

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE

concerning the protection at work of pregnant women
or women who have recently given birth

(presented by the Commission)

EXPLANATORY MEMORANDUM

I INTRODUCTION

1. Background

1. In 1989, eleven Member States of the European Community adopted the Community Charter of basic social rights of workers, with certain undertakings regarding both the development of equal opportunities for men and women (paragraph 16) and the continued harmonization of health and safety conditions for workers in the working environment (paragraph 19).

2. In its action programme implementing the Community Charter, the Commission has included among its aims the adoption by the Council of a Directive on the protection of pregnant women at work.

3. The adoption of a Directive of this kind is further justified by the fact that studies on the protection of women during pregnancy and maternity in the Member States of the European Communities⁽¹⁾ have revealed a number of inadequacies and gaps in the rules, regulations and practices regarding protection for female workers before and after giving birth.

4. In addition, Council Directive 89/391/EEC⁽²⁾ on the introduction of measures to encourage improvements in the safety and health of workers at work sets out to protect particularly sensitive risk groups from the dangers which specifically affect them. Pregnant workers or women who have recently given birth are in many respects to be regarded as a specific risk group.

5. Hence this Directive constitutes an individual Directive within the meaning of Directive 89/391/EEC, which aims to encourage improvements in the safety and health of workers at work. It follows that the Articles of the aforementioned framework Directive are applicable, in particular, Article 10 (Worker Information), 11 (Consultation and participation of Workers) and 12 (Training of Workers). It is recalled that, in the definition of the aforementioned framework Directive the meaning of worker is "any person employed by an employer, including trainees and apprentices" (Article 2.C) and of employer "any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment" (Article 2b).

(1) Cf. Report by Dagmar Coester-Waltjen, Doc. V/1829/84.
(2) OJ No L 183, 29.06.1989 p. 1.

2. Situation in the Member States and International Instruments

6. National rules and practices in the Member States regarding the protection of pregnant workers or women who have just given birth are presented as Annexes to this communication. The Annexes give an overview of the situation which concerns leave entitlement - such as maternity leave (duration and timing relative to the expected date of delivery, relative level of pay and/or allowance, financial arrangements etc.), the working conditions of pregnant workers (notably in respect of night work) and also the restrictions on exposure to certain risks and certain agents. It can be summarised as follows :

- i) that the leave entitlement accorded to pregnant workers ranges from 12 weeks in the Netherlands to 40 weeks in the United Kingdom (but, in the latter case, it is not paid for the whole period) - the average period is 15 weeks for the whole Community - from about 6 weeks before the expected date of delivery.
- ii) that the leave entitlement linked to pregnancy is either paid or accompanied by an allowance at a level of up to 100 % of the salary - the financing of this remuneration/allowance is either the responsibility of the employer, or of the social security system.
- iii) that the position of the Member States concerning night work for pregnant workers ranges from forbidding it to allowing it with possibly some provision for specific derogations to ban night work in certain sectors or for occupations which could impair the health of the pregnant worker.
- iv) that, in general, restrictions exist in the Member States relative to the risks of exposure of pregnant workers in relation to agents which could have a damaging effect on their health.

7. It is noted that, in all the Member States of the Community, the remuneration and/or allowance payable to pregnant workers benefiting from maternity leave is dependent on certain conditions of eligibility, specifically either in terms of the duration of employment prior to the expected date of delivery (respectively the commencement of the right to paid maternity leave), or in terms of the duration of the period before the protection of the social insurance system (for a maximum of 9 months starting from 12 months before this date). For the sake of comprehensiveness, it is necessary also to underline that, in certain Member States, the period during which the potential beneficiary may benefit from unemployment allowance is also taken into account and that, in addition, this period can be shortened in the case of a premature birth (similarly the duration of maternity leave can be prolonged in the case of multiple birth).

8. Regarding international instruments, Convention No 103 of the ILO of 1952 (revised in the 1982) concerning "the protection of maternity", ratified at this time by six Member States (Spain, Greece, Italy, Luxembourg, Netherlands, Portugal) provides also for a maternity leave period of 12 weeks - "and shall include a period of compulsory leave after confinement" (Article 3), this leave gives the right to receive cash and medical benefits (Article 4.1) - the employer, in no case "shall be individually liable for the cost of such benefits due to women employed by him" (Article 4.8). In addition, the said Convention specifies (Article 6) that it is unlawful for an employer "to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence".

9. In addition, the ILO Convention concerning night work (June 1990) specifies, in Article 7, that "measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work before and after childbirth, for a period of at least sixteen weeks, of which at least eight weeks shall be before the expected date of childbirth." (Article 7.1a).

This same Convention, which was the subject of an Agreement by the Social Partners at the ILO as well as eleven of the twelve Member States (the 12th abstained) specified also that the measures outlined below "may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave" (Article 7.2.), that pregnant women "shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth" (Article 7.3a), and finally that her income "shall be maintained at a level sufficient for the upkeep of herself and the child in accordance with a suitable standard of living" (Article 7.3b).

3. Conclusions

10. In accordance with its Action Programme, the Commission has to propose to the Council a Directive taking account of the diversity of occupations and the need to avoid creating additional obstacles to jobs for women.

11. Consequently, this proposal for a Directive, based on Article 118a of the EEC Treaty, sets out to improve the protection for pregnant workers or women who have just given birth, in their working environment, but without having a negative effect on their working conditions in general, and particularly on their situation on the job market. To this end, the proposal attempts to protect the health and safety of women workers while also guaranteeing respect of the principle of equality laid down by Council Directive 76/207/EEC, on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions⁽¹⁾ protecting female workers on the one hand and upholding the principle of equal opportunities for men and women on the other.

