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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.7.2009
COM(2009) 410 final

Proposal for a

COUNCIL DIRECTIVE

**implementing the revised Framework Agreement on parental leave concluded by
BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC**

(text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of this proposal

The aim of the proposal is to give legal effect to the revised Framework Agreement on parental leave, concluded by the European cross-industry social partners (BUSINESSEUROPE, UEAPME, CEEP and ETUC) on 18 June 2009. It replaces their previous agreement of 14 December 1995. Directive 96/34/EC which gave legal effect to the first agreement will hence be repealed.

The revised Agreement extends male and female workers' individual right to parental leave from three months to four months and introduces several improvements and clarifications relating to the exercise of that right. Workers will be protected against discrimination on the grounds of applying for or taking parental leave. The return to work after the leave period will be facilitated, in particular by granting the workers the right to request flexible working. The Agreement and this proposal will contribute to better reconciliation of work, private and family life and to promoting gender equality on the labour market.

1.2. General context

In the Roadmap for equality between women and men 2006-2010¹ adopted in March 2006, the Commission committed itself to reviewing existing European gender-equality legislation not covered by the 2005 recasting exercise, with a view to updating, modernising and recasting it where necessary. The recasting exercise did not cover Directive 96/34/EC.

In December 2007² the Council called on the Commission to evaluate the legal framework supporting the reconciliation of work, family and private life, and any need for improvement.

The European Parliament has consistently called for measures to improve the reconciliation of work, private and family life, and in particular for improvements to current legislation on parental leave. In its Resolution of 3 September 2008,³ Parliament took the view that the Framework Agreement on parental leave could be improved by providing incentives for fathers to take parental leave, improving the employment rights of workers who take parental leave, making the leave arrangements more flexible and increasing the duration of parental leave and pay during such leave.

On 3 October 2008 the Commission presented two proposals for legislation to improve the reconciliation of work, family and private life, both in relation to maternity leave⁴ and the

¹ COM(2006) 92.

² Council Conclusions: Balanced roles of women and men for jobs, growth and social cohesion (SOC 385).

³ European Parliament Resolution of 3 September 2008 on equality between women and men — 2008 (2008/2047(INI)), point 28.

⁴ Proposal for a Directive of the European Parliament and of the Council amending Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health of pregnant workers and workers who have recently given birth or are breastfeeding (COM(2008) 637 final).

situation of self-employed women and assisting spouses⁵. This ‘reconciliation package’ was accompanied by a stocktaking report on the provision of childcare in the EU⁶ and by a policy Communication⁷ in which the Commission announced that it would take the necessary action, if the social partners so requested, to give legal force to a new agreement on family-related leave in the form of a proposal for a directive.

1.3. Existing provisions on issues relating to the proposal

Directive 96/34/EC, which gives legal effect to the social partners’ Agreement of 14 December 1995, provides for an individual right to parental leave of at least three months for male and female workers on the birth or adoption of a child. That right should, in principle, be granted on a non-transferable basis; however, many Member States have allowed parental-leave entitlements to be transferred from one parent to the other, which in practice has meant that mothers have taken longer parental leave than fathers.

The Directive also provides for the protection from dismissal of workers taking parental leave, for a right to return to the same or an equivalent job and for the maintenance of employment rights during parental leave. It lays down the conditions governing parental leave and the detailed rules for applying it which the Member States and/or the social partners may determine at national level.

Lastly, the Directive provides for the right for workers to take time off work for urgent family reasons in the event of sickness or accident that makes the worker’s immediate presence indispensable.

1.4. Consistency with other policies and objectives of the Union

The aim of this proposal is consistent with EU policies and in particular with the Lisbon Strategy for Growth and Jobs. Promoting more equal sharing of family responsibilities by mothers and fathers by improving the conditions for taking parental leave will help bridge the gender gap in employment rates, which is one of the targets of the Lisbon Strategy. It also contributes to policies to tackle Europe’s demographic challenge.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation

In accordance with Article 138 EC, the Commission consulted the European social partners on better ways of reconciling professional, private and family life. The first stage in the consultation process⁸ was launched on 12 October 2006 on the need for further action at EU level. All the social partners who replied acknowledged the importance of reconciliation, and

⁵ Proposal for a Directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC (COM(2008) 636 final).

