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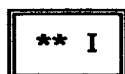
EUROPEAN PARLIAMENT

SESSION DOCUMENTS

English Edition

30 November 1990

DOCUMENT A 3-0337/90



R E P O R T

of the Committee on Women's Rights

on the proposal from the Commission to the Council for a directive concerning the protection at work of pregnant women or women who have recently given birth (COM(90) 406 final - C3-0340/90 - SYN 303)

Rapporteur: Mrs Joanna RØNN

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PE 143.482/fin.

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

Or. En.

* = Consultation procedure requiring a single reading

**II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

**I = Cooperation procedure (first reading)

*** = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

C O N T E N T S

Page

Procedural Page	4
A. Amendments to the Commission proposal	5
DRAFT LEGISLATIVE RESOLUTION	19
B. EXPLANATORY STATEMENT	20

By letter of 26 October 1990 the Council consulted the European Parliament, pursuant to Article 118a of the EEC Treaty, on the Commission proposal for a Council directive concerning the protection at work of pregnant women or women who have recently given birth.

At the sitting of 19 November 1990, the President of Parliament announced that he had referred this proposal to the Committee on Women's Rights as the committee responsible and to the Committee on Social Affairs, Employment and the Working Environment for their opinions.

At its meeting of 23 May 1990 the committee had appointed Mrs Rønn rapporteur.

At its meetings of 20 September, 30-31 October and 29 November 1990, the committee considered the Commission proposal and the draft report.

At the latter meeting it adopted the draft legislative resolution unanimously.

The opinion of the Committee on Social Affairs, Employment and the Working Environment will be published separately.

The following took part in the vote: Crawley, chairman; Domingo Segarra, vice-chairman; Rønn, rapporteur; Catasta (for Napoletano), Gröner, Hermans, Kostopoulos, Mebrak-Zaidi (for Belo), Nordmann (for Salema), van Putten (for Maibaum) and van Hemeldonck (for Vayssade).

The report was tabled on 30 November 1990.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

Commission proposal for a Council directive
concerning the protection at work of pregnant women
or women who have recently given birth (OJ No.)

Commission text¹

Amendments

(Amendment No. 1)

After the first recital, new recital

Whereas the concept of working environment must be interpreted as general living and working conditions;

(Amendment No. 2)

Ninth recital

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 women who are pregnant or have recently given birth must be considered a specific risk group as regards their own health and that of the foetus or baby measures must be taken with regard to their health and safety.

(Amendment No. 3)

Tenth recital

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

¹ Full text: COM(90) 406 final - OJ No. C 281 of 9.11.1990, p.3

(Amendment No. 4)
Fourteenth recital

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;

Whereas the objective of this directive is to protect the health of the pregnant worker, or worker who has recently given birth, within her working environment; whereas, furthermore, the Member States must take the measures necessary to ensure the maintenance of the remuneration or the payment of the allowance to such workers and to women who, have been registered as unemployed since the beginning of their pregnancy;

(Amendment No. 5)
Fifteenth recital

Considering, further, that 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; that, 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;

deleted

(Amendment No. 6)
Eighteenth recital

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 some types of activity 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 reduction of their working hours;

(Amendment No. 7)
After the eighteenth recital, new recital

Whereas the maintenance of the health of a woman worker during her pregnancy must be encouraged;

(Amendment No. 8)
Twentieth recital

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

Whereas, in addition, the exposure of male and female workers to certain physical, chemical or biological agents and processes may impair the reproductive functions of men and women;

Whereas a risk assessment should therefore be carried out, and in the light of this, appropriate measures should be taken ranging from greater protection to the implementation of measures ensuring that no exposure can occur under any circumstances; whereas each work situation shall be assessed individually;

Whereas a directive should therefore be drawn up on the subject, while in the meantime, the health of pregnant and breastfeeding workers and of the foetus or baby must be protected by carrying out a risk assessment and in the light of this, appropriate measures must be taken ranging from greater protection to the adoption of measures ensuring that no exposure can occur under any circumstances. Each situation shall be assessed individually.

(Amendment No. 9)

After the twentieth recital, new recital

Whereas the equal treatment of men and women implies the sharing of care for young children (whether or not adopted) between men and women;

Whereas the present directive is limited to protecting the working environment and the health of pregnant women, women who have recently given birth, and women who are breastfeeding, and a directive on parental leave must be drawn up without delay;

(Amendment No. 10)

After twenty-first recital, new recital

Whereas the physical and mental health of a woman and child must be protected during the period following adoption and the periods of leave provided for following childbirth must therefore be extended to cases of adoption;

(Amendment No. 11)

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;

The object 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 and are breastfeeding;

(Amendment No. 12)

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.

