

# Strengthening European Social Rights via the Work-Life Balance Directive?

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# Eu Social Cit

European Social Citizenship

## Strengthening European social rights via the work-life balance directive?

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## Summary

This deliverable examines the potential of the directive on work-life balance (WLBD) to increase the role of fathers in care, and thereby, to enhance possibilities for mothers to retain and strengthen their link to the labour market. The main instruments through which the directive seeks to lead to enhanced social rights for fathers/second carers are *paternity leave* (10 days, payable at the level of sick pay), and *earmarked parental leave* (2 months, with a high level of compensation). These provisions are examined in the national case studies, applying two components of the power resources framework: normative *and* instrumental resources. Regarding instrumental resources, we focus on easily accessible (digital) application procedures; the development of information targeted at workers, i.e. through union representatives and/or HR departments; and targeted information campaigns.

Concerning normative resources, in three countries that had long leave, but did not previously earmarked paid parental leave (Denmark, the Netherlands and Poland), the planned financial compensation for the new period of reserved leave will be relatively high, which can be conducive to take-up. Thus, the countries that were furthest away from the father-specific provisions pre-directive, are most ambitious regarding implementation of formal social rights. By contrast, for France, where the level of compensation for parental leave is very low, i.e. below the minimum income, changes to the level of compensation have not yet been settled. In Spain and Germany, which have relatively long reserved rights for fathers pre-directive, few changes are planned. However, even in countries with generous formal social rights to formally implement the WLBD, there are significant differences in the instrumental resources devoted to a shift from *de jure* to *de facto* use of social rights. Concerning accessible (digital) application procedures, this is extremely important to plan, to incentivize leave among fathers. Denmark is making plans to ensure that all citizens understand and have access to their (new) rights. In the Netherlands, similar efforts are underway, while in Poland, this is currently not being addressed, as the aim of the government is to maintain the status quo in terms of parental leave take-up (mainly by women). In Germany and France, there are, no new resources currently devoted to communicating or simplifying the application procedure. In both countries, it is highly complex, due to separate applications for leave and for financial compensation. The analysis shows that it is important to consider normative with instrumental social rights, to understand the dynamics of potential take-up of rights. The deliverable concludes with policy recommendations to reap the benefits of the WLBD for European citizens, focusing on the importance of formal leave rights with high compensation, easily accessible and simple information about leave rights, to be communicated by unions & HR departments, easily accessible (digital) application procedures, clarity of terms related to leave and information campaigns targeted in sectors where take-up is low.

# Strengthening European social rights via the work-life balance directive?

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# 1. Introduction

This deliverable examines the potential of the work-life balance directive (WLBD) to support a shift to gender equalization in the private sphere and on the labour market. At the EU level, the double earner-double carer model has been promoted for decades, yet the focus has primarily been on enhancing female labour market participation, with less attention to sharing care responsibilities between both parents (Lewis and Giullari, 2005). The focus is on increasing the active role of fathers in care, and thereby, to enhance possibilities for mothers to retain and to strengthen their link to the labour market. In this way, the directive aims to contribute to changing gender roles, via de-genderizing policies pertaining to work-life balance (de la Porte et al., 2020). The main instruments through which the WLBD seeks to gender roles are paternity leave (10 days, to be paid at the level of sick pay), and earmarked parental leave (2 months, to be paid at a level decided by member states). It is these father-specific provisions which have the most potential to lead to changes in gender roles in care, which is why this is the main empirical focus of the case studies is on the implementation plans of the WLBD.

In line with the overarching aim of EUSocialCit, this paper leverages the power resources framework, in order to examine how member states are implementing the directive. As argued by Ferrera et al. (forthcoming), it is important not only to look at the *de jure* legal implementation, but also at the intention of policy-makers with the directive, as well as the *instrumental resources* devoted to ensure there is not only formal access to social rights, but also means to ensure the actual use of social rights. The remainder of this report is organised as follows. Section 2 presents the EU work-life balance directive, compared to the EU's previous directives on parental leave. It also reflects upon the importance of the directive for European social citizenship and presents the issues of contention in the WLBD. As EUSocialCit puts a great emphasis on stakeholder engagement, it pinpoints insights from a co-creation focus group interview with COFACE, the NGO representing family interests in Europe. This has provided important background information for the case studies on the implementation of the WLBD. Section three presents the country policies of the WLBD prior to the adoption of the directive, which is useful to assess what changes member states have had to make, in order to comply with the directive, at least *de jure*. Section 4 explains how the resources framework is being applied (Ferrera et al., forthcoming) and section 5 presents the case studies of implementation of the work-life balance directive in 6 countries, with a focus on the father specific provisions. Section 6 discusses the implications of the case studies for upwards social convergence through social rights, which is the intention of the European pillar of social rights, under which the WLBD was adopted. The appendices

include the interview guide which was used for data collection, as well as selected comparative statistics.



## 2. Work-life balance directive: Towards EU-induced gender equalization?

### 2.1 EU work-life balance in a historical context and in the context of European social citizenship

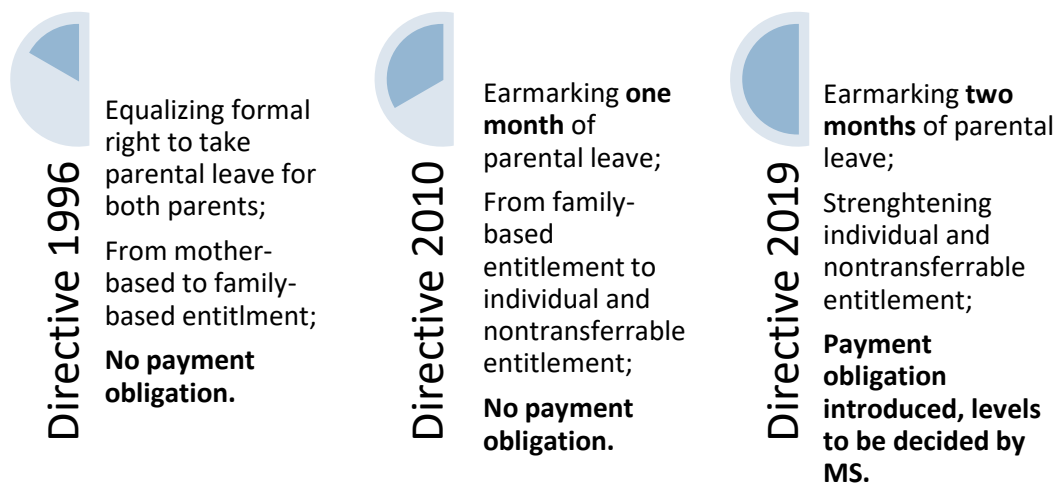
The EU has a strong legal base in regulating issues pertaining to labour contracts, including working conditions, and some regulation of leave for parents for child-rearing purposes. The EU has a maternity leave directive, from 1992, with the requirement to provide compensation for leave for 14 weeks (European Council, 1992). Since the 1990s, the EU's aim to enhance labour market participation of men *and* women has increased, leading to an enhanced focus on recruiting and retaining women on the labour market. The employment rates of women have increased substantially the last 2 decades (see appendix 2.2), and there have been investments increases in ECEC, but it is uneven across countries (see appendix 2.1). Yet, the focus on involving fathers in care has been less pronounced (see Lewis and Giullari, 2005). The care literature highlights the importance of individual non-transferable<sup>1</sup> and well-paid parental leave, to incentivise greater participation of men in care activities, and to enable women to re-enter the labor market after child-birth (Arnalds et al., 2019; Eydal and Rostgaard 2022; Dobrotić and Blum 2019; Geisler and Kreyenfeld, 2018; Daly, 2022).

