

European Trade Union Institute (ETUI)

**ANALYSIS OF THE IMPLEMENTATION  
OF THE PARENTAL LEAVE DIRECTIVE  
IN THE EU MEMBER STATES**

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## Introduction

The European Council spent over ten years (from 1983 to 1994) debating a proposal for a directive on parental leave only to be thwarted by the British government's veto. In 1994, the Commission was left with no alternative but to take a new initiative on the basis of the Social Protocol.

The negotiations between ETUC-UNICE-CEEP started in July 1995, reached their conclusion in November 1996 and a first EU draft framework agreement was ratified by the executives of the three organizations in December of the same year.

The agreement, adopted as a Directive in June 1996, represents a real achievement by the Social Partners, who demonstrated their capacity as EU co-legislator by "bargaining in the shadow of the law".

This report provides an overview on how the most important features of the Agreement/Directive were implemented by the 15 Member States via legislation or collective agreements. Reports from three Central and Eastern European countries which do not yet have to implement the Agreement/Directive but have a certain system of parental leave, are also included.

The information contained in the present analysis was obtained mainly from the replies to a questionnaire submitted by the ETUC affiliates. To ensure that the picture provided was correct, the full report was sent to the members of the ETUC Trade Union Legal Network, NETLEX, as well as to the ETUC Women's Committee for revision. And of course the legally oriented literature on the topic – albeit scarce - was also taken into account.

It is hoped that this report will provide a constructive and useful basis for both social partners in the light of the possible revision of the Agreement/Directive which they have promised to carry out by 2001.

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## Summary

In the majority of countries (11), parental leave and force majeure are regulated by legislation. In one country (Belgium) parental leave is regulated only by collective agreement.

There are three groups of countries. In the first group (8) new legislation was necessary, in the second group amendments to the existing legislation were made to bring it in line with the directive, and in the third group the existing legislation was to a very large extent in conformity with the provisions of the directive, such as in Denmark, The Netherlands and Sweden.

In almost all countries the social partners were involved in the implementation process. In some countries the involvement took place through a tripartite committee or through an on-going dialogue. In Sweden and The Netherlands they were given the opportunity to comment on the minor changes that were necessary in order to implement the agreement/Directive.

Many trade unions consider that the agreement/directive has been implemented correctly in their national law, but there are still problems in several countries. In Spain no individual right to take parental leave has been introduced. In Italy the regulation excludes women and men working in atypical professions in actual practice. And in France the force majeure provisions have not been implemented. In many countries in particular the question of pay and the amount of the allowances are still an important topic. In Ireland there is a provision that only parents of children born after 3 June 1996 can take parental leave. Two trade unions in Ireland and the United Kingdom respectively have already lodged a complaint with the European Commission regarding incorrect implementation.<sup>1</sup> The Austrian unions could take similar steps since their regulation also excludes children born after a certain date; they are currently working on the issue. A further violation of the agreement/Directive, in our opinion, is the fact that many countries limit the right to take urgent family leave to cases concerning children up to a certain age only.

Although all workers are included in at least nine countries, several have introduced the requirement that the workers must have been working for at least one year and/or that they must have an employment contract. Categories of workers excluded are:

- forestry/agricultural workers (Austria)
- civil servants (Austria, Belgium)
- workers with precarious contracts (de facto exclusion in Spain and Italy)
- agency workers (de facto exclusion in The Netherlands)
- trainees, apprentices (Belgium).

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<sup>1</sup> In the mean time the European Commission reached its reasoned opinion in the Irish case which is favourable to the trade unions and considers the integration of a so-called “cut-off date” (i.e. a provision stipulating that the Directive only applies to children born after a certain date) as a non-correct implementation of the Directive. The text of the reasoned opinion can be found in the annex.

The threshold of 1 year's seniority, often with the same employer, means in practice that fixed-term workers are excluded.

Many countries include all children in the parental leave system, but some have time limits excluding children born after or on a certain date from the system (Austria, Ireland, and the UK), and in The Netherlands foster children are excluded.

In Italy and Ireland parental leave is only provided for natural or adoptive parents. The other countries have a wider definition which includes different kind of family structures. In the light of many cases of teenage pregnancy (under 16 years of age), at an age when young women are often not considered experienced or mature enough to care for a newborn child, the Portuguese law recognizes the right for the grandparents of such children to be absent from work for 30 days to help with care, as long as they actually live together with the young mothers. In Italy, the right to parental leave is even granted to self-employed women, and if they want to take parental leave they are entitled to tax relief if they arrange to be replaced by another person.

In the case of special arrangements for disabled children, adoption or multiple childbirth, the national regulations vary widely. Most countries, except Denmark, provide additional leave for these special circumstances.

In the case of multiple childbirth, the periods of leave are either doubled, as is the case in Sweden, Ireland and The Netherlands, or prolonged (Spain: 2 weeks; Luxembourg and Finland: 2 months; Austria: 4 weeks).

In the case of adoption the periods in which the parental leave must be taken are generally prolonged. In Finland the employee is allowed a more flexible schedule for informing the employer.

In The periods of parental leave are also prolonged in the case of a disabled child, or the parents can work part-time as in Spain.

Some countries make provision for special arrangements for other specific circumstances such as caesarean birth (Austria) or premature birth (Italy).

In Germany, Spain and Sweden, for example, the right to take parental leave is not individual; it can be transferred from one parent to the other, whereas in all other countries the right to take parental leave is individual and non-transferable.

The age of the child up to which the leave can be taken varies from 3 years (France, Germany) to 8 years (Denmark, The Netherlands). The total period of leave also varies widely from 3 months (Belgium) to 36 months (Germany).

In many countries (10) there is no obligation to take parental leave immediately after maternity leave. In Luxemburg at least one parent must take parental leave after the maternity leave, otherwise the leave will be reduced. In Portugal the father only receives an allowance from the social security system if he takes parental leave immediately after the mother's maternity leave. According to the replies to the question on trends in parental leave (question 33), it can be stated that it is mainly women who take parental leave full-time immediately after maternity leave.

The flexible arrangements concerning how parental leave can be taken differ widely from one country to another. Some states have very flexible regulations, others do not. The parent can

generally take parental leave on a part-time basis or in fragments (Austria, Portugal, France, Belgium and The Netherlands). In Germany it is possible to work shorter hours (19 hours) during the parental leave period. The system of taking parental leave through a credit system is not common (only Austria and Sweden reported this).

Few countries try to encourage fathers to take parental leave. If they do, they try to make the system more popular through government campaigns and other publicity. Other countries try to make the parental leave more attractive for fathers by providing more flexible arrangements for taking parental leave.

With regard to eligibility requirements concerning entitlement to parental leave, many countries provide that the employee must have been working for the last 12 months – often for the same employer. In other countries the existence of an employment contract is the condition or social security contributions must have been paid beforehand.

Advance notice of parental leave must be given in every country, but the terms of notice differ from country to country, ranging from 15 days to several months. In Luxembourg, the parental leave must already be announced before the beginning of the maternity leave; the latter is to ensure the link with the law on fixed-term contracts. If the employer knows in advance that he will not be able to count on this worker for a long time, he can immediately hire a replacement on a longer fixed-term contract rather than being forced to conclude two fixed-term contracts, namely one for the period of maternity leave and one for the period of parental leave.

Also, the regulations on the right to postpone the leave differ. In some countries it is not at all possible to postpone parental leave, irrespective of the circumstances. In other countries it is possible to postpone parental leave, but only under special circumstances. Acceptable reasons for postponement are: the economic and financial circumstances of the employer, when several employees want to take parental leave at the same time, seasonal work, or if it is not possible to find a suitable replacement. In some countries there are special procedures whereby the trade union or another institution has to be informed about the postponement. There are also special procedures for the event that the employer and the employee fail to come to an agreement on a new date.

In most countries there are no special arrangements for SMEs, except in Belgium and in Luxembourg, where the leave can be postponed. In Italy, a proportion of the Employment Fund is earmarked for social security contributions in order to support firms with up to 50 employees under certain conditions. These firms must fulfil the following conditions: replacement of the worker on parental leave, training programmes for reintegrating workers after parental leave, schemes allowing mothers or fathers to benefit from certain forms of flexibility. In practice, however, it is difficult to implement the provisions in such firms.

A special feature of implementation in Austria is that the employer must inform the parent during his/her leave of any information concerning the enterprise which might affect his/her rights. This concerns more specifically information about promotion opportunities, restructuring measures in the enterprise and continuing vocational training programmes.

None of the countries require by law that workers who take parental leave be replaced. Some countries try to encourage employers to replace workers on parental leave in order to consolidate their labour market. This is often done by hiring workers on a fixed-term contract

for the period of leave. In Belgium the Flemish Region offers an additional premium if the worker is replaced. In Italy, the law makes provision for a 50% reduction of social security contributions in firms with fewer than 20 employees for every recruited fixed-term worker, and this measure applies until the first birthday of the absent worker's child and for one year from the adoption or fostering of a child. In Denmark, the social partners have concluded an agreement on a Maternity Fund, whose purpose is to cover additional costs for replacements during maternity leave, but this is limited to the public sector.

There are two different types of regulation concerning the termination of parental leave. On the one hand, some states have introduced the rule that parental leave cannot be terminated under any circumstances. On the other hand, there are states which allow the employer to terminate parental leave, but only if the employee is no longer caring for the child, is not living together with the child or is using the parental leave for other purposes.

In most countries there are no problems concerning the protection against dismissal requirement. But practice is always different from theory. Employers sometimes take advantage of the situation to dismiss workers, despite the existing protection period, which differs widely from country to country. In some countries, workers on leave can of course be dismissed for other reasons which have nothing to do with the parental leave.

All states, except Portugal apparently, guarantee that the worker can return to the same or an equivalent job, but problems occur in practice. It is difficult, for example, to determine whether the job offered is “equivalent”. Only the Austrian report mentioned that the law provides the possibility to work part-time after the parental leave. It is a major problem, especially for women, when no part-time work is available after the leave.

On the whole, there are no problems concerning the employment contract during the period of parental leave. In some countries the contract continues to exist as in Sweden and Austria, in other countries it is suspended. In Ireland there are special regulations for workers on probation, training or apprenticeship.

In most countries there are no problems concerning the retaining of employment rights during the period of parental leave. However in some countries wages and holidays (benefits) are affected. In certain countries the period of leave is not or is only partially taken into account for calculating working time, occupational pension schemes or other benefits linked to the enterprise.

The regulations concerning statutory social security rights also differ considerably. In some countries the rights existing before the parental leave are not affected. In several countries the sickness benefits are not paid if the parent falls ill during the period of parental leave. In other states the social security rights are suspended. In Belgium the worker must earn a minimum income to be insured by health care. In all other countries access to health care is available.

Like the social security rights, the allowances during the period of parental leave vary very much. In Ireland, The Netherlands, Spain, Portugal and the UK, no payments are provided. In the other countries payments exist which are income-related or paid as a fixed percentage of the worker's income. The amount of the allowance can also be related to the unemployment benefit as is the case in Denmark. In most cases the allowances are low, and cannot

compensate the former income, in particular the higher income of the bread-winner. In almost all cases the allowance consists of a payment from the social security scheme.

The employer generally does not pay anything, except in Italy, where he/she is required to pay 20% of the worker's wage during the period of leave. However, in many countries collective agreements have provided additional payments by the employer, and in several countries the employer has to pay contributions to a family fund or to the social security scheme.

There is no unanimous definition of force majeure in Europe. In French, Spanish and Portuguese law, force majeure is not defined at all. In most countries, absence to care for a sick child is included. But there are also differences regarding the age of the child. Some countries have wider definitions, where other relatives and circumstances (including natural disasters, accidents in the home) are also covered. In Sweden the definition has the same wording as in the directive, and the interpretation depends on EC case law. In other countries the definition can be part of a collective agreement at the national or local level, as is the case in Denmark or Germany.

Leave in connection with children because of force majeure is available in all countries which include force majeure in their legislation. The number of days sometimes varies according to the age of the child. There are also limits up to which the leave can be taken. The question of whether this is in line with the objectives of the Directive will have to be analyzed. Other relatives or family members are generally also included.

The minimum duration per year and per case varies according to legislation or collective agreement, ranging from 2 days per year to 1 week with the possibility of extending the leave a further week. In Finland the leave is unlimited. The duration sometimes depends on family circumstances (single parents or a couple, as in Germany). In the UK the time off must be "reasonable".

A substitute income is not provided for parents taking leave for reasons of force majeure. Some countries pay the normal wage, others a certain percentage of the wage or a certain percentage of the unemployment allowance. It can also be treated as a period of sickness for which sickness benefits are paid.

Women generally take parental leave on a full-time basis directly after maternity leave. In The Netherlands leave on a part-time basis is preferred. In Portugal most women do not take parental leave because it is not paid. In Denmark the benefits have been reduced, and this has had the effect that the number of parents taking parental leave has also decreased. In all states only a few men take parental leave.

It is very difficult to forecast how the use of parental leave will develop. Many social and economic circumstances have to be taken into account. An important point is the payment or non-payment of benefits for parents taking parental leave. In some countries the figures are constant, in others there are changes because of the increase or decrease in the payments. But some countries expect an increase in the number of men taking parental leave, because it is becoming more popular and accepted in society.

## **Conclusion**

It could be said that the implementation of the parental leave agreement has had considerable legal implications in the various member states, but this effect is minimized to a large extent by the fact that it has not been accompanied by a change in society where more men decide to take parental leave. The main question for research which this raises is why men do not take parental leave, even in countries where such leave is paid at a reasonable rate. What are the real reasons behind this?

## AUSTRIA

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)*

The Agreement/Directive has been implemented by legislation.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

Only amendments to the existing legislation - Mutterschutzgesetz (MSchG) and Elternkarenzurlaubsgesetz (EKUG) – were needed, which come into force 1.1.2000.

3. *Were the social partners involved in the implementation process satisfactorily? If not, why not?*

The Austrian social partners were involved in the implementation process. During those negotiations an agreement was reached, through which the necessary additions to Austrian law were made, such as the individual right of the father to take parental leave, and the extension of parental leave in the case of adoption.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

The Government has implemented the agreement correctly. (ÖGB) As soon as the report had been presented to the ETUC affiliates the ÖGB immediately contacted the Ministry of Labour in order to have the additional age limit imposed by the legislation eliminated. (See question 6)

The Government has found a compromise. (GPA)

A special feature of the implementation is that during the leave the employer must notify the parent of any information concerning the enterprise which might affect his/her rights. This concerns more specifically information about promotion opportunities, restructuring measures in the enterprise and continuing vocational training programmes.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

The changes concerning the implementation of the agreement/directive concern only the laws at the federal level, i.e. Mutterschutzgesetz and Elternkarenzurlaubsgesetz. The scope of these laws includes all workers who have an employment contract. It does not include workers who work in the agricultural or forestry sector. The implementation of the agreement/directive for this branch has not yet taken place.

Public sector workers are not covered by the implementation either. The law providing competence for these contracts is at Länder level, i.e. a lower level.

**6. Are any children excluded? (e.g. leave only for children born or adopted after a certain date)**

The regulations are applicable to all children born after 31.12.1999.

**7. Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians, etc.)**

Both natural and adoptive/foster parents can benefit from the right to parental leave.

**8. Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)**

Adoptive parents and persons who are fostering a child with a view to adopting it are entitled to parental leave before the child reaches the age of 2. In the case of children up to 7 years of age they are entitled to 6 months' parental leave. Parents without the right of custody are not entitled to parental leave. (ÖGB)

In the case of multiple or cesarean birth, the maternity leave is extended by 4 weeks. (ÖGB)

There are no special arrangements relating to adoption, multiple childbirth or disabled children. (GPA)

**9. Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?**

A most important point included in the amendment is the individual, non-transferable right of the father to take parental leave. Before the amendments, only the mother enjoyed this individual right.

**10. Up to what age of the child can parental leave be taken?**

Austrian law provides that a maximum of 22 months' parental leave can be taken before the child reaches the age of 2.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

The MSchG and EKUG provide that parental leave must be taken immediately after maternity leave. During this time the parent is protected against dismissal. But the parent must give advance notice of the parental leave between 8 and 12 weeks after the birth of the child. If the notice of parental leave is given too late, an individual arrangement can be agreed with the employer as provided by law. As of 1.1.2000, 3 months' parental leave can be taken up to the date when the child enters school. (ÖGB)

There are no obligations to take parental leave immediately after maternity leave. (GPA)

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

The minimum duration of the leave is 3 months. It can be shared with the father twice; each part must be at least 3 months.

Part-time parental leave for both natural and adoptive/foster parents is possible, but the employee must arrange the circumstances with the employer. If no arrangement is reached, the dispute must be brought before a court under a special procedure. The part-time leave can be taken until the child is 4 years old, and the number of hours must be reduced by at least two-fifths. A new regulation also provides payment of a parental leave allowance if the parent takes up short-term employment. This is intended to enable parents to keep in touch with employment.

Three months of the parental leave can be taken up to the child's 7th year ("Karenzzeitkonto"). The employee must come to an agreement with the employer. If no agreement can be reached, the dispute must be resolved by the courts. The employer can refuse to grant this period of parental leave for economic reasons.

The parental leave can be taken in three parts up to the child's 18th-21st month .

**13. *Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.***

The new regulation is more flexible, but no other legal measures have been taken to encourage fathers.

There is no paternity leave.

***Exercising the right to parental leave***

**14. *Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)***

There are no eligibility requirements concerning the right to parental leave.

To be entitled to a parental leave benefit, the parent taking parental leave must have been in employment and paying unemployment contributions to the social security scheme for at least 12 months in the previous 24 months.

**15. *Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)***

No, the new regulations have relaxed the rules on terms of notice. As of 1.1.2000 parental leave which is arranged after the period of notice will have the same legal value as parental leave arranged on time. (ÖGB)

There are problems regarding terms of notice or other procedures for taking parental leave. (GPA)

**16. *Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)***

The employer is not allowed to postpone the granting of the leave, if the worker takes the parental leave immediately after maternity leave and notifies the employer within the appointed time.

**17. Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

No, there are no special arrangements concerning parental leave in SMEs. (ÖGB)

There are special arrangements concerning taking parental leave in SMEs. (GPA)

**18. Are employers obliged or encouraged to replace workers on parental leave? If so, please explain.**

There are no legal obligations for the employer to replace workers on parental leave.

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)**

The new draft of the MschG and EKUG includes the regulation that the parental leave is terminated prematurely if the parent taking parental leave is no longer living with the child in the same household or is no longer caring for the child and when the employer orders the worker to return to work.

**20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

There are no problems concerning the dismissal requirement. The dismissal protection has been extended to 4 weeks after the end of the parental leave.

**21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

The workers have the right to return to the same or an equivalent job. If the same work post is not free, the wage and nature of the new work proposed as well as the working hours must be equivalent. In practice there are problems as to what constitutes an "equivalent" job. (ÖGB)

There are no problems regarding the right of the worker to return to the same or an equivalent job. (GPA)

Following negotiations between the social partners in February 1999, several new clauses were added to the collective agreement covering some 14 000 white-collar workers in the private insurance sector. The new clauses will come into force on 1.4.1999. The most important of these additions is the right of either parent returning to work after parental leave to request employment on a part-time basis. The agreement is the first in any sector to provide such an arrangement. This provision applies in all companies employing more than 50 white-collar workers. Any parent returning from long-term parental leave is entitled to commence part-time work following the expiry of the period of protection against dismissal (4 weeks).

**22. Are there any problems regarding the legal status of the employment contract during the period of leave (suspended, terminated, ...)? (clause 2.7)**

The employment contract continues to exist during the period of parental leave. The workers cannot claim wages from the employer. Persons who fulfil the conditions receive unemployment benefits or money from the family fund.

**Protection of acquired rights****23. Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security)? (clause 2.6)**

Rights which are calculated depending on the duration of the contract, such as periods of notice, are calculated without counting the time of parental leave.

**Statutory social security****24. How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)**

Persons who receive financial allowances from the state are covered individually by social security insurance during the period of parental leave. This includes health insurance *inter alia*.

Periods of parental leave up to 4 years per child count towards old-age pension.

