

Directive (EU) 2019/1158 on work-life balance for parents and carers

& repealing Council Directive 2010/18/EU

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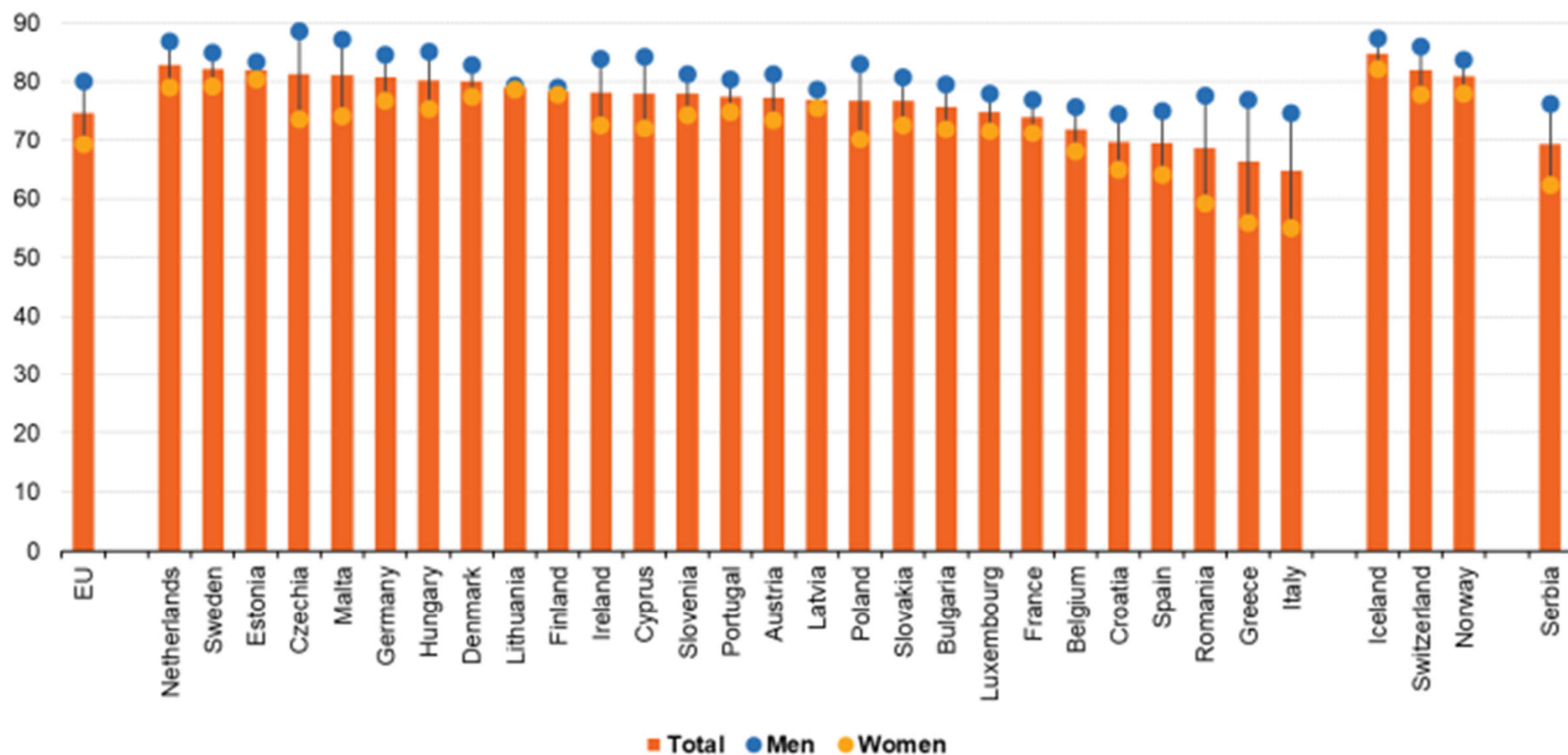
A woman with long brown hair, wearing a black blazer over a white shirt, is standing at a desk. She is holding a baby in a blue outfit. She is looking down at a notebook and writing with a blue pen. The background shows a wooden cabinet and a window.