The parental leave directive from 1996, based on a framework agreement among social partners, introduced the possibility for mothers and for fathers/second parents to take three months leave each, yet leave was not earmarked and pay was optional (Rees, 2003). However, the effect of this directive has been minimal from a gender perspective, since it is often the mother who takes the leave, especially if it is unpaid (van Belle, 2016). In 2010, the parental leave directive was revised, expanding each parent's leave rights to four months and introducing one month of earmarked leave per parent. However, 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 fathers of the reserved month of leave remained scarce (van Belle, 2016). Figure 1 below depicts the changes in EU regulation of parental leave, where the higher level of ambition of the WLBD from 2019 stands out, compared to 1996 and 201, due to the obligation of payment during leave.

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<sup>1</sup> Non-transferability here refers to both parents, having an individual right that cannot be transferred to the other parent. If the second parent (often father, but it can also be a same sex partner) do not use the part of the parental leave that is reserved from them, they lose the right to use the leave (Duvander et al. 2019; Eydal & Rostgaard 2022).

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



Source: Reproduced from de la Porte et al., 2020

As mentioned above, the EU's Work-Life Balance Directive (WLBD) stipulates that 10 days of paternity leave must be given to fathers right after child-birth, to be paid at the level of sick pay. Most countries already complied to this already prior to the WLBD. However, while it is positive, from the perspective of gender equalization that the EU has introduced this leave scheme for fathers, the 10 days around child-birth is too short to substantially alter gendered patterns of care. The WLBD also reserves 2 months of paid non-transferable leave for each parent, in the period after childbirth, which is, as evident from the care literature (Eydal and Rostgaard, 2021), more likely to lead to changes in gendered patterns of care. The WLBD also requires 5 yearly non-specific carer days to be reserved for each parent, but with no level of payment required. Thus, from a gender equality perspective, it is questionable how gender equalizing this provision is, because the literature shows that when rights are not accompanied by wages or cash benefits, it is predominantly women who use such rights. Another provision in the WLBD, is the right for parents to request flexibility in work, but employers are not required to grant this. This is flexibility in working time, but also flexibility in carrying out work (i.e. tele-working).

In sum, the strongest instrument (in terms of design and requirement for payment) from the WLBD for potentially leading to a greater institutionalization of the double-carer, double-earner model is paid father-specific leave. As most countries already have paternity leave, we focus mainly on earmarked leave, which also has the greatest potential to lead to changes in gender roles in care. To incentivize fathers to take leave, the European Commission, and COFACE - the NGO representing family rights - encourages a high level of compensation during parental leave (Focus group interview COFACE, June 2021).

## 2.2 Issues of contention and watering down of the WLBD

Although the WLBD is ambitious from the perspective of normative social rights, it is worth recalling the negotiation process of the directive, in particular the provisions which were negotiated downwards from the original proposal in 2010 to the final adopted version of the directive in 2019. The points of contention which were raised, and the compromises which were made may influence the implementation process. This is important, because it could, ultimately, have an impact on citizens from a social rights and gender equalization perspective.

First, a host of countries, especially the Nordics, argue that the Commission's WLBD proposal initially breached the principle of *subsidiarity*, undermining social partner authority in labour market issues (de la Porte et al., 2020). Following the principle of *subsidiarity*, the EU level of governance should only intervene if it is of added value. The Netherlands also argued that the WLBD did not address a cross-border issue, compromising the EU's involvement in this area, i.e. the decisions regarding welfare-labour market issues should be taken at the lowest possible level of governance. However, the WLBD was the revision of a pre-existing directive on parental leave, and thus, these arguments could not be sustained.

Secondly, there was contestation on a related but separate issue, i.e. the *financial costs* associated with the new social rights. In fact, the Commission's initial proposal of the WLBD stipulated that paternity, parental and carers' leave should be remunerated at least at the level of sick leave. But, as an extension of the principle of subsidiarity, EU policy in welfare and labour markets should not represent an unreasonable financial burden for member states. Since the suggested provision would imply *new financial costs* in some member states (to be borne by states, employers and/or employees), the proposal was highly contested. Furthermore, costs can be of particular concern for employers, especially for small and medium-sized enterprises.

Thirdly, the Commission proposal was contested from a *value-based* perspective. More specifically, father-specific leave drew immediate criticism from centre-right parties and governments favoring traditional family values, i.e. male breadwinner-female carer model. Opponents to father-specific leave argue that the WLBD abridges family autonomy in deciding on care arrangements.

Due to these principal points of contention, the Commission's original WLBD proposal was heavily watered down. Despite several amendments on the initial proposal, the high level of contestation remained, when adopting the directive in 2019: Denmark, Hungary, the Netherlands and Slovenia

voted against the directive, while Austria and Poland abstained (Council of the EU, 2019)<sup>2</sup>.

In the following, we lay out the major changes made during the negotiations at EU level, which are linked to the three points of contention summarized above, as the changes could be linked to shortcomings from a social rights perspective, in the actual implementation process (see also Table 1 below). First, the scope of the directive was changed from applying the directive to all workers (European Commission: 6) to all workers defined under law and by taking the practices in the member states into account (Article 2, Directive 2019/1158). This, in fact, leaves greater discretion to the member states on how to interpret the scope of the directive. For example, with the new definition it is possible to exclude various forms of atypical work and the self-employed. Linked to this, the period of work required to be eligible to require paternity leave - which was initially set by the Commission for six months - was set to 1 year for parental leave and 6 months for paternity leave (Agence Europe, 2019). Secondly, another significant change between the original proposal and the final directive concerns the earmarked parental leave period. While the Commission proposal stipulated four months of earmarked leave per parent, the adopted provision was reduced to two months of earmarked leave per parent. Hungary and Poland, with governments that promote traditional family values, even argued for one month only (Agence Europe, 2018e). A third significant change concerned remuneration during parental leave. While the Commission proposed to keep the remuneration at least at the level sick pay, the final text kept this proposal only for the paternity leave period (Art. 8, Directive 2019/1158) and replaced it for the general parental leave into 'adequate' remuneration (Agence Europe, 2018d). This change gives member states greater leeway in setting the level of pay, because an 'adequate' level of pay is not defined. While a high remuneration is crucial for a higher uptake of parental leave by fathers and the Commission advocated a high level of payment. However, it is now up to the member states to decide on it. Finally, the carer's leave, which was originally stipulated at 10 days of the level of sick pay, was reduced to five days without specification about remuneration (Agence Europe, 2018a). These are thus issues that we expect to be implemented differently across member states, which could lead to a more differentiated social Europe, although hopefully there will be a minimum level of social rights across all member states.