For the purposes of this Directive 'pregnant workers' and 'women workers who have recently given birth' and 'women workers who are breastfeeding' shall refer to workers, including women working in agriculture or in atypical working conditions (part-time work, seasonal work, replacement work, etc.) who are pregnant or have recently given birth or are breastfeeding and 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.

(Amendment No. 13)
Article 3(1)

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.

Without prejudice to the arrangements laid down in Article 6 of Directive 89/391/EEC, Member States shall take all necessary steps - having regard to the protection of the foetus - 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 authority carry out an evaluation of the impact on reproduction and pregnancy, of physical, chemical and biological agents and working processes, including posture, movement and mental and physical fatigue and other mental stresses, considered harmful to unborn children, pregnant or breastfeeding women;

Employers shall be required to make available to workers when they are appointed information concerning risks to health, fertility and the development of the foetus and concerning workers' rights; such information must be given to all workers of reproductive age.

(Amendment No. 14)

After Article 3(1) insert new Article 3(1) a

Member States shall adopt the necessary measures to ensure that the social health and prevention services provide information on the possible risks and hazards present or associated with:

- the specific activities on which the workers are engaged at the workplace;
- housework, with specific reference to the physical agents and chemicals used;
- the possible interactions and synergies between the activities and agents mentioned in the above two indents;

This information must be given systematically to all women workers in order to guarantee on mere suspicion and on confirmation of pregnancy that they will be removed from hazardous duties and/or given alternative duties.

(Amendment No. 15)

Article 3(2)

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 ensured in this case.

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, immediately after the worker has informed her employer of her pregnancy, and, if necessary, allowing a change to alternative duties. The maintenance of pay and employment rights is ensured in this case.

(Amendment No. 16)
Article 3(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 respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child;
 - I) during pregnancy;
 - II) during a specified time beyond the period after childbirth fixed pursuant to subparagraph (a), the length of which shall be determined by the competent authority after consulting the most representative organizations of employers and workers.

- (a) before childbirth, immediately after the worker has informed her employer of her pregnancy, and after childbirth for at least three months after the expected date of delivery;

(Amendment No. 17)
Article 3(4)

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 are maintained in this case.

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. Pay and employment rights shall be maintained in this case for the duration of the transfer, even where these are more favourable.

(Amendment No. 18)
Article 4(1)

1. The 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, or processes listed in Annex 1. Under no circumstances shall pregnant workers be exposed to potential concentrations in excess of the occupational exposure limits for other agents.

1. The Member States shall take the necessary measures to ensure that the individual employer is responsible for working conditions not being harmful to unborn children, pregnant or breast-feeding women. The employer shall take the necessary measures to eliminate or provide protection against occupational risks in accordance with Article 6(1) of the framework directive.

(Amendment No. 19)
Article 4(2)

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

2. Where agents or processes listed in the Annex are in use at the place of work, an expert evaluation shall be carried out of the risk of harmful effects.

(Amendment No. 20)
Article 4(3)

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. Employments rights shall be maintained during this period.

3. Where the risk cannot be immediately eliminated by means of organizational changes at the workplace, through substitution or health and safety measures, the workers concerned shall be transferred to another suitable employment within the same organization until the situation has been rectified. Where this is not technically or objectively possible, the workers concerned shall be entitled to leave without a reduction in income or loss of employment rights. The employer shall take the necessary measures to comply with the requirements laid down in Article 4(1).

(Amendment No. 21)
Article 5(1), first paragraph

The 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.

The 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 16 weeks leave from work on full pay and/or a corresponding allowance. The time at which this period of leave commences shall be decided by the beneficiary, in accordance with national practice and legislation.

(Amendment No. 22)
Article 5(1), second paragraph

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.

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 16 weeks. They will be dealt with under the scheme applicable in case of sickness.

(Amendment No. 23)
Article 5(2)

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 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.

2. Member States that grant a period of leave longer than 16 weeks shall take the necessary measures to ensure that an equivalent standard of protection and pay and/or a corresponding allowance not less than 80% of the normal salary are assured throughout this period, and if need be, within a ceiling defined by national regulation.

(Amendment No. 24)
Article 5(4)

4. Member States have the faculty to subject the right regarding the payment of the remuneration and/or allowance as defined above in paragraph 5(1) to the condition that the benefiting workers have worked or are registered as unemployed since at least the beginning of the pregnancy with the exclusion insofar as this faculty is concerned, of the compulsory rest period defined above in paragraph 2.

4. Member States have the faculty to subject the right regarding the payment of the remuneration and/or allowance as defined above in paragraph 5(1) only to the condition that the benefiting workers have worked or are registered as unemployed since at least the beginning of the pregnancy.

