieving equality between women and men (equal remuneration, paternity leave, access to work where they enjoy the same rights), is the basis for the achievement of better conditions regarding the reconciliation between private and professional lives and will ensure the economic independence of both men and women.

Justification

Barcelona's targets are a part of the EU Strategy for the growth and the creation of workplaces and they intend to help the young parents - especially women - to be engaged in the work field and to realise the reconciliation between the professional and private life. The access to better childcare services (conditions, price and very important - properly hours for the parents) represents the key for the access of the women on the labour market.

Amendment 3

Proposal for a directive – amending act Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) The Commission Communication of 4 July 2006 entitled 'Towards an EU Strategy on the Rights of the Child' states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals.

Justification

The communication states that children's rights should be an EU priority and that Member States should comply with the UN Convention on the Rights of the Child and the additional protocols thereto, as well as the Millennium Development Goals. With reference to this

directive, this means ensuring that all children may be breastfed and receive appropriate care in accordance with their needs as regards development and access to adequate quality care.

Amendment 4

Proposal for a directive – amending act Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) The care of disabled children presents a particular challenge for working mothers, which should be recognised by society. The increased vulnerability of working mothers of disabled children means that they should be granted additional maternity leave; the Directive should lay down a minimum period for such leave.

Justification

Caring for disabled children presents an additional, physical, mental and psychological challenge for working mothers. Society should recognise their efforts to meet this challenge. Pregnant women who are expecting a disabled child have to make many preparations during pregnancy to ensure the well-being of their child. In these cases it seems essential to lay down an additional minimum leave period to enable pregnant workers who expect a disabled child and working mothers of disabled children to meet this challenge and make the necessary preparations.

Amendment 5

Proposal for a directive – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) A post deemed ‘equivalent’ pursuant to Article 11(2)(c) should mean that such a post is essentially the same as the former job, as regards both the salary paid and the duties to be performed.

Amendment 6

**Proposal for a directive – amending act
Recital 13**

Text proposed by the Commission

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection.

Amendment

(13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection ***in order to safeguard their rights to decent working conditions and a better balance between family life and work.***

Amendment 7

**Proposal for a directive – amending act
Recital 13 a (new)**

Text proposed by the Commission

Amendment

(13a) To achieve true gender equality, it is essential for men to be given a legal entitlement to paternity leave, modelled on maternity leave, except as regards duration, with a view to gradually establishing the conditions required for balanced participation of men and women in work and family life.

Justification

Paternity leave should be established on a binding basis so as to ensure that men will not be made, on account of social pressure, to forgo their entitlement. A signal should be sent to the labour market to the effect that men too have to spend time away from the workplace and their job when they have children. Economic activity must consequently be organised in such a way as to allow for human reproduction, which is a right and responsibility in equal measure for men and women alike, as well as being a pre-eminent social value.

Amendment 8

Proposal for a directive – amending act Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) The Commission Green paper entitled "Confronting demographic change: a new solidarity between the generations" refers to the fact that the Member States have low fertility rates, which are insufficient for the replacement of the population. Measures are therefore needed for the improvement of conditions at the workplace for workers before, during and after pregnancy. It is recommended that the best practices from those Member States with high fertility rates and which ensure the continued participation of women in the labour market be followed.

Amendment 9

Proposal for a directive – amending act Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Member States should introduce into their national legal systems measures to ensure real and effective compensation or reparation, as they consider appropriate, for any harm caused to a worker by any breach of the obligations under this Directive, in a way which is dissuasive and proportionate to the damage suffered.

Amendment 10

Proposal for a directive – amending act Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Victims of discrimination must have appropriate legal protection. Member States should ensure, in accordance with their particular legal systems, that the rights of pregnant women are protected effectively. To provide more effective protection, it should be possible for associations, organisations and other legal entities to engage in proceedings on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 11

Proposal for a directive – amending act Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) It will be necessary for Member States to encourage and promote active participation by the social partners to ensure better information for those concerned and more effective arrangements. Through encouraging dialogue with the above-mentioned bodies, Member States could obtain more feedback and a greater insight into the implementation of the directive in practice, and of problems likely to arise, with a view to eradicating discrimination.

Justification

Participation by social partners is extremely important in efforts to eradicate discrimination. Their data networks could provide additional information channels for workers about their rights and a source of feedback for the Member States, given that they have greater

experience regarding the various problems likely to arise. We therefore consider it important to ensure their active participation and establish an open dialogue.