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<sup>2</sup> In the time-period from January 2010 until December 2019, only 8 out of 1050 adopted legislative acts have been contested by 6 member states and only 9 legislative acts have been contested by 7 or more member states (Pircher and Farjam, 2021).

**Table 1: The watering-down of the WLBD directive<sup>3</sup>**

Provisions	COM proposal 2017	Final Adopted WLBD 2019
Scope of Directive	To all workers with employment	Employment contract or employment relationship defined by law, taking into account collective agreements or practices in MS
Eligibility	6 months	1 year (parental leave) and 6 months (paternity leave)
Parental leave and Remuneration	4 months non-transferable and paid, until child is 12	2 months non-transferable and paid, until child is 8
Remuneration	Minimum the level of sick pay for paternity and parental leave, as well as carer days	Paternity leave: level of sick pay Parental leave: 'adequate' remuneration Carers' day: no specification
Carers' days	10 days with remuneration	5 days without remuneration

## 2.3 Insights from co-creation: Interview with COFACE

In June 2020, we undertook a focus group interview with COFACE – the NGO representing families - including the representatives in the Brussels office, as well as national members from Spain, France, Germany and Belgium. This has provided us with insights into three possible challenges with the implementation of the WLBD.

The first theme related to *remuneration*. Various representatives stressed that a high level of remuneration is critical to raising the take up rate of parental leave by fathers and second parents, because low remuneration weakens household finances, in turn disincentivizing fathers and second parents from using the leave. In this regard, granting Member States the autonomy to decide on the level of remuneration actually diminishes possible impact of one of the key aims of the WLBD, which is to increase the amount of time fathers and second parents spend on child-care duties with. Even if the Directive grants parents at least four months parental leave (of which 2 months is non-transferable), it is doubtful if fathers and second parents would use this leave if it remains poorly remunerated. In fact, the French representative stressed that low remuneration is also a disincentive

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<sup>3</sup> This table was also used within the EuSocialCit project in publications that are currently under review at international journals.

for mothers to use parental leave. In France, the level is so low that many choose to be unemployed, and thus, to be on unemployment benefit, rather than using parental leave during childcare. It is contestation on the level of compensation which has led to the French government to prolong the implementation to 2024, even if the degree of public deliberation on the WLBD has been low in France (see 5.6 infra). This use of the prolonged period for implementation of the level of payment for earmarked leave indicates that although the EU does not have the formal competence to require a particular level of payment, there seems to be an understanding among legislators in member states that the level of payment should, as highlighted in the COFACE interview, be generous, so that it would be conducive to men actually taking up parental leave.

A second theme that was raised by some national COFACE representatives relates to *differences in parental leave rights among different groups of workers*. Due to labour market segmentation, some workers, who are often in precarious work, including self-employed, are ineligible for parental leave. Additionally, variations in company policies in parental leave policies mean that some workers enjoy better remuneration and/or longer duration of leave than other workers. According to the Belgian representative, companies' policies are often polarized with little middle ground. Some companies offer generous terms, whereas others offer paltry ones. In short, the use of parental leave by fathers and second parents may depend on their labour market position as well as, in some Member States, the firm where they work. If socio-economic advantage intersects with better labour market position (and perhaps firms that can afford more generous leave schemes), then the use of parental leave by fathers and second parents would be socio-economically stratified.

A final theme that was raised by COFACE representatives relates to the *complexity of administration and procedures pertaining to leave policies*. The German representative noted that previous reforms to parental leave policies have given rise to a complex and potentially confusing system. This complexity may make it more difficult for parents to know about their leave entitlements and render it more challenging to apply for them. The complexity of leave policies may strongly diminish parents' incentive to seek parental leave, especially among fathers and second parents, who are already more ambivalent about taking parental leave. It is especially when parents (also mothers) have to apply separately for the right to leave and the right to payment, that administrative complexity is high. This in itself is a disincentive, especially for those with fewer socio-economic resources. This is an issue of particular pertinence in the German, French, Dutch and Polish cases (cfr. Case studies in section 5 below).

## 3. Overview of country policies before the WLBD

### 3.1 Introduction

This section presents an overview work-life balance policies before the adoption of the directive, with a focus on how these policies comply with the directive's central provisions with regards to paternity and parental leave, flexible working time arrangements and carer days.

### 3.2 Paternity leave

Art. 4 of the Directive obliges Member States to provide employees with paternity leave. Five out of six countries under comparison already comply with the Directive, while Article 8 introduced the obligation of payment that compensates earnings at least at the sick pay level.

In **France** there are 28 working days of paternity leave available. Fathers are required to take four calendar days of leave directly following child-birth and three days shortly after. The remaining 21 days (or 28 days in the case of multiple children) can be split into two parts—with a minimum period of five days each—to be taken within six months of the child's or children's birth. One week of fully paid partner/paternity leave in **the Netherlands** is available for partners of the employees giving birth. This paid leave can be taken any time in the first four weeks after the birth of the child. From July 2020, an additional paternity leave can be requested to the employer: five weeks extended partner's leave (to be taken during the first six months since the childbirth). Employees who take this leave will be able to claim benefits from the Employment Insurance Agency (UWV) for up to 70% of their salary. The employee can spread the leave over a longer period than 5 weeks, if the employer agrees to that arrangement.

In **Denmark** and in **Poland** two weeks of the leave are available, fully paid, but in Poland the leave may be taken within two years after childbirth. In **Spain** 16 weeks of paternity leave are available for all employed fathers, which includes six weeks obligatory leave that must be taken directly the birth (the rest of the leave must be used within the first 12 months following childbirth).

In **Germany**, there is no statutory paternity leave and therefore Germany does not comply with the Directive. However, fathers are entitled to two exclusive parental leave benefit months which are often taken directly after the birth of a child.

### 3.3 Parental leave

Articles 5 and 8 of the Directive oblige Member States to introduce parental leave including the following characteristics: duration of at least four months, with at least two months as individual and non-transferrable right for each of the parents, remuneration for these two months is at a level decided by the Member State. There must be the availability of the leave to be taken in parts, until the child reaches the age of eight.

There is a variety of solutions regarding parental leave and the countries differ in terms of the leave's duration, presence of the earmarked part (and its length). As changes with regards to parental leave are one of the most crucial when it comes to potential convergence and degenderizing effect, they are presented separately with it comes to the leave duration, the child's maximum age, remuneration and transferability.

#### 3.3.1 Duration

According to the WÆBD, leave should be available for at least four months and all countries comply with this specific provision, however, there are several countries where the provision is not reserved for fathers/second parents, making several countries non-compliant.