Key aims of the directive

Addressing marked gender differences
in employment levels,
working hours &
overqualification
... Slow progress in
reduction of gaps

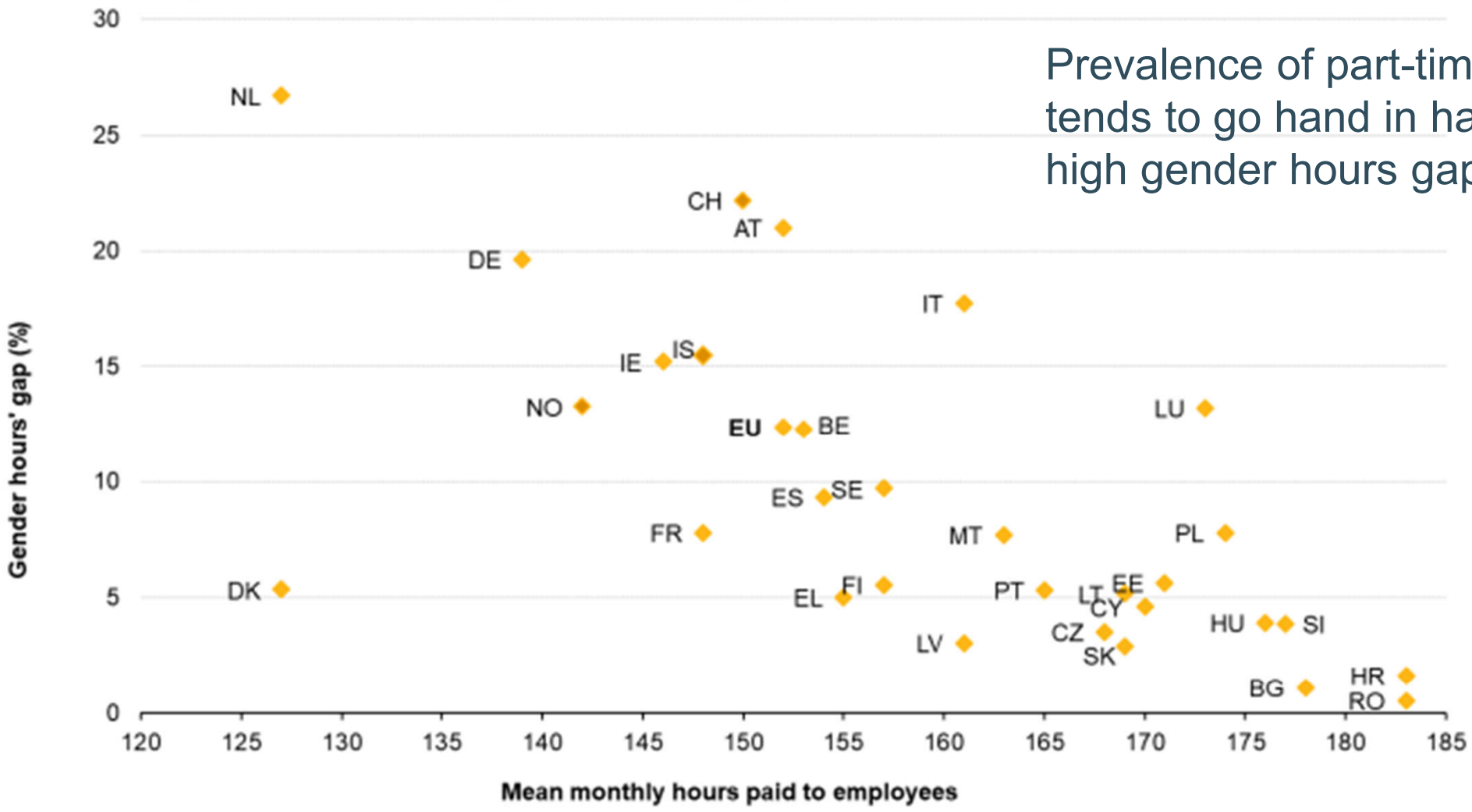
Employment rate by sex, 2022

(age group 20-64, percentage of total population for each category)



