Basic information

2008/0193(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure lapsed or withdrawn
Health and safety at work: workers who are pregnant, have recently given birth or are breastfeeding **Subject** 4.10.02 Family policy, family law, parental leave 4.10.09 Women condition and rights 4.15.12 Workers protection and rights, labour law 4.15.15 Health and safety at work, occupational medicine	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
FEMM Women's Rights and Gender Equality		

Former committee responsible	Former rapporteur	Appointed
FEMM Women's Rights and Gender Equality		

Committee for opinion	Rapporteur for opinion	Appointed
EMPL Employment and Social Affairs (Associated committee)		
ITRE Industry, Research and Energy		

Former committee for opinion	Former rapporteur for opinion	Appointed
EMPL Employment and Social Affairs (Associated committee)		
ITRE Industry, Research and Energy		

Committee for opinion on the legal basis	Rapporteur for opinion	Appointed
JURI Legal Affairs		

Council of the European Union

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	2947	2009-06-08
Employment, Social Policy, Health and Consumer Affairs	3131	2011-12-01
Employment, Social Policy, Health and Consumer Affairs	3053	2010-12-06
Employment, Social Policy, Health and Consumer Affairs	2930	2009-03-09
Employment, Social Policy, Health and Consumer Affairs	3099	2011-06-17

European Commission

Commission DG	Commissioner
Employment, Social Affairs and Inclusion	ANDOR László

Key events

Date	Event	Reference	Summary
03/10/2008	Legislative proposal published	COM(2008)0637	Summary
21/10/2008	Committee referral announced in Parliament, 1st reading		
18/12/2008	Referral to associated committees announced in Parliament		
09/03/2009	Debate in Council		Summary
16/04/2009	Vote in committee, 1st reading		Summary
04/05/2009	Debate in Parliament		
06/05/2009	Decision by Parliament		
08/06/2009	Debate in Council		Summary
19/10/2009	Resumption of business from the previous parliamentary term		
23/02/2010	Vote in committee, 1st reading		Summary
05/03/2010	Committee report tabled for plenary, 1st reading	A7-0032/2010	
18/10/2010	Debate in Parliament		
20/10/2010	Decision by Parliament, 1st reading	T7-0373/2010	Summary
20/10/2010	Results of vote in Parliament		
06/12/2010	Debate in Council		Summary
17/06/2011	Debate in Council		Summary
01/12/2011	Debate in Council		Summary
06/08/2015	Proposal withdrawn by Commission		

Technical information

Procedure reference	2008/0193(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 153-p2 Treaty on the Functioning of the European Union TFEU 157-p3
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	FEMM/7/00122

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Amendments tabled in committee		PE421.393	17/03/2009	
Committee opinion	EMPL	PE418.277	01/04/2009	
Committee draft report		PE430.593	12/11/2009	
Amendments tabled in committee		PE431.025	17/12/2009	
Committee opinion	EMPL	PE428.236	28/01/2010	
Specific opinion	JURI	PE438.389	29/01/2010	
Amendments tabled in committee		PE439.072	11/02/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0032/2010	05/03/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0373/2010	20/10/2010	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2008)0637	03/10/2008	Summary
Document attached to the procedure	SEC(2008)2595	03/10/2008	
Document attached to the procedure	SEC(2008)2596	03/10/2008	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0882/2009	13/05/2009	

Additional information		
Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

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

2008/0193(COD) - 08/06/2009

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.

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

2008/0193(COD) - 17/06/2011

The Council took note of a **progress report concerning the recent work** on the proposal to amend directive on the health and safety of pregnant workers and of workers who have recently given birth or are breastfeeding (maternity leave).

Several ministers expressed their concerns on the Commission proposal and/or the opinion of the Parliament at first reading.

Some ministers, given the diverging views, advocated that the Council should consider not continuing its work on this topic, while others stressed that the work should continue.

The Hungarian Presidency recognised that delegations needed further time to reflect on the impact of the proposed EP amendments; therefore, it concentrated the work on those areas where the Member States had already expressed some openness for further examination.