⁶ Report ‘Implementation of the Barcelona objectives concerning childcare facilities for pre-school-age children’ (COM(2008) 638 final; technical annex, SEC(2008) 2597).

⁷ Commission Communication, A better work-life balance: stronger support for reconciling professional, private and family life, COM(2008) 635 final.

⁸ SEC(2006) 1245.

the majority of organisations considered that further action was needed. However, views differed on what needed to be done and at what level.

In the second stage of the consultation process⁹ launched on 30 May 2007, the Commission looked at various ways to improve existing maternity-protection and parental-leave legislation, and highlighted new types of family-related leave (paternity leave, adoption leave, and leave to care for family members). As regards parental leave, the Commission document identified several ways to improve the existing Directive: these related to incentives for fathers to take parental leave, employment rights and the prohibition of discrimination, the duration of parental leave, flexibility in taking leave, the age of the child and payment during parental leave.

The consultation document requested the social partners to: (1) forward an opinion on the objectives and content of the proposals; (2) notify the Commission if they intend to initiate negotiations, in accordance with Article 138(4) and Article 139 of the EC Treaty; and (3) assess the provisions of the Framework Agreement on parental leave with a view to a review and report on progress by March 2008.

By joint letter of 11 July 2007, ETUC, BUSINESSEUROPE, CEEP and UEAPME replied that they intended to evaluate parental-leave arrangements in connection with other arrangements supporting parents and the work-life balance, such as flexible work arrangements and childcare, as well as other forms of leave, in order to assess whether joint action was needed. A progress report was presented at the Tripartite Social Summit of 13 March 2008, in which the European cross-industry social partners agreed to ‘undertake joint action to better achieve the aims of the Parental Leave Directive as part of wider work on reconciliation’.

On 11 September 2008 the social partners informed the Commission that they would open formal negotiations with a view to revising Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. Formal negotiations started on 17 September 2008 and concluded on 23 March 2009 after six months and seven rounds of negotiations. On 18 June 2009 the Secretaries-General of BUSINESSEUROPE, UEAPME, CEEP and ETUC signed the revised Framework Agreement on parental leave on behalf of their organisations and requested the Commission to submit the Agreement to the Council for a decision making it binding in all Member States.

When preparing its ‘reconciliation package’, the Commission also consulted the Member States and European NGOs active in this area on the same options as those on which the social partners had been consulted.

2.2. Collection and use of expertise

To assess progress in implementing the Parental Leave Directive in the Member States more than 10 years since its adoption and other instruments in the field of the work, family and private life balance, the European social partners consulted their members at national level by a questionnaire sent in November 2007. The *ad hoc* working group on reconciliation set up to analyse the information obtained met twice, in January and February 2008. The March 2008

⁹ SEC(2007) 571.

progress report to the Tripartite Social Summit outlines the social partners' analysis and examines leave arrangements, work arrangements and care infrastructure.

When preparing its 'reconciliation package', the Commission commissioned a study (finalised in June 2008) into the costs and benefits of reconciliation measures, which included several options for amending the existing parental-leave legislation. The Commission's network of independent legal experts on gender equality delivered a report in 2007 on pregnancy, maternity, parental and paternity rights¹⁰ in the Member States.

2.3. Impact assessment

The Commission conducted an impact assessment¹¹ on the basis of the legislative options outlined in the 2007 second-stage consultation document sent to the social partners. That impact assessment, which accompanied the proposal on maternity leave, also considered the option of amending the parental-leave provisions. It gave a positive assessment of the option to grant an additional month of parental leave, in the hypothesis that parental leave would have to be remunerated at a rate of 66 % of the last salary and that the additional month would be granted only if both parents have taken at least one month beforehand.

As this hypothesis was not retained by the social partners, the conclusion will differ. On the one hand the direct costs may be lower as payment is not made compulsory. On the other hand the benefits for working parents will also be less evident, as take-up of non-remunerated parental leave, in particular by fathers, cannot be expected to be as high.

The Commission has not prepared a specific impact assessment on this proposal, as it is not required to do so when it proposes to give legal effect to a social partners' agreement in accordance with Article 139(2) EC.

3. LEGAL ASPECTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 139(2) EC.

Article 139(2) EC provides that agreements concluded by the social partners at Community level in matters covered by Article 137 EC are to be implemented 'at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.' It goes on to say that 'The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 137(2). In that case it shall act unanimously.'

