

# A Gender Equalizing Regulatory Welfare State?

Enacting the EU's Work-Life Balance Directive in Denmark and Poland

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# A Gender Equalizing Regulatory Welfare State? Enacting the EU's Work-Life Balance Directive in Denmark and Poland

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## **The work-life balance directive: Towards a gender equalizing EU regulatory welfare state? Denmark and Poland compared<sup>1</sup>**

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Regulatory Welfare State"

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### **Abstract**

This paper analyses whether the EU could be emerging as a gender equalizing regulatory welfare state (RWS), through an examination of the tensions arising from the EU's work-life balance directive in two cases: Denmark and Poland. It examines the earmarking of paid parental leave, which has regulatory and fiscal elements. Drawing on the Europeanisation, feminist and regulatory welfare state literatures, we develop three analytical concepts to capture tensions that arise from regulatory decisions at a higher level of governance, but requiring implementation and funding at lower levels of governance. The concepts are EU-national subsidiarity, state-family subsidiarity, and fiscal constraint. Our findings show that the tensions shape the positions of the actors before and after the adoption of the directive. In both countries, there are similar parental leave schemes ex-ante, and similar positions of the major actors' initial stance on parental leave, favouring stagnation. Yet, the plans of implementation show how the actor positions changed, and the likely result is double expansion and degenderization of parental leave. Although in two different institutional settings, the similar outcome suggests that these changes are due to the European Union as an emerging RWS, that influences member states in terms of regulatory instruments with fiscal elements.

### **Key words**

Europeanisation, regulatory welfare state, work-life balance, parental leave, degenderization, Poland, Denmark.

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## 1. Introduction

Distinct models of welfare states and labor markets in the European Union (EU) co-exist in “legitimate diversity” (Scharpf, 2002), and therefore, the EU cannot develop as a full-fledged “regulatory welfare state” (RWS), involving regulation and expenditure in core redistributive areas (Levi-Faur, 2014). Yet, since the EU is a semi-federalized entity, the main means to shape welfare policies is regulation (Obinger et al., 2005). The EU has a regulatory impact in areas that are adjacent to the welfare state, such as anti-discrimination and labor law, especially where decision-making is made through Qualified Majority Vote (QMV) (Falkner et al., 2005). Regulation in EU social policy must respect the principle of subsidiarity, that is, the EU must be the most relevant level of governance, and the EU’s initiatives cannot involve an unreasonable financial burden on member states. The ambition of EU leaders, in the aftermath of the “Great Recession” that followed the 2008 financial crisis, has been to enhance social rights of citizens. To mark this ambition, the EU institutions adopted the “European Pillar of Social Rights” (EPSR) in 2017 to improve social rights for EU citizens. The EPSR, embodying high symbolic political value, consists of 20 principles that update existing policy and regulatory initiatives in the welfare state-labor market nexus (de la Porte, 2019). While the EPSR does not present any entirely new initiatives, reflecting the pattern during the last decade (Graziano and Hartlapp, 2019), the revised regulatory initiatives can have a significant impact on welfare states, from a gender, regulatory and fiscal perspective.

One of the EPSR’s initiatives, the work-life balance directive (WLBD), is central from the perspective of a gender equalizing regulatory welfare state. The WLBD is a revision and renaming of the parental leave directive from 2010 (2010/18/EU), to underline the EU’s aims of gender equalizing policies and high labor market participation (European Commission, 2017). A central provision of the WLBD is earmarking two months of parental leave, which is an extension of the requirement in the 2010 directive, where only one month was earmarked to each parent. Yet, what is distinct in the 2019 directive is the combination of the regulatory requirement of two months earmarked leave, with payment. In addition, while the level of payment is decided by member states, it should “facilitate the take-up of parental leave by both parents” (article 5(2), OJEU, 2019). Although not leading to a fully-fledged regulatory welfare state, the parental leave provision of the WLBD could have regulatory, gender equalizing and even fiscal implications for member states. These consequences can be considerable because, in most EU countries, statutory paid parental leave is associated with low, or non-existent compensation, and consequently, the take-up of parental leave among fathers is low (van Belle, 2016).

Following Benish and Levi-Faur (this issue), we are “transcending the welfare state vs. regulatory state” dichotomy, bridging it with the gender perspective on childcare. In our analysis, we use the RWS perspective - capturing regulatory initiatives at a higher level of governance, with regulatory and fiscal implications for lower levels of governance - with key concepts from Europeanisation and feminist literature. The former highlights the tensions between EU policy and regulatory rights of actors in member states, while the latter highlights that the design of parental leave, together with the level of pay, shapes the take-up of leave among fathers. The RWS perspective applied to the WLBD captures the regulatory component (required earmarking of parental leave), with the fiscal component (level of pay).

The article is organized as follows. Section two summarizes the development of EU parental leave regulation. Section three presents the literature review, the analytical framework, and the methodology, including the case selection. Section four comprises the case studies of Denmark and Poland. Each includes a presentation of the regulatory landscape for earmarked parental leave regulation, and the regulatory responses to the WLBD according to the key concepts of our analytical framework: EU-national subsidiarity (the EU intervening in areas of member state competency), state-

