



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

**ON THE IMPLEMENTATION OF COUNCIL DIRECTIVE 92/85/EEC OF 19
OCTOBER 1992 ON THE INTRODUCTION OF MEASURES TO
ENCOURAGE IMPROVEMENTS IN THE HEALTH AND SAFETY AT
WORK OF PREGNANT WORKERS AND WORKERS WHO HAVE
RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING**

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1. EXECUTIVE SUMMARY

Directive 92/85/EEC was adopted on 19 October 1992 and had to be implemented in the Member States by 19th October 1994. It identifies pregnant workers and workers who have recently given birth or are breastfeeding as a group of workers who face specific risks in the work place. For this reason Community-wide provisions covering the health and safety at work of this group, as well as certain employment rights connected to pregnancy, were adopted.

The Directive applies to all pregnant workers, and the Member States have ensured that the public and private sectors are covered, as well as women on both indefinite and fixed term contracts. The definitions in the Directive of breastfeeding worker and worker who has recently given birth refer to national law and therefore vary between the Member States, as does the requirement to formally notify the employer. These differences may lead to differing levels of protection for breastfeeding workers and workers who have recently given birth, which may be a matter of concern.

The Directive provides that an assessment must be made of the work place and the job of pregnant or breastfeeding women and women who have recently given birth. Should the assessment reveal a risk to health and safety, all reasonable steps must be taken to ensure that the risk is avoided. All the Member States had some legal provisions on the health and safety of pregnant workers, and the implementation of the Directive has, on the whole, supplemented the existing provisions. However, it has given clear legal status to aspects of health and safety protection, such as the right to paid leave if it is impossible to alter a woman's job or working conditions so as to avoid any identified risk to health and safety, and the right to paid time off for ante natal examinations.

Pregnant or breastfeeding women, or those who have recently given birth may not be obliged to work nights if doing so poses a risk to health and safety. Most Member States now provide for women covered by the Directive to have the possibility to transfer to day time work if a risk is identified in working at night.

The Directive prohibits the dismissal of a pregnant woman or a woman on maternity leave, unless it is for reasons unconnected with the pregnancy. Although such dismissals were already unlawful in most Member States, the requirement that the employer provide written reasons for any dismissal of a woman during pregnancy or maternity leave strengthens the protection afforded to pregnant women and women on maternity leave.

The minimum length of maternity leave permitted under the Directive is 14 weeks. Maternity leave, not including any sort of paternity or parental leave, varies from 14 weeks in the UK to 28 weeks in Denmark. The combination of lengthy compulsory maternity leave with unpaid leave may need to be re-examined. The amount women on maternity leave are paid, and the period for which they are paid, also varies widely. In Austria and the Netherlands women are entitled to 100% of their previous wage throughout their maternity leave, in the UK, Greece and Belgium a percentage of the woman's previous wage is paid for part of the maternity leave. In other Member States varying amounts of social security benefits are paid during maternity leave. All the Member States subject entitlement to remuneration during maternity leave to

conditions linked to length of service, residence or insurance. The effect of these conditions on the ability of women to enjoy paid maternity leave needs further study, as does their compatibility with provisions on non-discrimination and the free movement of workers. This study of the implementation of the Directive has revealed other difficulties which may limit the protection afforded to female workers who come within its scope, and the Commission will be reflecting on how to make progress in these areas.

The Directive has, in general, been well implemented by the Member States. Infringement procedures have been launched against a number of Member States for the incorrect implementation of certain provisions of the Directive.

2. INTRODUCTION

Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding was adopted on 19th October 1992 under Article 118a of the EEC Treaty. It was the tenth individual Directive to be adopted under the framework Directive 89/391/EEC on health and safety at work. Pregnant workers, workers who have recently given birth or workers who are breastfeeding are a group who face specific risks in the work place and therefore need specific health and safety protection, as set out in the Directive.

Before the entry into force of this Directive, the rights of pregnant workers were covered by national law. Their right to non-discrimination had been dealt with under other Community equality legislation (in particular Article 119 EEC on equal pay and Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational and promotion, and working conditions) and a large body of case law of the European Court of Justice had built up. In this context, mention should be made of a judgment given by the European Court of Justice, Boyle v Equal Opportunities Commission,¹ which concerns the employment rights of women on maternity leave, and is the first judgment of the Court to analyse the provisions of Directive 92/85/EEC. The main points of the judgment are given later in this report.

In accordance with Article 14(1) of the Directive, it had to be implemented in the Member States by 19 October 1994. Article 14(3) provides that the Member States must communicate to the Commission the provisions of national law which they have adopted in the field governed by the Directive. The Directive is implemented in the Member States by constitutional provisions, laws, regulations and decrees, as well as collective agreements and detailed guidelines from health and safety bodies. Infringement proceedings under Article 169 EC Treaty were initiated against Portugal, Italy, France, Germany, Belgium, Greece and Luxembourg in 1995 for non-communication of national implementing measures. All these proceedings were resolved except for those against Luxembourg: Case No C-409/97 Commission v Luxembourg was referred to the European Court of Justice in December 1997. Luxembourg passed a law on 7 July 1998 amending its 1975 law on the protection of pregnant women at work so as to give effect to the Directive and the new law was notified to the European Union in September 1998. As a result the infringement proceedings against Luxembourg have been discontinued, although the Opinion of Advocate-General Saggio, given on 2 October 1998 found that Luxembourg had failed in its obligations under Article 169 of the Treaty in not adopting national measures implementing the Directive within the time scale laid down.

The Member States were also required, under the second paragraph of Article 14(4) of the Directive, to submit to the Commission within 4 years of the adoption of the Directive a report on its practical implementation, indicating the views of both sides of industry. In September 1996 the Commission sent to the Member States a detailed

¹ Case C-411/96, judgment 27 October 1998.

questionnaire on the implementation of the Directive. The replies of the Member States to the questionnaire should be considered as the reports required under Article 14(4) of the Directive. However, it should be noted that the views of the social partners were specifically noted only in the reports from Austria, Ireland, Portugal and the Netherlands.

This Report is based upon the implementing measures notified to the Commission by the Member States and their replies, sent in 1996 and 1997, to the questionnaire. However, the Member States gave differing degrees of detail in their responses to the questionnaire and this is to some extent reflected in the report. Furthermore, it should be noted that the Greek and Dutch authorities did not reply to the questionnaire and, in the case of the Netherlands, did not send national legislation, making it difficult to assess their implementation of the Directive. Because of the infringement proceedings against Luxembourg the questionnaire referred to above was not sent to the Luxembourg authorities. As a result the information on Luxembourg contained in this report is derived solely from the legislation and its recent amendments, as sent to the Commission.

This Report from the Commission sets out the implementation of the Directive in the Member States, including Austria, Sweden and Finland which acceded to the European Union after the adoption of the Directive. In accordance with Article 14(5) this Report is submitted by the Commission to the European Parliament, the Council and the Economic and Social Committee.

Annexed to this Report are Directive 92/85/EEC, the questionnaire sent by the Commission to the Member States and a list of the national implementing measures.

3. PERSONAL SCOPE

In summary, Article 2 of the Directive defines pregnant workers as those workers who inform their employer of their condition, in accordance with national legislation or practice. Workers who have recently given birth and workers who are breastfeeding are defined as those workers who have recently given birth or are breastfeeding, within the meaning of national legislation or practice and who inform their employer of their condition, in accordance with national legislation or practice.

Most of the Member States do not define pregnant workers, but a number define workers who have recently given birth or workers who are breastfeeding. An exception to this is Luxembourg, which specifically defines a pregnant woman as a woman who is pregnant and has informed her employer by way of a medical certificate sent by registered post, and is affiliated to a social security scheme in Luxembourg. To require affiliation to a social security scheme to come within the personal scope of the Directive is contrary to Article 2(a), which does not allow any conditions to be imposed. Such a condition would be allowed only in connection with payment during health and safety or maternity leave under Article 11(4). The Commission has decided to launch further infringement proceedings against Luxembourg for this breach of the Directive. Greece defines workers who have recently given birth as those who have given birth in the last two months, and breastfeeding worker covers women who breastfeed their baby up to the age of one year. Similarly, in Ireland, recently given birth means within the last 14 weeks and

breastfeeding covers 6 months from the date of birth. In Portugal recently given birth means within 98 days, in Sweden the period is 14 weeks and in the UK it is 6 months. In Spain, women are assumed to breastfeed for 9 months.

Most Member States require the worker to inform her employer of her pregnancy, or of the fact that she has recently given birth or is breastfeeding and protection does not begin until this is done. In the UK, although there is no general requirement to inform the employer, unless he has been informed he is not required to undertake risk assessments and in Finland, Belgium and France, whilst there is no general legal requirement to inform the employer, entitlement to maternity rights and protection is dependent upon the employer being informed. In Spain a worker whose employer is aware of her pregnancy, even if they have not been officially informed of it, comes within the scope of the maternity legislation. In Ireland and in Portugal, the employer must be informed in writing and can demand a medical certificate confirming the woman's condition. In Luxembourg the woman must send her employer by registered post a medical certificate that she is pregnant and/or breastfeeding. In Austria the Labour Inspectorate and the employer must be informed if a worker is pregnant and the employer can demand a medical certificate.

All the Member States cover private and public sector workers (although the extent of their rights may vary considerably) and workers on fixed-term and temporary contracts. From the information supplied by the Belgian authorities, workers who do not have a contract of employment but who provide services under another person's authority are also covered.

However, in Austria, trainee nurses are not covered by the national implementation and student dentists and probationary teachers are only partially covered. In Greece, the armed forces, the police and domestic servants are not covered by the national implementation of the Directive. In Gibraltar, the relevant Regulations only cover women whose expected date of childbirth is after 5th May 1996.

The Directive applies to pregnant workers, workers who have recently given birth and workers who are breastfeeding in all fields and occupations, with no exceptions. The exclusion of certain groups of women from the scope of the Directive is therefore contrary to Community law and infringement proceedings will be commenced against Austria and Greece in this regard. Similarly, the late transposition of the Directive's provisions into the law of Gibraltar will be the subject of infringement proceedings.

4. ASSESSMENT OF RISK

In accordance with Article 3(1) of the Directive, the Commission, in conjunction with the Member States and assisted by the Advisory Committee on Safety, Hygiene and Health Protection at Work is in the process of drawing up guidelines on the assessment of risks to the workers covered by the Directive and these should be adopted by the beginning of 1999.

Article 4 requires that the employer complete an assessment of the risk of exposure to pregnant workers, workers who are breastfeeding or workers who have recently given

birth from the non-exhaustive list of agents, processes and working conditions in Annex 1.