**Payment during parental leave****25. Does the worker receive any income from the State during parental leave? If so how much, and is it financed by the social security scheme?**

a) Mothers who were employed before their maternity leave, (8 weeks before the birth and 8-12 weeks after the birth, § 5 MSchG) or who have been receiving unemployment benefits receive the average income of the last 13 weeks during the maternity leave, paid from the health insurance fund, (§ 162 Allgemeines Sozialversicherungsgesetz (ASVG)).

b) Parents who take parental leave immediately after maternity leave and who fulfil the conditions of entitlement to payments pursuant to § 3 Karenzgeldgesetz (KGG), currently receive 404,42 Euro for up to 16-22 months. One of the conditions of entitlement to these benefits is that the employer must have paid certain contributions to the unemployment insurance scheme. To get benefits during the whole time, The father must take at least 3 months of the parental leave in order for the benefits to be paid throughout the period.

c) Parents who work part-time after the maternity leave are entitled to benefits up to the child's 36-48th month. The benefits are up to a maximum of 50% of the benefits for full-time leave.

d) Persons who are not covered by unemployment insurance or who are insured in other insurance schemes, e.g. insurance for agricultural workers or insurance for the self-employed, or who have no qualifying periods as required under the social security scheme receive benefits amounting to 202,03 Euro.

e) Single parents or parents with low incomes are entitled to additional benefits under certain conditions, but they must pay them back if they earn a higher income. (AS 8064)

f) The weekly allowance paid during the maternity leave is paid by the health insurance and is financed by the family fund.

The benefits paid during parental leave are paid from the family fund (70%) and from the unemployment fund (30%).

The benefits paid during part-time parental leave are financed in the same way as full-time parental leave.

**26. Do employers pay anything?**

Employers do not pay anything directly to the employees, but they pay contributions to the family fund. (ÖGB)

**Force majeure**

**27. How is “force majeure” defined?**

a) Children up to 24 months: a parent who does not take parental leave is entitled to leave in the event of force majeure. This is defined as an unexpected and inevitable event and is at all events only allowed in the situations laid down by law. This is the case when the other parent who is caring for the child can no longer do so because of serious illness, a stay in hospital or imprisonment. Even if parental leave is used urgent family leave is also possible. This leave is also compensated.

b) Sick relatives, children up to the age of 12: employees have the right to care leave, (§ 16 Urlaubsgesetz(UrIG)) in order to care for a close relative living in the same household or to care for their own child when the normal care is not available. The employee is paid his/her wage by the employer for up to 2 weeks . Additional care leave is possible when the conditions are fulfilled.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

See question 27. (ÖGB)

Urgent family leave is not available for other relatives.(GPA)

Information received to the contrary: there is also statutory entitlement to paid time off for up to a maximum of 2 weeks a year to care for sick relatives including children, or to look after a child, if the usual carer is not available.

**29. Is leave available for other reasons?**

There is no leave available for other reasons. (GPA)

**30. What is the maximum duration per year/case?**

a) Normal care leave is 1 week fully paid by the employer for relatives living in the same household.

b) Extended care leave consists of an additional week of leave in the event that the normal leave has already been used and that there are no other collective agreements giving entitlement to additional leave. The substitute income is the wage paid by the employer.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

See question 30

### **Trends and outlook regarding parental leave**

#### **32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

a) Reasonable statistics can be deduced from the amount of benefits because most of the parents on parental leave receive the benefit. In 1998 an average of 88 459 persons received benefits, 98% of whom were women. Women receiving part-time benefits and additional benefits are not included in this figure.

b) In Austria parental leave can currently only be taken immediately after the maternity leave. This will change from 1.1.2000, when parents will be able to keep 3 months until the child starts to go to school. It remains to be seen whether this will lead to an increase in the use of parental leave.

c) Many mothers who take parental leave do not work during that time, because there are not enough places for child care available, especially for children up to the age of 18 months and 3 years. Most mothers who want to work during the period of parental leave, depend on child care organized within the family. There are no reliable statistics on how many mothers have a small job.

d) The number of people taking parental leave has fallen from 120 000 in 1996 to 85 000 in 1998. This is thought to be mainly due to a change in the law in 1996, which stipulated that parents are entitled to 2 years' parental leave if it is split evenly between both parents. If the parental leave is taken solely by one parent, entitlement is 18 months. Before the change in the law, up to 2 years' parental leave could be taken by one partner only - in practice usually the mother. This development illustrates a continuing reluctance on the part of men to exercise their right to this form of leave. However, the overall total of men taking such leave has risen slightly, from 1 000 in 1996 to 1 250 in 1998, accounting for 1.5% of all persons taking parental leave.

#### **33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The situation in Austria will not change in the near future, for social and economic reasons. In Austria, the opinion persists, especially in rural areas, that mothers should take parental leave for small children. Fathers who take parental leave generally do so under social pressure. Conversely, mothers who go to work are under the same pressure. Workers' income levels promote this situation, because in general men earn up to 30% more than women. Most families generally cannot live without the higher income. The parental leave allowance cannot offset the loss of the higher income. (ÖGB)

The outlook is a decrease in the use of parental leave. (GPA)

## BELGIUM

### **Implementation of the agreement**

**1. How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)**

The agreement has been implemented for the entire private sector by a national collective agreement, n° 64 of 23.4.1997, which has been made binding by a Royal Decree. Urgent leave already existed by virtue of collective agreement n°45.

The legislation stipulates:

the amount of the allowance (20.000 BEF)

the conditions based on which the worker is entitled to the allowance. This is settled by Royal Decree, which takes over the conditions stipulated in collective agreement n° 64 with the following exceptions:

that there are no allowances for leave taken in fragments;

that there is only an allowance for full-time leave for 3 months, but since October 1998 there is also an allowance for 6 months' part-time leave;

that the obligation to replace the worker does not apply to enterprises with less than 10 employees;

and regulates parental leave and leave for urgent reasons in the public sector.

The Ministry of Labour recently identified agreements concluded by 71 sectoral joint committees or sub-committees on the subject of career breaks, including breaks for child care purposes.

**2. Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?**

A new collective agreement was necessary as well as a Royal Decree in order to introduce the right to parental leave in Belgian legislation.

**3. Were the social partners involved in the implementation process satisfactorily? If not, why not?**

The social partners were consulted in the National Labour Council and in the Committees for the public service. It was the social partners who concluded collective agreement n° 64.

**4. Do you consider that your government has correctly implemented the agreement? If not, please explain and give details of any action you have taken in consequence.**

The social partners were involved, but the Government did not take up all of their proposals.

The minister has taken up the following proposals:

collective agreement no. 64 has been made mandatory;

benefits for parents on full-time parental leave (20.000 BEF) per month;

benefits under certain conditions for parents on part-time parental leave.

The following proposals were not accepted:

parental leave was introduced within the framework of the law on career breaks. This means that two systems exist in parallel, namely the collective agreement and the Royal Decree, and this dualism has complicated matters. Some employers force their employees to abide by the system of the collective agreement, which does not provide benefits for parents on parental leave and does not oblige the employer to replace the worker on parental leave.

The minister's motives were as follows:

no benefits without replacement (budgetary considerations because of the Maastricht guidelines);

she wanted to introduce new legislation in order to strengthen her political profile.

### ***The right to parental leave***

***5. Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)***

The agreement/directive is currently not being applied to for civil servants. Furthermore, every employee must have been working in the same enterprise for a at least 1 year. Trainees and apprentices are also excluded.

***6. Are any children excluded? (e.g. only for children born or adopted after a certain date)***

Parental leave of 3 months can be taken up to the 4th birthday of the child and up to the 8th birthday of a disabled or adopted child. If the employer postpones the leave, 6 months are added to the periods. These age limits will be reviewed within 3 years to take account of developments in other member states.

***7. Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)***

The father and mother can take parental leave, irrespective of their marital status. Adoptive parents can also apply for parental leave.

***8. Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)***

There are no special arrangements concerning multiple childbirth.

The leave can be taken until the child is 8 years of age if the child is disabled or for a period of 4 years after adoption (and must at all events be taken before the child is 8).

***9. Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

The right to parental leave is individual and non-transferable, as recommended by the agreement.

***10. Up to what age of the child can parental leave be taken?***

See question 6.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

There is no obligation to take leave immediately after maternity leave.

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

**(clause 2.3a)**

The leave can be taken for 3 months full-time or 6 months part-time. Other arrangements are possible, e.g. in fragments, if the employer and employee have come to an agreement. The Royal Decrees of 98 and 97 provide benefits for part-time and full-time parental leave. But part-time leave is only possible for employees working in enterprises with more than 10 employees. In practice an agreement for part-time leave is necessary in view of the running of the enterprise. A part-time contract must be in writing and must include the working time arrangements.

**13. Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.**

No specific measures have been taken to encourage fathers. It is possible to take fragmented leave without pay. Benefits of 20 000 BEF are paid and an extra premium of 5 000 BEF is paid by the Flemish Region for men and women who are replaced during the leave. The collective agreement is also applicable to managerial employees.

**Exercising the right to parental leave**

**14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

The employee must have been working for a period of 12 months. These 12 months can be worked over a period of 15 months. Because of this measure fixed-term workers with successive contracts have the possibility of obtaining entitlement to parental leave.

**15. Are there any problems regarding terms of notice and other procedures for taking parental leave? (clause 2.3d)**

There is a procedure where the employee has to give advance notice of the parental leave (3 months in advance). If the employer agrees, the 3-month term of notice can be reduced.

**16. Is the employer allowed to postpone the granting of the leave? If so how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

The employer can postpone the leave for a maximum of 6 months. The works council or the trade union representative has the possibility to intervene.

Justified reasons for postponement are:

seasonal work

the fact that it is impossible to find a replacement during the term of notice

the fact that a significant number of employees have requested parental leave at the same time.

**17. *Are there any special arrangements concerning taking parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)***

The parental leave can be postponed for 6 months, if there is an agreement with the employer.

**18. *Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.***

Employers are encouraged to replace workers on parental leave; provision is made for consultation of the works council and the trade union representative.

**19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave is not taken for the care of children)?***

The employer cannot terminate the parental leave. This was discussed between the social partners, but not introduced.

To begin with, employees on parental leave could only be replaced by unemployed persons. Since 1.10.1998 the employer can also replace that worker by young unemployed persons (under certain circumstances), agency workers and persons receiving welfare benefits.

**20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)***

There are no problems concerning the protection against dismissal requirement. The employer cannot terminate the contract except for serious reasons or "sufficient reasons". The reason is sufficient if it is recognized by the judge and is not related to the fact that the employee is taking his/her parental leave. The dismissal protection starts as of the day on which the employee states that he/she wishes to take parental leave and ends 3 months after the end of the parental leave.

**21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)***

National collective agreement n° 68 provides that workers taking parental leave can return to the same or an equivalent job. But in practice disagreements can arise. Given that the period of parental leave is only 6 months, the same job should be guaranteed, but there could be problems if the period of parental leave is longer.

**22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)***

There are no problems regarding the legal status of the employment contract during the period of leave. The employment contract is suspended during that period.

### **Protection of acquired rights**

23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security)? (clause 2.6)*

There are no problems concerning the retaining of employment rights acquired during the period of leave. This is regulated in collective agreement n° 64.

### **Statutory social security**

24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)*

Where the worker receives benefits in the context of a career break, he/she enjoys full social security coverage. Where the worker does not receive any benefits, there are in principal no problems with health insurance, but a minimum income of 25000 BEF per month must be earned. There are no regulations yet for the other branches of social security.

### **Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so how much, and is it financed by the social security scheme?*

A parent on full-time parental leave receives 20 000 BEF per month. Parents who take parental leave in fragments do not receive anything. The Flemish Region pays an extra premium of 5 000 BEF if the employee on leave is replaced.

26. *Do employers pay anything?*

Employers generally do not pay anything, but in certain sectors there are special collective agreements, which make provision for the payment of benefits.

### **Force majeure**

27. *How is “force majeure” defined?*

Force majeure has a very wide definition, wider than merely family reasons, e.g. force majeure leave is also given in the event of natural disasters.

28. *Is urgent family leave available in connection with both children and other relatives? (clause 3)*

Urgent family leave is available in connection with both children and parents.

29. *Is leave available for other reasons?*

Leave is also available for other reasons.

In addition, there is a system of career breaks, which have been an individual right of all workers since 1999. The only condition now is that the employer must be prepared to accept a previously unemployed worker as a replacement. Leave may be taken for any

reason including the care of children. It seems likely that it is mainly taken to enable mothers to care for children.

**30. *What is the maximum duration per year/case?***

The total maximum duration is 10 days per year.

**31. *Is any substitute income provided by the State and/or by the employer? If so, how much?***

Generally no substitute income is provided. But more and more collective agreements provide pay for one or several days. The pay is generally limited to cases of family reasons.

***Trends and outlook regarding parental leave***

**32. *Do you have information/statistics to tell you:***

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

It is mainly women who take parental leave (85%), but the number of men is increasing. And the total number of parents taking parental leave is also increasing. It is generally taken after maternity leave. A recent study by an organization which defends the rights of large and young families indicates that 67% leave takers know about it from the media, 13% were informed about this right by their employer and 10% by the trade unions; 21% take the leave because it was their right to do so. Of the persons taking part in the survey who have not taken parental leave, 37% stated that they did not take it because of the low allowances.

A recent study based on the figures of the unemployment payment authority (RVA) shows that in 1999 there were one-third more persons taking a career break (65 670 in October 1998 and 88 785 in 1999). The increase of one-third manifested itself amongst both men and women. One of the reasons mentioned for the increase was the right to take parental leave and in particular the increase in financial compensation for persons taking parental leave. Most recent official figures show that in February 2000 about 8.000 parents were on parental leave.

**33. *What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?***

The outlook is an increase in the use of parental leave by men. The number of men is increasing slowly but steadily because of a change in mentality.

## DENMARK

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)*

The agreement/Directive has been implemented by law and collective agreement. An existing law on parental leave was to a large extent already in line with the provisions of the directive. Only the force majeure provisions needed to be implemented. This was then done by sectoral collective agreement because most collective agreements only gave parents the right to take a day off on the first day of their child's illness to allow them to find child care for the further period. They need to be supplemented by law to cover employees not covered by an agreement. The trade union confederations and the confederations of employers have made a statement of intent by which the social partners undertake to ensure that citizens who are not covered by a collective agreement are nevertheless granted the rights pursuant to the directive.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

See Point 1.

3. *Were the social partners satisfactorily involved in the implementation process? If not, why not?*

The social partners were involved in the implementation process satisfactorily.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

LO Denmark considers that both the law and the sectoral collective agreements are in full compliance with the Directive.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

All employees are covered.

The target group was extended to unemployed persons and self-employed persons with children in the age group from 0 to 8 years.

6. *Are any children excluded? (e.g. only for children born or adopted after a certain date)*

No children are excluded.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

There are no problems regarding eligibility requirements for the parent.

**8. Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)**

There are no special arrangements relating to adoption, multiple childbirth or disabled children. (KTO)

There are no special arrangements relating to adoption, multiple childbirth or disabled children, but the agreement on child care days contains the possibility of multiplying the number of child care days in the case of multiple birth. (StK)

**9. Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?**

The right to parental leave is individual and non-transferable, as recommended by the agreement.

**10. Up to what age of the child can parental leave be taken?**

The Law on Parental Leave relates to children up to 8 years of age.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

There is no obligation to take leave immediately after the maternity leave.

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

**(clause 2.3a)**

Each parent is entitled to 13-52 weeks' full-time child care leave within the first 8 years of the child's life. The duration of the period of leave is set at a minimum of 13 weeks. If an agreement can be concluded between employee and employer the leave can be extended to 52 weeks. If the application for parental leave is made before the first anniversary of the child the parents have the unconditional right to 26 weeks' leave without agreement with the employer.

More flexible arrangements have been discussed within the framework of a Committee on Family Policy set up by the Government. The Committee has not agreed on recommendations along those lines, but the Government is expected to introduce a bill in the near future.(StK)

**13. Have any measures been taken to encourage fathers to take parental leave? (general consideration 8). Please explain.**

Recently the government proposed that the minimum period of parental leave should be reduced to 8 weeks. This proposal has been made to encourage more fathers to take parental leave. The proposal has not yet been adopted.

## **Exercising the right to parental leave**

**14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

According to the Law on Parental Leave requests for parental leave cannot be presented to the employer before 3 months of employment. (KTO)

There are no eligibility requirements concerning the right to parental leave, but with regard to child care days, see 6 above. (StK)

In the case of employees and self-employed persons one condition is that the persons concerned qualify for cash benefits in the event of sickness and maternity. In the case of unemployed persons one condition is that they must either qualify for unemployment benefit or be receiving welfare assistance.

**15. Are there any problems regarding terms of notice and other procedures for taking parental leave? (clause 2.3d)**

There are no problems regarding terms of notice and other procedures for taking parental leave.

Terms of notice are laid down in the law on parental leave. The term of notice for child care days is subject to local (workplace) agreements. (StK)

**16. Is the employer allowed to postpone the granting of the leave? If so how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

According to the Law on Parental Leave, the employer can postpone the granting of the leave for up to 26 weeks provided certain conditions are met. (KTO)

With regard to parental leave, the employer is not allowed to postpone the granting of the leave but can do so in the case of child care days. This is regulated within the framework of the shop steward system and is thus subject to negotiation at the local level. (StK)

**17. Are there any special arrangements concerning taking parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

No information available

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

There is no obligation to replace workers on parental leave, but employers are encouraged to do so. The social partners have concluded an agreement on a Maternity Fund, which has the purpose of covering additional costs for replacements during maternity leave etc.

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave is not taken for the care of children)**

The employer cannot terminate parental leave; the authority which can do so is the Exchange Unemployment Fund.

**20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

There are no problems concerning the protection against dismissal requirement.

21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)*

There may be occasional problems, but it is not a general problem.

22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)*

There are no problems regarding the legal status of the employment contract during the period of leave.

### **Protection of acquired rights**

23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)*

There are no problems concerning the retaining of employment rights acquired during the period of leave, especially after the conclusion of an agreement in 1999 covering the state sector which deals with pension rights during the leave.

### **Statutory social security**

24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)*

The statutory social security rights are not affected. See also question 23.

### **Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?*

Yes, under the Law on Parental Leave all employees receive a social security benefit from the State during parental leave equal to 60% of the maximum unemployment benefit rate. As regards urgent family leave, no payment is provided for by the law on parental leave or the collective agreements. In such cases the law on social welfare provides for a payment.

Information received to the contrary : a state benefit is paid of up to 90% of the earnings before the parental leave.

26. *Do employers pay anything?*

In some cases leave benefit may be supplemented by employer contributions.

### **Force majeure**

27. *How is "force majeure" defined?*

There is no definition in the law. The definition depends on local agreements.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

It is possible to take leave to take care of a child under 14 which is seriously ill or to take care of a dying relative, subject to certain conditions specified in Danish Social Legislation. (KTO)

Urgent family leave is available in connection with both children and other relatives. (StK)

**29. Is leave available for other reasons?**

Leave can also be taken for sabbaticals or for further education purposes. In both cases the maximum duration is 1 year and is paid up to 60% of the maximum unemployment benefit. In the case of sabbatical leave, the employer is obliged to replace the worker on leave.

**30. What is the maximum duration per year/case?**

There is no threshold in the law; the duration is subject to local agreements.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

All employees receive a social security benefit from the state which corresponds to 60% of the maximum unemployment benefit rate. (StK)

The State grants social benefits and the employer pays an amount guaranteeing an employee full income during these types of leave.(KTO)

In contrast to this, state employees receive full pay under maternity/adoption leave, including child care days. As regards urgent family leave, income is either full pay or sick pay, depending on the agreement applying to the employees in question.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

The right to an extra 2 days' leave for parents of young children introduced in the 1998 collective bargaining settlement has proved to be popular with employees in the manufacturing industry. Research giving a representative sample shows that 80% of white-collar and 69% of blue-collar workers in the sector took at least one of the days available in 1998, while only 20% and 32% respectively opted to receive extra pay instead.

As from 1.4.1997 the benefit for parents on parental leave has been reduced from 70% to 60% of the maximum unemployment rate, the number of persons who were granted parental leave dropped from 80 000 in 1994 to only 52 000 in 1995.

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The number of employees taking parental leave in the public and private sectors has levelled off at approximately 19 000 per year. (KTO)

## FINLAND

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)*

The agreement has been implemented by legislation.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

The existing regulations needed to be amended.