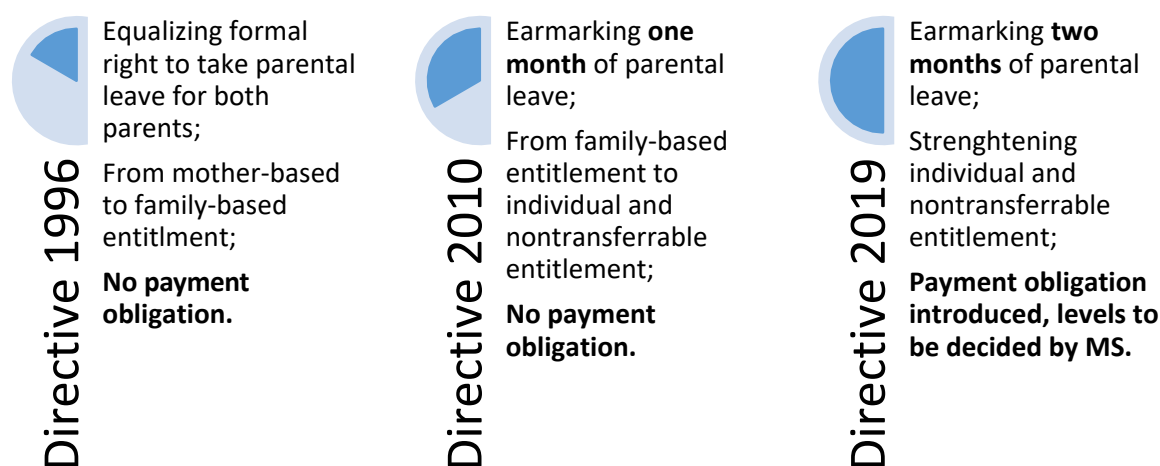
family subsidiarity (the state intervening in decisions considered to belong to the family), and the fiscal dimension. Section five comprises a comparative discussion and a conclusion.

## 2. EU regulation of parental leave

The EU first attempted to earmark parental leave - three months of unpaid non-transferable leave - in 1983, in a proposed directive on parental leave. However, it was contentious among member states due to the EU-national and state-family subsidiarity tensions. It was impossible to reach unanimity, which was required to adopt the directive (Falkner, Treib, Hartlapp and Leiber, 2002; Rubery, Smith and Fagan, 1998). In the 1990s, the political climate changed, with more support for leave schemes, seen to support high labor market participation among men and women (de la Porte, 2019).

The maternity leave directive in 1992, agreed on the basis of a Commission proposal in the Council, involved a fiscal component: the requirement to provide compensation for 14 weeks (European Council 1992). The parental leave directive from 1996, based on a framework agreement between social partners, introduced the possibility for mothers, and for fathers to take three months leave, yet leave was not earmarked and pay was optional (Rees, 2003). Thus, there was no intrusion on the EU-national, state-family subsidiarity or pay dimensions. The effect of this directive has been minimal from a gender perspective, since it is often the mother that takes the leave, especially if it is unpaid (van Belle, 2016). In 2010, the parental leave directive was revised through the EU level tripartite process. The 2010 revised parental leave directive expanded each parents' leave rights to four months and introduced one month of earmarked leave per parent. The earmarked leave did not involve an obligation of payment (European Council, 2010). In the absence of a requirement for member states to provide payment, take up among second carers remained scarce (van Belle, 2016). The directive represents a regulatory change, due to statutory earmarking of leave for the first time.

**Figure 1: Evolution of parental leave regulation at the EU level 1996-2019.**



Source: Own construction on the basis of the directive texts.

In 2019, the EU adopted the work-life balance directive, repealing the previous parental leave directive. In doing so, the potential for EU-led regulation of parental leave has been enhanced, involving regulation and pay (even if decided in member states) (OJEU, 2019). The time-frame for implementing the directive has been extended from two to three years, as it is deemed to be complex among member states (Ministry of Employment, 2018). This also makes it interesting to analyze the shifts in position in member states with regards to earmarking leave during the preparatory period.

### 3. Literature Review, analytical framework and methodology: Towards a degenderizing EU regulatory welfare state?

#### 3.1. Literature Review and analytical framework

In the following, we present concepts from relevant literature and relate them with the parental leave regulation of the WLBD. From each relevant body of literature - Europeanisation, feminist, and RWS – we derive key concepts, which we integrate into the RWS analytical framework.

Firstly, the literature on Europeanisation of social policy focuses on the EU legislation in gender equality, anti-discrimination, and various areas of labor law, such as working time, and health and safety. The EU has various directives that involve social regulation, and in some cases, a fiscal component. The fine-grained literature on EU social policy shows that political culture and fit-misfit with the EU regulatory system are crucial factors shaping member states' implementation patterns (Falkner et al., 2005; Falkner and Leiber, 2004). Some scholars find that EU social policy has been integrated with existing institutions in national contexts, with few substantive changes (Busby and James, 2015). Others underscore that although the EU has limited redistributive competencies, its regulatory policies have a redistributive impact, even involving costs carried by member states when implementing EU policies (Haber, 2017; Martinsen, 2007). Some authors highlight that EU regulation has led to changes in areas where there has been a stalemate in the national context (Falkner, et al, 2002). In their work on the EU's parental leave regulation from 2010, Falkner and Leiber (2004) highlight the clash between labor law regulation in member states – which could be governed by social partners and/or the state - and EU regulation. Following this lead, we seek to capture the potential tensions between EU regulation and the institutional context in member states. We thus conceptualize EU-national subsidiarity as EU-regulation that can impinge upon national modes of policy-making at the welfare state-labor market nexus.

