



January 2009
AK Position Paper

Proposal of the European Commission for a revision of the directive on maternity leave

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labor.

Werner Muhm
Director

Executive Summary

The Austrian Federal Chamber of Labour (AK) welcomes the legislative initiatives of the European Commission on a better reconciliation between professional and family-life. In the opinion of the AK, these initiatives must not be restricted to the Directive on maternity protection but should also include the Parental Leave Directive 96/34/EC and the Equal Treatment Directive 2002/54/EC.

From the point of view of the AK, a timely expansion of maternity leave before and after childbirth might be welcomed on principal; there was, however, no urgent need. The AK regards the plans of the draft Directive on more flexible maternity-related leave with scepticism, as the proposed formulations do not provide any protection against possible pressure situations, where for example pregnant women are pressurized into increasing their presence at the workplace. As maternity protection also serves to protect the health of pregnant women and nursing mothers, it is essential to standardize obligatory parts of the protection period in the draft Directive before and after childbirth.

The AK proposes that women who had a miscarriage - until now miscarriages have not been included in the protection area of the Directive on maternity protection - will, for reasons of health protection, also be granted an obliga-

tory protection period with protection against dismissal.

In order to clarify the better orientation of employers and employees, a provision should be incorporated into the Directive on maternity protection, which determines the earliest possible beginning of the protection against dismissal at normative level.

The AK welcomes the regulation proposal, according to which the rights and the workplace quality, which were acquired prior to childbirth have to be reinstated upon a mother's return to the workplace. Also desirable would be the integration of a comparable regulation in the Parental Leave Directive, to also give fathers the chance to assert these protection rights after their paternity leave.

There are basically no objections against the integration of special provisions into the Directive on maternity protection concerning the protection of pregnant women against discriminations. In order to also protect fathers against specific discriminations, which are based paternity leave or parental leave claims, the new version of the Equal Treatment Directive should also be specified accordingly.

The AK position in detail

The AK welcomes the initiative of the European Commission to improve the reconciliation between professional and family-life and to recognize the need of legislative measures in the maternity leave.

Preliminary remark

The AK thanks for being provided with the opportunity of commenting on the amendment proposal of the European Commission on the current Directive on maternity leave.

The AK welcomes the initiative of the European Commission, to introduce steps for improving the reconciliation between professional and family-life, recognizing at the same time that appropriate measures at legislative level are essential. We would, however, welcome the unambiguous clarification that the aspect of the health protection for pregnant women and nursing mothers is and will remain a priority for the Directive on maternity leave.

From the point of view of the AK, the Directive on maternity leave is significantly less suitable for taking measures concerning a better reconciliation between professional and family-life than the Parental Leave Directive 96/34/EC, as it is only directed at those women who are pregnant or have just given birth, whilst the circle of people addressed by the Parental Leave Directive also includes the parents of older children and in particular also men.

In the opinion of the AK, develop-

ments towards a more and improved reconciliation between professional and family-life require, apart from legislative measures, also the expansion and quality improvement of child care facilities on the one hand and the greater involvement of fathers in family care duties on the other. Therefore and for this purpose, the AK is of the opinion that apart from the Parental Leave Directive, in particular also the Equal Treatment Directive (redraft 2002/54/EC) should be applied and amended accordingly.

Article 1 of the Directive proposal

Z 1, Article 8, Maternity leave

Paragraph 1

The AK works on the assumption that the Austrian national regulations (16 weeks maternity leave, which is extended to 20 weeks in case of multiple, premature or Caesarean births or individual maternity leave if special medical reasons exist) are sufficient; it does, however, not raise any fundamental objections, if the European framework legislation extends this period to a minimum of at least 18 weeks. The assumption that the extension of the leave period would result in an earlier return to the workplace, however, is not very realistic, as mothers/parents with very young (newborn) children normally claim parental leave

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after their maternity leave has expired. Even an extended leave period will not bring significant changes to this fact.

The AK, however, comments that the extension of the maternity leave in Austria would result in significant additional expenditure for social security pursuant to Art 11 Paragraph 2 lit b, which in Austria is fully based on social security contributions and wage-dependent public levies. Furthermore, these costs are currently - adverse to the system - allocated to the health insurance, which has, due to its actual responsibilities, has exceeded the limits of its financial capacity.

We would take into consideration that the objective of better reconciliation between professional and family-life also requires the improvement of child care facilities. The AK works on the assumption that this important target could be better achieved if public funds would be allocated to improving child care.

Paragraph 2

The AK does not oppose a more flexible use of the maternity leave in principle, as it can also safeguard the interests of female employees by enabling an earlier start of the maternity leave, even without the necessity of medical reasons being present and therefore providing the employee - by starting parental leave subsequent to the maternity leave - with more vacant time. We would, however, like to point out that the flexibilisation could also result in pressure situations, when for

example employees try to persuade employees not to use any maternity leave prior to giving birth.

Should the flexible use of the maternity leave be integrated into the Directive on maternity protection, the AK would regard it as absolutely essential that an obligatory part of the maternity leave would also be allocated to a period before childbirth. We base our reason for this request in particular on the purpose of health protection for a pregnant woman and her unborn child. Under no circumstances should it happen that in case of occupations, where women - for objective medical reasons - are advised against working, this would be undermined by the flexible use.

Furthermore, we regard it - for the purpose of health protection - as obligatory that a formulation is found, which provides employees with a free choice as to how to use their maternity leave, but prevents employers from putting pressure on their employees to use their maternity leave in accordance with their employer's demands. In the opinion of the AK, the relevant provisions concerning the protection against discrimination due to pregnancy and childbirth are not sufficient.