Several sectoral agreements require employers to supplement the state allowance in part during parental leave. Some agreements include regulations for force majeure.

3. *Were the social partners satisfactorily involved in the implementation process? If not, why not?*

The social partners were involved in the implementation process satisfactorily. The amendments were agreed in a tripartite committee, which was assigned the task of reforming the Contracts of Employment Act.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

The Government has implemented the agreement correctly.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

All workers have the right to take parental leave.

6. *Are any children excluded? (e.g. only for children born or adopted after a certain date)*

There are no children excluded.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

There are no problems regarding eligibility requirements for the parent.

8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)*

As far as adoption is concerned, there is a more flexible timetable for informing the employer. In the case of multiple childbirth and from the second child onwards, parental leave is 60 days longer per child.

**9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

The right to parental leave is individual and non-transferable, as recommended by the agreement.

**10. *Up to what age of the child can parental leave be taken?***

The leave can be taken up to the age of three.

In the case of adoption parental leave can be taken up to the child's 7<sup>th</sup> birthday.

The leave is set at 158 days (26 weeks including Saturdays).

**11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)***

There is no obligation to take leave immediately after maternity leave, but in practice the leave is actually taken immediately after such leave.

**12. *Can the parental leave been taken :***

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

***(clause 2.3a)***

Parental leave can neither be taken part-time nor through a credit system. The leave can be taken in a maximum of 2 parts, one of which should be at least 12 days. Parents have the possibility of sharing the leave between them.

An employee can also work shorter hours in order to take care of a child up to its 3rd birthday.

There is also a statutory provision allowing parents to take subsequent unpaid care leave for children under 3 years of age, for unpaid temporary care leave of up to 4 days in the case of a child under 10 which falls ill, and shorter working hours (partial care leave - either a 6-hour day or a 30-hour week) until the end of the year in which the child begins school.

**13. *Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.***

The possibility of sharing the leave has been introduced, but it has not been used to any great extent.

***Exercising the right to parental leave***

**14. *Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)***

There are no eligibility requirements concerning the right to parental leave. In the case of partial care leave the threshold is 12 months of service over the last 24 months.

**15. *Are there any problems regarding terms of notice and other procedures for taking parental leave? (clause 2.3d)***

There are no problems regarding terms of notice and other procedures for taking parental leave.

**16. *Is the employer allowed to postpone the granting of the leave? If so how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)***

The employer is not allowed to postpone the granting of the leave.

**17. *Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)***

There are no special arrangements concerning parental leave in SMEs.

**18. *Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.***

Employers are not obliged or encouraged to replace workers on parental leave.

**19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave is not taken for the care of children)***

The employer cannot terminate parental leave.

**20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)***

Although the legislation is clear, there is some litigation. The major issue, however, is possible discrimination against pregnant workers.

**21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)***

There is quite a lot of litigation on this matter.

**22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)***

There are no problems regarding the legal status of the employment contract.

### **Protection of acquired rights**

**23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)***

There are no problems concerning the retaining of employment rights acquired during the period of leave.

### **Statutory social security**

**24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)***

There is no negative influence on social security rights and benefits during the period of leave.

### **Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so how much, and is it financed by the social security scheme?*

The worker receives during the period of parental leave, 158 days, an income financed by the social security scheme. (66% of annual earnings)

26. *Do employers pay anything?*

Some collective agreements contain regulations on paid maternity leave but not on parental leave.

### **Force majeure**

27. *How is "force majeure" defined?*

Force majeure is defined as "the right to be temporarily absent from work if the worker's presence is needed because of a non-predictable and force majeure reason related to his/her family, due to illness or accident."

28. *Is urgent family leave available in connection with both children and other relatives? (clause 3)*

Urgent family leave is available for both children and other relatives.

29. *Is leave available for other reasons?*

There are special regulations in collective agreements, e.g. for funerals.

30. *What is the maximum duration per year/case?*

A maximum duration of 4 days is stipulated for children under 10 years of age.

31. *Is any substitute income provided by the State and/or by the employer? If so, how much?*

There is no substitute income provided.

### **Trends and outlook regarding parental leave**

32. *Do you have information/statistics to tell you:*

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

It is mainly women who take parental leave on a full-time basis immediately after maternity leave.

33. *What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?*

There should be an increase in the number of men taking parental leave. In Finland men usually take paternity leave, but it is not common for fathers to be on parental leave (only 0.3% of men take parental leave).

According to the statistics for 1998, there were 31 145 Finnish men who received the fatherhood benefit, but only 1409 men received the parental leave benefit.

## FRANCE

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)*

Parental leave has existed in French legislation since the law of 12.7.1977.

The regulations concerning force majeure have not yet been implemented. The labour code contains a provision on exceptional leave for the care of sick children, but the regulations in the Agreement/directive are more extensive.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

The implementation of the Agreement/directive necessitates legal provisions dealing with care in the case of force majeure.

A recent survey of 320 sectoral collective agreements found that 140 included clauses on leave for looking after sick children, but only 57 provided for paid leave. At company level some agreements have introduced extended parental leave entitlements and supplementary payment for those taking leave (which under the law is exempt from taxation and social contributions).

3. *Were the social partners satisfactorily involved in the implementation process? If not, why not?*

General studies have been conducted in France by the government and/or social partners on the reconciliation of family and working life. The trade unions have also launched large-scale campaigns on the issue of parental leave. But no specific initiative was taken to consult the social partners on the agreement.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

See question 3.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

No workers are excluded, but they have to have been employed in the same enterprise for at least 1 year.

6. *Are any children excluded? (e.g. only for children born or adopted after a certain date)*

No information available.

**7. Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)**

According to the CFDT, there are no problems regarding eligibility requirements for the parents.

**8. Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)**

There are special arrangements for adoption. Parental leave can be prolonged if the child is sick, has had an accident or is disabled.

**9. Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?**

The right to parental leave is individual and non-transferable.

**10. Up to what age of the child can parental leave be taken?**

The period of parental leave must be taken before the child's 3rd birthday. In the event of the adoption of a child under 3 years of age, parental leave can be taken within the 3-year period following the arrival of the child.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

There is no obligation to take leave immediately after maternity leave.

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

**(clause 2.3a)**

Parental leave can be taken part-time but not in fragments. In principle, parental leave is for 1 year, but it can be prolonged twice for a further year. It is not possible to interrupt the leave except in the event of the death of the child or because of the family's financial circumstances.

After the first year, employees can either extend their leave or part-time work, or switch from leave to part-time work.

**13. Have any measures been taken to encourage fathers to take parental leave? (general consideration 8). Please explain.**

The leave can be taken by either the mother or the father. The father and the mother can take parental leave at the same time (Law of 4.1.1994). Both parents can take it at the same time or after each other even if they work for the same firm. There is no discrimination in the law against fathers taking parental leave, but neither does it contain incentives to encourage them to do so.

### **Exercising the right to parental leave**

- 14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

The worker must have worked for the same employer for at least 1 year in order to be able to benefit from parental leave.

- 15. Are there any problems regarding terms of notice and other procedures for taking parental leave? (clause 2.3d)**

No information available

- 16. Is the employer allowed to postpone the granting of the leave? If so how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

The employer is not allowed to postpone the leave, irrespective of the size of the enterprise. This is laid down by a law of 25.7.1994, which came into force on 1.1.1995.

- 17. Are there any special arrangements concerning taking parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

There are no special arrangements concerning parental leave in SMEs. (Law of 25.7.1994)

- 18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

Employers are not obliged or encouraged to replace workers on parental leave.

- 19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave is not taken for the care of children)**

In principle the employer cannot terminate parental leave, but he can dismiss the employee for other reasons - disciplinary or economic. In principle, the employee cannot perform any work during parental leave; this can be sanctioned by refusing the employee further employment.

- 20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

In principle the employee cannot be dismissed merely because he/she has taken parental leave.

- 21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

The law provides that the worker must be able to return to the same or an equivalent job with an equivalent salary. The legal texts are satisfactory, but in practice implementation is hampered by the difficulty of reintegrating employees who have taken parental leave. For this reason the CFDT proposes that certain measures be developed:

a reintegration programme

measures to encourage fathers to take parental leave.

- 22. Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)**

There are no problems regarding the legal status of the employment contract, which is suspended during the period of leave.

### **Protection of acquired rights**

23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)*

The employee retains all his/her acquired rights during the period of leave. But the leave counts for only half as regards seniority and does not count as working time for holiday benefits.

### **Statutory social security**

24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)*

The worker is entitled to maternity benefits during the period of parental leave. He/she is not entitled to daily allowances compensating wages in the event of illness.

### **Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so how much, and is it financed by the social security scheme?*

The parent taking leave receives an income which is calculated on half days of 70FF per day of leave.

Under certain conditions, i.e. more than 2 children, the state pays the following benefits:

3045,70 FF per month, if the parent stays at home;

2013,88 FF per month, if the parent works less than 85 hours per month;

1522,35 FF per month, if the parent works between 85-136 hours per month.

Eligibility conditions for receiving a benefit are thus more restrictive for parents with only 2 children compared to parents with 3 or more children. In the former case, parents are only eligible if they have worked for at least 2 of the 5 years preceding the birth. In the latter case, parents are eligible if they have worked 2 years at any time in the last 3 years preceding the birth.

26. *Do employers pay anything?*

According to the law, the employer does not pay anything, but some collective agreements provide additional benefits, e.g. the national collective agreement in the banking sector.

### **Force majeure**

27. *How is "force majeure" defined?*

Leave for force majeure is not regulated in French law.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

In 1994, an unpaid statutory 3-day period of leave was introduced for looking after sick children. This can be extended to 5 days if the child is under 1 year of age.

**29. Is leave available for other reasons?**

No information available

**30. What is the maximum duration per year/case?**

See 28.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

No.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

It is known in general that the vast majority of parents taking parental leave are women. More qualified women prefer to take part-time leave, so that they still keep in touch with their job; less qualified and lower-paid women prefer full-time leave. In fact many women in precarious jobs tend to take parental leave because they are then eligible for the parental educational leave allowance.

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

In France the rate of parents taking parental leave has increased considerably since the introduction of paid parental leave.

## GERMANY

### **Implementation of the agreement**

- 1. How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)**

In fact the agreement/directive has not affected German law to any great extent, since the existing law was already in line with the content of the agreement/directive (Gesetz über die Gewährung von Erziehungsgeld und Erziehungsurlaub (BerzGG) and, in the case of force majeure, § 45 Sozialgesetzbuch (SGB) V). The current Government has proposed a new bill on child care leave, which takes up the time flexibility aspect included in the Directive but not the individual and the transferable right. However, the bill does provide for the possibility for both parents to take child care leave at the same time. In addition, there are regulations in collective agreements concerning leave without pay to care for children or elderly persons.

- 2. Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?**

Laws and collective agreements already existed. There is no information as to whether amendments have been made. (IGM, ÖTV)

Amendments are still necessary, because there is no individual right to take parental leave and such leave can only be taken until the child is 3 years old. (DGB)

Since the late 1980s, collective agreements have increasingly extended the statutory entitlements. In 1994 parental leave provisions were included in seven sectoral framework agreements, including banking, retail, metalworking and insurance. In the metalworking sector 7 state-level agreements have covered parental leave. Though the provisions vary, some agreements enable workers to take additional periods of unpaid leave (e.g. up to a total of 5 years in banking and the retail trade) while retaining the post or a similar job. A number of company or works arrangements have extended the leave arrangements specified by law or by sectoral agreement. A national agreement for white-collar workers in the public sector entitles employees to special leave of up to 5 years for family reasons, the employment relationship thereby being suspended.

- 3. Were the social partners satisfactorily involved in the implementation process? If not, why not?**

No information available

- 4. Do you consider that your government has correctly implemented the agreement? If not, please explain and give details of any action you have taken in consequence.**

The existing rules correspond to a large extent with the provisions of the agreement/directive. The minimum requirement of 3 months' parental leave is much higher in Germany, but such leave can only be taken up to the child's 3<sup>rd</sup> birthday and not up to the 8<sup>th</sup> birthday. There is no individual right for men and women to take parental leave.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

Every worker on the territory of Germany has the right to take parental leave irrespective of the worker's nationality. The same rights are open to trainees and home workers. (IGM)

6. *Are any children excluded? (e.g. only for children born or adopted after a certain date)*

No children are excluded; there are only time limits up to the child's 7<sup>th</sup> birthday in the case of adoption or adoption care, and up to the child's 3<sup>rd</sup> birthday in the case of a natural child. There is still some confusion as to whether children born before the 31.12.1991 are excluded or not.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

There are no known problems regarding eligibility requirements for the parent.

8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)*

In the event of adoption or adoption care, parental leave can be taken up to the child's 7<sup>th</sup> birthday. If another child is born during the time limit the leave is extended for another 3 years. Special regulations concerning multiple childbirth or disabled children do not exist.

9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?*

The right to take parental leave cannot be excluded or limited (§ 15III BErzGG). The right can be transferred. If one of the parents is not working, he/she cannot take parental leave. The reasons for this are not known.

10. *Up to what age of the child can parental leave be taken?*

Leave of up to 36 months can be taken up to the child's 3<sup>rd</sup> birthday, and up to the 7<sup>th</sup> birthday in the case of adoptive children.

11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)*

It is obligatory to take parental leave immediately after maternity leave. (DGB)

There is no obligation to take parental leave immediately after maternity leave, but in practice most women do. (IGM)

12. *Can the parental leave been taken :*

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

*(clause 2.3a)*

During the parental leave a part-time work of 19 hours is possible. It can be taken in fragments. Parental leave cannot be taken via a time-credit system. (IGM)

**13. Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.**

The possibility of alternating parental leave three times (e.g. the mother takes the first year, the father the second year and the mother again the third year) is a measure to encourage fathers. There have also been some encouraging appeals. (ÖTV)

No measures have been taken to encourage fathers to take parental leave. (DGB)

The low financial compensation of the leave makes parental leave unattractive for fathers.

There is a tendency in more recent sectoral and company agreements to explicitly encourage fathers to take parental leave or to use reduced working time opportunities.

**Exercising the right to parental leave**

**14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

In order to be eligible for parental leave employees must have 4 weeks' service with the employer. The other parent must either be working, currently unemployed or a student and may not be claiming parental leave at the same time.

**15. Are there any problems regarding terms of notice and other procedures for taking parental leave? (clause 2.3d)**

There are no known problems. A parent who wants to take parental leave must notify the employer 4 weeks in advance .

**16. Is the employer allowed to postpone the granting of the leave? If so how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

There are no legal measures allowing the employer to postpone the parental leave. When there are doubts concerning the conditions of parental leave, the administration has to settle the case.

**17. Are there any special arrangements concerning taking parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

There are no special legal arrangements concerning parental leave in SMEs, but there may be some such arrangements in collective agreements.

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

The employer is not obliged to replace workers on parental leave, but he has the possibility to do so with fixed-term contract workers (§21 BErzGG).

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave is not taken for the care of children)**

The employer is not allowed to terminate parental leave, but the employee can terminate the leave prematurely with the employer's agreement.

**20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

There is a rule in the law concerning dismissal which prohibits dismissing a parent as of the date of notification of the wish to take parental leave, but the protection against dismissal lapses after the period of parental leave.

Dismissals occur in practice, however, when the women go back to work. In Eastern Germany in particular this is a consequence of the massive job cuts of the last few years. There is also a problem when the employer does not offer a part-time job to women who want to work part-time after taking parental leave.

**21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

The employer generally has to offer the same work post after parental leave, which is why the employment contract is suspended during the period of parental leave and resumes after that period. The employer can also offer another job, but only if the employment contract so provides. The new job must be equivalent to the old job.

See also question 20.

**22. Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)**

The employment relationship, including pay, is suspended during the period of parental leave.

**Protection of acquired rights****23. Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)**

The number of days of paid holidays can be reduced as well as the holiday allowance. In some cases parental leave can influence fringe benefits. The period of parental leave can be excluded in the calculation of occupational old-age benefits and jubilee bonuses.

The period of leave is included in the determination of the workers' social rights (e.g. for calculating seniority).

**Statutory social security****24. How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)**

Parental leave does not affect existing social security rights. Health insurance coverage continues during the period of parental leave without any contributions having to be paid. But sick benefits are not applicable during that period. The period of parental leave counts towards the old-age pension under certain conditions. (IGM)

The period of leave is included in the calculation of the worker's social rights.

### **Payment during parental leave**

**25. Does the worker receive any income from the State during parental leave? If so how much, and is it financed by the social security scheme?**

The worker does not receive his/her normal salary during the period of parental leave. He/she receives an income from the state, which depends on his/her income. The limits have been the same since 1986, which is why less and less families are entitled to receive it. The highest possible amount of the allowance is 600 DM for the first 6 months. For the following 24 months an income-related benefit is received. It should be pointed out that Turkish workers of both sexes here in Germany have indeed been entitled in the past to take child care leave but they have received no child care leave allowance. An ECJ ruling has been issued against this practice, but the necessary changes in German legislation have not yet been made.

**26. Do employers pay anything?**

The employer does not pay anything.

### **Force majeure**

**27. How is “force majeure” defined?**

Force majeure is regulated in § 45 SGB V, but this only includes the case of a sick child.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

Urgent family leave is available for sick children under the age of 12, where no other care can be found. This right exists only for persons covered by the public health insurance scheme. There are no statutory rules for other close relatives. Other regulations are possible in collective agreements.

**29. Is leave available for other reasons?**

There are no statutory regulations concerning leave for other reasons, but there are regulations in collective agreements (e.g. 6 days per year for a sick child in the public sector).

**30. What is the maximum duration per year/case?**

Single parents have the right to take leave for a maximum of 20 days per year, or, if they have several children, 50 days per year. Parents have the right to take unpaid leave for a maximum of 10 days per year, and 25 days in the case of several children. This right is not transferable.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

The state provides sick pay, which is 70% of the normal wage (§ 47 SGB V). There is no right to claim support from the employer.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

2%-3% of all men take parental leave. Most of the women take parental leave immediately after maternity leave and generally full time.

Reasons why men do not take parental leave are:

the payment is inadequate (West 74%, East 71%);

they are afraid of having too long a break in their career development (West 63%, East 43%);

they are afraid of losing their job (West 19%, East 30%);

the job does not allow it (West 31%, East 23%).

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

Parental leave is a major support measure for families in East Germany (97% of all entitled families took parental leave in 1995). The fact that this measure favours non-working mothers and discriminates against working mothers must be criticized. The pay for parental leave is not connected with the child, but with the parent's income. If the parent works, no parental leave allowance is paid. This is a disadvantage for single mothers and parents with low incomes. Non-working mothers receive the payment irrespective of the husband's income.

It seems to be that the payment is like a premium for not working.

The relatively low payment excludes fathers from taking parental leave, because they are generally the breadwinners of the families with higher incomes than the mothers.

The present government plans to reform the law to establish a time-credit system and to make the conditions more flexible, so that the mother and father can take the leave at the same time and up to the child's 8<sup>th</sup> birthday.

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## GREECE

The Greek trade unions have not yet replied to the questionnaire. The information below has been obtained from the literature, which is scant.

Since 1984 the law has enabled any parents, including adoptive parents who work in an enterprise or establishment with 100 or more employees to take unpaid child care leave of up to 3 months between the end of maternity leave and the date on which the child reaches 2½ years of age. In addition, parents are entitled to take up to 6 working days each year as unpaid leave of absence in cases of illness affecting their children or dependents. The duration is 8 days if they have 2 children and 10 if they have 3 or more. Parents who work in companies which employ at least 50 people and who are responsible for disabled children are entitled to a 1-hour reduction in working hours, with a corresponding reduction in their wages. There is also a provision for parents of school-age children under 16 to be absent from work to visit the school for a maximum of 4 days.

In 1993 the national collective agreement included provisions on child care leave which improve on the statutory provisions by extending the leave that can be taken from 3 to 3½ and a half months and by extending the period during which it can be taken to the child's 3rd birthday, although this is restricted to workers in companies employing more than 50 workers.

This right to leave is an individual and non-transferable right.

Employers may refuse the leave if it has been claimed by more than 8% of the workforce during the year.

The 1996-97 national collective agreement stated that the parties adopt the EU framework agreement and recognize the need to introduce the necessary measures in order to bring it into force.