The agreement concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC aims to improve the reconciliation of working, family and private life, which is a means to achieve 'equality between men and women with regard to labour market opportunities and treatment at work', an area governed by Article 137 EC. This is one of the fields in which the Council can decide by qualified majority. Article 139(2) EC is hence the appropriate legal basis for the Commission proposal.

¹⁰ See <http://ec.europa.eu/social/main.jsp?catId=641&langId=en&moreDocuments=yes>.

¹¹ SEC(2008) 2526/2.

Article 139(2) EC does not provide for Parliament's involvement in the legislative procedure. However, in line with previous commitments, the Commission will inform Parliament of its proposal so that it can, if it so desires, send an opinion to the Commission and the Council. The same applies to the European Economic and Social Committee.

3.2. Analysis of the Agreement

According to the Commission Communication¹² laying down the rules for implementing Article 139 EC agreements, 'the Commission will prepare proposals for decisions to the Council following consideration of the representative status of the contracting parties, their mandate and the 'legality' of each clause in the collective agreement in relation to Community law, and the provisions regarding small and medium-sized undertakings set out in Article [137(2)(b) EC Treaty].' That *ex-ante* assessment is set out below.

3.2.1. Representativeness of the signatory parties and their mandate

The social partners' right to be consulted and to negotiate agreements to be implemented by a Council decision is based on their representativeness. In 1995 the Framework Agreement on parental leave was signed by the European cross-industry social partners ETUC, CEEP and UNICE (today called 'BUSINESSEUROPE'). Studies commissioned by the Commission in 1999¹³ and 2004¹⁴ showed that their representativeness has not substantially changed and that their membership now includes the main cross-industry social partners in the new Member States.

BUSINESSEUROPE (Confederation of European Business) continues to be the most representative employer organisation in the European Union with members in all Member States covering all sectors of industry and all categories of enterprises. In the vast majority of the Member States, the main national employers' and industry confederations are affiliated to BUSINESSEUROPE. Its members have a direct or indirect role in collective bargaining.

CEEP (European Centre of Employers and Enterprises providing Public Services) represents public-sector enterprises or enterprises of general interest in the majority of Member States and therefore boosts the representativeness of employers', in particular in the public sector at local level and in sectors of general economic interest.

ETUC (European Trade Union Confederation), which covers the most representative trade union confederations in all Member States, remains by far the largest European cross-industry trade union organisation. Its members play the key role in collective bargaining in the Member States and represent all sectors of industry. The liaison committee Eurocadres/CEC was also represented in the negotiations as part of the ETUC delegation. Eurocadres (Council of European professional and managerial staff) and CEC (European Managers), the two EU cross-industry organisations representing professional and managerial personnel, are regular members of ETUC's delegation in the European social dialogue, and therefore boost its representativeness.

¹² Commission Communication concerning the application of the Agreement on social policy (COM(93) 600 final of 14 December 1993).

¹³ Report on the representativeness of European social partner organisations, Part 1, Institut des Sciences du Travail — Université Catholique de Louvain, September 1999.

¹⁴ Monographs of the situation of social partners in the acceding and candidate countries, intersectoral level, Institut des Sciences du Travail — Université Catholique de Louvain, March 2004.

The new Agreement has been negotiated and signed by the same signatories as in 1995, which are the three recognised general cross-industry organisations. In addition, UEAPME (European Association of Craft, Small and Medium-sized Enterprises) also participated in the negotiations and signed the Agreement. UEAPME is recognised as a European cross-industry social partner organisation representing a certain category of undertakings. It is the main European organisation representing the interests of SMEs, with members in the majority of Member States, some of whom are active in collective bargaining at national level. The organisation therefore boosts the representativeness of employers.

The Commission notes that all four organisations had a specific mandate from their national members for the negotiations on parental leave and concluded the Agreement on behalf of their members. All four approved the outcome of the negotiations in accordance with their internal decision-making procedures. The conditions of representativeness are therefore met.

3.2.2. Legality of the clauses in the Agreement

The Commission has scrutinised all the clauses in the Framework Agreement and has found none to contravene Community law. The Member States' obligations stem from the arrangements for implementing the Agreement in accordance with the Directive, rather than directly from the Agreement itself.