Amendment 12

Proposal for a directive – amending act Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Member states should encourage dialogue between social partners and with NGOs, in order to be aware of different forms of discrimination and to fight them.

Amendment 13

Proposal for a directive – amending act Article 1 – point -1 (new) Directive 92/85/EEC Article 1 – point 3 a (new)

Text proposed by the Commission

Amendment

-1. The following paragraph is added to Article 1:

"3a. This directive shall, in addition, ensure that workers can fulfil their essential family role and shall provide specific and appropriate protection for mother and child."

Justification

The new paragraph emphasises the vital need for working women to be able to fulfil their essential role as mothers.

Amendment 14

Proposal for a directive – amending act Article 1 – point -1a (new) Directive 92/85/EEC Article 2 – point a

Text proposed by the Commission

Amendment

-1a. In Article 2, point a is replaced by the following:

"(a) pregnant worker shall mean a pregnant worker, including a domestic worker, who informs her employer of her condition, in accordance with national legislation and/or national practice;"

Justification

The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.

Amendment 15

Proposal for a directive – amending act

Article 1 – point -1 b (new)

Directive 92/85/EEC

Article 2 – point b

Text proposed by the Commission

Amendment

-1b. In Article 2, point b is replaced by the following:

"(b) worker who has recently given birth shall mean a worker, including a domestic 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;"

Justification

The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.

Amendment 16

Proposal for a directive – amending act

Article 1 – point -1 c (new)

Directive 92/85/EEC

Article 2 – point c

Text proposed by the Commission

Amendment

-1c. In Article 2, point c is replaced by the following:

"(c) Worker who is breastfeeding shall mean a worker, including a domestic 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."

Justification

The Framework Directive on health and safety excludes domestic workers. However, they should be included explicitly in maternity protection.

Amendment 17

Proposal for a directive – amending act

Article 1 – point -1 d (new)

Directive 92/85/EEC

Article 3 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

-1d. In Article 3(1), the following subparagraph is added:

"2a. The guidelines referred to in the first subparagraph shall be regularly evaluated with a view to their revision, at least once every five years, starting in 2012."

Justification

Explanation: it is important to keep the guidelines up to date with recent developments and knowledge.

Amendment 18

Proposal for a directive – amending act

Article 1 – point -1 e (new)

Directive 92/85/EEC

Article 4 – title

Text proposed by the Commission

Amendment

-1e. In Article 4 the title is replaced by the following:

"Assessment, information and consultation"

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 19

Proposal for a directive – amending act

Article 1 – point -1 f (new)

Directive 92/85/EEC

Article 4 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1f. In Article 4, the following paragraph is inserted:

"-1. In the risk assessment carried out under Directive 89/391/EEC the employer shall include an assessment of the reproductive risks for male and female workers."

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 20

Proposal for a directive – amending act

Article 1 – point -1 g (new)

Directive 92/85/EEC

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

-1g. Article 4(2) is replaced by the following:

"2. Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2 in the undertaking and/or establishment concerned and/or their representatives and the relevant social partners shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work."

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 21

Proposal for a directive – amending act

Article 1 – point -1 h (new)

Directive 92/85/EEC

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

-1h. In Article 4 the following paragraph is added:

"2a. Appropriate measures shall be taken

to ensure that workers and/or their representatives may monitor the application of this Directive or may be involved in its application, in particular with regard to the measures determined by the employer which are referred to in paragraph 2, without prejudice to the employer's responsibility for determining those measures."

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and consultation of workers and their representatives.

Amendment 22

Proposal for a directive – amending act

Article 1 – point -1 i (new)

Directive 92/85/EEC

Article 4 –paragraph 2 b (new)

Text proposed by the Commission

Amendment

-1i. In Article 4 the following paragraph is added:

"2b. Consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance with Article 11 of Directive 89/391/EEC."

Justification

It is essential to promote a preventive approach providing for proper risk assessment at any workplace at which the employees are women and men of fertile age. Men and women alike may be exposed, before fertilisation, to the trigger factors involved in the genetic mutations and abnormalities that lead to infertility and chromosomal malformations and aberrations; the most severe effects, however, occur in the embryo. Paragraphs 4 and 5 are added, since in all other health and safety directives there are proper articles on information and

consultation of workers and their representatives.