In **Denmark** and in **Poland** parental leave is available for 32 weeks for each parent. In Denmark parents can choose an extended version of parental leave up to 64 weeks if taken part-time (must be agreed with the employer). In both countries the entitlement is not earmarked, making the systems implicitly genderizing, meaning that without a harder incentive for men and women to change behaviour, traditional gender roles tend to persevere. In **Netherlands** parents are entitled to 26 weeks in both the public and the private sector. In **France**, parental leave is available for the initial period of one year and renewable twice until the child(ren) is three years old. Leave can be taken simultaneously by both parents, but employees are eligible for parental leave on condition that they have worked at least one year for their employer before the birth of a child. The employer must be informed by request at least two months before the start of the leave. In **Spain**, each parent can take leave until three years after childbirth with full job protection for one year. **Germany** also has the leave with a benchmark at the child's third birthday, as the leave is available up to three years after childbirth for each parent (156 weeks).

#### 3.3.2 Child's maximum age



Several countries do not comply to this provision, which is set at the level of the child's eight years. In **France** and **Spain**, parental leave can be taken until the child is 3 years of age; in **Poland** leave is available until the child reaches the age of six.

In **Germany**, 24 months of the (paid) leave can be taken up until the child turns eight; in the **Netherlands**, **unpaid leave** is available until the child is eight. Hence, these two latter countries comply with the directive. In **Denmark**, leave can be taken until the child is nine years old.

### 3.3.3 Remuneration

The final version of the Directive only mentions that there should be a form of payment, which is to be decided by the Member State (Article 8). Among the countries under comparison **Spain** and the **Netherlands** do not have the corresponding payment (i.e., leave is unpaid), the rest of the countries offer various forms of payment.

In **Germany** leave to care for child/ren: parental allowance is paid at a level of 65 % of the preceding year's net income of € 1.240 or more (below the sickness replacement rate: 70% of the normal salary); 67 % of net income between €1.000 and €1.240 (similarly), 100% if income less than €1000. It is paid maximum €1.800 per month, minimum €300 per month paid during the first 12 months (plus two months if both parents take at least two months of leave); with a cap on the level of income - maximum €500.000 earnings (250.000 with single parent). In **Denmark** a daily cash benefit is based on the level of earnings, with the weekly limit of DKK 4.460 [€591.73] (before tax). In **Poland** the level of benefit amounts to either 60% or 80% of the previous salary, depending on the mother's decision – if she decides to be paid at 100%, the first six weeks of parental leave are paid at 100 per cent, the next 26 weeks - at 60 per cent of the previous salary. When the mother chooses the option of 80 per cent of earnings during her Maternity leave, the benefit's level will be 80% for the whole duration of the leave. In **France** parental leave is not paid, but there is parental leave benefit (parental leave benefit does not always overlap with parental leave). For parents with two or more children (under 20 years of age), the payment from PreParE (until the child turns three years old) ('Prestation partagée d'éducation de l'enfant') can be made to each parent for a maximum period of 24 months. It is possible however to claim payment for an additional 12 months, which means that to obtain benefits for the remaining 12 months, parental leave must be taken by the other parent by stopping employment or reducing working hours (part-time). For parents with one child, the payment from PreParE (until the child turns one year old) can be made to each parent for a maximum period of 6 months. It is possible however to claim payment for an additional 6 months. This means that to obtain benefits for the

remaining six months, parental leave must be taken by the other parent by stopping employment or reducing working hours (part-time).

### 3.3.4 Non-Transferability

Perhaps the most contested change introduced by the Directive was obliging the Member States to introduce at least two months of individual and non-transferrable part of the parental leave. Among the six countries Germany, the Netherlands and France meet the requirement. In **France** each parent is eligible to receive the benefit for six months, while in **Germany** two months are added to the overall length of the leave as a bonus if the other parent takes at least two months of the leave, which in practice also works as two months of individual and non-transferrable entitlement.

**Denmark** and **Poland** have family-based entitlement to parental leave, i.e., there is no earmarked part for the second parent, i.e., they do not comply with the Directive. Although **the Netherlands** has the non-transferrable entitlement, because it is unpaid, it is currently not complying with the Directive if Article 8 is taken into account as well with regards to remuneration. The **Spanish** solution is interesting, because the individual and non-transferrable parental leave is unpaid, however, because there are 16 weeks of paternity leave, this can be regarded as at least partially complying with the Directive.

### 3.3.5 Carer days

Directive is obliging the Member States to provide the employees with at least five days of leave to take care of a dependent family member (whether with payment is to be decided by the Member States, Article 6). Only Germany and the Netherlands currently comply with the Directive as far as carer days are concerned.

In **Germany**, a relative of a care-dependent person is entitled to 10 days of short-term leave if that person has an unexpected illness, as well as six months of long-term care leave. In **the Netherlands** employees have the right to a short-term leave up to an annual maximum of two times the number of working hours per week to care for a sick child living at home, a sick partner or parent, other household members or friends. In addition, a reasonable amount of time off work can be taken by an employee with very exceptional personal circumstances. This emergency leave can last from a few hours to a few days but terminates after one day if short term leave is subsequently taken. The leave is paid at the level of 70% of salary.

In **France** there is an unpaid leave of three days per year to care for a sick child under the age of 16 years old (*Conge de presence parentale*), or five days if the child is aged less than 1 year old or if they have at least three children, therefore France is not complying with the Directive with this respect. In **Poland** apart from the leave to take care of a sick child, the time-off to take care of a healthy child is only for two days, so would need to be extended and perhaps available to take care for other (than children) family members. The leave in **Spain** and in **Denmark** is also available only for two days.

### 3.3.6 Flexible working arrangements

The Directive also obliges the Member States to introduce the possibility of flexible working time arrangements for employed parents (Article 9). This includes the right to request reduced working hours (part-time work), the right to request flexible working hours and not least, flexibility in the place of work, i.e. teleworking. In **Spain** parents have the possibility to reduce their working day to care for a child under the age of twelve or to look after a disabled child. In **the Netherlands**, there are several options for the employees, including the option for employees who have simply completed six months' continuous employment with their present employer, to request changes in working time. In the Netherlands, it is very common for mothers, and to a lesser extent, fathers, to work part-time. In **Poland**, flexible working time options are available under special circumstances, for example in case of pregnancy, when the child is permanently ill or disabled. Therefore, Poland only partially conforms to the Directive in this respect. In **France** there is no statutory entitlement to flexible working time arrangements, but employees in the public sector are entitled to work part-time for family reasons. **Denmark** and **Germany** do not provide such arrangements. However, in both countries, it is common place for women to work part-time while they have small children. Regarding flexible working arrangements, but with existing hours of work, this is decided in work places, i.e. there are no statutory rules on this. However, it has become a more prominent issue since the lock-downs during the corona pandemic have facilitated teleworking.

