



ETUC's Position on the revision of the Pregnant workers Directive

(Directive 92/85/EEC on the introduction of measures to encourage improvements in the health at work of pregnant workers and workers who have recently given birth or are breastfeeding)

January 2009

Introduction

On 20 October 2006 the European Commission launched a consultation in two stages of the European social partners on the issue of reconciliation of professional, private and family life.

The ETUC expressed its views quite extensively ¹ (see summary of ETUC's response in the 2-nd stage of consultation in attached Annex).

With regard to updating the regulatory framework, the Commission strongly encouraged social partners to initiate the negotiation process on the basis of the proposals put forward in the consultation document with regard to

- a) the introduction of *new types of leave*: paternity leave, leave to care for dependent family members, adoption leave;
 - b) the improvement of *maternity protection* (Pregnant Workers Directive 92/85/EEC) in three areas: duration of leave, level of payment, protection of women returning from maternity leave;
- and failing that, to forward an opinion or recommendation on the objectives and contents of these proposals.

Furthermore, the Commission considered that improvements to Community provisions in relation to *parental leave* could be considered in order to better achieve the aims of the Parental Leave Directive 96/34/EC, based on a framework agreement of the European social partners.

With regard to the proposed revision of the Pregnant Workers Directive (92/85/EEC), the ETUC has welcomed the Commission's support for the need to review and improve this Directive. The Commission notes three areas in which improvements should be made: the duration of leave, the level of payment, and the protection of women returning from leave.

¹ ETUC's position on the first stage of consultation: <http://www.etuc.org/a/3194>
ETUC's position on the second stage of consultation: <http://www.etuc.org/a/3910>

ETUC agrees with the need to strengthen the Directive in these areas and has especially demanded stronger guarantees for payment during maternity leave (which should guarantee full salary protection, by social security or other solidarity funding), to ensure that women and their families can afford and are not 'penalized' for having babies.

However, ETUC has also drawn attention to the need to strengthen the health and safety dimension of the Directive, notably in terms of prevention and risk assessment, and the need to strengthen the right to breastfeeding facilities. Another important matter is to extend its protection to all workers in atypical forms of employment including domestic workers.

In addition, ETUC has drawn attention to the need to bring the EU Directive in line with ILO convention 103 (Maternity Protection Convention) as revised in 2000 and the Recommendations attached to it (ILO Recommendations 191), in accordance with the EP's call for an improvement of the Directive already in 2000². It would be very appropriate to adapt and update the Pregnant Workers Directive to ensure at least a level of protection equal to ILO Convention 103.

In the meantime, the European Social Partners have started joint work on reconciliation of work, private and family life, notably by sending a joint letter on childcare³, and have started negotiations on the revision of their Parental Leave Agreement as transposed in Directive 96/34/EC . However, they have refrained from joint action on maternity protection and the revision of the Pregnant workers Directive.

In October 2008, the European Commission has come up with a proposal for a revision of the Pregnant workers Directive which is now being discussed in the European Parliament.

General comments

1. ETUC first of all wants to emphasize the urgent need for *policy coherence* when it comes to reconciliation of work, private and family life, and the need to recognize its strong link to the protection of the health and safety of pregnant women and their unborn or newborn children.

In the context of demographic change and feminisation of the labour market, there is a need for both a higher and more sustainable birth rate and a higher labour market participation of women. In this situation, the protection of the health and safety of women and children but also the reproductive health of men and women is of high importance.

² EP Report and Resolution on the implementation of Council Directive 92/85/EE, rapporteur Elisa Maria Damião, 30 May 2000, A5-0155/2000

³ Joint letter of the European Social Partners to Commissioner Spidla on childcare, of 7 July 2008: <http://www.etuc.org/a/5204>

Appropriate protection of (pregnant) women and their unborn or just born children should be an integral part of a wider policy mix.

