



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.01.1996  
COM(96) 26 final

96/0033 (PRT)

Proposal for a  
COUNCIL DIRECTIVE

on the framework agreement on parental leave concluded by  
UNICE, CEEP and the ETUC

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(presented by the Commission)

## EXPLANATORY MEMORANDUM

### Introduction

1. Reconciling working and family life is a key element in equal opportunities policy. Since the beginning of the '80s, it has been one of the Commission's priorities in this area. On 24 November 1983 the Commission submitted a proposal for a Council Directive on parental leave and leave for family reasons<sup>(1)</sup>. The aim of this proposal was to grant to workers the right to a minimum period of leave following the birth or adoption of a child. It also provided for leave for other family reasons.
2. The Economic and Social Committee gave its opinion on 24 May 1984. The European Parliament gave its opinion on 30 March 1984, proposing 17 amendments to the Commission's proposal. In accordance with Article 149 of the Treaty, the Commission submitted an amended proposal<sup>(2)</sup> to the Council on 15 November 1984, incorporating some of the amendments proposed by Parliament.
3. This proposal was discussed in the Council and by the Ministers themselves on various occasions between 1985 and 1994, but the unanimity required in accordance with the legal basis (Article 100) was not obtained. Despite in-depth discussions within the Council and the broad consensus which emerged particularly clearly in 1993, the proposal was not adopted.
4. In addition to submitting this proposal, the Commission has stressed the key role conciliation can play in effectively promoting equal opportunities at work, in a series of texts submitted over the past ten years. Many of these initiatives were supported by the Council of Ministers<sup>(3)</sup>.
5. In July 1994 the Commission published the White Paper on the future of European social policy, in which it reiterates its desire to make progress in this area and indicates in Chapters 3 and 5 that it will examine the possibility of a framework directive on conciliation, providing for career breaks such as parental leave. The aim of the proposal would be to encourage people to devise new models catering better for the needs of European society and to enable women to be integrated fully into the labour market.
6. As no progress had been made in the Council, the Commission decided to initiate the procedure under Article 3 of the Agreement on Social Policy. On 22 February 1995 it therefore gave its approval for consultation of the social partners under Article 3(2) of the said Agreement on the basis of a text which retraced the steps of the Commission's conciliation policy and examined it from various points of view. At the end of a consultation period of six weeks, the Commission received 17 responses.

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(1) COM(83) 686 final.

(2) COM(84) 631 final.

(3) For example, point 16 of the Community Charter of Fundamental Social Rights for Workers, the Third medium-term action programme on equal opportunities for men and women, 1991 to 1995 and the Council Recommendation of 31 March 1992 on child care (OJ No L 123, 8.5.1992, p 16).

7. The social partners' responses showed that there was a consensus on the need for action on conciliation in one form or another in accordance with the guidelines in the Commission's first document. The social partners came out very clearly in support of promotion of equal opportunities for men and women. As regards the proper form and level for action to be undertaken in this area, it was generally acknowledged that a Community initiative might be what was needed. At the very least, a Community text might recommend various measures and standards, and a binding Community framework measure was also suggested to establish guidelines which could be implemented at national, local or enterprise level. Many of the responses also recommended that the social partners play an active role in drafting the principles and in putting them into practice through collective negotiations.
8. After analysing the reactions to its document, the Commission decided to initiate the second round of consultation provided for under Article 3(3) of the Agreement on Social Policy. On 5 July three organizations (UNICE, CEEP and the ETUC) announced their intention of starting negotiations on this matter and, in particular, on parental leave. At the end of these negotiations, the three organizations concluded a framework agreement on 14 December. At the same time they forwarded the Agreement to the Commission, asking for it to be implemented by a Council decision on a proposal from the Commission in accordance with Article 4(2) of the Agreement on Social Policy.

#### **Examination of the Agreement**

9. In its Communication concerning the application of the Agreement on Social Policy<sup>(4)</sup>, the Commission stressed that "by virtue of its role as guardian of the Treaties the Commission will prepare proposals for decisions to the Council following consideration of the representative status of the contracting parties, their mandate and the "legality" of each clause in the collective agreement in relation to Community law, and the provisions regarding small and medium-sized undertakings set out in Article 2(2). At all events, the Commission intends to provide an explanatory memorandum on any proposal presented to the Council in this area, giving its comments and assessment of the agreement concluded by the social partners".