(Amendment No. 25)
Article 5(4)a (new)

Member States shall adopt the necessary measures to ensure that every pregnant worker undergoing a difficult pregnancy may benefit from an immediate period of leave from work on presentation of a medical certificate without prejudice to the maintenance of employment rights.

(Amendment No. 26)
Article 5(5)

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 examinations before birth in case such examination can take place during working hours only.

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 examinations before birth where such examinations take place during working hours; leave provided under the terms of the current Directive after birth, shall also apply in the event of adoption.

(Amendment No. 27)
Article 5(5)a (new)

Member States shall undertake to adopt the necessary measures to ensure that a worker who is breastfeeding is authorized to interrupt her work for one or more periods whose duration shall be laid down under national legislation without prejudice to the maintenance of employment rights.

(Amendment No. 28)
After Article 6, insert new article

Complaints procedure (new)

The Member States shall incorporate into their national legislation the necessary provisions enabling anyone who believes that their rights under this directive have been infringed to seek legal redress through the courts or, if applicable, bring the case before other competent bodies.

(Amendment No. 29)
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 regards the burden of proof.

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. Where a worker initiates such a dispute, arguing that the rules of the directive have been infringed, and is able to show before a court or other competent authority, reasonable grounds for assuming that the directive has not been complied with, it shall be for the defendant to prove that the directive has not been infringed. The complainant shall enjoy the benefit of the doubt.

ANNEXES

Annex 1 and 2 of the Commission proposal shall be combined into a single annex reading as follows:

Annex

List of agents referred to in Article 4(1)

a) Physical agents:

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

b) Biological agents:

Biological agents of Groups III and IV within the meaning of Article 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

a) Physical agents:

- work causing or liable to cause movements harmful to the embryo or foetus;
- work causing or liable to cause an exposure of the body to pressures higher than that of the atmosphere;
- working in a hypertonic atmosphere (pressurized enclosures and underwater);
- underground work (mines);
- exposure to ionizing and non-ionizing radiation;
- work involving heavy lifting, pushing, pulling, heavy repetitive and stress work, etc. ...

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:

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

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,
- 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 I to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work.

c) Chemical agents:

The following chemical agents:

- substances labelled R39, R40, R45, R46, R47 and R48 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,
- Solvents containing chlorine;
- Organochlorine pesticides;
- Benzene and benzene derivatives;
- nitroderivatives and chlorite derivatives of benzene hydrocarbons,
- Ethyl glycol and ethyl acetate;
- PCB;
- chemical agents of known and dangerous percutaneous absorption;
- cadmium and cadmium components;
- lead and lead components;
- mercury and mercury components;
- nickel and nickel compounds;
- carbondisulphide;
- asbestos,
- teratogenic drugs which include antimitotic drugs;
- antiparasitics and herbicides;
- anaesthetic gases.

2. Processes

Pregnant and 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.

a) Physical agents:

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

b) Biological agents:

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

- Myxovirus and paramyxovirus
- Enterovirus (Echo-Coxsackie)

c) Chemical agents:

The following chemical agents:

- Substances labelled R40, or R45 under Directive 67/548/EEC (labelling of chemical substances)
- The chemical agents listed in Annex I to Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work
- Lead and/or 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

Nursing women must not be exposed:

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

3. Conditions and organization of work

The organization of work for pregnant and nursing women must take special account of the following conditions:

- the time of work, including night work;
- conditions causing mental stress;
- the risk of violence;
- sedentary, monotonous work;
- heat stress.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a directive concerning the protection at work of pregnant women or women who have recently given birth.

The European Parliament

- having regard to the Commission proposal to the Council (COM(90) 406 final)¹,
 - having been consulted by the Council pursuant to Article 118A of the EEC Treaty (C3-340/90),
 - having regard to the report of the Committee on Women's Rights and the opinion of the Committee on Social Affairs, Employment and the Working Environment (A3-0337/90),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly pursuant to Article 149(3) of the EEC Treaty;
 3. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
 6. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 281, 9.11.1990, p.3

EXPLANATORY STATEMENTIntroduction:

1. The Community Charter of the Fundamental Social Rights of Workers adopted by the Council in 1989 contains obligations to create equal opportunities for men and women. In addition, the Member States are enjoined to pursue their efforts to harmonize conditions with a view to an increasingly higher level of health protection and safety for workers.

The Commission proposal for a Council directive concerning the protection at work of pregnant women or women who have recently given birth is a product of these general objectives.

The basis for the directive is Article 118A of the EEC Treaty and Framework Directive No. 89/391, Article 16, which provides for individual directives.

In its explanatory memorandum, the Commission states that improvements are to be made to these workers' work environment without prejudice to their other conditions of work or their situation on the employment market. Equality of opportunity for men and women as laid down in Council Directive 76/207/EEC concerning equal treatment of men and women as regards access to employment, vocational training, promotion, and working conditions thus remains the overriding principle to which special provisions on behalf of one of the two sexes are subordinate.