All the Member States have existing requirements under their general health and safety laws for assessment of risk to workers and most have amended their legislation to take specific account of pregnant workers and the non-exhaustive list of agents, processes and working conditions in Annex 1 of the Directive. The Luxembourg Law of 7 July 1998 prohibits assigning pregnant women or women who have given birth in the last 3 months or women who are breastfeeding to certain tasks where they will be exposed to certain dangerous working conditions or agents and a non-exhaustive list is given. In Ireland, specific regulations on the health and safety at work of pregnant workers appear to consider the list in Annex 1 as exhaustive, which is contrary to the Directive. The Gibraltar regulations do not appear to provide any obligation for the employer to assess risks for pregnant or breastfeeding workers, a clear contravention of Article 4. The Commission will be launching infringement proceedings against the UK and Ireland for these breaches of Article 4.

Article 4(2) gives workers covered by the Directive the right to be informed of the results of the assessment.

In Denmark and Portugal the results of the risk assessment must be given to the employees in writing. France, Austria, Greece, Sweden, Denmark, the UK and Germany require employers to inform workers of the result of the risk assessment. In Luxembourg the employer must provide a copy of the list of tasks to which pregnant or breastfeeding women or those who have recently given birth may not be assigned. In Spain the Labour and Social Security Inspectorate is responsible for ensuring that workers and/or their representatives receive information on the risk assessment carried out by the employer and in Finland occupational health experts must inform the employer and employee of any risks discovered during their assessment. In Ireland the employer and the National Authority for Occupational Safety and Health are responsible for ensuring that employees covered by the Directive and/or their representatives, are informed of the results of the risk assessment.

5. ACTION FURTHER TO THE ASSESSMENT

Article 5 of the Directive requires the employer to adjust the working conditions or working hours of the worker in order to avoid any identified risk. If this is not possible, then she must be moved to another job and if that is not possible she must be granted leave.

Most Member States follow Article 5 fairly closely, requiring the employer to take reasonable steps to ensure the worker avoids any risk, by first adjusting working conditions or working hours or shifts, with re-assignment or leave as final options. Spanish legislation does not provide for a worker to be granted leave if that is the only way for her to avoid risk to herself or the embryo. Similarly, French law does not specifically provide for pregnant workers to take leave for health and safety reasons. This is incompatible with the Directive and infringement proceedings have been launched against Spain and France.

Article 6 of the Directive refers to Annex II of the Directive which contains a non-exhaustive list of agents and working conditions to which exposure by pregnant or breastfeeding workers is prohibited, if the assessment carried out by the employer reveals a risk of exposure to any of the listed agents or working conditions which would jeopardise safety or health. Member States appear to have transposed the non-exhaustive list of prohibited agents and working conditions by amending existing requirements under national health and safety law to ensure the workers protected by the Directive are not put at risk.

6. NIGHTWORK

In 1991 the European Court of Justice ruled in the Stoeckel² case that a provision which banned women from performing nightwork, when no such ban existed for men, was contrary to Article 5 of Directive 76/207/EEC. In 1994 the Commission initiated infringement proceedings against Belgium, Greece, Italy, Portugal and France in respect of bans on night work for women. These proceedings culminated in the judgments of the Court of Justice in 1997 in Commission v French Republic³ and Commission v Italy⁴.

Directive 92/85/EEC is careful not to depart from the fundamental principle of equal treatment, which allows women to work on equal terms as men. However, pregnant workers, those who have recently given birth or those who are breastfeeding are a category of workers in need of special treatment, so Article 7 of the Directive provides that if it is necessary in order to protect the health of the woman or the baby, and the employer is entitled to demand a medical certificate to that effect, they cannot be forced to work nights. If nightwork does pose a risk to health and safety, the woman can be moved to daywork and where that is not possible or cannot be reasonably required, the woman should be granted leave or an extension of maternity leave. Moving a woman from night shifts could also be a necessary element in avoiding identified risks under Articles 5 and 6 of the Directive.

In Belgium women are not required to work nights for the 8 weeks before the date of birth, nor for 4 weeks after the end of maternity leave, upon presentation of a medical certificate. In Sweden a pregnant or breastfeeding worker must present a medical certificate to her employer proving that working nights would be bad for her health. Similarly, in Finland, Greece, Ireland, Portugal, Spain, the Netherlands, the UK and in France the woman must produce a medical certificate. In Denmark and in Greece no certificate is necessary, but the woman must not work nights if this causes any risk to her or to the pregnancy.

Contrary to the wording of Article 7, some Member States go far further than required under the Directive and ban pregnant women and women who have recently given birth from working at night. The Commission considers this to be contrary to the Directive and has commenced infringement proceedings on this point.

² Case C-345/89, ECR I-4047.

³ Case C-197/96.

⁴ Case C-207/96.

In Germany, the general rule is that pregnant or breastfeeding women may not work at night. There are exceptions for women working in certain categories such as hotel and restaurant workers, those in the entertainment business and dairy workers, who may work during the first 4 months of pregnancy or while they are breastfeeding. The Länder supervisory authority can authorise further exceptions. This system of a general ban with exceptions related to certain occupations rather than the risk to the woman's health and safety which might be posed by a particular job is not in accordance with Article 7 and the Commission is therefore considering commencing infringement proceedings against Germany on this point.

In Austria, nightwork is banned for pregnant and breastfeeding women, although the Labour Inspectorate can authorise individual exceptions up to 11pm. under certain conditions. In Italy, in the manufacturing sector there is a general ban on pregnant women working at night, but in other sectors the woman must produce a medical certificate to show that she should not be forced to work nights. In Luxembourg there is a complete prohibition on pregnant women working at night, as well as for women who breastfeed for longer than 12 weeks. The complete ban on nightwork for pregnant or breastfeeding women in these countries is considered to be contrary to the general principle of equal treatment as expressed in Directive 76/207/EEC, is contrary to the judgment of the European Court of Justice in case C-197/96 and also goes much further than is required under Directive 92/85/EEC.

In Gibraltar the legislation is silent on the question of workers covered by the Directive and nightwork. There appears to be no specific provision allowing a woman not to work nights if it would create a risk to her health or that of the baby. Infringement proceedings will be commenced against Austria, Italy, Luxembourg and the UK for the reasons set out above.

7. MATERNITY LEAVE

Article 8 of the Directive provides that the workers covered by it must be entitled to a continuous period of at least 14 weeks maternity leave allocated before or after confinement, in accordance with national practice. This period must include at least two weeks of compulsory maternity leave allocated before or after confinement, in accordance with national practice.

In Austria, there is an absolute ban on working for 8 weeks before the birth and 8 weeks afterwards. In Belgium, maternity leave lasts for a maximum of 15 weeks, made up of a compulsory period consisting of one week before the birth and 8 weeks afterwards. The remaining 6 weeks can be taken from the 49th day before the birth or it can be taken after the 8 weeks after the birth, or it can be not taken at all (although a woman cannot be forced to give it up). In Denmark, maternity leave lasts for 28 weeks, made up of four weeks before the birth, a compulsory two weeks after the birth followed by a further 22 weeks. Finnish law lays down the period for which maternity allowance is payable, rather than specifying the length of maternity leave. Maternity allowance is payable from, at the latest, 30 days before the birth and continues for 75 days afterwards. There is no compulsory maternity leave, although for two weeks after the birth a woman can only do very light work, supported by a medical certificate that the work is risk free. French maternity leave starts 6 weeks

before the birth and continues for 10 weeks after it. The woman is legally not able to work for 8 weeks, of which at least 6 weeks must be after the birth.

In Germany work is prohibited for 6 weeks before the birth, although the woman can request to work during that period. She may not work for 8 weeks after the birth. Greek maternity leave is for 16 weeks, 8 weeks before the birth and 8 weeks afterwards, all of which is compulsory. In Ireland, women can take up to 14 weeks' maternity leave, of which 4 weeks are compulsory before the birth and 4 weeks are compulsory after the birth. At the end of the 14 weeks, women have the right to take a further 4 weeks immediately. Italy bans women from working in the two months preceding the birth and in the three months following it. If the woman does heavy work she may not work for three months before the birth. In Luxembourg a pregnant woman must stop work 8 weeks before the birth and is not allowed to work in the 8 weeks that follow the birth. This compulsory post-natal period is extended to 12 weeks for women who are breastfeeding. The Netherlands grants women 16 weeks maternity leave, of which 4 weeks before the birth and 8 weeks following the birth are compulsory. Portugal provides for 98 days maternity leave, 14 days of which are compulsory. 60 of the days must be taken after the birth, the remaining 30 can be taken either before or after the birth.

Spanish law provides for 16 weeks of maternity leave, which can be taken before or after the birth as the woman decides, but at least 6 weeks must be taken after the birth, during which time the woman may not work. In Sweden women are entitled to 7 weeks off work before the birth and 7 weeks after the birth. They are also entitled to leave if they are breastfeeding the baby. There is no period of compulsory maternity leave. In the UK maternity leave is 14 weeks of which 2 weeks must be taken, compulsorily, after the birth. Women working in factories must take 4 weeks after the birth. Women who have worked for the same employer for two years are entitled, after the 14 weeks maternity leave, to maternity absence up to the end of the 28th week following the birth. In Gibraltar maternity leave is for 14 weeks, of which the 2 weeks following the birth are compulsory.

Although the generous maternity allowances in Finland and Sweden mean that nearly all women are on leave following the birth of a child, Directives must be implemented by legislative measures rather than practice or administrative action⁵. Therefore the lack of a compulsory period of at least two weeks maternity leave in Sweden and Finland will be the subject of infringement proceedings.