**Table 2: Compliance with the key legal provisions in the adopted WLBD Directive<sup>4</sup> *ex-ante* (2019, when the directive was adopted)**

POLICIES/BENCHMARKS	DE	DK	ES	FR	NL	PL	Total
<b>PATERNITY LEAVE</b>							
10 working days	N	Y	Y	Y	Y	Y	5
Payment at least at the level of sick-pay	N	Y	Y	Y	Y	Y	5
No period of qualification	N	Y	Y	Y	Y	Y	5
<b>PARENTAL LEAVE</b>							
At least 2 months individual, non-transferrable	Y	N	P(1)	Y	N	N	2-3
Remuneration for leave	Y	N	P(1)	Y	N	Y	3-4
Qualification period (if any) not exceeding one year	N	Y	Y	P(2)	Y	Y	4
Child's maximum age	Y	Y	N	N	Y	N	3
<b>CARER DAYS</b>							
5 days or more	Y	N	N	P(3)	Y	N	2
<b>FLEXIBLE WORKING ARRANGEMENTS</b>							
The right to request flexible working arrangements	N	P	Y	P(4)	Y	P(3)	2
<b>TOTAL "YES"</b>	3	5	5	3	7	4	

Key: **Y**: yes; **N**: no; **P**: partially

- 16 weeks of paternity leave (paid) can be regarded as partially complying to the Directive.
- Available for parents in special circumstances. Qualification period for parental leave is employment for at least one year, but qualification period for remuneration of parental leave is working without break for two years.
- Only under the circumstance that the parent has 3 children or more younger than 16 years old.
- Employees are allowed to request flexible working arrangements, but childcare is not explicitly specified as one of those conditions in the law.

<sup>4</sup> Comparative table partly updated from Ghailani, D. (2018) *Brief overview of measures related to work-life balance in the European Union. Country sheets*. Brussels: European Social Observatory. Available at: [https://www.etuc.org/sites/default/files/press-release/file/2018-06/etuc\\_wlb\\_country\\_sheets\\_ose\\_final\\_19\\_01\\_2018.pdf](https://www.etuc.org/sites/default/files/press-release/file/2018-06/etuc_wlb_country_sheets_ose_final_19_01_2018.pdf). Information on institutional feature of work-life balance policies was drawn on the basis of national country experts and team members, as well as the country reports within the *International Review of Leave Policies and Research 2021 (full references in literature list)*.

### 3.3.7 Summary

Table 2 above summarizes the section. Most countries comply with the directive when it comes to paternity leave for employed fathers, both with regards to the duration of the leave and the absence of qualification period. The only country, where a separate paid paternity leave is unavailable is Germany, yet it is because its leave scheme is in principle neutral, although mothers still take leave more frequently and for longer periods of time than men (see German case 5.5 below). In Spain, there is leave reserved for mothers (maternity leave) and also leave for fathers (paternity leave). Three countries are non-compliant when it comes to parental leave: Denmark, Poland and The Netherlands do not have reserved (earmarked) leave. Spain does not have earmarked parental leave, but has paid father specific leave for 16 weeks. When it comes to carer days and flexible working time, the countries' performance is even more differentiated: only two countries, i.e Germany and the Netherlands provided carer leave in line with the Directive prior to implementation, while in case of flexible working time conditions only Netherlands and Spain have statutory arrangements to request part-time work. However, in Denmark, there are many options, through the collective bargaining system. Overall, all countries must undertake reforms to comply with the directive. Yet, the most contested issues pertain to father-specific leave, in particular earmarked parental leave, and for Germany, paternity leave.

## 4. Application of resources framework to Work-life balance directive (normative and instrumental resources)

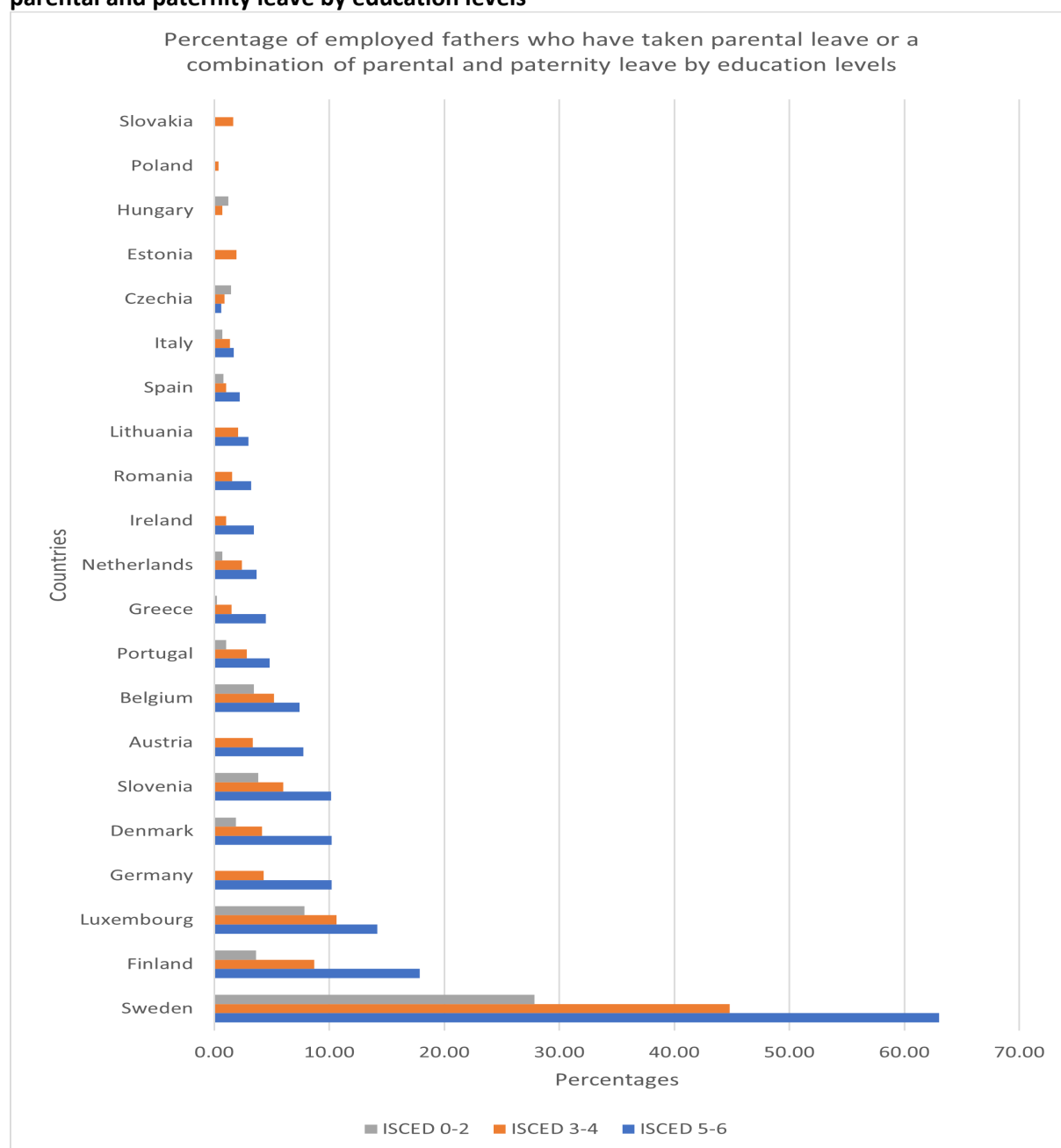
As mentioned above, a central component of the EU's Work-Life Balance Directive (WLBD) is 2 months of paid non-transferable leave for each parent, in the period after childbirth. This is seen as a landmark for gender equality in the EU, further institutionalizing the double-carer, double-earner model. The European Commission, and COFACE - the NGO representing family rights - encourages a high level of compensation during parental leave, as this is important for fathers to actually use their leave rights (Focus group interview COFACE, June 2021). The importance of this is confirmed by insights from the care literature, which highlights that it is necessary to have a high level of financial compensation with non-transferable leave, to maximise fathers' use of leave. In fact, financial considerations are important for decisions about leave between parents (Gíslason et al., 2015). However, in the EU context, member states may be implementing earmarked leave differently, as they decide on the design and compensation of earmarked leave, even if they are required to comply with the provisions of the WLBD.