While recognising that there are overlaps in some cases, the Presidency identified the following main thematic groups of amendments:

- provisions related to return to work,
- health and safety and working conditions of pregnant workers,
- combination work and family life,
- equal treatment and general non-discrimination issues, and
- amendments related to special leave and different forms of leave.

As it was clear that the **length and the payment of the maternity leave** were the most sensitive topics and that reaching an agreement on these issues was likely to take some time and reflection, the Presidency left these out of the Working Party discussions for the time being, allowing the delegations more time to consider them.

During the Working Party discussions, some delegations recalled their openness to certain EP amendments and in some instances were able to agree with the spirit of the amendments. However, on the **majority of the EP amendments discussed no majority support could be established**. Several EP amendments were considered too detailed to be included in the draft Directive, especially related to **return to work**. While a number of delegations considered the issues and underlying principles important and even indicated that their national legislation had provisions on a number of issues raised by the Parliament (including time-off for breastfeeding, special working arrangements for parents with disabled children, additional maternity leave in certain cases etc), they considered that specificities should be left to the Member States.

Regarding the **amendments on different types of leave**, a large majority of delegations considered that it should be up to the Member States to decide on additional maternity leave in special circumstances. However, some delegations agreed that including the principle of such longer or additional leave in the Directive might be worth to explore further. One delegation explicitly supported the Commission's proposal on specific additional maternity leave in certain circumstances, however, leaving it to the Member States to decide on details. Some delegations supported the idea that the Directive could give a non-exhaustive list of examples in which cases additional leave could be granted. Some delegations reiterated that the Directive would be meant to set minimum standards. In addition, some delegations recalled that the recently amended Parental Leave Directive 2010/18/EC aimed at increasing gender equality in child care.

In general, delegations considered that **the Directive should cover only maternity leave**. In particular, many delegations stressed that the proposal should essentially remain a health and safety at work Directive. Only a few delegations were flexible on the issues of adoption and paternity leave.

Many delegations rejected certain amendments, which they considered to be already covered elsewhere in the EU legislation (this concerned especially amendments on the prevention of discrimination, burden or proof, witness protection).

In the light of Council discussions, the need for **an additional impact assessment** should be further explored at a later stage. Work on the proposal will continue in 2011 and the social partners' views are expected to be available shortly.

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

2008/0193(COD) - 06/12/2010

The Council held a policy debate on the draft directive aimed at improving the protection of pregnant workers and workers who have recently given birth or are breastfeeding.

A very large majority of ministers considered that the amendments adopted by the European Parliament at first reading, **notably the requested extension of the minimum maternity leave to 20 weeks on full pay, did not constitute an appropriate basis for negotiations**. They expressed concerns regarding the cost implications and emphasised that a directive should set minimum standards while respecting the principle of subsidiarity and the diversity of situations in the different Member States.

Many ministers were reluctant to include paternity leave within the scope of the draft directive on maternity leave, of which the main purpose was to improve the health and safety at work of pregnant women and workers who had recently given birth or were breastfeeding, and not to reconcile work, family and private life, which was covered by other EU rules. Some delegations, however, considered that the draft directive should also cover fathers.

Many ministers were open to the idea of including a "passerelle" clause in the draft directive, allowing the Member States to take into account forms of leave other than maternity leave offered to the mother which fulfilled certain conditions.

Many ministers stressed the need to carefully reflect on the draft directive, and some of them called for a further impact assessment.

The Belgian Presidency concluded that the Commission's original proposal aiming to extend the minimum length of maternity leave from 14 to 18 weeks could be a more acceptable basis for a compromise than the European Parliament's amendments. It also stressed the need to examine this issue carefully, including with the social partners, in order to achieve a balanced outcome. The Belgian Presidency announced that it would consider how best to continue dealing with the file over the coming weeks, in coordination with Hungary and Poland, the two forthcoming presidencies.

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

2008/0193(COD) - 09/03/2009

The Council held a **policy debate** on key questions of a Commission's proposal concerning 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.