Source: Eurostat (dataset code lfsi_emp_a)

Mean monthly hours paid and gender hours gap, 2018

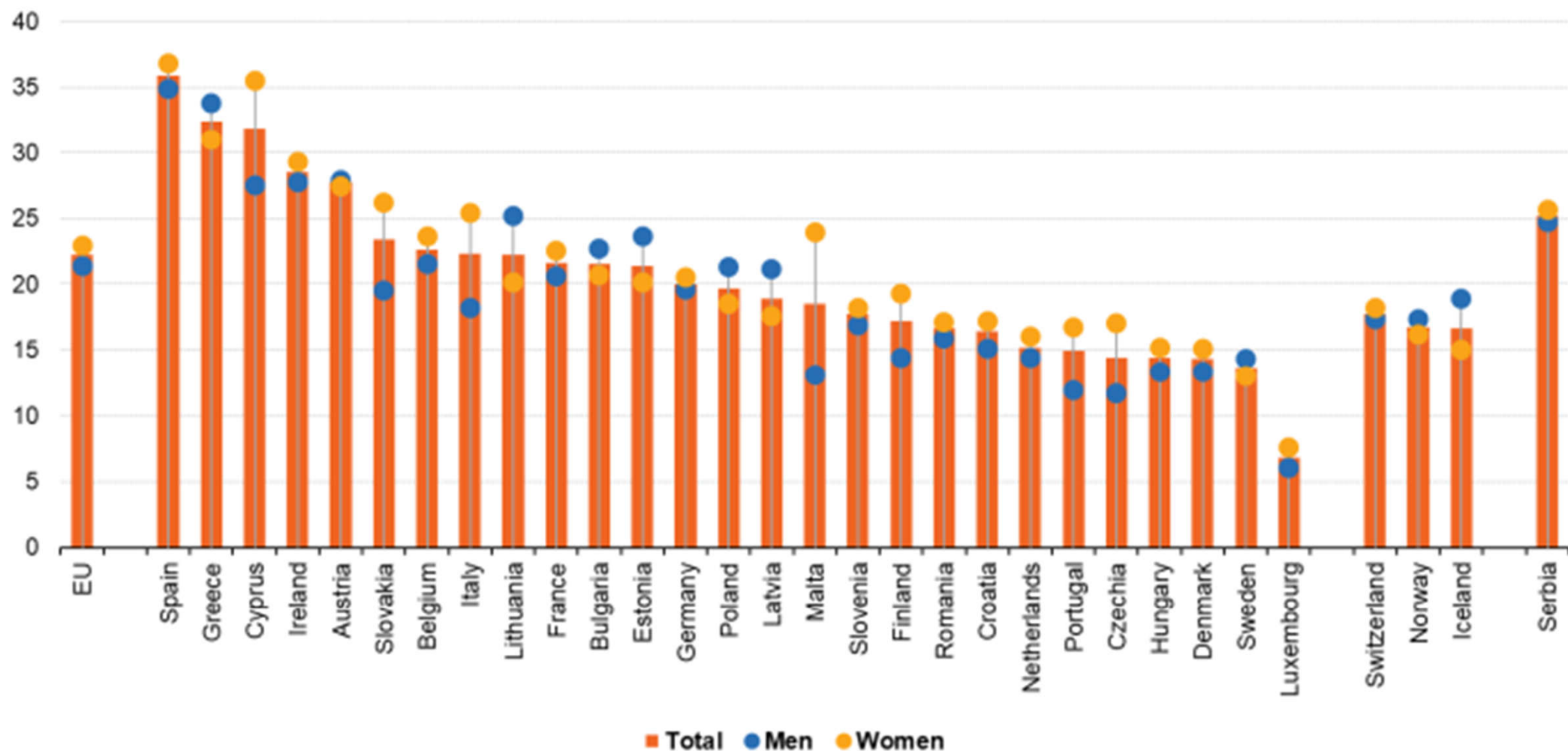


Prevalence of part-time work tends to go hand in hand with high gender hours gaps

Source: Eurostat (online data code: earn_ses_monthly)