Secondly, the feminist literature examines the gendered implications of work-life balance policies, including parental leave policies, which seek to engage parents in caring for children, close to the time of child-birth (Ciccia and Bleijenbergh 2014; OJEU, 2019). Following the WLBD, parental leave is “leave from work for parents on the grounds of the birth or adoption of a child to take care of that child” (OJEU, 2019). Relevant concepts from the feminist literature are “genderizing” policies that maintain traditional gender roles: female-carer and male bread-winner in child-rearing, while “degenderizing” policies aim to equalize participation of *both* parents in child-rearing (Saxonberg, 2013; Fraser, 1994). When parental leave involves individual, non-transferrable entitlements, together with a high level of pay (full salary or high replacement rate of salary), then care practices have the potential to become more gender equalizing (Saxonberg, 2013). The empirical evidence from countries with such schemes – including Sweden - shows that take-up among fathers is comparatively high (Lundqvist, 2015). Furthermore, countries with such schemes often have lower gender inequality on the labor market, because men and women share leave in conjunction with child-birth more equally. When parental leave schemes involve only optional rather than earmarked leave, then leave is primarily taken by mothers, making such schemes implicitly “genderizing” (Saxonberg, 2013). The EU's 2010 parental leave directive, has, even if requiring parental leave to be earmarked for one month, had very little degenderizing effect, because in most countries, leave is unpaid or compensated at a very low level (van Belle, 2016).

The feminist literature also highlights the political and societal tensions that arise with introducing provisions in work-life balance targeted at fathers. This is because it involves (earmarking) parental leave through regulation, which could be considered as violating families' right to choose. This is particularly prominent in countries, where parental leave is a *family* rather than individual entitlement, enabling families to choose how they utilize parental leave (Rogg Korsvi and Warat, 2016; Borschort, 2006). The EU's WLBD compels each Member State to reserve at least two months for each parent, with the obligation to secure payment during the period of the leave, at a level that should, in

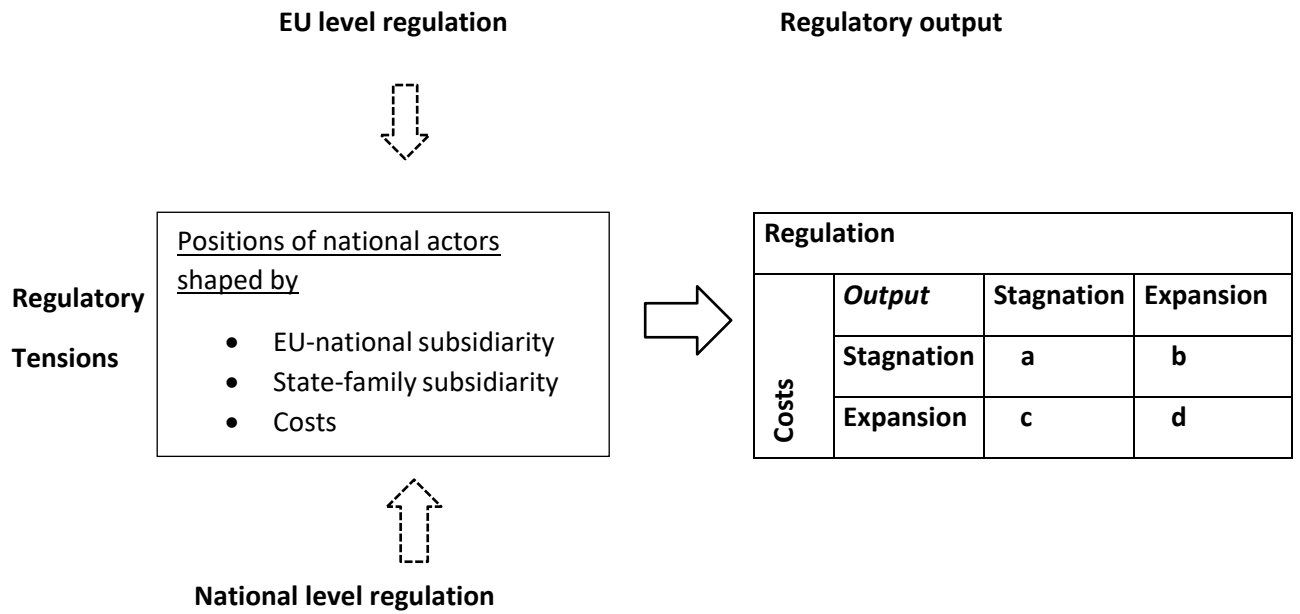
theory, facilitate take-up of parental leave by both parents (OJEU, 2019). Therefore, our second concept is state-family subsidiarity, which captures the tension that can arise when states regulate in areas that are identified as belonging to the private (family) sphere.

Thirdly, the RWS perspective is particularly useful regarding parental leave because it captures the tensions between multiple levels of governance – EU and national level – and merges social regulation with social spending. Furthermore, the RWS literature also highlights the tensions between regulation at a higher level of governance, with hidden costs for the lower level of governance, which implements a policy (Levi-Faur, 2014; Harper, 2017; Benish et al. 2017). Our third concept is fiscal constraint, which captures the tension arising from a cost, to be covered at the lower level of governance, without distribution from the higher level of governance. This cost could be carried by the (welfare) state, employers-employees (in collective agreements), or social insurance schemes (Falkner and Leiber, 2004; Obinger et al., 2005). In case the level of pay accompanying the earmarked leave is very low or non-existent, then the cost would be borne by the family, which is implicitly genderizing. In case the level of pay to accompany leave is high (or full wage compensation), then the scheme would be degenderizing (Saxonberg, 2013).

