



Confédération des Organisations Familiales de l'Union européenne
Confederation of Family Organisations in the European Union

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Briefing on the work-life balance texts adopted by the European Commission on 3 October 2008

What does the "balance package" contain?

- Communication from the European Commission "A better work-life balance: stronger support for reconciling professional, private and family life";
- proposal for a Directive amending 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 (maternity leave);
- impact assessment accompanying the proposal for a Directive amending Directive 92/85/EEC (+ summary);
- proposal for a Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC;
- impact assessment accompanying the proposal for a Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC (+ summary);
- Commission Report on the implementation of the Barcelona objectives concerning childcare facilities for pre-school-age children (+ Annex).

All the documents can be downloaded from:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=418&newsId=402&furtherNews=yes>

<http://ec.europa.eu/social/main.jsp?langId=en&catId=418&newsId=404&furtherNews=yes>

Communication "A better work-life balance: stronger support for reconciling professional, private and family life"

As well as an overview of each of the documents reviewed below, the key points of the Communication are:

The importance of work-family life balance in tackling poverty and social exclusion

The Communication puts reconciliation of family and working life on a par with gender equality and demographic renewal for tackling poverty and social exclusion. This squares perfectly with the

thrust of the policy position COFACE is now drafting on reconciling work and family life to prevent poverty and social exclusion. The Communication puts an emphasis on the quality of jobs.

Social partner negotiations on parental leave and other types of family leave

In July 2008, the European social partners gave notice of their plans to negotiate a framework agreement revising the previous framework agreement on parental leave (turned into the Parental Leave Directive 1996). The talks will also extend to other types of family leave (paternity, adoption, filial). They have 9 months within which to conclude their negotiations, but this deadline can be extended. Should the negotiations founder, the Commission may put forward a draft directive.

The talks got under way on 17 September. COFACE is on terms with the European Trade Union Confederation (ETUC) and so will be kept updated on progress. The ETUC's demands are very much akin to those of COFACE.

Future actions of the European institutions and Member States

As well as the proposals for a Directive and improved implementation of the Barcelona objectives on childcare facilities for pre-school-age children, the other reconciliation measures pursued by the Commission and Member States will be:

- an exchange of good practices (especially on childcare provision and on measures to address the gender imbalance in use of family-related leave);
- use of the manuals produced by the Commission on gender mainstreaming in employment, social inclusion and social protection policies; and
- the development of statistics.

These actions will be mainly carried out through the European Alliance for Families.

The Structural Funds (especially the European Social Fund) will continue to cofinance national and local reconciliation measures, such as by supporting:

- care services for children and other dependants;
- training and qualification for care workers;
- employers who offer their employees career breaks, childcare and other family support services.

Proposal for a Directive amending 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 (maternity leave)

Directive 92/85/EEC can be downloaded in full from:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0085:EN:HTML>

Key points of the proposal:

Length of maternity leave

The length of maternity leave is upped from 14 to 18 weeks, which can be taken before or after the birth, except for a compulsory period of 6 weeks to be taken after childbirth.

The 18-week period was what COFACE argued for in its reply to the European Commission consultation on reconciliation measures (March 2008). It is also worth noting that the mandatory period of prenatal leave has now gone.

Where childbirth occurs after the due date, the prenatal portion of the leave is extended to the actual date of birth, without any reduction in the post-natal portion of the leave.

The Member States are to take measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities and multiple births. The duration of the additional leave should be proportionate to the special needs of the mother and child. This was also one of COFACE's demands.

The Member States must 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.

COFACE had also called for this measure, but not just for the four weeks before confinement. There is no good reason for this limitation: pregnant workers can take their whole maternity leave after childbirth, so it is not acceptable that sick leave taken in the four weeks before childbirth should affect the maternity leave entitlement.

Prohibition of dismissal

The proposal plans to extend the 1992 Directive's ban on dismissing pregnant workers in the period from the beginning of their pregnancy until the end of maternity leave to also outlaw any preparation for a dismissal during this period.

An employer who dismisses a worker within six months of the end of her maternity leave must give duly substantiated grounds for her dismissal in writing at her request. So the dismissal is not being made unlawful, it just has to be duly substantiated.

Employment rights

Any worker who is excluded from work by her employer who considers her not fit for work without medical indication supplied by the worker will receive a payment equivalent to her full salary until the beginning of her maternity leave.

