



**COUNCIL OF
THE EUROPEAN UNION**

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15994/09

SOC 699

REPORT

from : Permanent Representatives Committee (Part I)
to : COUNCIL (EPSCO)

No. Cion prop. : 12761/09 SOC 477
No. prev. doc.: 15302/09 SOC 642

Subject : Proposal for a Council Directive implementing the revised Framework Agreement on parental leave concluded by **BUSINESSEUROPE**, **UEAPME**, **CEEP** and **ETUC** and repealing Directive 96/34/EC as amended by Directive 97/75/EC (text with EEA relevance)
- Political agreement

I. INTRODUCTION

On 30 July 2009, the Commission submitted to the Council a proposal with the aim of giving legal effect to the revised Framework Agreement on parental leave, concluded by the European cross-industry social partners (**BUSINESSEUROPE**, **UEAPME**, **CEEP** and **ETUC**) on 18 June 2009. The Framework Agreement is intended to replace the social partners' previous agreement of 14 December 1995.

While the Council is not in a position to amend the Agreement concluded by the social partners, the delegations examined the elements of the revised Framework Agreement which differ from those of the first Agreement on parental leave:

- the clarification that all types of employment contracts, including for fixed-term, part-time and temporary agency workers, were covered by the Agreement (Clause 1(3));
- each parent would be granted four months of parental leave (instead of three) and at least one month of this leave would be strictly non-transferable, i.e. one parent could not transfer it to the other (Clause 2(2));
- the application of the possible qualification period to workers with successive fixed-term contracts had been clarified in the agreement (Clause 3(1), sub-paragraph (b));
- notice periods before parental leave had been made obligatory (Clause 3(2));
- Clause 4 on adoptive parents had been added;
- protection against less-favourable treatment had been added (Clause 5(4));
- the new Clause 6(1) on the right for workers returning from parental leave to request changes to their working hours and/or patterns, which employers would have to consider and respond to.

During the meeting on 13 November 2009, the Permanent Representatives' Committee reached an agreement on the text of a draft Council Directive implementing the Framework Agreement, subject to a small number of outstanding issues explained in Section II. The text of the draft Directive can be found in the Annex.

II. OUTSTANDING ISSUES

(a) Article 3(1), second sentence, and recital 16(new) on correlation tables

The delegations considered that correlation tables should not be made obligatory (as had been proposed by the Commission) and amended the text following the model used in a number of adopted Directives. The Commission maintained its reservations on the removal of the words "*and a correlation table between those provisions and this Directive*" from Article 3(1), second sentence, and on the new recital 16, indicating, however, that it would reconsider its reservation should the delegations reach unanimity on the text.

(b) Parliamentary reservations

DK, FR, MT and UK have maintained parliamentary scrutiny reservations.

(c) Linguistic reservations

BE, IT, LT, LU, HU and NL have maintained linguistic reservations on the proposal, BE indicating that its reservation concerned the Dutch language version.

III. CONCLUSION

The Council is invited to examine the remaining outstanding issues with a view to reaching political agreement on the file.

Draft

COUNCIL DIRECTIVE

**implementing the revised Framework Agreement on parental leave concluded
by BUSINESSEUROPE, UEAPME, CEEP and ETUC and
repealing Directive 96/34/EC as amended by Directive 97/75/EC
(text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) Article 137 of the Treaty enables the Community to support and complement the activities of the Member States, *inter alia* in the field of equality between men and women with regard to labour-market opportunities and treatment at work.
- (2) Social dialogue at Community level may, in accordance with Article 139(1) of the Treaty, lead to contractual relations, including agreements, should management and labour (the ‘social partners’) so desire. The social partners may, in accordance with Article 139(2) of the Treaty, request jointly that agreements concluded by them at Community level in matters covered by Article 137 of the Treaty be implemented by a Council decision on a proposal from the Commission.

¹ OJ C , , p. .