These three tensions shape the positions of various actors, and will ultimately lead to different kinds of regulatory outcome. Following Levi-Faur (2014), social regulation and fiscal means applied to parental leave could expand, stagnate (leave unchanged) or retrench parents' leave rights, and may thus reinforce one another or entail mixed dynamics, which promote or hamper policy development in the area of fathers' leave rights. In practice, and applied to the WLBD, it can lead to different policy outputs with distinct implications for the degree on degenderization, depending on the starting point of a member state and on the how a provision is implemented. In countries where there already is at least two months of statutory earmarked leave at a relatively high level of compensation, then the WLBD would not lead to any change, that is "stagnation", in terms of regulation, financial compensation and gender equality ("a" in figure 2). Another possibility is "regulation-led expansion" ("b" in figure 2), when EU regulation expands - earmarked leave - but where the fiscal component stagnates. Due to the absence of financial compensation, this would probably not lead to increased take-up of leave by fathers and would thus be implicitly gendered. The third possibility is cost-led expansion ("c" in figure 2) which entails that the fiscal component is expanded, often from unpaid or low levels of compensation to more generous payment. However, if the leave is not earmarked, then it could be genderizing, while if the leave is already earmarked, it could be degenderizing, if the level of pay is high. The fourth possibility is "double expansion" ("d" in figure 2), which involves introducing two months of earmarked leave (regulation) and ensuring a high level of payment, to encourage both parents to take up leave. In countries where it does not already exist, it would entail a shift from family-based to individual and non-transferrable entitlements, and thus add an additional two months of parental leave to existing parental leave schemes, together with a high level of financial compensation, provided by social partners or the state. This regulatory output would *de facto* encourage higher uptake of parental leave by fathers, and thus lead to degenderization in care practices.

The adapted version of the RWS, taking account of three tensions, will be applied to our own analysis. In the earmarking of leave in the WLBD, the EU as regulatory state specifies the regulatory standards - individualizing the right to paid parental leave and requests the level of compensation to encourage the take-up of leave among mothers and fathers - but leaves the level of payment to member states, following the EU's principle of subsidiarity. As explained above and illustrated in figure 2, the directive can lead to different regulatory outcomes, depending on how the regulatory and fiscal provisions from the WLBD on parental leave are implemented (Levi-Faur, 2014: 605).

**Figure 2: Analytical framework “EU (degenderizing) regulatory welfare state”**



Source: own construction; Regulatory welfare state output adapted from Levi-Faur (2014)

### 3.2. Methodology, including case selection

Our country case selection strategy is based on the most different systems design, but focusing on similarities (Levi-Faur, 2006). Denmark and Poland differ on a number of parameters, including for policies influencing female economic autonomy, such as child-care (see table 2 below). However, in terms of statutory regulation of parental leave, both countries have similar statutory provisions, whereby the potential for a Europeanized impact is comparable. In Denmark, there is dual regulation of parental leave. Social partners regulate parental leave for those covered by collective agreements (83% of the labor force), while statutory leave covers workers not covered by collective agreements. It is to be noted that earmarked parental leave covered by collective agreements involves full wage compensation, for parts of the leave period, while longer leave is covered by statutory pay only, which is lower (at the level of unemployment benefit). The second case, Poland, is statutory regulation, with limited involvement of social partners in the regulatory process. The pay is provided through social insurance, and is thus dependent on employer and employee contributions for mothers and fathers that are active on the labor market. There is a scheme with flat-rate monthly payment (for 12 months) for those that are not insured, and thus, de facto, coverage is achieved for all citizens.

Thus, if the response to regulatory pressure from the EU is similar in these two EU countries, then the results would be applicable for countries with similar regulatory features, i.e. the first group of countries characterized by dual regulation with social partner autonomy and statutory rules and the second group of countries characterized by only statutory regulation of parental leave policy. Table 1 below summarizes our case selection process and criteria, according to means of labor market regulation, and financing of parental leave schemes.



**Table 1: Case Selection for Parental Leave Regulation**

	Regulation of Parental Leave		
Costs of parental leave		State	Social Partners
	State	<b>Denmark</b> (flat rate, at level of unemployment benefit); <b>Poland</b> (flat rate for uninsured)	
	Labour market/Social Insurance	<b>Poland</b> (60-80% wage compensation)	<b>Denmark</b> (100% wage compensation for part of the leave)

Source: Own construction.

Prior to the implementation of WLBD, both countries have 32 weeks of paid parental leave, but they only had one month of unpaid earmarked statutory parental leave (for childcare leave in Poland, see section 4.2.1). Yet, there are different regulatory dilemmas. In Denmark, all parents have the right to (non-earmarked) statutory paid leave (at the level of unemployment benefit). Most Danish parents, however, are also covered by collective agreements, giving them the entitlement for full-wage compensation for part of parental leave period. In Poland, parental leave is regulated at state level, and the compensation rate for the total period is between 60 percent and 80 percent of the wage. Despite the regulatory differences and distinct levels of compensation in Denmark and Poland mothers continue to take most of the leave in both countries, thus the leave schemes are implicitly gendered. Yet, the broader work-life balance policy differs in the two countries, as Denmark has publicly subsidized and widely available child care for children under three – 66 percent are enrolled in child-care – while in Poland it is only 10,2 (see Table 2).

**Table 2: Denmark and Poland: Parental leave and child-care for 0-2-year olds**

	<b>DENMARK</b>	<b>POLAND</b>
<b>PARENTAL LEAVE</b>	32 weeks of paid leave, transferrable (family-based) entitlement. Statutory pay (flat-rate, at level of unemployment benefit) but full wage compensation for up to 18 weeks in collective agreements*.	32 weeks of paid leave, transferrable (family-based) entitlement. 60 percent or 80 percent wage replacement. Additional scheme of flat-rate payments for uninsured
<b>CHILDCARE ARRANGEMENTS</b>	66 percent of children under three enrolled in childcare. High subsidization and public provision (delivered at municipal level). Guarantee for child-care for all.	10.2 percent of children under three enrolled in childcare. Government program of subsidies is based on open calls. Allocation of subsidies is discretionary and there is not child-care guarantee

Source: Data on parental leave: The international network on leave policies (leavenetwork.org, data for April 2019); data on childcare enrolment: Eurostat (2019).