While on maternity leave, she must be kept on her full pay or given an adequate allowance. Such an allowance will be considered adequate if it guarantees income at least equivalent to the last monthly salary or an average monthly salary of the worker concerned, subject to any maximum set by national legislation. Any such maximum cannot be lower than the allowance that the worker must be given in the event of a break in activity on grounds connected with her state of health. The Member States may lay down the period over which this average monthly salary is calculated. So, the Member States may be encouraged to provide a statutory allowance equivalent to the worker's monthly salary, but the minimum amount still remains that of sickness benefit.

Member States must take the measures necessary to ensure that workers may, during or when returning from maternity leave, ask their employer to make changes to their working hours and patterns. The employer must consider such a request taking his and the workers' needs into account.

A similar provision allowing both men and women workers to request changes to their working hours and patterns to meet their work-life balance needs is included in the Commission proposal to amend Working Time Directive 2003/88/EC. The Commission favours bringing the measure in through the Working Time Directive, as does COFACE on the grounds that if men are to get more involved in family life, they absolutely must have the same right as women to request changes to

their working hours for family reasons. COFACE will therefore be lobbying to get such a provision included in the Working Time Directive.

Burden of proof

The proposal for a Directive provides for the onus of proof to be shifted onto the employer where there is a possible breach of the rights granted by the Directive.

Victimisation

Member States must introduce measures to protect workers who exercise their rights from being victimised for it.

More favourable provisions

National legislation can provide measures more favourable to workers than those laid down in the Directive.

Time for transposition

The Member States must carry the Directive over into their national law within 2 years of it being adopted and published in the Official Journal of the European Union.

The proposal for a Directive now has to be discussed and adopted by Parliament and Council. It has already come under fire from the employers' organizations. Some Member States have also criticized the proposal – Germany, for instance, fears a boomerang effect on women's employment from the increased cost for employers, while the Czech Republic argues that paying a full salary during maternity leave will put the national budget under an intolerable strain (although Member States in fact have an opt-out from the full pay rule).

Impact assessment accompanying the proposal for a Directive amending Directive 92/85/EEC (maternity leave)

The impact assessment draws some interesting conclusions about the other types of leave. It calls for:

- an amendment to the Parental Leave Directive, increasing the minimum period to six months and granting one additional month on condition that both partners have taken at least one month's parental leave beforehand (no conditions for lone-parent families), paid at 66% of last salary;
- the introduction of a European right to adoption leave on the same terms as parental leave;
- the introduction of a European right to 10 days paternity leave paid at 66% of salary
- the introduction of a European right to one month's filial leave

However, because the social partners are in negotiations on these different forms of leave, the European Commission is not proposing any new measures on them, although it does acknowledge that a proposal incorporating all these different forms of leave would have been the most coherent and effective solution.

COFACE believes that the reconciliation of family and working life would be best served by a framework directive and will continue working for that.

The impact assessment also contains a summary of the responses made by COFACE and some of its members to the consultation opened by the European Commission in early 2008.

Proposal for a Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC

The key points are:

Social protection for assisting spouses

Member States must take the necessary measures to ensure that assisting spouses can, at their request, benefit from at least an equal level of protection as self-employed workers under the same conditions as those that apply to self-employed workers.

This was one of COFACE's demands, a fact expressly mentioned in the explanatory memorandum of the proposal.

Maternity leave

Member States must take the necessary measures to ensure that female self-employed workers and assisting spouses can, at their request, be entitled to the same period of maternity leave as provided for in Directive 92/85/EEC (i.e., the Maternity Leave Directive: duration 14 weeks, including 2 weeks that must be taken).

Member States must take the measures to ensure that the women concerned receive an adequate allowance during their maternity leave, which must guarantee them of an income at least equivalent to that which they would receive in the event of a break in their activities on grounds connected with their state of health or, if not applicable, any equivalent allowance established by national law, subject to any ceiling laid down under national legislation.

Member States must take the necessary measures to ensure that female self-employed workers and assisting spouses have access as far as possible to services supplying temporary replacements or to any existing national social services, as an alternative to the above allowance.

A right to maternity leave plus entitlement to an allowance or temporary replacement services was something COFACE had called for, and this was expressly mentioned in the proposal's explanatory memorandum.

COFACE nevertheless regrets that:

- the Directive's requirements as to the amount of the allowance are unclear and leave Member States free to set it at a very low level.
- the reference to Directive 92/85/EEC in connection with the duration of leave means that this proposal falls short of the Commission's other proposal on maternity leave for employed workers put out at the same time.
- the proposal does not provide for a European right to other types of family leave for self-employed workers and assisting spouses.

