UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATON OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

UEAPME position paper on the proposal for a directive of the European Parliament and 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

On 1st October 2008 the European Commission adopted an amended proposal for the 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 directive.

General comments

Already during the two previous consultations of the European Commission with European Social partners launched under Article 138.2 of the Treaty, UEAPME expressed the opinion that the current existing directive 92/85/EEC was sufficient to adequately protect the health and safety of pregnant workers and workers who have recently given birth or are breastfeeding and therefore did not see any need for a revision of the directive.

In this context UEAPME would like to recall that the role of an EU directive in the social field is to adopt minimum requirements which can be upgraded by the Member States if they decide to go further than the minimum standards.

The Commission decided to use a double approach in the revision process of the current directive. Although the proposal is primarily based on health and safety principles, some of the new measures are legally justified by the application of the principle of equal opportunities and equal treatment between women and men. The objective should aim at a better reconciliation of work/life balance.
UEAPME as employers' organisation is fundamentally in favour of a good reconciliation of work and family life including for women taking into account that European societies need more children and European labour markets need a higher employment rate of women. A good work/life balance should help facilitate the reconciliation of these social and economic requirements.
This double approach should have let to more flexibility for the member state when it comes to revise the duration of maternity leave. Reconciliation of work and family life has clearly to be considered on a broader basis organised around three main elements: various types of leave possibilities including maternity leave, parental leave and time credit, affordable childcare facilities and flexible working arrangements.
Against this background the provisions on maternity leave cannot be seen in isolation from the other three elements mentioned above and notably from the provisions on parental leave.

Finally UEAPME is seriously concerned about the new proposal both in terms of content and timing. The current revision of this directive is very unfortunate since the European Social Partners have just started their negotiations on the revision of the parental leave directive and one cannot deny a possible interference between the two processes.

Specific comments on the new proposal

Article 8: Maternity leave

Article 8.1-
The Commission is proposing to increase the right to maternity leave from 14 to 18 weeks allocated before and/or after confinement with a compulsory leave of at least six weeks after childbirth.

UEAPME does not question the existence and soundness of maternity leave notably for health and safety protection of the mother. However the Commission provides no evidence at all that 14 weeks of maternity leave are not sufficient to adequately protect a woman who will give or has given birth when there is no specific problem surrounding the birth.

Moreover in each Member State the maternity leave can be extended by a further minimum parental leave of 3 months for the mother. This was fixed by the European social partners in their agreement of 1995, subsequently transposed into Directive 96/34/EC and is currently under revision through negotiations between the European social partners.

In addition it is largely recognised that lengthy leaves are contra-productive for women looking for an easy reintegration into the labour market. Therefore increasing the length of maternity leave will not help to increase the employment rate of women. The end result of this measure could have an adverse effect on the labour market and be simply detrimental to women.

Finally the increase of maternity leave duration will not facilitate the task of employers particularly the human resource management in small and micro companies concerning women and could have a contrary effect on the employment rate of women.

Article 8.2
"The maternity leave shall include compulsory leave of at least six weeks after childbirth. The non-compulsory portion of maternity leave is taken before or after childbirth".
UEAPME is strictly opposed to this particular new proposal for flexible modalities when taking maternity leave.
Such a new clause will create an impossible situation for work organisation and planning in SMEs. Knowing that the vast majority of companies in Europe have less than 10 workers, the rules for taking maternity leave should be fixed in advance at national level and not be left to the pregnant woman to decide how and when she will take her maternity leave.
Both employer and worker need legal certainty and transparency. These are basic guiding principles for a smooth labour market functioning.
For obvious reasons (mainly very limited workforce and the attached difficulties to organise work in the absence of an entire employee) the employer has to be informed in plenty of time in advance about the absence of the female worker in order to plan work load and work organisation in an optimal manner. This is even more justified in that replacement of a qualified workforce is difficult in general and even more acute in small businesses.

Article 8.4

UEAPME does not see any serious justification for increasing the maternity leave length, given that Article 8.4 rightly foresees additional leave in the case of premature childbirth, children hospitalised at birth, children with disabilities or multiple births. This list should even be completed in the case of cesarean childbirth.

In these latter cases the Commission does not fix any duration, on the contrary it leaves the choice to Member States to decide upon the most appropriate solution as long as it is proportionate and allows to accommodate the special needs of mothers and children.

Article 10: Prohibition of dismissal

In this Article the Commission proposes that "the worker cannot be dismissed during the maternity leave and within six months following the end of maternity leave. In case of dismissal during the maternity leave, the employer must cite duly substantiate grounds for dismissal in writing. When it occurs during the six months after the end of maternity leave the employer must cite duly substantiated grounds for dismissal in writing at the request of the worker concerned.

UEAPME is opposed to the obligation of protecting the worker during six months after the end of maternity leave. Notwithstanding that it imposes new obligation on the employer and will create additional burdens and legal uncertainties notably for SMEs, the question of dismissal falls outside the remit of the health and safety protection.

Therefore UEAPME strongly questions the fact whether the decision on new dismissal rules should not be taken at unanimity vote, as it has been the case in 1992 for the current maternity leave directive adoption when the health and safety legal basis required unanimity vote at the Council.

Moreover the clause concerning the prohibition of "all preparations for a dismissal of workers during the period from the beginning of the pregnancy to the end of maternity leave" constitutes heavy infringement of freedom of enterprise in personnel planning and management and will create new legal uncertainty for employers.

Article 11.3: Rule on payment

"The allowance referred to in point 2(b) shall be deemed adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary, subject to any ceiling laid down under national legislation. Such a ceiling may not be lower than the allowance received by workers within the meaning of Article 11.2 in the event of a break in activity on grounds connected with the worker's state of health. The Member States may lay down the period over which this average monthly salary is calculated".

In the current directive it is stated that the adequate allowance should be at least equivalent to the income received in case of health problems.

Based on the principle of subsidiarity it is up to Member States to decide the level of payment of the maternity leave.

The possible payment of an allowance equivalent to the last monthly salary included in the new proposal will very much depend on the duration of the maternity leave.

In any case it will strongly increase direct or indirect costs for employers. According to national social protection systems, this will be financed either by higher non-wage labour

costs for employers or by the tax based system and therefore paid by all citizens notably employers and workers.
Consequently UEAPME is against the new proposal of the Commission concerning the rule of payments.

Article 11.5: Right to ask for flexible working arrangements
UEAPME acknowledges the importance to combine maternity with flexible working arrangements be it based on working patterns and/or working hours. However any change can only take place with the consent of employers.
This is particularly important for small and micro companies with a limited number of employees. This provision of flexible work organisation for the worker returning from maternity leave must take into account the specificities of SMEs and their capacity to reorganise the work and particularly avoid creating real disruption for the good functioning of the business.

Article 12.c – Penalties
The current proposal states that "penalties may comprise payment of compensation, which may not be limited by the fixing of a prior upper limit …"
UEAPME strongly advocates that Member States should be allowed to fix upper limits in the case of compensation as stated by the ECJ in the Draehmpaehl case and asks for the deletion of the last part of the sentence "which may not be limited by the fixing of a prior upper limit".

Conclusions:

- UEAPME does not see any need for an increased duration of maternity leave at EU level
- UEAPME is opposed to an EU flexible system for taking maternity leave
- UEAPME is against the extension of dismissal protection to six months after the end of maternity leave for workers returning from maternity leave
- UEAPME disagrees with the new provision for the payment of maternity leave allowance at the level of the last monthly salary
- UEAPME requests to take into account SMEs' specificities concerning workers right to ask for flexible working arrangements when returning to work after a maternity leave.

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