

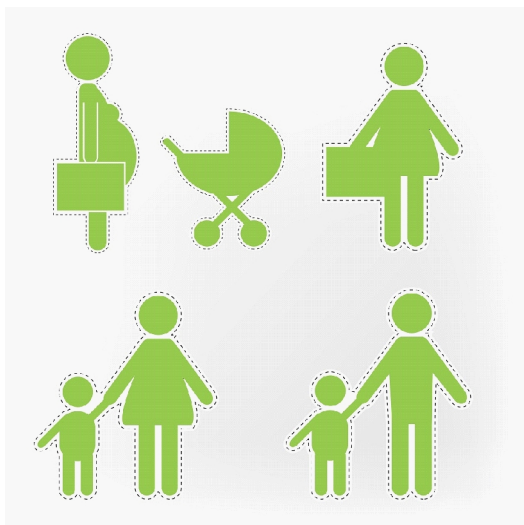
## Maternity, paternity and parental leave in the EU

### SUMMARY

The EU has been working on reforming family leave policies in Member States since the 1980s. Its efforts resulted in two directives currently in force: the 1992 Maternity Leave Directive and the 2010 Parental Leave Directive. Even though EU Member States' transposition of the current directives has mostly been satisfactory technically, in 2015 the Commission announced a package on work-life balance which would replace the current legislation.

The rationale for the new package is to increase female labour participation, bring gender balance to care activities now predominantly performed by women, and improve negative demographic trends. The current legislative framework has been evaluated as inadequate to deal with these challenges.

While the content of the Commission proposal is not yet fully known, an analysis of the current situation may shed light on the direction of change, as well as the obstacles that the new proposal may face. Even though Member States have transposed the current directives, they have also been given much freedom in deciding on elements which may be crucial in achieving the aims of the new Commission proposal. Why Member States decided to implement certain elements over others depends on their cultural, social and economic situations, which, according to experts, play a significant role in deciding policies of that type and may also influence the new proposal.



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### Glossary

**Maternity leave:** ‘leave generally available to mothers only (except in a few cases where part of the leave can be transferred to other carers under certain circumstances). Usually understood to be a health and welfare measure intended to protect the health of the mother and new-born child, to be taken just before, during, and immediately after birth’.

**Paternity leave:** ‘leave generally available to fathers only, usually to be taken soon after the birth of a child, and intended to enable the father to spend time with his partner, new child and older children’.

**Parental leave:** ‘leave available equally to mothers and fathers ... generally understood to be a care measure, intended to give parents the opportunity to spend time caring for a young child; can usually only be taken following the end of maternity leave’.

*Source: [12th International Review of Leave Policies and Related Research 2016](#), International Network on Leave Policies and Research*

## Towards a new proposal on work-life balance

Following the European Commission’s failed attempt to revise the current Maternity Leave Directive in 2015, the Commission announced a new comprehensive package to replace it. According to the Commission [work-life balance roadmap](#), the main impetus for the new proposal is increasing women’s participation in the labour market, to decrease the risk of poverty for women and give the EU economy the opportunity to better use their skills. It is also hoped that more favourable work-life balance legislation would induce couples to have more children, which is vital to reversing the current negative demographic trend.

The current EU framework, consisting inter alia of directives on maternity and parental leave, needs to be ‘modernised’ and adapted to ‘today’s labour market, to allow for parents with children or workers with dependent relatives to better balance caring and professional responsibilities’.