Over-qualification rate by sex, 2022

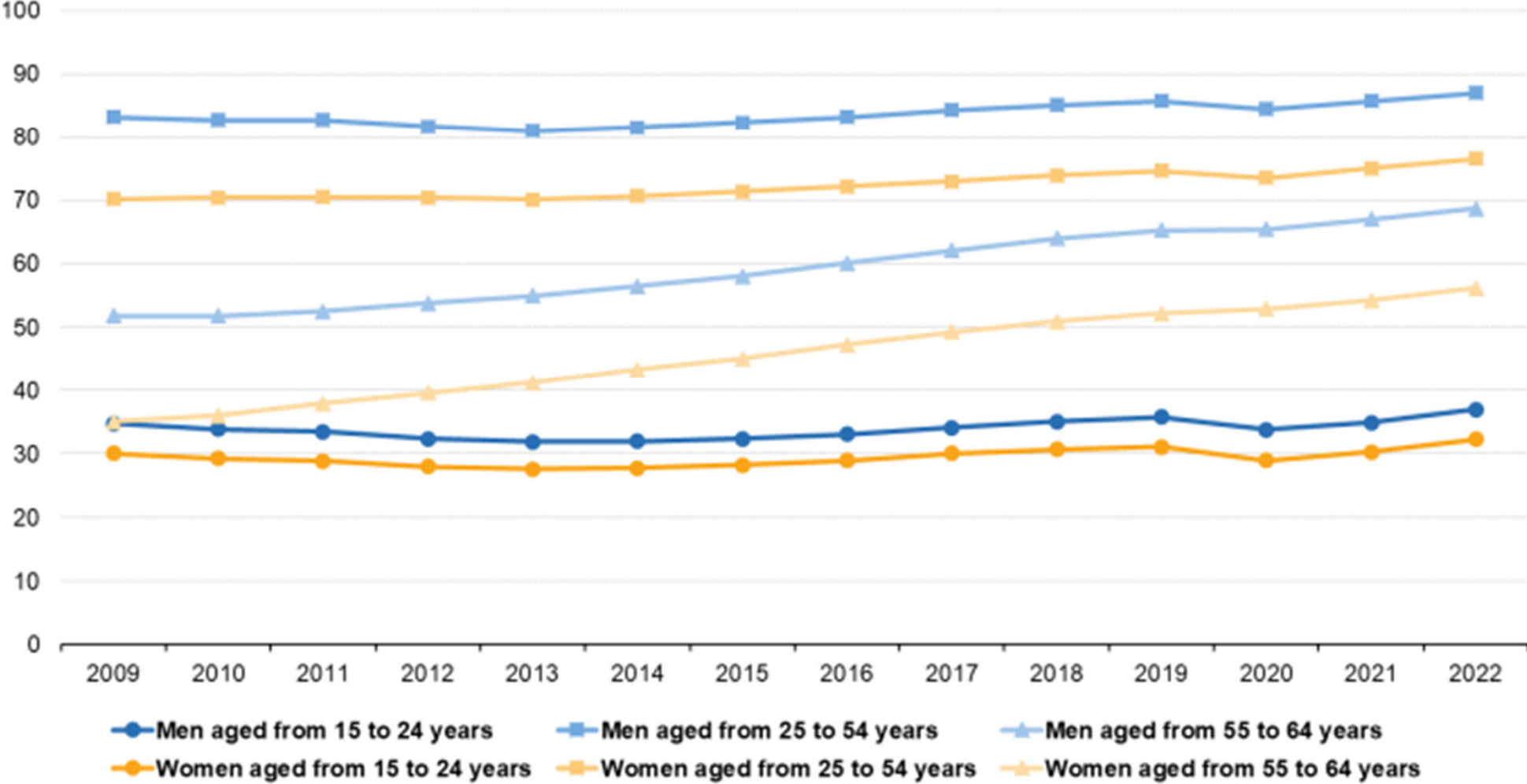
(percentage, age group 20-64)



Source: Eurostat (dataset code lfsa_eoqgan)

Employment rate by age group and sex, 2009-2022, EU

(percentage of total population for each sex/age category)



Source: Eurostat (dataset code lfsi_emp_a)

