

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive concerning the protection at work of pregnant women or women who have recently given birth*COM(90) 406 final — SYN 303**(Submitted by the Commission on 18 September 1990)**(90/C 281/04)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission, drawn up after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a better level of protection of the safety and health of workers;

Whereas this Directive does not justify any reduction in levels of protection already achieved in individual Member States, the Member State being committed, under the Treaty, to encouraging improvements in conditions in this area and to harmonizing conditions while maintaining the improvements made;

Whereas, under the terms of that Article, those directives are 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;

Whereas, pursuant to Council Decision 74/325/EEC ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, the Advisory Committee on Safety, Hygiene and Health Protection at Work is consulted by the Commission on the drafting of proposals in this field;

Whereas 11 Heads of State or Government of the Member States of the European Community, meeting in Strasbourg on 9 December 1989, adopted the Community charter of basic social rights for workers;

Whereas paragraph 19 of this charter lays down that 'every worker must enjoy satisfactory health and safety conditions in his or her working environment' and that 'appropriate measures must be taken with a view to achieving further harmonization of conditions in this area while maintaining the improvements made';

Whereas the Commission, in its action programme for the implementation of the Community charter of basic social rights for workers, has included among its aims the adoption by the Council of a Directive on the protection of pregnant women at work;

Whereas Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽²⁾ provides, in Article 15, that particularly sensitive risk groups, including pregnant women, must be protected against the dangers which specifically affect them;

Whereas women who are pregnant or have recently given birth must be considered a specific risk group in many respects, and measures must be taken with regard to their health and safety;

Whereas the fatigue associated with the condition of pregnant women and those who have recently given birth makes it necessary for them to be granted a period of leave from work, and they should therefore be allowed to stop work for such a period;

⁽¹⁾ OJ No L 185, 9. 7. 1974, p. 15.

⁽²⁾ OJ No L 183, 29. 6. 1989, p. 1.

Whereas the ergonomic difficulties faced at the workplace by women workers in late pregnancy and their particular needs arising from their condition are such that arrangements should be made for them to be removed from such workplace for a suitable period prior to giving birth;

Whereas the delicate condition of women workers immediately after giving birth renders them vulnerable to risks at the workplace and, as preventive measures may be insufficient to guarantee their health and safety in such a case, they should be removed from the workplace for a suitable period after giving birth;

Whereas the purpose of the period of leave from work — namely the protection of the health of pregnant women or women who have recently given birth — would not be achieved unless accompanied by the maintenance of rights, without which, some of these women would be forced to give up most of their period of leave in order not to lose their remuneration; consequently maintenance of employment and income rights should be guaranteed during the period;

Whereas the objective of this Directive is to protect the health of the pregnant worker within her working environment, and it is necessary therefore to take account of the working relations between the potential beneficiary and her employer; whereas, furthermore, it is advisable to leave to the Member States the faculty of subjecting the eligibility regarding the maintenance of the remuneration or the payment of the allowance to the existence of a working relationship since the beginning of the pregnancy or, by extension, to the pregnant workers who, at the beginning of their pregnancy, were registered as unemployed;

Whereas the provisions of this Directive regarding the compulsory rest period before the presumed date of birth (and after the birth) would have no effect if this rest period were not to be accompanied by the maintenance of pay or the payment of an equivalent allowance; whereas, in consequence, the eligibility period referred to above does not apply to the compulsory rest period and it is necessary that the Member States take all the appropriate measures to that effect.

Whereas the risk of dismissal for reasons associated with their condition may have harmful effects on the physical and mental state of women who are pregnant or have recently given birth; whereas, consequently, it is necessary to prohibit the dismissal of pregnant workers or these who have recently given birth for reasons associated with their condition;

Whereas, in order to determine the appropriate measures to protect the health and safety of pregnant workers, the Member States should, in accordance with Article 6 of Council Directive 89/391/EEC, take all measures to ensure that a prior evaluation of the risks particularly affecting these workers is carried out; whereas it is in the interest of all that the results of this evaluation are communicated to the social partners;

Whereas some types of activities and some working conditions may damage the health of pregnant and breastfeeding workers; whereas, consequently, it is necessary to ensure these workers and adequate adjustment of their working conditions and working hours;