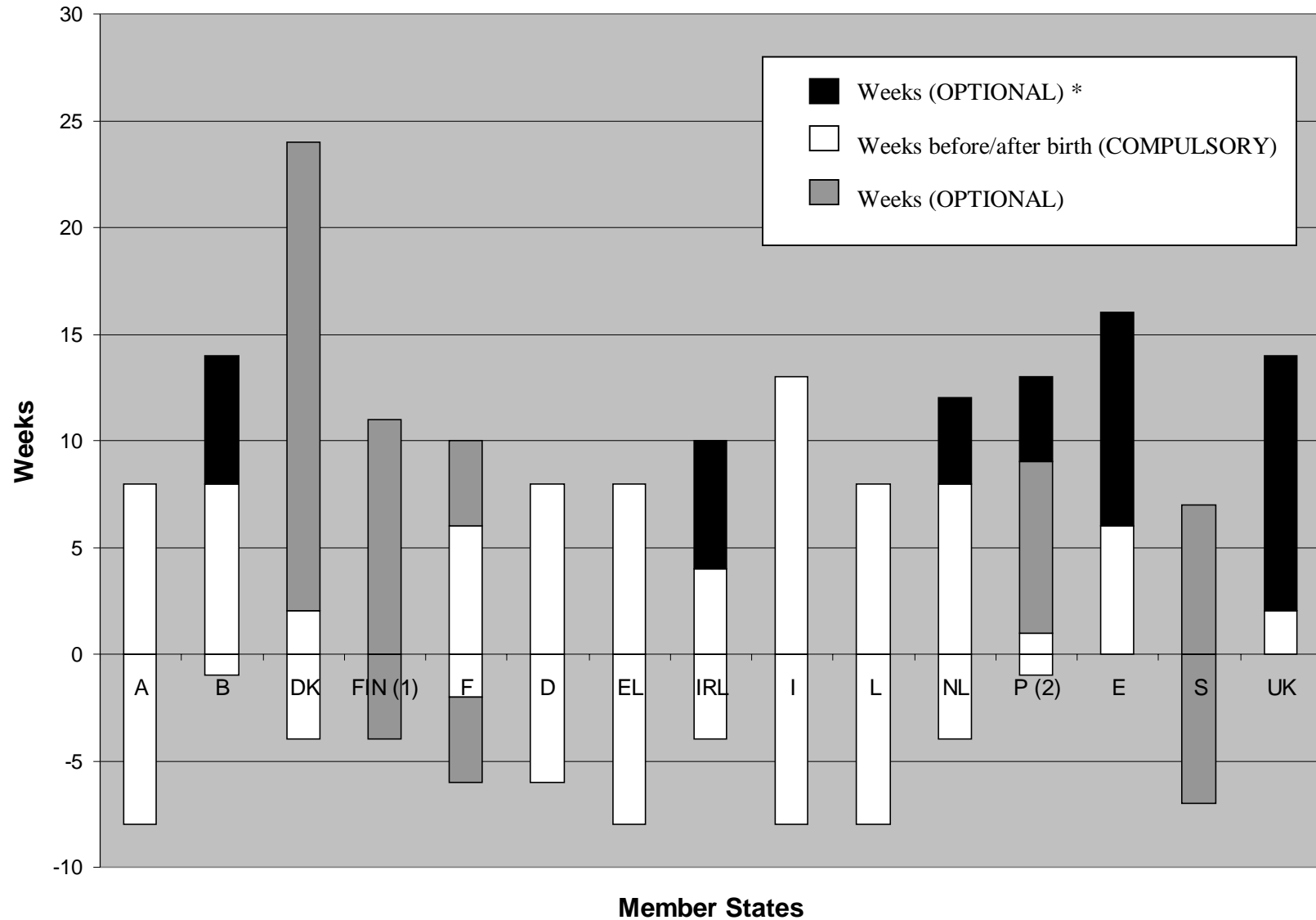
⁵ Commission v Belgium [1980] ECR 1473.

MATERNITY LEAVE

(*) These periods can be taken before or after the compulsory maternity pay.

(1) This is the maximum period for which maternity allowance is payable, rather than statutory maternity leave.

(2) Portuguese law does not specify whether the compulsory 2 week period must be taken before or after the birth. Of the remaining maternity leave, 60 days must be taken after the birth and 30 days can be taken before or after the birth.



8. ANTE-NATAL EXAMINATIONS

Article 9 Directive 92/85/EEC gives pregnant workers the right to paid time off, in accordance with national legislation and/or practice for ante-natal examinations, if such examinations cannot take place outside of working hours.

This obligation has been correctly transposed by the Member States. A number of Member States require the woman to produce a certificate to show that she cannot attend for examinations other than during working hours, but this is compatible with Article 9. In Sweden the right to paid time off for ante-natal examinations appears to be contained in collective agreements rather than in legislation.

9. PROHIBITION OF DISMISSAL

Article 10 of the Directive provides that women who come within its provisions must be protected from dismissal from the beginning of their pregnancy to the end of their maternity leave. The only exception to this provision is if the dismissal is for reasons unconnected to the pregnancy, which are permitted under national law and where the appropriate authority has given its consent. If a worker protected by the Directive is dismissed during period, she has the right to be given the reason in writing.

The judgments of the European Court of Justice in cases concerning refusal to appoint pregnant women and their dismissal are reflected in the Directive and should be briefly mentioned. As long ago as 1990 the Court held that to refuse to appoint a woman because she was pregnant was direct discrimination on grounds of sex, contrary to Directive 76/207/EEC⁶. In its judgment in Webb v EMO Air Cargo (UK) Ltd⁷ the Court held that it was contrary to Directive 76/207/EEC to dismiss Mrs Webb, hired to replace a woman away from work on maternity leave, when she discovered that she too was pregnant. In the Larsson case⁸ the Court was faced with the dismissal of a woman who was dismissed after a lengthy period of sick leave due to a pregnancy related condition. The Court held that as the dismissal took place after the end of the woman's period of maternity leave, Directive 76/207/EEC did not apply. In 1998 the UK's House of Lords referred to the Court, under Article 177 EEC, a very similar case; Brown v Rentokil Ltd⁹. Mrs Brown was absent from work for over 6 months during pregnancy due to a pregnancy related illness. The contracts of employment of all Rentokil employees, men and women, contained a clause that sickness absence of 6 months justified dismissal. Accordingly, Mrs Brown was dismissed. The Court held, in an explicit reversal of the Larsson judgment, that it was contrary to Directive 76/207/EEC to dismiss a woman for pregnancy-related illness during her pregnancy. The facts of both the Larsson and Brown cases arose before Directive 92/85/EEC came into force.

In Austria and in Germany, the worker is protected against dismissal from the time she informs her employer of her pregnancy until 4 months after the birth. In Belgium protection also runs from the time the employer knows of the pregnancy and

⁶ Dekker v Stichting Vormingscentrum voor Jong Volwassenen [1990] ECR I-3941.

⁷ Case C-32/93 [1994] ECR I-3567.

⁸ Larsson v Fotex Supermarked [1997] ECR I-2757.

⁹ Case C-394/96, judgment 30 June 1998, [1998] ECR I-4185.

continues until one month after the end of maternity leave. Protection from dismissal in France runs from the beginning of the pregnancy to one month after the end of maternity leave, but is dependant upon the employer having been informed of the pregnancy. Denmark and Sweden prohibit dismissal for reasons connected to pregnancy, childbirth, adoption or the requesting of maternity leave.

Similarly, in Finland dismissals for pregnancy or during maternity or parental leave are null and void. In Greece and in Italy, dismissal is illegal during pregnancy and for one year afterwards. Irish law provides that any dismissal during pregnancy, health and safety leave, maternity leave or leave for ante-natal examinations shall be void. In Luxembourg it is prohibited to dismiss a woman while she is pregnant or during the 12 weeks that follow the birth. In the Netherlands, women are protected from dismissal during pregnancy and until 6 weeks after the end of the maternity period. In Portugal protection from dismissal subsists throughout pregnancy, maternity leave and any period the woman is breastfeeding. In Spain, dismissal for pregnancy-related reasons would be considered discriminatory under the Constitution and would thus be null and void. Whilst it is possible that existing national law can be considered to correctly implement the provisions of a later Directive, there must be some doubt in this case whether the general protection afforded by the Constitution is as effective as a specific provision on dismissal during pregnancy and maternity leave would be.

If a woman is dismissed during pregnancy or maternity leave, most of the Member States require the employer to prove that the dismissal was for an objective reason unconnected to pregnancy. In Germany the Länder supervisory authority must declare the dismissal lawful, as must the Equal Employment Commission in Portugal. In Greece the Labour Inspectorate of the Prefecture must be informed of any dismissal during pregnancy or the year that follows. In Luxembourg the employer does not appear to be under a specific duty to prove that the dismissal was for reasons unconnected with the pregnancy, although there is a special procedure which allows the dismissed woman to request the President of the Labour Court to look at her case urgently. In the other Member States there is no official authority which must authorise dismissals in these circumstances; if the woman considers that she has been unfairly dismissed she must take her case to the Labour Courts. It should be noted that Directive 97/80/EC on the burden of proof in cases of discrimination based on sex will apply to those provisions of Directive 92/85/EEC where the principle non-discrimination between women and men is to be applied, once it enters into force (1.1.2001 for the 14 Member States, 22.7.2001 for the UK).

10. EMPLOYMENT RIGHTS

10.1. A. During leave on health and safety grounds

Article 11(1) of the Directive provides for rights under the employment contract including the maintenance of a payment whilst a woman is granted leave from work because of risks to her health or that of the baby, or when she is granted leave from night work. In these cases, employment rights must be maintained according to national legislation and/or practice, and the worker has the right to the maintenance of a payment or to be paid an adequate allowance. The preamble to the Directive and the minutes statement of the Commission and Council make it clear that the reference to sick pay should in no way be interpreted as suggesting an analogy between pregnancy and illness. Article 11(4) of the Directive provides that Member States may make entitlement to pay or an adequate allowance conditional upon the worker fulfilling the conditions of eligibility for such benefits laid down by national law. The maximum length of previous employment that can be required is 12 months before the presumed date of birth.

In Austria a worker on such leave is entitled to be paid an average of her remuneration over the previous 13 weeks. Her rights under her employment contract are maintained and she is entitled to any special payments such as bonuses. However, if the reason the woman is granted leave from work is because the Labour Inspectorate doctor issued a certificate stating that it was necessary for her health, then the woman is entitled to a social insurance benefit, maternity allowance. This allowance is not payable to those whose previous earnings were low; in respect of those women the employer must continue to pay remuneration. The Austrian Trade Union Confederation says that this leads to employers pressurising women to apply for a medical certificate.

In Belgium, a woman granted leave from work for health and safety reasons is entitled to 60% of her pay, up to a maximum as long as she has worked for 120 days in the 6 months preceding the granting of the payment. In Denmark when a woman is granted leave from work her employment contract is maintained, and she is entitled to a "daily cash benefit" or half pay, whichever is greater. Entitlement to daily cash benefit is dependent upon her having worked for the previous 13 weeks, or being entitled to unemployment benefit. In Finland, periods of leave from work for health risk reasons count for annual leave purposes, but the woman is not entitled to her pay. Instead she is entitled to a special maternity allowance which is the same amount as incapacity benefit, and amounts to about 60% of pay. The woman must be insured to be eligible for benefit. In France, a worker granted leave from her normal work is entitled to 90% of her pay for the first 30 days and two thirds of her pay for the next 30 days.

In Germany, a woman's employment contract continues throughout leave from work for health reasons and throughout maternity leave. During leave from work the woman is entitled to be paid the average of her salary during the last 13 weeks. In Greece, a woman granted leave from work because of health and safety concerns has the rights to half pay from her employer for the first 25 days of absence and thereafter she has the same rights to pay as she has during maternity leave. Under the Irish

system, whilst she is on "health and safety" leave a woman's rights under her employment contract subsist and she must be paid in full by the employer for the first 21 days. After that, she may be entitled to the standard rate of Health and Safety benefit if she has paid social insurance contributions in at least 39 weeks in the 12 months before the date the baby is due and her average weekly earnings for the previous tax year were over £170. If a woman's earnings were under that amount she is entitled to a lower rate of benefit.