##### **(i) Representative status of the contracting parties and their mandate**

10. The organizations which are parties to the Agreement are UNICE, CEEP and the ETUC. These three organizations have, since 1985, committed themselves to an autonomous and voluntary process known as the "Val Duchesse" social dialogue. This has given rise to 14 joint opinions, two recommendations and two agreements. They concluded a significant agreement in October 1991 which was designed to define the role and position of social dialogue in the new Community framework. Articles 3 and 4 of the Agreement on Social Policy are largely inspired by this Agreement.
11. The three organizations all fulfil the following criteria defined in the Communication from the Commission (point 24):
  - they are cross-industry and are organized at European level;
  - they consist of organizations which are themselves an integral and recognized part of Member State social partner structures, have the capacity to negotiate agreements and are representative of all Member States;
  - they have adequate structures to ensure their effective participation in implementing the Agreement on Social Policy.

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<sup>(4)</sup> COM(93) 600 of 14 December 1993.

12. These three organizations are the only three general cross-industry organizations within the meaning of Annex 2 to the Communication from the Commission. The study on the social partners annexed to the Communication arrives at several conclusions with regard to the representative status of employers' and trade union organizations:

Employers' organizations

- 12.1 The employers' federation which is most representative of all the industrial sectors and the categories of enterprises is UNICE. In all the Member States the organizations affiliated to the UNICE are by far the most representative cross-industry employers' federations. All the affiliated organizations at national level are directly or indirectly involved in collective bargaining and participate in the International Labour Conference. CEEP provides significant representation of public enterprises or enterprises with public participation in the Member States.

Trade union organizations

- 12.2 By far the most representative general cross-industry trade union confederation is the ETUC. Its affiliated organizations are the most representative cross-industry trade union confederations in all the Member States. All its affiliated organizations at national level are directly or indirectly involved in collective bargaining and participate in the International Labour Conference.
13. The Commission notes that the members of these three organizations at national level have given them a specific mandate for negotiations on parental leave and have ratified the framework agreement. The three organizations have concluded the framework agreement on behalf of their national members.
14. The Commission concludes that these three organizations fulfil the condition of representativeness which it had undertaken to verify before forwarding its proposal. However, the Commission has forwarded the framework agreement to all the organizations which it had previously consulted or informed, and has organized a meeting for exchange of information with them. Certain organizations have contested the representative status of contracting parties and maintained that the agreement does not take into account the interests of certain sectors or categories of enterprises. On the contrary, other organizations have underlined the flexible character of the provisions of the agreement that will allow account to be taken, when transposing it into national law, of the specific needs of some sectors or sub-sectors.

**(ii) "Legality" of the clauses of the agreement**

15. The Commission has carefully examined each of the clauses of the framework agreement and does not find any provisions contrary to Community law in the main clauses thereof (Clauses 1, 2 and 3). The fact that the agreement provides for obligations on the Member States does not prevent it from being legal. On the contrary, it follows from the second declaration annexed to the Agreement on Social Policy<sup>(5)</sup> that the second of the arrangements for application of the agreements between management and labour at Community level is likely to create obligations for the Member States. The obligations imposed on Member States do not derive directly from the agreement

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<sup>(5)</sup> "The 11 High Contracting Parties declare that the first of the arrangements for application of the agreements between management and labour at Community level - referred to in Article 4(2) - will consist in developing, by collective bargaining according to the rules of each Member State, the content of the agreements, and that consequently this arrangement implies no obligation on the Member States to apply the agreements directly or to work out rules for their transposition, nor any obligation to amend national legislation in force to facilitate their implementation."

between the social partners but from the arrangement for applying the agreement. Paragraph (iv) contains the Commission's assessment of the content of the agreement.

16. Clause 4 regarding the procedural rules for applying the agreement is different. Without amending these rules, the Commission is obliged to propose to the Council, in the text of its proposed legislation, the provisions which will be necessary to ensure that the social partners' framework agreement is applied in practice by the Member States in accordance with Community law.

