



## POSITION PAPER

# LET'S UNBLOCK THE "MATERNITY LEAVE" DIRECTIVE! OR WHY THIS IS NOT AN OLD- FASHIONED TEXT

*ONE EUROPE FOR ALL OF US –  
SOLIDARITY, DIVERSITY AND SECURITY*

*Gender Equality*

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## INTRODUCTION

### 3 steps-schemes PROPOSAL

#### Revision of Directive on Maternity leave - compromise to be negotiated

18 weeks statutory leave as follows:

- 6 weeks mandatory fully paid (incl. transfer to partner) +
- 12 weeks paid in accordance with current practice in Member States or min. 85% of previous salary if no particular scheme in place = health and safety at work for pregnant workers = increased employability
- Passerelle clause to parental leave (for the last 2 weeks)

#### New, separate, Directive on Paternity Leave

Establish paid paternity leave of at least ten working days

Assess the **implementation of the revised Parental Leave Directive** (which provides for 4 months' parental leave paid in accordance with current practice in Member States, of which one non transferrable between parents )

## 1 WHERE DO WE STAND?

1. The EU 2020 strategy for a smart, sustainable, and inclusive economy entails ambitious targets, including the 75% employment rate for men and women and reducing the number of persons experiencing or at risk of poverty and social exclusion by at least 20 million by 2020. These targets will unlikely be met unless Member States implement coherent policies to promote gender equality;
2. The falling birth rate in the EU has been exacerbated by the crisis, given that unemployment, precarious job opportunities, uncertainty about the future and a sustainable recovery are making couples, and younger women in particular, put off having children, thereby further reinforcing the EU-wide trend towards population ageing;
3. The objectives of economic growth and social inclusion as well as the demographic challenge, also confirm the need to facilitate the work-life balance or reconciliation policies as the most important precondition for increasing female labour force participation.

4. Despite existing legislation provided for in the Council directive 1992, pregnancy-related discrimination remains a reality as high levels of pregnancy and maternity related discrimination is reported to be one of the issues addressed by equality bodies in Europe today.<sup>1</sup> Complaints for unfair selection procedures and covert techniques by employers to drive out pregnant women have been also reported since 2009. Reports also show that in times of crisis, employers may find it easier to discriminate on a gender basis when unemployment is high, thus allowing the employers to hire on a gender basis with a low probability of being detected and with no negative consequences in terms of profits.
5. Differences in practices and access to statutory pregnancy/maternity rights across Europe impede upon the right of mobility of women workers as enshrined in the Treaties.
6. Since 1992, a Council directive provides for at least 14 continuous weeks of maternity leave with "adequate allowance". In 2008, the Commission published a proposal amending the directive to extend leave's duration from 14 to 18 weeks (ILO standard), improving the safety and health at work for pregnant workers and workers who have recently given birth or are breastfeeding. The Estrela report adopted in the European Parliament in October 2010 established at first reading the EP position: the length was extended to 20 weeks (WHO standard), a paternity leave non-transferable of at least two weeks was introduced, as well as the protection of domestic workers and the protection against dismissal which was reinforced. Lastly, the wage replacement would amount to 100% full pay for at least 16 weeks. Since then, successive presidencies never achieved a position nor received a mandate to start negotiations.
7. Besides a new set of institutional actors following 2014 EP elections - new Rapporteur Mrs Arena (S&D) - and new Commissioners appointed, Mrs Jourova - the "Maternity Leave directive" has been under threat in the list of Commissioner Timmermans for the May 2015 REFIT exercise. Procedurally, the responsibility is now in the side of the Council. The Italian presidency has

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<sup>1</sup> Equinet, European Network of Equality Bodies, *Equality bodies promoting a better work-life balance for all*, An Equinet policy perspective, 2013.

intended to restart discussion on the issue, but the Latvian presidency has recently indicated, that "although it considers it a priority, there is few prospects to reach a mandate, and a more modern text is needed".

8. It is not right for one institution not to engage with another in the legislative process, and it is the responsibility of the Commission to engage institutions and of the Council to move forward. We call on the Commission and the Member States to resume negotiations and recall the European Parliament's willingness to unblock this file.
9. We in the Parliament are ready to take a fresh look at this file. In order to unblock the current dead-lock situation, We call on establishing a Working Group of the Trio-Presidency (Italy – Latvia – Luxembourg) at the next EPSCO meeting on March 9. Let us move forward together!

