

Improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding *I**

European Parliament legislative resolution of 20 October 2010 on 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 (COM(2008)0637 – C6-0340/2008 – 2008/0193(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2008)0637),
 - having regard to Article 251(2) and Articles 137(2) and Article 141(3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0340/2008),
 - having regard to the Commission Communication to Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(3) and Article 153(2) and Article 157(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 13 May 2009¹,
 - after consulting the Committee of Regions,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 37, 55 and 175 of its Rules of Procedure,
 - having regard to the first report of the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (A6-0267/2009),
 - having regard to the second report of the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (A7-0032/2010),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

¹ OJ C 277, 17.11.2009, p. 102.

3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

Position of the European Parliament adopted at first reading on 20 October 2010 with a view to the adoption of Directive 2011/.../EU 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 *and on the introduction of measures to support workers in balancing work and family life*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union, and in particular Articles 153(2) and 157(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 277, 17.11.2009, p. 102.

² Position of the European Parliament of 20 October 2010.

Whereas:

- (1) Article 153 of the Treaty on the Functioning of the European Union (TFEU) provides that with a view to achieving the objectives of Article 151 TFEU, the Union shall support and complement the activities of Member States in improving the working conditions to protect the safety and health of workers and in ensuring equality between women and men with regard to labour market opportunities and treatment at work.
- (2) Article 157 TFEU provides that the European parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- (3) Since this Directive addresses not only the health and safety of workers who are pregnant, or have recently given birth or are breastfeeding, but also, inherently, issues of equal treatment, such as the right to return to the same or an equivalent working place, the rules on dismissal and employment rights, or on better financial support during the leave, Articles 153 and 157 TFEU are combined to form the legal base for this Directive.
- (4) Equality between men and women is a fundamental principle of the European Union. Articles 21 and 23 of the Charter of Fundamental Rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas, *including in the achievement of a work-life balance*.
- (5) Under Article 3 of the Treaty on European Union, promoting such equality is one of the Union's essential tasks. Similarly, under Article 8 TFEU the Union must aim to eliminate inequalities and to promote equality between men and women in all its activities.

- (6) *In its judgment of 26 February 2008 in Case C-506/06 Mayr v Flöckner¹, the Court of Justice held that direct discrimination on grounds of sex occurs if a female employee is placed at a disadvantage on account of absence in connection with in vitro fertilisation treatment.*
- (7) *The entitlement of a woman on maternity leave to return, after the end of that leave, to her job or to an equivalent post is laid down in Article 15 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation².*
- (8) Council Directive 92/85/EEC³ implements measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
- (9) *The objectives set out in the Presidency Conclusions of the Barcelona European Council of 15 and 16 March 2002 stated that Member States should remove disincentives to women's involvement in the labour market and aim to provide by 2010 childcare facilities for at least 90% of children between the age of three and the compulsory school age and for at least 33% of children under the age of three, and that such children should have equal access to such facilities in towns and rural areas.*
- (10) *The World Health Organisation Global strategy on infant and young child feeding of 16 April 2002, endorsed by Resolution 55.25 of the 55th World Health Assembly states that exclusive breastfeeding during the first six months of a child's life guarantees optimum growth and development. On the basis of this resolution, the Member States should encourage the provision of leave designed to fulfil this purpose.*

¹ ECR 2008, I-01017.

² OJ L 204, 26.7.2006, p. 23.

³ OJ L 348, 28.11.1992, p. 1.

- (11) One of the six priorities laid down in the Commission Communication of 1 March 2006, entitled "A Roadmap for equality between women and men 2006-2010" is to achieve a better balance between work and private and family life. In this connection the Commission undertook to review the existing legislation in the field of gender equality with a view to modernising it, where necessary. The Commission also announced that in order to improve governance of gender equality, it would 'review the existing EU gender equality legislation not included in the 2005 recast exercise with a view to updating, modernising and recasting where necessary'. Directive 92/85/EEC was not included in the recasting exercise.
- (12) In its Communication of 2 July 2008, entitled "Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe", the Commission affirmed the need to improve reconciliation of private and professional life.
- (13) *All parents have the right to care for their child.*
- (14) *The provisions of this Directive concerning maternity leave should be without prejudice to Member States' other rules on parental leave and this Directive should not undermine those rules. Maternity leave, paternity leave and parental leave are complementary and when used in combination can promote a better work-life balance.*
- (15) *A worker who has adopted a child should have the same rights as a natural parent and be entitled to take maternity leave on the same conditions.*
- (16) The vulnerability of pregnant workers and of workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least **20 continuous weeks**, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least six weeks allocated after confinement.

