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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
SEC(2008) 2527

COMMISSION STAFF WORKING DOCUMENT

accompanying 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

Summary of the Impact Assessment Report

{COM(2008) 600}
{SEC(2008) 2526}

1. INTRODUCTION

Gender equality is one of the main objectives of the European Union, to be achieved via all the Union's policies¹, and the Commission's Roadmap for equality between women and men (2006-2010)² highlights the need for women and men to participate to an equal extent in the labour market. Gender equality has also been an objective of the **European Employment Strategy (EES)** since its inception in November 1997. Policies to support the reconciliation of professional, private and family life, whose importance is now widely recognised, have become an economic imperative as demographic and competitive pressures increasingly emphasise the need to optimise labour market participation. Furthermore, there is a positive correlation between fertility rates and labour market participation: Member States where the fertility rates are higher are also those with more women in employment.

The **Roadmap for equality between women and men (2006-2010)** sets six priorities for action, the first of which is achieving equal economic independence for women and men. Another priority — reconciling work, private and family life — contributes directly to the latter.

The **European Parliament** has consistently called for improvements to the existing Community legislation on maternity and parental leave³: in its May 2008 proposals to amend the Employment Guidelines, it called for the provision of parental and other leave schemes⁴.

The **European social partners** also play an important role in the area of reconciliation. In March 2005 they adopted a Framework of Actions on gender equality, one of the priorities being action to support the work-life balance.

The Commission has prepared this Impact Assessment on the basis of the legislative options to improve reconciliation outlined in the 2007 second-stage consultation of the European social partners⁵. In July 2008 the social partners confirmed their intention of initiating the negotiation procedure provided for in Article 139 EC on a revision of the parental leave directive. The Commission has thus restricted the scope of this proposal to maternity leave since the social partners confirmed that they do not intend to cover this in their negotiations. However, the Impact Assessment covers all options not just that covering the amending of conditions for maternity leave.

2. EVIDENCE AND CONSULTATION

The European social partners were consulted by the Commission in two stages in 2006 and 2007. In response to the second-stage consultation, four social partners⁶ decided to set up a joint working group within the context of the European social dialogue to carry out a review

¹ Article 2 and Article 3(2) of the EC Treaty.

² COM(2006) 92.

³ For example, Resolution 2003/2129(INI), P5_TA(2004)0152), point 26.

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0207+0+DOC+XML+V0//EN&language=EN>.

⁵ http://ec.europa.eu/employment_social/social_dialogue/docs/reconciliation2_en.pdf.

⁶ ETUC, BUSINESSEUROPE, CEEP and UEAPME.

of the framework agreement on parental leave annexed to Directive 96/34/EC. In July 2008 they decided to start formal negotiations on parental leave in accordance with Article 138 EC.

In December 2007 the Commission consulted the Member States to gather information on legislation on all forms of family-related leave arrangements and to ascertain their views on options for amending it.

The Advisory Committee on Equal Opportunities for Women and Men⁷ adopted an opinion on the introduction of new forms of leave (paternity leave, adoption leave and 'filial' leave) by written procedure on 3 July 2008⁸. The Commission also consulted several European NGOs by questionnaire on their views on options for amending and supplementing the existing legislation on leave arrangements in connection with reconciliation.

In December 2007 the Commission commissioned an external study on the costs and benefits of options to improve provisions for the reconciliation of work, private and family life from the ECORYS Group⁹. The Network of national legal experts on gender equality also delivered a report on national measures on Pregnancy, Maternity, Parental and Paternity Rights in the Member States as well as a stock-taking report on national measures concerning flexible working patterns¹⁰.

3. PRESENT LEGAL FRAMEWORK

Two Directives deal with leave for family reasons and related rights, namely Directive 92/85/EEC¹¹ (hereinafter 'Maternity leave Directive') and Directive 96/34/EC¹² (hereinafter 'Parental Leave Directive'), which were adopted in 1992 and 1996 respectively. These provide for a minimum entitlement of 14 weeks' maternity leave, paid at least at the rate for sick leave, and for three months' unpaid parental leave for each parent, which may be transferred in many Member States to the other parent. The current provisions lay down neither the duration of or precise conditions for adoption leave nor the right to paternity leave or 'filial' leave (leave to care for dependent family members).