The substance of the Agreement falls within the scope of Article 137 EC and of that outlined in the Commission's second-stage consultation document. It introduces several adaptations while maintaining the main principles in the current Agreement. It lays down minimum requirements and allows the Member States to introduce or maintain more favourable provisions in line with Article 137 EC. The Commission therefore considers that the Agreement meets the conditions of legality.

3.2.3. Provisions regarding small and medium-sized enterprises

Under Article 137(2) EC, legislation in the social field must avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

Like its predecessor, the Agreement pays special attention to the situation of SMEs. Clause 3(1)(d) specifically allows for 'special arrangements to meet the operational and organisational requirements of small undertakings'. Other clauses provide for flexible management of parental leave, allowing account to be taken of the specific needs of employers in small businesses (see Clause 3(1)(a) and (c) and Clauses 3(2) and 6(1)).

No clause appears to impose inappropriate burdens on SMEs. Furthermore, UEAPME, the organisation representing the specific interests of SMEs at EU level took part in the negotiations and approved the Agreement.

3.3. Subsidiarity and proportionality

The aim of this proposal is to update the existing common minimum European standards on the granting of parental leave to workers with small children and their protection within the employment relationship, and thereby to create a level playing field in this crucial aspect of reconciling work, private and family life. This can only be achieved by a Community-wide measure and not by the Member States alone. Both the European social partners and the Commission are convinced of the need for Community action in this area.

Nonetheless, the Agreement sets out only general principles governing parental leave and leaves the decisions on the rules for applying those principles to the Member States. By including frequent references to the discretionary power of the Member States and the national social partners in a number of specific areas, the Agreement and the proposal avoid being over-prescriptive and leave considerable room for the provisions to be adapted to the labour market of the Member State concerned.

The fact that the substantive provisions of the proposal (i.e. those most concerned by the different measures on the ground) were drafted by the legitimate representatives of workers and employers rather than by the Commission is another guarantee of respect for the principle of subsidiarity.

As for proportionality, the proposal goes no further than necessary to ensure that the objectives are met. It sets out basic minimum standards while allowing the Member States that wish to adopt more stringent requirements to do so.

The proposal, which is taken at the right level and does not go further than absolutely necessary at EU level to achieve the objectives, therefore complies with the principles of subsidiarity and proportionality.

3.4. Choice of instrument

The proposal seeks to replace an existing Directive.

The term ‘Council decision’ in Article 139(2) EC is to be understood in its general meaning as referring to the legally binding instruments provided for in Article 249 EC. It is for the Commission to decide and propose which of the three binding instruments (directive, regulation or decision) is most suitable. The aim of the Agreement is to establish minimum requirements which, given the type and substance of the Agreement, are best applied indirectly through provisions to be transposed into national law by the Member States and/or the social partners. The appropriate instrument is therefore a Council directive to which the Agreement is annexed.

3.5. Correlation table

The Member States are required to send the Commission the text of national provisions transposing the Directive, together with a correlation table between those provisions and the Directive.

3.6. European Economic Area

As the Agreement is relevant to the European Economic Area, the Directive will be applicable to the non-EU Member States of the European Economic Area, following a decision by the EEA Joint Committee.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS

5.1. Text of the Directive

Article 1

This Article will make the Agreement between the social partners, annexed to the Directive, legally binding across the European Union, which is the purpose of a Council decision adopted under Article 139(2) EC.

Article 2

The proposed Article is the standard Article relating to penalties. It is expected to contribute substantially to the effective implementation of the Framework Agreement. In accordance with the case law of the European Court of Justice,¹⁵ this Article on penalties provides that there should be no upper limit on the compensation payable in the event of a breach of the principle of equal treatment. This provision does not require criminal penalties to be introduced. It codifies existing case law and brings the Directive into line with the other equal treatment Directives.

Articles 3, 5 and 6

These Articles set out the usual provisions on transposition into Member State law and specific provisions regarding the possibility of transposition by way of collective bargaining. The specific provisions were established by the social partners in the Agreement and are equivalent to those of the current Directive.

Article 4

This Article makes it clear that this Directive repeals and replaces the current Directive on parental leave.

5.2. Text of the Agreement in the Annex to the Directive

The following explanations refer only to those clauses in the Agreement that amend the provisions of the current Directive.