- (17) *The care of disabled children presents a particular challenge for working mothers, which should be recognised by society. The increased vulnerability of working mothers of disabled children means that they should be granted additional maternity leave; this Directive should lay down the minimum period of such leave.*
- (18) *In order to be considered maternity leave within the meaning of this Directive, family-related leave which is available at national level should extend beyond the periods provided for in Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC¹; should be remunerated as provided for in this Directive; and the guarantees laid down in this Directive in relation to dismissal, return to the same job or an equivalent post, and discrimination, should apply.*
- (19) The Court of Justice has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman's biological condition during and after pregnancy. It has, moreover, consistently ruled that any unfavourable treatment of women related to pregnancy or maternity constitutes direct sex discrimination.
- (20) On the basis of the principle of equal treatment, the Court has also recognised the protection of employment rights of women, and in particular their right to return to the same or an equivalent job, on terms that are no less favourable, as well as to benefit from any improvement in working conditions introduced during their absence.
- (21) *A post termed 'equivalent' should mean a post that is the same as the former post, as regards both the salary paid and the duties to be performed or where this is not possible, a similar post corresponding to the worker's qualifications and existing salary.*

¹ OJ L 145, 19.6.1996, p. 4.

- (22) *In view of demographic trends in the Union, it is necessary to promote an increase in the birth-rate by means of specific legislation and measures to combine work, private life and family life more effectively.*
- (23) *Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection, in order to safeguard their rights to decent working conditions and a better balance between family life and work.*
- (24) *In the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life¹, Member States were encouraged to consider whether, under their respective legal systems, working men might be granted a non-transferable individual right to paternity leave, without any loss of employment rights.*
- (25) *For the purposes of helping workers reconcile their professional and family life, it is essential to provide for longer maternity and paternity leave, including in the event of adoption of a child under the age of 12 months. The worker who has adopted a child under the age of 12 months should have the same rights as a natural parent and be able to take maternity and paternity leave on the same conditions.*
- (26) *For the purposes of helping workers to reconcile their professional and family life and to achieve true gender equality it is essential for men to be entitled to paid paternity leave, granted on an equivalent basis – except with regard to its duration – to maternity leave with a view to gradually establishing the conditions required. This entitlement should also be given to unmarried couples. Member States are encouraged to consider whether, under their respective legal systems, working men might be granted a non-transferable individual right to paternity leave, without any loss of employment rights.*

¹ OJ C 218, 31.7.2000, p. 5.

- (27) *In the context of the Union's ageing population and the Commission Communication of 12 October 2006 entitled "The demographic future of Europe – from challenge to opportunity", every effort will need to be made to ensure the effective protection of motherhood and fatherhood.*
- (28) *The Commission Green paper entitled "Confronting demographic change: a new solidarity between the generations" refers to the fact that the Member States have low fertility rates, which are insufficient for the replacement of the population. Measures are therefore needed for the improvement of conditions at the workplace for workers before, during and after pregnancy. It is recommended that the best practices from those Member States with high fertility rates and which ensure the continued participation of women in the labour market be followed.*
- (29) *In the December 2007 conclusions of the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on "Balanced roles for women and men for jobs, growth and social cohesion", the Council recognised reconciliation of work and family and private life as being a key area as regards the promotion of gender equality in the labour market.*
- (30) This Directive is without prejudice to Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions¹, as recast in Directive 2006/54/EC.
- (31) The protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should be guaranteed and not run counter to the principles enshrined in the Directives concerning equal treatment for men and women.

¹ OJ L 269, 5.10.2002, p. 15.