- (3) A Framework Agreement on parental leave was concluded by the European cross-industry social partners (ETUC, UNICE and CEEP) on 14 December 1995 and was given legal effect by Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.² That Directive was amended and extended to the United Kingdom of Great Britain and Northern Ireland by Council Directive 97/75/EC.³ The Directive contributed greatly to improving the opportunities available to working parents in the Member States to reconcile their work and family responsibilities better through leave arrangements.
- (4) In accordance with Article 138(2) and (3) of the Treaty, the Commission consulted the European social partners in 2006 and 2007 on ways of further improving the reconciliation of work, private and family life and, in particular, the existing Community legislation on maternity protection and parental leave, and on the possibility of introducing new types of family-related leave, such as paternity leave, adoption leave and leave to care for family members.
- (5) The three European general cross-industry social partner organisations (ETUC, CEEP and BUSINESSEUROPE, formerly named UNICE) and the European cross-industry social partner organisation representing a certain category of undertakings (UEAPME) informed the Commission on 11 September 2008 of their wish to enter into negotiations, in accordance with Article 138(4) and Article 139 of the Treaty, with a view to revising the Framework Agreement on parental leave concluded in 1995.
- (6) On 18 June 2009 those organisations signed the revised Framework Agreement on parental leave and addressed a joint request to the Commission to submit a proposal for a Council decision implementing that Framework Agreement.

² OJ L 145, 19.6.1996, p. 4.

³ OJ L 10, 16.1.1998, p. 24

- (7) In the course of their negotiations the European social partners completely revised the 1995 Framework Agreement on parental leave. Therefore Directive 96/34/EC, as amended by Directive 97/75/EC, should be repealed and replaced by a new directive rather than being simply amended.
- (8) Since the objectives of the action to be taken, namely to improve the reconciliation of work and family life for working parents and equality between men and women with regard to labour-market opportunities and treatment at work across the Community, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (9) When drafting its proposal for a Directive, the Commission took account of the representative status of the signatory parties, their mandate and the legality of the clauses in the Framework Agreement and its compliance with the relevant provisions concerning small and medium-sized undertakings.
- (10) The Commission informed the European Parliament and the European Economic and Social Committee of its proposal.
- (11) Clause 1(1) of the Framework Agreement, in line with the general principles of Community law in the social policy area, states that this Agreement lays down minimum requirements.
- (12) Clause 8(1) states that the Member States may introduce or maintain more favourable provisions than those set out in the Agreement.

- (13) Clause 8(2) states that the implementation of the provisions of the Agreement can not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by it.
- (14) The Member States should provide for effective, proportionate and dissuasive penalties in the event of any breach of the obligations under this Directive.
- (15) The Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as long as they take all the steps necessary to ensure that they can at all times guarantee the results imposed by this Directive.
- (16)(new) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁴, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,⁵

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive puts into effect the revised Framework Agreement on parental leave concluded on 18 June 2009 by the European cross-industry social partner organisations (BUSINESSEUROPE, UEAPME, CEEP and ETUC), as set out in the Annex.

⁴ OJ C 321, 31.12.2003, p. 1.

⁵ Cion: reservation on this recital. See Section II, point (a) of the Report.

Article 2

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed. The penalties shall be effective, proportionate and dissuasive.

Article 3

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive or shall ensure that the social partners have introduced the necessary measures by agreement by⁶ at the latest. They shall forthwith communicate to the Commission the text of those provisions [...]⁷. When the Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The Member States shall determine how such reference is to be made.
2. The Member States may have a maximum additional period of one year to comply with this Directive, if this is necessary to take account of particular difficulties or implementation by collective agreement. They shall inform the Commission thereof by⁸ at the latest, stating the reasons for the need of an additional period.
3. The Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

⁶ Date two years after adoption.

⁷ The phrase on obligatory correlation tables has been deleted from the text.
Cion: reservation on this deletion. See Report, Section II, point (a).

⁸ Date two years after adoption.

Article 4

Directive 96/34/EC as amended by Directive 97/75/EC shall be repealed with effect from.....⁹.
References to Directive 96/34/EC shall be construed as references to this Directive.

Article 5

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6

This Directive is addressed to the Member States.

Done at, [...]

For the Council

The President

[...]

⁹ Date two years after adoption.

**FRAMEWORK AGREEMENT ON PARENTAL LEAVE (REVISED)
18 JUNE 2009**

PREAMBLE

This framework agreement between the European social partners, BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee Eurocadres/CEC) revises the framework agreement on parental leave, concluded on 14 December 1995, setting out the minimum requirements on parental leave, as an important means of reconciling professional and family responsibilities and promoting equal opportunities and treatment between men and women.

The European social partners request the Commission to submit this framework agreement to the Council for a Council decision making these requirements binding in the Member States of the European Union.

