

ERA Seminar: "EU Gender Equality Law"; 17-18 April 2023  
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**Work-life balance: Directive 2019/1158 on work-life balance for  
parents and carers**



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**Eu Social Cit**  
European Social Citizenship

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EUSOCIALCIT - Working Paper Strengthening European social rights via  
the work-life balance directive

<https://www.eusocialcit.eu/published-our-working-paper-on-the-potential-of-the-work-life-balance-directive-wlbd-to-support-a-shift-to-gender-equalization/>

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## Data: EIGE reports 2018 -2019

Women dominate part-time employment, consigning them to jobs with poorer career progression - In 2018, 31 % of women and 8 % of men worked part-time;

Being a parent continues to hinder women, but not men, in the labour market. FTE employment rates of women with children were around 60 % while FTE employment rate of fathers living in a couple is 88 %).

Caring responsibilities are reason for inactivity of 31% of inactive women while this is only the case for 4,5% of men

[Gender Equality Index | Publications | European Institute for Gender Equality \(europa.eu\)](#)

[A new start to support work-life balance for parents and carers: fact sheet Social rights | European Institute for Gender Equality \(europa.eu\)](#)

## Tackling the imbalance on the division of unpaid care work

Due to **gender stereotyping**, domestic and care work (mostly unpaid) is associated with women, and paid work with men. As a result, the unequal distribution of time spent on caring and housework activities between women and men remains a major hurdle to progress on gender equality.

To address the inequalities on caring activities, the EU has adopted in 2019 a **directive on work-life balance for parents and carers**.

Under the umbrella of the **European Pillar of Social Rights**, the Directive promotes a gender-equal sharing of care responsibilities and establishes '**minimum requirements related to paternity, parental and carers' leave** and to flexible working arrangements for parents and workers with caring responsibilities'.

# A NEW START TO SUPPORT WORK-LIFE BALANCE FOR PARENTS AND CARERS

- New initiative after withdrawal of the 2008 Commission proposal on revision of the Maternity Directive;
- Imbalance in the design of parental leaves for men and women, lack of incentives for the use of leave by the father;
- Comprehensive package of measures to combat under-representation of women in employment and support the professional career of women through improvements in the conditions for the conciliation of professional and private life.

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## Initiative – New start

The European Commission adopted a work-life balance package for parents and carers;

### **Objectives:**

- General: equal treatment and opportunities between men and women (Art. 153.1 TFEU legal basis for a new Directive);
- Improve the conditions of working parents and caregivers;
- Increase female employment rate, women's earnings and career progression;
- Reduce the wage and pension gap between women and men, as well as the exposure to poverty of women;
- Encourage the participation of Fathers in family life.
- Public intervention in private roles? De-genderisation theory - Controversial

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# Policy measures package – New Start

## Legislation

Reform of parental leave Directive – New Directive 2019/1158 on work-life balance for parents and carers

## Social Policy

- Adoption of measures to ensure accessible, affordable and quality professional care services (prioritize the use of European funds)
- Reduction of tax elements and benefits that discourage women from working more.

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# UE Policy on work-life balance – connection with gender equality

In the Commission's agenda since the First Program for equal opportunities between men and women (1982)

In various "soft-law" instruments: Decisions, Recommendations of the Council about the guidelines for employment policy and in the Commission's Action Programs;

Legislation: Art. 23 & Art. 33 EU Charter of FFRR; Art. 157 TFEU; Gender Directives (ie. Directive 2006/54 on equal treatment for men and women in employment and occupation-Recast Directive);

European Pillar of Social Rights- principle of gender equality and right to work-life balance are reaffirmed in principles 2 & 9.

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# European Pillar of Social Rights

## 9. Work-life balance

Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.

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Comparing previous and current Directive 2019/1158

## Paternity leave (Article 4)

### Directive 2010/18/EU

No minimum standards for paternity leave at EU level.

### New WLB Directive

Working fathers (or equivalent second parent) will be able to take at least 10 working days of paternity leave around the time of birth of the child.

Paternity leave will be compensated at least at the level of sick pay. (Art. 8.2)

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## Comparing previous and current Directive 2019/1158 - Parental leave (Art. 5)

### Directive 2010/18/EU

At least 4 months per parent, out of which 1 month is non-transferable between parents (Clause 2.2);

Parents have right to apply for this kind of leave until child is 8 years old (Clause 2.1);

No minimum rules on allowance/payment.

### New WLB Directive

At least 4 months per parent, out of which 2 months are non-transferable between parents.

Parents can request to take the leave in flexible forms (full-time, part-time or in a piecemeal way.)