- (32) In order to improve the effective protection of pregnant workers and workers who have recently given birth or are breast feeding, the rules on the burden of proof should be adapted where there is a prima facie case of a breach of the rights granted under this Directive. For those rights to be applied effectively, the burden of proof should fall on the respondent when evidence of such a breach is brought.
- (33) *Provision concerning maternity leave would serve no purpose unless accompanied by the maintenance of all rights linked to the employment contract, including maintenance of full pay and entitlement to an equivalent allowance.*
- (34) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.
- (35) Member States should provide for effective, proportionate and dissuasive penalties in the event of any breach of the obligations under this Directive.
- (36) *Member States are urged to introduce into their national legal systems measures to ensure real and effective compensation or reparation, as they consider to be appropriate, for any harm caused to a worker by any breach of the obligations under this Directive, in a way which is dissuasive, effective and proportionate to the damage suffered.*
- (37) Experience shows that protection against breaches of the rights guaranteed by this Directive would be strengthened by giving the equality body or bodies in each Member State competence to analyse the problems involved, to consider possible solutions and to provide practical assistance to victims. Therefore, provision should be made to this end in this Directive.

- (38) *Victims of discrimination should have adequate means of legal protection. To provide more effective protection, it should be possible for associations, organisations and other legal entities to engage, as Member States consider to be appropriate, in proceedings on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.*
- (39) *It will be necessary for Member States to encourage and promote active participation by the social partners to ensure better information for those concerned and more effective arrangements. Through encouraging dialogue with the abovementioned bodies, Member States could obtain more feedback and a greater insight into the implementation of this Directive in practice, and of problems likely to arise, with a view to eradicating discrimination.*
- (40) This Directive lays down minimum requirements and thus offers the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation prevailing in each Member State, *in particular national laws which, by combining parental leave and maternity leave, provide for an entitlement to the mother of at least 20 weeks of leave allocated before and/or after confinement, and remunerated at least at the level provided for in this Directive.*
- (41) *Member states should encourage dialogue between social partners and with non-governmental organisations, in order to be aware of and to fight against different forms of discrimination.*
- (42) Since the objectives of the action to be taken, namely to improve the minimum level of protection of pregnant workers and workers who have recently given birth or are breastfeeding and to improve the effective implementation of the principle of equal treatment cannot be sufficiently achieved by the Member States in view of their diverging levels of protection, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/85/EEC is hereby amended as follows:

(1) *In Article 1 the following paragraph is inserted:*

“1a. This Directive also aims to improve the conditions for pregnant workers and workers who have recently given birth to remain in, or return to, the labour market and to ensure better reconciliation of professional, private and family life.”;

(2) *Article 2 is replaced by the following:*

*“Article 2
Definitions*

For the purposes of this Directive the following definitions shall apply:

- (a) *"pregnant worker" means a pregnant worker employed under any type of contract, including in domestic work, who informs her employer of her condition, in accordance with national legislation and/or national practice;*
- (b) *"worker who has recently given birth" means a worker employed under any type of contract, including in domestic work, who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice; for the purpose of this Directive it shall also mean a worker who recently adopted a child;*

- (c) *"worker who is breastfeeding" means a worker employed under any type of contract, including in domestic work, who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice."*;
- (3) *Article 3 is replaced by the following:*

*"Article 3
Guidelines*

1. *In consultation with the Member States and assisted by the Advisory Committee on Safety, Hygiene and Health Protection at Work, the Commission shall draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous for the reproductive health of male and female workers and for the safety or health of workers within the meaning of Article 2. These guidelines shall be reviewed and shall, from 2012, be updated at least every five years.*

The guidelines referred to in the first subparagraph shall also cover movements and postures, mental and physical fatigue and other types of physical and mental stress connected with the work done by workers within the meaning of Article 2.

2. *The purpose of the guidelines referred to in paragraph 1 is to serve as a basis for the assessment referred to in Article 4(1).*

To this end, Member States shall bring these guidelines to the attention of all employers and all male and female workers and/or their representatives and the social partners in their respective Member State.";

(4) *Article 4 is replaced by the following:*

“Article 4

Assessment, information and consultation

1. In the risk assessment carried out pursuant to Directive 89/391/EEC the employer shall include an assessment of the reproductive risks for male and female workers. For all activities liable to involve a specific risk of exposure to the agents, processes or working conditions for which a non-exhaustive list is included in Annex I, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned, of workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2, either directly or by means of the protective and preventive services referred to in Article 7 of Directive 89/391/EEC, in order to:

