

Health and safety at work: workers who are pregnant, have recently given birth or are breastfeeding

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The Council took note of a **Presidency progress report** on a draft Directive to improve the protection of pregnant workers and workers who have recently given birth or are breastfeeding. It also invited its preparatory bodies to continue work on this file. The new Directive would amend the existing Directive 92/85/EEC.

Under the Czech Presidency, the Council's preparatory bodies discussed in particular the possibility of counting other family-related leave offered to the mother as maternity leave, remuneration during leave, the obligatory period of maternity leave, prohibition of dismissal and protection against discrimination.

The Presidency succeeded in improving considerably the understanding of the issues at stake and in clarifying the text of the Commission proposal.

In its most controversial article, Article 8, dealing with **the length of and other provisions regarding maternity leave**, a majority of delegations have welcomed the Presidency's approach of including in the text an option under which Member States with less than 18 week's maternity leave would be considered to comply with the Directive if family-related leave offered to the mother other than maternity leave fulfilled the criteria set out in the Directive (passerelle clause), with one of the main principles being that the total period of leave must exceed the period of parental leave provided for in Directive 96/34/EC.

The Presidency's text has also given consideration to the fact that, in a number of Member States, other family-related leave is **less well remunerated** than sick pay. In order for these Member States to still count this family-related leave as maternity leave, the Presidency has formulated the idea that, in these cases, the overall level of pay for the whole maternity leave should not fall below a certain level which could be fixed in later discussions.

The issue of an **obligatory period within the maternity leave (either before or after childbirth)** has been discussed in detail. A large majority of delegations appreciate the flexibility included in the current Directive 92/85/EEC. However, some delegations have maintained their call for more ambition and, therefore, the acceptance of the Commission's proposal of six obligatory weeks of maternity leave after childbirth.

The Working Party has also progressed in improving and clarifying the text of the draft Directive, in particular the sections on **prohibition of dismissal and on protection against discrimination**.

Notwithstanding the tangible progress which has been made under the current Presidency, further work on the entire text will still be required.

More concretely, the **major open issues can be summarised as follows**:

1. The **length of maternity leave** and, related to that, the possibility of counting other family-related leave as maternity leave, in the meaning of this Directive, under certain conditions: while a majority of delegations have supported the Commission's proposal to extend the minimum maternity leave to 18 weeks, about a third of delegations have expressed their reservations on

extending maternity leave as proposed, the main problem for a number of delegations being that they did not wish to extend the leave reserved solely to the mother. A number of delegations consider that the proposal should be tackled (also) from the perspective of fathers and of parenthood in general. The Presidency has introduced Article 8(1a)(new) which is intended to be used by Member States with maternity leave shorter than 18 weeks if they offer family-related leave other than maternity leave to the mother and this leave fulfils a set of criteria, including the required level of remuneration. Such a "passerelle" clause was already referred to in the Commission's explanatory memorandum to the proposal. The Presidency's approach has been welcomed by a number of delegations. However, a number of delegations have considered that the "passerelle" clause as drafted by the Presidency would not help all delegations, as it excluded e.g. the issue of paternity leave. Some delegations also consider that mixing the two systems could lead to confusion and problems of implementation.

2. **The obligatory portion of maternity leave:** the Commission, supported by some delegations, has maintained its proposal to increase the obligatory period of maternity leave to six weeks, to be taken after childbirth. Following the discussions, the Presidency has suggested that the current rules concerning the 2 weeks' obligatory maternity leave would be maintained, in order to give the Member States flexibility at national level. A large number of delegations could support such a minimalist approach. A number of delegations have stressed the importance of obligatory prenatal maternity leave. Lastly, Delegations have considered it important, at this stage of the discussions, to explore different ways of better matching the different principles under discussion (women's right to choose and setting rules for the protection of the mother and the child).
3. **Maternity allowance:** while a number of delegations have not considered it useful or necessary to include in the text the mere aim of paying an allowance at the level of full salary during maternity leave, the Commission has maintained its proposal that Article 11(c) should include the aim of full pay, even though the Member States would be allowed to continue the present practice of payment of an allowance at least at the level of sick pay.

The future Swedish Presidency has indicated that this file is among its priorities in the field of employment and social affairs. **During the second half of 2009**, the Council will continue its work on the file, also in the light of the European Parliament's Opinion; the social partners' agreement on the revision of the Directive on parental leave; the Council's continued work on other files within the "reconciliation package".

It should be noted that the proposal forms part of the Commission's work-life balance package which aims to contribute to reconciling professional, private and family life more effectively. The other parts of the package are a proposal for a [Directive on the equal treatment of the self-employed and their assisting spouses](#), a policy document explaining the background and context and a report on progress made by EU countries towards the so-called 'Barcelona targets' for facilities for children.