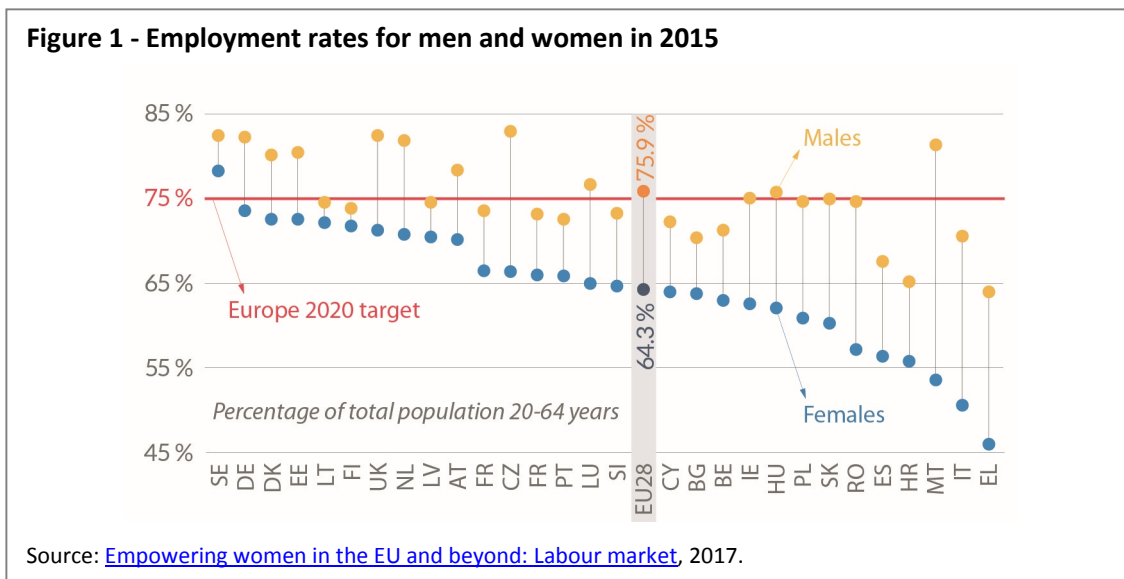
## Work-life balance of men and women and declining fertility

A 2015 EPRS [study](#) on gender equality in employment and occupation provides an overview of the extent of gender inequality issues in the labour market. A stark example of this inequality is the gender pay gap and, perhaps even starker, the gender gap in pensions. In 2014, the gender pay gap in the EU was [16.7 %](#). The gender gap in pensions, a result of inequalities accumulated over the entire career, was even higher, amounting to [40.2 %](#) in 2014 (an increase from [39 %](#) in 2009).

Women’s labour market [participation](#) in the EU-28 in 2015 was 64.3 %, while it was 75.9 % for men. Men have therefore reached the [Europe2020](#) target of 75 % of labour market participation, whereas if the level of labour market participation for women does not significantly increase in the near future, this target will not be met for both genders in 2020. Of course, the gender gap in [employment](#) is not the same in all Member States, with some, such as Sweden, having a very small gap, with both men and women exceeding the 75 % target, and others, such as Malta, having a substantial, 27.8 % gap, with a mere 53.6 % of women employed.

Decreased [female labour participation](#) is [attributed](#) to the unequal division of family responsibilities between the sexes, where the burden predominantly falls on women. For example, data from 2010 shows that only 2.7 % of men took parental leave, although

men's take up of leave was not the same [across](#) all Member States. The biggest gender difference in labour market participation is identified<sup>1</sup> in those countries which do not provide adequate child-care facilities, making it clear that child-care related policies are



crucial for achieving gender equality.

The issue of gender inequality with regard to labour market participation has another important facet: the EU's ageing population and related issues (for example, without a favourable working-age to retired population ratio, the current welfare state is unsustainable). This situation is a consequence of both the extension of the life span of the population, and a decrease in fertility rates. [Research](#) shows that more favourable maternity and parental leave policies, such as better wage compensation during the leave period, can have a positive impact on increasing fertility rates.

After a slight rise from 1.46 live births per woman in 2001 to 1.62 in 2010, [fertility rates](#) in the EU are falling. In 2014, the EU fertility rate was 1.58 live births per woman, with some variations across Member States. These variations have also fallen in the past 50 years, and in 2014 ranged from 2.01 live births per woman in France to 1.23 live births in Portugal. Member States that registered the lowest fertility rates in the EU (with values below 1.30 births in 2000), were Bulgaria, the Czech Republic, Greece, Italy, Latvia, Slovenia, Slovakia, and Spain. With the aforementioned increase in fertility rates after 2000, all of the Member States except Portugal had fertility rates above 1.30 in 2014.

## Current legislation and its implementation

### EU framework

The reconciliation of work and private life is a right recognised by the [Charter of Fundamental Rights of the EU](#), in Article 33(2), which provides protection for the family in general, forbidding dismissal for maternity-related issues and giving citizens the right to paid maternity and parental leave after the birth or the adoption of a child.

Articles 153 and 157 of the Treaty on the Function of the EU (TFEU) are also related to maternity and parental issues. Their aim is to improve the protection and employment rights of pregnant workers and those who have just given birth or are breastfeeding, and to contribute to a better reconciliation of professional, family and private life.

Outside the EU, the **International Labour Organization (ILO)** has done significant work on the promotion of [maternity rights](#) and also has an impact on EU policy-making in the field. ILO

recommends a minimum of 18 weeks maternity leave, and links paid maternity leave with positive health outcomes for mothers and children, along with the practice of breastfeeding.