Whereas, in addition, nightwork may be harmful to the physical and mental health of pregnant workers undertaking work which has particular risks or significant physical or mental stress and alternative provisions should be made to avoid these risks;

Whereas, in addition, the exposure of pregnant workers to certain physical, chemical or biological agents and processes may impair the health of pregnant and breastfeeding workers; whereas in consequence work practices exposing or likely to expose pregnant and breastfeeding workers to these agents and processes should be banned;

Whereas measures regarding the protection of the health of pregnant workers and/or workers having given birth should not have an unfair effect on the position of women on the labour market; whereas in this perspective, this Directive is to be without prejudice to the provisions of the Council Directives concerning equal treatment for men and women,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

Scope and definition

Article 1

The purpose of this Directive, which is an individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC, is to implement measures to encourage improvements in the safety and health of pregnant workers and women workers who have recently given birth.

Article 2

For the purposes of this Directive 'pregnant workers' and 'women workers who have recently given birth' shall refer to pregnant workers and those who have recently given birth who inform their employer of their condition, either in person or through a medical practitioner or other competent medical authority, in accordance with legal provisions or national practices.

SECTION II

Working conditions*Article 3*

1. Without prejudice to the arrangements laid down in Article 6 of Directive 89/391/EEC, Member States shall take all necessary steps to ensure that pregnant workers are protected against the risks arising particularly at work. To this end, Member States shall ensure that the relevant health and safety authorities carry out an evaluation of the impact on pregnancy of the activities in which these women are engaged, in respect of the nature and degree of exposure to any chemical, physical or biological agent, and also in respect of posture, movements and mental and physical fatigue related to their work. These evaluations shall be communicated to employers and workers so as to increase awareness of possible risks.

2. Member States shall take measures to ensure, when the type of activity of pregnant and breastfeeding workers may endanger their health and safety, that their working conditions and/or working hours are adapted, and, if necessary, allow a change to alternative duties. The maintenance of pay and employment rights is assured in this case.

3. Member States shall take measures to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

(a) before and after childbirth, for a period of at least 16 weeks of which at least eight weeks shall be before the expected date of childbirth;

(b) for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child:

(i) during pregnancy;

(ii) during a specified time beyond the period after childbirth fixed pursuant to subparagraph (a), the length of which shall be determined by the competent authority after consulting the most representative organizations of employers and workers.

(4) The measures referred to in paragraph 3 may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave. Employment rights shall be maintained in this case.

Article 4

1. Member States shall take the necessary measures to ensure that pregnant workers are not engaged in activities during which they are actually or potentially exposed to the agents or processes listed in Annex I. Under no circumstances shall pregnant workers be exposed to potential concentrations in excess of the occupational exposure limits for other agents.

2. The Member States shall take the necessary measures to ensure that breastfeeding workers are not engaged in activities during which they are actually or potentially exposed to the agents and processes listed in Annex II.

3. Where a transfer to another activity is not technically or objectively possible, the workers concerned shall be granted paid leave from work for the period judged necessary for the protection of their health. Employment rights shall be maintained during this period.

SECTION III

Leave arrangements, duration of work and employment rights*Article 5*

1. Member States shall take the necessary measures to ensure that the women referred to in Article 2 are granted an uninterrupted period of at least 14 weeks leave from work on full pay and/or a corresponding allowance, commencing before and ending after delivery. The time at which this period of leave commences shall

be decided by the beneficiary, in accordance with national practice and legislation.

In the eventuality of periods of sickness occurring during this leave from work, these periods shall not be taken into account as part of the 14 weeks. They will be dealt with under the scheme applicable in case of sickness.

2. Member States have the faculty to grant a period of leave longer than 14 weeks, not on full pay, as long as an equivalent standard of protection is assured. In this case, the pay and/or the corresponding allowance for the entire period of rest shall not be less than 80 % of the salary of the beneficiaries, and if need be, within a ceiling defined by national regulation;

3. Member States shall take the necessary measures to ensure that pregnant workers shall be granted an obligatory period of paid leave covering a period of not less than two weeks before the presumed date of delivery.