On 2 September 1998, the Greek Official Gazette published Law 2639 on "Regulations governing employment relations and the establishment of a Labour Inspectorate". With regard to parental leave, it stated that parents employed for at least 1 year with their current employer are entitled to take parental leave to care for the child for the period between the end of maternity leave and the date on which the child reaches the age of 3½. Each parent may take parental leave for up to 3½ months during that period. No wage or salary is paid during that period. Parental leave is granted by the employer on the basis of a ranking of the workforce in the firm drawn up every calendar year. This ruling also applies to employees in the public sector, legal public-law entities and local authorities and their bodies.

In its bargaining agenda with the employers' organizations for the years 2000-2001, the GSEE incorporated the demand that paid parental leave be introduced of which 50% is paid by the employer and 50% by the OAED public employment service. Furthermore, they want to negotiate 10 days' paid annual leave to care for members of the family.

## IRELAND

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)*

The Agreement/Directive was implemented by legislation.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

New legislation had to be enacted. The Parental Leave Act 1998 covers both parental leave and force majeure.

Only a small number of organizations have introduced the parental leave arrangement. The civil service has introduced a number of "family-friendly" policies such as career breaks, job-sharing and paternity leave. The vast majority of Irish organizations are reluctant.

3. *Were the social partners satisfactorily involved in the implementation process? If not, why not?*

A consultative process did take place on the content of the legislation, however, ICTU was not advised that the Government were seeking a 6-month extension over the 2-year transition period. The European Commission granted the 6-month extension without advising the Social Partners in Ireland and without giving ICTU the opportunity to express its views on the extension. The ICTU therefore objected to the European Commission's decision.

Critics maintain that most people simply cannot afford to take the unpaid leave and have called for leave takers to be able to draw a benefit from the social welfare fund in the same way as is currently the case with maternity leave.

The Irish Congress of Trade Unions is seeking paid parental leave along the lines of current maternity leave provisions, so that it would be of particular benefit to low-paid workers. On the employer side, IBEC has formally endorsed the social partners' agreement at Community level, but has urged the Government to take full advantage of the flexibility that is provided for in the text of the agreement.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

In addition to the provision on the maximum age of the child that is provided for in the Agreement, Irish legislation provides the following, for which no provision is made in the Agreement/Directive:

"The entitlement to parent leave shall apply only in respect to a child born on or after the 3rd day of June 1996, or a child in whose case an adoption order has been made on or after that date."

The ICTU challenged this provision at the national level when it first appeared in the Bill, but the Government proceeded to enact the legislation containing that provision. ICTU challenged this provision with the European Commission as soon as the Act became law

on 3 December 1998. ICTU argued that the Irish legislation provided for a maximum age of 5 years in respect of eligible children, which was in accordance with the Agreement/Directive. However the Agreement/Directive contains no provisions for further restricting parental leave to children born after the day the Directive was signed into European law, 3 June 1996.

The European Commission wrote to the Irish Government on 11 May 1999, inter alia, that: "Clause 2(1) of the framework agreement gives workers the right to up to three months' parental leave to care for a child up to a given age of eight years to be defined by the Member State and or management and labour. Ireland has defined the maximum age as five years, which is permitted by the directive. However, the Directive does not contain any provision permitting Member States to set a date by which children in respect of whom the right to parental leave is exercised must be born. Clearly, the right to take parental leave under the Directive does not apply until the Directive is implemented in national law - 3 December 1998, in the case of Ireland. However, the condition which the Directive sets for the right to take parental leave is to have a child under the maximum defined age. By requiring children to have been born after the date of the Directive's adoption, the Irish Government has added a condition which is not permitted by the Directive. Had the Directive permitted the Member State to limit the taking of parental leave to parents with children born after the date of the Directive's adoption, a specific legal provision on this point would have been included."

The Irish Government did not accept the European Commission's view as outlined above and in accordance with the procedure they responded to the Commission within 2 months, i.e. on 4 May, stating the reasons why they believe that the Irish legislation meets the requirements of the Agreement/Directive.

In the mean time the European Commission reached its reasoned opinion in the Irish case which is favourable to the trade unions and considers the integration of a so-called "cut-off date" (i.e. a provision stipulating that the Directive only applies to children born after a certain date) as a non-correct implementation of the Directive. The text of the reasoned opinion can be found in the annex

### ***The right to parental leave***

**5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)***

An employee who is the natural or adoptive parent of a child is entitled to leave.

An employee is defined as meaning a person of any age who has entered into or works under a contract of employment.

A "contract of employment" is defined as (a) a contract of service or apprenticeship, or (b) any other contract whereby an individual agrees with another person who is carrying on the business of an employment agency with the meaning of the Employment Agency Act 1971 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract), whether the contract is express or implied and if express, whether it is oral or in writing."

**6. *Are any children excluded? (e.g. only for children born or adopted after a certain date)***

Children born on or before the third of June 1996 are excluded - see 4 above.

**7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)***

As stated under Point 5 above, an employee who is the natural or adoptive parent of a child eligible for Parental Leave. The Act stipulates that the employee must either be the natural or adoptive parent of the child. There was a great of deal discussion around this wording as part of the consultative process, but it was not possible to agree on a wider definition.

**8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)***

In the case of an adopted child who is under 3 years of age at the time of the adoption, the leave must be taken before the child reaches 5 years of age. However, if the child is between 3 and 8 years of age at the time of adoption, the leave must be taken within 2 years of the adoption order.

In the case of multiple birth, an employee is entitled to parental leave in respect of each child of which he or she is the natural or adoptive parent. In addition, there is a provision that where an employee is entitled to parental leave in respect of more than one child he or she may not take more than 14 weeks' parental leave in any 12-month period, unless the employer agrees otherwise. However, this restriction does not apply in the case of the children of a multiple birth.

**9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

Parental leave is the entitlement of each parent and is non-transferable. The Act provides that "neither of the parents shall be entitled to the parental leave of the other parent or may transfer any part of the period of his or her parental leave to the other parent."

**10. *Up to what age of the child can parental leave be taken?***

The act provides that "the period of parental leave shall end not later than the day on which the child concerned attains the age of 5 years or, in the case of a child who is a subject of an adoption order and who had attained the age of 3 years but had not attained the age of 8 years on or before the date of the making of that order, not later than the expiration of the period of 2 years beginning on that date."

**11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)***

There is no obligation to take parental leave immediately after maternity leave.

**12. *Can the parental leave been taken :***

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

***(clause 2.3a)***

Parental leave may be taken as a continuous block of 14 weeks or, by agreement between the employer and the employee, may be broken up over a period of time, e.g. into individual days or weeks, or taken in the form of reduced hours of work, or taken in the form of a combination of both.

Employees who have more than one eligible child may not take more than 14 weeks leave in any period without the consent of the employer.

**13. *Have any measures been taken to encourage fathers to take parental leave? (general consideration 8). Please explain.***

No measures have been taken to encourage fathers to take parental leave.

***Exercising the right to parental leave***

**14. *Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)***

There is a requirement that an employee cannot commence a period of parental leave until he/she has completed 1 year's continuous employment with the employer from whose employment the leave is taken. However, where the child is approaching the age threshold and the employee has more than 3 month's but less than 1 year's service with the employer, he or she is entitled to pro rata parental leave. In such a case the employee will be entitled to 1 week's leave for every month of continuous employment completed with the employer when the leave begins.

**15. *Are there any problems regarding terms of notice and other procedures for taking parental leave? (clause 2.3d)***

Employees are required to give notice of their intention to take parental leave as soon as reasonably practicable but not later than 6 weeks before the commencement of the leave. The notice must be given in writing and must specify the date of commencement of the parental leave and its duration and the manner in which it is proposed to be taken.

**16. *Is the employer allowed to postpone the granting of the leave? If so how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)***

There are two provisions in the Act relating to the postponement of parental leave:

by the agreement of the parties concerned

by the employer - an employer may postpone the taking of parental leave at the time specified in the notice when he/she is satisfied that the taking of parental leave at the time specified would have a substantial adverse effect on the operation of his or her business by reason of:

seasonal variation in the volume of the work concerned

the unavailability of a person to carry out the duties concerned

the nature of the duties concerned

the number of employees in the employment whose periods of

parental leave or parts of whose period of parental leave fall within the period specified,

or any relevant matters.

The employer must give written notice to the employee, not later than 4 weeks before the intended commencement date, of the intention to postpone the commencement of the parental leave to such time not later than 6 months after the date of commencement specified.

Before giving notice of intention to postpone parental leave the employer must consult the employee. A notice from the employer must contain a statement in summary form of the grounds for the postponement of the commencement of the parental leave.

The commencement of parental leave in respect of a particular child may not be postponed more than once unless a ground of postponement is seasonal variation in the volume of work concerned. Where that is a ground for the postponement the parental leave may not be postponed twice.

If solely because of the postponement of the commencement of parental leave the child concerned reaches the age threshold, the attainment of the age will be deemed to have occurred after the end of the period of parental leave.

Parental leave cannot be postponed by the employer once a confirmation document has been signed by both parties.

**17. *Are there any special arrangements concerning taking parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)***

There are no special arrangements for SMEs.

**18. *Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.***

The legislation does not oblige or encourage employers to replace workers on parental leave.

**19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave is not taken for the care of children)***

Yes. The Act specifies that the entitlement to parental leave is subject to the condition that is used to take care of the child concerned. Where an employer has reasonable grounds for believing that an employee who is on parental leave is not using the leave for the purpose of taking care of the child concerned, the employer may give notice in writing to the employee of his/her intention to terminate the leave and invite the employee to make representations on the matter within 7 days.

The employer is obliged to consider the employee's submission before deciding whether to terminate the leave. If the employer decides to terminate the leave the employee must be notified in writing and the notice must specify the grounds and the date of termination, which must be no less than 7 days after the date of receipt by the employee of the notice.

**20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)***

The Act provides that while on parental leave an employee is regarded for all purposes relating to his/her employment (other than remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment) as still working in the employment and none of his/her other rights relating to the employment are affected by the leave.

**21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)***

An employee is entitled to return to work at the end of the parental leave period with the employer with whom he/she was working immediately before the absence or with his or her successor, in the job held immediately prior to the leave under the same contract,

terms and conditions of employment. If the business has changed ownership during the employees absence on parental leave, he/she is entitled to work under a contract of employment identical to the contract that existed with the original employer.

If it is not reasonably practicable for an employer or his or her successor to allow an employee to return to the job immediately prior to the leave, the employer or his or her successor must offer the employee suitable and appropriate alternative employment under a new contract of employment. The terms of the alternative employment (e.g. the place of work, the capacity in which the employee is employed) must not be substantially more favourable for the employee than the terms of his or her original job.

**22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)***

There is no problem regarding the legal status of the employment contract.

In the case of an employee who is on probation or undergoing training or of an employee under a contract of apprenticeship, the employer may require that the probation, training or apprenticeship be suspended during the period of parental leave and completed by the employee at the end of the parental leave.

See also 20 above.

**Protection of acquired rights**

**23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)***

There are no problems concerning the retaining of employment rights acquired during the period of leave.

See 20 above.

**Statutory social security**

**24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)***

The Minister for Social, Community and Family Affairs has introduced Regulations to ensure preservation of social insurance records for employees who avail themselves of parental leave.

**Payment during parental leave**

**25. *Does the worker receive any income from the State during parental leave? If so how much, and is it financed by the social security scheme?***

The worker does not receive any income from the state during parental leave.

**26. Do employers pay anything?**

The employers do not pay anything.

**Force majeure****27. How is "force majeure" defined?**

The definition is:

"An employee is entitled to leave with pay from his or her employment, where for urgent family reasons, owing to an injury to or the illness of a person specified below, the immediate presence of the employee at the place where the person is, whether at his or her home or elsewhere, is indispensable."

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

Urgent family leave is available for the following persons:

a child or adoptive child of the employee

the spouse of the employee, or a person with whom the employee is living as husband or wife

a person to whom the employee is in loco parentis

a brother or sister of the employee

a parent or grandparent of the employee

persons of such other (if any) class or classes as may be prescribed (no other class of person has been prescribed to date).

**29. Is leave available for other reasons?**

Reasons are defined under Point 27 above.

**30. What is the maximum duration per year/case?**

Force majeure leave may consist of one or more days, but not more than 3 days in any period of 12 consecutive months or 5 days in any period of 36 consecutive months. Absence for part of a working day is counted as 1 day of force majeure leave.

As soon as reasonably practicable after his or her return to work, after an absence on force majeure leave, an employee must confirm to his or her employer that he or she has taken the leave. A medical certificate describing the circumstances which led to the leave being taken should be provided within 4 weeks of the end of the leave.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

The force majeure leave is paid by the employer.

**Trends and outlook regarding parental leave**

32. *Do you have information/statistics to tell you:*

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

Parental leave has been in operation for only 6 months and we have no data on the use by employees - men or women.

33. *What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?*

No information available

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## ITALY

### **Implementation of the agreement**

- 1. How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure / urgent family leave.)**

The new law on parental leave, law n°53/2000 has recently been published in the Official Journal. It is the result of an agreement on the welfare state between the government and the social partners signed in November 1997. The law provides for various types of leave, parental leave, leave for particular events and reasons and leave for training. Legislation seemed to be the most logical approach here because it is the only way of guaranteeing the right to better harmonization of working and caring schedules, linking these to everyone's natural aspirations for occupational advancement. So far neither collective bargaining nor existing regulations have offered such assurance.

- 2. Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?**

The law has undergone various amendments. In 1997 the text known as the "Turco Law" considered parental leave only. It was then revised several times before taking its present shape, covering matters other than parental leave, such as the right to training and the co-ordination of urban rhythms.

Collective bargaining in many sectors and companies has extended workers' entitlement to parental leave. However, while sector-level negotiations have in many cases increased the proportion of normal wages paid during compulsory maternity leave above the statutory level (80%), collective agreements have not tended to improve upon the 30% level which applies to optional parental leave. In the course of 1997 the main trade union confederation launched a concerted initiative for collective agreements in the light of the standards of the Directive. While the main employer's confederation, Confindustria, believes that the Directive does not necessarily imply changes in Italian law, the trade unions consider that the Directive introduces certain improvements.

- 3. Were the social partners satisfactorily involved in the implementation process? If not, why not?**

The law is the result of an on-going dialogue between the government and the social partners on the welfare state. A very important aspect of this law is without a doubt the explicit recognition of the fundamental role of the social partners and in particular of collective bargaining and consultations. These are the real instruments for implementing the law, especially in certain highly sensitive respects such as procedures for taking leave from work, measures to support flexitime, procedures for obtaining urgent family leave and training leave; arrangements concerning supplementary pensions where appropriate.

- 4. Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.**

There are no causes for complaint. The Italian government has implemented the agreement/directive correctly. (CISL)

This law applies to all workers, but in practice it covers only some of them. Due to the absence of collective bargaining in small businesses, female employees cannot benefit from the legislation. Young women who are doing atypical jobs are also excluded from the legislation. About 200 000 women who have found work belong to this category. There is therefore a risk that women of child-bearing-age and women with pre-school-age children will be excluded. However, the government has announced other types of protection. (UIL)

### **The right to parental leave**

**5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)***

Act 1204 of 1971 on maternity protection laid down the compulsory right of male and female workers to abstain from work during 5 months (2 months before confinement and 3 months afterwards). Act 1204/71 also provides for a further 6 months of optional leave, which may be taken either by the mother or by the father to look after the child until its first birthday. Act 546/1987 extended this right to women who are self-employed, shopkeepers and farm workers including share-croppers. The present provisions also refer to fixed-term workers and the self-employed. The new law applies to all mothers and fathers. Self-employed women who want to take parental leave are entitled to tax relief if they arrange to be replaced by another person.

**6. *Are any children excluded? (e.g. only for children born or adopted after a certain date)***

No.

**7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)***

Adoptive parents have the same rights as natural ones.

**8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)***

The rest periods are doubled in the case of twin birth.

In the case of premature delivery the days of compulsory time-off not taken before the confinement are added to the compulsory leave period after the confinement.

Leave is also available for looking after disabled children (Act 104 of 1992). (CISL)

In the case of disabled children, Act 104 of 1992 affords certain concessions for parents including adoptive parents. This includes an extension of the optional leave period until the child is 3, or 2 hours off with pay every day, again until the child reaches the age of 3. Once the child has reached that age, the worker is allowed to take 3 days off. These days are fully paid. (UIL, CGIL)

For disabled children aged over 6, the law reforming the pension system grants leave of 25 days per year, up to 24 months. (CISL)

In case of adoption and where the adopted child is between the ages of 6 and 12, the parents may take the leave within the 3 years following the adoption.

**9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

Either parent may take up to a maximum of 10 months. Under the new regulations parents are not permitted to take more than six months' leave in one block but if a father takes at least three months' leave in one block, his employer can award one extra month of parental leave as a "bonus".

**10. *Up to what age of the child can parental leave be taken?***

Parental leave can be taken, even by both parents simultaneously, until the child's 9th birthday.

A national agreement in the financial sector allows unpaid leave for family, personal or educational reasons for up to a maximum of 1 year. Another agreement in the retail sector provides for a period of 12 months' unpaid leave. An agreement in a banking enterprise (Banca Ambroveneto) provides for unpaid leave, of not more than 12 months, for the illness of a child (3 to 6 years old) and for reasons related to child care.

**11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)***

There is no obligation to take other leave after the compulsory period.

**12. *Can the parental leave been taken :***

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

***(clause 2.3a)***

A worker, male or female, may request that the optional 6-month period can be taken either continuously or in fragments, as long as the child is under the age of 1 year. (CGIL)

Once the compulsory leave period is over, the parents cannot take more than a total of 10 months off during the period up to the child's 8<sup>th</sup> birthday. The mother is entitled to stay off work for a continuous or fragmented period not longer than 6 months, the father for an equivalent period. A single parent is allowed to stay off for a continuous period which does not exceed 10 months. If the father exercises his right to take at least 3 months off, the limit is raised to 7 months and the total period of absence for both parents combined is consequently 11 months. (CISL, UIL)

**13. *Have any measures been taken to encourage fathers to take parental leave? (general consideration 8). Please explain.***

The new law provides for an extra month of leave if the father takes at least 3 months of parental leave.

## **Exercising the right to parental leave**

**14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

All that is usually required for maternity leave is the existence of an employment relationship with the exception of certain mothers such as farm-workers and domestic staff, who must be paying social security contributions. (CGIL)

Another requirement is a certificate issued by a medical specialist employed by the local health service. The parents have to present a declaration stating that the other parent is not absent from work on the same days and for the same reasons. (UIL)

**15. Are there any problems regarding terms of notice and other procedures for taking parental leave? (clause 2.3d)**

In order to exercise the right to parental leave a parent must inform the employer in accordance with the arrangements and criteria laid down by collective agreement and must at all events give at least 15 days' notice. (CISL, UIL)

There are no procedural problems concerning maternity leave; the worker must simply apply for it. (CGIL)

**16. Is the employer allowed to postpone the granting of the leave? If so how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

The employer cannot deny parental leave except in the cases covered by question 19. (UIL)

The employer may not alter the period of compulsory maternity leave nor the period of optional leave which is chosen by the mother herself. He may however come to an arrangement with the mother on the daily 2-hour breast-feeding. If no agreement can be reached, the labour inspectorate intervenes. If other days off are not written into the contract, an employer may refuse to accept other absences from work. (CGIL)

**17. Are there any special arrangements concerning taking parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

There are no special arrangements concerning SMEs. A proportion of the Employment Fund is earmarked for social security contributions in order to support firms with up to 50 employees under certain conditions. These firms have to fulfil the following conditions: replacement of the worker on parental leave, training programmes for reintegrating workers after parental leave, schemes allowing mothers or fathers to benefit from certain forms of flexibility.

In practice, however, it is difficult to implement the provisions in such firms.

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

Although it is not compulsory, employers are allowed by law to recruit staff on fixed-term contracts to replace workers on maternity leave as of 1 month before the employee commences the leave.

In firms with fewer than 20 employees there is a 50% reduction of social security contributions for 1 year for every fixed-term worker recruited.

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave is not taken for the care of children)**

The employer can terminate the parental leave if the leave has not been taken for the care of the children but for some other reasons. (UIL)

Pursuant to Act 1204/71 women cannot be dismissed while on maternity leave. This protection applies until the child's first birthday. (CISL)

No provision is made for the employer to terminate leave or to check that it is being used for the care of children. (CGIL)

**20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

There is a protection against dismissal. Any female worker who is dismissed has the right to be reinstated. This protection applies until the first birthday of the child.