The so-called Pregnant Workers Directive ([92/85/EEC](#)), the Parental Leave Directive ([2010/18/EU](#)) and the Recast Directive [2006/54/EC](#) on equal treatment of men and women in matters of employment and occupation are the legal instruments dealing with these issues at EU level.

#### *Pregnant Workers Directive, 92/85/EEC*

The Pregnant Workers Directive, covering maternity leave provisions in Member States, was adopted in 1992. At that time there was no [unanimity rule](#) for adopting the directive, and the United Kingdom (UK) and Italy abstained. The directive had a significant impact on some Member States' legislation, resulting, for example, in the UK having to extend access to maternity leave, enabling more women to benefit.<sup>2</sup>

In 2008, the European Commission proposed to improve the directive by, inter alia, extending the period of leave in line with the ILO recommendation ([18 weeks](#)) and raising the maternity allowance to the amount of full salary. The proposal was adopted in the Parliament in 2010, which amended the proposal to extend the leave period to 20 weeks and added a period of paternity leave. However, following several years of being blocked in the Council, this proposal was abandoned in 2015.

The directive as it now stands prohibits night work for pregnant workers and those who have just given birth. It states that pregnant workers should have a continuous period of maternity leave of at least 14 weeks, allocated before and/or after confinement in accordance with national legislation and/or practice. There is a compulsory period of maternity leave of at least two weeks immediately before or after confinement. Workers should not be dismissed during the period from the beginning of their pregnancy to the end of maternity leave, except in exceptional cases unconnected to their condition and permitted under national legislation.

#### *Parental Leave Directive, 2010/18/EU*

The first directive regulating parental leave at EU level was adopted in [1996](#). It gave male and female 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 the child for at least three months, up to a specific age (up to eight years, to be defined by the Member State). The right was provided, in principle, on a non-transferable basis. While minimum requirements needed to be respected, the rules were defined by the Member State, which could introduce more favourable conditions. Workers had the right to return to the same job, or if this was not possible, to an equivalent or similar job, at the end of the leave period.

This directive was replaced in 2010 by the current Parental Leave Directive, aimed at reconciling work, private and family life and achieving gender equality with regard to labour market opportunities and treatment at work in the EU.

The scope of the directive also includes part-time workers, fixed-term contract workers and temporary workers. Parental leave is granted to either of the parents for a minimum period of four months on the birth or adoption of a child, until the child is eight years old, on condition that at least one of the four months is provided on a non-transferable basis to ensure equal take-up of the leave between parents.

On the other hand, Member States and social partners determine the conditions of access and detailed application rules. They may define, for example, whether the parental leave is granted on a part-time or a full-time basis, whether it is subject to a length of prior

service requirement (though this requirement may not exceed one year), the circumstances under which the employer may delay or postpone the parental leave period, and authorise special arrangements for the requirements of small businesses. Member States also determine the period of notice to be given by workers to their employer, as well as adjusting access and modalities of parental leave for parents of children with disabilities or a long-term illness and adoptive parents.

The directive stipulates that workers have the right to return to the same or equivalent job after the end of the parental leave period. Member States and/or social partners are to define the status of the employment contract during parental leave and take measures to protect workers against less favourable treatment or dismissal when taking parental leave. Member States and/or social partners also take care of all matters relating to social security and income, as well as ensuring that workers may ask for changes in their working hours for a period of time after returning from parental leave.

Member States and/or social partners are also responsible for giving workers the opportunity to take time off from work on grounds of *force majeure* (urgent family reasons in case of sickness or accident).

*The recast Directive on equal treatment of men and women in matters of employment and occupation, 2006/54/EC*

The recast directive was adopted to replace several former legislative acts in the area of equal opportunities and equal treatment of men and women in matters of employment and occupation. It is relevant for child-related issues because it guarantees mothers returning from maternity leave may return to their previous jobs or to an equivalent post. The directive also mentions paternity and adoption leave but leaves it to the Member State to decide whether or not to exercise these provisions.

### **EU Member States legislation**

#### *Maternity and paternity leave*

All EU Member States [offer](#) a form of leave to be taken by mothers at the time of birth, either before or after confinement. In the majority of Member States it is called maternity leave, and is separate from paternity leave. Portugal has parental leave only, but the initial period is reserved for the mother. Sweden is also a special case where, even though it has a maternity leave period, parental leave is considered more relevant, and can be taken immediately after birth instead of maternity leave.