4. Member States have the faculty to subject the right regarding the payment of the remuneration and/or allowance as defined in paragraph 1 to the condition that the benefiting workers have worked or are registered as unemployed since at least the beginning of the pregnancy with the exclusion, in so far as this faculty is concerned, of the compulsory rest period defined above in paragraph 3.

5. Member States shall take the necessary measures to the effect that pregnant workers benefit from a leave without loss of pay when attending medical examination before birth, in case such examinations can take place during working hours only.

Article 6

1. There shall be no diminution of employment rights during the entire period of leave referred to in Article 5 (1).

2. Member States shall take the necessary measures to prohibit the dismissal of the women referred to in Article 2 for reasons connected with their condition during the period starting at the beginning of their pregnancy until the end of the period of leave as defined above in Article 5 (1).

SECTION IV

Final provisions

Article 7

In case of a dispute connected with the implementation of this Directive, and arising within the period of protection laid down by the latter, Member States shall make sure that the rules of procedure take into account the specific situation of the workers concerned, notably as regard the burden of proof.

Article 8

Strictly technical amendments to the Annexes as a result of technical progress, changes in international regulations or specifications and knowledge with regard to the area covered by this Directive, shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.

Article 9

1. Member States shall comply with this Directive by 31 December 1992 by bringing into force the laws, regulations and administrative provisions necessary, or shall ensure that the social partners bring such provisions into force by joint agreement; the Member States shall not thereby be relieved of the obligation to ensure that the aims of this Directive are achieved. They shall forthwith inform the Commission thereof.

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

2. Member States shall communicate to the Commission the text of the national provisions which they have already adopted or are in the course of adopting in the field covered by this Directive.

Article 10

This Directive is addressed to the Member States.

ANNEX I

LIST OF AGENTS REFERRED TO IN ARTICLE 4 (1)

1. Agents

(a) *Physical agents*

Work causing or liable to cause movements harmful to the embryo or foetus. Work causing or liable to cause an exposure of the body to pressures higher than that of the atmosphere.

(b) *Biological agents*

Biological agents of Groups III and IV within the meaning of Article ... of Directive 90/000/EEC and the following biological agents, except when women are proved to be adequately protected against such agents by immunization:

- toxoplasma,
- rubella virus,
- chicken pox virus,
- listeria,
- neisseria gonorrhoea,
- cytomegalovirus,
- treponema pallidum,
- myxovirus and paramyxovirus,
- enterovirus (Echo-Coxsackie),
- Epstein-Barr-virus.

(c) *Chemical agents:*

The following chemical agents:

- substances labelled R₄₀, R₄₅, R₄₆ and R₄₇ under Directive 67/548/EEC (labelling of chemical substances),
- chemical agents in Annex I to Directive 90/394/EEC, on the protection of workers from the risks related to exposure to carcinogens at work,
- thiophosphoric esters,
- mercury,
- nitro derivatives and chlorite derivatives of benzene hydrocarbons,
- asbestos,
- antimitotic drugs.

2. Processes

Pregnant women must not be exposed to the industrial processes listed in Annex I to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work.

ANNEX II

LIST OF AGENTS AND PROCESSES REFERRED TO IN ARTICLE 4 (2) (nursing women)

1. Agents

(a) *Physical agents:*

- work in a hyperbaric atmosphere (pressurized enclosures and underwater diving),
- underground work (mines).

(b) *Biological agents:*

Biological agents of Groups III and IV within the meaning of Article ... of Directive 90/.../EEC and the following biological agents except when women are proved to be adequately protected against such agents by immunization:

- myxovirus and paramyxovirus.
- enterovirus (Echo-Coxsackie).

(c) *Chemical agents:*

The following chemical agents:

- substances labelled R₄₀ or R₄₅ under Directive 67/548/EEC (labelling of chemical substances),
- the chemical agents listed in Annex I to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work,
- lead and/or compounds,
- mercury and/or mercury compounds,
- antimitotic drugs,
- solvents containing chlorine,
- carbon disulphide,
- benzene and/or benzene derivatives,
- organochlorine pesticides,
- PCB,
- chemical agents of known (French: 'formelle') and dangerous percutaneous absorption.

2. Processes

Nursing women must not be exposed to the industrial processes listed in Annex I to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work.