**21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

After the leave period the mother or father returns to his former job with the same duties or duties equivalent to the former duties.

**22. Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)**

No information available

**Protection of acquired rights**

**23. Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)**

The leave does not count towards service or pension entitlement.

**Statutory social security**

**24. How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; general considerations 10 and 11)**

The leave does not count towards service or pension entitlement.

**Payment during parental leave**

**25. Does the worker receive any income from the State during parental leave? If so how much, and is it financed by the social security scheme?**

The parental leave is paid but only up to 30% of the previous wages.

**26. Do employers pay anything?**

The employer pays 20% of a worker's wage during the period of compulsory leave, unless other additional provisions have been agreed through collective bargaining. (UIL)

Employers advance the allowance on behalf of the insurance fund; where the contract provides for a supplement, the employer has to pay it directly to the employee. In the public service it is the administration itself which disburses the allowances. (CGIL)

### **Force majeure**

#### **27. How is “force majeure” defined?**

The law defines force majeure as leave for particular events and reasons, this includes death or serious illnesses.

#### **28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

Under the new legislation parents are entitled to time off to care for a sick child upon production of a medical certificate. This is unlimited during a child’s first 3 years and is paid at 30% of the salary. For children over 3, leave is limited to 5 days a year on an alternating basis. Some collective agreements may improve the level of payments.

Employees are entitled to 3 days’ paid leave a year for serious family reasons, such as the death or serious illness of a partner or close relative. Provided an employee has completed 5 years’ service, he or she may also request unpaid leave of up to 2 years for a serious family reason.

#### **29. Is leave available for other reasons?**

The law grants the employees of public or private employers leave for training as long as they have at least 5 years’ service with the same company or administration. During the period of leave for training the employee retains his or her job but is not entitled to any pay. This period does not count towards seniority and cannot be combined with holidays, sick leave or leave for any other purpose. The rules for taking leave - setting out the maximum percentage of workers allowed to do so - are stipulated in collective agreements. The worker may buy back the training period by paying the relevant contributions, calculated according to criteria applying to the optional pursuit of training.

Since 1992 additional leave has been available to the parents of severely disabled children.

#### **30. What is the maximum duration per year/case?**

If a child aged between 3 and 8 is ill, the parents may be absent from work on an alternating basis for up to 5 days a year.

#### **31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

No substitute income is provided.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

There are no statistics because of the recent (not yet finalized) implementation of the new law.

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The law, if properly implemented, will substantially change the way in which women and men relate to care, work and the marketplace. It should also at last improve the situation of women, by putting an end to what were often marginal and marginalizing conditions of employment. (UIL) But it is not possible to predict the impact they will have once adopted. Expectations concerning the final adoption of this draft legislation are high amongst both women and men. (CISL)

## LUXEMBOURG

### **Implementation of the agreement**

1. ***How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)***

The agreement/directive has been implemented by the law of 12.2.1999 (in force since 1.1.1999), implementing the national Action Programme which was drawn up within the framework of the European Commission's 1998 employment guidelines. The idea behind it is in fact that the use of parental leave will lead to job creation.

2. ***Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?***

A new law was introduced.

Collective agreements covering extended parental leave are reported to be rare, although a number of agreements have introduced provisions permitting short-term leave for urgent family reasons, on which there is currently no legislation. Examples include the sectoral agreements covering banking staff and crèche workers and several company agreements.

3. ***Were the social partners involved in the implementation process satisfactorily? If not, why not?***

The social partners were involved in the implementation process satisfactorily.

4. ***Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.***

The CGT/LCGB regards the implementation as correct, even if they would have preferred more flexible application.

The social partners have made several proposals to the Government concerning the introduction of parental leave.

It was out of the question that the leave should be paid and re-employment should be guaranteed.

However the leave should be taken in one single block, to allow job rotation. This gives the employer the possibility of recruiting an unemployed person for a minimum of 6 months to replace the absent worker.

People working on a part-time basis should also be integrated. They can take leave for the minimum period and receive the monthly payment for 12 months.

the parents should be able to choose between the current scheme (which allows leave of up to 22 months, but without the guarantee of re-employment) and the new parental leave.

Most of the proposals were introduced in the new legislation.

**The right to parental leave****5. Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)**

All workers have the right to take parental leave if they fulfil the following conditions:

They must be working for at least 20 hours per week at the time of the birth or at the beginning of the adoption procedure and have at least 1 year's service prior to the beginning of the leave period. In the case of redundancy and subsequent re-employment with another firm, the wage-earning parent must have been employed by a previous firm for 1 year prior to the parental leave.

They must have belonged to a pension scheme for at least 12 months immediately prior to the beginning of the parental leave.

They must not undertake employment during the leave period if taking full-time leave or must reduce their normal weekly working time by half during the leave period if taking part-time leave.

They must care for the child at home.

**6. Are any children excluded? (e.g. leave only for children born or adopted after a certain date)**

The parental leave only applies in the case of children born or adopted after 1 January 1999.

**7. Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)**

It cannot be ascertained whether there are any problems regarding eligibility requirements for the parent, because the law was introduced on 1.1.1999.

**8. Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)**

There exists an extension of parental leave in the case of multiple childbirth (2 months extra in the case of full-time leave, 4 months in the case of part-time leave).

There is also provision for 8 weeks' leave on the adoption of a child (12 weeks if 2 or more children are adopted). This is available to either adoptive parent.

**9. Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?**

The right to parental leave is individual and non-transferable.

**10. Up to what age of the child can parental leave be taken?**

Parental leave can be taken for 6 months full-time or 12 months part-time up to the child's 5<sup>th</sup> birthday.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

One of the parents must take the parental leave immediately after maternity leave or adoption leave. This is sanctioned with the possible loss of the leave. Single parents can choose when to take parental leave within the 5-year age limit.

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

**(clause 2.3a)**

The leave can be taken on either a full-time or a part-time basis. On a full-time basis, the leave is for a period of 6 months, even if the worker is employed as a part-timer. An employer cannot refuse the leave, although both parents cannot take full-time leave at the same time. If both parents apply for full-time leave at the same time, the mother will have priority. On a part-time basis, the leave will be of 12 month's duration and both parents can take part-time leave at the same time in order to ensure continuous child care by at least one parent. Part-time parental leave can only be taken with the agreement of the employer or all employers if a worker holds positions with more than one firm. If an employer refuses the right to part-time leave, the leave must be taken on a full-time basis. During part-time parental leave, weekly working time must be reduced by at least 50% of the normal or collectively agreed working time.

In the private sector, female employees may stop work for up to a year after maternity leave and receive priority consideration for vacancies but are not guaranteed re-engagement. In the public sector, female employees have the right to up to 2 years' unpaid parental leave following maternity leave and may request a period of unpaid child care leave or part-time employment to look after children up to the age of 15, with the time of re-engagement dependent upon a suitable vacancy arising.

**13. Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.**

No measures have been taken to encourage fathers to take parental leave. If both parents apply for parental leave at the same time, priority will be given to the mother.

**Exercising the right to parental leave**

**14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

The worker must have worked for the enterprise during a period of 12 months and must be working at least 20 hours per week.

**15. Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)**

The first parent taking parental leave must apply before the beginning of the maternity leave. This was done mainly to avoid violations of the Fixed-term Employment Act. A parent who takes maternity leave can be replaced by a fixed-term worker. If that same parent then wishes to take parental leave, a new contract must be drawn up, and the Fixed-term Employment Act only allows for a certain number of renewals with the same employee.

The other parent must do so at least 4 months before the parental leave is due to start. There are special rules for self-employed parents.

It is not yet possible to make any remarks on this topic.

**16. *Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)***

The second parental leave, which does not follow the maternity leave, can be postponed by the employer. The employer can, as an exception, postpone the requested parental leave in the following cases:

where a significant number of workers in the same department, administration or enterprise apply for parental leave at the same time, which would seriously hamper the organization of work;

where it is not possible to replace a specialist, because there is nobody else available on the market;

where the employee is a member of the management board and takes part in the management of the company;

where the work is seasonal and the parental leave is situated during the season;

where the enterprise has less than 15 employees.

Postponement is unjustified when a serious situation occurs in which the help of one parent is necessary:

in the case of a serious illness or an accident, which require that one parent cares for the child constantly. This must be proved by a medical certificate.

in the case of school problems or behavioral problems of the child, which make it necessary, that one parent cares for the child. This must be proved by a certificate issued by the school authority.

Postponement is not possible if the employer has agreed to the leave or does not respond within the 4-week term of notice.

Where the worker works for different employers, postponement is not possible if there is disagreement between the employers.

In the event of postponement of the parental leave the employer must propose a new date for the leave within 1 month; the new date must not be more than 2 months after the old date. He/she must do this without any specific request. In this case the worker's request cannot be refused.

In the case of seasonal work, the leave must be granted after the season.

For enterprises with less than 15 employees the postponement can be extended from 2 to 6 months.

If there is a workers' representation body, it must be informed by the employer of the refusal to grant parental leave. The employee, the workers' representation body and the representative national trade union can decide to monitor the case. If they consider that the reason for the postponement is unjustified, the labour inspector can intervene. If no agreement concerning the validity of the reason can be found, one of the parties can immediately file a claim with the labour court.

The above mentioned does not apply to civil servants.

**17. Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

See question 16

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

Employers are encouraged to replace workers on parental leave. An assessment of the impact on labour market trends, equal opportunities and the interests of the child is due to be carried out by 31.7.2003.

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)**

The employer cannot terminate the parental leave.

**20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

As of the day of the application for parental leave and during the period of parental leave, the employer may not dismiss the employee. This does not apply in the event of "serious grounds" or because of misconduct on the part of the employee.

There are no problems concerning the protection against dismissal requirement, although it is too soon to have a good overview.

**21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

No information available

**22. Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)**

There are no problems regarding the legal status of the employment contract during the period of leave.

### **Protection of acquired rights**

**23. Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)**

In principle there are no problems concerning the retaining of employment rights acquired during the period of leave, although it is still too soon to reply to this question. Seniority and other benefits accrued during an employee's working life will be maintained during the leave. During parental leave, rights to annual leave will be suspended.

**Statutory social security****24. How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)**

In principle social security rights continue to apply during the period of parental leave.

**Payment during parental leave****25. Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?**

One parent can opt to receive a flat-rate benefit paid over 22 months at LF 16 640 per month, but without the guarantee of re-employment (i.e. not linked to parental leave), or she/he can opt for a flat-rate benefit payment of LF 60 000 per month for 6 months, with the guarantee of re-employment. This allowance is exempted from tax and pension insurance contributions but not from contributions to the health and insurance schemes covering dependents.

**26. Do employers pay anything?**

Employers do not pay anything

**Force majeure****27. How is “force majeure” defined?**

Force majeure is defined as absence because of family reasons. The absence of the worker must be necessary because of a serious illness or an accident or for other serious reasons which make it necessary for one parent to stay with the child. This only applies in the case of children under 15 years of age.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

Leave is only available for children up to 15 years.

**29. Is leave available for other reasons?**

Leave is not available for other reasons.

**30. What is the maximum duration per year/case?**

The maximum duration is 2 days per child and per year. The leave can be divided up. It can also be extended if the children are seriously ill, in which case a certificate issued by the medical department of the social security system is necessary.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

Leave because of force majeure is treated in the same way as sickness leave or leave because of an accident. During the period of leave the legal provisions concerning social security and health and safety continue to apply.

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**Trends and outlook regarding parental leave**

32. *Do you have information/statistics to tell you:*

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

The first statistics show that it is mainly women who take parental leave on a full-time basis.

33. *What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?*

No information available.

## NETHERLANDS

### **Implementation of the agreement**

1. ***How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)***

The agreement/directive has had minor impact on Dutch legislation on parental leave and force majeure/urgent family leave. One cannot speak of implementation. The Dutch framework is legislation which was first introduced in 1991 and amended in July 1997, except in the case of civil servants and the national education system, where it is regulated by collective agreement and a separate law. In the meantime, and as the law of 1991 prescribes, the impact of the law on parental leave has already been analyzed twice.

2. ***Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?***

Only minor amendments were made to existing legislation. The Dutch law was updated at the same time as the discussions and negotiations on the European framework agreement. Force majeure leave was also already included in the legislation, but as the result of the directive it was made more explicit in the explanations on the legislation and in information brochures distributed by the government.

35% of collective agreements in 1994, covering 53% of employees contained provisions extending the possibilities for taking parental leave, or reducing the consequences for pension and social security rights. A notable feature is that paid parental leave is available to national and local civil servants, the police and the judiciary and some other public sector groups. Civil servants receive 75% of their wages for the hours they take as leave and have greater flexibility in the way their leave is structured.

3. ***Were the social partners involved in the implementation process satisfactorily? If not, why not?***

The social partners were asked to give advice on plans for improving the legislation on parental leave, and the FNV did so.

4. ***Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.***

The government has implemented the agreement correctly.

### **The right to parental leave**

5. ***Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)***

All workers who have been employed for 1 year or more have the right to parental leave. This means that the category of contract workers whose contracts are for less than 1 year are excluded. In practice and de facto workers employed through employment agencies are also excluded.

Employees of Dutch organizations who are working abroad will have parental leave entitlement, although employers have the right to refuse to grant leave for serious reasons.

**6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)***

The parental leave is not extended to certain foster children. The FNV is trying to get them included, but there are only a few such cases.

**7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)***

Natural and/or legitimate parents and others who live at the same address of the child are eligible.

**8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)***

The law applies to adopted children and the parents of disabled children. There are no special rules for these children. With regard to multiple childbirth, a bill allowing both parents double parental leave in the event of multiple childbirth has been adopted in the Second Chamber of Parliament. The same would apply to parents who adopt a child. The Senate is expected to approve the bill, according to which the leave does not have to be taken subsequently.

**9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

Parental leave is individual and non-transferable.

**10. *Up to what age of the child can parental leave be taken?***

Parental leave can be taken up to the child's 8<sup>th</sup> birthday, unless a lower age is agreed in a collective agreement. The EU directive has in fact had a positive effect on the age limit. The bill originally made provision for 6 years of age, but the parliament amended it to 8.

In the Dutch insurance sector, employees are given the opportunity to extend leave once by 6 months beyond the statutory parental leave, but the employer retains the right to refuse the request if the interest of the company does not allow it.

**11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)***

There is no obligation to take leave immediately after maternity leave.

**12. *Can the parental leave been taken :***

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

***(clause 2.3a)***

The worker has the right to 13 weeks' parental leave, which can be taken full-time, part-time or in fragments as long as the leave hours are the same every week. It is permitted to take 4, 6, or 8 hours of parental leave each week. It is only in the event of very serious

problems that the employer can object to the proposed arrangement, not to parental leave as such. There are no time-credit systems; such systems may perhaps be included in a collective agreement, but this is not known.

- 13. *Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.***

The parental leave for fathers was generally promoted through TV ads and brochures.

### **Exercising the right to parental leave**

- 14. *Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)***

The worker has to have been in employment with the same employer for at least 1 year.

- 15. *Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)***

There are no problems regarding terms of notice or other procedures for taking parental leave.

- 16. *Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)***

The employer is not allowed to postpone the granting of the leave, but in very serious circumstances he/she can only influence the arrangements of the parental leave and the days in the case of part-time parental leave.

- 17. *Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)***

There are no special arrangements concerning parental leave in SMEs, and there are no known problems.

- 18. *Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.***

Employers are neither obliged nor encouraged to replace workers on parental leave.

- 19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)***

The employer cannot terminate the parental leave.

- 20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)***

There are no problems concerning the dismissal requirement.

- 21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)***

Only a few problems arise. In these cases it generally suffices to point to the existing case law.

22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)*

There are no problems regarding the legal status of the employment contract.

### **Protection of acquired rights**

23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)*

There are no problems concerning the retaining of employment rights acquired during the period of leave.

### **Statutory social security**

24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)*

During the leave social security rights are suspended (including health care in the case of full-time leave), but after the leave they are restored at the same level as before the leave. The only exception is unemployment insurance, for which the leave counts as working time (extended eligibility), so there is in fact coverage. In the case of full-time leave, voluntarily sick fund participation can be acquired whenever a certain premium is paid – which is not very high.

### **Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?*

In general, parental leave is unpaid, but there are some possibilities for receiving a very low income whenever the employer hires an unemployed person as a replacement. If full-time leave is taken the maximum income is DFL 900 (gross) per month, financed by the social security scheme (since October 1998).

26. *Do employers pay anything?*

In some collective agreements a payment by the employer is agreed. These agreements exist mainly in the public sector, which consist of a payment of 50% for hours of leave.

### **Force majeure**

27. *How is “force majeure” defined?*

In the law the provision reads that in special cases wages must be paid when the worker cannot work *inter alia* in the event of childbirth, the death of the partner or a close relative, etc. In other texts it is explained that "inter alia" also implies sick children and relatives or good friends, or even the urgent need for a plumber in the case of heating problems, etc. However, this legal provision can be changed by collective or individual

agreements into leave in stricter circumstances. This happens in half of the agreements in which leave provisions exist. In the others the law applies.

**28. *Is urgent family leave available in connection with both children and other relatives? (clause 3)***

See question 27

**29. *Is leave available for other reasons?***

Dutch legislation also includes the concept of career break.

**30. *What is the maximum duration per year/case?***

The law defines the maximum duration as “a short and reasonable time”.

**31. *Is any substitute income provided by the State and/or by the employer? If so, how much?***

The law provides that wages must be paid, unless otherwise agreed in collective or individual agreements.

***Trends and outlook regarding parental leave***

**32. *Do you have information/statistics to tell you:***

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

Women take parental leave 11 times as often as men when it is unpaid and 3 times as often when it is paid. Parental leave is generally taken after maternity leave, by men as well as women, or at all events when the child is under 1 or 2 years of age. The most common way is part-time, but the change in legislation, which allows more flexible arrangements, has only been applicable since quite recently. It is difficult to predict developments on this point.

**33. *What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?***

The FNV expects an increase in parental leave, even if it is generally unpaid.

## PORTUGAL

### **Implementation of the agreement**

**1. How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)**

The framework Agreement has been implemented by new legislation (Act 142/99 passed on 31 August 1999) which was recently approved in principle as an integral part of the Maternity and Paternity Act, which is also undergoing further amendment. The Government is thereby taking account of the various opinions of the social partners represented in the CPCS and CITE, which are both tripartite committees. The implementation was completed through Act 39/1999 "for promoting the reconciliation of the family and working lives of employed persons" (para promover la conciliación de la vida familiar y laboral de las personas trabajadoras), which reforms Spain's rules on family-related leave, which are spread over several pieces of legislation. Extensive amendments have thus been made to the Workers' Statute (Estatuto de los Trabajadores), the Labour Procedure Act (Ley de Procedimiento Laboral), the Labour Risks Prevention Act (Ley de Prevención de Riesgos Laborales), the General Social Security Act (Ley General de la Seguridad Social) and the legislation regulating the general working conditions of public employees and civil servants. The new law will be completed by government regulations on the relevant social security benefits.

Negotiated improvements to existing statutory provisions are rare. But there are examples of sectoral collective agreements extending entitlement to paternity leave to include life partners, extending the right to leave in the event of miscarriage and introducing supplementary financial benefits.

**2. Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?**

There was no need for new legislation, but amendments were made to the existing law. An individual non-transferable right to take parental leave was imposed and the maternity/paternity leave was further developed. Examples are:

the introduction of leave of up to 30 days for grandparents caring for grandchildren who are living with them;

a new paternity leave scheme;

partial compensation if the father takes the leave .

**3. Were the social partners involved in the implementation process satisfactorily? If not, why not?**

A tripartite and temporary agreement was concluded on 20.12.1996. The transposition of the directive is taking place in several steps, and the proposals of the social partners are thereby being taken into account. In particular, the UGT has called for more flexible possibilities for taking parental leave. (part-time, for very short periods). On the other hand, however, the current period of 6 months' leave will be reduced by the new draft to 3 months. The CC.OO.s have also presented objections to the bill.

