1. **According to Article 8 of Council Directive 92/85 /EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding the Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of a least 14 weeks allocated before and / or after confinement in accordance with national legislation and / or practice. At least two of those weeks are compulsory maternity leave allocated before and / or after confinement in accordance with national legislation and/or practice.**

   QA: Is it possible within Article 8 on a national level to give the opportunity to postpone part of the maternity leave to a later time, so that as an example, the two compulsory weeks are held just after the birth of the child and then the last 12 weeks is to be used at a later time?

Maternity leave under *Article 8 of* Council Directive 92/85 /EEC provides for a "continuous period" of a least 14 weeks allocated before and / or after confinement in accordance with national legislation and / or practice. Similarly, recital 14 states that "Whereas the vulnerability of pregnant workers, workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least 14 **continuous** weeks, allocated before and/or after confinement…". The terminology suggests that the weeks cannot be separated and part of the leave postponed to a later time. Furthermore, according to the ECJ's judgment in case C-5/12, Montull v. INSS, para. 56, "the woman's right to suspend her employment during that limited period of at least 14 weeks (…) may not be called into question, in whatever way, by the public authorities or by the employer."

QB: If so, is it possible for the mother to transfer those postponed weeks of non-mandatory maternity leave to the father?

According to the ECJ judgment in case C-5/12, Montull v. INSS, it is possible for the (working) mother to consent to a transfer of her maternity leave rights falling outside of the compulsory maternity leave of two weeks to the (working) father as long as her health is not at risk. However, as also clarified in this case, the maternity leave provided for under Directive 92/85 "may not be withdrawn from the mother against her will so as to be assigned, in whole or in part, to the child's father" (para. 56). Thus, Member States can allow mothers to transfer the 12 weeks falling outside of the scope of the compulsory maternity leave of two weeks under art. 8(2), as long as this is in line with the Court's ruling.

2. **According to Article 5 of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of four months that is to be taken before the child reaches a specified age, up to the age of eight. Further Member States shall ensure that two months of parental leave cannot be transferred.**

   QA: Is it possible within Article 5 to decide on a national level that more than two months should not be transferrable, so that as an example 3 months for both parents cannot be transferred?

   QB: Is it possible within the directive and other relevant instruments of EU law to decide on a national level that the father – in light of the leave granted to the mother under directive

92/85/EEC – is allocated more parental leave that cannot be transferred than the mother, so that as an example the father is granted 3 months that cannot be transferred whereas the mother is granted 2 months that cannot be transferred?

The Work-Life Balance Directive only sets minimum requirements and obliges Member States to provide *at least* two months of non-transferable and paid leave for each parent. The Directive does not prohibit Member States from making more than two months of paid parental leave non-transferable.

The Directive is compatible with a general system that gives each parent the same total period of leave rights because of the birth of a child – even if, within that general system, fathers have more parental leave rights than mothers. In any event, national law must ensure that directives 92/85 and 2019/1158 are respected, by granting mothers and fathers the period of leave and pay provided by these directives.

3. ***It follows from Article 20 (6) of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers that for the purposes of complying with Articles 4, 5, 6 and 8 of this Directive and with Directive 92/85/EEC, Member States may take into account any period of, and payment or allowance with respect to, family-related time off work, in particular maternity leave, paternity leave, parental leave and carers' leave, available at national level which is above the minimum standards provided for in this Directive or in Directive 92/85/EEC, provided that the minimum requirements for such leave are met and that the general level of protection provided to workers in the areas covered by those Directives is not reduced.***

   Furthermore, Recital 46 stipulates that rights that are already acquired on the date of entry into force of this Directive should continue to apply unless this Directive provides for more favourable provisions. The implementation of this Directive should neither be used to reduce existing Union law rights, nor constitute valid grounds for reducing the general level of protection provided to workers, in the areas covered by this Directive.

   QA: Given that the existing Danish framework gives each parent 32 weeks non-transferable parental leave but a shared right to 32 weeks benefits during parental leave (of which a total of 18 weeks (9 to each parents) will be granted non-transferrable pursuant to directive 2019/1158/EU), would the non-regression approach in article 16 and 20 (6) and Recital 46 prevent an amendment of the Danish framework to convert 12 of those shared weeks of benefits to paternity leave or parental leave for the father with a possibility of transferring those weeks (should both parents want to) to the mother?

   QB: Given that the existing Danish framework gives the parents a shared right to 32 weeks benefits during parental leave, are the approaches in 2. QA and QB and 3. QA in accordance with the principle of non-regression as they replace the shared rights to benefits and thus the mother's existing rights under national law?

The *passerelle clause* in Art. 20(6) of the Directive allows Member States to take into account more generous leave rights, i.e. any period of family-related time off work, in particular maternity leave, paternity leave and parental leave that exceeds the minimum requirements under the two Directives.

The non-regression clause in article 16(2) provides that the implementation of the Directive shall not constitute grounds for lowering the *general level of protection of workers* in the areas covered by it. The prohibition of such a reduction in the level of protection is without prejudice to the right of Member States and the social partners to lay down new rules, in light of changing circumstances.

These provisions do not prevent Member States which have been granting mothers more generous leave rights (such as Denmark), to reallocate (part of) these rights under the Work Life Balance Directive to fathers, as long as the minimum requirements of both, the Work-Life Balance and the Maternity Leave Directive are met.

They also do not prevent Member States that provide for leave rights and benefits that are shared between both parents, from earmarking individual leave rights/benefits for fathers and mothers, as required by the Directive, while at the same time ensuring that the total amount of leave rights provided for both parents, considered together, are maintained.

4. **The purpose of Directive 92/85 /EEC of 19 October 1992 is to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding whereas the purpose of Dirctive (EU) 2019/1158 s is to promote equality between men and women with regard to labour market opportunities and treatment at work.**

   QA: Is it possible to view and interpret the purposes of the two Directives in combination and make a joint evaluation of the minimum requirements under the two Directives?

The two directives have distinct purposes and the evaluation of their minimum requirements should be distinct as well. Therefore, it is not possible to make a joint evaluation.

5. **According to Article 4 (1) Member States shall take the necessary measures to ensure that fathers or, where and insofar as recognised by national law, equivalent second parents, have the right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.**

   QA: Must the paternity leave necessarily be taken in connection with the birth of the child or is it possible on a national level to decide a longer period of time in which the paternity leave can be held?

Recital 19 clarifies that it is up to the Member States to determine the timeframe within which paternity leave is to be taken. However, in doing so, Member States have to bear in mind that the directive differentiates between two types of leave – paternity and parental, so paternity leave must be distinguishable from parental leave in the national transposition laws.

The timeframe for paternity leave is more restrictive: Paternity leave has to be granted on the occasion of the birth of the child in order to allow to create an early bond between father and child. Member States, according to Article 4(1), can even allow an uptake partly before the birth. Therefore, we suggest that the time period to be close to the birth of the child. A one year period, for example, would seem reasonable.