(1) OJ No L 39, 14.2.1976, p. 40.

12. Finally, the Directive takes into consideration the provisions, presented above, ILO International Conventions on maternity protection (No 103) and the regulation of night work of June 1990.

II PRESENTATION

13. Article 1 lays down the scope of the Directive in accordance with the provisions of Article 118a of the EEC Treaty and of framework Directive 89/391/EEC on the safety and health of workers at work.

However, it is essential, in order to ensure both safety and health protection and employment protection for the women referred to in this Directive, that the Directive should respect the principles of equal treatment of men and women as set out in the relevant Council Directives and in accordance with the Case Law of the Court of Justice of the European Communities.

14. Article 2 adds some necessary details on the scope of the Directive.

15. Section II (Articles 3 and 4) concerns working conditions for pregnant workers in relation to the risks which may affect them, in particular while at work, hence the necessary measures which the Member States must take in that regard.

16. In addition to the period of leave referred to above, protecting the health and safety of pregnant workers may make it necessary to change their working hours and their working activities to take account of their state of health, and also their types of activities and their working conditions. Such changes may concern, for example, organizing rest periods at regular intervals adapting conditions for workers on VDUs and, where necessary, arranging for a change of job. More particularly, there have been found to be a higher number of miscarriages among women who work on VDUs. Scientific studies⁽¹⁾ have shown that these miscarriages appear to be connected above all to the working posture; hence the need for provisions concerning working on VDUs.

17. In the same way, the constraints resulting from night work, due in part to a poor rate of recovery on the part of the pregnant women workers assigned to jobs involving special risks for them or significant physical or mental stress, can cause a higher rate of premature birth and/or miscarriages; hence pregnant workers ought not to be assigned obligatorily to night work for a certain period. (Article 3.3a).

(1) for example, study by Northern California Kaiser Permanent Medical Care Program, published in American Journal of Industrial Medicine, June 1988;

18. As certain risks specifically affect women workers who breast feed, and indirectly their babies through the mother's milk, it is appropriate to include in this Directive some provisions for the specific protection of these women. As a result of breastfeeding, such women undergo a change in their inner environment (a rise in their basic metabolism, a fall in overall blood circulation etc.) as well as a diminution of their energy reserves and their reserves of vitamins and oligo-elements. The result is a greater tendency towards fatigue which is a possible source of accidents at work, as well as creating diminished resistance to any stress encountered in the workplace.

19. For the same reasons as those outlined above (§ 20) regarding the break from work, the adaptation of working conditions to the benefit of women workers will be useful only if they retain at the same time the rights pertaining to work and adequate pay.

20. Women workers covered by this Directive must enjoy the benefits of Directive 89/391/EEC adapted to their specific situation, particularly as regards the obligations on employers concerning protection from risks connected with exposure to chemical, physical and biological agents at work. In some cases, this may mean that pregnant workers should not be engaged in work in which they are exposed or may be exposed to certain agents and procedures listed in the Annex to this Directive. These agents, which are covered by Article 4, are listed at paragraph 32 below. In the same spirit, pregnant women shall not be exposed to foreseeable excessive limit values for occupational exposure to other agents; otherwise their health could be seriously affected on account of their particular vulnerability. It must be borne in mind that the protection of workers against the risks of ionizing radiation is already assured by Directive 80/836/Euratom of 15 July 1980.

21. Section III (Articles 5 and 6) defines the nature and arrangements for maternity leave for pregnant workers and women who have recently given birth as well as aspects relevant on the one hand to work-related rights for beneficiaries of this leave, and on the other hand reduction in working time.

22. More specifically (Article 5.1), the delicate condition of pregnant workers, by reason of their pregnancy, and those who have just given birth is sometimes difficult to reconcile with the constraints of work, which could lead to the impairment of their state of health, justifies an uninterrupted period of 14 weeks leave, beginning before and finishing after the date of delivery. The proposed 14 weeks, and in some cases more, are already granted in most of the Member States. Without prejudice to further legislative advances in these countries, since these are minimum requirements, this proposal offers a welcome improvement, compatible with Community objectives (see Annex 2).

It is well understood that the division of the duration of leave before and after delivery should be left to the judgment of the beneficiary, within the framework of national legislation and practice.

In the same context, and considering the objectives in terms of health and safety, it is advisable to leave to the Member States the faculty of granting a longer rest period, not necessarily on full pay, on the condition, obviously, that such provisions ensure an equivalent level of protection.

23. Prenatal examinations, compulsory in most Member States, which must be available to pregnant women workers, are indispensable to the protection of their health. This warrants measures being taken by the Member States, where they have not already done so, to ensure that all pregnant workers are granted leave without loss of pay to undergo an examination, such interruptions to be counted as part of working time.

24. Given that, as the Court of Justice stated in its judgement of 15 May 1986 in the Johnston case (222/84), exceptions to the principle of equal treatment for men and women, as laid down in Directive 76/207/EEC, must be interpreted strictly, specific provisions for the protection of women during pregnancy and maternity do not allow women to be barred from a job on the grounds that public opinion requires them to have greater protection against certain risks than men (see Annex 3 to this explanatory memorandum setting out the current situation in the Member States on this point). It is therefore desirable that the break from work referred to above remains a women's right and not an obligation, except where there is medical opinion to the contrary.