A woman in Italy granted leave from work for health and safety reasons is entitled to an allowance equivalent to 80% of her pay, 100% if she works in the public sector. In Luxembourg a woman granted leave from work is entitled to maternity allowance at the same level as sickness benefit as long as she is insured. The Netherlands provide that an insured woman granted leave from work is entitled to an allowance equivalent to 100% of her pay, which is higher than she would receive if she was sick (only 70% of pay) . In Portugal maternity benefit equivalent to 65% of the person's reference wage (determined by the formula $R/180$, where R is the woman's total gross pay over the previous 6 months) is payable to workers granted leave from work. Public sector employees are entitled to full pay for any period of leave.

As mentioned above (page 5), Spain does not provide the possibility for a woman to be granted leave from work due to health and safety reasons. It follows that there are no provisions in Spanish law on payment during such absences from work. In Sweden, an insured woman (basically resident in Sweden) granted leave from work for health and safety reasons is entitled to a pregnancy cash benefit which is paid at 75% of the woman's wage. In the UK a woman granted leave from work for health and safety reasons is entitled to continue to receive her full pay, as long as she has not unreasonably refused alternative employment. The position is the same in Gibraltar.

10.2. B. During maternity leave

Article 11(2) of the Directive makes similar provision for employment rights during maternity leave as exist during leave for health and safety reasons, including the possibility of imposing qualifying conditions to entitlement to pay or adequate allowance. An adequate allowance is defined as being at least the amount the worker would be entitled to if she was away from work on sick leave.

In Austria during maternity leave insured workers are entitled to maternity allowance paid at the rate of 100% of the average net remuneration over the previous 3 months. This is higher than the allowance paid for sick pay. Periods in receipt of maternity allowance count for pension and insurance purposes. Those who earn below the threshold for paying insurance are not entitled to maternity allowance and their employer must continue to pay during the 16 weeks maternity leave. Civil servants are entitled to full pay during maternity leave.

In Belgium a woman on maternity leave is entitled to an allowance equivalent to 82% of her net salary for the first 30 days, followed by 75% of her salary for the remainder of the 15 weeks maternity leave. This is higher, for the first 30 days, than the level of sick pay, but thereafter the rates are the same. The conditions of entitlement are the same as those for payment of benefit during leave for health and safety reasons. Whilst she is on maternity pay her contract of employment is suspended and any

period during which she is entitled to maternity allowance counts for pension purposes.

In Denmark the daily cash benefit paid during leave from work on health and safety grounds is also paid during maternity leave, as long as the woman has worked for the previous 13 weeks. The amount varies depending on the hourly income the woman would have been entitled to on sick leave, up to a maximum of DK 70 per hour. The Salaried Employees Act covers non-manual workers who work at least 15 hours a week in specific fields such as the provision of technical assistance, shop assistants or supervisors. Women coming within the scope of the Act can choose to receive half pay or benefit, whichever is higher.

In Finland women on maternity leave are entitled to maternity allowance, which is paid at the same rate as the allowance for incapacity for work. Entitlement to maternity allowance is subject to the woman having resided in Finland for at least 180 days before the birth. The employment contract continues and pension rights accrue, during maternity and parental leave. Civil servants are paid during maternity leave.

In France maternity leave counts for seniority and pension purposes. During maternity leave a woman is entitled to 84% of her salary up to a prescribed maximum. In order to qualify the woman must have worked for at least 200 hours in the three months preceding the birth and must have been registered for social security purposes at least 10 months before the birth. Civil servants continue to be paid in full during maternity leave.

In Germany if a woman has been a member of the statutory health insurance scheme when her maternity leave starts and was a member for at least 12 weeks in the period running from the beginning of the 10th month before the date of birth to the end of the 4th month before the birth, she is entitled to maternity allowance paid by the health insurance scheme up to a maximum of 25DM per day, plus the difference between the maternity allowance and her net pay. If she has been in paid employment during the same period she is entitled to the same benefit. For women who are not members of the statutory health insurance scheme, if they have been in paid employment from at least the beginning of the 10th month before the birth to the end of the 4th month before the birth they are entitled to maternity allowance paid by the Federal State limited to a maximum total of DM400 during the maternity leave, plus the difference between maternity allowance and the average daily net salary. The employment contract continues during maternity leave.

Greek law gives women the right to half pay for the first 25 days of maternity leave. After that period, women in the public sector are entitled to 100% pay from their employer and women in the private sector are entitled to the same amount, partly from their employers and partly from social security schemes. The Greek legislation provides that the specific arrangements for implementing Article 11(2)(b) and (3) of the Directive are left to the relevant insurance bodies and no information on these specific arrangements has been provided. A Member State must implement its obligations under the Directive by legal means rather than by administrative measures which can be changed. As a result the Commission has decided to launch infringement proceedings against Greece on this point.

In Ireland, entitlement to maternity benefit of up to 70% of gross pay, with a minimum payment of £IR 83.70 and a maximum of £IR162.80, is dependent upon the woman satisfying the same conditions as for health and safety benefit set out above. This is higher than benefit for sickness. All employment rights except remuneration continue during maternity leave.

In Italy payment during maternity leave is the same as that during leave from work for health and safety reasons, set out above. Time on maternity leave counts for seniority purposes and towards holidays and pensions.

In the Netherlands, insured women are entitled to payment equivalent to 100% of their wages, which is more than the 70% of wages for sick leave. There is no qualifying period – women are insured from the first day of work. In Luxembourg insured women are entitled to maternity allowance at the rate of sickness benefit during maternity leave.

In Portugal a woman on maternity leave is considered to be in work. She receives 65% of her reference wage (see above) provided she has worked for at least 6 months. As for the maintenance of rights under the employment contract, apart from the fact that is unpaid, periods of maternity leave count as actual performance of service. In Spain pay during maternity leave is at the same rate as temporary disability benefit. The woman must have worked and paid national insurance for at least 6 months in the 5 years preceding the birth. The employment contract is suspended during maternity leave.

Sweden provides an allowance during maternity leave which is at the same rate as sickness benefit, 60skr a day. The woman must have been registered with the social security office for 180 days before the day on which the payment begins. A higher rate is payable to women who have been registered for 240 days. Periods spent caring for a child under the age of three are recognised for the purposes of the parent's entitlement to supplementary pension.

In the UK a woman is entitled to statutory maternity pay (SMP) provided that she has worked for her employer for at least 6 months before 15th week before the birth and earned enough on average during the 8 weeks preceding the 15th week before the birth to have to pay national insurance contributions. During the first 6 weeks SMP is paid at the rate of 90% of salary, thereafter at £54.44 pounds a week. Women not entitled to SMP may be entitled to maternity allowance if they have worked and paid national insurance contributions in at least the 26 weeks out of the 66 weeks ending with the week before the expected date of birth. After the first 6 weeks SMP is paid at the same rate as statutory sick pay, as is maternity allowance. Rights under the employment contract continue for the 14 weeks maternity pay, and the employer must continue to pay occupational pension contributions based on the woman's normal remuneration. The woman is only required to make contributions on the basis of pay actually received during maternity leave. In Gibraltar women on maternity leave are entitled to remuneration at the weekly rate of injury benefit to which she would have been entitled had she been a beneficiary of injury benefit. This implies that entitlement to an allowance during maternity leave is dependent upon the woman satisfying the conditions of entitlement for injury benefit. However, as the Member States are permitted by the Directive to make entitlement to an adequate allowance

subject to the conditions of eligibility of benefits (Article 11(4)), such a restriction is permissible.

As mentioned in the introduction, the European Court of Justice gave its first ruling on Directive 92/85/EEC on 27th October 1998. The Boyle case concerned the rights of women under their contract of employment (rather than under statute) during pregnancy and maternity leave. The Court held that the Member States are free to determine when maternity leave begins, but that a contractual clause which prohibited a woman from taking sick leave during the minimum 14 weeks maternity leave, unless she returned to work and terminated her maternity leave, was contrary to the Directive. The Court ruled that as long as the minimum provisions of the Directive were respected, it was lawful for contractual provisions to go no further, and indeed extra entitlements due under contract could be subject to additional conditions. The Court therefore held that it was permissible to limit the accrual of annual leave to the 14 weeks statutory maternity leave. However, the Court held that occupational pension rights must continue to accrue during any period of the 14 weeks minimum maternity leave that was unpaid by either the state or the employer.

On the 19th November the Court of Justice gave its second judgment on the Directive in the Pedersen case,¹⁰ concerning Danish legislation on pay during incapacity for work due to pregnancy. The fact that women absent from work for incapacity connected to pregnancy were paid less than workers absent for other forms of incapacity was discriminatory. The Court also ruled that it was contrary to Articles 4 and 5 of Directive 92/85/EEC for an employer to be able to send a pregnant woman home who is not unfit for work, without paying her salary, because he considers he cannot provide work for her. The Court emphasised that such a system was aimed not at protecting the pregnant woman's biological condition but at preserving the employer's interests.

11. CONCLUSION

Before Directive 92/85/EEC was adopted, all the Member States had some form of protection for pregnant workers, although it varied considerably. In some Member States, such as Italy, the Netherlands and France, the protection provided was higher than that required by the Directive, whereas in others it had the effect of increasing the health and safety protection and the employment rights of pregnant workers. For example, in Sweden and in Portugal, maternity leave was increased as a result of the Directive, and in the UK qualifying periods for maternity leave were reduced. In Ireland implementation of the Directive led to a number of improvements, in particular the possibility of "health and safety" leave if it is not possible for the woman's work to be altered so as to avoid an identified risk to the pregnancy or the baby. Paid time off for ante-natal examinations was introduced in Belgium, Austria, Denmark, Ireland and Finland.

Under Article 14(6) of the Directive the Council has a duty to re-examine the Directive. From the information the Commission has received on the implementation of the Directive in the Member States, a number of potential problems are evident.

¹⁰ Case C-66/96.

11.1. Personal Scope

The first concerns the personal scope of the Directive. Article 2 provides that in order to come within the definition of "pregnant worker" the worker must inform her employer in accordance with national legislation and/or practice. The definition of "worker who has recently given birth" is left to national law and/or practice, as is the obligation to inform the employer. Similarly, the definition of "worker who is breastfeeding" and the obligation to inform the employer are left to national law and/or practice. The definition of worker who has recently given birth ranges widely between the Member States, from 2 months after the birth in Greece to 6 months after the birth in the UK, as does the definition of breastfeeding worker, from 6 months after the birth in Ireland to one year old in Greece. The requirement to inform the employer also varies widely between the Member States.