\*Parents' rights to full-wage compensation varies depending on the collective agreement.

Methodologically, we carry out structured focused analyses, using the case study method (Bennett and George, 2005). All our data is analyzed on the basis of the conceptual distinctions, pertaining to gender equalization and the regulatory welfare state, especially EU-national subsidiarity, state-family subsidiarity and costs. Our data includes 11 elite interviews, primary documents (document analysis),

as well as an analytical vignette (as background information) to locate the position of key actors that influence or are involved in the policy-making process. As the directive is not yet implemented, we trace the changes in positions of the actors over time, with a focus on how they respond to regulatory pressures from the EU. This enables us to assess whether changes could be due to the EU regulatory pressure. We use process-tracing as a way to assess the extent to which changes are due to the EU and/or other factors.

#### **4. The political and regulatory responses in member states**

##### **4.1. Denmark**

###### **4.1.1. The regulatory landscape for parental leave**

Parental leave in Denmark is shaped by dual regulation (see table 1). The collectively agreed rights are developed in the Danish industrial relations model, where social partners self-regulate issues pertaining to the labor market. The union density - 63 percent in 2018- and the collective agreement coverage - 84 percent in 2017 - are high (OECD, 2017). Wage and working conditions, including parental leave, sometimes earmarked and sometimes with full pay, are primarily regulated through collective agreements at sectoral and at company level (Due and Madsen, 2008). Most collective agreements have more extensive parental leave rights than the legislation, in terms of earmarking and pay (Larsen and Navrbjerg, 2018). For workers not covered by collective agreements, there is a statutory parental leave scheme (with no earmarking) but pay is rather low (unemployment benefit level).

###### **4.1.2. Subsidiarity: EU-national level**

Proposals for EU directives hardly ever make it to the public agenda. The WLBD, however, was one of the most publicly debated directives ever, due to strong opposition among most political parties and stakeholders (Interview Danish Ministry of Employment, 2019), mainly arising from a combination of EU-national and state-family subsidiarity tensions. The reaction among political parties, including the major parties in the center-left and center-right, has been skeptical. During the negotiation of the directive, the conservative-liberal government (2015-2019) was openly hostile to the directive. In the Council, Denmark opposed the directive. In the EP, Danish MEPs from left and right opposed (with a few exceptions: Social liberals (Radikale Venstre) and the socialist party (SF)). Since then, the left-leaning minority social-democratic government (2019 - ) has followed in these footsteps. In particular, the newly appointed Minister of Equality announced publicly in 2019 that Denmark would ask for an exemption not to implement the directive, which he later retracted. The fear of EU making decisions in an area regulated by social partners was one of the main reasons for this, i.e. EU-national subsidiarity and has been a long-standing Danish position towards EU-regulation (Kristiansen, 2015). There is also a fear that the European Court of Justice would play a role in interpreting the provisions of the directive as has been seen with past rulings in the labor market area (Larsen and Andersen, 2007). The only parties that supported the directive both before and after its adoption are smaller support parties on the left: the social liberals, the alternative, and the socialist party.

It remains uncertain how the Danish government will proceed with transposing the directive into Danish labor law. It is likely that this will be closely coordinated with social partners, as other directives in labor law (Kristiansen, 2015). Yet, the Ministry of Employment assessed that Denmark could not present a yellow card to the Commission (indicating that the EU did not have the right to legislate in this area), because it was a revision of an existing directive, rather than a new directive. Thus, there was no legally justified case to be made for the EU encroaching member state competency (Ministry of Employment, 2018).

Among social partners, initial reactions, during the negotiation of the directive, were mostly skeptical, due to the fear that the EU would force the Danish state to legislate more on parental leave, and thereby, undermine the authority of social partners in parental leave. The main trade union confederation FH - especially its blue-collar member organizations Danish Metal and 3F (The United Federation of Danish workers) - initially opposed parts of the directive on the grounds that it undermines the Danish labor market model as well as uncertainties about who would carry the associated financial costs (Interview The central organization of Industrial Employees in Denmark (CO-industri), 2019). However, these unions have, following the adoption of the directive, included novel elements in their collective agreements, extending their earmarking of paid leave for fathers, in line with the aims of the directive. Thus, they have attempted to minimize state intervention in their bargaining area of parental leave. After the adoption of the directive, there have also been changes among other private sector social partners. In February 2020, social partners within manufacturing extended the earmarking of paid parental leave for fathers from five to eight weeks with full-wage compensation, to be in line with EU's directive. Subsequently, all other private sector social partners followed suit and agreed to earmark eight weeks of parental leave for fathers with full-wage compensation. This trend is due to the regulatory set up for collective bargaining in the private sector, whereby social partners in manufacturing usually conclude their sectoral agreement, that then inspires or in some instances even dictates agreements in other bargaining areas (Due and Madsen, 2008). In a few sectors, the requirement of earmarking of paid leave was already implemented prior to the WLBD. In these sectors, such as banking, social partners aim to keep status quo, since they already offer 12 weeks of fully compensated parental leave per parent (The Danish Employers' Association for the Financial Sector (FA) and The Financial services union (Finansforbundet), 2020). The recent regulatory changes agreed by social partners, were adopted prior to state involvement in social partner territory in the area of parental leave. This suggests that the EU is an emerging RWS, resulting in double expansion in the regulatory and fiscal area in Denmark.