25. That such leave is paid and/or qualifies the women worker for an allowance - the funding arrangements fall beyond the scope of this Directive - is evidence of the simple fact that many pregnant workers would have to do without all or part of the break from work in order not to lose their pay - which would, of course, run counter to the objective sought - that is to improve health protection at the workplace. It will be recalled that the 1990 ILO Convention on night work states that "the income of the woman worker shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living" (Article 7.3b.); the wording is the same as that of Article 7.4 of Convention 103.

26. Article 5.2 deals specifically with the period immediately preceding the presumed date of delivery. Many pregnant women workers currently prefer to defer, for very understandable reasons, their right to maternity leave until the period following the birth, thus remaining at work until just before the birth. The pregnant workers' difficulties in ergonomic adjustment at the workplace and the serious dangers to their health which may result from the abovementioned deferment warrant them being granted a compulsory paid break from work during the last two weeks preceding the presumed date of delivery.

27. Maintaining her work-related rights (Article 6), and especially her right to her job itself and the associated remuneration, is an essential corollary to the rights referred to in Article 3 of the Directive to ensure that a woman does not give up her health and safety protection for career-related reasons. It therefore follows that these rights must be maintained, and that, in the case of pregnant workers or women who have just given birth, any risk of dismissal for reasons associated with their condition must be avoided.

28. Section 4 concerns the final provisions. Article 7 seeks to consolidate the health and safety protection for women workers covered by this Directive by altering the legal procedure in their favour in respect of litigation which may arise during the period covered by the Directive from the provisions of the attached Directive. In fact, the burden of proof has been modified in national law in favour of the employee in maternity protection cases in Italy⁽¹⁾, Denmark⁽²⁾, Ireland⁽³⁾, France⁽⁴⁾, the Netherlands, Germany⁽⁵⁾ and the United Kingdom⁽⁶⁾. Belgium is also now in the process of amending its legislation accordingly.

29. Article 8 contains a provision common to the individual Directives under Directive 89/391/EEC regarding the adaptation of the technical Annex.

30. Articles 9 and 10 contain the provisions common to the Directives, adapted to take account of the special case of implementation by agreement, without thereby relieving Member States of the obligation to ensure that the aims of the Directive are achieved.

31. The deadline for implementation of this Directive is put at 31 December 1992 to enable it to be integrated into the social dimension of the internal market.

32. The Annexes set out a list of agents and procedures to which pregnant and breastfeeding workers must not be exposed because of the specific risks they constitute for them.

1) Physical agents:

- Work causing or liable to cause high-frequency vibration around the central axis of the body is liable to cause detachment of the placenta in pregnant women and may also play a part in premature birth; hence the proposed prohibition of such work for pregnant workers, particularly as current technical measures for preventing vibration are not effective enough.

11) Biological agents:

- Biological agents belonging to groups III and IV within the meaning of Article 2 of Directive 90/ /EEC cause serious illnesses in the population at large and are a serious hazard to workers. Exposure to such agents might cause serious damage to pregnant women, which might in turn adversely affect their life expectancy; it therefore follows that exposure of pregnant workers to the above agents should be banned.

(1) Article 2 law No 1.204, 30.12.1971.

(2) Article 16(4), law of 1.1.1988.

(3) Article 26, law of 26.3.1981.

(4) Article 83-635, 13.7.1983, Labour Code Art. L 140-8.

(5) Civil Code, Articles 611(a) § 1 and 612 §3.

(6) Khanna v. Ministry of Defense, (1981) ICR 653.

- Toxoplasmosis and the rubella and chicken pox viruses are known to cause foetal malformations where the mothers have not been immunized; hence the need to ban exposure of pregnant workers to these agents, in view in particular of the medical complications which might ensue for them, not to mention the psychological injury caused to the mother by the birth of an handicapped child.
- The other biological agents listed in the Annex (listeria, myxovirus, etc.) present, in addition to the hyperthermia risk to infected patients (itself a factor in foetal anoxia) their own risks to the embryo or the foetus in the form of malformations and/or miscarriage.
- Finally, the specific tropism of biological agents infecting the lower genital organs in particular (i.e. neisseria gonorrhoea, treponema pallidum) makes them dangerous to pregnant workers in that they are likely to infect the ovum through the lower passage with the complications which may result for the women concerned.

iii) Chemical agents :

- The labelled substances⁽¹⁾ R40 (possibly irreversible effects), R45 (carcinogenic), R46 (hereditary genetic changes) and R47 (teratogenic) are such a hazard to the woman or the ovum that pregnant women must not be allowed to come into contact with them.
- The other substances listed in the Annex present one of the above hazards but have not yet been classified or labelled by Directive 67/548/EEC.
- The industrial processes listed in Annex 1 to Directive 90/.../EEC concerning the protection of workers from the risks associated with exposure to carcinogenic agents at work present such a risk to pregnant women workers that such women should not be engaged on such processes.

(1) Under Directive 67/548/EEC (labelling of chemical substances).

ANNEX 1

MATERNITY LEAVE

Country	Maternity leave	Pay	Extra leave
Belgium	14 weeks (6 before birth) (1)	100% for 1-4 weeks, thereafter 80%	/
Denmark	28 weeks (4 before birth) (2)	90% of salary (3)	/
FRG	14 weeks (6 before birth) (4)	100% of salary or fixed sum	/
Greece	15 weeks (6 before birth) (5)	100% of salary	Mothers may apply for a paid reduction in working hours of up to 2 hours for children under 2 and 1 hour for children up to 4.
Spain	16 weeks (6)	75% of salary	/
France	16 weeks (6 before birth) (7)	84% of salary	/
Ireland	14 weeks (4 before birth) (8)	70% of salary (9)	4 weeks (unpaid).
Italy	20 weeks (8 before birth) (10)	80% of salary	2 hours per day (paid) up to the child's first birthday.
Luxembourg	16 weeks (8 before birth) (11)	100% of salary	/
Netherlands	12 weeks (6 before birth) (12)	100% of salary	/
Portugal	90 days (6 weeks before birth) (13)	100% of salary	1 hour reduction in daily working hours for 9 months (paid) for mothers who are breastfeeding (14)
UK	40 weeks (15)	6 weeks at 90% of the salary and 12 weeks at a fixed reduced sum. Remaining period unpaid (16)	/

Notes (1)-(16): see following page

Notes: Maternity leave

(1) Must have been covered by social security for six months, including three before the birth. Must also have worked for 120 days (real or credited).

