



Malta-EU Steering & Action Committee

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 health and safety of pregnant workers and workers who have recently given birth or are breastfeeding [COM (2008) 637]

SUMMARY

Work/family life balance is an issue that many European citizens have to deal with. The European Union has in recent decades initiated measures in this regard, including Directive 96/34/EC on parental leave measures, the directive to which amendments are being proposed.

In its Roadmap for equality between men and women for 2006-2010, the Commission included reconciliation of family and professional life one of the 6 priority areas of action.

In March 2006, the European Council agreed on a European Pact for Gender Equality whereas the European Parliament has repeatedly called for improvements to existing EC legislation on parental leave. Earlier this year, Parliament called on Member States to adopt best practices as regards the length of maternity leave as well as measures that would positively influence birth-rate curves.

In 2005, the European social partners listed supporting a work-life balance as one of the 4 priorities of the Framework of Actions on Gender Equality.

The current legislative proposal being submitted is calling for the following measures:

- Maternity leave to be increased to a minimum of 18 weeks (from current 14 weeks), 6 of which must be taken after child-birth (in line with the ILO recommendation);
- The right of the women falling within the scope of the Directive to choose freely when to take the non-compulsory portion of the leave (before or after childbirth);
- When birth occurs after due date, pre-natal leave is extended to the actual date without a reduction in post-natal leave;
- Prohibition of all preparations for possible dismissal not related to exceptional circumstances during maternity leave;
- Mothers should be paid the full salary (corresponding to the last month) whilst on maternity leave although Member States may establish a ceiling provided that this is not below sick pay rates;
- Mothers have the right to ask employers for flexible work patterns – the employer is obliged to consider such a request, but has no obligation to accept.

Other elements of the Proposal:

- The burden of proof, as is common in most Directives on equal treatment, places the onus on the respondent to prove that there has been no breach of the Directive;
- Effective legal protection against victimization where individuals exercise their rights under the Directive;
- No upper limits on the compensation payable which must be effective, proportionate and dissuasive.
- Competence of national equality bodies extended to cover issues falling within the scope of the Directive.

Member States are not precluded from affording more protection. The proposal indicates a period of 2 years to transpose the Directive, from its coming into force. There is also an obligation on Member States and on national equality bodies to report every 5 years to the Commission on the application of Directive 92/85/EEC as amended by this Directive.