Health and safety at work: pregnant women, recently given birth or breastfeeding women (direct. 92/85/EEC). Report

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PURPOSE : to implement Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding. CONTENT : the Directive applies to all pregnant workers, and the Member States have ensured that the public and private sectors are covered, as well as women on both indefinite and fixed term contracts. The definitions in the Directive of breastfeeding worker and worker who has recently given birth refer to national law and therefore vary between the Member States, as does the requirement to formally notify the employer. These differences may lead to the differing levels of protection for breastfeeding workers and workers who have recently given birth, which is a matter of concern. In addition, the Directive provides that an assessment must be made of the work place and the job of pregnant or breastfeeding women and women who have recently given birth . Should the assessment reveal a risk to health and safety, all reasonable steps must be taken to ensure that the risk is avoided. All the Member States have some legal provisions on the health and safety of pregnant workers, and the implementation of the Directive has, on the whole, supplemented the existing provisions. However, it has given clear legal status to aspects of health and safety protection, such as the right to paid leave if it is impossible to alter a woman's job or working conditions so as to to avoid any identified risk to health and safety, and the right to paid time off for ante-natal examinations. Pregnant or breastfeeding women, or those who have recently given birth may not be obliged to work nights if doing so poses a risk to health and safety. Most Member States now provide for women covered by the Directive to have the possibility to transfer to day-time work if a risk is identified in working at night. The Directive prohibits the dismissal of a pregnant woman or a woman on maternity leave, unless it is for reasons for any dismissal of a woman during pregnancy or maternity leave strengthens the protection afforded to pregnant women and women on maternity leave. The maximum length of maternity leave permitted under the Directive is 14 weeks. Maternity leave, not including any sort of paternity or parental leave, varies from 14 weeks in the UK to 28 weeks in Denmark. The combination of lengthy compulsory maternity leave with unpaid leave may need to be re-examined. The amount of women on maternity leave who are paid, and the period for which they are paid, also vary widely. In Austria and the Netherlands, women are entitled to 100% of their previous wage throughout their maternity leave; in the UK, Greece and Belgium a percentage of the woman's previous wage is paid for part of the maternity leave. In other Member States, varying amounts of social security benefits are paid during maternity leave. All the Member States subject entitlement to renumeration during maternity leave to conditions linked to length of service, residence or insurance. The Directive has, in general, been well implemented by the Member States. Infringement procedures have been launchedagainst a number of Member States for the incorrect implementation of certain provisions of the Directive. Furthermore, the Member States were required to submit to the Commission within 4 years of the adoption of the Directive a report on its practical implementation, indicating the views of both sides of the industry. In September 1996, the Commission sent to the Member States a detailed questionnaire on the implementation of the Directive. The replies of the Member States to the questionnaire should be considered as the reports required under Article 14(4) of the Directive. However, it should be noted that the views of the social partners were specifically noted only in the reports from Austria, Ireland, Portugal and the Netherlands. This report is based upon the implementing measures notified to the Commission by the Member States and their replies, sent in 1996 and 1997, to the questionnaire. However, the Member States gave differing degrees of detail in their responses to the questionnaire and this is to some extent reflected in the report. It should, furthermore, be noted that the

Greek and Dutch authorities did not reply to the questionnaire and, in the case of the Netherlands, did not supply the text of the national legislation, making it difficult to assess their implementation of the Directive.