Clause 1: Purpose and scope

Paragraph 1 states that the Agreement's provisions are meant to take account of the increasing diversity of family structure (including single-parent households, unmarried couples and same-sex couples) without calling the Member States' competence for family law matters into question.

Paragraph 3 makes it clear that the Agreement applies to all forms of employment contract or relationship, including part-time work, fixed-term work and temporary-agency work.

Clause 2: Parental leave

¹⁵

Cases C-180/95 *Draehmpaelh* [1997] ECR I-2195 and C-271/91 *Marshall* [1993] ECR I-4367.

The right of working parents to parental leave is extended from three to four months per child. The general principle that parental leave is an individual right and should not be transferred from one parent to the other is maintained. In addition, to encourage more equal take-up of parental leave by fathers and mothers, the Agreement provides that at least one of the four months cannot be transferred under any circumstances (and will therefore be lost if only one parent takes parental leave).

Clause 3: Rules of application

Paragraph 1(a) makes it clear that flexible take-up of parental leave must be decided in accordance with the interests of both workers and employers.

Paragraph 1(b) maintains the possible qualification period of up to one year, but makes it clear that, in the case of successive fixed-term contracts with the same employer, the overall duration of such contracts is to be taken into account for the purposes of calculating that qualifying period.

The indicative list of circumstances under which the granting of parental leave may be postponed is deleted in paragraph 1(c) without any amendment to the substance of the provision.

Paragraph 2 makes the establishment of periods of notice which the worker must give the employer when exercising his or her right to parental leave mandatory at national level. When determining the length of those periods, the interests of both workers and employers are to be taken into account.

Paragraph 3 encourages the Member States and national social partners to assess the need to adjust the conditions governing parental leave to the needs of parents of children with a disability or a long-term illness.

Clause 4: Adoption

This Clause provides for an assessment of the need for additional measures to address the specific needs of adoptive parents to be carried out at national level. The general right of adoptive parents to parental leave is maintained in Clause 2(1).

Clause 5: Employment rights and non-discrimination

Paragraph 4 now prohibits all forms of less favourable treatment, not only dismissal on grounds of applying for or taking parental leave. As a result workers taking parental leave are better protected against discrimination on that ground.

Paragraph 5 (second sentence) makes it clear that decisions on pay or income during parental leave are to be taken by the Member States and/or by the social partners at national level, and highlights the important role of income in actual take-up of parental leave.

Clause 6: Return to work

Paragraph 1 establishes the right of workers returning from parental leave to request changes to their working hours and/or patterns for a set period. Employers must consider and respond to such requests for flexible working in the light of both their own and their employees'

needs. This measure is intended to promote better reconciliation of work and family life for working parents, even after their parental leave ends.

Paragraph 2 encourages workers and employers to maintain contact during their leave and to make arrangements for suitable reintegration measures after it ends. The aim of this recommendation is to facilitate return to work following parental leave.

Clause 7: Time off from work on grounds of force majeure

This Clause introduces no new points.

Clause 8: Final provisions

This Clause maintains the general final provisions in the current Agreement, including the ‘minimum standards’ clause, which states that the Member States may maintain or introduce more favourable provisions than those set out in the Agreement, and the ‘non-regression’ clause.

Proposal for a

COUNCIL DIRECTIVE

**implementing the revised Framework Agreement on parental leave concluded by
BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC**

(text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission¹⁶,

Whereas:

- (1) Article 137 of the Treaty enables the Community to support and complement the activities of the Member States, *inter alia* in the field of equality between men and women with regard to labour-market opportunities and treatment at work.
- (2) Social dialogue at Community level may, in accordance with Article 139(1) of the Treaty, lead to contractual relations, including agreements, should management and labour (the ‘social partners’) so desire. The social partners may, in accordance with Article 139(2) of the Treaty, request jointly that agreements concluded by them at Community level in matters covered by Article 137 of the Treaty be implemented by a Council decision on a proposal from the Commission.
- (3) A Framework Agreement on parental leave was concluded by the European cross-industry social partners (ETUC, UNICE and CEEP) on 14 December 1995 and was given legal effect by Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.¹⁷ That Directive contributed greatly to improving the opportunities available to working parents in the Member States to reconcile their work and family responsibilities better through leave arrangements.
- (4) In accordance with Article 138(2) and (3) of the Treaty, the Commission consulted the European social partners in 2006 and 2007 on ways of further improving the reconciliation of work, private and family life and, in particular, the existing Community legislation on maternity protection and parental leave, and on the possibility of introducing new types of family-related leave, such as paternity leave, adoption leave and leave to care for family members.