The validity of the framework agreement/directive has been questioned by the Portuguese affiliates of EuroCommerce and COPA/COGECA (agriculture), which were not party to the agreement, arguing that it should not apply to sectors not represented in the negotiations.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

The Government has implemented the agreement correctly, except for the reduction from 6 months to 3 months, and even though the trade unions were unable to obtain paid leave.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

This Act applies to all workers without exception. (CGTP)

All workers with an employment contract and civil servants have the right to take parental leave. (UGT)

6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)*

No children are excluded.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

Parental leave is defined as the right of both the father and the mother. New adoptive and foster parents of children under 6 years of age, or of older children with special difficulties (where the child is disabled, or in the event of international adoptions, and so on), enjoy the same leave entitlements as new natural parents. Adoption and fostering have thus become equivalent to childbirth as regards leave entitlement.

In the light of many cases of teenage pregnancy (under 16 years of age) at an age when young women are often not considered experienced or mature enough to care for a newborn child, the law recognizes the right for the grandparents of such children to be absent from work for 30 days to help with care, as long as they actually live together with the young mothers.

8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)*

In the event of adoption of children under the age of 3, 60 consecutive days' leave is granted to one of the parents, but only if both parents are working. Leave for adoptive parents has been extended to include children of up to 6 years of age, since it is considered that older children also need a period of intimacy, care and attention.

The parents of handicapped children can reduce their working time even if the child is older than six. In the case of parents of adopted or fostered children, the same provisions apply as for natural children (paid maternity leave, time off and reduction of working time for child care).

Time off from work (up to 30 days per year) may be taken by either parent to care for sick children under the age of 10, or full time if a child is in hospital. Up to 15 days off

per year is allowed for children over the age of 10. Special leave may be taken for a maximum of 2 years to care for children under the age of 3, or a maximum of 4 years to care for children who are disabled or chronically ill. The law allows workers with disabled children to request part-time work or flexibility in working patterns for up to 3 years.

Women with high-risk pregnancies receive improved protection since the length of additional leave has been increased from 30 days to an indefinite period.

Existing entitlements to unpaid parental leave and the reduction of working time (by between one-third and half of normal working time) are extended to situations where the worker is taking care of a relative (up to the "second degree of consanguinity or kinship") due to severe illness, accident or old age. This family leave scheme is restricted to a maximum of 1 year, instead of the 3-year maximum which applies in the case of parental leave (after birth or adoption).

**9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

There is a need to distinguish between parental leave and maternity leave. The former is regarded by law as an individual right, whereas maternity leave to care for the newborn child incorporating the right to social security benefits is a right of the mother which may be transferred to the father, except in the case of a recently adopted or fostered child, in which case it is also individual but transferable.

**10. *Up to what age of the child can parental leave be taken?***

The law provides that the unpaid leave can be taken up to the age of 6 for a period from 6 months to 2 years following maternity leave. There is no age limit if the child is disabled.

**11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)***

There is no obligation to take leave immediately after maternity leave. But the father only receives remuneration from the social security fund for a period of 15 days if he takes parental leave immediately after the maternity leave.

**12. *Can the parental leave been taken :***

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

***(clause 2.3a)***

The new law includes wide flexibility as requested by the trade unions. The worker can take parental leave for 3 months full-time, 6 months part-time, or in other combinations. At all events, the leave may not exceed 3 months full-time.

**13. *Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.***

The father only receives full social security and wages if he takes 15 days of parental leave immediately after the maternity leave. (UGT) (positive discrimination)

The law grants working fathers 5 working days' paternity leave in the month after the child is born and in exceptional circumstances or by the parents' joint decision, fathers can take leave in lieu of the mothers' maternity leave entitlement.

### **Exercising the right to parental leave**

**14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

Under the terms of the law, The simultaneous exercise of the right can only be limited when 2 or more workers in the same firm are entitled to request leave or the reduction of working time to care for the same person (e.g. the father and mother of a child, 2 or more brothers or sisters wishing to care for their father or mother).

There are no special requirements concerning the right to parental leave. The only condition is to have an employment contract or to be a civil servant. (UGT)

There are no seniority requirements in the legislation. But there is a lot of precarious employment where leave is not paid. This means that there is no encouragement to take leave. (CGTP)

**15. Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)**

The employee must give 15 days' advance notice of parental leave. There are no real problems in this connection.

**16. Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

The employer is not allowed to postpone parental leave; the right to take parental leave is unconditional.

**17. Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

There are no special arrangements concerning parental leave in SMEs.

Trade union representatives were not consulted on this point.

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

The existing law allows the employer to replace the worker on parental leave by a worker with a fixed-term contract. Present reductions in employers' social security contributions in respect of workers recruited to replace employees on maternity leave are extended to replacements for self-employed persons or cooperative working partners, and to the new leave scheme in the event of risk to the health of an expectant or breast-feeding mother.

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)**

The employer does not have the possibility to terminate the parental leave for reasons connected with the organization of the enterprise. But the parental leave must be used for

the care of children. The parent on parental leave can only perform additional work if it is compatible with the nature of parental leave. (UGT)

Neither the current Act nor the new one mentions the right to terminate parental leave. But in accordance with the principle of good faith employers can terminate the leave if they become aware that it is being used for other reasons. (CGTP)

**20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)***

A special procedure has been introduced whereby dismissals are declared null and void if issued during the period of parental or maternity leave.

**21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)***

At the end of the parental leave the worker can be forced to take a job which is not equivalent to the previous one. (CGTP)

The new law does not include any regulations concerning this matter, so the system of "special leave" again applies. At the end of the leave all the rights and duties are restored. But when the parent returns earlier e.g. because of the death of the child, the employer is obliged to offer the first available job in the same category and occupation. (UGT)

**22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)***

The contracts are suspended if the period of leave is longer than 30 days. Social security and seniority rights are guaranteed. (CGTP)

During the period of parental leave the employment contract is suspended, which is why this period does not count towards benefits connected with the duration of work, seniority benefits, promotions etc., or other rights which are connected with the performance of the service. (UGT)

### ***Protection of acquired rights***

**23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)***

The new legislation provides that seniority, health and pension rights are not affected by the exercise of parental leave. (CGTP)

The acquired rights are preserved until the end of the leave and resume after the leave. (UGT)

### ***Statutory social security***

**24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)***

The new legislation guarantees access to health care, which is not guaranteed at the present time. (CGTP)

The current law does protect the worker in the event of illness. The proposed law mentions that the period of parental leave is taken into consideration for the disability benefits and the statutory old-age benefits. (UGT)

### **Payment during parental leave**

**25. Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?**

The worker does not receive any income during the period of parental leave, except for fathers, who receive an allowance for 15 days if they take parental leave immediately after the maternity leave.

**26. Do employers pay anything?**

Employers do not pay anything.

### **Force majeure**

**27. How is “force majeure” defined?**

No information available.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

Under certain conditions, urgent family leave is available for children, adopted children, children of the other parent (up to the age of 10) and disabled children. The leave can be taken for up to 30 days per year in the event of the illness or accident of the child. If the child is over 10 years of age, the leave can be taken for only 15 days per year. The leave is also available full-time if a child is in hospital. Special leave may be taken for a maximum of 2 years to care for children under the age of 3, or for a maximum of 4 years to care for children who are disabled or chronically ill. The law also confers the right to the reduction of weekly working hours of up to 5 hours in order to enable parents to care for disabled children of up to the age of 1. The new law has extended the right to take this leave not only to parents but also to guardians.

**29. Is leave available for other reasons?**

Leave is not available for other reasons.

**30. What is the maximum duration per year/case?**

See question 28.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

The State provides a substitute income of 65% of the normal wage. (UGT)

The State does not provide any substitute income. (CGTP)

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**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

Most women do not take parental leave because of the high unemployment rate, the cultural circumstances, income levels and the fact that the leave is not paid. (UGT)

If they take parental leave, they take it immediately after maternity leave on a full-time basis.

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The major problem in this field is that parental leave is not paid. But the social partners are working very hard on this issue. The UGT has insisted on more flexible regulations concerning parental leave and the forthcoming legislation is a success on this central point.

## SPAIN

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)*

The Council of Ministers approved Act 39/1999 on the Reconciliation of Family and Working Life on 14 May 1999.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

The law modifies provisions contained in various laws: the Workers' Statute, the Accident Prevention Act, the Labour Procedure Act, the General Social Security Act, Royal Decree 11/98, the Public Service Act, and the Civil Servants Act.

There are more favourable sectoral agreements in the photographic industry, the railway sector, the retail trade, and the iron and steel industry.

3. *Were the social partners involved in the implementation process satisfactorily? If not, why not?*

The social partners were not directly involved in the preparation of the draft legislation. They were consulted and some of their observations were taken into account. The UGT communicated its approval of the ETUC report on the draft law at the same time as they presented its own views.

4. *Do you consider that your government has correctly implemented the agreement? If not, please explain and give details of any action you have taken in consequence.*

No, because the law does not recognize individual rights to paternity/maternity leave and does not encourage equal sharing of family tasks between men and women. It is not accompanied by measures that make any real reconciliation between family and working life possible, e.g. there are no provisions dealing with affordable quality services for the care of family dependents.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

In theory no workers are excluded, but in practice they are excluded. Workers in more precarious employment situations will not benefit from parental leave. This will affect women in particular, because they have the most precarious jobs.

6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)*

The law allows parents to take full-time parental leave up to the child's 3<sup>rd</sup> birthday and up to the child's 6<sup>th</sup> birthday in the case of parents working shorter hours. Breast-feeding permission is given until the child is 9 months old. The guardians of adopted children can

benefit from the same maternity/paternity leave as natural parents until the child is 6 years old.

**7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)***

There are no problems regarding eligibility requirements for the parent.

**8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)***

Maternity leave is longer in the event of multiple childbirth i.e. 2 weeks extra for each additional child. Parents with disabled children can reduce their working hours by up to 50% as per the regulations applying to the care of children under 6 or older disabled children who are unable to enter gainful employment.

In the case of the guardians of adopted children (both permanent adoption and where the adoption procedure has not yet been completed) and the foster parents of children under the age of 6, leave of absence will be granted for an uninterrupted period of 16 weeks starting from a date chosen by the worker or from the date of the administrative or court decision on fostering or adoption. The draft law would also include international adoptions.

Where both the mother and the father are working, the suspension of the employment contract will be in accordance with the wishes of the interested parties, who will be able to take leave simultaneously or successively for uninterrupted periods subject to the length of time indicated.

**9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

The law does not regard it as an individual right, but continues to view paternity leave as a right which is derived from maternity leave. It is the mother who has the right to leave and she can transfer part of it to the father.

**10. *Up to what age of the child can parental leave be taken?***

Parental leave can be taken up to the child's 6<sup>th</sup> birthday.

Provisions on parental leave in the photographic industry entitled workers to leave of absence of no more than 3 years to care for each child. This agreement furthermore makes provision for voluntary leave of absence for a period of 3 months to 5 years. Employees with 2 years' service or more are covered. The worker must be reinstated in the post he or she occupied at the time of requesting the leave.

**11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)***

There is no obligation to take leave immediately after maternity leave.

**12. *Can the parental leave been taken :***

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

***other (specify)******(clause 2.3a)***

The law allows parents on maternity/paternity leave to take leave on either a full-time or a part-time basis, subject to prior agreement with the employer and the terms set out in the regulation. The Spanish government still has not drafted the above-mentioned regulations, and the conditions on which it will be possible to take parental leave are not yet known.

At the moment each family is entitled to 12 months full-time leave. A further period of 2 years' full-time leave may be taken, but a parent taking this period of leave is not entitled to return to his/her former job unless it is free; otherwise he/she must wait until a vacancy occurs.

**13. *Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.***

There have been no measures taken to encourage fathers to take parental leave.

***Exercising the right to parental leave***

**14. *Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)***

The mother must have paid national insurance contributions for 180 days over the previous 5 years in order to receive maternity leave benefits.

**15. *Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)***

There are problems concerning the hours of mothers who are breast-feeding and the reduction of working time. There are also problems concerning workers returning to their jobs after taking leave.

**16. *Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)***

In theory, no, but in practice, yes. Furthermore the draft law expressly recognizes the power of the employer to limit any reduction of working hours and to restrict the right of workers to take leave if 2 or more workers in the same company exercise the right simultaneously, and if the employer believes that this will prejudice the company's operations.

**17. *Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)***

There are no special arrangements concerning parental leave in SMEs.

**18. *Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.***

Employers are not obliged to replace workers on parental leave, but a Royal Decree enforcing Act 11/1998 made special arrangements in relation to social security contributions for the temporary contracts that are concluded to replace workers on maternity, adoption and fostering leave.

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)**

The law does not say anything about this. However the interpretation of existing regulations would indicate that the employer could take action if parental leave is being used for purposes other than those for which it has been granted.

**20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

There are problems with the proof of unfair dismissal.

**21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

There are less problems with maternity leave. But workers do expect difficulties in getting their jobs back if they take leave of absence or reduce their working hours.

**22. Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)**

There are no problems regarding the legal status of the employment contract.

### **Protection of acquired rights**

**23. Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)**

Compensation paid on the termination of the contract as well as unemployment benefits do not take any period of absence for family reasons into account.

### **Statutory social security**

**24. How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)**

Existing statutory social security rights are not affected.

### **Payment during parental leave**

**25. Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?**

The worker only receives benefits during the period of maternity/paternity leave, i.e. 16 weeks.

**26. Do employers pay anything?**

Employers must continue to pay social security contributions during the period of maternity/paternity leave. The benefits paid to the worker are debited from the social security budget.

**Force majeure****27. How is “force majeure” defined?**

Spanish legislation does not define force majeure.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

The law allows for 2 days’ leave for the birth of a child or in the event of the death, accident, serious illness or hospitalization of relations to the second degree of consanguinity and kinship.

**29. Is leave available for other reasons?**

There is no leave available for other reasons.

**30. What is the maximum duration per year/case?**

The maximum period per case is 2 days, 4 if travel is necessary.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

There is no substitute income provided.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

Leave of absence and reduction of hours generally occur after the period of maternity leave. Leave of absence can only be taken on a full-time basis. Reduction of working hours can be to a minimum of one third and a maximum of half of a normal working day.

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The figures will remain constant because the draft does not encourage workers to request leave.

## SWEDEN

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)*

The parental leave rights were implemented by legislation in 1995. Urgent family leave has been implemented by legislation of 1998 as well as by collective agreements. (e.g. the agreement of the Ericsson group – see annex).

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

There was no need for new legislation, because it existed since 1973.

There was a need for a new law concerning urgent family leave (SFS 1998:209). But otherwise the Parental Leave Act (SFS 1995:584) together with some other regulations (SFS1962:381 and 1998:1465) provides very good protection and rights. In some cases this new legislation on urgent family leave results in situations concerning Directive 96/34 EEC where different national rules in various legislation cover the same situation - but the employee can always choose the most favourable. (TCO)

3. *Were the social partners involved in the implementation process satisfactorily? If not, why not?*

The LO Congress put pressure on the Government to change the maternity leave entitlement to parental leave entitlement. Since then they have taken part in all changes.

The SAHP was not involved in the process, because these laws existed previously in Sweden.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

The Government has correctly implemented the agreement.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

All workers who are parents have the right to take parental leave.

6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)*

No children are excluded.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

All kinds of family structures are included.

**8. Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)**

Parental leave is doubled in the event of multiple childbirth (LO), namely 180 days more (SAHP). The parents of disabled children receive extra support. The parents of adopted children have the same rights as other parents.

**9. Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?**

Parental leave is transferable between the parents (SAHP) except for 1 month, which is reserved for the father.(LO)

**10. Up to what age of the child can parental leave be taken?**

Parental leave can be taken up to a maximum of 450 days until the child is 8 years old.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

There is no obligation to take leave immediately after maternity leave.

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

**(clause 2.3a)**

Swedish legislation is very flexible; the parents can share as they decide, part-time, in fragments or via a credit system (100%, 75%, 50%, 25%).

The parents together are entitled to a maximum of 450 days until the child is 8 years old. Those days can be divided, but at least 30 days must be used by each individual parent.

Once the benefit has run out, parents still have the right to a 25% reduction in their normal working hours but without any compensation. This right is also limited to the period up to the child's 8<sup>th</sup> birthday.

**13. Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.**

Many measures have been taken to encourage fathers to take parental leave, especially several campaigns organized by the Swedish Government and the union confederation.

Fathers have 10 days with parental allowances after the birth/adoption of the child. (SK)

The parents have 15 paid months of a total of 18 months. The father has the explicit right to one of the paid months. Both the Swedish Government and the union confederations have held several campaigns with measures to encourage fathers to take parental leave. (TCO, LO)

### **Exercising the right to parental leave**

- 14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

There are no eligible requirements concerning the right to parental leave. (SK)

The parent is entitled to parental leave after 6 months of employment or after 12 months of employment over a period of at least 2 years. (LO)

- 15. Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)**

The wish to make use of parental leave must be announced one month before it can be taken. (LO)

The leave can only be taken in 3 periods in each year. (SAHP)

- 16. Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

The employer can postpone the granting of the parental leave for one month if he/she has special reasons. If the employer wants to postpone the parental leave, he/she must inform the union.

- 17. Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

There are no special arrangements concerning parental leave in SMEs. (SAHP)

- 18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

It is up to the employer to replace the worker. (LO)

- 19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)**

According to the Parental Leave Act, the employer cannot terminate parental leave.

- 20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

There are no problems concerning the protection against dismissal requirement. The legislation gives the parents full protection.

- 21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

The Parental Leave Act gives the parent the right to return to the same or an equivalent job. In practice problems can occur, e.g. if there has been reorganization in the undertaking.

- 22. Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)**

There are no problems regarding the employment contract. The legislation gives the parent the right to retain the legal status of the employment contract.

**Protection of acquired rights**

23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)*

The parent has the right to retain his/her employment rights during the period of leave.

Wages can sometimes be affected. (SK)

A case has recently been brought before the Labour Court (Arbetsdomstolen) against the University College of Skövde in southern Sweden concerning a university teacher who received a smaller pay rise than his colleagues while he was taking parental leave. The Court will examine for the first time whether an employer might be justified in giving an employee a comparatively small wage rise while he/she is at home taking care of children. The employee is represented in the case by the Association of Graduate Engineers.

**Statutory social security**

24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)*

The social security rights are the same as before.

The parent can receive sickness benefits instead of benefit from the parental leave insurance if she/he is ill during the parental leave. (LO, TCO)

During the period of leave social security and pension contributions are maintained, and this period is included in the calculation of length of service.

**Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?*

The worker receives 80% of the income during the first 12 months, after which he/she receives 60 SEK (about 1 hour's work) each day for 3 months. And finally, the worker has 3 months' parental leave without benefit. (LO) The income is paid from the social security fund.

In order to qualify for the earnings-related benefit (1 year max.) the employee must have earned a minimum amount over a period of at least 240 consecutive days before the birth. In order to receive the flat-rate payments (3 months max.), employees have to be registered with a public insurance fund for at least 180 days prior to the birth.

26. *Do employers pay anything?*

Some of the unions have extra benefits in their collective agreements in the form of small increments (SAHP) or 10% more of the income. (SK)

## **Force majeure**

### **27. How is "force majeure" defined?**

The definition of force majeure in the new Swedish law on urgent family leave has the same meaning as the wording in the EC directive which means that in the event of dispute the European Court of Justice has to interpret it. The definition follows section 1, which states: "An employee is entitled to leave from his her employment for urgent family reasons which are connected with illness or accident and make the immediate presence of the employee absolutely necessary " (TCO)

For example, accidents or illnesses which make it impossible for the employees to go to work. (SAHP)

### **28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

Urgent family leave covers both children and other members of the family. (TCO, SK, SAHP)

### **29. Is leave available for other reasons?**

There is no leave available for other reasons under this law. (SAHP)

The parent has the possibility of accompanying the child when it begins school. (LO)

Leave is available in the event of illness of the child. Parents are compensated with a parental allowance. (SK)

### **30. What is the maximum duration per year/case?**

The maximum duration per year is 60 days; in special circumstances this can be extended to a maximum of 120 days.

In the collective agreement for the public sector up to 10 days extra are granted. (SAHP)

### **31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

80% of the wage is granted as compensation. (LO)

Temporary parental allowances are granted as a substitute income. (SK)

## **Trends and outlook regarding parental leave**

### **32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

Parental leave is generally taken after maternity leave, and then on a full-time basis. After 1 year part-time leave is more common. (SAHP)

Full-time parental leave is more common. (SK)

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The outlook for the future is that the rate of men taking parental leave will increase in particular. And it will be more common for both parents to share the leave between them.

