



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 21 November 2011**

**17029/11**

---

---

**Interinstitutional File:  
2008/0193 (COD)**

---

---

**SOC 1002  
SAN 246  
CODEC 2061**

## **REPORT**

---

from: The Presidency  
to: Permanent Representatives Committee (Part I) / Council (EPSCO)

---

No. prev. doc.: 17041/11 SOC 1006 SAN 247 CODEC 2070  
No. Cion prop.: 13983/08 SOC 575 SAN 217 CODEC 1285 - COM(2008) 637 final + COR 1

---

Subject: 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  
- Progress Report

---

## **I. INTRODUCTION**

On 3 October 2008, the Commission submitted its 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 main aim of the proposal is to improve the protection offered to pregnant workers and workers who have recently given birth or are breastfeeding. In particular, it extends the minimum length of maternity leave from 14 to 18 weeks.

All delegations have maintained general scrutiny reservations on the proposal. DK, FR, MT and UK have entered parliamentary scrutiny reservations. In addition, several delegations have recalled their support for the statement included in the minutes of the EPSCO Council on 6 December 2010.<sup>1</sup>

The European Parliament adopted its position in first reading on 20 October 2010.

The European Economic and Social Committee adopted its Opinion on the proposal on 13 May 2009.

For its part, the European Parliament took the view that maternity leave should last 20 weeks and be fully paid, and recalled that the period of 20 weeks was recommended by the WHO and gave mothers the possibility to recover fully from childbirth and to establish a close bond with the newborn child. The Parliament' position at first reading contains more than 70 amendments to the Commission's proposal, including an entitlement to at least two weeks' fully paid paternity leave to a person whose spouse or life partner has recently given birth.

The Council debate of 6 December 2010 having shown that the length of the maternity leave and the related allowance were the most sensitive topics, the Hungarian Presidency decided to set them aside in the Working Party discussions in early 2011, concentrating instead on a number of thematic groups of amendments (provisions related to return to work; health and safety and working conditions of pregnant workers; combination of work and family life; equal treatment and general non-discrimination issues; and special leave and different forms of leave). On most of the EP amendments discussed, no majority support was to be found. Several amendments were considered too detailed; some delegations reiterated that the Directive was meant to set minimum standards. In general, delegations considered that the Directive should cover *maternity* leave alone, only a few delegations being flexible on the issues of adoption and paternity leave. In particular, many delegations stressed that the proposal should essentially focus on health and safety at work.<sup>2</sup> Thus delegations have questioned both the dual legal basis proposed by the Commission and the idea of mixing together different types of leave.

---

<sup>1</sup> 17716/10; minutes statement by CZ, DK, DE, EE, NL, SK, SE and UK.

<sup>2</sup> For further detail see 10541/11, pp. 7-9.

While the Hungarian Presidency made some progress in examining particular EP amendments, it was clear further discussions were needed in order to form a Council view of the proposal as well as to search for common ground between the two co-legislators.

## II. WORK DURING THE POLISH PRESIDENCY

### (a) The Presidency's approach

The Presidency explicitly included the proposal in the priorities of its work programme, in the area of "Intergenerational solidarity: the Demographic Future of Europe". In order to establish how the work on the file should continue, the Presidency had informal contact with different delegations, the Parliament and the Commission; in the absence of a mandate, the Presidency could listen to different parties but could not take any position.

At the Informal Meeting of Ministers for Family and Gender Equality in Cracow on 21 October, the Presidency invited Ministers to discuss the issue of reconciliation of work, private and family life, with particular reference to working parents' rights, considering that the Maternity Directive would play a crucial role in this context.

Drawing on the above discussions, the Presidency addressed the Parliament during the plenary debate on 25 October, based on Oral Question 184/2011 by the Rapporteur, Ms Estrella. In her question to the Council, Ms. Estrella, had stated that the Parliament was "*aware that several Member States [had] voiced concerns over amendments adopted by the European Parliament*" and that "*the European Parliament [was] receptive to be flexible*".<sup>1</sup> In particular, the Minister stressed that the Council could not accept the proposed 20 weeks of fully paid maternity leave and elaborated on such factors as the broad diversity of maternity protection and social security systems among Member States, different approaches to subsidising recipients, the principles of subsidiarity and proportionality, and the cost implications.

---

<sup>1</sup> 16145/11.

The Presidency thanked the MEPs for the constructive tone of the debate and welcomed their proposals for getting out of the impasse.

**(b) Elements to consider in the future work**

Having delivered to the Parliament the message that 20 weeks of maternity leave with full pay was out of the question for the Council, the Presidency considered that the way to take the work forward was to begin reflecting on possible options that could be further explored. Therefore, the Council's preparatory bodies restarted work on the file, considering the elements of the proposal that had not been tackled during the Hungarian Presidency, i.e. the length of the maternity leave and maternity allowance, and also reflecting on the next steps for the dossier.

Aware of the fundamental reservations voiced by a significant number of Member States regarding the Parliament's first reading position, the Presidency outlined, as the basis for an exploratory debate, a number of options covering the main elements of the dossier (length of maternity leave between 16 and 18 weeks, the level of the maternity allowance, and the possible inclusion of a "passerelle" clause in the Directive). The Presidency invited delegations to express their opinion on whether any of these options could be used as a basis for further discussion within the Council, stressing that the four options in the Presidency's note were not yet full-fledged proposals, but rather possible elements for further discussion. While delegations considered discussions premature and in some cases not feasible in the current economic situation, the Presidency was able to draw the following preliminary conclusions on the options presented:

- maternity leave (even shorter than 20 weeks) with fully paid maternity leave 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.

### III. CONCLUSION

In the light of the discussions that have taken place, and following the exchange of views during the informal ministerial meeting in Cracow on 21 October, it has become abundantly 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 crisis, the introduction of such a solution could have counterproductive effects. In fact, even a shorter period of maternity leave on full pay cannot be supported by the Member States.

The Presidency welcomes the signs of openness and flexibility that have already been shown by some MEPs (including during the plenary debate on 25 October) as well as the willingness declared by a majority of Member States to continue work on the file if given appropriate assurances. The Presidency believes that constructive dialogue between the Parliament and the Council is of great importance for further progress, as was stressed by the Commission and a number of Member States.

To achieve this purpose, informal contacts and consultations with the European Parliament are recommended. Such contacts should also contribute to establishing the extent of the possible concessions that the Parliament would be able to make when negotiating with the Council.

The Presidency hopes that the more flexible approach of the Parliament may provide an opportunity for further constructive dialogue between the co-legislators and a possible future compromise. It should be stressed that, the Council's openness to negotiate depends on the degree of flexibility that the European Parliament is prepared to show in the future dialogue, and on clear and concrete indications on how the Parliament would take into account the Member States' views.

The Presidency takes note of the Commission's statement that it will not withdraw the proposal and welcomes the Commission's constructive approach to further work and its willingness to contribute positively in the next steps to be taken.

Bearing in mind the crucial role of maternity legislation for the development of social policy within the European Union, the Presidency declares its willingness to support future Presidencies in their efforts to achieve further progress.