



EUROPEAN COMMISSION

Brussels, 5/10/2009
C/2009/ 7434

Dear Mr Sobotka,

I would like to thank you for transmitting the resolution of the Senate of the Czech Republic on the proposal for a Directive amending 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 {COM(2008) 637 final}.

The Commission welcomes the remarks from the Czech Senate. It has considered them carefully and will take them into account in further discussions on the proposal in the Council.

The Commission attaches the highest importance to the division of power between the EU and the Member States, in particular with an eye to the principle of subsidiarity. It is determined to work with the Council, the European Parliament and National Parliaments to ensure that the Directive abides by that principle, as the explanatory memorandum states clearly.

Furthermore, the Commission thinks that the overall objectives of the proposal can only be achieved by a Community-wide measure, since a level playing-field across the Member States as regards the protection of pregnant workers and workers who have recently given birth or are breastfeeding can only be achieved by common minimum standards. In the case in point, this means that the existing rules in Directive 92/85/EEC have to be adapted to meet today's needs. In the Commission's view, the proposed provisions do not conflict with the principle of subsidiarity. Member States acting individually cannot meet the objectives of establishing a minimum standard of protection for pregnant women throughout the European Union and of offering reconciliation measures of a minimum standard.

Mr. Přemysl Sobotka
President of the Senate
of the Parliament of the Czech Republic

The Czech Senate's first observation expresses doubt as to whether longer maternity leave would result in fewer women taking parental leave.

The Commission thinks that entitlement to longer maternity leave would help workers to recover from the immediate effects of giving birth and make it easier for them to return to the labour market at the end of their maternity leave. For some time now, the Council and Parliament have called for better reconciliation of professional, private and family life.

In combination with other measures, increasing the entitlement to family-related leave would help women and men to reconcile work and private life more easily. The starting point is adequate maternity-leave provision for the mother, supplemented by other family-related leave to be taken by either parent. The impact assessment carried out by the Commission¹ concludes that a proposal to amend the maternity leave rules (Directive 92/85/EEC) is a very useful measure in terms of improving reconciliation. A longer period of leave will ease women's return to the labour market.

In the light of the results of the consultation carried out by the Commission and covering the European social partners, the Member States and representatives of civil society, and of the study commissioned by the Commission, the option of extending the duration of maternity leave was considered a proportionate way of improving the health and safety of women, allowing them to reconcile their professional and family obligations more easily, and thereby fostering equal opportunities between women and men on the labour market.

Currently, maternity leave ranges in length from 14 weeks in a small number of Member States to 28 weeks in others, and in certain circumstances, to up to 52 weeks, not all of which is paid. 13 Member States already provide for maternity leave lasting 18 weeks or more.

Maternity leave lasting 18 weeks also corresponds to the period provided for in the ILO Maternity Protection Recommendation adopted in 2000, and is intended to safeguard the general health and safety of women giving birth. Leave of that length should allow women to recover from pregnancy and childbirth, to bond and spend sufficient time with their babies, and to be able to breastfeed for a longer period. It is also easier for women to return to work when their children are that much older.

In addition, women returning to the labour market after maternity leave will find it easier to secure childcare facilities after longer maternity leave.

The Czech Senate's second observation calls for the principle of the reversal of the burden of proof not to be extended to new areas.

Recital 9 of Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination states that female workers covered by Directive 92/85/EEC should benefit from the adaptation of the rules on the burden of proof. Article 3 (scope)

¹ Published under:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2596:FIN:EN:PDF>.

of Directive 97/80/EC thus states explicitly that Directive 92/85/EEC is covered by the principle of the reversal of the burden of proof in so far as sex discrimination is concerned. The proposal to amend Directive 92/85/EEC seeks to uphold the same standard of protection. Moreover, the Commission's proposal reflects the settled case law of the Court of Justice.

The Commission has examined the Czech Senate's observations carefully and will take its views into account in discussions within the Council's Working Groups.

I hope that the clarifications provided above satisfactorily address the main concerns expressed in your resolution.

Yours sincerely,

Margot WALLSTRÖM
Vice-President of the European Commission