I GENERAL CONSIDERATIONS

1. Having regard to the EC Treaty and in particular Articles 138 and 139 thereof;

2. Having regard to Articles 137(1)(c) and 141 of the EC Treaty and the principle of equal treatment (Articles 2, 3 and 13 of the EC Treaty) and the secondary legislation based on this, in particular Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women;¹⁰ 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;¹¹ Council Directive 96/97/EC amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes;¹² and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);¹³
3. Having regard to the Charter of Fundamental Rights of the European Union of 18 December 2000 and Articles 23 and 33 thereof relating to equality between men and women and reconciliation of professional, private and family life;
4. Having regard to the 2003 Report from the Commission on the Implementation of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC;

¹⁰ OJ L 45, 19.2.1975, p. 19–20.

¹¹ OJ L 348, 28.11.1992, p. 1–8.

¹² OJ L 46, 17.2.1997, p. 20–24.

¹³ OJ L 204, 26.7.2006, p. 23–36.

5. Having regard to the objective of the Lisbon strategy on growth and jobs of increasing overall employment rates to 70%, women's employment rates to 60% and the employment rates of older workers to 50%; to the Barcelona targets on the provision of childcare facilities; and to the contribution of policies to improve reconciliation of professional, private and family life in achieving these targets;
6. Having regard to the European social partners' Framework of Actions on Gender Equality of 22 March 2005 in which supporting work-life balance is addressed as a priority area for action, while recognising that, in order to continue to make progress on the issue of reconciliation, a balanced, integrated and coherent policy mix must be put in place, comprising of leave arrangements, working arrangements and care infrastructures;
7. Whereas measures to improve reconciliation are part of a broader policy agenda to address the needs of employers and workers and improve adaptability and employability, as part of a flexicurity approach;
8. Whereas family policies should contribute to the achievement of gender equality and be looked at in the context of demographic changes, the effects of an ageing population, closing the generation gap, promoting women's participation in the labour force and the sharing of care responsibilities between women and men;
9. Whereas the Commission has consulted the European social partners in 2006 and 2007 in a first and second stage consultation on reconciliation of professional, private and family life, and, among other things, has addressed the issue of updating the regulatory framework at Community level, and has encouraged the European social partners to assess the provisions of their framework agreement on parental leave with a view to its review;

10. Whereas the Framework agreement of the European social partners of 1995 on parental leave has been a catalyst for positive change, ensured common ground on work life balance in the Member States and played a significant role in helping working parents in Europe to achieve better reconciliation; however, on the basis of a joint evaluation, the European social partners consider that certain elements of the agreement need to be adapted or revised in order to better achieve its aims;
11. Whereas certain aspects need to be adapted, taking into account the growing diversity of the labour force and societal developments including the increasing diversity of family structures, while respecting national law, collective agreements and/or practice;
12. Whereas in many Member States encouraging men to assume an equal share of family responsibilities has not led to sufficient results; therefore, more effective measures should be taken to encourage a more equal sharing of family responsibilities between men and women;
13. Whereas many Member States already have a wide variety of policy measures and practices relating to leave facilities, childcare and flexible working arrangements, tailored to the needs of workers and employers and aiming to support parents in reconciling their professional, private and family life; these should be taken into account when implementing this agreement;
14. Whereas this framework agreement provides one element of European social partners' actions in the field of reconciliation;
15. Whereas this agreement is a framework agreement setting out minimum requirements and provisions for parental leave, distinct from maternity leave, and for time off from work on grounds of force majeure, and refers back to Member States and social partners for the establishment of conditions for access and modalities of application in order to take account of the situation in each Member State;

16. Whereas the right of parental leave in this agreement is an individual right and in principle non-transferable, and Member States are allowed to make it transferable. Experience shows that making the leave non-transferable can act as a positive incentive for the take up by fathers, the European social partners therefore agree to make a part of the leave non-transferable;
17. Whereas it is important to take into account the special needs of parents with children with disabilities or long term illness;
18. Whereas Member States should provide for the maintenance of entitlements to benefits in kind under sickness insurance during the minimum period of parental leave;
19. Whereas Member States should also, where appropriate under national conditions and taking into account the budgetary situation, consider the maintenance of entitlements to relevant social security benefits as they stand during the minimum period of parental leave as well as the role of income among other factors in the take-up of parental leave when implementing this agreement;
20. Whereas experiences in Member States have shown that the level of income during parental leave is one factor that influences the take up by parents, especially fathers;
21. Whereas the access to flexible working arrangements makes it easier for parents to combine work and parental responsibilities and facilitates the reintegration into work, especially after returning from parental leave;
22. Whereas parental leave arrangements are meant to support working parents during a specific period of time, aimed at maintaining and promoting their continued labour market participation; therefore, greater attention should be paid to keeping in contact with the employer during the leave or by making arrangements for return to work;

23. Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the European Union economy and to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium sized undertakings;
24. Whereas the social partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore play a special role in the implementation, application, monitoring and evaluation of this agreement, in the broader context of other measures to improve the reconciliation of professional and family responsibilities and to promote equal opportunities and treatment between men and women.