¹⁶

OJ C , , p. .

¹⁷

OJ L 145, 19.6.1996, p. 4.

- (5) The three European general cross-industry social partner organisations (ETUC, CEEP and BUSINESSEUROPE, formerly named UNICE) and the European cross-industry social partner organisation representing a certain category of undertakings (UEAPME) informed the Commission on 11 September 2008 of their wish to enter into negotiations, in accordance with Article 138(4) and Article 139 of the Treaty, with a view to revising the Framework Agreement on parental leave concluded in 1995.
- (6) On 18 June 2009 those organisations signed the revised Framework Agreement on parental leave and addressed a joint request to the Commission to submit a proposal for a Council decision implementing that Framework Agreement.
- (7) In the course of their negotiations the European social partners completely revised the 1995 Framework Agreement on parental leave. Therefore Directive 96/34/EC should be repealed and replaced by a new directive rather than being simply amended.
- (8) Since the objectives of the action to be taken, namely to improve the reconciliation of work and family life for working parents and equality between men and women with regard to labour-market opportunities and treatment at work across the Community, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (9) When drafting its proposal for a Directive, the Commission took account of the representative status of the signatory parties, their mandate and the legality of the clauses in the Framework Agreement and its compliance with the relevant provisions concerning small and medium-sized undertakings.
- (10) The Commission informed the European Parliament and the European Economic and Social Committee of its proposal.
- (11) Clause 1(1) of the Framework Agreement, in line with the general principles of Community law in the social policy area, states that this Agreement lays down minimum requirements.
- (12) Clause 8(1) states that the Member States may introduce or maintain more favourable provisions than those set out in the Agreement.
- (13) Clause 8(2) states that the implementation of the provisions of the Agreement can not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by it.
- (14) The Member States should provide for effective, proportionate and dissuasive penalties in the event of any breach of the obligations under this Directive.
- (15) The Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as long as they take all the steps necessary to ensure that they can at all times guarantee the results imposed by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive puts into effect the revised Framework Agreement on parental leave concluded on 18 June 2009 by the European cross-industry social partner organisations (BUSINESSEUROPE, UEAPME, CEEP and ETUC), as set out in the Annex.

Article 2

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. They may comprise payment of compensation, which may not be limited by the fixing of a prior upper limit. The Member States shall notify those provisions to the Commission by the date specified in Article 3 at the latest and shall notify it without delay of any subsequent amendments affecting them.

Article 3

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive or shall ensure that the social partners have introduced the necessary measures by agreement by [two years after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. When the Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. The Member States may have a maximum additional period of one year to comply with this Directive, if this is necessary to take account of particular difficulties or implementation by collective agreement. They shall inform the Commission thereof by [deadline for implementation] at the latest, stating the reasons for the need of an additional period.
3. The Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Directive 96/34/EC shall be repealed with effect from [deadline for implementation to be inserted].

Article 5

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council
The President
[...]*

ANNEX

FRAMEWORK AGREEMENT ON PARENTAL LEAVE (REVISED)

18 JUNE 2009

PREAMBLE

This framework agreement between the European social partners, BUSINESSEUROPE, UEAPME, CEEP and ETUC (and the liaison committee Eurocadres/CEC) revises the framework agreement on parental leave, concluded on 14 December 1995, setting out the minimum requirements on parental leave, as an important means of reconciling professional and family responsibilities and promoting equal opportunities and treatment between men and women.

The European social partners request the Commission to submit this framework agreement to the Council for a Council decision making these requirements binding in the Member States of the European Union.

I – GENERAL CONSIDERATIONS

1. Having regard to the EC Treaty and in particular Articles 138 and 139 thereof;
2. Having regard to Articles 137(1)(c) and 141 of the EC Treaty and the principle of equal treatment (Articles 2, 3 and 13 of the EC Treaty) and the secondary legislation based on this, in particular Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women;¹⁸ Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;¹⁹ Council Directive 96/97/EC amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes;²⁰ and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);²¹
3. Having regard to the Charter of Fundamental Rights of the European Union of 18 December 2000 and Articles 23 and 33 thereof relating to equality between men and women and reconciliation of professional, private and family life;
4. Having regard to the 2003 Report from the Commission on the Implementation of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC;

¹⁸ OJ L 45, 19.2.1975, p. 19–20.