Amendment 23

Proposal for a directive – amending act

Article 1 – point -1 j (new)

Directive 92/85/EEC

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

-1j. The following paragraph is added to Article 6:

"2a. Pregnant women shall, in addition, not be required to perform tasks such as carrying and lifting heavy weights or tasks that are dangerous or exhausting or which pose health risks."

Justification

Pregnant workers should be exempted not only from activities exposing them to high risks but also from tasks that involve major physical effort or pose health risks.

Amendment 24

Proposal for a directive – amending act

Article 1 – point -1 k (new)

Directive 92/85/EEC

Article 7 – paragraph 2 – point a

Text proposed by the Commission

Amendment

- 1k. In Article 7(2), point (a) is replaced by the following:

"(a) transfer to a compatible daytime working timetable; or"

Amendment 25

Proposal for a directive – amending act

Article 1 – point -1 l (new)

Directive 92/85/EEC

Article 7 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

-1l. In Article 7 the following point is added:

"2a. Workers wishing to be exempted from night work shall, in accordance with rules laid down by the Member States, inform their employer and, in the case referred to in point (b) of paragraph 2, submit a medical certificate to the employer."

Amendment 26

Proposal for a directive – amending act

Article 1 – point -1 m (new)

Directive 92/85/EEC

Article 7 - paragraph 2 b (new)

Text proposed by the Commission

Amendment

-1m. In Article 7 the following paragraph is added:

"2b. In respect of single parents and parents with children with severe disabilities, the period referred to in paragraph 1 may be extended in accordance with the procedures laid down by the Member States."

Amendment 27

Proposal for a directive – amending act

Article 1 – point -1 n (new)

Directive 92/85/EEC

Article 7 a (new)

Text proposed by the Commission

Amendment

-In. The following article is added :

"Article 7a

Overtime

The Member States shall take the appropriate measures to ensure that pregnant workers and workers who have recently given birth or are breastfeeding are not obliged to work overtime or on Sundays or holidays, during pregnancy and for six months after the birth."

Amendment 28

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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 18 weeks.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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

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.

freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth. ***The six-week period of compulsory maternity leave after childbirth shall apply to all working women regardless of the number of days worked prior to confinement. Member States may extend the compulsory portion of the maternity leave up to a maximum four weeks before childbirth and at least eight weeks after the birth of a disabled child.***

Amendment 30

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The worker must indicate her chosen period of maternity leave at least three months before the starting date.

Justification

Amendment 25 by the rapporteur states that pregnant workers should not be coerced into working overtime during a period of three months before the birth. If the worker indicates her chosen period of maternity leave around that time it is easier for her employer to make arrangements for her replacement.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In the case of a multiple birth the period of maternity leave mentioned in Article 8(1) shall be increased by four

weeks for each child.

Justification

Total periods of normal leave are also expressed in weeks.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 4

Text proposed by the Commission

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.

Amendment

4. Member States shall take the necessary measures to ensure that additional leave ***on full pay*** is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities, ***mothers 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. ***The total period of maternity leave shall be extended by at least eight weeks after the birth in the case of the birth of a disabled child and Member States shall also ensure an additional period of leave of six weeks in the case of a stillbirth.***

Amendment 33

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. This Directive shall not apply to self-employed workers.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/85/EEC

Article 8 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Member States shall adopt suitable measures for the recognition of postnatal depression as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on this illness and correcting the prejudices and possible stigmatisation which it can still attract.

Justification

The aim of this amendment is to raise Member States' awareness of the need for official recognition of postnatal depression as an illness, given that it affects 10-15% of women and has significant repercussions for work and family life.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall take appropriate measures to ensure the safety and health of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job), work intensity, and increased protection against specific infectious agents and ionising radiation.

Justification

Protecting the health and safety of pregnant workers should be a major concern of this directive.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – paragraph 2

Text proposed by the Commission

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.***

Amendment

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 ***or*** 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. ***This shall not affect the substantive provisions on dismissal under national law.***

Amendment 37

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/85/EEC

Article 10 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an equivalent allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and national practice;

Justification

Entitlements should be based on full pay, to prevent women losing out financially because they are mothers.

Amendment 38

Proposal for a directive – amending act

Article 1 – point 3 – point a

Directive 92/85/EEC

Article 11 – paragraph 1a

Text proposed by the Commission

1a. workers, within the meaning of Article 2, who are excluded from work by their employer who considers them not fit for work without medical indication supplied by the worker, **shall**, until the beginning of the maternity leave in the sense of Article 8(2), receive a payment equivalent to their full salary.