THE SIGNATORY PARTIES HAVE AGREED THE FOLLOWING:

II CONTENT

Clause 1: Purpose and scope

1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, taking into account the increasing diversity of family structures while respecting national law, collective agreements and/or practice.
2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State.

3. Member States and/or social partners shall not exclude from the scope and application of this agreement workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

Clause 2: Parental leave

1. This agreement entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years to be defined by Member States and/or social partners.
2. The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. The modalities of application of the non-transferable period shall be set down at national level through legislation and/or collective agreements taking into account existing leave arrangements in the Member States.

Clause 3: Modalities of application

1. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreements in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or social partners may, in particular:
 - (a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system, taking into account the needs of both employers and workers;

- (b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year; Member States and/or social partners shall ensure, when making use of this provision, that in case of successive fixed term contracts, as defined in Council Directive 1999/70/EC on fixed-term work, with the same employer the sum of these contracts shall be taken into account for the purpose of calculating the qualifying period;
 - (c) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation. Any problem arising from the application of this provision should be dealt with in accordance with national law, collective agreements and/or practice;
 - (d) in addition to (c), authorise special arrangements to meet the operational and organisational requirements of small undertakings.
2. Member States and/or social partners shall establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave. Member States and/or social partners shall have regard to the interests of workers and of employers in specifying the length of such notice periods.
3. Member States and/or social partners should assess the need to adjust the conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness.

Clause 4: Adoption

1. Member States and/or social partners shall assess the need for additional measures to address the specific needs of adoptive parents.

Clause 5: Employment rights and non-discrimination

1. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.
2. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements and/or practice, shall apply.
3. Member States and/or social partners shall define the status of the employment contract or employment relationship for the period of parental leave.
4. In order to ensure that workers can exercise their right to parental leave, Member States and/or social partners shall take the necessary measures to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements and/or practice.
5. All matters regarding social security in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law and/or collective agreements, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care.

All matters regarding income in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law, collective agreements and/or practice, taking into account the role of income – among other factors – in the take-up of parental leave.

Clause 6: Return to work

1. In order to promote better reconciliation, Member States and/or social partners shall take the necessary measures to ensure that workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time. Employers shall consider and respond to such requests, taking into account both employers' and workers' needs.

The modalities of this paragraph shall be determined in accordance with national law, collective agreements and/or practice.

2. In order to facilitate the return to work following parental leave, workers and employers are encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, to be decided between the parties concerned, taking into account national law, collective agreements and/or practice.

Clause 7: Time off from work on grounds of force majeure

1. Member States and/or social partners shall take the necessary measures to entitle workers to time off from work, in accordance with national legislation, collective agreements and/or practice, on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.

2. Member States and/or social partners may specify the conditions of access and detailed rules for applying clause 7.1 and limit this entitlement to a certain amount of time per year and/or per case.

Clause 8: Final provisions

1. Member States may apply or introduce more favourable provisions than those set out in this agreement.
2. Implementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this agreement. This shall not prejudice the right of Member States and/or social partners to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances (including the introduction of non-transferability), as long as the minimum requirements provided for in the present agreement are complied with.
3. This agreement shall not prejudice the right of social partners to conclude, at the appropriate level including European level, agreements adapting and/or complementing the provisions of this agreement in order to take into account particular circumstances.
4. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with the Council decision within a period of two years from its adoption or shall ensure that social partners introduce the necessary measures by way of agreement by the end of this period. Member States may, if necessary to take account of particular difficulties or implementation by collective agreements, have up to a maximum of one additional year to comply with this decision.

5. The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and/or practice.
6. Without prejudice to the respective role of the Commission, national courts and the European Court of Justice, any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to the signatory parties who will give an opinion.
7. The signatory parties shall review the application of this agreement five years after the date of the Council decision if requested by one of the parties to this agreement.

Done at Brussels, 18 June 2009

For ETUC
John Monks
General Secretary
On behalf of the trade union delegation

For BUSINESSEUROPE
Philippe de Buck
Director General

For UEAPME
Andrea Benassi
Secretary General

For CEEP
Ralf Resch
General Secretary