Impact assessment accompanying the proposal for a Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC

The impact assessment includes an Annex containing COFACE's position in response to the European Commission's consultation, and a large number of comparative tables showing the current situation on maternity leave and other types of leave in particular in the different Member States.

Commission Report on the implementation of the Barcelona objectives concerning childcare facilities for pre-school-age children

The report deals only with formal systems of child care, i.e., all forms of childcare provision organized or controlled by a public or private body.

It emphasizes the importance of childcare provision as a support for employment, for gender equality and for social inclusion (especially for lone-parent families) and for people's ability to plan a family.

On the *availability and accessibility* of childcare services, the report stresses that most Member States will not meet the Barcelona objectives, especially for the under-3s. Much still needs to be done. The Commission believes that the situation could be improved both by opening new childcare facilities and by professionalizing informal childcare, for example by setting quality standards for childcare, improving conditions of employment and remuneration, and staff training. The Commission also argues that the more specific needs of parents with atypical working hours or sick children must also be met.

On *cost and financing*, the report concludes that the cost of childcare facilities, principally for the under-3s, remains a major obstacle to their take-up by parents in more than half of the Member States. It is even the main factor cited by women who have been compelled to restrict their participation in the labour market (involuntary part-time working, or not working at all) through lack of childcare facilities. The Commission notes that the cost of services is an important issue from the perspective of making work financially worthwhile. From the point of view of social inclusion, measures are also needed to ensure that childcare facilities are also available to the lowest income households.

Where *quality and conditions of employment* are concerned, the Commission notes that for parents, quality is a key factor when it comes to choosing which childcare facility to entrust their children to. Ensuring a basic level of quality for everyone is also a matter of equality of opportunity, for both children and parents. There is a need to promote the quality of early childcare services as social services of general interest, notably through developing voluntary quality standards. Improving the quality of childcare in Member States demands an adherence to strict standards, enforced through official checks, but it also requires all childcare workers to have a minimum level of training, better working conditions and more opportunities for continuing training, and being given proper recognition, especially in terms of remuneration.

As to *future actions*, the Commission points out that it has no direct powers in the field of childcare but will continue to monitor the Barcelona objectives regularly, providing support through statistics, and making specific recommendations to certain Member States where necessary. It will also promote exchanges of national experiences (in particular through the [European Alliance for Families](#)) and will encourage research into working conditions in the pre-school childcare sector and into ensuring that jobs in this field are more highly valued. National and local authorities and social partners are called on to play an active part in developing the provision of accessible, affordable and quality early childcare services, in particular by using the cofinancing opportunities offered by the European Funds.

The Annex to the report contains interesting comparative tables on the situation in the different Member States

Initial responses of COFACE members

Femmes Prévoyantes Socialistes (FPS, Belgium) welcomes the European Commission's proposal to extend maternity leave. It emphatically supports this measure and calls on Belgium to bring it in ahead of time. Femmes Prévoyantes Socialistes calls on the European Commission to add a minimum mandatory leave for fathers to its proposal, so that the entire burden of the difficulties that the birth of a child may bring, in particular as regards work, is not borne by women.

The Confédération Nationale des Associations Familiales Catholiques (CNAFC, France) welcomes the European Commission's proposal to extend maternity leave from 14 to 18 weeks.

Press release issued by Familles Rurales (France):

http://www.famillesrurales.org/communiquede_presse-167-237.html#lib2

Conclusions

COFACE welcomes the European Commission's decision to publish a set of work-life balance texts in a comprehensive approach that encompasses gender equality, social inclusion and population issues. COFACE particularly appreciates the significant progress made for female self-employed workers and assisting spouses.

However, COFACE is disappointed that the proposed legislation is confined to maternity leave only to the detriment of other types of family leave (parental, paternity, adoption, filial) all of which are key measures for enabling families to reconcile family life and work. COFACE calls on the social partners to bear the interests of families in mind in their negotiations in this area. COFACE also regrets the very limited progress made on maternity pay.

Finally, COFACE calls on the European Union to place a bigger focus on special dependency care, in particular by setting objectives for care facilities for dependent (disabled and elderly) persons.

More information on COFACE's position on reconciliation of family life and work:

<http://www.coface-eu.org/en/basic434.html>