The differences in the national definitions of breastfeeding workers and workers who have recently given birth means that the personal scope of the Directive differs substantially depending upon the Member State. The requirement to inform the employer also raises a more general question. If a woman is obviously pregnant but has not formally informed her employer, she falls outside the personal scope of the Directive, even though in practice the employer is aware of the pregnancy. The Commission will reflect further on how to resolve this problem.

The definition of "worker" in the Directive has a Community meaning, which cannot be overridden by national law definitions. However the meaning of "worker who has recently given birth" and "worker who is breastfeeding" is then qualified by national law definitions, leading to disparity of treatment across the Member States. Differences in national law in the definition of breastfeeding workers and workers who have recently given birth mean that the protection offered to women varies considerably. Furthermore, to require the pregnant woman to inform her employer in accordance with national procedure not only leads to differences in treatment but could substantially limit the protection offered by the Directive.

11.2. Employment Rights

Given that most Member States provide for longer maternity leave than is required under the Directive, it is not necessary to alter the provision on the length of maternity leave. Although the Directive provides for 14 weeks maternity leave, only 2 weeks of it are compulsory. However, the majority of Member States have much longer periods of compulsory maternity leave, prohibiting work both before and after the birth. During this period the woman is usually only paid a percentage of her normal pay, or is entitled to social security benefits.

There is an inherent tension in ensuring that pregnancy is not used as an excuse to discriminate against women and the need for protective measures for pregnant women. An example of this is night work. The Directive provides that a women may not be obliged to work nights during pregnancy or for a period following childbirth, subject to the submission of a medical certificate stating that this is necessary for health and safety reasons. The principle of equal treatment means that women have the same access to night work as men, but that a limited exception for health and safety reasons is made for pregnant women and women who have recently given

birth. The wording of Article 7 of the Directive reflects the need to provide specific health and safety protection for pregnant women whilst respecting their general right of non-discrimination which allows them to work nights.

However, from the information gathered for this Report, it is clear that in some Member States the right of women to non-discrimination has been disregarded by the imposition of bans on night work. Banning pregnant women from night work without undertaking an assessment of risk of the particular job leads to women being granted leave from work, with the loss of salary this entails in nearly all the Member States.

Article 1(3) of the Directive prohibits the Member States from using the Directive as an excuse to *reduce* the level of protection for pregnant or breastfeeding women or those who have recently given birth that existed before the adoption of the Directive. Paragraph 3 of Article 118a of the Treaty is also relevant in the context of national measures which may go beyond the provisions of the Directive:

"The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent measures for the protection of working conditions compatible with this Treaty."

The Court of Justice confirmed on 17th December 1998 in Case C-2/97 Societa Italiana Petroli SpA v Borsana SrL that where a Directive laying down minimum requirements is adopted under Article 118a the Member States are still free to introduce more stringent measures for the protection of working conditions. However, the Court appeared to imply that such measures must respect the coherence of Community action in the area of workers' health and safety, and must apply in a non-discriminatory way so that the exercise of the fundamental freedoms guaranteed by the Treaty are not hindered.

Although the Directive prohibits dismissal during pregnancy or maternity leave, it is silent on the question of the woman's right to return to her job or an equivalent one at the end of her period of maternity leave. Such a right to return is provided for in the national legislation of a number of Member States (Ireland, Luxembourg, Finland and the UK) and is the natural corollary of the prohibition on dismissal. The Commission will consider how to deal with this problem.

The question of payment during health and safety leave and maternity leave is crucial to the ability of women to take advantage of their right to take leave. Payment during leave from work for health and safety grounds under Articles 5, 6 and 7 appears to be reasonably well provided for by the Member States in their implementing measures. Pay during this period is a mixture of payment from the employer and state benefits. Although some Member States impose conditions of entitlement these do not appear to be too onerous.

The situation is more difficult concerning payment during maternity leave. Whilst more generous arrangements may apply to civil servants or as a result of certain collective agreements, during maternity leave nearly all women are paid social security benefits. Even though the level of these benefits may be linked to the woman's previous wages they are usually considerably lower than her previous pay. It is interesting that the burden of pay during maternity leave is put squarely on the state rather than on the employer. The Directive allows conditions of entitlement to be

imposed, and all the Member States have taken advantage of this provision. Conditions range from minimum periods of residence, insurance or payment of social security contributions, employment or level of previous earnings.

Reliable information on the practical effect of the conditions women must satisfy in order to receive payment during maternity leave is not available, and it is therefore impossible to know what percentage of women on maternity leave are not entitled to any payment at all. The lack of any payment during maternity leave will make it very difficult for some women to take maternity leave, thus reducing considerably the protection afforded by the Directive. To enable a proper assessment of this aspect of the implementation of the Directive, the Commission will request further information on the conditions of entitlement to payment during maternity leave imposed by the Member States.

The judgment of the Court of Justice in Commission v Luxembourg¹¹ should be noted in this context. The Court held that the childbirth allowance and the maternity allowance were a "social advantage" under Article 7(2) of Regulation 1612/68 and that a residence requirement discriminated indirectly against migrant workers who were less likely to satisfy the residence requirement than national workers. Furthermore, the maternity allowance was held to be a social security benefit within the scope of Regulation 1408/71, Article 18 of which provides that where entitlement to a benefit is dependent upon the completion of periods of insurance, employment or residence, Member States must take into account periods of insurance, employment or residence completed in another Member State. It is not clear from the information provided by the Member States whether the grant of maternity allowance complies fully with the principles of Regulation 1612/68 and Regulation 1408/71 as regards migrant workers who are pregnant or have recently given birth. Further information from the Member States will be sought on this point.

In general terms, Directive 92/85/EEC has been well implemented by the Member States. It has ensured that pregnant women, women who have recently given birth or are breastfeeding are entitled to the same health and safety standard at work across the European Union. They are also entitled to the same employment rights, an essential element for working women who have children. The rights set out in the Directive represent a good framework for the dual role of women as workers and as mothers, roles which require both special protection and non-discrimination. Although a number of infringement proceedings have been launched for failure to properly implement particular provisions of the Directive, now that new legislation has entered into force in Luxembourg no Member State is being pursued for total non-implementation of the Directive. The fact that the Directive has been reasonably well implemented in the Member States is reflected in the low level of complaints about the rights of pregnant workers received by the Commission.

¹¹ Case C-111/91, ECR I 817.

ANNEX 1

COUNCIL DIRECTIVE 92 / 85 / EEC

of 19 October 1992

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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

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 work¹,

In co-operation with the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

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 protect 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 States 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 Article 118a of the Treaty, the said 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 Decision 74/325/EEC⁴, as last amended by the 1985 Act of Accession, 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 the Community Charter of the fundamental social rights of workers, adopted at the Strasbourg European Council on 9 December 1989 by the Heads of State or Government of 11 Member States, lays down, in paragraph 19 in particular, that:

¹ OJ C 281, 9. 11. 1990, p. 3; and OJ C 25, 1. 2. 1991, p. 9.

² OJ C 19, 28. 1. 1991, p. 177; and OJ C 150, 15. 6. 1992, p. 99.

³ OJ C 41, 18. 2. 1991, p. 29.

⁴ OJ L 185, 9. 7. 1974, p. 15.

'Every worker must enjoy satisfactory health and safety conditions in his working environment. Appropriate measures must be taken in order to achieve further harmonisation 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 the fundamental social rights of workers, has included among its aims the adoption by the Council of a Directive on the protection of pregnant women at work;

Whereas Article 15 of 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 work⁵ provides that particularly sensitive risk groups must be protected against the dangers which specifically affect them;

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

Whereas the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women on the labour market unfavourably nor work to the detriment of directives concerning equal treatment for men and women;

Whereas some types of activities may pose a specific risk, for pregnant workers, workers who have recently given birth or workers who are breastfeeding, of exposure to dangerous agents, processes or working conditions; whereas such risks must therefore be assessed and the result of such assessment communicated to female workers and/or their representatives;

Whereas, further, should the result of this assessment reveal the existence of a risk to the safety or health of the female worker, provision must be made for such worker to be protected;

Whereas pregnant workers and workers who are breastfeeding must not engage in activities which have been assessed as revealing a risk of exposure, jeopardising safety and health, to certain particularly dangerous agents or working conditions;

Whereas provision should be made for pregnant workers, workers who have recently given birth or workers who are breastfeeding not to be required to work at night where such provision is necessary from the point of view of their safety and health;

Whereas the vulnerability of pregnant workers, workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least 14 continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least two weeks, allocated before and/or after confinement;

Whereas the risk of dismissal for reasons associated with their condition may have harmful effects on the physical and mental state of pregnant workers, workers who

⁵ OJ L 183, 29. 6. 1989, p. 1.

have recently given birth or who are breastfeeding; whereas provision should be made for such dismissal to be prohibited;

Whereas measures for the organisation of work concerning the protection of the health of pregnant workers, workers who have recently given birth or workers who are breastfeeding would serve no purpose unless accompanied by the maintenance of rights linked to the employment contract, including maintenance of payment and/or entitlement to an adequate allowance;

Whereas, moreover, provision concerning maternity leave would also serve no purpose unless accompanied by the maintenance of rights linked to the employment contract and or entitlement to an adequate allowance;

Whereas the concept of an adequate allowance in the case of maternity leave must be regarded as a technical point of reference with a view to fixing the minimum level of protection and should in no circumstances be interpreted as suggesting an analogy between pregnancy and illness,

HAS ADOPTED THIS DIRECTIVE -

SECTION I

PURPOSE AND DEFINITIONS

Article 1

Purpose

1. The purpose of this Directive, which is the tenth 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 at work of pregnant workers and workers who have recently given birth or who are breastfeeding.
2. The provisions of Directive 89/391/EEC, except for Article 2 (2) thereof, shall apply in full to the whole area covered by paragraph 1, without prejudice to any more stringent and/or specific provisions contained in this Directive.
3. This Directive may not have the effect of reducing the level of protection afforded to pregnant workers, workers who have recently given birth or who are breastfeeding as compared with the situation which exists in each Member State on the date on which this Directive is adopted.

Article 2

Definitions

For the purposes of this Directive:

- (a) *pregnant worker* shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice;
- (b) *worker who has recently given birth* shall mean a worker who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;
- (c) *worker who is breastfeeding* shall mean a worker who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice.

SECTION II

GENERAL PROVISIONS

Article 3

Guidelines

1. In consultation with the Member States and assisted by the Advisory Committee on Safety, Hygiene and Health Protection at Work, the Commission shall draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous for the safety or health of workers within the meaning of Article 2.