- assess any risks to the safety or health and any possible effect on the pregnancy or breastfeeding of workers within the meaning of Article 2 of this Directive and workers likely to be in one of the situations referred to in Article 2 of this Directive,*
- decide what measures should be taken.*

2. *Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 of this Directive and workers likely to be in one of the situations referred to in Article 2 of this Directive in the undertaking and/or establishment concerned and/or their representatives and the relevant social partners shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work.*
 3. *Appropriate measures shall be taken to ensure that workers and/or their representatives in the undertaking or establishment concerned may monitor the application of this Directive or may be involved in its application, in particular with regard to the measures determined by the employer which are referred to in paragraph 1, without prejudice to the employer's responsibility for determining those measures.*
 4. *Consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance with Article 11 of Directive 89/391/EEC.”;*
- (5) *In Article 5 paragraphs 2 and 3 are replaced by the following:*
- “2. *If the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible the employer shall take the necessary measures to move the worker concerned to another job.*
 3. *If moving her to another job is not technically and/or objectively feasible the worker concerned shall be granted leave in accordance with national legislation and/or national practice for the whole of the period necessary to protect her safety or health.”;*

(6) *The following point is added to Article 6:*

"3. pregnant women shall, in addition, not be required to perform tasks such as carrying and lifting heavy weights or tasks that are dangerous or exhausting or which pose health risks.";

(7) *Article 7 is replaced by the following:*

"Article 7

Night work and overtime

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are not obliged to perform night work and are not obliged to work overtime:

(a) during the 10 weeks prior to the due date of childbirth;

(b) during the remainder of the pregnancy should it be necessary for the health of the mother or the unborn child;

(c) during the entire period of breastfeeding.

2. The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of:

(a) a transfer to compatible daytime work; or

(b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible.

3. *Workers wishing to be exempted from night work shall, in accordance with rules laid down by the Member States, inform their employer and, in the case referred to in paragraph 1(b), submit a medical certificate to their employer.*
 4. *For single parents and parents of children with severe disabilities, the periods referred to in paragraph 1 may be extended in accordance with the procedures laid down by the Member States."*
- (8) Article 8 is replaced by the following:

"Article 8
Maternity leave

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least **20 weeks** allocated before and/or after confinement.
2. *With respect to the last four weeks of the period referred to in paragraph 1, a scheme of family-related leave available at national level may be considered to be maternity leave for the purposes of this Directive, on condition that it provides overall protection to workers, within the meaning of Article 2 of this Directive, that is equivalent to the level laid down in this Directive. In that case, the total period of leave granted must exceed the period of parental leave provided for in Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC*.*

The remuneration for the last four weeks of maternity leave shall be no lower than the allowance referred to in Article 11(5) or, alternatively, it may be the average of the remuneration for the 20 weeks of maternity leave, which shall be at least 75 % of the last monthly salary or of the average monthly salary as stipulated according to national law, subject to any ceiling laid down under national legislation. The Member States may lay down the periods over which the average monthly salaries are calculated.

Where a Member State has made provision for a period of maternity leave of at least 18 weeks, that Member State may decide that the last two weeks are met through paternity leave available at national level, with the same level of pay.

3. *The maternity leave stipulated in paragraph 1 shall include compulsory fully paid maternity leave of at least six weeks after childbirth, without prejudice to existing national laws which provide for a period of compulsory maternity leave before childbirth. The six-week period of compulsory maternity leave shall apply to all working women regardless of the number of days worked prior to confinement. The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth, without prejudice to existing national laws and/or practices, which provide a maximum number of weeks prior to the childbirth.*
4. *This period may be shared with the father, in accordance with the legislation of the Member State concerned if the couple agrees and so requests.*
5. *To protect the health of both mother and child, Member States shall take the necessary measures to ensure that workers can decide freely and without compulsion whether or not to take the non-compulsory portion of maternity leave before childbirth.*
6. *The worker must indicate her chosen period of the non-compulsory portion of the maternity leave no later than one month before the date of commencement of such leave.*
7. *For multiple births the compulsory portion of maternity leave referred to in paragraph 3 shall be increased for each additional child in accordance with national legislation.*

8. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date and the actual date of childbirth, without the remaining portion of leave being reduced.
9. Member States shall take the necessary measures to ensure that additional leave ***on full pay*** is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities, ***mothers with disabilities***, and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated. ***The total period of maternity leave shall be extended by at least eight weeks after the birth in the case of the birth of a disabled child. Member States shall also ensure an additional period of leave of six weeks in the case of a stillbirth.***
10. Member States shall ensure that any period of sick leave due to illness or complications arising out of pregnancy occurring four weeks or more before confinement does not impact on the duration of maternity leave.
11. ***Member States shall protect mothers' and fathers' rights by ensuring that there are special working conditions so as to help the parents of children with disabilities.***
12. ***Member States shall adopt suitable measures for the recognition of postnatal depression as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on the illness and correcting the prejudices and possible stigmatisation which it can still attract.***

* ***OJ L 145, 19.6.1996, p. 4."***

(9) *The following Articles are inserted:*

"Article

8a

Paternity leave

1. *Member States shall take the necessary measures to ensure that workers whose life partner has recently given birth are entitled to a continuous period of non-transferable paid paternity leave of at least two weeks, granted on an equivalent basis – except with regard to its duration – to maternity leave, to be taken after the confinement of the worker's spouse or partner during the period of the maternity leave.*

Member States that have not already introduced non-transferable paid paternity leave, granted on an equivalent basis – except with regard to its duration – to maternity leave to be taken during the period of the maternity leave on a compulsory basis for a continuous period of at least two weeks after the confinement of the worker's spouse or partner, are strongly encouraged to implement it in order to promote equal participation of both parents in balancing family rights and responsibilities.

2. *Member States shall take the necessary measures to ensure that workers whose life partner has recently given birth are granted a period of special leave including the unused portion of maternity leave in the case of death or physical incapacity of the mother.*

Member States shall take the necessary measures to ensure that the provisions of this Directive concerning maternity and paternity leave also apply in the event of adoption of a child of less than 12 months old."

(10) Article 10 is replaced by the following:

"Article 10
Prohibition of dismissal

In order to guarantee that workers within the meaning of Article 2 can exercise their health and safety protection rights as recognised under this Article:

1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to ***at least six months following*** the end of the maternity leave provided for in Article 8(1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.
2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. ■ .

3. The Member States shall take the necessary measures to protect workers within the meaning of Article 2 from the consequences of dismissal which is unlawful by virtue of points 1 and 2.
4. ***Member States shall take the necessary measures to prohibit discrimination against pregnant women in the labour market by creating equal opportunities for them with regard to recruitment, should they meet all the requirements for a particular position.***
5. Less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Article 8 of this Directive shall constitute discrimination within the meaning of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*.
6. ***Member States shall take the necessary measures to ensure that during paternity /co-maternity leave, workers enjoy the same protection from dismissal afforded in point 1 to workers within the meaning of Article 2.***
7. ***Member States shall be encouraged to adopt measures that ensure that workers may choose to work part time for a period of no longer than one year, with full protection from the possibility of dismissal and full rights to recover their full-time position and pay at the end of this period.***

* OJ L 204, 26.7.2006, p. 23.";

(11) Article 11 is replaced by the following:

"Article 11

Employment rights

In order to guarantee that workers within the meaning of Article 2 can exercise their health and safety protection rights as recognised under this Article, it shall be provided that:

- 1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment, and/or entitlement to an equivalent allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;***
- 2. a worker, within the meaning of Article 2, who is excluded from work by her employer who considers her not fit for work without medical indication supplied by the worker, may consult a doctor on her own initiative. If the doctor certifies the woman as fit to work, either the employer must employ her again as previously, or she shall receive a payment equivalent to her full salary until the beginning of the maternity leave within the meaning of Article 8(3);***
- 3. Member States shall take appropriate measures to ensure the health and safety of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job), work intensity, and increasing protection against specific infectious agents and ionising radiation;***