**(iii) Respect for provisions regarding small and medium-sized undertakings**

17. Article 2(2) of the Agreement on social policy provides that legislation on social policy shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
18. Special consideration was given to the specific situation of SMUs when the framework agreement was drawn up. There are two explicit references to them:

**General Considerations, 12. "Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community 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."**

**Clause 2.3.f: "Member States and/or Social Partners may, in particular, ... authorize special arrangements to meet the operational and organizational requirements of small undertakings"**.

19. The agreement ensures that the special situation of SMUs is taken into consideration, explicitly authorizing the Member States and/or social partners to make special arrangements for them.
20. In addition, other provisions of the framework agreement, without explicitly mentioning SMUs, enable national provisions to be taken which take account of their special situation. This is true of the following:

**Clause 2.3.a "Member States and/or Social Partners may, in particular ... decide whether parental leave is granted on a full-time or part-time basis, in a fragmented way or in the form of a time-credit system,"**

**Clause 2.3.e "Member States and/or Social Partners may, in particular ... define the circumstances in which the employer ... is allowed to postpone the granting of parental leave for justifiable reasons relating to the operation of the enterprise"**.

These two provisions show that the social partners are keen to encourage new, flexible ways of organizing work and time which are better suited to the changing needs of society and which should take the needs of both the enterprises and the workers into account (General Considerations, 6).

21. The Commission therefore concludes that the framework agreement complies with the provisions concerning SMUs. In drawing it up, the social partners provided scope for the special circumstances of SMUs to be taken into account, particularly when the agreement is being transposed into national law.

**(iv) Assessment of the agreement**

22. The Commission considers parental leave to be an important factor in reconciling family and working life. It also constitutes an important element in the introduction of new, flexible ways of organizing work and time. As a result, the Commission asked the social partners for their reactions to this more broadly based approach.
23. The Commission wholeheartedly endorses the aims of the social partners' framework agreement and sees it as an important step in two respects.
24. First, minimum standards with regard to parental leave are a big step forward in achieving equal opportunities for men and women. Sharing of family responsibilities between parents is a key element in the strategies designed to improve equality in the labour market. It is also likely to increase the number of women in work. Reconciling working and family life must be part of a long-term strategy to increase the number of women in the working population. The Essen European Council in December 1994 gave top priority to promoting employment and equal opportunities. This was confirmed by the European Councils of Cannes and Madrid.
25. Secondly, the introduction of parental leave also contributes to realizing another objective set by the European Council in Essen - the introduction of new, flexible ways of organizing work. Such flexibility must meet the needs of enterprises which, faced with international competition, have to increase their competitiveness. It must also take account of the interests of workers by enabling them to tailor their working hours more closely to their needs. An agreement between the social partners on this matter as a result of negotiations between employers and workers is the right vehicle for reconciling the interests of the two parties.
26. The Commission considers that all the conditions are fulfilled for a proposal for the framework agreement between the social partners to be implemented by a Council decision.

**The Commission's proposal**

27. In its Communication of 14 December, the Commission stated that "implementing an agreement concluded at Community level by means of a Council decision on a proposal from the Commission at the joint request of the social partners would give the Council no opportunity to amend the agreement. For this reason, the Commission will merely propose, following examination of the agreement between the social partners, the adoption of a decision on the agreement as concluded".
28. The Commission also took the view that "the Council decision must be limited to making binding the provisions of the agreement concluded between the social partners, so the text of the agreement would not form part of the decision but would be annexed thereto".
29. Finally, the Commission announced that "if the Council decides, in accordance with the procedure set out in the last subparagraph of Article 4(2), not to implement the agreement as concluded by the social partners, the Commission will withdraw its proposal for a decision and will examine, in the light of the work done, whether a legislation instrument in the area in question would be appropriate".
30. Hence, the Commission has not incorporated the text of the agreement in its proposal but simply annexed it thereto. Moreover, it reiterates that, if the Council amends the agreement concluded between the social partners, it will withdraw its proposal.

**(i) Legal basis**

31. Article 4(2) of the Agreement on Social Policy provides that "agreements concluded at Community level shall be implemented, in matters covered by Article 2, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission". The agreement on parental leave relates to equal opportunities for men and women in the labour market and equal treatment at work, which come under Article 2(1) of the Agreement on Social Policy. This is one of the areas where the Council may act by a qualified majority. As a result, Article 4(2) is the proper legal basis for the Commission's proposal.
32. That Article does not provide for consultation of the European Parliament on requests addressed to the Commission by the social partners. In accordance with the undertaking in its Communication, the Commission has kept the Parliament informed about the various phases of consultation of the social partners. It is also forwarding this proposal to the Parliament so that it can deliver its opinion to the Commission and the Council if it so wishes. The same applies to the Economic and Social Committee.