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

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

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

Article 4

Assessment and information

1. For all activities liable to involve a specific risk of exposure to the agents, processes or working conditions of which a non-exhaustive list is given in Annex I, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned, of workers within the meaning of Article 2, either directly or by way of the protective and preventive services referred to in Article 7 of Directive 89/391/EEC, in order to:

- assess any risks to the safety or health and any possible effect on the pregnancies or breastfeeding of workers within the meaning of Article 2,
- decide what measures should be taken.

2. Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2 in the undertaking and/or establishment concerned and/or their representatives shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work.

Article 5

Action further to the results of the assessment

1. Without prejudice to Article 6 of Directive 89/391/EEC, if the results of the assessment referred to in Article 4 (1) reveal a risk to the safety or health or an effect on the pregnancy or breastfeeding of a worker within the meaning of Article 2, the employer shall take the necessary measures to ensure that, by temporarily adjusting the working conditions and/or the working hours of the worker concerned, the exposure of that worker to such risks is avoided.

2. If the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the employer shall take the necessary measures to move the worker concerned to another job.

3. If moving her to another job is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds, the worker concerned shall be granted leave in accordance with national legislation and/or national practice for the whole of the period necessary to protect her safety or health.

4. The provisions of this Article shall apply *mutatis mutandis* to the case where a worker pursuing an activity which is forbidden pursuant to Article 6 becomes pregnant or starts breastfeeding and informs her employer thereof

Article 6

Cases in which exposure is prohibited

In addition to the general provisions concerning the protection of workers, in particular those relating to the limit values for occupational exposure:

1. pregnant workers within the meaning of Article 2 (a) may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardise safety or health, to the agents and working conditions listed in Annex II, Section A;
2. workers who are breastfeeding, within the meaning of Article 2 (c), may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardise safety or health, to the agents and working conditions listed in Annex II, Section B.

Article 7

Night work

1. Member States shall take the necessary measures to ensure that workers referred to in Article 2 are not obliged to perform night work during their pregnancy and for a period following childbirth which shall be determined by the national authority competent for safety and health, subject to submission, in accordance with the procedures laid down by the Member States, of a medical certificate stating that this is necessary for the safety or health of the worker concerned.
2. The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of:
 - (a) transfer to daytime work; or
 - (b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds.

Article 8

Maternity leave

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of a least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice
2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

Article 9

Time off for ante-natal examinations

Member States shall take the necessary measures to ensure that pregnant workers within the meaning of Article 2 (a) are entitled to, in accordance with national legislation and/or practice, time off, without loss of pay, in order to attend ante-natal examinations, if such examinations have to take place during working hours.

Article 10

Prohibition of dismissal

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

1. Member States shall take the necessary measures to prohibit the dismissal of workers, within the meaning of Article 2, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8 (1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent;
2. if a worker, within the meaning of Article 2, is dismissed during the period referred to in point 1, the employer must cite duly substantiated grounds for her dismissal in writing;
3. Member States shall take the necessary measures to protect workers, within the meaning of Article 2, from consequences of dismissal which is unlawful by virtue of point 1.

Article 11

Employment rights

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

1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;
2. in the case referred to in Article 8, the following must be ensured:
 - (a) the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;

- (b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2;
3. the allowance referred to in point 2 (b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation;
 4. Member States may make entitlement to pay or the allowance referred to in points 1 and 2 (b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation.

These conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.

Article 12

Defence of rights

Member States shall introduce into their national legal systems such measures as are necessary to enable all workers who should themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process (and/or, in accordance with national laws and/or practices) by recourse to other competent authorities.

Article 13

Amendments to the Annexes

1. Strictly technical adjustments to Annex I as a result of technical progress, changes in international regulations or specifications and new findings in the area covered by this Directive shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.
2. Annex II may be amended only in accordance with the procedure laid down in Article 118a of the Treaty.

Article 14

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than two years after the adoption thereof or ensure, at the latest two years after adoption of this Directive, that the two sides of industry introduce the requisite provisions by means of collective agreements, with Member States being required to make all the necessary provisions

to enable them at all times to guarantee the results laid down by this Directive. They shall forthwith inform the Commission thereof.

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

3. Member States shall communicate to the Commission the texts of the essential provisions of national law which they have already adopted or adopt in the field governed by this Directive.

4. Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the points of view of the two sides of industry.

However, Member States shall report for the first time to the Commission on the practical implementation of the provisions of this Directive, indicating the points of view of the two sides of industry, four years after its adoption.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

5. The Commission shall periodically submit to the European Parliament, the Council and the Economic and Social Committee a report on the implementation of this Directive, taking into account paragraphs 1, 2 and 3.

6. The Council will re-examine this Directive, on the basis of an assessment carried out on the basis of the reports referred to in the second subparagraph of paragraph 4 and, should the need arise, of a proposal, to be submitted by the Commission at the latest five years after adoption of the Directive.

Article 15

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992

For the Council
The President
D. CURRY

ANNEX I

NON-EXHAUSTIVE LIST OF AGENTS, PROCESSES AND WORKING CONDITIONS

referred to in Article 4 (1)

A. Agents

1. *Physical agents* where these are regarded as agents causing foetal lesions and/or likely to disrupt placental attachment, and in particular:

(a) shocks, vibration or movement;

(b) handling of loads entailing risks, particularly of a dorsolumbar nature;

(c) noise;

(d) ionizing radiation^(*);

(e) non-ionizing radiation;

(f) extremes of cold or heat;

(g) movements and postures, travelling - either inside or outside the establishment mental and physical fatigue and other physical burdens connected with the activity of the worker within the meaning of Article 2 of the Directive.

2. *Biological agents*

Biological agents of risk groups 2, 3 and 4 within the meaning of Article 2 (d) numbers 2, 3 and 4 of Directive 90/679/EEC¹, in so far as it is known that these agents or the therapeutic measures necessitated by such agents endanger the health of pregnant women and the unborn child and in so far as they do not yet appear in Annex II.

3. *Chemical agents*

The following chemical agents in so far as it is known that they endanger the health of pregnant women and the unborn child and in so far as they do not yet appear in Annex II :

(a) substances labelled R 40, R 45, R 46, and R 47 under Directive 67/548/EEC² in so far as they do not yet appear in Annex II;

(b) chemical agents in Annex I to Directive 90/394/EEC³;

^(*) See Directive 80/836/Euratom (OJ L 246, 17. 9. 1980, p. 1).

¹ OJ L 374, 31. 12. 1990, p. 1.

² OJ L 196, 16. 8. 1967, p. 1. Directive as last amended by Directive 90/517/EEC (OJ L 287, 19. 10. 1990, p. 37).

³ OJ L 196, 26. 7. 90, p. 1.

(c) mercury and mercury derivatives;

(d) antimitotic drugs;

(e) carbon monoxide;

(f) chemical agents of known and dangerous percutaneous absorption.

B. Processes

- Industrial processes listed in Annex I to Directive 90/394/EEC.

C. Working conditions

- Underground mining work.

ANNEX II

NON-EXHAUSTIVE LIST OF AGENTS AND WORKING CONDITIONS

referred to in Article 6

A. **Pregnant workers within the meaning of Article 2 (a)**

1. *Agents*

(a) Physical agents

Work in hyperbaric atmosphere, e.g. pressurized enclosures and underwater diving.

(b) Biological agents

The following biological agents:

- toxoplasma,
- rubella virus,

unless the pregnant workers are proved to be adequately protected against such agents by immunization.

(c) Chemical agents

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. *Working conditions*

Underground mining work

B. **Workers who are breastfeeding within the meaning of Article 2 (c)**

1. *Agents*

(a) Chemical agents

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. *Working conditions*

Underground mining work.

ANNEX 2

Questionnaire for the Report concerning the evaluation of Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

INTRODUCTORY REMARKS

This questionnaire consists of 25 questions relating to the articles of Council Directive 92/85/EEC. As stated in article 14.4. second paragraph of the Directive, the practical implementation of the provisions of the Directive, as well as the views of both sides of industry, should be indicated in the answers.

Where the provisions of the Directive have been implemented through legislation or collective agreement, please indicate the applicable article and instrument, and annex the text of the legislative measure or collective agreement to the response.

Please indicate which category of workers are covered by the different national regulations or collective agreements implementing the Directive.

Where applicable, please answer the questions separately with respect to workers in the private and public sectors.

Unless otherwise stated, all references in the questionnaire refer to the 92/85 Directive.

ARTICLE 2: PERSONS PROTECTED

Article 2 a:

Question 1a: For the purposes of the directive, who are considered as pregnant workers in your Member State ?

Question 1b: Does this definition cover employees/persons who are:

- i) under fixed term contracts,
- ii) under temporary contracts,

Article 2 b:

Question 2: Under your national legislation and/or practice, how do you define a worker who has recently given birth?

Article 2 c:

Question 3: Under your national legislation and/or practice, how do you define a worker who is breastfeeding?

Article 2 a-c:

Question 4a: For the purposes of the Directive, is the protection in your Member State, dependent on the fact of the worker having informed the employer of the pregnancy?

Question 4b: How long before the commencement of maternity leave must the worker inform the employer of the pregnancy?

Question 4c: What other requirements have to be fulfilled for the employer to be considered informed of the pregnancy for the purposes of the Directive in accordance with national legislation and/or national practice?

ARTICLES 3 AND 4: ASSESSMENT OF HAZARDOUS AGENTS AND PROCESSES

Article 3.1

Question 5: Whilst awaiting the guidelines, which are being drawn up by the Commission with the assistance of the Advisory Committee on Safety, Hygiene and Health Protection at Work, what guidelines are being used in your Member State for risk assessment?

Article 4

Question 6: In your Member State, which authority is responsible for monitoring the obligations of employers, particularly those relating to risk assessment and measures to be adopted as a result thereof? Is the same national authority required to ensure that workers likely to be in one of the situations referred to in Article 2 and/or their representatives are informed in accordance with the provisions of the Directive?

ARTICLES 5 AND 6: ACTION FURTHER TO THE ASSESSMENT AND PROHIBITION OF EXPOSURE

Article 5

Question 7: What legislative and/or practical measures have been taken at national level to ensure that, if the assessment reveals that they are exposed to risks to their safety and health, the workers referred to in Article 2 benefit from the measures laid down in Article 5, ranging from a temporary adjustment of working conditions and/or working hours, through a move to another job, to the granting of leave for the whole of the period necessary?

Article 6

Question 8: What legislative and/or practical measures have been introduced at national level to prevent pregnant or breastfeeding workers from performing duties for which the assessment has revealed a risk of exposure, which would jeopardise safety or health, to the agents and working conditions listed in Annex II, Sections A and B respectively?

ARTICLE 7: NIGHTWORK

Article 7.1:

Question 9a: What measures in national legislation and/or national practice exist to ensure that workers referred to in article 2 are not obliged to perform night work during their pregnancy?

Question 9b: Is the non-performance of night work made dependent upon a submission of a medical certificate in your Member State, and if so, what requirements and procedures apply in relation to the submission of the medical certificate?