There are marked differences between the Member States in terms of policy on facilitating reconciliation. Maternity leave provisions range roughly from 14 to 52 weeks, with payments ranging from 55% (subject to a ceiling) to 100% (subject to no ceiling). Parental leave provisions involve entitlement to leave ranging from three months to three years. Payments, where granted, are made for a period of from 15 days to two years. Entitlement to adoption leave varies from 10 days to the same period as for parental leave. Some Member States provide for no payment, others provide for a payment similar to that for parental leave. There is no entitlement to paternity leave in a number of Member States. Where such entitlement exists, it covers periods of from one to 10 days. In some Member States, part of the parental leave is earmarked for fathers. Certain Member States provide for no payment at all, others for a flat-rate payment of up to 100% pay. Some Member States make no provision for any

⁷ Members include representatives of the Member States, equality bodies, social partners and NGOs.

⁸ http://ec.europa.eu/employment_social/gender_equality/docs/2008/opinion_newforms_en.pdf.

⁹ http://ec.europa.eu/employment_social/gender_equality/legislation/new_legislation_en.html.

¹⁰ Details at: http://ec.europa.eu/employment_social/gender_equality/legislation/bulletin_en.html.

¹¹ Council Directive 92/85/EEC of 19 October 1992 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 (OJ L 348, 28.11.1992, p. 1).

¹² Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ L 145, 19.6.1996, p. 4).

entitlement to filial leave. The duration varies from two to 10 days for a disabled or sick child and in some cases for other relatives too. In some Member States this leave is paid as a lump sum at the rate applying for sickness or another rate.

3. PROBLEM DEFINITION

The need is now accepted at EU level for reconciliation policies to ensure that women and men need not make trade-offs between having a fulfilling private, family and professional life. Such policies may enable both women and men to exercise real choices in this area and, in particular, may result in a higher employment rate and lower unemployment rate for women. They may also reduce gender segregation on the labour market and close the gender pay gap. However, even where various flexible working arrangements have been put in place to support reconciliation, they are actually used much more by women than by men for reasons of economic necessity rather than free choice.

Despite the increase in women's participation in the labour market, the **pay gap** remained steady at 15% from 2003 to 2007, and has narrowed by only one point since 2000¹³. This pay gap is due to a certain extent to the problems women face in reconciling professional and private obligations. One important factor influencing woman's participation in the labour market is the availability of childcare. **Childcare** facilities in the Member States are insufficient and are not always adapted to family needs¹⁴. Only in Denmark and Portugal is more than 30 hours per week of formal childcare available for over 30% of children under the age of three. Women also bear the main responsibility of **caring for the elderly**.

The impact of having children on **women's labour market participation** is stark. As a result, the employment rate for women with dependent children in 2007 was only 65.5%, compared with 91.7% for men, a difference of more than 26 points. In 2007, the employment rate of women between the age of 20 and 49 fell by around 12 percentage points once they had children, while that of men rose around seven points. Family responsibilities mean that women are more likely to work **part-time** than men. This has negative implications on their career prospects and wages. Furthermore, there is **discrimination on the labour market** against mothers (and fathers) with small children and **low take-up of parental leave by fathers**. But as long as the mothers rather than the fathers forgo participation in the labour force when they have children and make use of parental-leave provisions, employers will in general continue to perceive women as less committed than men to their careers and will less likely invest in female career opportunities.

4. BASE-LINE SCENARIO

If no new EU action is taken, the current EC Directives would remain applicable and current programmes and targets would be maintained. Some but not all Member States would have detailed national legal provisions on better reconciliation measures. The Lisbon targets will be evaluated in 2010 and new guidelines and targets will be fixed under the EES. The Roadmap for equality between women and men will lapse in 2010 but the work of the European social partners will go on.