(2) Must be insured and have worked for six months during the year preceding the birth, including at least 40 hours during the four weeks preceding maternity leave. The last ten weeks may be taken by the father or mother, or shared between them (parental leave).

(3) For blue-collar workers the sum is equivalent to 90% of the salary for 18 weeks, or for white-collar workers at least 50% of the salary for five months, up to a certain limit. Approximately 50% of women have incomes over this limit.

(4) Four weeks extra for a premature or multiple birth. Beneficiaries must have worked or received unemployment benefit for at least nine months (or seven in the case of premature birth) out of the previous twelve.

(5) Must have paid 200 days' contributions during the two years preceding entitlement to a maternity grant. Public sector employees are entitled to four months' paid maternity leave (two months before the birth and two months after).

(6) After adoption: eight weeks for a child aged under nine months and six weeks for a child aged between nine months and five years. Beneficiaries must have been registered with the social security for at least nine months before the birth and have paid contributions for at least 180 days during the previous year.

(7) From the third child onwards women may have an extra two weeks before the birth and eight weeks after. Two extra weeks are granted for multiple births and ten weeks for repeated multiple births.

(8) Must have worked at least 18 hours per week and held a post conferring entitlement to social security for at least 26 weeks. The public sector and part of the private sector grant 10 weeks' maternity leave for adoption.

(9) Women on maternity leave are also entitled to the equivalent of 30% of their salary in the form of a social security payment. Women in the public sector receive 100% of their wage.

(10) In the public sector women may apply for four extra weeks' paid maternity leave at 100% and 16 weeks at 30% after the birth. In the private sector they may take four extra weeks after the birth at 80% of their wage. Applicants must be working and have been insured at the start of the pregnancy.

(11) Four extra weeks for breastfeeding or premature/multiple births. Social security compulsory for at least six months of the year preceding the birth.

(12) The beneficiary must have worked for at least six months in order to be eligible, although the Industry Board often allows exceptions to this rule.

(13) Likewise twelve weeks for adoption. Beneficiaries must have paid at least six months' social security contributions, including eight days in the three months preceding entitlement to a maternity grant.

(14) The public sector grants 15 days' extra paid leave per year to mothers of handicapped children.

(15) Leave may be taken at the mother's convenience between eleven weeks before and 40 weeks after the birth.

(16) Eligibility: two years for those working at least 16 hours, five years for those working 8-16 hours. Those not eligible receive a flat-rate maternity grant for each child.

FINANCING OF MATERNITY LEAVE

Country	Grants and benefits payable by a) social security b) the employer
FRG	<p>During normal leave: 100% wages guaranteed (net wage paid over the previous three months)</p> <p>a) <u>social security</u> covers costs up to DM 25 per day</p> <p>b) <u>the employer</u> pays the difference between this grant and the average wage</p> <p><u>Exception</u>: no social security grant if the employer continues to pay the full wage.</p> <p><u>Extra leave</u>: DM 750 payable by insurance.</p>
Belgium	<p>a) <u>Social security</u>: 79.5% of the gross wage during leave not paid by the employer</p> <p>b) <u>The employer</u></p> <ul style="list-style-type: none"> - for manual workers: 100% of the wage for seven days - for others: 100% of the wage for one month.
Denmark	<p>a) <u>Social security</u>: for female employees and self-employed workers only: 90% of the average weekly wage; maximum: Dkr. 2339 per week</p>
Spain	<p>a) <u>Social security</u>: 75% of the basic wage used to calculate the contributions paid during maternity leave.</p>
France	<p>a) <u>Social security</u>: 84% of the average daily wage paid during the last month's work, up to a certain limit (+ birth grant and breastfeeding bonus)</p>
Greece	<p>a) <u>Social security</u>: the average reference wage (22 groups)</p> <p>b) <u>The employer</u>: full wage for 15 days (or 30 days if beneficiary has at least one year's seniority) minus the social security benefit, i.e., 50% of the maximum wage.</p>
Ireland	<p>a) <u>Social security</u>:</p> <ul style="list-style-type: none"> - manual workers: 70% of the average daily wage over the last tax year < £ Irl. 76 per week > £ Irl. 11 000. - general rules: £ Irl. 42.30 per week (may be more)

Italy	a) <u>Social security</u> : 80% of income during "normal" leave, 30% of income during extra leave
Luxembourg	a) <u>Social security</u> : 100% of the gross wage + maternity grant (Lfrs 3 312, 1987)
Netherlands	a) <u>Social security</u> : 100% of the gross wage up to a maximum of Hfl 263 per day
Portugal	a) <u>Social security</u> : 100% of the average wage paid during the two months preceding the second month before the maternity leave, provided that the beneficiary has paid the equivalent of 20 days' contributions + breastfeeding grant
United Kingdom	b) <u>The employer</u> : for six weeks 90% of the weekly wage from which the maternity pay is calculated. The employer pays maternity pay at the same rate for eight weeks if the beneficiary has worked for him for 26 weeks (earnings threshold of £41 per week). He may apply for reimbursement of the pay (calculated on the basis of seniority within the maximum and minimum laid down) from the Maternity Fund.