¹⁹ OJ L 348, 28.11.1992, p. 1–8.

²⁰ OJ L 46, 17.2.1997, p. 20–24.

²¹ OJ L 204, 26.7.2006, p. 23–36.

5. Having regard to the objective of the Lisbon strategy on growth and jobs of increasing overall employment rates to 70%, women's employment rates to 60% and the employment rates of older workers to 50%; to the Barcelona targets on the provision of childcare facilities; and to the contribution of policies to improve reconciliation of professional, private and family life in achieving these targets;
6. Having regard to the European social partners' Framework of Actions on Gender Equality of 22 March 2005 in which supporting work-life balance is addressed as a priority area for action, while recognising that, in order to continue to make progress on the issue of reconciliation, a balanced, integrated and coherent policy mix must be put in place, comprising of leave arrangements, working arrangements and care infrastructures;
7. Whereas measures to improve reconciliation are part of a broader policy agenda to address the needs of employers and workers and improve adaptability and employability, as part of a flexicurity approach;
8. Whereas family policies should contribute to the achievement of gender equality and be looked at in the context of demographic changes, the effects of an ageing population, closing the generation gap, promoting women's participation in the labour force and the sharing of care responsibilities between women and men;
9. Whereas the Commission has consulted the European social partners in 2006 and 2007 in a first and second stage consultation on reconciliation of professional, private and family life, and, among other things, has addressed the issue of updating the regulatory framework at Community level, and has encouraged the European social partners to assess the provisions of their framework agreement on parental leave with a view to its review;
10. Whereas the Framework agreement of the European social partners of 1995 on parental leave has been a catalyst for positive change, ensured common ground on work life balance in the Member States and played a significant role in helping working parents in Europe to achieve better reconciliation; however, on the basis of a joint evaluation, the European social partners consider that certain elements of the agreement need to be adapted or revised in order to better achieve its aims;
11. Whereas certain aspects need to be adapted, taking into account the growing diversity of the labour force and societal developments including the increasing diversity of family structures, while respecting national law, collective agreements and/or practice;
12. Whereas in many Member States encouraging men to assume an equal share of family responsibilities has not led to sufficient results; therefore, more effective measures should be taken to encourage a more equal sharing of family responsibilities between men and women;
13. Whereas many Member States already have a wide variety of policy measures and practices relating to leave facilities, childcare and flexible working arrangements, tailored to the needs of workers and employers and aiming to support parents in reconciling their professional, private and family life; these should be taken into account when implementing this agreement;
14. Whereas this framework agreement provides one element of European social partners' actions in the field of reconciliation;

15. Whereas this agreement is a framework agreement setting out minimum requirements and provisions for parental leave, distinct from maternity leave, and for time off from work on grounds of force majeure, and refers back to Member States and social partners for the establishment of conditions for access and modalities of application in order to take account of the situation in each Member State;

16. Whereas the right of parental leave in this agreement is an individual right and in principle non-transferable, and Member States are allowed to make it transferable. Experience shows that making the leave non-transferable can act as a positive incentive for the take up by fathers, the European social partners therefore agree to make a part of the leave non-transferable;

17. Whereas it is important to take into account the special needs of parents with children with disabilities or long term illness;

18. Whereas Member States should provide for the maintenance of entitlements to benefits in kind under sickness insurance during the minimum period of parental leave;

19. Whereas Member States should also, where appropriate under national conditions and taking into account the budgetary situation, consider the maintenance of entitlements to relevant social security benefits as they stand during the minimum period of parental leave as well as the role of income among other factors in the take-up of parental leave when implementing this agreement;

20. Whereas experiences in Member States have shown that the level of income during parental leave is one factor that influences the take up by parents, especially fathers;

21. Whereas the access to flexible working arrangements makes it easier for parents to combine work and parental responsibilities and facilitates the reintegration into work, especially after returning from parental leave;

22. Whereas parental leave arrangements are meant to support working parents during a specific period of time, aimed at maintaining and promoting their continued labour market participation; therefore, greater attention should be paid to keeping in contact with the employer during the leave or by making arrangements for return to work;

23. Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the European Union economy and 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;

24. Whereas the social partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore play a special role in the implementation, application, monitoring and evaluation of this agreement, in the broader context of other measures to improve the reconciliation of professional and family responsibilities and to promote equal opportunities and treatment between men and women.