Amendment

1a. *A* worker, within the meaning of Article 2, who *is* excluded from work by *her* employer who considers *her* not fit for work without medical indication supplied by the worker, **must consult a doctor on her own initiative. If the doctor certifies the woman as fit to work, either the employer must employ her again as normal, or** until the beginning of the maternity leave in the sense of Article 8(2), **they shall** receive a payment equivalent to *her* full salary.

Justification

If the woman consults a doctor of her choice, this ensures clarity as to whether she is actually sick or not. Only after clarifying the situation should further measures be taken.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 3 – point a a (new)

Directive 92/85/EEC

Article 11 – point 1 aa (new)

Text proposed by the Commission

Amendment

(aa) In Article 11, the following point 1 aa is inserted:

"1aa. Member States may adopt preventive and monitoring measures for the protection and safety at the workplace of pregnant workers and workers who have recently given birth."

Justification

Workplace stress can have an adverse psychological affect on pregnant women and mothers of newly-born infants and can have repercussions for the foetus or infant. We need

monitoring measures from the flexisecurity point of view.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 92/85/EEC

Article 11 – paragraph 2 – point c

Text proposed by the Commission

(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence;

Amendment

(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence; ***in exceptional situations of restructuring or radical reorganisation of the production process steps shall always be taken to ensure that the worker can discuss with her employer the impact of such changes on her work situation and the body representing workers' interests must always be given the opportunity, together with the employer, to advise the worker concerned about the effects of such changes;***

Amendment 41

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 92/85/EEC

Article 11 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

"(ca) the maintenance for workers within the meaning of Article 2 of opportunities for career development through education along with ongoing professional and additional training with a view to consolidating their career prospects;"

Justification

This is to ensure that the fact that women are mothers does not adversely affect their career prospects. Employers should, in consultation with the workers concerned, take the necessary education and training measures to ensure that the workers' career prospects are maintained.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 3 – point b

Directive 92/85/EEC

Article 11 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) the taking of maternity leave must not be prejudicial to the worker's pension rights; the period of maternity leave must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave.

Justification

It is important to ensure that allowances paid to workers during maternity leave do not adversely affect their pension entitlements. Member States should prevent this from happening and provide compensation for any loss of pension rights.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 3 – point c

Directive 92/85/EEC

Article 11 – point 3

Text proposed by the Commission

Amendment

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***

3. the allowance referred to in point 2(b) shall be adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary. ***Workers on maternity leave shall be paid their full salary and the allowance shall be 100% of the last monthly salary or the average monthly salary.*** Member States may lay down the period over which this average

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.

monthly salary is calculated.

Justification

Payment of their full salary to women is a way of ensuring that women will not lose out financially because they have decided to have children. Many Member States already provide for payment of between 80% and 100% of average earnings during maternity leave. More, the pregnant workers should not be penalized in a financial way for their decision of having a baby.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 3 – point c a (new)

Directive 92/85/EEC

Article 11 – point 3 3 a (new)

Text proposed by the Commission

Amendment

(ca) The following point 3a is inserted:

"(3a) Member States shall ensure that workers on maternity leave are entitled to receive automatically any increase of salary, if applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase."

Justification

If there is a wage increase for the position of workers on maternity leave, it should come into force automatically for them, so they will not have to interrupt their maternity leave just to get the higher salary and after that resume the leave. The administrative work of the employer in that respect will also be reduced and simplified

Amendment 45

Proposal for a directive – amending act

Article 1 – point 4

Directive 92/85/EEC

Article 12 a

4. The following Article 12a is inserted:

deleted

Article 12a

Burden of proof

1. Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider that their rights under this Directive have been breached establish, before a court or other competent authority, facts from which it may be presumed that there has been such a breach, it shall be for the respondent to prove that there has been no breach of the Directive.

Paragraph 1 shall not prevent the Member States from introducing rules of evidence which are more favourable to plaintiffs.

Paragraph 1 shall not apply to criminal proceedings.

Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.

Paragraphs 1 to 4 shall also apply to any legal proceedings commenced according to Article.