Question 10a: Which national authority is competent in determining the length of the period after the childbirth during which workers referred to in article 2 are not obliged to perform night work?

Question 10b: In your Member State, how much time is allowed after the childbirth in which workers referred to in article 2 are not obliged to perform night work.

Question 10c: If the period, referred to in question 10a above, is established for each individual case, what procedure applies?

Article 7.2:

Question 11: What measures in national legislation and/or national practice exist to ensure that workers referred to in article 2, who are not obliged to perform night work during their pregnancy, have the possibility to be transferred to daytime work?

Question 12: What measures in national legislation and/or national practices exist to ensure that workers referred to in article 2, who are not obliged to perform night work during their pregnancy, are granted leave when transfer to daytime work is not feasible or cannot reasonably be required?

ARTICLES 11.1 AND 11.4: THE MAINTENANCE OF EMPLOYMENT RIGHTS IN RELATION TO THE PROCEDURES EXISTING FOR THE PURPOSE OF ARTICLES 5, 6 AND 7.

Article 11.1:

Question 13a: What measures in national legislation and/or national practice exist to ensure that workers referred to in article 2 whose working conditions, in terms of place of work, working hours etc, are modified, under the procedures existing for the purposes of articles 5-7, maintain their employment rights relating to the employment contract?

Question 13b: What measures in national legislation and/or national practice exist to ensure that workers referred to in article 2 who are granted leave under article 5.3, maintain their employment rights relating to the employment contract?

Question 13c: To what level of payment/allowance are workers referred to in article 2, whose working conditions are altered in the situations specified under articles 5-7, entitled to according to national legislation and/or national practice?

Question 13d: What level of payment/allowance is a worker, as referred to in article 2, who are granted leave under article 5.3, entitled to according to national legislation and/or national practice?

Question 13e: Are there any criteria to be fulfilled by workers referred to in questions 13a and 13b above (i.e. in terms of previous time of employment or of accepting suitable alternative work), in order to retain their employment rights, other than remuneration?

Article 11.4:

Question 14: In your Member State, has the entitlement to pay or allowance for workers referred to in questions 13c and 13d above, been made conditional on the worker concerned fulfilling any conditions of eligibility? And if so, what are these conditions?

ARTICLES 8 AND 11.2-4: MATERNITY LEAVE AND THE MAINTENANCE OF EMPLOYMENT RIGHTS

Please answer the questions separately with respect to workers in the private and public sectors.

Article 8.1:

Question 15a: What measures in national legislation and/or national practice exist to ensure that workers referred to in article 2 are entitled to a continuous period of maternity leave of at least 14 weeks?

Question 15b: How long is the period of maternity leave in your Member State?

Question 15c: When does the maternity leave formally commence according to the national legislation and/or national practice in your Member State?

Question 15d: Is there any fixed period of time during which the maternity leave should be taken, (e.g. in relation to the expected time of birth)?

Question 15e: Is the right to maternity leave dependant on the fulfilment of any conditions of eligibility by workers referred to in article 2?

Article 8.2:

Question 16a: What measures in national legislation and/or national practice exist to ensure that the continuous period of maternity leave includes a period of compulsory maternity leave of at least 2 weeks?

Question 16b: Are there any requirements as to when the compulsory maternity leave has to be taken (e.g. in relation to the expected date of birth)?

Article 11.2 (a):

Question 17a: What measures in national legislation and/or national practice exist to ensure that workers on maternity leave within the meaning of article 8, maintain their employment rights during the period of maternity leave?

Question 17b: Has a worker on maternity leave the right to accrue pension rights during the period of maternity leave, and if so, under what conditions?

Article 11.2 (b):

Question 18a: What measures in national legislation and/or national practice exist to ensure that workers on maternity leave within the meaning of article 8 maintain their pay and/or are entitled to an adequate allowance?

Question 18b: What level of payment does a worker obtain during the maternity leave?

Question 18c: Does the remuneration vary amongst different categories of workers and over different periods of time of the maternity leave? (If so, please describe the system of maternity remuneration applicable in your Member State.)

Article 11.3:

Question 19: What measures in national legislation and/or practice exist to ensure that pay received during maternity leave is comparable to an income which the worker concerned would receive in the event of a break in her activities on the grounds connected with her state of health? (If different levels of remuneration apply for different categories of workers, please answer this question for the respective categories.)

Article 11.4:

Question 20: In your Member State, has the entitlement to pay or allowance for workers on maternity leave within the meaning of article 8, been made conditional on the fulfilment by the worker concerned of any conditions of eligibility? And if so, what are these conditions of eligibility?

ARTICLE 9 TIME OFF FOR ANTE-NATAL EXAMINATIONS

Question 21: What measures in national legislation and/or national practice exist to ensure that workers referred to in article 2 (a) are entitled to time off, without loss of pay, in order to attend ante-natal examinations if these examinations have to take place during working hours?

ARTICLE 10 PROHIBITION OF DISMISSAL

Article 10.1:

Question 22a: What measures in national legislation and/or national practice exist to ensure the prohibition of the dismissal of workers during the period from the beginning of their pregnancy to the end of the maternity leave within the meaning of article 8 (1)?

Question 22b: Under which, if any, circumstances in your national legislation and/or national practice could the employer dismiss a worker during the period from the beginning of the pregnancy to the end of the maternity leave within the meaning of article 8 (1)?

Question 22c: Which national authority is competent to give the consent for such a dismissal to be legally effective?

Question 22d: What procedure is applicable in your Member State for the employer to obtain the consent of the competent authority?

Article 10.2:

Question 23: What measures in national legislation and/or practice exist to oblige an employer who dismisses a worker during the period from the beginning of her pregnancy to the end of the period of maternity leave within the meaning of article 8 (1), to cite duly substantiated grounds for the dismissal in writing?

Article 10.3:

Question 24: What measures in national legislation and/or practice exist to ensure that workers are protected from consequences of dismissal which is unlawful by virtue of Article 10.1?

ARTICLE 12 DEFENCE OF RIGHTS

Question 25a: What methods of judicial protection are given to workers referred to in article 2 in your Member State, in relation to the obligations arising from the Directive?

Question 25b: If the workers referred to in article 2 have recourse to competent authorities other than national courts, which are these authorities?

Question 25c: Does the competence of another authority exclude the access to a national court for the same question?

Question 25d: What other type of judicial enforcement mechanisms exist in your Member State in the area covered by the Directive?

ANNEX 3

**NATIONAL PROVISIONS COMMUNICATED BY THE MEMBER STATES
CONCERNING: Council Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16(1) of
Directive 89/391/EEC)**

BELGIUM

Loi du 16/03/1971 modifiée par la Loi du 03/04/1995 et l'arrêté royal du 02/05/1995,
Moniteur belge

DENMARK

Bekendtgørelse nr. 497 af 29/6/1998 af Lov om arbejdsmiljø.

Bekendtgørelse nr. 867 af 13/10/1994 om arbejdets udførelse.

Arbejdsministeriets bekendtgørelse nr. 439 af 1/10/1997 om virksomhedernes
sikkerheds- og sundhedsarbejde.

Bekendtgørelse nr. 686 af 11/10/1990 af lov om ligebehandling af mænd og kvinder
med hensyn til beskæftigelse og barselor lov m.v. Arbejdsmin. 1. kt. j.nr. 1440.24.
Lovtidende A 1990 hæfte nr. 113 udgivet den 23/10/1990 s. 2461. ALOV

Lov nr. 412 af 01/06/1994 om ændring af lov om ligebehandling af mænd og kvinder
med hensyn til beskæftigelse og barselorlov m.v. Arbejdsmin., j.nr. 92-5232-1.
Lovtidende A 1994 hæfte nr. 84 udgivet den 02/06/1994 s. 1959. ALOV

Lov nr. 852 af 20/12/1989 om dagpenge ved sygdom eller fødsel. Socialmin.1.kt.j.nr.
1600-26. Lovtidende A hæfte 124 udgivet den 21/12/1989 s.3254. RLOV.

Lov nr. 447 af 01/06/1994 om ændring af lov om dagpendge ved sygdom eller fødsel.
Socialmin., j.nr. 5210-42. Lovtidende A 1994 hæfte nr. 85 udgivet den 02/06/1994 s.
2094. RLOV

Bekendtgørelse nr. 127 af 06/03/1996 om arbejdets udførelse m.v. på havanlæg.
Energistyrelsen, j.nr. 4012-0014. Lovtidende A 1996 hæfte nr. 32 udgivet den
15/03/1996 s. 1211. MBEK

Lov nr. 292 af 10/06/1981 om visse havanlæg. Energimin.j.nr. 130 22-81.
Folketingstid. 1980-81 : 7936, 8806, 12109, 12523; A: 4421; C:741. Lovtidende A
hæfte 39 udgivet den 19/06/1981 s. 754

Bekendtgørelse nr. 711 af 16/11/1987 om sikkerhed m.v. på havanlæg. Energimin.
4612-1. Lovtidende A hæfte 97 udgivet den 24/11/1987 s. 2644

Bekendtgørelse nr. 825 af 20/09/1994 om gravide søfarendes ret til fratræden og fri
hjemrejse. Industri- og Samordningsmin., Søfartsstyrelsen, Arbejdsmiljøkontoret, j.nr.
4101-23. Lovtidende A 1994 hæfte nr. 155 udgivet den 30/09/1994 s. 4748. TBK

Trafikministeriets bekendtgørelse nr. 162 af 07/03/1994 af lov om luftfart. Trafikmin., j.nr. 1994-201-1. Lovtidende A 1994 hæfte nr. 35 udgivet den 18/03/1994 s. 697. OLOV

Lov nr. 1226 af 27/12/1996 om ændring af lov om dagpenge ved sygdom eller fødsel. Socialmin., kontantydelseskontoret, j.nr. 5210-105. Lovtidende A 1996 hæfte nr. 200 udgivet den 28/12/1996 s. 7235. RLOV

Bekendtgørelse nr. 549 af 23/06/1994 af lov om dagpenge ved sygdom eller fødsel. Socialmin. 1.2.kt.,j.nr. 5210-48. Lovtidende A 1994 hæfte nr. 102 udgivet den 01/07/1994 s. 2855. RLOV

Bekendtgørelse nr. 875 af 17/10/1994 af lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse og barselorlov m.v. Arbejdsmin. 1.kt. j.nr. 94-5239-1. Lovtidende A 1994 hæfte nr. 168 udgivet den 28/10/1994 s. 5091. ALOV

Teknisk forskrift om arbejdets udførelse om bord i skibe. Søfartsstyrelsens tekniske forskrift nr. 3 af 07/04/1995. Arbejds miljøkontoret,j.nr. 4101-11

Vurdering af sikkerheds- og sunhedsforholdene på arbejdspladsen (arbejdspladsvurdering). At-anvisning Nr. 4.0.0.1 August 1994

Gravide og ammendes arbejdsmiljø. At-anvisning Nr. 4.0.0.2 Oktober 1996

Bestemmelser om helbreds krav. Statens Luftfartsvæsen. Bestemmelser for civil luftfart. BL 6-05. Udgave 3 af 30/07/1990

Bekendtgørelse nr. 191 af 23/05/1975 vedrørende luftfartscertifikater. Min. f. off. arb. j.nr. G. 22-10-25. Lovtidende A 1975 hæfte nr. 20 udgivet den 31/05/1975

Højesteretsdomme af 15/03/1993 i sag 314/1991 Handels- og Kontorfunktionærernes Forbund i Danmark mod Dansk Arbejdsgiverforening

Bekendtgørelse nr. 766 af 19/09/1995 af Sømandsloven. Erhvervsmin. Søfartsstyrelsen, j.nr. 4101-27. Lovtidende A hæfte 145 udgivet den 29/09/1995 s.4125. TLOV.