On the basis of questions suggested by the Presidency, **a majority of Member States supported the extension of maternity leave entitlement from 14 to 18 weeks**. However, some called for opening up the leave also for fathers and to take into account the outcome of the social partners' negotiations on other types of family leave.

A number of Member States wished to keep the right to decide within their national legislation whether a **part of maternity leave should be taken before childbirth**.

Some Member States expressed concern that a further extension of maternity leave might be at the expense of broader rights to parental leave and might adversely effect the situation of women on the labour market.

Furthermore, Member States agreed that further discussion would be needed concerning the dual legal basis of the proposal, namely Article 137(2) (on workers' health and safety) and 141(3) (on equal treatment between women and men) of the Treaty.

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

2008/0193(COD) - 20/10/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 390 votes to 192, with 59 abstentions a 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.

The Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise reached between the European Parliament and the Council. Parliament amends the Commission’s proposal as follows:

Purpose: Parliament extends the scope of the Directive. It states that the 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**.

Definitions: the term ‘pregnant worker’ shall mean a pregnant worker employed under any type of contract, including in domestic work. The term ‘worker who has recently given birth’ shall also mean a worker who recently adopted a child.

Guidelines: Members consider it important to update guidelines in accordance with circumstances and knowledge. There are health and safety risks that are considered hazardous for the reproductive health of male and female workers. These guidelines shall be reviewed and shall, from 2012, be updated at least every five years. These guidelines to the attention of the social partners.

Assessment, information and consultation: Members stipulate that 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**. To promote a preventive approach, the assessment should cover workers likely to be in one of the situations covered by the directive. Provisions regarding consultation and participation of workers and/or their representatives for questions falling within its scope were introduced.

Working conditions: Parliament considers that the current text of this article gives a far too wide opportunity to employers to argue that they cannot adapt the workplace or offer an alternative job. Accordingly, it has deleted the words “or cannot reasonably be required on duly substantiated grounds” in order to ensure that protection of the employment opportunities for women is increased.

Tasks involving serious physical effort or presenting a risk to health: an amendment specifies that pregnant women shall 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.

Night work and overtime: according to the amended text, workers within the scope of the text must not be 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; and c) during the entire period of breastfeeding. There must be the alternative of transfer to daytime work which is compatible.

Workers wishing to be exempted from night work shall inform their employer and, in the case of workers who have recently given birth submit a medical certificate to the employer.

For single parents and parents of children with severe disabilities, these periods may be extended in accordance with the procedures laid down by the Member States.

Maternity leave: Members propose that workers be entitled to a **continuous period of maternity leave of at least 20 weeks** allocated before and/or after confinement (the Commission proposed 18 weeks and current legislation provides for 14).

- With respect to the last four weeks of the period in question, a 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 an overall protection to workers that is equivalent to the level laid down in this Directive.

- The remuneration for the last four weeks of maternity leave shall be no lower than a certain threshold or, alternatively, it may be the average of the remuneration for the 20 weeks of maternity leave, which shall be at least 75 % of the last monthly salary or of the average monthly salary as stipulated according to national law, subject to any ceiling laid down under national legislation.

- Where a Member State has made provision for a period of maternity leave of at least 18 weeks, that Member State may decide that the last two weeks are met through paternity leave available at national level, with the same level of pay.

- The maternity leave 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 six-week period of compulsory maternity leave shall apply to all working women regardless of the number of days worked prior to confinement.

- New provisions state that **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.

- 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. For multiple births the compulsory period of maternity leave shall be increased for each additional child in accordance with national legislation.

- 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**. 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.

Lastly, 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.

Paternity leave: Members call for measures to ensure that workers whose life partner has recently given birth are entitled to a continuous period of non-transferable paid paternity leave of at least two weeks, granted on an equivalent basis – except with regard to its duration – to maternity leave, 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 it are strongly encouraged to implement it in order to promote equal participation of both parents in balancing family rights and responsibilities.

Members also wish 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.

Adoption leave: the necessary measures should also be taken 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.