## **2 WHY THIS IS NOT AN OLD-FASHIONED TEXT**

1. Europe is facing major demographic challenges as well as economic stagnation. Women, who represent 60% of graduates, can be a key lever for growth. However, only 63% of women in the EU are working, a difference of 12% with men, although the target for women's employment rate is at 75%. At the current rate, we would have to wait for 2038 before meeting this target. It represents a significant loss of potential. Women can and should play an important role in Europe's economic and social recovery.
2. Inequality in the labour-market carries life-long consequences and impacts on women's rights particularly pensions as the 39% EU gender pension gap testifies, representing more than double the gender pay gap of 16%. One of the drivers of the persistent gender pay gap is linked to periods out of the labour-market, including giving birth, which in the long term constitutes discrimination against women in comparison with their male counterparts.
3. Beside the social and economic climate, one of the main disincentives for women to enter the labour market are the difficulties they face in balancing working and private responsibilities. On a practical level this results in horizontal and vertical segregation. Pregnant women and new mothers are among the most vulnerable workers in the labour market, a situation which is exacerbated in times of economic difficulty. There is a real and urgent need to strengthen the protection of women during pregnancy and on return to work. For example, the practice of having the worker sign an undated letter of resignation at the time of

hiring for future use by the employer at his or her convenience and which affects more specifically pregnant women has become even more widespread since the start of the crisis.

4. Extended and harmonized maternity leave provisions would therefore help protecting women on the labour market while allowing them to reconcile work and private life. It would also be an important step towards women's economic empowerment.

This proposal therefore serves two major objectives: strengthening the European social agenda while providing better conditions so that women can fully play their part in the economic recovery of the EU.

The results of the European elections confirm the malaise that currently exists between Europe's citizens and the European institutions. If Europe is to reconnect with its citizens it needs to demonstrate that it is able to ensure rights, equality and justice for all. Adopting a stronger maternity directive would send a positive message to European citizens and show that European institutions are able to reach consensus on issues that matter to them in their daily lives.

### **3 "FALSE" ARGUMENTS**

1. The revised maternity leave proposal is not as relevant as in 2008, due to changes in the socio-economic environment and the modification of the parental leave Directive that took place in the meantime. It is too costly.

False. The budgetary constraints and the fiscal consolidation process have often been put forward as one of the main reasons to abandon this proposal.

Beside its necessity in terms of social protection, safety, health and rights, the revised maternity leave Directive should also be regarded as an investment that will have real impact in terms of women's employment as well as economic growth. According to the European Commission, all EU member states could achieve economic growth by eliminating gender inequalities in the labour market.

2. The revised maternity leave proposal might endanger the situation in countries where the current provisions go further than the proposal.

False. The European Parliament is ready to include more flexibility in order to ensure that Member States can follow their own rhythm while guaranteeing a minimum level of paid leave and protection. The proposed directive is based on minimum standards, which Member States are welcome to provide higher standards, but cannot go below these.

3. We do not have the resources or the political capital to devote to this file at the moment.

False. Women health and safety standard cannot be considered a second class issue. Governments should deploy resources and willingness to reach an agreement. For millions of citizens and voters, Europe must deliver on social rights and gender equality.

4. We can live with the status quo for now and will come back with a fresh, more ambitious and more comprehensive proposal at a better time.

False. Even if some Member States have maternity provisions close to those included in the blocked proposal, adopting the revised Directive would strongly to ensure minimum European standards and improve health and safety of all pregnant women and women who have given birth. This legislation currently in application dates back to 1992 and needs to be updated.

## **4 WHY PARENTAL LEAVE DOES NOT FULFIL THE SAME PURPOSES**

The Parental Leave (agreed among social partners in 2010) seeks to ensure a fairer repartition of the responsibilities within the household, but it does not address the basic reality that women are biologically responsible for giving birth. The Maternity Leave is about pregnant women's rights. In addition, the Parental Leave Directive implementation should first be examined before calling for new measures.

## 5 WHAT IS THE WAY FORWARD?

The EP urged the Latvian presidency to resume negotiations by IMMEDIATELY setting up an informal Working Group of the trio of presidencies that could lead to the granting of a mandate. This would enable the negotiators to put fresh solutions on the table in the framework of the current proposal.

1. As expressed in its adopted position, European Parliament would, of course, prefer to achieve the extension of minimum leave to 20 weeks. However the Commission's original proposal (18 weeks) can be a good basis for the Council to start working on a possible compromise. For instance, a gradual introduction of leave extension for those Member States, where the leave is now shorter, could be envisaged. Both the regime of payment and the length of leave could be examined with flexibility. It could for instance include 6 weeks mandatory full pay plus 12 weeks according to current Member States' practices.
2. The sharing of family and domestic responsibilities between men and women is essential in order to achieve gender equality; nevertheless a quarter of Member States still do not offer paternity leave.

The EP calls on the Commission and the Member States to study all the possibilities to establish paid paternity leave of at least ten working days. The EP also encourages measures, legislative and otherwise, that will enable men, and fathers in particular, to exercise their right to achieve work-life balance, one example being to promote parental leave, to be taken either by the father or by the mother, but without swapping between them, until their child has reached a given age.