Justification

The proposed regulation infringes the principle of the presumption of innocence and would disrupt the balanced position between employees and employers. Those who make an allegation should have to prove it. It is not possible to ask the other party, when it states that 'nothing happened', to provide proof that nothing happened.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 4

Directive 92/85/EEC

Article 12a – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with her approval, in any judicial and/or administrative proceedings provided for the enforcement of obligations under this Directive.

Justification

*If this amendment is adopted, Paragraph 5 shall be amended accordingly to read:
'Paragraphs 1 to 4a shall also apply to any legal proceedings commenced according to Article 12.*

Amendment 47

Proposal for a directive – amending act

Article 1 – point 5

Directive 92/85/EEC

Article 12 b

Text proposed by the Commission

Amendment

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive.

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals ***including witnesses*** from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive.

Justification

Extending protection from reprisals to witnesses makes it possible to ensure that they are free

to give reliable testimony in complaints proceedings without fear of any discrimination against them.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 6

Directive 92/85/EEC

Article 12 c

Text proposed by the Commission

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation, ***which may not be limited by the fixing of a prior upper limit***, and must be effective, proportionate ***and dissuasive***.

Amendment

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation and must be effective ***and*** proportionate.

Justification

An EU ban on limiting compensation claims disproportionately restricts Member States' freedom to adopt their own rules and forces them to adopt detailed provisions that are not in line with their own judicial law.

PROCEDURE

Title	Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding		
References	COM(2008)0637 – C6-0340/2008 – 2008/0193(COD)		
Committee responsible	FEMM		
Opinion by Date announced in plenary	EMPL 19.10.2009		
Rapporteur Date appointed	Rovana Plumb 16.9.2009		
Discussed in committee	5.11.2009	1.12.2009	26.1.2010
Date adopted	27.1.2010		
Result of final vote	+: 31	–: 11	0: 5
Members present for the final vote	Regina Bastos, Edit Bauer, Jean-Luc Bennahmias, Pervenche Berès, Mara Bizzotto, Milan Cabrnock, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Sergio Gaetano Cofferati, Marije Cornelissen, Tadeusz Cymański, Frédéric Daerden, Karima Delli, Richard Falbr, Ilda Figueiredo, Pascale Gruny, Thomas Händel, Marian Harkin, Roger Helmer, Nadja Hirsch, Vincenzo Iovine, Liisa Jaakonsaari, Martin Kastler, Ádám Kósa, Patrick Le Hyaric, Veronica Lope Fontagné, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Csaba Öry, Siiri Oviir, Rovana Plumb, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck		
Substitute(s) present for the final vote	Georges Bach, Raffaele Baldassarre, Vilija Blinkevičiūtė, Silvia Costa, Kinga Göncz, Richard Howitt, Dieter-Lebrecht Koch, Franz Obermayr, Ria Oomen-Ruijten, Emilie Turunen		

PROCEDURE

Title	Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding		
References	COM(2008)0637 – C6-0340/2008 – 2008/0193(COD)		
Date submitted to Parliament	3.10.2008		
Committee responsible Date announced in plenary	FEMM 19.10.2009		
Committee(s) asked for opinion(s) Date announced in plenary	EMPL 19.10.2009	ITRE 19.10.2009	
Not delivering opinions Date of decision	ITRE 2.9.2009		
Rapporteur(s) Date appointed	Edite Estrela 16.7.2009		
Legal basis disputed Date of JURI opinion	JURI 28.1.2010		
Discussed in committee	1.9.2009	1.12.2009	25.1.2010
Date adopted	23.2.2010		
Result of final vote	+: -: 0:	19 13 1	
Members present for the final vote	Regina Bastos, Edit Bauer, Emine Bozkurt, Andrea Češková, Marije Cornelissen, Silvia Costa, Tadeusz Cymański, Edite Estrela, Ilda Figueiredo, Iratxe García Pérez, Zita Gurmai, Jolanta Emilia Hibner, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Caroline Lucas, Astrid Lulling, Barbara Matera, Angelika Niebler, Siiri Oviir, Raül Romeva i Rueda, Nicole Sinclair, Joanna Katarzyna Skrzydlewska, Eva-Britt Svensson, Marc Tarabella, Britta Thomsen, Marina Yannakoudakis, Anna Záborská		
Substitute(s) present for the final vote	Lena Ek, Sylvie Guillaume, Elisabeth Morin-Chartier, Norica Nicolai		
Substitute(s) under Rule 187(2) present for the final vote	Marian Harkin, Ria Oomen-Ruijten		