Right to request the leave is the same – until child turns out 8 years old (proposal was 12 years);

The 2 non-transferable months of parental leave will be compensated at a level set by Member States/social partners. (Art. 8.3)

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## Article 8. 3 WLB Directive

provides that the level of payment of the non-transferable months of **parental leave**, "shall be defined by the Member State or the social partners and shall be set in such a way as to **facilitate the take-up of parental leave by both parents**".

The CJEU could use the European Pillar of Social Rights to "encroach into spaces that the Member States in the Council intended to preserve for national discretion."\*Therefore, (*hypothetically*) the CJEU could set the threshold for that **facilitating aim of the take-up of parental leave** at a certain minimum percentage level of payment by relying on the principles of the EPSR (principle 9).

\* Dura, S., *Mobilising social rights: Usages and Effects of the European Pillar of Social Rights*, *Academisch Proefschrift*, UvA, 2023. (p. 132)

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## Comparing previous and current Directive 2019/1158 Carers leave (Art. 6)

### Directive 2010/18/EU

No minimum standards for carers at EU level (except case of “forcé majeure” allowing to take short time off for imperative and unexpected family reasons) Clause 7.

No minimum standards at EU level regarding duration of this leave or payment.

### New WLB Directive

All workers will have the right to 5 working days of carers’ leave per year.

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## Time off from work on grounds of force majeure (Article 7)

Member States shall take the necessary measures to ensure that each worker has the right to time off from work on grounds of force majeure for urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable.

Member States may limit the right of each worker to time off from work on grounds of force majeure to a certain amount of time each year or by case, or both.

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# Comparing previous and current Directive 2019/1158 Flexible working (Art. 9)

## Previous Directive

Right to request reduced and flexible working hours upon return from parental leave. Clause 6.1

## New WLB Directive

All working parents with children up to at least 8 years old and all carers will have the right to request the following flexible working arrangements:

1. Reduced working hours.
2. Flexible working hours.
3. Flexibility on the place of work.

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## Legal Resources – WLBD – power resources theoretical framework/EUSOCIALCIT project

**Normative resources:** Articles 4 – 8: paternity leave, parental leave, carers' leave, time off on grounds of force majeure, flexible working arrangements.

### Art. 10 Employment rights

1. Acquired rights: "Rights that have been acquired or that are in the process of being acquired by workers on the date on which leave provided for in Articles 4, 5 and 6 or time off from work provided for in Article 7 starts shall be maintained until the end of such leave or time off from work. At the end of such leave or time off from work, those rights, including any changes arising from national law, collective agreements or practice, shall apply."

2. Right to return to work: "Member States shall ensure that, at the end of leave provided for in Articles 4, 5 and 6, workers are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave."

3. Status of the employment contract/ entitlements to social security,

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## Legal Resources – WLBD – power resources theoretical framework/EUSOCIALCIT project

### Instrumental resources:

Prohibition of discrimination (Art.11);

Protection from dismissal and reversal in the burden of proof (Art. 12);

Protection against adverse treatment or consequences (Art. 14);

Support of Equality bodies (Art. 15)

Dissemination of information (Art. 17);

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## Legal Resources – WLBD – power resources theoretical framework/EUSOCIALCIT project

### Enforcement resources:

Penalties for non-compliance – “effective, proportionate and dissuasive” (Art. 13)

Provisions on transposition (Art. 20.) Deadline: 2 August 2022

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## Evolution of CJEU case law – conciliation/parents care roles:

Restrictive interpretation of equal treatment in **the Hofmann** Judgment, Case 184/83 – EU legislation on equal treatment between men and women was not designed to resolve issues related to family organization / division of responsibilities between parents;

Case 476/99 **Lommers**: the argument based on the fact that women are more likely to interrupt their professional careers in order to take care of their young children, can only be taken into account while maintaining the respect due to the principle of proportionality. Men who take care of children alone should have same access to day care facilities at the employer's premises;

Case C-104/09, **Roca Álvarez** - Access to male worker to breastfeeding leave. It is argued that the role of men and women in the care and education of children is comparable.

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## Case Law CJEU

Clear dividing line between maternity leave and parental leave;

**Case C - 351/14, Rodríguez Sánchez**: Right to return of a working partner after maternity leave - Request for a reduction in working hours and fixed work schedule - Situation not included in the scope of application of clause 6.1 of the framework agreement on parental leave.

**Case – 463/19, Syndicat CFTC**: In this judgement the CJEU has revised the **Hofmann** case law.

The Court is trying to draw a line between, on the one hand, periods of leave genuinely intended to protect women's biological condition and, on the other hand, those periods of leave granted to workers in their capacity as parents – in respect of which mothers and fathers should be equally treated.