4. *in the case referred to in Article 8, the following must be ensured:*

- (a) *the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;*
- (b) *maintenance of a payment, and/or entitlement to an equivalent allowance for, workers within the meaning of Article 2;*
- (c) *the right of workers on maternity leave to receive automatically any increase of salary, where applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase;*
- (d) *the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them, with the same pay, professional category and duties as they enjoyed prior to the period of maternity leave, and to benefit from any improvement in working conditions to which they would have been entitled during their absence; and in exceptional situations relating to the restructuring or substantial reorganisation of the production process, that the worker can discuss with her employer the impact of such changes on her work situation and, indirectly, her personal situation;*

- (e) *the maintenance for workers within the meaning of Article 2 of opportunities for career development through education along with ongoing professional and additional training with a view to consolidating their career prospects;*
 - (f) *a period of maternity leave must not be prejudicial to the worker's pension rights and must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave;*
- 5. the allowance referred to in point 4(b) shall be deemed ***equivalent*** if it guarantees income equivalent to the last monthly salary or an average monthly salary. ***Workers on maternity leave shall be paid their full salary and the allowance shall be 100% of the last monthly salary or the average monthly salary.*** The Member States may lay down the period over which this average monthly salary is calculated;
- 6. *the allowance received by workers within the meaning of Article 2 shall not be lower than the allowance received by workers within the meaning of Article 2 in the event of a break in activity on grounds connected with the worker's state of health;*

7. *Member States shall ensure that workers on maternity leave are entitled to receive automatically any increase of salary, if applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase;*
8. Member States shall take the measures necessary to ensure that workers, within the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account;
9. *Member States shall take the necessary measures to encourage employers and to promote dialogue between the social partners to provide for reintegration and training support for workers returning to work after maternity leave, where necessary and/or where requested by the worker and in line with national legislation;*

10. *the employer shall ensure that the working time of pregnant workers takes account of the need for regular and extraordinary medical check-ups;*
 11. *Member States shall encourage employers to set up childcare facilities for children of employees who are younger than three years old.";*
- (12) *The following Articles are inserted:*

"Article 11a

Time off for breastfeeding

1. *A mother who is breastfeeding her child shall be entitled to a period of leave for that purpose that shall be taken in two separate periods, each of which shall be of one hour, unless another arrangement has been agreed with the employer, without losing any privileges connected to her employment.*
2. *In the case of multiple births, the leave referred to in paragraph 1 shall be increased by 30 minutes for each additional child.*
3. *In the case of part-time work, the leave referred to in paragraph 1 shall be reduced in proportion to the normal working hours, but shall not be less than 30 minutes.*
4. *In the case referred to in paragraph 3, the leave shall be taken for a period not exceeding one hour and, where applicable, for a second period to cover the remaining duration, unless another arrangement has been agreed with the employer.*

Prevention of discrimination and gender mainstreaming

Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners at appropriate levels with a view to putting in place effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.

Member States shall encourage employers through collective agreements or practice, to take effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.

Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.";

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(13) The following Articles are inserted:

"Article 12a
Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals ***including witnesses*** from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive.

Article 12b
Penalties

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation ■ and must be effective, proportionate and dissuasive.

Article 12c
Equality body

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not ***solely*** to the worker's health and safety."

Article 2

1. Member States may introduce or maintain provisions which are more favourable to workers than those laid down in this Directive.
2. ***Member States may adopt preventive and monitoring measures for the protection and safety at work of pregnant workers and workers who have recently given birth.***
3. Implementation of this Directive shall under no circumstances constitute grounds for reducing the level of protection in the fields covered by this Directive.
4. ***The provisions laid down in this Directive shall be incorporated into the text of collective work contracts in the Member States.***

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...^{*}. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
2. The measures thus adopted by the Member States shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

^{*} Two years after entry into force of this Directive.

Article 4

1. Member States and national equality bodies shall communicate to the Commission, by ...* and every **three years** thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of Directive 92/85/EEC as amended by this Directive.
2. The Commission's report shall take account, as appropriate, of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, the report shall inter alia provide an assessment of the impact on women and men of the measures taken. ***It shall also include an impact study analysing the social and economic effects, in the Union as a whole, of a further increase in the duration of maternity leave and of the implementation of paternity leave.*** In the light of the information received, the report shall, where necessary, include proposals to revise and update Directive 92/85/EEC as amended by this Directive.

Article 5

This Directive shall enter into force on the day 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 European Parliament

The President

For the Council

The President

* ***Three years*** after entry into force of this Directive.