**(ii) The form the instrument is to take**

33. The term "decision" within the meaning of Article 4(2) of the Agreement on Social Policy refers to one of the binding legislative instruments under Article 189 of the Treaty. It is up to the Commission to propose to the Council the most appropriate of the three binding instruments under the said Article (regulation, directive or decision). In this case, given the nature (framework agreement) and the content of the social partners' document, it is clear that the framework agreement is intended to be applied indirectly by means of provisions to be transposed into national law by the Member States or the social partners. Hence, in that case, the most suitable instrument for its application is a Council directive. Moreover, in accordance with the undertakings it has given, the Commission considers that the text of the agreement should not be part of the decision but should be annexed thereto.
34. The Commission's comments on the Articles in its proposal are given below:

Article 1

- 34.1 This Article confines itself to making the framework agreement between the social partners obligatory in order to enable it to be implemented by a Council decision under Article 4(2) of the Agreement on Social Policy.

Articles 2 and 3

- 34.2 These Articles contain the usual provisions for transposal into the national law of the Member States. More particularly, Article 2(1) says that the provisions of the Directive only prescribe minimum requirements, giving Member States the possibility of adopting stricter measures in the relevant field.
- 34.3 Article 2(2) consists of a "non-regression" clause that affects Member States having, at the time of the adoption of the Directive, a higher level of protection than the one guaranteed by the framework agreement attached to it. This clause concerns the non-regression of the workers' general level of protection on grounds of the adoption of the Community Directive. However, it offers Member States the possibility of adopting different measures required by their economic and social policies, subject to observance of the minimum requirements prescribed by the framework agreement. It is clear in all the circumstances that the room for manoeuvre of Member States covers only the level of protection higher than the one guaranteed by the Directive.

- 34.4 Article 2(3) is a non-discrimination clause in accordance with the undertaking given by the Commission in its Communication<sup>(6)</sup> on racism, xenophobia and antisemitism. In this connection, the solemn declaration adopted by the social partners in Florence in October 1995 on the prevention of racial discrimination and xenophobia and the promotion of equal opportunities at work should also be borne in mind.
- 34.5 Article 2(4) obliges Member States to provide penalties which are effective, commensurate with the infringement and constitute a sufficient deterrent. Indeed, when applying Community law, it is necessary, as in every legal system, on the one hand, that those bearing obligations resulting from this law are dissuaded from infringing it and, on the other hand, that those who do not respect Community law are duly penalized.

#### **Justification of the Directive in respect of subsidiarity**

35. The proposal for a Council Directive concerning the framework agreement on parental leave concluded by UNICE, CEEP and CES complies with the principle of subsidiarity as regards its two criteria, namely the necessity and proportionality as laid down in Article 3(b) of the Maastricht Treaty.
36. The first criterion, namely the need to undertake Community action, is justified by the fact that social partners, within the framework of the procedure provided for in Article 3 of the Agreement on Social Policy, have agreed that it is necessary to undertake action at Community level and they have requested the implementation of their agreement which has been concluded at Community level, through a Council decision based upon a proposal from the Commission, pursuant to Article 4(2) of that agreement. Moreover, it should be noted that "parental leave" forms part of the measures which allow men and women to reconcile their professional and family responsibilities with a view to promoting the equality of opportunities, which has been acknowledged as being of major importance at the European Council held in Essen in December 1994.
37. The Council Directive corresponds to the requirement of proportionality in so far as it only defines the major objectives to be attained by Member States, while allowing social partners and not the Community to fix its content.

#### **Conclusion**

38. The Council is requested to adopt the proposal for a Directive on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

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<sup>(6)</sup> COM(95) 653 final of 13 December 1995.