In the following, we explore how the member states are implementing father specific leave, which has been the most contested aspect of the WLBD, due to tensions with subsidiarity, (new) costs of parental leave, as well as values about fatherhood (de la Porte et al., 2020). The formal social rights, aka 'normative resources', according to the resources framework, are a first indication of whether fathers could use parental leave arrangements. Yet, having formal social rights is often insufficient to ensure citizens' take-up or use of these rights (Ferrera et al., forthcoming). Furthermore, it is relevant to separately consider the right to have paid leave, from the level financial compensation. The right to earmarked leave is important, and so is a high level of financial compensation (Gíslason et al., 2015). Thus, if member states implement the WLBD's parental leave provision with different rates of financial compensation, this could lead to uneven take-up rates across the EU, which would ultimately undermine the EPSR.

Furthermore, additional challenges to take-up of leave, coined instrumental resources, are related to issues such as procedural challenges and lack of knowledge of social rights (Ferrera et al., forthcoming). For instance, a notable obstacle could be cumbersome application procedures in the administrative systems (Döring, 2021), especially if parental leave and remuneration are applied for separately, as in France. This may make it more difficult for fathers to take leave, especially among those who have difficulties in navigating administrative systems (Moynihan et al., 2015). These

administrative hurdles may have little impact on fathers who would like to take parental leave because they believe in 'active fatherhood', but they could impede the take-up of leave among fathers who do not have such strong convictions of engaged parenthood. The level of awareness among parents about the conditions, rules as well as application procedures governing parental leave is often mixed. While it is recognised that these limitations exist in Southern Europe, there is less knowledge about their relevance in other countries. However, even in countries with better administrative systems, hurdles to access parental leave, for instance, related to the complexity of the system, may exist. Germany, is showcased as a country where the system is very complex, possibly preventing higher use of paid parental leave by fathers (see German case, *infra*, 5.5). Fathers who are highly educated or in occupations or sectors which convey clear information about fathers' rights are often more aware of the rules, conditions and application procedures. By contrast, less educated fathers in occupations or sectors where taking parental leave is uncommon, may be less informed about them. Even in Denmark, the take-up rate among highly educated fathers is almost 3 times as high as that of fathers with lower levels of education, according to a recent study (3F, 2021). These findings are also corroborated by Rostgaard and Ernjæs (2021), and for Sweden, by Duvander and Cedstrand (2022). Figure 1 below shows that fathers with higher levels of education have a higher propensity to take leave. This is a clear indication that information campaigns targeted at fathers with lower propensity to take-up leave are important. Yet, the effectiveness of such campaigns is mixed; there have been many campaigns in Sweden, when earmarked parental leave was introduced (Lundqvist, 2011), but Matthew effects pertaining to use of leave in Sweden are pronounced. Thus, if the *most likely case* for gender equalization in care – Sweden as it has long reserved leave as well as high compensation and high commitment to instrumental resources – has inequality in take-up, based on socio-economic background, then this should be tackled among policy-makers when they (re-)design leave schemes in light of the WLBD.

**Figure 1. Percentage of employed fathers who have taken parental leave or a combination of parental and paternity leave by education levels**



*Notes:* Member states that are missing have missing data on the number of employed men with children who have work interruptions by taking parental leave or parental and paternity leave for all three education levels. Slovakia, Poland, Hungary, Estonia, Lithuania, Romania, Ireland and Germany have missing data for some (but not all) educational categories. ISCED 0-2: Less than primary, primary and lower secondary education. ISCED 3-4: Upper secondary and post-secondary non-tertiary education. ISCED 5-6: Tertiary education. To calculate the percentages, we used these two datasets from 2018 that are part of Eurostat's Labour Force Survey ad hoc module on reconciliation between work and family life: *LFSO\_18PARLVED* and *LFSO\_18STWKED* (<https://ec.europa.eu/eurostat/documents/1978984/6037334/Explanatory-notes-AHM-2018.pdf>). We took the sum of employed fathers who have had work interruptions due to childcare and who had taken parental leave or a combination of parental and paternity leave, and divided it by the sum of employed fathers who had work interruption due to childcare and employed fathers who have not had work interruption due to childcare. We then converted this value to percentages.



## 5. Studies in work-life balance

### 5.1 Introduction

In this section, we conduct six focused structured case study analyses (Bennett and George, 2005), to examine examines the potential of the WLBD to lead to an increase in take-up of parental leave among fathers and second parents across EU countries. The case studies explore whether and if so, how social rights are being enhanced through the WLBD. We focus on *formal legal rights*<sup>5</sup> – planned changes to father specific leave and paid earmarked leave – and on three types of *instrumental resources* - administrative procedures for applying for the social right, information availability on the work-place, planning of targeted information campaigns. We select these three instrumental resources as they are recognised as main hurdles to take-up of social rights (Eurofound, 2018), also corroborated in the interview with COFACE (focus groups interview COFACE, June 2021). In our case countries, we consider the extent of instrumental resources as an indication of whether there are intentions to enhance the uptake of leave among fathers. We rely on qualitative data obtained from legislative and political proposals, transposition plans, and adopted legislation in conjunction with the WLBD. This data is complemented with elite interviews with key decision-makers and stakeholders and reports from stakeholders. Elite interviews (with those in the policy process) and expert interviews (with long-term analysts of parental leave) were essential to tap into the present and planned implementation of formal social rights and instrumental resources in conjunction with implementation of the WLBD in our selected countries (See interview guide in Annex 1).