2. This *broad policy mix* consist of measures to allow workers (men and women) to have the amount of children that they wish, under (working) conditions that do not negatively influence their reproductive health, protect the health and safety of the mother and/or (unborn or newborn) child during pregnancy, allow the mother to properly recover from childbirth and the child to have a good start in the world (both physically and psychologically), and last but not least allow parents (women **and** men) to bond with their child from the very beginning.
3. Not all the elements of this are yet recognized or regulated adequately at national or EU level. One area that until now has received insufficient attention is the area of *reproductive health and reproductive hazards*, which is relevant for both men and women. ETUC calls on the EP to include in its report an urgent call on the European Commission to take such reproductive hazards more seriously into account in its policy making especially regarding prevention of chemical hazards.
This is also important from a gender equality perspective: general preventive measures focussing on healthy and safe workplaces for men and women are much more conducive to gender equality than specific measures targeted at (pregnant) women. Such specific measures should be limited to situations which are intrinsically linked to the situation of pregnant women and their unborn child.
4. The other element which until now has been underdeveloped is the recognition that a more equal division of labour between men and women with regard to childrearing demands *possibilities for fathers to bond* with their children in an early stage. This leads to the need to introduce specific leave and other facilities, such as paternity leave. This possibility, and the need for a more equal sharing of parental care responsibilities, which should be addressed in terms of wider opportunities for parental leave, childcare and flexible working arrangements, *should not be confused with the continued need for protection of women* and their unborn or just born child when it comes to pregnancy and giving birth, in terms of health and safety protection and maternity leave.

On the proposals from the Commission

5. The current Pregnant workers Directive is based on the legal basis of health and safety. However, there is an increasing understanding that health and safety measures for pregnant workers must not negatively affect the employment and career opportunities for women, and should contribute to gender equality. This is one reason why it would be logical to *extend the legal basis* of the Directive *to equal treatment*.

6. The extended legal basis in our view would also allow the inclusion in the Pregnant workers Directive provisions on paternity leave (i.e. leave for the father/partner to take a short leave around the birth of the child) and adoption leave (i.e. leave for adoptive parents around the adoption of the child, to be able for parents and child to start their family bonds).
7. The ETUC is in favour of improving the Pregnant workers Directive in the areas proposed by the Commission, i.e. duration, payment and job-protection. We have argued, together with the EP, already in 2000 that the Directive on these issues needed to be brought in line with the revised ILO Convention on maternity protection (183) and the ILO Recommendations on this issue (191).
8. For the ETUC, maternity protection and maternity leave must be clearly distinguished from leave and other facilities for parents for the purpose of care. In our view, an extension of the leave to 18 weeks can be clearly argued on the basis of research and experience in Member States as being necessary for a proper physical recovery of the woman after pregnancy and giving birth. In specific cases (premature or sick child, multiple births etc.) a longer leave can be necessary. The proposals of the Commission in this area are therefore appropriate.
The need for maternity leave of a sufficient length should not be confused with the need to provide the other parent (father/partner) with the opportunity to bond with the new born child (preferably by offering a period of paternity leave around the birth of the child) and opportunities for both parents to share the care responsibilities for their children in a later stage (by way of parental leave and flexible working arrangements). We are therefore strongly opposed to suggestions that the minimum period of maternity leave provided to women giving birth, established at EU level, could be shortened in favour of transferring a part of this leave to fathers.
9. The proposal to ensure that at least 6 weeks of the leave should be taken up after child birth is in line with ILO Convention 183 (that has been ratified already by 9 EU Member States, whereas an additional 5 EU Member States have ratified the preceding Convention 103 which contains a similar provision).
10. With regard to the payment of the leave, it is clear that any payment lower than the normal salary of the woman has a detrimental effect on women, and 'penalises' them for the biological role of being mothers, not only when having children but also in the long run (influence on social security and pension rights etc.). In an era in which Europe has a bigger interest than ever in keeping or even regaining proper birth-rates as well as having an increased labour market participation of women, it is of the highest interest to safeguard income and employment security of pregnant women and young mothers to ensure a sustainable future.

ETUC therefore highly welcomes the Commission's proposal to ensure income protection during maternity leave at the level of their full salary.

11. Therefore, it is also necessary to extend the job protection to the period after returning to the job, including giving women a stronger right to return to the same or an equivalent job, as proposed by the European Commission.
12. The ETUC recognizes the importance of introducing a right to request changes to working hours and patterns to allow women to adapt the organisation of work to their needs when returning from maternity leave.
However, we would prefer to extend this right to all parents of young children, to promote a more equal sharing of childrearing tasks between men and women. With the extended legal basis this would be possible.