Annex 2

Reasons for stopping work

Figures for 1988

Men/women (1000)

Sample from Member States for which the Community has reliable figures

Source: Statistical Office of the European Communities

	TOTAL	Maternity leave	% of total	Other reasons, e.g. personal or family	% of total
B	2211/1272	-/9,1	-/0,7	(1) / 9,1	(1) / 0,7
DK	1463/1220	-/22,3	-/1,8	12,7/21,3	0,9 / 1,7
D	16454/10545	-/99,3	-/0,9	39,0/66,0	0,2 / 0,6
E	8111/3597	-/13,4	-/0,4	27,7/20,9	0,3 / 0,5
F	12409/9096	-/131,7	-/1,4	47,0/60,7	0,4 / 0,7
I	14044/7058	(2)	(2)	84,0/153,0	0,6 / 2,2
NL	3736/2174	(2)	(2)	36,5/56,8	1,0 / 2,6
P	2613/1841	-/5,5	-/0,3	18,1/12,7	0,7 / 0,7
UK	14746/10914	-/96,9	-/0,9	60,7/105,7	0,4 / 1,0
EUR	61226/40165	-/388,9	-/0,97	332,8/511,5	0,54/1,27

(1) Insufficient data

(2) Maternity leave included with other reasons

(3) Europe not including Italy and the Netherlands

ANNEX 3

Right to resume employment and ban on dismissal

FR Germany: Dismissal prohibited during pregnancy and within four months of the birth (provided employer was duly advised); right to resume old job.

Belgium: The Law of 16 March 1971 on employment states in Article 40 that the employer may do nothing to terminate employment unilaterally with effect from the moment when he is informed of the pregnancy until the expiry of one month starting at the end of post-natal maternity leave except in circumstances which are not directly linked to the condition of the employee (burden of proof lies with employer).

Denmark: The law on the equality of treatment of men and women with regard to employment and maternity leave of 1 May 1989 provides in Article 9 for the protection of female workers from dismissal.

Spain: The employment contract can be suspended in the event of maternity and at the end of the period of suspension the worker has the right to resume her job.

France: L 126.6 (employment legislation) : suspension of the employment contract during maternity leave; upon conclusion of the period of suspension the worker has the right to resume her job.

L 122-25 2 (employment legislation) : protection against dismissal of pregnant female workers up to the end of the fourth week following the return from maternity leave.

Greece: Law 1483/1984 provides in Article 15 (1) that the dismissal of any woman during pregnancy and before the lapse of one year following pregnancy is prohibited. The law states that when a woman takes maternity leave the employment contract will be unilaterally suspended. The return of the person after maternity leave terminates the suspension of the contract.

Ireland: Sections 20 and 21 of the Maternity Protection of Employees Act 1981 establishes the right to resume the same job unless it has meanwhile become unreasonable for the worker to resume the same job.

Italy: The law on the protection of mothers at work (No 1204/1971) ensures protection from dismissal until the child is one year old.

Luxembourg: The law of 3 July 1975 on the protection of pregnant women prohibits in Article 10 (1) the dismissal of workers during the 12 weeks following birth and in subparagraph (4) guarantees the right to resume the same or an equivalent job.

Netherlands: Article 1639 h of the civil code provides that for a period extending from the seventh to the eleventh week after the birth of her child the employer may not dismiss a worker who resumes her work after giving birth.

Portugal: Law number 4/1984 on the protection of mothers and fathers states in Article 18 that the periods of maternity leave are taken into account as if they had actually been in paid employment and so no rights are lost.

United Kingdom: The Employment Protection (Consolidation) Act of 1978 as amended by the Employment Act Part III Sch.2. Provided the worker satisfies certain conditions with regard to the number of hours worked and the number of years with her employer she has a right to resume the same job or an equivalent job in the 29 weeks following the birth (notification formalities to be completed). Employers employing fewer than 5 staff are not covered by the job resumption provisions if they prove unreasonable in practice.

ANNEX 4

ATTITUDE OF THE MEMBER STATES
WITH REGARD TO NIGHT-SHIFT WORKING BY WOMEN*

<u>MEMBER STATES</u>	<u>PRINCIPLE</u>	<u>EXCEPTIONS</u>
Belgium	Young people under 18 not allowed to work night-shifts. A rest period of at least 11 consecutive hours must be taken.	Limits for night-shift working are 22.00 to 05.00 or 23.00 to 06.00 for continuous working or shifts 23.00 or 05.00 or 24.00 working to 06.00 for shift work in firms operating the 5-day week. Possible exemption: exceptional circumstances or urgent and unscheduled orders; by Royal Decree on the basis of the opinion of the Joint Committee, for certain industrial sectors, firms or occupations.
France	Night-shift working by women prohibited in factories, manufacturing industries, mines and quarries, construction sites and workshops of all types, public or private, lay or religious, as well as public authorities and ministries, establishments for the self-employed, commercial companies, trade unions and all types of associations.	General exceptions for - jobs in management or jobs involving technical responsibility; the health and safety services, and welfare institutions where no manual work is involved. Possible exemption: for work connected with national defence, in exceptional circumstances or where perishable goods are involved; -by virtue of extended collective agreement or by company or establishment agreement in firms operating shift working (with the exception of iron and steel, national agreement on 17.7.1986 extended by Decree on 1.1.1987)

* On the basis of information supplied to the Commission in 1989.