The remaining Member States have leave periods ranging from 14 weeks (Germany) to as high as 58 weeks (Bulgaria). A majority of EU Member States have maternity benefits which amount to 100 % of prior earnings, except those that give lower percentages, e.g. Latvia (80 %) or Cyprus (72 %), or that combine periods where the mother receives a combination of a percentage of the salary, flat-rate benefits or no money at all (e.g. the UK, Ireland). Some Member States even allow parents to share a period of maternity leave, such as Croatia, where the father can take over from the mother once the child is 70 days old and until aged six months.

Whilst all EU Member States have a form of leave dedicated for mothers around the time of birth, not all Member States have paternity leave. Seven Member States currently lack any provision equivalent to maternity leave for fathers (Austria, Croatia, Cyprus, the Czech Republic, Germany, Luxembourg, and Slovakia).

Some Member States have much more generous paternity leave than others. Slovenia currently allows seven weeks, but is slowly reducing this<sup>3</sup> to bring leave to four weeks in

2018. Finland, on the other hand, has a relatively stable provision of nine weeks for paternity leave. This contrasts starkly with, for example, Malta or the Netherlands, which give fathers only two days of leave.

Where it exists, paternity leave is usually paid at 100 % of previous earnings. Paternity leave is also more often paid by the employer than maternity leave<sup>4</sup> (e.g. Greece, first three days in Belgium). Only Belgium and Portugal have made paternity leave mandatory. This is reflected in the take-up of paternity leave, where fewer men take paternity leave than are entitled. In those countries for which data are [available](#), recipient rates are above 50 per 100 live births. However, this relatively low take-up of paternity leave by men is higher than their take-up of parental leave.

### *Parental leave*

Even though provisions for maternity and paternity leave in the EU Member States are quite diverse, provisions for parental leave at national level are even more complex. This is unsurprising given the substantial room for Member States and/or social partners to determine conditions as they see fit in many provisions of the 2010 Parental Leave Directive. According to the 2015 implementation [report](#) on the Parental Leave Directive, because some Member States considered their national legislation to be in line with its provisions, they did not formally transpose the directive.

#### **Transposition of Parental Leave Directive in Member States**

Not formally transposed because legislation considered already compatible	Austria, Czech Republic, Finland, Germany, Latvia, Lithuania, Portugal, Spain, and Sweden
Formally transposed	Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Slovakia, and Slovenia
Small amendments necessary	Belgium, Croatia, Luxembourg, Malta, Romania, United Kingdom, Denmark, Italy, the Netherlands, France, and Poland

Source: European Commission [report](#) on the transposition of the Parental Leave Directive

The four-month minimum provision for the duration of parental leave was respected in all Member States and is substantially exceeded in some (for example, many Member States allow parental leave to continue until the child is three years old, such as Hungary or Slovakia). However, not all Member States have a period of leave that [cannot](#) be [transferred](#) to the other parent. Having periods of leave that cannot be transferred to the mother is considered important in encouraging fathers' take up of leave (e.g. Austria, Lithuania), given the possibility that leave that is not taken is lost to the family.

Along with the non-transferability of leave periods, paid leave is considered another [motivation](#) for fathers to take up parental leave, and loss of income a deterrent. The Parental Leave Directive does not regulate this aspect, leaving it to Member States to decide. As a consequence, the situation in EU Member States is very heterogeneous. Some Member States do not have any paid leave (e.g. Cyprus, Ireland, and the UK), some pay a fixed allowance (Belgium, Luxembourg, Slovakia), and in some, payment amounts vary.

Some Member States also differentiate between the public and private sectors, both in terms of monetary benefits (Greece, the Netherlands) and non-monetary benefits (Spain).<sup>5</sup>

### **Analysis and outlook**

Even though all EU Member States have implemented EU maternity, paternity and parental leave policies to a degree, significant variation remains. This variation is a

consequence of the fact that EU directives leave a significant number of provisions for Member State decision. Each Member State approaches the issue from their unique perspective – a result of their historical, social, cultural, and economic circumstances.

In contemporary societies, leave policies have the aim of satisfying many different needs, and depending on the context, some needs may be given more emphasis than others. [RAND Europe](#) separates these into three groups: social (maternal and infant health, work-life balance, development of children); demographic (reducing barriers to parenthood); and economic (regulating labour force participation). Kamerman and Moss<sup>6</sup> also mention gender equity as an important need to be satisfied by leave policies. All these aspects are addressed to a degree in the Commission roadmap on work-life balance, with the greatest emphasis placed on increasing women's labour market participation.