#### **4.1.3. Subsidiarity: state-family**

The political parties and unions that oppose paid earmarked leave use implicit gendered arguments, arguing that earmarking parts of the parental leave intervenes with families' rights to organize their leave arrangements according to their individual needs (Borchorst, 2010; Rostgaard, 2002). Thus, earmarked parental leave has also been controversial in Denmark on the state-family subsidiarity dimension, prior to the WLBD. The Helle-Thorning government (2011-2015), pledged to introduce earmarked parental leave, especially to encourage fathers to take leave. However, due to disagreement in the parliament this was not adopted (Larsen and Navrbjerg, 2018). In the negotiations prior to EU adopting the WLBD, some unions, under the Danish Trade union Confederation (LO, now FH), feared that fathers would not use their earmarked leave, and that, if it could not be transferred to the mother, then it would result in less parental time with children (Interview The Danish Trade Union Confederation (FH), December 2019; LO, 2017). On the other hand, union confederations, such as The Confederation of Professionals in Denmark (FTF) and The Danish Confederation of Professional Associations (AC), have, similar to the Socialist Party, the Social Liberals and the Alternative, welcomed the directive. They argue that improved rights for fathers could promote gender equality in the Danish labor market (The Employee Committee, 2017).

With the WLBD being adopted, some employers recently changed position. The Confederation of Danish industries (DI) - the largest employers association and often a first mover among the employers in the private sector - announced that they no longer opposed statutory earmarking, but were instead, in favor of such arrangements (Interview: The Confederation of Danish Employers (DA), 2019). They also agreed with the unions to earmark eight weeks paid leave for fathers in their collective agreements. However, their motivation may be driven by concerns of keeping politicians and implicitly EU at arms-length, rather than a genuine interest in promoting gender equality, especially in the light of Danish employers' historical opposition to earmarked leave for fathers. After DI changed its position, another major umbrella organization for Danish employers, the Danish Chamber of

Commerce (Dansk Erhverv) also changed position. It had previously been very skeptical and their changed position is similar to DI, mainly due to retaining regulatory powers, even if a double expansion would entail additional costs on business (Danish Erhverv, 2020, Interview DA, December 2019).

#### **4.1.4. Costs**

Social partners are under no obligation to provide payment for earmarked parental leave. However, in Denmark, the associated costs for paid parental leave are divided: the state covers statutory paid leave at the level of unemployment benefits, while social partners through collective agreements top-up parts of the parental leave, so employees receive full wage compensation. The additional costs up to full-wage compensation are borne by the employers with distinct collective agreed and statutory funds (*barselsfonde*) compelling all employers to contribute to these funds and thus spread the associated leave costs across male and female dominated businesses. The Danish social partners in the private sector have agreed that the two months of earmarked parental leave for fathers required by the directive should be paid with full wage compensation, although there also are examples of more generous leave entitlements for fathers in some collective agreements. This means *de facto* that the cost of parental leave will partly be on the employer in areas of the labor market covered by collective agreements, topping up the flat-rate provided by the state. This is likely, as it would be in line with the current regime on the part of parental leave that is paid. Statutory earmarked leave is likely to be at the level of unemployment benefit. Furthermore, this would also ensure at least a minimal coverage for parents that are not covered by a collective agreements. This would, in turn, ensure that the Court of Justice would not be able to intervene on this aspect.

Thus, the EU's directive has offered a leeway for some key stakeholders to change position, to overcome political stalemate, and to push through reforms in the area of parental leave, in order to avoid government intervention (EU and national level). Thus far, social partners have adopted measures that are altering the Danish parental leave landscape. This means that for parents covered by collective agreements, the earmarking of parental leave will benefit fathers, with full wage compensation, while mothers will be less penalized on the labor market in conjunction with child-rearing. For fathers not covered by collective agreements, the level of pay for earmarked leave is not yet settled. In the area of earmarked parental leave, the directive seems to be leading to double expansion – regulatory and fiscal - which can be considered degenderizing.

### **4.1. Poland**

#### **4.1.1. Regulatory landscape before adoption the directive**

The regulation of family-related leave schemes in Poland is rooted in the state-socialist past, where mothers had the right to 16 weeks of maternity leave with full wage compensation and an optional leave for *childcare* (unpaid or means-tested flat-rate monthly allowance for 24 months max). Since the 1980s, fathers have had access to the scheme in extraordinary circumstances. At that time, *parental* leave, as such, did not exist in Polish legislation. In preparation for EU membership, regulation in equal treatment was adopted in 1996, whereby the Labor Code was amended to introduce the equal right for fathers to use the *childcare* scheme. It was a family-based entitlement, rather than an individual right for each parent.

These schemes remained unaltered until 2010 directive, when one of 36 months of the unpaid (or flat-rate) leave childcare leave was earmarked. The most significant change in parental leave arrangements took place in 2013, when the centre-right (liberal) Civic Platform-led government introduced 26 weeks of paid *parental* leave, which was later extended to 32 weeks. Together with extended maternity leave, the leave extends now to 52 weeks. In parallel to this leave scheme, a flat-rate parental benefit is available for uninsured parents, for up to twelve months.

Unlike in Denmark, social partners are not involved in the design and implementation of various social policies. The Union density is 12 percent, while the collective bargaining coverage is low, at 17.2

percent (OECD, 2017). Thus, welfare reforms are highly politicized, with the political parties as the main actors, and/or hidden from the public debate, in a technocratic environment.

