

COUNCIL DIRECTIVE 96/34/EC

of 3 June 1996

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

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,

- (1) Whereas on the basis of the Protocol on social policy, 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 pursue the course mapped out by the 1989 Social Charter have concluded an Agreement on social policy amongst themselves;
- (2) Whereas management and labour 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;
- (3) Whereas paragraph 16 of the Community Charter of the Fundamental Social Rights of Workers on 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';
- (4) Whereas the Council, despite the existence of a broad consensus, has not been able to act on the proposal for a Directive on parental leave for family reasons ⁽¹⁾, as amended ⁽²⁾ on 15 November 1984;
- (5) 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 working and family life;
- (6) 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;
- (7) 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;

- (8) Whereas the said cross-industry organizations concluded, on 14 December 1995, a framework agreement on parental leave; whereas they have forwarded to the Commission their joint request to implement this framework agreement by a Council Decision on a proposal from the Commission in accordance with Article 4 (2) of the said Agreement;
- (9) 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 ⁽³⁾, asked the two sides of industry to make use of the possibilities 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 have signed the Agreement on social policy welcomed the conclusion of this framework agreement;
- (10) Whereas the signatory parties wanted to conclude a framework agreement setting out minimum requirements on parental leave and time off from work on grounds of *force majeure* and referring back to the Member States and/or management and labour for the definition of the conditions under which parental leave would be implemented, in order to take account of the situation, including the situation with regard to family policy, existing in each Member State, particularly as regards the conditions for granting parental leave and exercise of the right to parental leave;
- (11) Whereas the proper instrument for implementing this framework agreement is a Directive within the meaning of Article 189 of the Treaty; whereas it is therefore binding on the Member States as to the result to be achieved, but leaves them the choice of form and methods;
- (12) Whereas, in keeping with the principle of subsidiarity and the principle of proportionality as set out in Article 3b 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 is confined to the minimum required to achieve these objectives and does not go beyond what is necessary to achieve that purpose;

⁽¹⁾ OJ No C 333, 9. 12. 1983, p. 6.

⁽²⁾ OJ No C 316, 27. 11. 1984, p. 7.

⁽³⁾ OJ No C 368, 23. 12. 1994, p. 6.

- (13) Whereas the Commission has drafted its proposal for a Directive, taking into account the representative status of the signatory parties, their mandate and the legality of the clauses of the framework agreement and compliance with the relevant provisions concerning small and medium-sized undertakings;
- (14) Whereas the Commission, in accordance with its Communication of 14 December 1993 concerning the implementation of the Protocol on social policy, informed the European Parliament by sending it the text of the framework agreement, accompanied by its proposal for a Directive and the explanatory memorandum;
- (15) Whereas the Commission also informed the Economic and Social Committee by sending it the text of the framework agreement, accompanied by its proposal for a Directive and the explanatory memorandum;
- (16) Whereas clause 4 point 2 of the framework agreement states that the implementation of the provisions of this agreement does 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 management and labour to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances (including the introduction of non-transferability), as long as the minimum requirements provided for in the present agreement are complied with;
- (17) 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;
- (18) Whereas Article F (2) of the Treaty on European Union provides that 'the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law';
- (19) Whereas the Member States can entrust management and labour, at their joint request, with the implementation of this Directive, as long as they take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;
- (20) Whereas the implementation of the framework agreement contributes to achieving the objectives under Article 1 of the Agreement on social policy,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Implementation of the framework agreement

The purpose of this Directive is to put into effect the annexed framework agreement on parental leave concluded on 14 December 1995 between the general cross-industry organizations (Unice, CEEP and the ETUC).

Article 2

Final provisions

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 June 1998 at the latest or shall ensure by that date at the latest that management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measure 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.

2. The Member States may have a maximum additional period of one year, if this is necessary to take account of special difficulties or implementation by a collective agreement.

They must forthwith inform the Commission of such circumstances.

3. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 1996.

For the Council

The President

T. TREU

ANNEX

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 and time off from work on grounds of *force majeure*, as an important means of reconciling work and family life 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 minimum 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, annexed 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 that measures should be developed to enable men and women to reconcile their occupational and family obligations;
5. Whereas the Council Resolution 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 two sides of industry 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 undertakings and workers into account;
7. Whereas family policy should be looked at in the context of demographic changes, the effects of the ageing population, closing the 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 the present 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 of access and detailed rules 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 impede the creation and development of small and medium-sized undertakings;
13. Whereas management and labour are best placed to find solutions that correspond to the needs of both employers and workers and must therefore have conferred on them a special role in the implementation and application of the present 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 agreements or practices in force in each Member State.

Clause 2: Parental leave

1. This agreement grants, subject to clause 2.2, men and women workers 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 up to 8 years to be defined by Member States and/or management and labour.
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 of access and detailed rules for applying 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 management and labour may, in particular:
 - (a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system;
 - (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 of access and detailed rules for applying 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), authorize special arrangements to meet the operational and organizational requirements of small undertakings.

4. In order to ensure that workers can exercise their right to parental leave, Member States and/or management and labour 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 practices.
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 management and labour 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 management and labour 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 management and labour may specify the conditions of access and detailed rules for applying 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 may apply or introduce more favourable provisions than those set out in this agreement.
2. Implementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this agreement. This shall not prejudice the right of Member States and/or management and labour to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances (including the introduction of non-transferability), as long as the minimum requirements provided for in the present agreement are complied with.
3. The present agreement shall not prejudice the right of management and labour to conclude, at the appropriate level including European level, agreements adapting and/or complementing the provisions of this agreement in order to take into account particular circumstances.
4. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with the Council decision within a period of two years from its adoption or shall ensure that management and labour⁽¹⁾ introduce the necessary measures by way of agreement by the end of this period. Member States may, if necessary to take account of particular difficulties or implementation by collective 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 role 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 will give an opinion.
7. The signatory parties shall review the application of this agreement five years after the date of the Council decision if requested by one of the parties to this agreement.

⁽¹⁾ Within the meaning of Article 2 (4) of the Agreement on social policy.

Done at Brussels, 14 December 1995.

Fritz VERZETNITSCH,
President of the ETUC

Antonio Castellano AUYANET,
President of the CEEP

François PERIGOT,
President of the Unice

Emilio GABAGLIO,
Secretary-General

Roger GOURVÈS,
Secretary-General

Zygmunt TYSZKIEWICZ,
Secretary-General

ETUC
Bld Emile Jacqmain 155
B-1210 Brussels

CEEP
Rue de la Charité 15
B-1040 Brussels

UNICE
Rue Joseph II 40
B-1040 Brussels