Greece	Night-shift working by women between 21.00 and 05.00 is prohibited in factories, mines and shops.	Night-shift working restriction limited to 23.00 - 06.00 in the textiles industries and similar. Exemptions - by Decree for certain sectors of industry (for example the fish canning plants); by order of the local authority after consultation of workers and management where matters of a national interest justify the exemption.
Portugal	Night-shift working by women prohibited.	General exemptions for - managerial jobs or jobs involving technical responsibility; health and safety series where no manual work is involved. With the exception of pregnant women and young mothers during the 3 months following the birth of the child exemptions are possible in industry where - exceptional circumstances prevent the establishments operating normally or - there is a need to prevent laboratory material deteriorating and such work is governed by collective bargaining.
Italy	Night-shift working between 24.00 and 06.00 prohibited for men and women in industry and craft trades (no provisions for the non-industrial sectors).	Exemptions possible by virtue of collective bargaining or company agreements in view of production constraints or organizational requirements where such work is on a voluntary basis.

Spain	Work between 22.00 and 06.00 must involve a 25% bonus on basic salary levels.	Night-shift working by young people under 18 prohibited. No overtime between 22.00 and 06.00.
FR Germany	Night-shift working by women between 20.00 and 06.00 and for more than 7 hours at a stretch prohibited. Permission for night-shift work required by all with the same rest periods prescribed for women and men.	Exemptions for the following sectors; transport, hotel service and restaurants, hairdressing, swimming pools, orchestras, theatres and other public events, outdoor sales areas and markets, gardens, pharmacies and health services. The länder have responsibility for deciding to prohibit or restrict night-shift working with a view to protecting the lives and health of women and unborn children.
Ireland	Night-shift working by women must be authorized.	Pregnant women may choose to be transferred to a day shift on medical advice.
Luxembourg	General authorization required.	
Netherlands	General authorization for night-shift working (since 13.4.1989)	Night-shift working by pregnant women prohibited except with special authorization.
United Kingdom	General authorization required for night-working.	

NATIONAL LEGISLATION ON
NIGHT WORK

MEMBER STATES	TEXTS	CONTENT
Belgium	Law of 1921	Ban on night work for all employees between 2000 and 0600
	Law of 21.3.1952	Ratification of International Labour Office (ILO) Convention No 89, applicable up to 18.2.1991.
	Royal Decree of 24.12.1968 + RD 24.5.1981 RD 19.4.1988	List of exceptions to the ban on night work for women. Addenda.
	Law of 16.3.1971 + Law 17.3.1987	Derogations from the ban on night work for all employees. Addenda.
	National collective agreement No 42	Derogations (via collective agreements) for men over 18 only.
	National collective agreement No 46 23.3.1990	Universal provisions regarding the nature of night work; specific provisions on protection of pregnant women and those having given birth recently, three months before and three months after giving birth.
France	Law of 21.9.1953	Ratification of Convention No 89.
	Article L.213.1 of Labour Code	Ban on employing women at night in certain sectors.
	Law of 2.1.1979	Exceptions to the ban.
	Law of 19.6.1987	New set of derogations.
Greece	Law 4029/1912	Ban on night work for women.
	Law 3924/1959	Ratification of Convention No 89.

Portugal	Order in Council of 23.1.1963	Ratification of Convention No 89.
	Order in Council of 27.9.1971	Legal provisions governing work time.
Italy	Law 653/1937	Ban on night work, in line with ILO Convention No 89.
	Law 903/77	Equal treatment of men and women in industry and craft sector.
Spain	Law of 18.5.1970	Ratification of Convention No 89.
	Law of 8.4.1976	Introduction into legislation of the principle of sexual equality in labour relations.
	Constitution of 1978 (Art. 14)	Ban on sexual discrimination.
	Law of 10.3.1980 (Estatuto de los Trabajadores)	Confirmation of the principle of equality between men and women at work.
Germany	Arbeitszeitordnung 1938 + Freizeit- ordnung 1943	Ban on night work for women. Addenda.
	<i>Draft Arbeitszeit- gesetze, 1988</i>	<i>New work regulations, repealing the ban on night work for women.</i>
Netherlands	Law of 13.4.1989	Abolition of all rules and regulations discriminating between men and women.
Luxembourg	Grand-Ducal Government communication of 15.2.1982	Renunciation of ILO Conventions No 4 and 89, with effect from 19.2.1983.

Ireland	Conditions of Employment Act, 1936	Ban on night work for women in industry.
	Act of 1952	Ratification of Convention No 89.
	Mines and Quarries Act, 1965	Ban on night work for women in mines and quarries.
	Act of 1983	Renunciation of ILO Convention No 89
	Employment Equality Act, 1977 (Employment of Females in Mines) Order 1984	Repeal of ban on night work for women in mines.
Employment Equality Act (Employment of Women) Order 1986	Repeal of ban on night work for women in industry.	
United Kingdom	Sex Discrimination Act 1986	Abolition of discrimination between men and women.
	Order of February 1987	Removal of restrictions on equality between the sexes, as provided for in the Mines and Quarries Act.
	Order of 26.2.1988	Repeal of ban on night work, as provided for in the Hours of Employment Act.

ANNEXE 5

**ADDENDUM TO THE EXPLANATORY MEMORANDUM ON
THE PROTECTION OF PREGNANT WOMEN AT WORK**

RESTRICTIONS ON EXPOSURE
OF PREGNANT WOMEN TO CERTAIN RISKS:
SITUATION IN MEMBER STATES

1. BELGIUM

Exposure of pregnant women to certain specific substances and of all women to lead pigments and paints is prohibited.