#### **4.1.2. Subsidiarity principle: EU vs. nation state**

The right-wing, populist Law and Justice government(s), which has been in power since 2015, has dominated recent debates and decisions on family policy, to promote traditional family values. This included a child-care benefit program, to encourage families to have children. Thus, it opposed paid earmarked leave and has been against the EU having any role in this area. Poland voted against the first version of the directive in the Council, in June 2018, and abstained in 2019. When the directive was announced in 2017, the then-minister of family, labor and social policy argued that “what the directive suggests is interfering too much in our national law” (GP 2017). In contrast to Denmark, the Minister wanted to initiate a yellow card procedure (GP 2017). Thus, a special resolution issued by the Parliament in 2017, argued that the EU was breaching the principle of subsidiarity, although the resolution recognized the need to support individual entitlements for parental leave for both parents (Sejm 2017). The Law and Justice party was opposing the directive in multiple policy arenas, including the European Parliament. According to Joanna Wiśniewska, Law and Injustice MEP, the directive violated the principles of subsidiarity and proportionality at the same time (Wisniewska 2017). Yet, because it is a revision of an existing directive, it was not possible to launch a yellow-card procedure.

In contrast to the government, the major trade union organizations- NSZZ Solidarność (2017) - expressed their direct support for the directive while - OPZZ, All-Poland Alliance of Trade Unions (OPZZ 1) - tacitly supported the EU’s initiative. They stressed the EU’s role in enhancing the social policy standards, thus positioning themselves *against* the government and the Parliament (Interviews: Solidarność 2020a; OPZZ 2020; TUEx 2020). While Law and Justice leaders emphasized the magnitude of changes relating to parental leave, trade union representatives underlined (both before and after directive) that the regulation fills a gap in family policy provisions (TUEx 2020) and represents one of the most important initiatives of the EPSR (Solidarność 2020a). Trade union representatives stressed the importance of EU regulatory power against the weakness of social dialogue in Poland (Solidarność 2020a, Solidarność 2020b, OPZZ 2020). In contrast to most Danish trade unions, the unions in Poland would like to see more EU regulatory activity in welfare issues, as it is also a way to enhance their own legitimacy. Finally, employers’ organizations accept the general goals set by the EU, although, like most employer organizations across the EU, they do not want regulation to hamper business activity (Leviatan 2020).

When it became clear that the directive would be adopted, the government refrained from commenting on the directive altogether, but found the revised version of the directive acceptable. As commented by one of the Deputy Ministers of Family, the fact that member states could decide on the level of the benefit granted during earmarked leave, was seen as positive (Żebrowski 2019a). Furthermore, the minister also mentioned that the Council for Social Dialogue (an official tripartite body) should be engaged in implementing the Directive (Żebrowski 2019b.) Thus far, the Ministry has not called for any meetings or consultations (Interviews: Leviatan 2019; OPZZ 2020; Solidarność 2020; TUEx 2020).

#### **4.1.3. Family-state subsidiarity**

Positions by the actors on the earmarking the leave were not only related to the EU-national subsidiarity, but also to the state intervening in the private sphere. The government interpreted earmarking leave as “violating family’s autonomy”, while also “threatening children’s well-being”, especially if the mother does not have access to the leave, which was expected to be unused by fathers (Janos 2017). This mirrors the debate among skeptical actors in Denmark. Employers also argued from a state-family subsidiarity perspective, that “taking the two months away from mothers...may harm the children” (Janos 2017).

The level of support for earmarking leave expressed by the two major trade union confederations is differentiated on the dimension of family-state subsidiarity. In contrast to NSZZ Solidarność, OPZZ did not issue any official statement in support of the Directive, because there was lack of agreement among the unions within the federation on earmarking leave. Some unions considered it interfering with family decisions, and thus it was difficult to issue a statement in support of it (OPZZ 2020). It is also to be noted that NSZZ Solidarność, although very positive towards the directive itself, did not explicitly support earmarking of leave, implying that there were skeptical voices among their member organizations. Nevertheless, Solidarność in general supports solutions that would strengthen fathers' entitlements and support women's participation in the labor market (Solidarność 2020). This comes as a surprise, as usually the political links between Solidarność and Law and Justice are strong.

Proponents for EU regulation stressed it is important for enhancing gender equality. The biggest opposition party, Civic Platform, a center-right, liberal and pro-EU party previously in office (2007-2015) with Donald Tusk as a Prime-Minister (2007-2014), supported the directive in the European Parliament. A Polish MEP, Agnieszka Kozłowska-Rajewicz, was a Rapporteur for the directive representing the Committee on Women's Rights and Gender Equality (FEMM). A former head of the national gender equality machinery (during Civic Platform's term in office), she advocated for adopting the directive to achieve genuine gender equality at home, therefore positioning herself against arguments relating to how the directive might interfere with internal family issues and violate the freedom of choice and in support of degenderization (Kozłowska-Rajewicz 2018)

#### **4.1.4. Costs and fiscal consequences of regulating parental leave and benefit**

Parental leave benefits are paid by the National Insurance Fund and financed through employee contributions, to the "sickness and maternity" fund. If there is a deficit in the Fund, the state budget may provide subsidies, or a loan to be paid later. Therefore, *direct* costs of two additional months of benefit would not be carried directly by the employers but by the National Insurance Fund (with employers and employee contributions), possibly supplemented by the state budget. Therefore, there is a chance that regulation of earmarked parental leave, decided at the EU level, could have fiscal consequences for the state budget. This could materialize, because the sickness and maternity fund has the biggest deficit among all funds in the National Insurance Fund. The contribution covering 60 percent of the costs, while the state covers 40 percent (ZUS 2016).