Proposal for a  
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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Agreement on Social Policy annexed to the Protocol (No 14) on Social Policy, annexed to the Treaty establishing the European Community and, in particular, Article 4(2) thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Whereas on the basis of the Protocol on Social Policy annexed to the Treaty establishing the European Community, the Member States, with the exception of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the Member States"), wishing to implement the Social Charter of 1989, have concluded an agreement on social policy,

Whereas management and labour (the social partners) may, in accordance with Article 4(2) of the Agreement on Social Policy, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;

Whereas point 16 of the Community Charter of the Fundamental Social Rights of Workers, dealing with equal treatment for men and women, provides inter alia that "measures should also be developed enabling men and women to reconcile their occupational and family obligations";

Whereas the Council, despite the existence of a broad consensus amongst the majority of the Member States, has not been able to act on the proposal for a Council Directive on parental leave and leave for family reasons<sup>(2)</sup>, as amended<sup>(3)</sup>, on 15 November 1984;

Whereas the Commission, in accordance with Article 3(2) of the Agreement on Social Policy, consulted management and labour on the possible direction of Community action with regard to reconciling occupational and family life;

Whereas the Commission, considering after such consultation that Community action was desirable, once again consulted management and labour on the substance of the envisaged proposal in accordance with Article 3(3) of the said Agreement;

Whereas the general cross-industry organizations (UNICE, CEEP and the ETUC) informed the Commission in their joint letter of 5 July 1995 of their desire to initiate the procedure provided for by Article 4 of the said Agreement;

Whereas those cross-industry organizations have concluded, on 14 December 1995, a framework agreement on parental leave, whereas they have forwarded to the Commission their joint request to implement the framework agreement on parental leave by a Council decision on a proposal from the Commission, in accordance with Article 4(2) of the said Agreement;

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<sup>(1)</sup> OJ No C

<sup>(2)</sup> OJ No C 333, 9.12.1983, p. 6.

<sup>(3)</sup> OJ No C 316, 27.11.1984, p. 7.

Whereas the Council, in its Resolution of 6 December 1994 on certain aspects for a European Union social policy: a contribution to economic and social convergence in the Union<sup>(4)</sup>, asked management and labour to make use of the opportunities for concluding agreements, since they are as a rule closer to social reality and to social problems; whereas in Madrid the members of the European Council from those States which had signed the Agreement annexed to the Protocol on Social Policy welcomed the conclusion of this framework agreement;

Whereas the proper instrument for implementing the framework agreement is a directive within the meaning of Article 189 of the Treaty; whereas it therefore binds the Member States as to the result to be achieved, whilst leaving them the choice of form and methods;

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3(b) of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive limits itself to the minimum required for the attainment of those objectives and does not go beyond what is necessary for that purpose;

Whereas the Commission has drafted its proposal for a Council Directive, taking into account the representative status of the contracting parties, their mandate and the legality of each clause of the framework agreement, and compliance with the relevant provisions concerning small and medium-sized undertakings;

Whereas the Commission, in accordance with its Communication concerning the application of the Agreement on Social Policy, informed the European Parliament by sending it the text of the agreement, accompanied by its proposal for a Directive and the Explanatory Memorandum;

Whereas the Commission also informed the Economic and Social Committee by sending it the text of the Agreement; accompanied by its proposal for a Directive and the Explanatory Memorandum;

Whereas the provisions of this Directive should lay down minimal requirements, thus giving Member States the option of introducing more favourable provisions;

Whereas the implementation of this Directive should not serve to justify any regression in relation to the situation which already exists in every Member State;

Whereas the Community Charter of the Fundamental Social Rights of Workers recognizes the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinions and creeds; whereas the Commission adopted on 13 December 1995 a Communication<sup>(5)</sup> on racism, xenophobia and antisemitism; whereas management and labour adopted a solemn declaration on the prevention of racial discrimination and xenophobia and promotion of equal opportunities at work in Florence in October 1995;

Whereas, in keeping with Article 5 of the Treaty, Member States should take all measures necessary to safeguard the scope and the efficiency of Community law, and should in particular, in the event of infringement, determine penalties which are effective and commensurate with it and which constitute a sufficient deterrent;

Whereas a Member State may entrust management and labour, at their joint request, with the implementation of this Directive, as long as that Member State takes all the necessary steps to ensure that it can at all times guarantee the results imposed by this Directive;

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<sup>(4)</sup> OJ No C 368, 23.12.1994, p. 6.

<sup>(5)</sup> COM(95) 653 final.