2. DENMARK

No ban on exposure of pregnant women to certain risks, but special provisions exist concerning exposure to polyurethane, epoxy resin production and exposure to lead.

3. FRANCE

Women are not allowed to do certain jobs or to be in places where certain types of work are carried out.
There is one exception to this regarding work with aromatic hydrocarbons carried out in a closed system.

4. FEDERAL REPUBLIC OF GERMANY

Pregnant women and mothers of young children may not be exposed to certain dangerous substances or engage in certain types of activity considered tiring or stressful.

5. GREECE

Pregnant women may not carry out certain jobs involving exposure to benzene or certain preparations containing benzene.

6. IRELAND

Women may not be exposed to work involving use of lead.

7. ITALY

Pregnant women may not be employed in certain dangerous, tiring or stressful jobs considered injurious to health during pregnancy or seven months after giving birth. Such women may not be exposed to lead paints.

8. LUXEMBOURG

Women are not allowed to work with lead paints or pigments containing lead. Pregnant women are not allowed to work from the eighth week prior to delivery up to such time as they furnish a medical certificate saying they can return to work. During pregnancy and the three months following birth women may not be assigned to work involving exposure to harmful effects, toxic substances, radiation, heat, cold, humidity, trauma or vibrations.

9. NETHERLANDS

No bans on work by pregnant women.

10. UNITED KINGDOM

Pregnant women exposed to a certain level of lead must be automatically removed from the workstations causing such exposure. Furthermore, women in general may not be assigned to certain types of work process involving lead.

Proposal for a

COUNCIL DIRECTIVE

concerning the protection at work of pregnant women

or women who have recently given birth

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 Commission¹, drawn up after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

In cooperation 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 ensure a better level of protection of the safety and health of workers;

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

Whereas, under the terms of that Article, those directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

Whereas, pursuant to Council Decision 74/325/EEC⁴, as last amended by the Act of Accession of Spain and Portugal, the Advisory Committee on Safety, Hygiene and Health Protection at Work is consulted by the Commission on the drafting of proposals in this field;

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

1

2

3

4 OJ No L 185, 9.7.1974, p. 15.

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

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

Whereas Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁵ provides, in Article 15, that particularly sensitive risk groups, including pregnant women, must be protected against the dangers which specifically affect them;

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

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

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

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

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

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

5 OJ No L 183, 29.6.1989, p. 1.

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

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

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

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

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

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

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

HAS ADOPTED THIS DIRECTIVE:

SECTION I

SCOPE AND DEFINITION

Article 1

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

Article 2

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

SECTION II

WORKING CONDITIONS

Article 3

1. Without prejudice to the arrangements laid down in Article 6 of Directive 89/391/EEC, Member States shall take all necessary steps to ensure that pregnant workers are protected against the risks arising particularly at work. To this end, Member States shall ensure that the relevant Health and Safety authorities carry out an evaluation of the impact on pregnancy of the activities on which these women are engaged, in respect of the nature and degree of exposure to any chemical, physical or biological agent, and also in respect of posture, movements and mental and physical fatigue related to their work. These evaluations shall be communicated to employers and workers so as to increase awareness of possible risks.
2. Member States shall take measures to ensure, when the type of activity of pregnant and breastfeeding workers may endanger their health and safety, that their working conditions and/or working hours are adapted, and, if necessary, allowing a change to alternative duties. The maintenance of pay and employment rights is assured in this case.

3. Member States shall take measures to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:
 - a) before and after childbirth, for a period of at least sixteen weeks of which at least eight weeks shall be before the expected date of childbirth;
 - b) for additional periods in respects of which a medical certificate is produced stating that it is necessary for the health of the mother or child:
 - i) during pregnancy;
 - ii) during a specified time beyond the period after childbirth fixed pursuant to subparagraph a), the length of which shall be determined by the competent authority after consulting the most representative organisations of employers and workers.

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

Article 4

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

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

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

SECTION III

LEAVE ARRANGEMENTS, DURATION OF WORK AND EMPLOYMENT RIGHTS

Article 5

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

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

2. Member States have the faculty to grant a period of leave longer than 14 weeks, not on full pay, as long as an equivalent standard of protection is assured. In this case, the pay and/or the corresponding allowance for the entire period of rest shall not be less than 80% of the salary of the beneficiaries, and if need be, within a ceiling defined by national regulation;
3. Member States shall take the necessary measures to ensure that pregnant workers shall be granted an obligatory period of paid leave covering a period of not less than two weeks before the presumed date of delivery.
4. Member States have the faculty to subject the right regarding the payment of the remuneration and/or allowance as defined in paragraph 1 to the condition that the benefitting workers have worked or are registered as unemployed since at least the beginning of the pregnancy with the exclusion, in so far as this faculty is concerned, of the compulsory rest period defined above in paragraph 3.
5. Member States shall take the necessary measures to the effect that pregnant workers benefit from a leave without loss of pay when attending medical examination before birth, in case such examinations can take place during working hours only.

Article 6

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

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

SECTION IV

FINAL PROVISIONS

Article 7

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

Article 8

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

Article 9

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

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

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

Article 10

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

ANNEX I

I. LIST OF AGENTS REFERRED TO IN ARTICLE 4, PARAGRAPH 1

I. AGENTS

a) Physical agents:

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

b) Biological agents:

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

- Toxoplasma
- Rubella virus
- chicken pox virus
- Listeria
- Neisseria gonorrhoeae
- Cytomegalovirus
- Treponema pallidum
- Myxovirus and paramyxovirus
- Enterovirus (Echo-Coxsackie)
- Epstein-Barr virus

c) Chemical agents:

The following chemical agents:

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

II. PROCESSES

Pregnant women must not be exposed

to the industrial processes listed in Annex 1 to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work.