**Case C-519/93, Commission v. Luxembourg**

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## Case Law CJEU - Konstantinos Maïstrellis, Case C-222/14

**Ruling:** “The provisions of Council Directive 96/34 on the framework agreement on **parental leave** concluded by UNICE, CEEP and the ETUC, as amended by Directive 97/75 (‘the Framework Agreement’), and Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, **must be interpreted as precluding national legislation under which a civil servant is not entitled to parental leave in a situation where his wife does not work or exercise any profession**, unless it is considered that due to a serious illness or injury the wife is unable to meet the needs related to the upbringing of the child.

First, it follows from the wording of the Framework Agreement and from its objectives and context that **each parent is entitled to parental leave**, which means that Member States adopt cannot such legislation. Secondly, those provisions constitute **direct discrimination on grounds of sex**, within the meaning of Article 14(1) of Directive 2006/54, read in conjunction with Article 2(1)(a) of that directive, in respect of fathers who are civil servants, as regards the granting of parental leave.”

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## CJEU case law - Praxair MRC SAS, C-486/18

### Indirect discrimination on grounds of sex

**Ruling:** “Clause 2.6 of the framework agreement on **parental leave** concluded on 14 December 1995, which is annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 97/75/EC of 15 December 1997, must be interpreted as **precluding**, where a **worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave**, the compensation payment for dismissal and the redeployment leave allowance to be paid to that worker being determined at least in part on the basis of the **reduced salary** which he receives when **the dismissal takes place**.

**Article 157 TFEU** must be interpreted as precluding legislation such as that in the main proceedings which provides that, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that worker receives a compensation payment for dismissal and a redeployment leave allowance determined at least in part on the basis of the reduced salary being received when the dismissal takes place, in circumstances **when a far greater number of women than men choose to take part-time parental leave** and when that **difference in treatment which results therefrom cannot be explained by objective factors** unrelated to any sex discrimination.”

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## CJEU case law - Caisse pour l'avenir des enfants, Case C-129/20

**Ruling:** “Clauses 1.1, 1.2, 2.1 and 3.1(b) of the Framework Agreement on **parental leave** (revised) of 18 June 2009, annexed to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, must be interpreted as **not precluding national legislation** which makes the grant of a **right to parental leave subject to the condition that the parent concerned is employed without interruption for a period of at least 12 months immediately preceding the start of the parental leave**. By contrast, those clauses preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent has the **status of a worker** at the time of the birth or adoption of his or her child.

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## Case Law CJEU- H. v. Land Berlin, C-174/16

Clause 5, paragraphs 1 and 2 Directive 2010/18/EU

**Right to return to work at the end of parental leave;**

**Right to occupy the same job position or an equivalent or similar job;**

Maintenance without modifications of the rights acquired or in the course of acquisition.

Very protective interpretation: EU law precludes a national rule that established that the final promotion to a managerial position is submitted to the requirement that the successful candidate pass a previous two-year trial period in that position and under which, in a situation in which the given candidate has been for most of that period on parental leave, this trial period legally ends after the two-year period, without it being possible to extend it, so that, at the end of her parental leave, the worker has to return to the lower-level position he or she occupied prior to being admitted to carry out the said internship period for a managerial position.

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## REQUEST FOR A PRELIMINARY RULING – CASE C-673/22, INSS

Is the omission in a national legislation (Spanish Workers' Statute & General Law on Social Security) of provisions requiring an assessment of the specific needs of **single-parent families** in the area of work-life balance, having implications for the period in which care is provided to a new-born child, as compared with a child born into a two-parent family in which both parents have an expectation of access to paid leave if both fulfil the conditions of access to the social security benefit, compatible with the Work Life Balance Directive?

### EU provisions at issue:

Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, recital 37 and Article 5.

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## Evolution of EU law – More modern vision

CJEU jurisprudence shows an evolution from conservative positions that legitimized the traditional vision of women in the family as the main caregiver to more modern visions of their place in society, promoters of the social value of parenting;

The new Directive broadens the range of paid parental leave and encourages its use by men. (paid leaves - socialization of the costs of conciliation)

Better balance of work and professional life - corollary of effective equality between women and men

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## Case study the Netherlands – Paternity leave

### **Paternity leave**

If the partner of an employee gives birth, the employee has a right to 1 week of partner/paternity leave after the birth. This paid leave can be taken any time in the first 4 weeks after the birth of the child. During this period of leave the employer must continue to pay 100% of the employee's salary.

### **Extended partner leave**

Partners have the right to 5 weeks unpaid leave in the first 6 months after the birth. They can also choose to take less than 5 weeks. Employees who take unpaid leave will be able to claim benefits from the Employment Insurance Agency (*UWV*) for up to 70% of their salary.