Key considerations

- **Economic loss** due to the gender employment gap €370 billion / year
- On average, having children increases fathers' and decrease mothers' **labour market participation**
- 2008 proposal for revision of **Maternity Directive 92/85/EEC** withdrawn in 2015
- Social partners unable to agree on new Framework Agreement to replace **Parental Leave Directive** (PLD; originally Directive 96/34/EC, then 2010/18/EU)

Overview of provisions

**Directive
2019/1158**

Scope

Art. 2: all workers

- Employment contract / relationship as defined by national law
- But “taking into account the case law of the CJEU”
- See past case law
 - On PLD: public sector (cases *Chatzi*, *H v. Land Berlin*)
 - Cf. case law on “Lawrie-Blum concept” in other contexts (e.g. managers, judges, on-call workers, gig workers...)
- Cf. maternity leave also for the self-employed (Art. 8 Self-employed Directive 2010/41/EU)

Rights to leave and/or flexible arrangements

Art. 5: parental leave

- Art. 3: right to **4 months** of leave *on grounds* of birth or adoption
- Before child's specified **age (up to age 8)**
- Min. **2 months non-transferable**
- "Reasonable" **notice period**
 - **Account of worker's & employer's needs**
- **Seniority** requirement: max. 1 year
 - Recognition of **successive fixed-term contracts**

Rights to leave and/or flexible arrangements

Art. 5: parental leave

- CJEU case law: **no other conditions**
 - Case *CAE 2021*: requirement to be employed at the time of childbirth
 - Case *Maïstrellis*: condition for the worker's partner to be in employment
- **Postponement** by reasonable period if it “would **seriously disrupt the good functioning** of the employer”
 - **Reasons provided in writing**

Rights to leave and/or flexible arrangements

Art. 7: force majeure leave

- Urgent family reasons in case of **illness or accident**
- **National law: limits** per year and/or per case

Art. 4: paternity leave

- Art. 3: for **fathers** or “**equivalent second parents**” as recognised by national law, *at the occasion* of birth or adoption
- **10 working days** (before and/or after birth)
- **No seniority requirements**

Rights to leave and/or flexible arrangements

Art. 6: carers' leave

- Art. 3: providers of personal care / support to a **relative / household member** in need of **significant care** / support for a serious medical reason
 - Relative = child / parent / partner
- **5 working days** / year
 - Alternative reference periods under national law
- National law: details regarding **scope & conditions**; requirement of “appropriate substantiation”

Rights to leave and/or flexible arrangements

Differentiation between types of leave

- Irrelevance of denotation under national law
- Leave system must fulfil minimum requirements of
 - Maternity Directive
 - WLB Directive
 - Gender discrimination provisions (Art. 157 TFEU, Recast Directive, Self-employed Directive)
- **CJEU case law**
 - Cases *Syndicat CFTC*, *Roca Álvarez*, *Betriu Montull*: gender discrimination where “maternity” rights are effectively given for child-rearing purposes

Rights to leave and/or flexible arrangements

Art. 9: flexible working arrangements

- Art. 3: adjusted working patterns, incl. through **remote working / flexible schedules / reduced working hours**
- **Right to request** for parents & carers
 - “**Reasonable limitations**” to duration under national law
- **Employers to consider** requests & respond within reasonable period
 - Account of workers' & employers' needs
 - Reasons for any refusal / postponement

Cf. CJEU case law on PLD

- Cases *Ortiz Mesonero*, *Rodríguez Sánchez*: rights only for employees returning from parental leave

Rights to leave and/or flexible arrangements

Art. 5(6-7): flexible ways of taking parental leave

- **Right to request**
 - “**Modalities of application**” specified by national law
- **Employers to consider** requests & respond within reasonable period
 - Account of workers' & employers' needs
 - Reasons for any refusal in writing

Art. 5(8): adapted arrangements for parental leave

- MSs to “**assess need**”
 - For adoptive / disabled parents; parents of children with a disability / long-term illness
 - Cf. case *Chatzi* on parents of twins