II – CONTENT

Clause 1: Purpose and scope

1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, taking into account the increasing diversity of family structures while respecting national law, collective agreements and/or practice.
2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State.
3. Member States and/or social partners shall not exclude from the scope and application of this agreement workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

Clause 2: Parental leave

1. This agreement entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years to be defined by Member States and/or social partners.
2. The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. The modalities of application of the non-transferable period shall be set down at national level through legislation and/or collective agreements taking into account existing leave arrangements in the Member States.

Clause 3: Modalities of application

1. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreements in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or social partners may, in particular:
 - (a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system, taking into account the needs of both employers and workers;
 - (b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year; Member States and/or social partners shall ensure, when making use of this provision, that in case of successive fixed term contracts, as defined in Council Directive 1999/70/EC on fixed-term work, with the same employer the sum of these contracts shall be taken into account for the purpose of calculating the qualifying period;
 - (c) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation. Any problem

arising from the application of this provision should be dealt with in accordance with national law, collective agreements and/or practice;

(d) in addition to (c), authorise special arrangements to meet the operational and organisational requirements of small undertakings.

2. Member States and/or social partners shall establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave. Member States and/or social partners shall have regard to the interests of workers and of employers in specifying the length of such notice periods.

3. Member States and/or social partners should assess the need to adjust the conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness.

Clause 4: Adoption

1. Member States and/or social partners shall assess the need for additional measures to address the specific needs of adoptive parents

Clause 5: Employment rights and non-discrimination

1. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

2. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements and/or practice, shall apply.

3. Member States and/or social partners shall define the status of the employment contract or employment relationship for the period of parental leave.

4. In order to ensure that workers can exercise their right to parental leave, Member States and/or social partners shall take the necessary measures to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements and/or practice.

5. All matters regarding social security in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law and/or collective agreements, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care.

All matters regarding income in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law, collective agreements and/or practice, taking into account the role of income – among other factors – in the take-up of parental leave.

Clause 6: Return to work

1. In order to promote better reconciliation, Member States and/or social partners shall take the necessary measures to ensure that workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time. Employers shall consider and respond to such requests, taking into account both employers' and workers' needs.

The modalities of this paragraph shall be determined in accordance with national law, collective agreements and/or practice.

2. In order to facilitate the return to work following parental leave, workers and employers are encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, to be decided between the parties concerned, taking into account national law, collective agreements and/or practice.

Clause 7: Time off from work on grounds of force majeure

1. Member States and/or social partners shall take the necessary measures to entitle workers to time off from work, in accordance with national legislation, collective agreements and/or practice, on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.

2. Member States and/or social partners may specify the conditions of access and detailed rules for applying clause 7.1 and limit this entitlement to a certain amount of time per year and/or per case.

Clause 8: Final provisions

1. Member States may apply or introduce more favourable provisions than those set out in this agreement.

2. Implementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this agreement. This shall not prejudice the right of Member States and/or social partners to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances (including the introduction of non-transferability), as long as the minimum requirements provided for in the present agreement are complied with.

3. This agreement shall not prejudice the right of social partners to conclude, at the appropriate level including European level, agreements adapting and/or complementing the provisions of this agreement in order to take into account particular circumstances.

4. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with the Council decision within a period of two years from its adoption or shall ensure that social partners introduce the necessary measures by way of agreement by the end of this period. Member States may, if necessary to take account of particular difficulties or implementation by collective agreements, have up to a maximum of one additional year to comply with this decision.

5. The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and/or practice.

6. Without prejudice to the respective role of the Commission, national courts and the European Court of Justice, any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to the signatory parties who will give an opinion.

7. The signatory parties shall review the application of this agreement five years after the date of the Council decision if requested by one of the parties to this agreement.

Done at Brussels, 18 June 2009

For ETUC

John Monks

General Secretary

On behalf of the trade union delegation

For BUSINESSEUROPE

Philippe de Buck

Director General

For UEAPME

Andrea Benassi

Secretary General

For CEEP

Ralf Resch

General Secretary