The employee must:

- take the standard 1-week's partner leave first;
- take the extra weeks' leave during the first 6 months after the childbirth;

The employee can spread the leave over a longer period than 5 weeks. The employer has to agree to this

## Case the Netherlands

- New paid **parental leave** for all workers.
- Act paid parental leave (Wet betaald ouderschapsverlof, Wbo) entered into force on 2 August 2022. (Amendment of level of parental leave by Decree of 26 April 2022).
- The government has decided to pay the first 9 weeks of parental leave.

Parents can take up to 26 weeks' leave. The Employee Insurance Agency (*UWV*) pays 70% of an employee's daily wages during parental leave, up to 70% of the maximum daily wage.

Parents will have to use the 9 weeks' paid leave in the first year after the child is born.

They can use the remaining 17 weeks as they wish up to the child's 8th birthday. This leave will be unpaid, unless stated differently in the collective labour agreement (*CAO*) or company policy.

## EUSOCIALCIT project - Working Paper Strengthening European social rights via the work-life balance directive

**In-depth case studies:** DK, NL, PL, FR, DE, SP (including elite interviews)

**For each case study:** focus on **father-specific leave** (paternity leave, parental leave), state of work-life balance policy prior to the WLBD (including take-up of leave by fathers), expected implementation of the directive, following **two dimensions** of resources framework

**Normative resources:** **formal social rights**, including **level of pay for parental leave**

**Instrumental resources:** Easily accessible information about social rights, Easily accessible application procedure (digital/administrative), Resources for union reps on work place and HR personnel to facilitate leave, Resources to encourage men/Second carers to take-up leave, such as information campaigns



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## Findings

- In the **Netherlands & Denmark**, political establishment embraces father-specific leave.
- **Normative resources: implementation with high replacement rate in both countries**
- **Instrumental resources:** High-level of commitment, i.e. AIM is to enhance leave take-up for fathers/second carers
- Inclusive and decentral/sectoral decision-making and implementation models (in **NL** – stakeholder organisations; In **DK** – social partners)
- **Poland:** attractive model on paper (new paid father-specific leave), but political decision not yet final; thus far, no new instrumental resources (centralised decision-making)
- **Germany:** aim is to keep status quo (reluctance to implement paternity leave); No new instrumental resources
- **France:** challenge with level of remuneration (currently below minimum income), thus transposition on this point is extended to 2024; no new instrumental resources
- **In all countries -** alongside **normative resources**, investments in **instrumental resources** indicate real intention of policy-makers to shift from formal transposition to actual implementation, i.e. increasing take-up among fathers
- **Risk** that countries that have well-functioning institutional capability will have more possibilities to fully implement the rights. Thus, perhaps there could be re-enforcement of inequalities in take-up social rights between north and south/east, undermining overall aim of EPSR



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## Lessons

**Paid leave with high level of remuneration** – necessary but not sufficient condition for enhancing take-up (also in preamble of the WLBD)

**Lack of information** In many countries, information about parental leave rights is lacking or unclear. Need for clarity, for instance pertaining to definitions and consistency of terms pertaining to leave (maternity, paternity, parental)

**Application procedure** is highly complex (i.e. application process for leave is separate from application for payment). This can be simplified, preferably one application, or at least where two parts connected + easily accessible digital instrument.

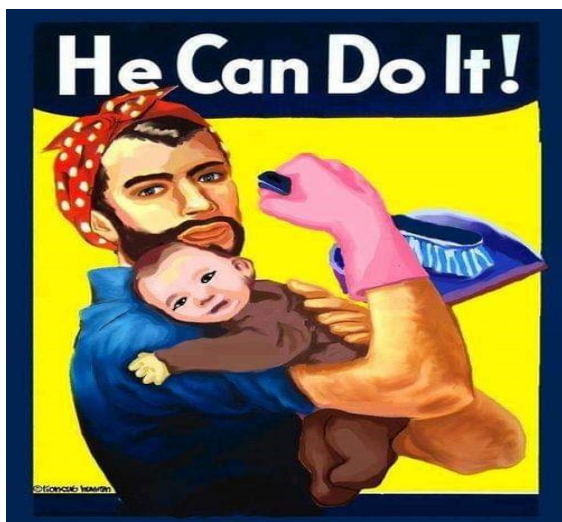
**Resources on work-place** (HR departments and union reps) could enable easily communicable information for parents on new 'gender equalizing' model, rather than previous gendered models (all cases)

In highly gendered sectors – resources for **information campaigns** could be developed

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Is the EU promoting efficiently a better balance in conciliation of working and family life? Can and should legislation try to change cultural/socially established values?



### New EU initiatives:

- Respond to the need to eliminate stereotypes about the role of men and women in caring for children.
- Aim to rebalance the division of responsibilities at home.
- Availability of paid leave and flexible work formulas substantially reduces the negative effects of family responsibilities on female employment.

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Thanks for your attention

Any Questions?

Any Remarks?

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