ANNEX II

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

1. AGENTS:

a) Physical agents:

- Work in a hyperbaric atmosphere (pressurised enclosures and underwater diving)
- Underground work (mines)

b) Biological agents:

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

- Myxovirus and paramyxovirus
- Enterovirus (Echo-Coxsackie)

c) Chemical agents:

The following chemical agents:

- Substances labelled R40 or R45 under Directive 67/548/EEC (labelling of chemical substances)
- The chemical agents listed in Annex I to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work
- Lead and/or lead compounds
- Mercury and/or mercury compounds
- Antimitotic drugs
- Solvents containing chlorine
- Carbon disulphide
- Benzene and/or benzene derivatives
- Organochlorine pesticides
- PCB
- Chemical agents of known (French: "formelle") and dangerous percutaneous absorption

2. PROCESSES

Nursing women must not be exposed:

to the industrial processes listed in Annex 1 to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work.

FICHE D'IMPACT
SUR LA COMPETITIVITE ET L'EMPLOI.

Proposition de directive du Conseil
concernant la protection au travail
de la femme enceinte et venant d'accoucher.

I. Principales raisons pour introduire les mesures?

D'une manière générale, la politique sociale de la Communauté a deux objectifs principaux: améliorer les conditions de travail et encourager la compétitivité, en particulier en instaurant des règles minimales au niveau communautaire.

Une protection adéquate des femmes enceintes et venant d'accoucher constitue un des principaux éléments pour l'amélioration des conditions de travail à la fois pour les entreprises et pour les femmes concernées, dans la mesure où, très souvent, ces dernières se retrouvent encore partagées entre leurs responsabilités professionnelles et familiales et que, non seulement leur santé, mais également leur travail peut en subir les conséquences.

La Commission s'est donc fixé entre autres objectifs, dans son Programme d'action pour la mise en oeuvre de la Charte communautaire des droits sociaux fondamentaux des travailleurs, l'adoption par le Conseil d'une directive portant sur la protection de la femme enceinte au travail.

Basée sur l'article 118A du Traité CEE, la présente proposition prévoit des prescriptions minimales en matière de protection de la santé et de la sécurité au travail de la femme enceinte et venant d'accoucher.

II. Caractéristiques des entreprises concernées?

Ainsi que toutes les directives basées sur l'article 118A, notamment dans le cadre de la Directive 89/391/CEE, la présente proposition doit s'appliquer à toutes les entreprises et le service public, tels que définis dans la Directive-cadre.

III. Quelles obligations cette mesure impose-t-elle directement aux entreprises?

Les dispositions de la présente directive visent à assurer certains droits protecteurs aux travailleuses enceintes et venant d'accoucher en prévoyant des dispositions en ce qui concerne, d'une part, un arrêt de travail de travail rémunéré (14 semaines, dont au moins 2 avant la date présumée de l'accouchement et 2 après celui-ci), accompagné du maintien des droits qui y sont liés, et, d'autre part, la connaissance de la nature et du degré des risques auxquels ces femmes peuvent être exposées dans leur travail, grâce à une évaluation de ceux-ci par l'employeur, une information et une instruction adéquates, ainsi que la prise des mesures nécessaires par l'employeur.

La plupart de ces dispositions sont déjà respectées, bien que sous des formes variées, dans la majorité des Etats membres. L'objectif de la présente proposition est d'assurer le respect de ces droits à toutes les travailleuses enceintes et venant d'accoucher, dans la Communauté, et d'améliorer ainsi les conditions sur le lieu de travail pour une meilleure protection de la santé et de la sécurité de ces travailleuses.

IV. Quelles obligations indirectes les autorités nationales, régionales ou locales pourraient-elles imposer aux entreprises?

Il peut y avoir un impact dans la mesure où les autorités nationales sont responsables de la transposition des dispositions de la directive dans la législation nationale.

V. Y a-t-il des dispositions particulières pour les PME?

Il n'y a pas d'autre disposition particulière pour les PME que les dispositions de l'article 118A qui prévoit que la création et le développement des PME ne doit pas être entravés par les mesures prises dans ce cadre.

L'article 5 de la présente proposition soulève toutefois la question à propos de l'éventualité d'un changement de poste nécessaire dans certains cas, et notamment en cas de difficulté de remplacer un travail de nuit par un travail de jour, ce qui peut arriver en particulier dans les PME. Le paragraphe 2, 2^o alinéa vise à résoudre ce problème.

VI. Quel est l'effet probable sur:

a) la compétitivité des entreprises?

En rendant les conditions de travail plus saines pour les travailleuses, la compétitivité des entreprises s'en trouvera renforcée à long terme, dans la mesure où le potentiel humain pourra être utilisé d'une manière plus rationnelle et responsable.

Comparé à cette perspective, le coût à court terme des mesures envisagées apparaît d'autant plus minime (voir annexe 2).

b) l'emploi?

D'un point de vue macro-économique et considérant tous les facteurs, la présente proposition offrira certainement un intérêt pour les employeurs dans la mesure où la main d'oeuvre féminine sera de plus en plus nécessaire et doit donc être encouragée par de telles mesures.

VII. Les organisations représentatives concernées ont-elles été consultées?

La présente proposition a été rédigée après consultations des experts gouvernementaux et des partenaires sociaux, dont les observations ont été prises en compte dans la mesure du possible.

Le Comité consultatif pour la sécurité, l'hygiène et la protection de la santé sur le lieu de travail a été consulté également.

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