¹³ Definition used by Eurostat: 'The gender pay gap is given as the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees'.

¹⁴ See recent report *The Provision of Childcare Services* by Platenga/Remery, 2008.

A marked difference in labour market participation by women with children compared to men with children will, however, remain. The Member States will need the participation of more women on the labour market, not only to solve the problems of an ageing society but also for competitiveness at global level. Greater participation by women is therefore vital. The Member States also need a stable birth-rate if they are to cope with the demographic challenge. Those with high rates of female employment (such as Finland, Sweden, Denmark, the Netherlands and the UK) also have fertility rates that are significantly above the average¹⁵. To a large extent those Member States also have the most effective reconciliation policies.

5. POSSIBLE EU POLICY RESPONSES

The objectives are to address the employment rates of women with children and reduce the gender imbalance and discrimination by increasing the possibilities on offer, improving the conditions for take-up of family-related leave and providing financial support during family-related leave.

A number of possibilities were considered before it was concluded that failing to act was not an option because the Commission has set better reconciliation facilities as one of its priorities in the Roadmap on equality between women and men and major stakeholders have urged it to do more in this area. Non-legislative measures (for example, exchanges of good practice and social partners' initiatives) will continue in any case, as will other measures to increase the employment rate of women. The EU must take further action to promote women's employment and allow them to exploit their full potential and talents. Since large discrepancies remain between actual and preferred employment patterns, it seems clear that women in general want to work more. There is therefore great potential for increasing female labour participation.

This narrowed down the options to the following: take no action at EU level, disseminate good practice, amend the maternity leave rules (Directive 92/85/EEC), amend the parental leave rules (Directive 96/34/EC), make more specific provision for adoption leave and introduce two new forms of leave, paternity and 'filial' leave.

6. ASSESSING THE OPTIONS

Each option was assessed in terms of how it met the objectives and by comparison with the baseline scenario. It emerged that the 'no new action' option would not solve the problems identified. The 'dissemination of good practice' option would be helpful in achieving a better work-life balance.

As to maternity leave, a rate of payment of 100% of the former salary and a four weeks' increase in the leave would provide meaningful, valuable support in terms of better reconciliation. The same applies to a clause providing for a right to ask for flexible working hours after returning from maternity leave. The objectives would be met with the exception of reducing the gender gap between women and men taking family-related leave.

As to parental leave, increasing parental leave by one month and providing a payment of 66% of former salary was assessed as giving valuable support to reconciliation if both parents took at least one month's parental leave. As parental leave would be paid, this would give fathers

¹⁵ *Ibid.* p. 18.

an incentive to take at least one month's parental leave, which entitlement would otherwise be lost. Provisions of this sort have proved to be very effective in the Nordic countries.

As to adoption leave, adapting the provisions as far as possible to those governing parental leave was assessed as promising for the same reasons as those for amending the parental leave arrangements.

Providing for paternity leave lasting 10 days was assessed as being particularly helpful in terms of encouraging more fathers to take parental leave. According to previous experience in other Member States, fathers will only take family-related leave if the rate of payment during paternity leave has a close link with their salaries. This option therefore provides for a payment equal to at least 66% of the salary.

Providing for filial leave lasting one month to care for a dependent family member (including children over eight years) was assessed as useful in terms of helping women (or men) to stay in employment while caring for a dependent family member.

7. CONCLUSION

The conclusion of the Impact Assessment Report is that legally binding measures at Community level would be the best instrument for achieving the objectives set. Changes to the maternity leave and parental leave arrangements assessed and introducing new/other forms of leave in combination would form a very useful set of measures for achieving better reconciliation. Nonetheless, since the social partners will negotiate on parental leave, the Commission should refrain from putting forward proposals on parental leave and should bear in mind that the social partners' negotiations could cover the new formulae for leave. Under the circumstances, the only feasible measure for the time being is a proposal to amend the maternity leave arrangements.