For each country, we first present the background of work-life balance, regarding parental leave, as well as Early childhood education and care (ECEC). This provides us insight into the family policy institutional set up in the countries under examination. Then we present decision-making context and how the earmarked paid parental leave provision of the directive has been contested in the distinct member states and for what reasons, i.e. subsidiarity, regarding relevant level of governance deciding on parental leave, new permanent financial costs associated with implementing the WLBD, and finally, values related to gendered division of care (see 2.2 supra). Thereafter, we focus on planned changes in formal social rights (*normative resources* following resources framework) for father specific leave, and we inspect three types of *instrumental resources* devoted to the implementation of the WLBD

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<sup>5</sup> Ferrera et al (forthcoming) refer to formal legal rights as ‘normative resources’, but because ‘norms’ in the care literature refers to gender roles, we mostly often use the term formal social rights.

(administrative procedures for applying for the social right, information availability on the work-place, planning of targeted information campaigns). Then, we tentatively conclude whether the WLBD could, indeed, be a trigger to enhance father-specific leave. For each country, we also present a brief overview of the decisions on the two other key provisions of the directive, carer days and the right to request flexible work.

## 5.2 Denmark

### 5.2.1 Work-life balance in Denmark prior to the WLBD: Use of leave among mothers and fathers prior to the adoption of the WLBD, and use of ECEC

The take-up rate of parental leave among fathers was significantly below the two months required by the directive. In 2018, take-up rates of parental leave among fathers (including the mandatory 10 days of paternity leave), was on average 32 days, which is significantly lower than the average of 274 days among mothers (which includes four weeks prior to child-birth). This means that fathers use on average ca. 12% of total leave period (Rostgaard and Ejrnæs, 2021). Thus, Denmark is the country among the Nordics where gender inequality is most pronounced in terms of take-up of parental leave.

By contrast, Denmark is the leader among the Nordic countries when it comes to childcare provision for children under the age of 3 (Nordic Councils of Ministers, 2019). There has also consistently been support for ECEC across the political spectrum and among key stakeholders, especially social partners and parents' organisations (Borchorst, 2009; Larsen and de la Porte, 2022). ECEC is not only seen as a means to enable both women and men to have gainful employment, but also as a means to invest in skills for children – parents would rather have their children in childcare than at home (Eydal and Rostgaard, 2011). Denmark has invested in high-quality day care for children under the age of three for decades, with a relatively high proportion of expenditure (1,2% in 2019, compared to the EU average of 0,5%) (Eurostat, 2021b). There is comprehensive implementation of ECEC nation-wide, including a right for all children aged 6 months and up to be in child-care, while provision remains at the local level. High quality ECEC is seen by social partners – especially employer organisations – as a cornerstone in the Danish social model (see Larsen and de la Porte, 2022). The use of childcare is particularly high among the 1 up to 3 year-olds (67% in 2020, Eurostat) while the take-up rate of ECEC among children below 1 year is around 20%, due to parents' (especially mothers') possibility to take up to one year paid parental leave. At the same time, the employment rate of mothers (75,6% in 2021), is almost as high as that of men (82,5% in 2021,

Eurostat). Out of the total employment rate, the proportion of women in part-time jobs (30,5%) is, however, much higher than that of men (12,3% in 2021), often to reconcile work and family life. While this is not a statutory right, as it is possible under a large number of collective bargains. Although labour market participation of women is relatively high in Denmark, there is a higher percentage of women in part-time jobs, and the lower proportion of women in leading positions in the private sector. Strengthening conditions for women to have careers has been raised as a priority in the 2021 trade union congress (Interview Denmark 1, 3F, 2022; Interview Denmark 2, FH, 2022). The hope is that earmarking leave could be part of the solution to enable mothers who would like to do so, to return faster to work, especially if fathers/second carers take more leave. It is also the hope that, as fathers take more leave, then women would no longer have the same career development barriers.

### 5.2.2 Decision-making context on labour market/family policy issues

In Denmark, a multitude of actors are involved in decision-making and implementation of parental leave, which is considered a labour market policy. Through a dual system of decision-making, the government decides on the formal legal transposition of the WLBD, but after political agreement with social partners. In the actual implementation process, after the political agreement on transposition of a directive, an implementation committee, chaired by the Ministry of Employment, and with representatives from social partners, ensures the directive is correctly transposed into Danish legislation. Normally, the work is very technical, and the work of the implementation committee focus on legal transposition. Alongside the legal transposition, social partners decide on additional provisions of parental leave (e.g. compensation level to top-up the statutory flat-rate which is at the level of unemployment benefit) for those covered by collective bargaining (ca. 84% of workforce). Among the organisations on the labour market, Fagbevægelseshoved organization (FH) is the umbrella trade union organisation (under which there are ca. 900 collective bargains, covering ca. 1,3 million workers), while Dansk Arbejdsgiverforening (DA) is the umbrella organization representing employers. Prior to the WLBD, there was no statutory earmarked leave, although a number of sectoral collective bargains included the right to parental leave with full wages, which has prompted fathers (especially the highly educated), to take parental leave. In some sectors, there was earmarked leave prior to the WLBD (de la Porte et al., 2020; Rostgaard and Ejrnæs, 2021). The Danish government and social partners generally have a skeptical position on EU legislation concerning labour market policy, due to *subsidiarity*, as they fear that it would undermine social partner autonomy (de la Porte, 2021). Furthermore, decision-makers also fear that through the back-door, a provision from EU social legislation could end up in the Court of Justice of the European Union, and

could have consequences for the Danish labour market model.

### 5.2.3 Paid earmarked parental leave: Regulatory Tensions

When the WLBD was first proposed, the Danish government voted against it in the Council, due to subsidiarity. At the time, all political parties, except the social liberals and the socialist party, as well as a large part of employer organisations and unions, opposed the directive (de la Porte et al., 2020). The costs have not been an issue in Denmark, as the models of parental leave proposed were not expected to incur new permanent costs to the parental leave system that was present prior to the WLBD.

Yet, after the directive was adopted in the Council, many political parties, in particular the governing social-democratic party, changed position, as the directive had to be implemented. During the political negotiation of the directive, and in line with the institutional model of labour market policy in Denmark, DA and FH made a proposal to the government on the implementation on the WLBD. They suggested a cost-neutral solution in line with the directive: the total length of leave available parental leave (48 weeks) should not be changed, but 9 weeks should be earmarked for each parent. The unions, while sceptical about the EU intervening in the Danish labour market model in the period preceding the adoption of the directive, supported the earmarking of leave after the directive was adopted (Interview Denmark 1, 3F, 2022; Interview Denmark 2, FH, 2022; Interview Denmark 5, Ministry of Employment, 2022). All parties on the left supported this proposal of earmarking 9 weeks per parent (in addition to two weeks pre-existing paternity leave and four weeks maternity leave). It is notable that the liberal party (Venstre) also proclaimed support for this position, thus changing its traditional standpoint in an attempt to appear as a modern liberal party, supporting gender equalising policies (Svane, 2021). The parties on the right remained against the earmarking, i.e, the conservative party, Danish people's party, the liberal party, and the new bourgeois party.