Prohibition of dismissal: this is extended to **at least six months following the end of the maternity leave**. Dismissal during that period shall be duly justified in writing.

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. They should also 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.

Health and safety: Members consider that the protection of pregnant women's health and safety is the main objective of this Directive. 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.

Employment rights: Members stipulate that **entitlements should be based on full pay**, to prevent women losing out financially because they are mothers.

They consider that it is 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.

In addition, 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

Time off for breastfeeding: an amendment states that 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. There are additional provisions for cases of multiple births and part-time work.

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.

Burden of proof: Parliament deleted the Commission's proposals on burden of proof stating that 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.

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.

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

Communication of information and report: Member States and national equality bodies shall communicate to the Commission, within three years of the adoption of this Directive and every three years thereafter, all the information necessary for the Commission to draw up a report. The report must also include an impact study analysing the social and economic effects, in the EU as a whole, of a further increase in the duration of maternity leave and of the implementation of paternity leave.

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

2008/0193(COD) - 03/10/2008 - Legislative proposal

PURPOSE: to improve the protection offered to pregnant workers and workers who have recently given birth or are breastfeeding and to extend the minimum length of maternity leave from 14 to 18 weeks.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: in March 2006, the European Council stressed the need for a better balance between work and private life in order to achieve economic growth, prosperity and competitiveness, and approved the European Pact for Gender Equality. In December 2007 and March 2008, the Council called on the Commission to evaluate the legal framework supporting reconciliation and the possible need for improvement in this area and reiterated that further efforts should be made to reconcile work with private and family life for both women and men.

The European Parliament has consistently called for improvements to the existing legislation

relating to the protection of pregnant workers and the granting of parental leave, and for

measures to improve the reconciliation of professional, private and family life (for example,

in its resolution of 21 February 2008 on the demographic future of Europe, Parliament called on the Member States to adopt best practices as regards the length of maternity leave and in its resolution of 27 September 2007, it urged the Member States to mutualise the costs of maternity and parental leave allowances in order to ensure that women no longer represent a more costly source of labour than men.

This is why the Commission has finally decided to review Directive 92/85/EEC on pregnant workers and workers who have recently given birth or are breastfeeding and is proposing to revise it.

CONTENT: the proposed Directive amends the existing 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 in particular its Articles 8 (Maternity leave), 10 (Prohibition of dismissal) and 11 (Employment rights).

1) Maternity leave: Article 8 is amended so as to increase the duration of maternity leave to **18 weeks**, 6 of which must be taken after childbirth. This corresponds to the length of leave provided for in the ILO Maternity Protection Recommendation, adopted in 2000, and is intended to generally improve the health and safety of women giving birth to a child. This increase is designed to allow women to recover from pregnancy and childbirth, to have more time with their children, and to be able to breastfeed for a longer period. Under the current Directive the duration is **14 weeks**, 2 weeks of which are compulsory before or after confinement.

Other measures related to maternity leave are as follows:

- women falling within the scope of the Directive would be able to choose freely the time at which the non-compulsory portion of the leave is taken (before or after childbirth), and would thus no longer be obliged to take a specific portion of the leave before childbirth as is presently the case in some Member States. It is for the Member States to decide on notification periods;
- where childbirth occurs after the due date, the prenatal portion of the leave is extended to the actual date of birth, without any reduction in the post-natal portion of the leave, in order to guarantee that women have sufficient time to recover from giving birth and to breastfeed;
- the Member States are to decide on the length of additional leave to be granted in the event of premature childbirth, children hospitalised at birth, new-born children with disabilities and multiple births. The extra time should allow women to recover from the particular stress that premature childbirth, children hospitalised at birth, the birth of children with disabilities and multiple births usually cause;
- any period of sick leave, up to 4 weeks before confinement, in the event of illness or complications arising out of pregnancy or childbirth shall not shorten the period of maternity leave, again in the interest of women's health.