Whereas the implementation of the framework agreement contributes to achieving the objectives under Article 1 of the Agreement on Social Policy;

Whereas parental leave is a matter relating to equal opportunities at work under Article 2(1) of the said Agreement; whereas the Council is therefore acting by a qualified majority,

**HAS ADOPTED THIS DIRECTIVE:**

Article 1

The framework agreement on parental leave concluded on 14 December 1995 between the general cross-industry organizations (UNICE, CEEP and the ETUC) and annexed to this Directive is made binding.

Article 2

1. Member States may introduce more favourable provisions than those laid down in this Directive.
2. The implementation of this Directive shall not in any case constitute sufficient grounds to justify a reduction in the general level of protection of workers in the fields covered by this Directive; this shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of adoption of this Directive, provided always that the minimum requirements laid down in this Directive are adhered to.
3. When Member States adopt the provisions to implement this Directive, these shall prohibit any discrimination based on race, sex, sexual orientation, colour, religion or nationality.
4. Member States shall determine the range of penalties applicable for infringements of national provisions made in implementation of this Directive and shall take all necessary steps to ensure that they are enforced. The penalties must be effective, commensurate with the infringement, and must constitute a sufficient deterrent. Member States shall notify these provisions to the Commission by the date mentioned in paragraph 5 at the latest, and any subsequent amendment thereto in good time.
5. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [31 March 1998] at the latest or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measures enabling them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

Member States may have a maximum of one more year, if this is necessary, to take account of special difficulties or implementation by a collective agreement. They shall inform the Commission forthwith in such circumstances.

When Member States adopt the provisions referred to in the first paragraph, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

**Article 3**

**This Directive is addressed to the Member States.**

**Done at Brussels,**

**For the Council  
The President**

**FRAMEWORK AGREEMENT ON PARENTAL LEAVE**

**PREAMBLE**

The enclosed framework agreement represents an undertaking by UNICE, CEEP and the ETUC to set out 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.

ETUC, UNICE and CEEP 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 Community with the exception of the United Kingdom of Great Britain and Northern Ireland.

**I. General Considerations**

1. Having regard to the Agreement on Social Policy annexed to the Protocol on Social Policy attached to the Treaty establishing the European Community and in particular Articles 3(4) and 4(2) thereof,
2. Whereas Article 4(2) of the Agreement on Social Policy provides that agreements concluded at Community level shall be implemented, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission;
3. Whereas the Commission has announced its intention to propose a Community measure on the reconciliation of work and family life;
4. Whereas the Community Charter of fundamental social rights stipulates at point 16 dealing with equal treatment for men and women, that measures should be developed to enable men and women to reconcile their occupational and family obligations;
5. Whereas the Resolution of the Council of 6 December 1994 recognizes that an effective policy of equal opportunities presupposes an integrated, overall strategy allowing for better organization of working hours and greater flexibility, and for an easier return to working life, and notes the important role of the Social Partners in this area and in offering both men and women an opportunity to reconcile their work responsibilities with family obligations;
6. Whereas measures to reconcile work and family life should encourage the introduction of new flexible ways of organizing work and time which are better suited to the changing needs of society and which should take the needs of both the enterprises and the workers into account;
7. Whereas family policy should be looked at in the context of demographic changes, the effects of the ageing population, closing generation gap and promoting women's participation in the labour force;
8. Whereas men should be encouraged to assume an equal share of family responsibilities, for example they should be encouraged to take parental leave by means such as awareness programmes;

9. 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 the conditions for access and modalities of application in order to take account of the situation in each Member State;
10. Whereas Member States should provide for the maintenance of entitlements to benefits in kind under sickness insurance during the minimum period of parental leave;
11. 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;
12. Whereas this Agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community 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 enterprises;
13. Whereas the Social Partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore be conferred a special role in the implementation and application of this agreement.