**Some case studies**

The Ericsson Swedish telecommunications group has concluded an agreement with 3 trade unions making provision for better pay for parents who want to stay at home to look after their children under the provisions of the Parental Leave Act. The agreement comes at a time when the Equal Opportunities Ombudsman has called for strengthened rights for parents at work (August 1999).

In 1999, seven companies in the Ericsson telecommunications group were covered by an agreement concluded by the parent company with the Union for Technical and Clerical Employees in Industry (Svenska Industritjänstemanna-förbundet, SIF), the Association of Graduate Engineers (Sveriges Civilingen-jörsförbund, CF) and the Association of Managerial Staff (Ledarna).

The Ericsson agreement contains provisions on 6 months of extra parental leave pay for employees who stay at home with a new baby or a small child. It also provides that employees taking parental leave and earning more than SEK 22,750 per month will receive from the employer 80% of their salary above this ceiling, up to a negotiated limit of SEK 45,500 per month. Parents may receive this top-up to the parental leave benefit for 180 days in the period until the child is 12 years old. The period of leave must be continuous; it cannot be divided into shorter blocks.

"In the private sector there are few examples of similar agreements," according to Inger Grufman, an official in the CF union responsible for gender equality issues. The Statoil oil company has an agreement similar to the Ericsson deal, but providing for only 75% of pay above the ceiling. The Folksam insurance company, which has close links with the two biggest trade union confederations, concluded an agreement 3 years ago giving parents who stay at home for at least 3 months 12 months' extra pay. "However, the government sector has the most generous rules," Ms Grufman points out. "The employees in this sector receive a total of 90% of their salary, regardless of how much they earn, when on parental leave." Furthermore, when former government authorities such as Vattenfall and Telia became state-owned companies at the beginning of the 1990s, their employees retained their existing additional parental leave pay rights.

Sweden's national parental leave scheme was introduced in 1974 in order to promote greater equality between men and women in the home, at work and in society. However, women have consistently used parental leave to a far greater extent than men have done. According to figures from the National Insurance Board (Riksförsäkringsverket) ("Social insurance in Sweden 1999") for 1997, around 300 000 women (69% of all benefit recipients) and 135 000 men (31%) were paid parental leave benefits. Two-thirds of these parents were under 35 years of age. On average, men took far fewer days of leave than women: women accounted for some 90% of all leave days with parental benefit taken during 1997, while the men accounted for a little less than 10%.

(Source : EIROnline September 1999)

## UNITED KINGDOM

### **Implementation of the agreement**

- 1. How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)**

The parental leave aspects of the Agreement are implemented by new regulations under enabling provisions in Schedule 4 of the Employment Relations Act 1999 and have been in effect since 15 December 1999. There are provisions to allow collective and 'workforce' agreements (i.e. agreements in non-unionized workplaces) to opt out of the statutory model scheme. These agreements can only improve the basic provisions and not undermine them. If such an agreement applies this must be mentioned in the employment contract. In the absence of such an agreement between employer and employee, a statutory "fallback" scheme set out by the regulations will apply. This will enable employees to take up to a maximum of 4 weeks' parental leave in a year in blocks or multiples of one week, after giving 21 days' notice. "Workforce agreements" between employer and trade unions are allowed with the intention of providing flexibility. Enterprise-specific schemes may, for example, allow leave to be taken in days, weeks, all at once or as reduced working hours - or as a mixture of all of these. These agreements can also cover matters such as how much notice of parental leave must be given and the circumstances in which employers may seek to postpone it.

The urgent family leave aspects are all in Schedule 4 of the ER Act 1999. (see below)

- 2. Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?**

See question 1.

- 3. Were the social partners involved in the implementation process satisfactorily? If not, why not?**

The TUC had a number of consultation meetings with DTI officials, either separately, with voluntary sector organizations or with employer organizations. They also had a meeting with the Secretary of State and several other interested organizations. Some crucial aspects (e.g. the cut-off date) were not raised in consultation by officials or no answer was given when raised by us. The issue of a statutory commission to monitor and assist with implementation, including social partner representation, has been raised by ministers and supported by us but has not progressed.

- 4. Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.**

The TUC considers that there are several areas where the government implementation of the agreement/directive may be incorrect.

The cut-off date for leave eligibility excluding parents with children born or adopted before 15 December 1992 is considered by the TUC to be arguably inconsistent with Clause 2.1 of the agreement. The GMB general union have already lodged a complaint with Acting Commissioner Flynn.

Parental leave rights are restricted to “employees” only and not to “workers” as defined more broadly.

The employee is entitled to return only to a suitable alternative job after parental leave if it is not “reasonably practicable” for the employer to allow return to the same job.

The postponement provisions allow the employer to postpone leave if it would substantially prejudice the operation of the business.

Remedies for breaches by employers of provisions on parental leave are not a sufficient deterrent to bad employers.

### ***The right to parental leave***

**5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)***

Only those workers legally classified as 'employees' are covered. However, only employees with at least 1 year's service with their employer are eligible.

**6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)***

See answer to 4.

**7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)***

'Parent' is linked to legal parental responsibility. In most cases this will exclude same-sex partners and legal guardians (e.g. grandparents or other relatives). The TUC has concerns about absent fathers who may be violent applying for family law orders in order to get parental leave.

**8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)***

Employees are entitled to a maximum period of unpaid leave of 13 weeks for each eligible child. In the case of multiple birth multiple entitlements will apply. In the case of adoption parents also have the right to 13 weeks over the 5 years following the adoption. The parents of disabled children born after the regulations came into force will be able to use their entitlement of 13 weeks' leave up to the child's 18<sup>th</sup> birthday.

**9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?***

Yes.

**10. *Up to what age of the child can parental leave be taken?***

Up to the age of 5 (subject to comments on 8.)

**11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)***

No.

**12. Can the parental leave been taken :**

*part-time  
in fragments  
via a time-credit system (e.g. one month a year)  
other (specify)*

**(clause 2.3a)**

Employees are entitled to a maximum period of leave of 13 weeks for each eligible child. Part-time workers will be entitled to leave on a pro rata basis. Reduced working hours or the more fragmented taking of leave is only allowed if a collective or 'workforce' agreement has provided for it.

**13. Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.**

No.

**Exercising the right to parental leave****14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

We already mentioned that 1 year's service is required. In addition, the parent must actually be the parent or the adoptive parent or must have acquired formal parental responsibility.

**15. Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)**

Arguably, proposed terms of notice are too onerous - e.g. 6 months' notice required if wanting to take 3 months' leave.

**16. Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

Yes, postponement is allowed for no more than 6 months from the date on which the employee has wanted to take leave and if the leave would unduly disrupt the operation of the business, except where the employee gives notice to take it immediately after the time the child is born or is placed with the family for adoption. If the employer unreasonably refuses to grant parental leave the employee may take the case to the employment tribunal.

**17. Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

This is not envisaged.

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

No.

**19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)***

Employers and employees will be reminded that normal disciplinary procedures apply.

Employers can take disciplinary action if the parental leave is not used for the right reason.

**20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)***

An employee who takes parental leave is protected from victimization, including dismissal, for taking it.

**21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)***

The law provides that after taking parental leave the employee must be given his or her old job back again, or if that is not possible, a job which has the same or better status, terms and conditions as the old job. Where the leave is taken for a period of 4 weeks or less, the employee will be entitled to go back to the same job.

**22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)***

Yes. Although the contract will continue in theory, only terms relating to mutual trust and confidence will continue in full. Holiday, seniority and pension rights etc. will only accrue as if the worker had not been away if the employer agrees.

### ***Protection of acquired rights***

**23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)***

See answer to 22.

### ***Statutory social security***

**24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)***

Not entirely clear yet - the new Working Families' Tax Credit payment will be available to parents on unpaid leave in families who meet the eligibility requirements and apply at the right time in the WFTC application cycle.

### ***Payment during parental leave***

**25. *Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?***

No, but see answer to 24. The trade unions are lobbying strongly for it, but business is opposed.

**26. Do employers pay anything?**

Not unless voluntarily – we have not as yet been notified of any agreements on pay for parental leave.

**Force majeure****27. How is “force majeure” defined?**

The new regulation provides that it includes assistance on an occasion when a dependent falls ill or is injured and making arrangements in the event that the dependents give birth, in consequence of the death of a dependent, the breakdown of caring arrangements, or sudden problems involving a dependent child during school hours or on a school trip.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

'Dependent' is defined as the employee's parent, wife, husband or partner, child or someone who lives as part of the family (such as a person for whom the employee is the main carer).

**29. Is leave available for other reasons?**

No.

**30. What is the maximum duration per year/case?**

The new regulation provides the right to take a “reasonable“ amount of unpaid leave. What is reasonable will depend on the individual circumstances.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

Not by the State. Many employers do give payment for urgent family leave for a period of a few days. At all events, whether it is paid or not depends on the contractual arrangements between employer and employee, or is left to the employer's discretion.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

In early 1999, the TUC commissioned NOP to carry out a poll on parental leave. NOP asked 1 466 parents of children under 16 the following question. 'The government is planning to give mothers and fathers a new right to take time off from work to look after their children. Both mothers and fathers will be allowed to take up to a total of 65 days off work before a child's eighth birthday, but won't be paid for this time off. If you were working and had children under 8, which of the statements on this card best describes what you would do if these new proposals came into effect? '

	all	men	women
I would take all or nearly all of the 65 days, even though I would not get paid for them	15%	9%	20%
I would take some of the time off, but nowhere near all 65 days	32%	33%	31%
I couldn't afford to take any of the time off except in emergencies	34%	40%	30%
I could afford to take time off, but I wouldn't do so, except for emergencies, because I would be worried that my employer would hold it against me	13%	14%	13%
don't know	5%	4%	5%

The results included the possibility of taking leave in days.

TUC figures estimate that in Britain 2.5 million women and 3.4 million men fall under the scope of application of the new legislation and 0.8 million employees are parents of babies under 12 months of age.

**33. *What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?***

The outlook is very bad, given the lack of payment and lack of flexibility. The official government estimate is that 2% of men and 35% of women will take 10 weeks of their entitlement over the next 5 years. Also, not much is planned as far as we can make out in terms of Government promotion. The Department for Education and Employment is due to launch general 'family-friendly' employment campaign in the autumn, but the Department of Trade and Industry does not seem keen on major promotion including widespread advertising such as that for the National Minimum Wage.

Opinion of the TUC:

The TUC welcomes the new right to parental leave.

However, their main concerns in the context of the consultation on the new regulation are that :

- there should be no cut-off date for parental leave eligibility – all workers with children under the relevant maximum age set by the government as at the date of implementation should be included;
- parental leave should be available, in principle, flexibly, in months, weeks or shorter periods or on a basis of reduced hours, subject to objective justification by employers;
- all workers - and not just “employees” - should be entitled to parental leave rights;
- workers should be given the right to return to exactly the same job following parental leave subject to any reorganization or redundancy that has genuinely arisen, and with preferential rights to alternative employment in these circumstances;
- collective agreements should be the sole method of voluntary agreement on parental leave in workplaces with recognized trade unions;

- serious consideration should be given to increasing the maximum age of a child for whom parental leave can be taken. The arguments for this age to be set at 16 for parents of children with disabilities or other special needs are particularly strong;
- rights to postponement of parental leave should be more tightly drafted and should require employers to justify objectively the need for postponement and to consult with workers or their representatives;
- there should be a high-profile public information campaign to promote and explain parental leave. In particular, this should address the concerns of fathers with regard to parental leave and encourage them to take it.
- the government should give serious consideration to setting up a Parental Leave Commission or similar body to monitor and promote parental leave and should help solve problems of implementation;
- all contractual and other terms and conditions apart from remuneration should continue during parental leave as if the leave taker has not been absent.

On an earlier occasion the TUC already reacted against :

- The fact that the new regulation of parental leave does not provide any benefits for parents on parental leave. This means that the mother or father on parental leave loses his/her income during the 3 months' parental leave and does not get any supplementation. Especially low-paid workers cannot afford to care for their children without pay. of workers belong It is mostly coloured people who belong to this group. They cannot use their rights because of their financial and economic situation. In contrast to this there are the well-educated working women, who are most likely to take parental leave to care for their children and return to work afterwards. The unpaid nature of the leave on offer appears to be a key point for taking or not taking parental leave. Half of unskilled workers will take leave only in emergency situations because they cannot afford to take it, while 1 in 6 professional workers fall into this category. Women are more likely to take time off than men. This may be partly due to men's earnings being higher than women's, but it is probably also to be explained by many men expecting their wives or partners to take responsibility for child care arrangements.
- The fact that the qualifying period of service for the right to parental leave will be 1 year and that this requirement will disqualify proportionately more black than white workers, because more black workers have been in employment for less than 3 months. The right to urgent family leave will not be subject to a length of service requirement.
- The fact that it looks as though the Government appears to be contemplating the possibility of transferring the entitlement from one parent to another in exceptional circumstances.
- With regard to urgent leave, the TUC wants a statutory right to 10 days' paid family leave with wide scope and a wide definition.

## BULGARIA

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)*

Since Bulgaria is not yet a member of the European Union, the implementation of the directive is not obligatory and for this reason nothing concrete has been undertaken for the moment. A massive change in labour and social security legislation is under way and some of the legislative decisions of the EU will probably be accepted.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

See question 1.

3. *Were the social partners involved in the implementation process satisfactorily? If not, why not?*

See question 1.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

See question 1.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

The worker is obliged to have a contractual relationship.

6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)*

Parental leave can be taken for one's own and for adopted children.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

In accordance with the Labour Code, parental leave can be taken by the mother and, with her permission, by the father. The same rules are applicable in the case of the adoption of a child. The law does not provide any other requirements.

8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)*

These questions are settled in the Family Code and the Act for the Protection, Rehabilitation and Social Integration of the Disabled.

9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?*

This question is not dealt with in Bulgarian legislation.

10. *Up to what age of the child can parental leave be taken?*

Paid leave can be taken until the child's 2<sup>nd</sup> birthday, and thereafter 1 year's unpaid leave. The unpaid leave is considered as labour practice of the person using it.

11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)*

There is no rule concerning this matter in Bulgarian law.

12. *Can the parental leave been taken :*

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

*(clause 2.3a)*

This is not dealt with in the Labour Code.

13. *Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.*

The father uses the leave in the event that the mother does not have the opportunity to take the leave and transfers the right to the father.

### **Exercising the right to parental leave**

14. *Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)*

There are no requirements concerning the right to parental leave.

15. *Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)*

At the moment there are no problems regarding terms of notice or other procedures for taking parental leave. But there are discussions about changing the law, so these problems may occur.

16. *Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)*

No information available

17. *Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)*

There are no arrangements in the Labour Code concerning parental leave in SMEs. The law is the same for every enterprise.

18. *Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.*

The possibility exists of replacing a worker on parental leave.

19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)*

The employer cannot terminate the parental leave; it can only be terminated by the parent.

20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)*

If the worker who takes parental leave is dismissed without the permission of the Labour Inspectorate, he/she may submit a claim.

21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)*

No information available

22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)*

No information available

### **Protection of acquired rights**

23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)*

All labour rights acquired before or during parental leave are preserved during and after the leave.

### **Statutory social security**

24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)*

This subject is not regulated in detail at the moment.

### **Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?*

The worker using parental leave to care for a child receives compensation from the "Public Insurance" Fund for 2 years equivalent to the minimum wage per month.

26. *Do employers pay anything?*

The employer does not pay anything during this period.

**Force majeure****27. How is “force majeure” defined?**

The concept of force majeure does not exist in Bulgarian law.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

This subject is not regulated in labour and social security legislation at the moment.

**29. Is leave available for other reasons?**

This subject is not regulated in labour and social security legislation at the moment.

**30. What is the maximum duration per year/case?**

This subject is not regulated in labour and social security legislation at the moment.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

This subject is not regulated in labour and social security legislation at the moment.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

No statistics are available in Bulgaria, but in general parental leave is very rarely used. In most cases, parental leave is only used when the mother dies, or if there are other extremely important reasons connected with the health of the mother which make it impossible for the mother to care for the child.

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The trend in Bulgaria is a decrease in the number of fathers taking parental leave to care for the child.

## HUNGARY

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)*

The agreement has been implemented through provisions in the Labour Code.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

See question 1.

3. *Were the social partners involved in the implementation process satisfactorily? If not, why not?*

The social partners were involved.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

No information available

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

All workers have the right to take parental leave.

6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)*

There are no children excluded.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

There are no problems regarding eligibility requirements for the parent. This is regulated by law.

8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)*

There are special arrangements relating to adoption, multiple childbirth and disabled children.

9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?*

The right to parental leave is individual and non-transferable. Benefit is paid for only 1 child per family.

**10. Up to what age of the child can parental leave be taken?**

Parental leave can be taken up to the child's 12<sup>th</sup> birthday.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

There is no obligation to take leave immediately after maternity leave, but 4 weeks' leave before the birth of the child is obligatory.

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

*(clause 2.3a)*

There is a time-credit system.

**13. Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.**

Some measures have been taken to encourage fathers.

**Exercising the right to parental leave****14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

No information available

**15. Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)**

Notice of parental leave must be given within 60 days of the birth of the child. It can be taken by the father, the mother, or carers.

**16. Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

The employer is not allowed to postpone parental leave.

**17. Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

There are no special arrangements concerning parental leave in SMEs.

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

The employers are not obliged or encouraged to replace workers on parental leave.

**19. Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)**

The employer cannot terminate parental leave, but the social security authority can.

**20. Are there any problems concerning the protection against dismissal requirement? (clause 2.4)**

There are no problems concerning the dismissal requirement.

**21. Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)**

There are problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job.

**22. Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)**

There are no problems regarding the legal status of employment contracts during the period of leave.

### **Protection of acquired rights**

**23. Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)**

There are no problems concerning the retaining of employment rights acquired during the period of leave.

### **Statutory social security**

**24. How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)**

If the parent is ill during the period of parental leave, he/she receives sick pay, which is paid from the social security fund.

### **Payment during parental leave**

**25. Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?**

The worker receives income from the state as follows:

60%-70% from the sick pay fund;

70% during pregnancy;

150% of the old age benefit paid once as maternity benefit;

children's allowances up to the child's 3<sup>rd</sup> birthday.

**26. Do employers pay anything?**

The employer does not pay anything.

**Force majeure****27. How is "force majeure" defined?**

There are some specific situations where "personnes illégitimes" exist. In this case benefits are paid by the social security fund: (sick pay, pregnancy benefits). But the family benefits are low.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

If a child is sick, leave without pay is possible. The social security fund pays benefits.

**29. Is leave available for other reasons?**

The leave is available for other reasons, too, but without pay.

**30. What is the maximum duration per year/case?**

The minimum duration per case is 30 days.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

There is no substitute income provided by the state.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

No information available

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

The ATUC thinks that more parents will take parental leave, because the state offers children's allowances, which are paid out of the social security budget.

## POLAND

### **Implementation of the agreement**

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)*

Since Poland is not a member of the European Union, the parental leave directive does not yet have to be implemented.

2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*

See question 1.

3. *Were the social partners involved in the implementation process satisfactorily? If not, why not?*

See question 1.

4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

See question 1.

### **The right to parental leave**

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*

All workers regardless of their sex and the form of their employment contract are entitled to take parental leave after submitting an application to the employer in writing.

6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)*

No children are excluded.

7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*

No information available

8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)*

There are no special arrangements relating to adoption and multiple childbirth. There are special civil law regulations concerning adoption, legal guardians, etc.

9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?*

The right to parental leave is individual.

**10. Up to what age of the child can parental leave be taken?**

The parental leave can be taken up to the child's 4<sup>th</sup> birthday. If the child is mentally ill or disabled, 3 years' parental leave can be taken up to the child's 18<sup>th</sup> birthday.

**11. Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)**

There is no legal obligation to take parental leave immediately after maternity leave.

**12. Can the parental leave been taken :**

*part-time*

*in fragments*

*via a time-credit system (e.g. one month a year)*

*other (specify)*

*(clause 2.3a)*

The parental leave can be split into a maximum of 4 parts.

**13. Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.**

The encouragement of fathers to take parental leave is a societal issue. So far no special legal incentives have been put forward.

**Exercising the right to parental leave****14. Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)**

No information available

**15. Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)**

The worker can apply for parental leave at least 2 weeks before the proposed start. The application must include the beginning and the end of the parental leave and the times, and whether some parts of the parental leave have already been taken.