Missing issues

13. The ETUC wants to draw special attention to the excellent report that was made in 2000 by the EP (rapporteur Elisa Maria Damião) on the implementation of the Pregnant workers Directive, in which the Commission was asked to take action on several important issues.⁴
14. One issue that needs to be addressed in the revision is breastfeeding. The ILO Convention 183 contains very clear provisions on this (article 10: a woman shall be provided with the right to one or more daily breaks or a daily reduction of hours for breastfeeding, to be determined by national law and practice, and these breaks will count as working time and must be paid accordingly). It is no longer acceptable that the EU Directive remains silent on this.
15. Another important issue to be urgently addressed is the general exclusion of domestic workers from all health and safety directives, according to Article 3a) Framework Directive 89/391, which has as an effect that they are also excluded from any maternity protection!

This can no longer be accepted. 90 Percent of domestic workers are women. Already in 2000, the EP adopted a "Resolution on regulating domestic help in the informal economy" (rapporteur Miet Smet)⁵, in which among other things there was a strong plea to

⁴ EP report Elisa Maria Damião, see above, footnote 2

⁵ EP resolution, rapporteur Miet Smet, "Regulating domestic help in the informal sector", 30 November 2000, EP AP-0301/2000
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2000-0542+0+DOC+XML+V0//EN>

bring domestic work within the scope of labour legislation and collective agreements.

ILO Convention 183 explicitly covers **all** employed women, including those in atypical forms of dependent work (article 2).

16. A major issue that is not dealt with in the revision is the whole area of health and safety protection of the Directive. ETUC has expressed on several occasions its dissatisfaction with the fact that the Commission does not want to use the revision of the Directive to also improve the core provisions of the Directive on health and safety. Already in 2000, the EP gave clear indications on the improvements that were necessary!
17. Risk assessment plays a central role in the Directive, but the Directive does not prescribe any specific preventive measure. There are at least **3 problems** as regards preventive measures:
 - a. A major problem is that there is no clear obligation to assess reproductive risks more in general, but only an obligation to assess risks once a woman reports that she is pregnant. The available data show that pregnancy is generally notified to the employer between the 7-th and 10-th week, but the greatest risks of foetal malformation lie between the 3-rd and 8-th week after conception. Likewise there is a bigger risk of miscarriage during the first weeks of pregnancy. This means that in most cases taking measures after notification is **too late**.
 - b. The Directive requires employers to adopt preventive measures on the basis of the risk assessment, but there is not sufficient obligation to follow a hierarchy of actions i.e. to first try to eliminate the risk, and only in the last instance remove the woman from the workplace by sending her on leave.
 - c. Unlike the other health and safety Directives, the Pregnant workers Directive does not provide for workers' representative bodies to be consulted on preventive measures. This was also criticized by the EP in 2000.

This absence adds to the tendency to treat protection of pregnant workers as a provision for individuals in an abnormal situation rather than as an issue of collective health and safety in every workplace.
18. The Pregnant Workers Directive was adopted in 1992 as a provisional compromise. The Commission was supposed to put forward proposals for improvements in October 1997, however, it did not do so. In July 2000, the European Parliament gave a critical assessment of the directive's implementation and voted for a

revision to improve it. It reiterated its demand in January 2008. Now, the Commission has put forward a proposal for revision only focussing on matters regarding the duration of leave, the payment of the leave, and employment protection, arguing that the revision is placed in the context of a 'reconciliation package'.

For the ETUC, this is not an acceptable argument. *Health and safety protection is an important **pre-condition** for reconciliation* of work and family life. We call therefore on the EP to come up with proper amendments on these issues.

19. What is urgently needed in addition is, to put the protection of mothers and their (unborn or newborn) children in the context of a *more general and effective preventive approach*: rules and regulations regarding maternity protection should be limited to conditions that are specific to the situation of pregnant women and women that have just given birth, and possible effects on their unborn or newborn children⁶, and a much stricter general policy should be adopted on *prevention of chemical and other hazards applicable to all workers*. Priority must go to eliminating and replacing substances that are hazardous to both female and male reproduction. Wherever elimination of those risks is not technically feasible, effective control measures should be adopted to prevent or minimize exposures.

The real need is *to promote a reorganization of production that will protect the health of women, men and their offspring*. We call on the EP to promote such an approach.

⁶ Mainly in the areas of ergonomics, working time (including night- and shift work) and work intensity, and increased protection against particular infectious agents and ionizing radiation.