## **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.
2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.

#### **Clause 2: Parental leave**

1. This agreement entitles, subject to clause 2.2, men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age of up to eight years to be defined by Member States and/or Social Partners.
2. To promote equal opportunities and equal treatment between men and women, the parties to this agreement consider that the right to parental leave provided for under clause 2.1 should, in principle, be granted on a non-transferable basis.
3. The conditions for access and modalities of application of parental leave shall be defined by law and/or collective agreement 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 fragmented way or in the form of a time-credit system;

- (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;
  - (c) adjust conditions for access and modalities of application of parental leave to the special circumstances of adoption;
  - (d) 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;
  - (e) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and practices, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the undertaking (e.g. where work is of a seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for parental leave at the same time, where a specific function is of strategic importance). Any problem arising from the application of this provision should be dealt with in accordance with national law, collective agreements and practices;
  - (f) in addition to (e) above, authorize special arrangements to meet the operational and organizational requirements of small undertakings.
4. In order to ensure that workers can exercise their rights to parental leave, Member States and/or Social Partners shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practice.
  5. 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.
  6. 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 or practice, shall apply.
  7. Member States and/or Social Partners shall define the status of the employment contract or employment relationship for the period of parental leave.
  8. All matters relating to social security in relation to this agreement are for consideration and determination by Member States according to national law, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care.

**Clause 3: 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 for access and modalities of application of clause 3.1 and limit this entitlement to a certain amount of time per year and/or per case.

#### **Clause 4: Final provisions**

1. Member States can maintain or introduce more favourable provisions than 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 of this agreement. This does 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 this agreement are complied with.
3. This agreement does not prejudice the right of the 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<sup>(1)</sup> that the Social Partners establish 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 agreement, 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 practices.
6. Without prejudice to the respective roles of the Commission, national courts and the 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 shall give an opinion.
7. The signatory parties will 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.

Brussels, 14 December 1995

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<sup>(1)</sup> Within the meaning of Article 2(4) of the Social Policy Agreement annexed to the EC Treaty.



# IMPACT ASSESSMENT FORM THE IMPACT OF THE PROPOSAL ON BUSINESS

with special reference to small and medium-sized  
enterprises (SMEs)

**TITLE OF PROPOSAL:** Proposal for a Council Directive on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC

## THE PROPOSAL:

**1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?**

The aim of this Directive is to implement the framework agreement on parental leave under Article 4(2) of the Agreement on social policy annexed to the Treaty. This Article provides for implementing agreements concluded by the social partners by a Council decision on a proposal from the Commission. The signatories have jointly asked the Commission to present a proposal to the Council. The Commission, in accordance with its Communication<sup>(1)</sup> on the application of the Agreement on Social Policy, undertook a three-fold analysis of the agreement. The Commission considers that all the conditions have been met (representative status of the signatories, legality of the clauses of the agreement and compliance with specific provisions on SMEs) and that its proposal for a Council Directive should be adopted. The Madrid European Council also welcomed the agreement.

## THE IMPACT ON BUSINESS:

**2. Who will be affected by the proposal?**

All enterprises and all workers may be affected by the framework agreement, irrespective of the sector or size of the enterprise concerned.

**3. What will business have to do to comply with the proposal?**

The enterprises have several options to make up for the absence of workers on parental leave, the main being as follows:

- hiring of replacements;
- sharing of the work between colleagues;
- postponing work until the persons concerned return to work.

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<sup>(1)</sup> COM(93) 600 final.

**4. What economic effects is the proposal likely to have?**

Introduction of parental leave will also contribute to achieving the second priority set in Essen by the European Council - the introduction of new flexible ways of organizing work. Such flexibility should cater for the needs of enterprises which, in the face of international competition, must increase their competitiveness and for the interests of workers by enabling them to adjust their working time to their personal needs. The agreement between the social partners on this matter, which has been negotiated between employers and workers, is the most suitable instrument for reconciling the interests of the two parties.

The job guarantee accompanying parental leave should normally underpin continuity in the labour market - whereas hitherto gainful employment had to be interrupted - to the benefit of workers and enterprises alike. Workers may be spared some of the cost of returning to working life and can maintain the benefits of their experience and their seniority with their employers. The employers keep the labour force which they have trained and, depending on the way in which they replace workers on leave, do not have to commit expenditure for recruitment or training of new personnel.

**5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?**

Yes. See paragraphs 17 to 21 of the Explanatory Memorandum.

### **CONSULTATION**

**6. List the organizations which have been consulted about the proposal and outline their main views.**

A list of the organizations which have been consulted is annexed. Paragraph 14 of the Explanatory Memorandum explains their views.

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# DOCUMENTS

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