Paragraph 3

The AK welcomes this clarification.

Paragraph 4

The AK welcomes the expansion of the catalogue of criteria for an extension

The AK approves the expansion of the catalogue of criteria for an extension of maternity leave following the birth of a disabled child.

of maternity leave following the birth of a disabled child and with respect to a hospital stay of the child. We would suggest that Paragraph 4 also incorporates Caesarean births, as these require an extended recuperation phase for the nursing mother.

We do, however, regard the formulation as not sufficient. It should be clarified that the additional leave represents maternity leave (with protection against dismissal pursuant to Article 10) in accordance with the Directive on maternity leave. Furthermore, a formulation should be found which clarifies that this period is regarded as additional maternity leave, which cannot be offset against the 18 weeks pursuant to Art 8 Paragraph 1.

The AK regards the formulation in Sentence 2 ("The duration of additional leave should be proportional...") as inadequate and suggests to extend the duration of the extended maternity leave after childbirth to at least 12 weeks independent from the duration of the already used maternity leave. We base our reasons on the priority purpose of health protection for the nursing mother.

Paragraph 5

The AK suggests that instead of the formulation "Sick leave due to pregnancy-related illnesses or complications" a formulation is found, which clarifies that extended maternity leave also exists in those cases, which cause the claim to social security benefits pursuant to Art 11 Paragraph 2 lit

b. Also with respect to these cases, it has to be clarified at the level of the Directive on maternity protection that extended maternity leave is not offset against the regular duration of the protection period.

Z 2, Article 10, Prohibition against dismissal

The AK welcomes the safeguarding of the prohibition against dismissal.

In addition, we would suggest the incorporation of a provision that includes women who have suffered a (medically confirmed) miscarriage into the prohibition against dismissal, as also in these case the women affected have to be protected against further physical or emotional stress for reasons of health.

Paragraph 1

The AK would like to point out that the beginning of a pregnancy and thereby also the protection against dismissal for pregnant women cannot be precisely determined from a medical-biological point of view. We would therefore regard it as useful to incorporate a uniform provision, which includes a normative regulation for the earliest possible start of the prohibition against dismissal; this provision could orient itself on the average duration of a pregnancy (266 days). The protection against dismissal would therefore always begin 38 weeks before the due date, which has been calculated in accordance with Naegele's Rule.

The AK advocates the regulation, which provides mothers returning from maternity leave with the option of adapting their working hours to the requirements of child care and proposes to incorporate a comparable protection for fathers.

In addition, the formulation of Paragraph 1 would have to ensure that the prohibition against dismissal does not only exist until the end of the protection against dismissal pursuant to Article 8 Paragraph 1, but that an extended maternity leave pursuant to Article 8 Paragraph 5 of the draft Directive would also be covered by the protection against dismissal.

Paragraph 2

In accordance with the current proven legal position in Austria, the AK proposes to extend the prohibition against dismissal following childbirth to four months. The provision, according to which the employer has to justify a dismissal following the end of the maternity leave, should be extended to at least one year.

Z 3, Article 11, Rights associated with a contract of employment

Paragraph 1a

The AK suggests defining the formulation more precisely. The transfer to another workplace should not only be based on a medical certificate or on an estimation of the employer but also on official decisions.

Paragraph 2

The AK welcomes the clarification that both the rights associated with a contract of employment as well as the quality of the workplace of female employees returning from maternity leave have to be safeguarded. Without

wanting to anticipate the agreement of the European social partners, we would propose the incorporation of an identical provision into the Parental Leave Directive so that this safeguarding provision also applies to fathers claiming parental leave, paternity leave or other forms of family leave, who are frequently confronted with the same discrimination patterns as women in comparable situations.

Paragraph 5

The AK welcomes the regulation, which provides mothers returning from maternity leave with the option of adapting extent and location of their working hours to the requirements of child care. Here too, we would propose to incorporate an identical provision into the Parental Leave Directive to provide mothers and fathers on their return from parental leave or other forms of family leave with comparable protection.

Z 4-7, Article 12 a to Article 12 d

The AK regards the incorporation of this Article as not absolutely essential as discriminations based on pregnancy and birth as well as the return from maternity leave are already covered by the scope of the Directive 2002/54/EC – Equal Treatment Directive as amended (compare Article 15).

In order to achieve the purpose of the improved reconciliation between professional and family-life, the AK would regard a more precisely defined new

version of the Equal Treatment Directive as more appropriate, so that the discrimination facts would also include discriminations based on marital or family status as well as discriminations, which refer to adverse sex-role stereotyping. Due to the personal area of application, a provision to protect against discrimination in the Directive on maternity protection only refers to pregnant women and breast-feeding mothers. Discriminations at the work place, due to stereotype opinions of sex roles, however, can also affect fathers who claim paternity leave ("Papamonat" = a free month for fathers); they would be better protected by precise provisions in the Equal Treatment Directive.

For further information please contact:

Martina Thomasberger

(expert of AK Vienna)

T +43 (0) 1 501 65 2392

martina.thomasberger@akwien.at

as well as

Christof Cesnovar

(in our Brussels Office)

T +32 (0) 2 230 62 54

christof.cesnovar@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Strasse, 20-22

A-1040 Vienna, Austria

T +43 (0) 1 501 65-0

F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation to the EU

Avenue de Cortenberg, 30

B-1040 Brussels, Belgium

T +32 (0) 2 230 62 54

F +32 (0) 2 230 29 73