Bekendtgørelse nr. 594 af 26/06/1996 af Lov om skibes sikkerhed. Erhvervsmin., Søfartsstyrelsen, j.nr. 5000-2. Lovtidende A 1996 hæfte nr. 106 udgivet den 05/07/1996 s. 3461. TLOV

Bekendtgørelse nr. 172 af 13/03/1990 om dagpenge til søfarende ved sygdom eller fødsel. Socialmin.1.kt.j.nr. 1600-30. Lovtidende A 1990 hæfte nr. 26 udgivet den 23/03/1990 s. 565. RBK

GERMANY

Gesetz zur Änderung des Mutterschutzrechts vom 20/12/1996, Bundesgesetzblatt Teil I vom 30/01/1996 Seite 2110

Verordnung zur ergänzenden Umsetzung der EG-Mutterschutz-Richtlinie (Mutterschutzrichtlinienverordnung - MuSchRiV) vom 15/04/1997, Bundesgesetzblatt Teil I vom 18/04/1997 Seite 782

GREECE

Loi numéro 1483/1984

Loi numéro 1414/1984

Décret présidentiel numéro 176/97 du 02/07/1997, FEK A numéro 150 du 15/07/1997
Page 6283

SPAIN

Orden de 09/03/1971, Boletín Oficial del Estado de 16/03/1971

Ley número 8/80 de 10/03/1980, sobre el Estatuto de los Trabajadores, Boletín Oficial del Estado número 64 de 14/03/1980

Ley número 3/89 de 03/03/1989, por la que se amplía a 16 semanas el permiso por maternidad y se establecen medidas para favorecer la igualdad de trato de la mujer en el trabajo, Boletín Oficial del Estado número 57 de 08/03/1989 Página 6504 (Marginal 5272)

Decreto Ley número 2065/74 de 30/03/1974, Boletín Oficial del Estado de 22/07/1974

Ley número 8/88 de 07/04/1988, sobre infracciones y sanciones en el Orden social, Boletín Oficial del Estado número 91 de 15/04/1988 Página 11427

Real decreto legislativo número 521/90 de 27/04/1990, por el que se aprueba el texto articulado de la Ley de Procedimiento Laboral, Boletín Oficial del Estado número 105 de 02/05/1990 Página 11800 (Marginal 9915)

Ley número 31/95 de 08/11/1995, de Prevención de Riesgos Laborales, Boletín Oficial del Estado número 269 de 10/11/1995 Página 32590 (Marginal 24292)

Real decreto legislativo número 1/95 de 24/03/1995, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores, Boletín Oficial del Estado número 75 de 29/03/1995 Página 9654 (Marginal 7730)

Ley número 42/94 de 30/12/1994, de Medidas fiscales, administrativas y de orden social, Boletín Oficial del Estado número 313 de 31/12/1994 Página 273 (Marginal 28968)

Real decreto legislativo número 2/95 de 07/04/1995, por el que se aprueba el texto refundido de la Ley de Procedimiento Laboral, Boletín Oficial del Estado número 86 de 11/04/1995 Página 10695 (Marginal 8758)

FRANCE

Décret no 96-364 du 30 avril 1996 relatif à la protection des travailleuses enceintes ou allaitantes contre les risques résultant de leur exposition à des agents chimiques, biologiques et physiques et modifiant notamment le code du travail (deuxième partie: Décrets en Conseil d'Etat), Journal Officiel du 02/05/1996, Page 6613.

IRELAND

The Safety, Health and Welfare at Work (Pregnant Employees etc) Regulations, 1994
Statutory Instruments number 446 of 1994

The Maternity Protection Act, 1994

The Maternity Protection Act, 1994 (Commencement) Order, 1995, Statutory Instruments number 16 of 1995

The Maternity Protection (Disputes and Appeals) Regulations, 1995, Statutory Instruments number 17 of 1995

The Maternity Protection (Time off for Ante-Natal and Post-Natal Care) Regulations, 1995, Statutory Instruments number 18 of 1995

The Maternity Protection (Health and Safety Leave Certification) Regulations, 1995, Statutory Instruments number 19 of 1995

The Maternity Protection (Health and Safety Leave Remuneration) Regulations, 1995, Statutory Instruments number 20 of 1995

European Communities (Social Welfare) Regulations, 1994, Statutory Instruments number 312 of 1994

The Social Welfare (Health and Safety Benefit) Regulations, 1994, Statutory Instruments number 313 of 1994

The Social Welfare Regulations, 1995, Statutory Instruments number 25 of 1995

The Social Welfare (Consolidated Payments Provisions) (Amendment) Regulations, 1995, Statutory Instruments number 26 of 1995

ITALY

Legge del 30/12/1971 n. 1204, tutela delle lavoratrici madri, Gazzetta Ufficiale - Serie generale - del 18/01/1972 n. 14 pag. 412

Decreto del Presidente della Repubblica del 25/11/1976 n. 1026, regolamento di esecuzione della legge 30 dicembre 1971, n. 1204, sulla tutela delle lavoratrici madri, Gazzetta Ufficiale - Serie generale - del 16/03/1977 n. 72

Decreto legislativo del 25/11/1996 n. 645, recepimento della direttiva 92/85/CEE concernente il miglioramento della sicurezza e della salute sul lavoro delle lavoratrici gestanti, puerpere o in periodo di allattamento, Gazzetta Ufficiale - Serie generale - del 21/12/1996 n. 299 pag. 17

LUXEMBOURG

Loi portant modification A) de la loi du 03/07/1975 concernant 1. la protection de la maternité de la femme au travail; 2. la modification de l'article 13 du code des assurances sociales modifié par la loi du 02/05/1974, B) de l'article 25 du code des assurances sociales du 07/07/1998, Mémorial A Page 1066

NETHERLANDS

Ziektewet

Besluit zwangere werknemers van 2. Mei 1994

Arbeidsomstandighedenwet

Loodbesluit, new article 14a

Arbeidstijdenwet

Burgerlijk Wetboek

AUSTRIA

Gesetz vom 15/12/1994 , mit dem das Gesetz über den Mutterschutz und den Karenzurlaub geändert und das EWR-Recht angepaßt wird, Landesgesetzblatt für Kärnten, Nr. 21/1995

Mutterschutzgesetz 1979 (MSchG), Bundesgesetzblatt für die Republik Österreich, Nr. 221, idF BGBl. Nr. 434/1995

Landarbeitsgesetz 1984, Bundesgesetzblatt für die Republik Österreich, Nr. 287/1984, idF BGBl. Nr. 514/1994

Kundmachung des Reichsstatthalters in Österreich, wodurch die Beordnung zur Einführung von Arbeitszeitvorschriften im Lande Österreich vom 7. Februar 1939 bekanntgemacht wird (Arbeitszeitordnung), Reichsgesetzblatt Nr. 231/1939

Verordnung des Bundesministers für soziale Verwaltung vom 25. Juli 1973 über den Schutz des Lebens und der Gesundheit der Arbeitnehmer bei Arbeiten in Druckluft sowie bei Taucherarbeiten (Druckluft- und Taucherarbeiten-Verordnung), Bundesgesetzblatt für die Republik Österreich, Nr. 501/1973, idF BGBl. 450/1994

Bundesgesetz, mit dem arbeitsvertragsrechtliche Bestimmungen an das EG-Recht angepaßt (Arbeitsvertragsrecht-Anpassungsgesetz - AVRAG) und das Angestelltengesetz, das Gutsangestelltengesetz und das Hausgehilfen- und Hausangestelltengesetz geändert werden, Bundesgesetzblatt für die Republik Österreich, Nr. 459/1993, idF BGBl. Nr. 450/1994

Allgemeines Sozialversicherungsgesetz (ASVG), Bundesgesetzblatt Nr. 189/1955, idF BGBl. Nr. 895/1995

Liste der Berufskrankheiten, Anlage 1 zum ASVG

Bundesgesetz vom 7. März 1985 über die Arbeits- und Sozialgerichtsbarkeit (Arbeits- und Sozialgerichtsgesetz - ASGG), Bundesgesetzblatt für die Republik Österreich, Nr. 104/1985, idF BGBl. Nr. 133/1995

Gesetz vom 07/11/1991 über den Mutterschutz und den Karenzurlaub, Landesgesetzblatt für Kärnten, Nr. 9/1992, ausgegeben am 29/01/1992

Gesetz, mit dem die Vertragsbedienstetenordnung 1995 geändert wird (2. Novelle zur Vertragsbedienstetenordnung 1995), Landesgesetzblatt für Wien, Nr. 32/1996

Gesetz, mit dem die Dienstordnung 1994 geändert wird (2. Novelle zur Dienstordnung 1994), Landesgesetzblatt für Wien, Nr. 33/1996, ausgegeben am 24/07/1996

Gesetz vom 22/04/1997 mit dem das Gesetz über den Mutterschutz und den Karenzurlaub geändert wird, Landesgesetzblatt für Kärnten, Nr. 73/1997 herausgegeben am 04/08/1997

Gesetz vom 29/02/1996, mit dem das O.ö. Landesbeamtengesetz 1993, das als Landesgesetz geltende Gehaltsgesetz 1956, das O.ö. Landes-Vertragsbedienstetengesetz, das Landesbeamten-Pensionsgesetz, das O.ö. Mutterschutzgesetz und das O.ö. Karenzurlaubsgeldgesetz geändert und Bestimmungen über das Ausmaß der Lehrverpflichtung für Vertragslehrer an Musikschulen der o.ö. Gemeinden erlassen werden (O.ö. Dienstrechtsänderungsgesetz 1996), Landesgesetzblatt für Oberösterreich, Nr. 37/1996, ausgegeben und versendet am 15/05/1996

PORTUGAL

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