Rights to leave and/or flexible arrangements

For all arrangements

- Art. 3(2): **pro rata temporis** calculation
 - Proportionally to working time
 - See CJEU case law on annual leave in case of changing / flexible working time (cases *Zentralbetriebsrat der LKH Tirols*, *Brandes*, *Greenfield*)
- **Right to return** to the original working pattern
 - Early return due to change of circumstances: employer to consider and respond

Payment / allowance

Art. 8

- **Paternity leave**
 - Equivalent to sick pay
 - Seniority requirement: max. 6 months
- **Parental leave**
 - “... shall be set in such a way as to facilitate the take-up of parental leave by both parents”
- **Cf. Art. 11 Maternity Directive & CJEU case law:**
 - Full pay (cases *Parviainen*, *Gassmayr*) during individual risk-related leave or adapted work
 - Sick pay during 14 weeks of maternity leave

Equal treatment & opportunities

Art. 10: employment rights

- Rights “**acquired / in the process of being acquired**”
 - Maintained until end of leave
 - Incl. **improvements** “to which they would have been entitled had they not taken the leave”
 - Employment relationship to be maintained
 - MSs to decide status for social security, incl. pension contributions

Art. 11: non-discrimination

- On grounds of having applied for or used leave / time off / flexible arrangements

Equal treatment & opportunities

- **Cf. CJEU & EFTA Court case law on PLD**
 - *Zentralbetriebsrat der LKH Tirols*: **maintenance of rights** during 2-year parental leave
 - Not: **accrual of new rights** (case *Botoşani* – contrary to Art. 11(2)a Maternity Directive... still applicable?)
 - *Meerts, Lyreco, Praxair MRC*: **calculation of severance pay** based on income in reference period
 - *H v. Land Berlin*: continuation of **probationary period**; direct applicability
 - *Riežniece*: **return** to position envisaged to be abolished
 - *ESA v. Norway 2019, Gómez-Limón*: no protection against discrimination in **social security**

Enforcement of rights

Art. 12: burden of proof for dismissal

- Right to request **duly substantiated reasons for dismissal in writing**
- **Prima facie case** of dismissal on grounds of having applied for or used leave / time off / flexible arrangements
 - Shift of burden of proof when worker brings “facts capable of giving rise to a presumption that they have been dismissed on such grounds” before court / competent authority
- Not in ex officio / criminal proceedings

Art. 13: penalties

- Effective, proportionate & dissuasive
- MSs to ensure implementation

Enforcement of rights

Art. 14: victimisation

- Protection from adverse consequences from complaint lodged within the undertaking / legal proceedings
- Incl. workers' representatives

Art. 15: equality bodies

- Added to competence of existing bodies under Art. 20 Recast Directive

Art. 17: dissemination of information

- Bringing national measures to attention of workers & employers (incl. SMEs) “by all appropriate means”