Which needs are given more emphasis depends on the political factors influencing policy choices. EU directives are only one of these. The Kamerman and Moss<sup>7</sup> overview of these political factors, begins with countries' welfare regimes. According to Esping-Andersen,<sup>8</sup> there are different types of welfare states, with distinct values and organisational logic, developing out of different historical forces and continuing in different directions. Ireland and the UK are closest to the 'liberal' welfare state model in the EU, with modest means-tested assistance. These types of states often traditionally have rather weak provisions for leave policies (e.g. in terms of length or payment). The continental European welfare model, exemplified by France or Italy, maintains rights according to class or status, and is also often shaped by the church, and dedicated to maintaining traditional family values. Motherhood is thus encouraged, along with the chief (male) breadwinner family model. The 'social democratic' welfare state, on the other hand, aims to promote equality and encourage individual independence. Scandinavian countries are the closest EU examples of this model, having highly developed services for children aiming, inter alia, at giving women opportunities to work.

Societal values are also an important factor, according to Kamerman and Moss. Attitudes towards motherhood and work for women differ among Member States and this climate may influence policy-making. Countries differ in their [attitude](#) towards gender roles for example; percentages of people who thought that men should work and women should take care of the home and family were higher in the Slovak Republic, Poland and Latvia, than in Sweden and Denmark, in 2012.

Political actors and institutions can also lead policies in a certain direction, with, for example, conservative actors being in favour of longer leave and flat-rate benefits, and social democrats, trade unionists and feminists supporting care services and shorter leave with earning-related benefits. The gender composition of legislators may also impact policies, as having women as decision-makers promotes more generous leave policies. International influences are another factor in policy-making in this area, such as the International Labour Organization and the EU, through legislation and other means.

Path dependency (the principle according to which previous decisions made in the policy area have a significant effect and limit the scope for future decisions), is also an important factor influencing countries' choices on leave policies. Member States may resist changes when they feel that they differ too much from their existing policies.

The **European Parliament** has been very vocal in supporting more generous leave policies, as exemplified by its 2010 amendment of the Commission proposal on the 2008 Maternity Leave Directive, which aimed at extending the period of leave by two weeks and adding provisions for paternity leave that did not exist in the original Commission proposal. More recently, the

Parliament adopted a [Resolution on creating labour market conditions favourable for work-life balance](#) (2016/2017(INI)), in which it calls, inter alia, for better maternity protection, improved coordination of different types of leave, addition of paternity leave, extension of minimum parental leave from four to six months, and better financial compensation. Parliament also calls on the Commission to publish an implementation report on the Parental Leave Directive. The Women's Rights and Gender Equality Committee report, [Equality between women and men in the European Union in 2014-2015](#) (rapporteur: Ernest Urtasun, Greens/EFA, Spain), tabled for the March 2017 plenary session, also makes note of the unsatisfactory take-up of leave by men, and calls on the Commission to propose an ambitious work-life balance package as part of the Commission Work Programme 2017.

## Main references

The politics of parental leave policies: children, parenting, gender and the labour market. Eds. Sheila B. Kamerman and Peter Moss. 2009.

[12th International Review of Leave Policies and Related Research 2016](#), International Network on Leave Policies and Research.

[The Implementation of the Parental Leave Directive 2010/18 in 33 European Countries](#), European Commission, 2015.

[Background brief on fathers' leave and its use](#), OECD, 2016.

## Endnotes

<sup>1</sup> European Commission, Barcelona objectives: The development of childcare facilities for young children in Europe with a view to sustainable and inclusive growth, 2013.

<sup>2</sup> Bernard Fusulier, 'The European directive: making supra-national parental leave policy', in 'The politics of parental leave policies: Children, parenting, gender and the labour market', Eds Sheila B. Kamerman and Peter Moss, 2009.

<sup>3</sup> Paternity leave of this length is a result of an erroneous interpretation of the parental leave directive by Slovenia, according to Kamerman and Moss, 2009.

<sup>4</sup> Maternity leave is usually paid from social contributions/general taxation.

<sup>5</sup> Parental leave in Spain lasts until the child is three years old. However, in the private sector, parents may return to their previous place of work only up until the child is one year old, and in the public sector until the child is two years old.

<sup>6</sup>In 'The politics of parental leave policies: Children, parenting, gender and the labour market', Sheila B. Kamerman and Peter Moss, 2009.

<sup>7</sup> *ibid.*

<sup>8</sup> In 'Why we need a New Welfare State', Gosta Esping-Andersen, 2002.

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