Prohibition of dismissal: points 1 and 2 of Article 10 are amended: in order to take account of the case law of the European Court of Justice, it is proposed to prohibit all preparations for a possible dismissal not related to exceptional circumstances, during the maternity leave. Under the current Directive, the employer must duly substantiate the grounds for such dismissal in writing only in cases where a woman is dismissed while on maternity leave. The proposed amendment **extends this duty of the employer to cases where a woman is dismissed within 6 months of the end of her maternity leave**, if the woman requests such a written motivation. The aim of this provision is not to amend any rules on individual or collective dismissal, but only to provide, in the interest of both the business and the worker concerned, that during a certain period after the return from maternity leave, any dismissal should be duly motivated in writing if the worker so requests.

Employment rights: the new point 2(c) of Article 11 makes it clear that following maternity leave, the woman has the right to return to the same job or to an equivalent post on terms and conditions that are no less favourable, and the right to benefit from any improvement in working conditions to which she would have been entitled during her absence. This is taken from Directive 2002/73/EC, as recast in Directive 2006/54/EC.

Rights relating to the employment contract:

- the new point 2(c) of Article 11 makes it clear that following maternity leave, the woman has the **right to return to the same job or to an equivalent post** on terms and conditions that are no less favourable, and the right to benefit from any improvement in working conditions to which she would have been entitled during her absence;
- point 3 modifies the existing rule on the **payment given during maternity leave**: it provides for the principle of the payment of the full monthly salary received prior to the maternity leave. However, this is not mandatory since this payment may be subject to a ceiling, to be determined by the Member State, provided that it is not set below the rate for sick pay. Member States may determine if the level of the payment during maternity leave corresponds to the one of the last monthly salary before maternity leave or to an average to be calculated over a certain period;
- according to new point 5 of Article 11, a worker during maternity leave or when returning from maternity leave has a right to ask her employer to **adapt her working patterns and hours to the new family situation** and the employer is obliged to consider such a request. However, the employer has no obligation to accept or follow-up on the request. The detailed rules on the exercise of this right are to be laid down by the Member States.

Burden of proof, retaliation measures: the provision on the burden of proof is common to most Directives on equal treatment between women and men. In judicial procedures, the general rule is that a person who alleges something must prove it. However, in equal treatment cases, it is often extremely difficult to obtain the evidence necessary to prove the case, as it is often in the hands of the respondent. The provision on victimisation is also commonly found in equal treatment Directives. Effective legal protection must include protection against retaliation. Victims may be deterred from exercising their rights on account of the risk of retaliation, and individuals must therefore be protected from any adverse treatment where they exercise the rights conferred by the Directive.

Penalties: in accordance with the case law of the Court of Justice, the provision on penalties provides that there should be no upper limit on the compensation payable in the event of a breach of the principle of equal treatment. This provision does not require criminal penalties to be introduced.

Provide a higher level of protection in the Member States: the proposal reaffirms the standard provision, which allows the Member States to provide a higher level of protection than that guaranteed by the Directive and confirms that there should be no lowering of the level of protection already afforded by the Member States when implementing it. It also stipulates that Member States shall ensure that the body or bodies designated 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.

This provision gives the Member States a period of **2 years** to transpose the Directive into national law.

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

2008/0193(COD) - 01/12/2011

The Council took stock of progress made on the maternity leave directive on the basis of a Presidency report.

The report draws the following preliminary conclusions:

- **maternity leave (even shorter than 20 weeks) with full pay was not supported**;
- considering further payment at the level of sick pay was the option that won the most support from delegations. Several delegations raised the concern that "sick pay" itself was an unclear term (there are different levels of sick pay, including statutory and contributory sick pay, and the level might also depend on the length of the sickness);
- there was also some support for an option entailing a maternity allowance with a ceiling, as a basis for further discussion;
- while some delegations considered the "passerelle" clause to be an interesting option, there were others who were not able to accept this approach.

Moreover, it concludes that, in the light of recent discussions, it has become crystal clear that the period of 20 weeks of maternity leave with full pay is unacceptable to the Council. Taking into account the broad diversity of maternity protection and social security systems among the different member states, as well as the financial implications, especially during the crisis, the introduction of such a solution could have counterproductive effects.