

Framework agreement on parental leave

(14 December 1995)

Preamble

The enclosed framework agreement represents an undertaking by UNICE, CEEP and ETUC to set out 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. ETUC, UNICE and CEEP 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 Community with the exception of the United Kingdom of Great Britain and Northern Ireland.

I — General considerations

1. Having regard to the Agreement on social policy annexed to the Protocol on social policy attached to the Treaty establishing the European Community, and in particular Articles 3(4) and 4(2) thereof,
2. Whereas Article 4(2) of the Agreement on social policy provides that agreements concluded at Community level shall be implemented, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission,
3. Whereas the Commission has announced its intention to propose a Community measure on the reconciliation of work and family life,
4. Whereas the Community Charter of Fundamental Social Rights stipulates at point 17 dealing with equal treatment for men and women, that measures should be developed to enable men and women to reconcile their occupational and family obligations,
5. Whereas the resolution of the Council of 6 December 1994 recognizes that an effective policy of equal opportunities presupposes an integrated, overall strategy allowing for better organization of working hours and greater flexibility, and for an easier return to working life, and notes the important role of the social partners in this area and in offering both men and women an opportunity to reconcile their work responsibilities with family obligations,
6. Whereas measures to reconcile work and family life should encourage the introduction of new flexible ways of organizing work and time which are better suited to the changing needs of society and which should take the needs of both the enterprises and the workers into account,
7. Whereas family policy should be looked at in the context of demographic changes, the effects of the ageing population, closing generation gap and promoting women's participation in the labour force,
8. Whereas men should be encouraged to assume an equal share of family responsibilities, for example they should be encouraged to take parental leave by means such as awareness programmes,
9. Whereas the present 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 the conditions for access and modalities of application in order to take account of the situation in each Member State,

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

11. 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,

12. Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community 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,

13. Whereas the social partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore be conferred a special role in the implementation and application of the present agreement,

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.

2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.

Clause 2: Parental leave

1. This agreement entitles, subject to clause 2.2, men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for

at least three months, until a given age up to eight years to be defined by Member States and/or social partners.

2. To promote equal opportunities and equal treatment between men and women, the parties to this agreement consider that the right to parental leave provided for under clause 2.1 should, in principle, be granted on a non-transferable basis.

3. The conditions for access and modalities of application of parental leave shall be defined by law and/or collective agreement 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 fragmented way or in the form of a time-credit system,
- (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,
- (c) adjust conditions for access and modalities of application of parental leave to the special circumstances of adoption,
- (d) 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,
- (e) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and practices, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the undertaking (e.g. where work is of a seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for pa-

rental leave at the same time, where a specific function is of strategic importance). Any problem arising from the application of this provision should be dealt with in accordance with national law, collective agreements and practices,

(f) in addition to (e) above, authorize special arrangements to meet the operational and organizational requirements of small undertakings.

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 dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practice.

5. 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.

6. 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 or practice, shall apply.

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

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

Clause 3: 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 for access and modalities of application of clause 3.1 and limit this entitlement to a certain amount of time per year and/or per case.

Clause 4: Final provisions

1. Member States can maintain or introduce more favourable provisions than 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 of this agreement. This does 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. The present agreement does not prejudice the right of the 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 ensure¹ that the social partners establish 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 agreement, 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 practices.

6. Without prejudice to the respective role of the Commission, national courts and the 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 shall give an opinion.

7. The signatory parties will 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.

¹ Within the meaning of Article 2(4) of the Social Policy Agreement of the Treaty on European Union.