In terms of *indirect* costs, if the government decides to extend the existing leave by two months, this would mean longer breaks from employment, which would burden employers. Thus, employers' organizations prefer that two months should be earmarked out of the current six months, rather than adding two additional months (Leviatan 2019). However, since the cash transfers are paid from Central Insurance Institution, the argument of cost is not of major concern. More recently, Responsible Business Forum (employers' association) declared an explicit support for the Directive, engaging in research on Poles' attitudes towards earmarking, that suggest there is a moderate but clear societal support for these solutions among both women and men (RBP, 2020).

Although there was initially strong resistance in Poland against adopting the Directive, the attitude in government has changed after its adoption to minimizing its effect. However, because the government wants to present itself as family-friendly, it may decide to add two months on the top of existing scheme. Overall, business organizations and unions support the directive, yet they are not involved in the process yet.

## **5. Comparative discussion and conclusions**

We have analyzed the regulatory responses to the WLBD in two different cases, but with *ex-ante* similar parental leave policies. Our adaptation of the RWS perspective captures how regulation, together with a requirement of fiscal commitment, at a higher level of governance could lead to gender equalizing change at a lower level of governance. We have added three new concepts –

drawing on Europeanisation and feminist literature - to cover tensions related to implementation of EU regulation. EU-national subsidiarity captures the extent to which actors in national contexts perceive EU activity as encroaching on their regulatory rights. State-family subsidiarity refers to the extent to which state regulation causes a tension about the state deciding on issues that could be considered to belong the private sphere. Costs refers to the fiscal challenges regarding regulatory policy – in this case the implementation of earmarked leave – through statutory means and/or through employers and/or employee contributions in social insurance or collective agreements.

Although the EU does not have exclusive regulatory power in the welfare state, it has progressively extended its regulatory reach in parental leave. We have argued that it could have a degenderizing effect, by individualizing the right to paid parental leave. The case studies reveal that the main actors in Denmark and Poland were skeptical about the WLBD prior to its adoption mainly due to the EU-national and state-family subsidiarity issues. After the adoption of the WLBD, actors in Denmark and Poland changed position, because it was clear that they had to implement the earmarking of leave. In Denmark, social partners in the private sector have embraced earmarked leave and extended existing collective agreed leave schemes, together with full wages. The pro-active regulatory engagement of social partners with earmarked leave helps them to maintain their legitimacy among their constituents, and to avoid regulatory intervention by the state. For those without collective agreement coverage, it is also likely to be de-gendered regulatory expansion, but at the level of unemployment benefit, to keep costs neutral. In Poland, the government is silent, and most likely pushing the decision until the last moment, however, no longer openly criticizing the directive. Concerning the cost component, this is a major concern as the government may not want to burden the national insurance fund, which is already under pressure, however, the government also wants to be perceived as family-friendly, so extending the duration of paid parental leave is likely. The developments in both countries move from supporting no-change and implicit genderization, towards double expansion, with plans to individualize leave through earmarking. Furthermore, in both countries, the level of pay envisaged is in line with the aims of the Directive, that is, at a comparatively high level, which makes the schemes degenderizing. Although in two different institutional settings, the similar process among actors in the two countries allows us to attribute the causal impact of change to the WLBD. Thus, degenderizing change is being induced by the European Union as a RWS, combining regulatory with fiscal elements.

Based on our cases, we draw tentative conclusions on the likely implementation of the directive across different welfare states. First, the earmarking of leave as such is not foreseen to be a major challenge, as it is a relatively small extension of what already existed in the 2010 directive – from one to two months of earmarked parental leave. It is on the dimension of pay that we expect differentiation across member states, which may have major consequences for the impact of the WLBD, because a high level of pay during parental leave is crucial for the take-up of leave. We expect those countries that already have a long (albeit gendered) parental leave, with generous compensation, to be able to earmark two months of leave for fathers. The likely outcome of this is that fathers would increasingly take parental leave, leading to more degenderizing care practices. Thus, the long-term effect could be upwards social convergence – take-up of parental leave among men and women – despite different models of labor market regulation and different sources of compensation (related to state and social insurance). Future research could focus on the impact of earmarking of leave for fathers in countries where there is currently unpaid leave.

There are other regulatory initiatives in the EPSR in the pipeline, including an initiative for an EU minimum wage. The EU minimum wage – especially if mandatory and adopted through regulation – has a tension in terms of EU-national subsidiarity, and in terms of costs. Concerning EU-national subsidiarity, the issue of which actors would be involved in regulatory implementation would arise, and the issue of costs would also arise, although it seems it would be borne by employers. The state-family subsidiarity is not, at first sight, present in the issue of wages, although there is an implicit issue of gender, considering the predominance of women in low-wage service sector jobs. Our findings for

the earmarking in the WLBD indicate that tensions can be captured with our supplementary concepts to the regulatory welfare state framework. Thus adapted RWS framework could be used for future research on the RWS, especially in federations and in the EU context.



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### **Analytical vignette**

Analytical vignette (collected according to the EU-national, State-family, and costs dimensions) was made for each relevant policy actor.

### ***Elite interviews***

#### Denmark:

- Interview Danish Ministry of Employment, 2019
- Interview FH, 2019
- Interview DA, 2019
- Interview with CO-industri, September 2019
- Interview with Danish Metal, November 2017
- Interview with 3F, December 2017

#### Poland:

- Interview with employer's organization 'Leviatan', October 2019 (Leviatan 2019).
- Interview with an anonymous trade union expert, February 2020 (TUEx 2020).
- Interview with OPZZ, February 2020 (OPZZ 2020).
- Two interviews with NSZZ Solidarność, February 2020 (Solidarność 2020a and Solidarność 2020b).