It is therefore important to strike a balance between equality and protection so that we do not impede women's access to the labour market. There is a need for constructive and measured solutions which secure a high level of protection but at the same time do not tie employers' hands when it comes to employing and retaining women in the workforce.

2. In the light of this, it is important to bear in mind that this proposal for a directive on the protection of pregnant and breast-feeding women at their places of work and the establishment of social rights in the form of leave, should not be based on the view that women as such constitute a risk group. Pregnancy is not an illness but, obviously, a woman is temporarily more susceptible during pregnancy to harmful effects in the working environment owing to the physiological changes she is undergoing. Where there is a need to take particular account of pregnant and breast-feeding women, this is due to their inseparable relationship to the child they are expecting or have just given birth to. As long as the child is a part of or in close relationship with the mother's body through breast-feeding, her working environment, both physical and mental, also affects the child.

3. However, it is not enough to improve the working conditions of women who have already realized that they are pregnant.

In the longer term, the EEC term should work towards tightening up the provisions of paragraphs 5 and 6 of the framework directive with the express intention of ensuring that neither men nor women are exposed to effects that might damage their reproductive capacities or the genes they pass on to the next generation. Only then will the primary objectives - including equal treatment of the sexes - be attained.

The obligation to provide workers with information about how the substances which they come into contact with in their work can affect them should therefore be broadened to include not only women who are already pregnant but all women, given that pregnancy can, after all occur, without being planned in advance.

Working conditions

4. The proposal for a directive concerns two lists of substances and processes to which pregnant and breast-feeding women should not be exposed. (Annexes 1 and 2).

The proscriptive nature of the lists gives cause for concern. There are no alternatives on offer other than transferring the women either to other work or completely out of the firm. The fear is that employers will become extremely reticent to employ women of childbearing age.

Some substances are clearly harmful to women, men and unborn children. Employees must be protected from these substances in the same way as they must be protected under the framework directive against all harmful effects arising from the working environment.

However, the use of personal protective equipment - which is a burden in itself - or the removal of the pregnant worker should be the absolutely last resort.

Where substances or processes are in use which are harmful to the unborn child, the pregnant worker or the reproductive system, a specific risk assessment should be carried out.

The primary aim of this should be to assess the possibility of eliminating the harmful substances or processes or replacing them with less dangerous or harmless ones.

The risk assessment should also take account of whether the substances or processes in question are or can be enclosed or if there is any other way of ensuring that workers do not come into contact with the harmful substances or processes.

Finally, the assessment should consider whether, through information and training, workers are in a position to the required extent to protect themselves against harmful effects.

Who is covered?

5. The proposal for a directive is aimed at workers, i.e. employed wage-earners. It is important to specify that not only full-time workers but also part-time and seasonal workers etc. (atypical working arrangements) are covered by the provisions. This is of great significance as a very large number of women work part time either through choice or not.

In the longer term, the aim must be to accord the same rights to leave etc. both to unemployed and self-employed women. They should be guaranteed social security until they are fully available for employment again after their leave.

Efforts should also be made to secure leave for men in connection with the birth of a child. This would have an important bearing on a man's bond with the child, the well-being of the entire family and, ultimately, women's ability to retain their link with the job market and combine family and work.

Compulsory rules versus the voluntary approach

6. In its present form, the proposal for a directive requires women to stop work two weeks before the estimated date of the birth.

It is proposed that this rule be excluded, (a) because there can be great uncertainty as to the actual date on which the child is due and (b) because many women prefer to have as long a period of leave as possible after the birth.

Instead, women should be encouraged to regard it as normal and desirable to stop work when the birth of the child is imminent. It is therefore proposed that women be given the opportunity of stopping work two weeks before the estimated date of birth, secure in the knowledge that, in any case, they will have 14 weeks leave after the birth.

The voluntary approach is essential to future efforts to change patterns of behaviour, and the Commission has taken this into consideration with regard to night work.

The aim must be to reduce the need for night work in all sectors and hence the proposal that there should be alternatives to night work on offer, is a step in the right direction. It commits everyone to a constructive and progressive approach for the benefit of workers.

Complaints procedure

7. Where a woman believes that she is unable to avail herself of the rights that the directive grants her, she should be able to appeal to a court of law or to other competent authorities.

It is often difficult to provide evidence in matters of this kind. For example, it can be difficult to prove that a worker's conditions have deteriorated because she announced that she was pregnant. The Commission is therefore urged to modify Article 7 to make clear that the burden of proof is reversed and falls on the employer in disputes concerning maternity leave and dismissal, in particular.

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