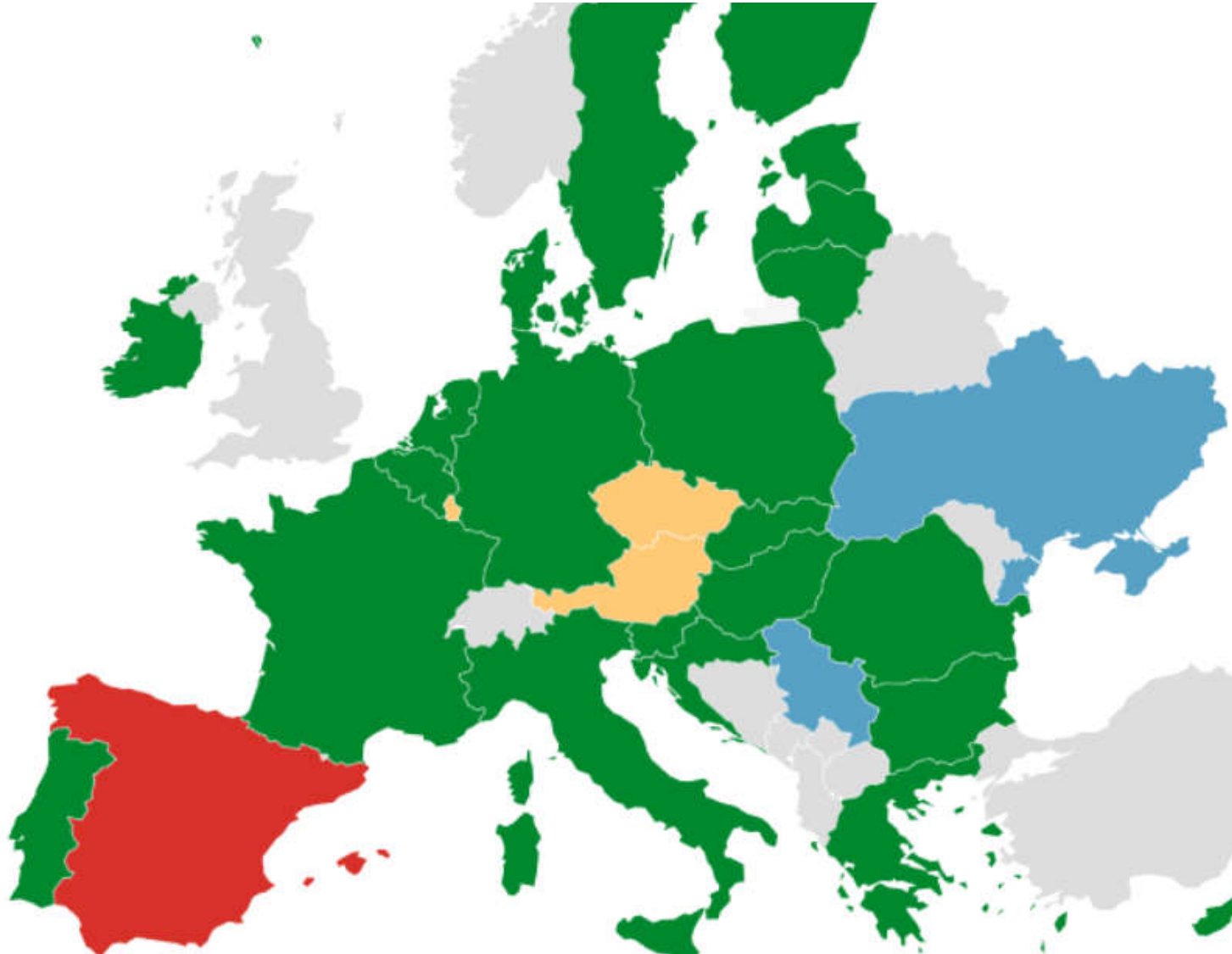
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Transposition

Art. 20:

- 2 August 2022
- 2 August 2024 for last 2 weeks of paid parental leave

■ No draft yet ■ Draft law ■ Final legislation ■ Not an EU member



... Reasoned opinion sent by the COM on 19 April 2023 to non-implementing states and BE, FR, CY, EL & HR

Source: iuslaboris.com

Relevance of regulatory framework for leave uptake

Take-up of well-paid & non-transferable leave by fathers

- 62% (FR, > 2 weeks), 74% (ES, > 4 weeks; UK, 1 week), 83% (NL, 3 days)
- 70-90% (NO, 10 weeks), 81% (IS, 13 weeks), 88% (SE, 20 weeks)

Take-up of un- or lower paid leave

- 11% of fathers (NL)
- Female share: 93% (ES), 96% (FR)

Leave duration: well-paid & non-transferable leave vs. average leave taken up by fathers

- 14 vs. 12.6 days (PL), 10 vs. 9.8 weeks (NO), 13 vs. 17.6 weeks (IS), 20 vs. 21.2 weeks (SE)

Use of annual leave by fathers

- 43% (UK), 60% (NL)

Source: Bartova & Keizer in Palgrave Handbook of Family Policy (2020)

Persistent challenges

- **Demographic change**
 - Importance of ensuring **labour market attachment** of workers with family care responsibilities
 - **Informal LTC provision** more challenging to regulate than child-rearing
- Key financial aspects (social security benefits; tax incentives; institutional care provision) **cannot be regulated by EU law**
 - Cf. failure to meet 2002 **Barcelona targets** by 2010; continued challenges regarding care institutions' availability, opening hours etc.

Many thanks for your attention.

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