

BUSINESSEUROPE, UEAPME, CEEP, ETUC

**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 women¹; 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 breastfeeding²; 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 schemes³; 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)⁴;
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 3rd June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC;
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;

¹ OJ L 45, 19.2.1975, p. 19-20

² OJ L 348, 28.11.1992, p. 1-8

³ OJ L 46, 17.2.1997, p. 20-24

⁴ OJ L 204, 26.7.2006, p. 23-36

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), authorize special arrangements to meet the operational and organizational 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 3.1 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

For BUSINESSEUROPE

For UEAPME

For CEEP

John Monks
General Secretary

Philippe de Buck
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Andrea Benassi
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Ralf Resch
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On behalf of the
trade union
delegation