**16. Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)**

The employer is not entitled to postpone parental leave. There is no obligation for him/her to consult workers' or trade union representatives.

**17. Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)**

There are no special arrangements concerning parental leave in SMEs.

**18. Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.**

There are no specific legal rules which oblige or encourage employers to replace workers on parental leave.

**19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)***

If the employer is informed that the worker is not using the leave for taking care of the child, the employer must summon the worker to come back to work, specifying the date of return, which should not be earlier than 30 days from the date on which the employer received the information.

**20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)***

A worker on parental leave cannot be dismissed unless the termination of the contract is based on disciplinary grounds connected with the worker or the termination is due to organizational or economic reasons or restructuring.

**21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)***

There are no problems regarding the right of workers to return to the same or an equivalent job with the same pay.

**22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)***

The employment contract is suspended during the period of parental leave.

### ***Protection of acquired rights***

**23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)***

All required rights are preserved during the period of parental leave.

### ***Statutory social security***

**24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)***

All required rights are preserved during the period of parental leave.

### ***Payment during parental leave***

**25. *Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?***

The worker receives parental allowance and sick pay. The amount of parental allowance is 264.90 PLN (c.a. 67 USD) per month and for a single parent 421,30 PLN (c.a. 108 USD) per month.

**26. Do employers pay anything?**

In the case of an SME with less than 20 employees, the parental allowance is paid directly from the social security fund. In the case of larger enterprises the employer pays the allowance but obtains reimbursement from the state.

**Force majeure****27. How is "force majeure" defined?**

Force majeure is defined as a sudden, unpredictable, external and unavoidable event.

**28. Is urgent family leave available in connection with both children and other relatives? (clause 3)**

Urgent family leave is available in relation to children and other relatives.

**29. Is leave available for other reasons?**

Leave is available for many different reasons - the birth of a child, the wedding of a worker or of his child, death and funerals. Most leaves entail various types of administrative activities and obligations.

**30. What is the maximum duration per year/case?**

The duration of the leave varies according to the situation, e.g. in the event of the wedding or birth of a child of the employee: 2 days per case; in the event of the death and funeral of the worker's spouse, his/her child, parents, step-parents: 2 days; in the event of the wedding of the child of the worker or the funeral of another relative: 1 day.

**31. Is any substitute income provided by the State and/or by the employer? If so, how much?**

The remuneration varies from the reason for the leave, e.g. the leave is paid in full in the case of the death, funeral, wedding and birth of members of the worker's family.

**Trends and outlook regarding parental leave****32. Do you have information/statistics to tell you:**

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

The total number of persons on parental leave in 1995 was 234 800 persons, and in 1996 the figure was 204 900 persons (source: Statistical Labour Review 1997).

**33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?**

Solidarność observes a slight but constant decrease in the number of parents taking parental leave. There would seem to be many reasons for this development. To mention a few: a decrease in the number of births, the threat of losing the job and, first and foremost, the economic situation.

**List of organizations which replied to the questionnaire**

<b>Austria</b>	ÖGB/Gewerkschaft der Privatangestellten (GPA)
<b>Belgium</b>	CSC
<b>Denmark</b>	LO-Denmark, Association of Danish State Employees' Organizations (StK), Danish County and Municipal Sector (KTO)
<b>Finland</b>	SAK
<b>France</b>	CFDT
<b>Germany</b>	DGB, DAG, ÖTV, IG-Metall
<b>Ireland</b>	ICTU
<b>Italy</b>	GCIL, UIL, CISL
<b>Luxembourg</b>	CGTL/LCGB
<b>Netherlands</b>	FNV
<b>Portugal</b>	UGR-P, CGTP
<b>Spain</b>	UGT-E, CC.OO
<b>Sweden</b>	LO-S, TCO, SACO Swedish Association of Health Professionals (SAHP), Swedish Municipal Workers' Union
<b>UK</b>	TUC
<b>Bulgaria</b>	?
<b>Hungary</b>	ATUC
<b>Poland</b>	NSZZ Solidarność
<b>Switzerland</b>	SGB

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**Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC**

*Official Journal L 145 , 19/06/1996 p. 0004 – 0009*

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Agreement on social policy, annexed to the Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community, and in particular Article 4 (2) thereof,

Having regard to the proposal from the Commission,

(1) Whereas on the basis of the Protocol on social policy, the Member States, with the exception of the United Kingdom of Great Britain and Northern Ireland, (hereinafter referred to as ‘the Member States’), wishing to pursue the course mapped out by the 1989 Social Charter have concluded an Agreement on social policy amongst themselves;

(2) Whereas management and labour may, in accordance with Article 4 (2) of the Agreement on social policy, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;

(3) Whereas paragraph 16 of the Community Charter of the Fundamental Social Rights of Workers on equal treatment for men and women provides, inter alia, that ‘measures should also be developed enabling men and women to reconcile their occupational and family obligations’;

(4) Whereas the Council, despite the existence of a broad consensus, has not been able to act on the proposal for a Directive on parental leave for family reasons (1), as amended (2) on 15 November 1984;

(5) Whereas the Commission, in accordance with Article 3 (2) of the Agreement on social policy, consulted management and labour on the possible direction of Community action with regard to reconciling working and family life;

(6) Whereas the Commission, considering after such consultation that Community action was desirable, once again consulted management and labour on the substance of the envisaged proposal in accordance with Article 3 (3) of the said Agreement;

(7) Whereas the general cross-industry organizations (UNICE, CEEP and the ETUC) informed the Commission in their joint letter of 5 July 1995 of their desire to initiate the procedure provided for by Article 4 of the said Agreement;

(8) Whereas the said cross-industry organizations concluded, on 14 December 1995, a framework agreement on parental leave; whereas they have forwarded to the Commission their joint request to implement this framework agreement by a Council Decision on a proposal from the Commission in accordance with Article 4 (2) of the said Agreement;

(9) Whereas the Council, in its Resolution of 6 December 1994 on certain aspects for a European Union social policy; a contribution to economic and social convergence in the Union (3), asked the two sides of industry to make use of the possibilities for concluding agreements, since they are as a rule closer to social reality and to social problems; whereas in Madrid, the members of the European Council from those States which have signed the Agreement on social policy welcomed the conclusion of this framework agreement;

(10) Whereas the signatory parties wanted to conclude a framework agreement setting out minimum requirements on parental leave and time off from work on grounds of force majeure and referring back to the Member States and/or management and labour for the definition of the conditions under which parental leave would be implemented, in order to take account of the situation, including the situation

with regard to family policy, existing in each Member State, particularly as regards the conditions for granting parental leave and exercise of the right to parental leave;

(11) Whereas the proper instrument for implementing this framework agreement is a Directive within the meaning of Article 189 of the Treaty; whereas it is therefore binding on the Member States as to the result to be achieved, but leaves them the choice of form and methods;

(12) Whereas, in keeping with the principle of subsidiarity and the principle of proportionality as set out in Article 3b of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive is confined to the minimum required to achieve these objectives and does not go beyond what is necessary to achieve that purpose;

(13) Whereas the Commission has drafted its proposal for a Directive, taking into account the representative status of the signatory parties, their mandate and the legality of the clauses of the framework agreement and compliance with the relevant provisions concerning small and medium-sized undertakings;

(14) Whereas the Commission, in accordance with its Communication of 14 December 1993 concerning the implementation of the Protocol on social policy, informed the European Parliament by sending it the text of the framework agreement, accompanied by its proposal for a Directive and the explanatory memorandum;

(15) Whereas the Commission also informed the Economic and Social Committee by sending it the text of the framework agreement, accompanied by its proposal for a Directive and the explanatory memorandum;

(16) Whereas clause 4 point 2 of the framework agreement states that the implementation of the provisions of this agreement does 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 management and labour 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;

(17) Whereas the Community Charter of the Fundamental Social Rights of Workers recognizes the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinions and creeds;

(18) Whereas Article F (2) of the Treaty on European Union provides that 'the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law';

(19) Whereas the Member States can entrust management and labour, at their joint request, with the implementation of this Directive, as long as they take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;

(20) Whereas the implementation of the framework agreement contributes to achieving the objectives under Article 1 of the Agreement on social policy,

#### **HAS ADOPTED THIS DIRECTIVE:**

Article 1 Implementation of the framework agreement

The purpose of this Directive is to put into effect the annexed framework agreement on parental leave concluded on 14 December 1995 between the general cross-industry organizations (UNICE, CEEP and the ETUC).

## Article 2 Final provisions

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 June 1998 at the latest or shall ensure by that date at the latest that management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measure enabling them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. The Member States may have a maximum additional period of one year, if this is necessary to take account of special difficulties or implementation by a collective agreement.

They must forthwith inform the Commission of such circumstances.

3. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

## Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 1996.

For the Council The President T. TREU

## ANNEX

### FRAMEWORK AGREEMENT ON PARENTAL LEAVE

#### PREAMBLE

The enclosed framework agreement represents an undertaking by UNICE, CEEP and the ETUC to set out minimum requirements on parental leave and time off from work on grounds of force majeure, as an important means of reconciling work and family life 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 minimum 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, annexed 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 16 dealing with equal treatment that measures should be developed to enable men and women to reconcile their occupational and family obligations;

5. Whereas the Council Resolution 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 two sides of industry 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 undertakings and workers into account;
7. Whereas family policy should be looked at in the context of demographic changes, the effects of the ageing population, closing the 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 of access and detailed rules of application in order to take account of the situation in each Member State;
10. Whereas Member States should provide for the retaining 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 retaining 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 impede the creation and development of small and medium-sized undertakings;
13. Whereas management and labour are best placed to find solutions that correspond to the needs of both employers and workers and must therefore have conferred on them a special role in the implementation and application of the present agreement,

## **THE SIGNATORY PARTIES HAVE AGREED THE FOLLOWING:**

### **II. CONTENT**

#### Clause 1: Purpose and scope

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 agreements or practices in force in each Member State.

#### Clause 2: Parental leave

This agreement grants, subject to clause 2.2, men and women workers 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 8 years to be defined by Member States and/or management and labour.

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 of access and detailed rules for applying 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 management and labour 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;

(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 of access and detailed rules for applying 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 period of notice, where a significant proportion of the workforce applies for parental 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), 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 management and labour 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 practices.

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 management and labour 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

Member States and/or management and labour 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 management and labour 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 4: 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 management and labour 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 shall not prejudice the right of management and labour to conclude, at the appropriate level including the 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 management and labour (1) 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 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 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, 14 December 1995.

Fritz VERZETNITSCH,  
President of the ETUC

Emilio GABAGLIO,  
Secretary-General ETUC

Bld Emile Jacqmain 155  
B-1210 Brussels

Antonio Castellano AUYANET,  
President of the CEEP

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B-1040 Brussels

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Secretary-General UNICE

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.04.2000

C(2000) 789 final

### REASONED OPINION

Addressed to Ireland, in accordance with the first paragraph of Article 226 of the EC Treaty, with regard to the transposition into national law of Directive 96/34/EC on the Framework Agreement on parental leave concluded by UNICE, CEEP and the ETUC

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### REASONED OPINION

Addressed to Ireland, in accordance with the first paragraph of

Article 226 of the EC Treaty, with regard to the transposition into national law of Directive 96/34/EC on the Framework Agreement on parental leave concluded by UNICE, CEEP and the ETUC

The Commission has drawn the attention of the Irish Government to the incompatibility of the relevant Irish implementing legislation with Council Directive 96/34/EC of 3 June 1996 and the Framework Agreement on parental leave annexed to it.

Clause 2(1) of the Framework Agreement gives workers a right to up to three months parental leave to care for a child up to a given age of eight years to be defined by the Member State and/or management and labour. Ireland has defined the maximum age as five years which is permitted by the Directive.

A letter of formal notice was notified to the Irish authorities on 11 March 1999 drawing attention to the fact that the Irish implementing legislation, the Parental Leave Act 1998, provides that parental leave is only available in respect of children born or adopted on or after 3 June 1996, and that the Commission considered that such a provision was contrary to the Directive.

In accordance with Article 226 of the EC Treaty, the Commission invited the Irish Government to submit its observations within two months of receipt of the letter. The Irish authorities replied to the Commission's letter of formal notice on 5 May 1999, giving their view that the Directive granted wide discretion to the Member States as to how they should provide parental leave, including the discretion to set an upper age limit. The Irish authorities also mentioned that in discussion with the social partners at national level, the employers' representatives did not want the right to parental leave to apply to children born before or adopted before 3 December 1998 as the burden on employers would be too great, and that setting the date of 3 June 1996 was a compromise between the two sides of industry. The possible impact of granting parental leave to parents with children born before 3 June 1996 but under the age of five was mentioned in the reply, followed by the comment "it is not possible to estimate the up-take and how it would impact upon small businesses".

The Commission does not consider that any of the arguments put forward in the letter dated 5 May 1999 are persuasive and that therefore the violation of Community law identified is continuing.

The Directive does not contain any provision permitting Member States to set a date by which children in respect of whom the right to parental leave is exercised must be born. Clearly, the right to take parental leave under the Directive does not apply until the Directive is implemented in national law, 3 December 1998 in the case of Ireland. However, the condition, which the Directive sets for the right to take parental leave, is to have a child under the maximum defined age. By requiring children to have been born after the date of the Directive's adoption, the Irish Government has added a condition, which is not permitted by the Directive. Had the Directive permitted Member States to limit the right to take parental leave to parents with children born after the date of the Directive's adoption, a specific legal provision on this point would have been included.

This is not a case of the Directive having retrospective effect as alleged in the Irish authorities' letter. The Directive gives a right to parental leave, and this cannot be taken before the Irish implementing legislation came into effect on 3 December 1998.

In reply to the points made about the impact of allowing parental leave for children born before 3 December 1996, the Commission would point out that clause 2(3)(f) allows the Member States and/or management and labour to authorise special arrangements for parental leave to meet the operational and organisational requirements of small undertakings. Ireland has not taken advantage of this possibility, although it has allowed employer to postpone the granting of parental leave, in accordance with clause 2(3)(e).

The Commission consulted the signatories to the agreement on 11 June, 3 November and 4 December 1999. At those meetings, the signatory parties agreed with the Commission's interpretation of clause 2(1) of the Framework Agreement, that it permits the Member States to impose an upper age limit on children in respect of whom parental leave can be claimed, but it does not allow the Member States to impose a further condition relating to the date the child was born. In any event, the Commission would point out that the procedure under clause 4(6) is without prejudice to its role as guardian of the Treaties, in pursuance of which its duty is to investigate any violation of Community law.

#### **FOR THE ABOVE REASONS, THE COMMISSION**

Having by the above mentioned letter of 11 August 1998, given the Irish Government the opportunity to submit its observations, and having rejected the observations made by the Irish Government in its reply of 5 May 1999,

#### **HEREBY DECLARES AS ITS REASONED OPINION**

That Ireland, by restricting the right to parental leave to employees with children born or adopted on or after 3 June 1996, has failed to fulfil its obligations under clause 2(1) of the Framework Agreement on parental leave annexed to Directive 96/34/EC.

Pursuant to the second paragraph of Article 226 of the above mentioned Treaty, the Commission requests that Ireland take the measures necessary to comply with this Reasoned Opinion within two months following notification therefore.

Done in Brussels, 03.04.2000

for the Commission  
Anna DIAMANTOPOULOU  
Member of the Commission

April 26, 1999

To the members of the ETUC Women's Committee in EU + EEA  
To the members of ETUC Netlex in EU + EEA  
To the member organizations for information purposes  
Re: Parental leave framework agreement

Dear Colleagues,

The ETUC is now evaluating the effects of the framework agreement on parental leave concluded with UNICE/CEEP in December 1995 and adopted as a Directive in June 1996 by European Union governments under the Social Protocol.

We enclose a questionnaire asking for information about the impact that the agreement has had in your country. We ask members of the Women's Committee and Netlex to complete the questionnaire jointly and to return it to Stefan Clauwaert, ETUI (fax: 32 2 224 0502) by May 28 1999.

The ETUC will organize a seminar to discuss the results of the questionnaire in the second half of 1999.

We thank you for your cooperation,

Yours sincerely,

Jean LAPEYRE  
Deputy General Secretary

Beatrice HERTOGS  
Confederal Secretary

Encl.

## **Implementation of the framework agreement on parental leave Questionnaire to national confederations**

Please type your answers (no handwriting please!) and send them to Stefan Clauwaert, ETUI fax 32 2 224 0502, Email [SCLAUWAE@ETUC.ORG](mailto:SCLAUWAE@ETUC.ORG) by May 28, 1999.

### ***Implementation of the agreement***

1. *How has the agreement been implemented - by legislation and/or collective agreement? (If necessary, make a distinction between parental leave and force majeure/ urgent family leave.)*
2. *Was a new law/collective agreement necessary or did the existing regulations merely need to be amended?*
3. *Were the social partners involved in the implementation process satisfactorily? If not, why not?*
4. *Do you consider that your government has implemented the agreement correctly? If not, please explain and give details of any action you have taken in consequence.*

### ***The right to parental leave***

5. *Do all workers have the right to take parental leave? Are any categories of workers excluded (e.g. homeworkers, fixed-term contract workers)? (clause 1.2)*
6. *Are any children excluded? (e.g. leave only for children born or adopted after a certain date)*
7. *Are there any problems regarding eligibility requirements for the parent? (e.g. natural mother/father; adoptive father/mother; stepparents; legal guardians...)*
8. *Are there any special arrangements relating to adoption, multiple childbirth, disabled children? (clause 2.3c)*
9. *Is the right to parental leave individual and non-transferable, as recommended by the agreement? (clause 2.2) If not, why not?*
10. *Up to what age of the child can parental leave be taken?*
11. *Is there any obligation to take the leave immediately after maternity leave? (General consideration 9)*
12. *Can the parental leave been taken :*
  - part-time*
  - in fragments*
  - via a time-credit system (e.g. one month a year)*
  - other (specify)**(clause 2.3a)*

13. *Have any measures been taken to encourage fathers to take parental leave? (General consideration 8). Please explain.*

#### **Exercising the right to parental leave**

14. *Are there any eligibility requirements concerning the right to parental leave (e.g. seniority thresholds)? (clause 2.3b)*
15. *Are there any problems regarding terms of notice or other procedures for taking parental leave? (clause 2.3d)*
16. *Is the employer allowed to postpone the granting of the leave? If so, how is this regulated? Are trade union/worker representatives consulted? (clause 2.3e)*
17. *Are there any special arrangements concerning parental leave in SMEs? Are trade union/worker representatives consulted? (clause 2.3f)*
18. *Are employers obliged, or encouraged, to replace workers on parental leave? If so, please explain.*
19. *Can the employer terminate the parental leave? (e.g. if it is proved that the leave has not been taken for the care of children)*
20. *Are there any problems concerning the protection against dismissal requirement? (clause 2.4)*
21. *Are there any problems regarding the right of workers who have taken parental leave to return to the same or an equivalent job? (clause 2.5)*
22. *Are there any problems regarding the legal status of the employment contract during the period of leave? (suspended, terminated, ...)? (clause 2.7)*

#### **Protection of acquired rights**

23. *Are there any problems concerning the retaining of employment rights acquired during the period of leave (e.g. wages, seniority, occupational social security) ? (clause 2.6)*

#### **Statutory social security**

24. *How are existing statutory social security rights and benefits, especially regarding health care, affected during the period of leave? (clause 2.8; General considerations 10 and 11)*

#### **Payment during parental leave**

25. *Does the worker receive any income from the State during parental leave? If so, how much, and is it financed by the social security scheme?*
26. *Do employers pay anything?*

#### **Force majeure**

27. *How is “force majeure” defined?*
28. *Is urgent family leave available in connection with both children and other relatives? (clause 3)*

*29. Is leave available for other reasons?*

*30. What is the maximum duration per year/case?*

*31. Is any substitute income provided by the State and/or by the employer? If so, how much?*

**Trends and outlook regarding parental leave**

*32. Do you have information/statistics to tell you:*

*who takes parental leave (e.g. how many men, women)?*

*when parental leave is generally taken (after maternity, for older children)?*

*what the commonest form of parental leave is (full-time, part-time, etc.)?*

*33. What in your opinion is the outlook regarding the increase/decrease in the use of parental leave (for men as well as for women)?*

PSC/SC15.4.99

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