Prior to that, Danish Industry, changed position, arguing that earmarking leave was good for the labour market and productivity (Dansk Industri, 2018; de la Porte et al., 2020). Other strong private sector actors in the Danish public debate, particularly the director of the Danish national bank, also supported the earmarking of leave for fathers, arguing that it would be advantageous for women's careers and the economy (Finans, 2019). Although the base-line assessment was that this was good for the labour market, it also reflects a change in the *values* among the political actors, and not least employer organisations and the union movement, supporting not just gender equality in terms of labour market participation, but also in terms of sharing the care burden for new-born children (Interview Denmark 2, FH, 2022; Interview 3, DA, 2022). The private sector actors have also

mentioned the importance of having the WLBD to support gender equalization on the labour market, including for women's careers.

#### 5.2.4 Normative resources, including summary of decision-making on WLBD (Formal parental leave rights to paid parental leave and remuneration)

To implement the WLBD, the Ministry of Employment proposed a gender neutral model, based on input by the main umbrella organisations of the political agreement reached by the government. The political proposal adopted by the government was designed in almost full entirety by the umbrella organisations of the unions (Fagbevægelsens Hovedorganisation, FH) and the employers (Dansk Arbejdsgiverforening, DA) (FH, 2021). The proposal was officially tabled as a legislative proposal in December, followed by deliberations, including a formal process of consultation with civil society organisations, where 35 position papers and notes were submitted (Høringssvar, 2022). The consultation process has involved not only social partners, but also representatives of other levels of government (regions, municipalities), ministerial units that will be involved in delivering the rights obtained through the directive on the ground, and relevant civil society actors, such as mothers' and fathers' organisations, and organisations of LGBT communities. Various issues were raised in the hearing process by these actors, mainly concerned with enabling a large number of citizens to have actual access to rights (unions, interest organisations), while employer organisations raised concerns about a of notice, and replacement of workers in case of long absence. A common theme raised by multiple actors pertained to the complexity of the pre-existing and new system.

The formal social rights regarding earmarking and statutory level of remuneration were adopted as a legislative proposal on 3 March 2022 (Folketinget, 2022), following three rounds of hearings. In this process, the implementation committee played a key role. Thus, after the political agreement of FH and DA on earmarking of leave, the implementation committee paved the way for legal implementation. In Denmark, once there is a political agreement on how an EU directive will be implemented, the implementation committee deals with the technical legal aspects. Yet, this time, there were significant changes, since the political parties on the left, especially the red-green alliance and the socialist party, were keen on being more ambitious, i.e. with the gender neutral model (Interview Denmark 5, Employment ministry, 2022; Interview Denmark 3, DA, 2022). Thus, the work became somewhat more complicated, with political actors raising issues after the agreed political implementation. The main change prompted by the involvement of political parties in the work of the implementation committee was the decision to have at the outset a gender neutral model.

Thus, the WLBD prompted a change in the parental leave system in Denmark, to render it, in principle, gender neutral. In the new model, the total length of parental leave remains unchanged, but each parent receives, after childbirth, 24 weeks of leave, including the right to a flat-rate benefit (unemployment benefit level). Of the total of 48 weeks, nine weeks are earmarked for each parent, to comply with the WLBD (Beskæftigelsesministeriet, 2021). In addition, fathers have two weeks of leave when the child is born, and mothers will continue to be entitled to four weeks leave before giving birth. This means in practice that of the 24 earmarked weeks per parent, 11 weeks are earmarked per parent, and there are 13 weeks which are not earmarked. The WLBD will compel full-wage compensation for earmarked leave across sectors (Interview Denmark 1, 3F, 2022; Interview Denmark 2, FH, 2022). In addition, fathers have two weeks of paternity leave when the child is born, and mothers will continue to be entitled to four weeks of maternity leave before childbirth. It is notable that while the earmarking of 2 months was a requirement of the directive, the 24+24 model, which is implicitly gender neutral, is not required by the EU. Yet, based on experiences in other countries, it is the earmarked part, which is explicitly gender neutral, which is likely to have the most impact, i.e. with a high potential to lead to a higher take-up of leave among fathers/Second carers. Also, to truly be inclusive, the self-employed, which are not required by the directive to be included, could have been included.

What is particularly interesting is that after the WLBD was adopted, the industry sector changed their rules of the right to paid parental leave for fathers. More specifically, they increased the right to full wages under parental leave for fathers, from 5 to 8 weeks (in addition to the two weeks of paternity leave at the time of birth of a child). This change was made because there was awareness that the directive was adopted and it would have to be implemented (Interview Denmark 1, 3F, 2022; Interview Denmark 2, FH, 2022; Denmark 3, DA, 2022). Although not part of the formal implementation, this is part of the practical *de facto* implementation, where a high level of compensation for leave is seen as central for improving possibilities for fathers to actually use parental leave. This signifies in practice, that of the 9 earmarked weeks per parent, 8 weeks are with full wages, while one week is at the level of unemployment benefit level. Then there are three weeks with full wages for parents to share. The remaining right to parental leave is at the level of unemployment benefit level.

#### 5.2.5 Eligibility

In terms of access, those who have the right to full wages have to be employed on the labour market. Furthermore, some sectors have specific requirements in terms of length of employment (often 9 months) prior to obtaining the right to paid parental leave. The umbrella organisation, FH, does not

get involved in the eligibility requirements for parental leave, as it is decided between the social partners at sectoral level. For those not covered by collective bargain, or who are not eligible to the full wages, they have the right to unemployment benefit level during leave. It is notable that the self-employed are not included. Although this was not required by the WLBD, it would have been an effective way to include a wider range of citizens. This is particularly relevant, as many of the self-employed are in a relatively precarious situation in terms of income.

#### 5.2.6 Instrumental

What is striking in the Danish case, is the intention, in conjunction with the implementation of the WLBD, to prompt a higher use of parental leave among fathers. This is because of the current political landscape, with a minority social democratic government, and ambitious support parties on the left, especially the socialist party, the red-green alliance, and the social liberals (Interview Denmark 4, Ministry of Employment, 2022; Interview Denmark 2, FH, 2022). At the same time, the attitude of the social partners is to defend their autonomy in the negotiation of a directive at EU level, but once it is adopted, to ensure that it gets implemented so that it actually benefits their main constituents (Interview Denmark 3, DA, 2022; Interview Denmark 2, FH, 2022). For instance, DA and FH explicitly highlight that the implementation of the WLBD in Denmark should enable mothers to return to work more swiftly after parental leave, while encouraging fathers to spend time with their new-born children (Politiken, 2021; Interview Denmark 3, DA, 2022, Interview Denmark 2, FH, 2022).

In this process of transposition, the WLBD is thus being framed as an opportunity to enhance gender equality, and thus, resources are being devoted to encourage use of parental leave by both parents. First, regarding the *simplicity of the system*, including administrative and digital application procedure, FH and other organisations, in the official hearing process, expressed concern that the legal framework is likely to become even more complex and difficult to understand for parents. Many stakeholders highlight that it is necessary to have clarity about the definitions of terms related to leave for small children, in particular paternity, maternity and parental leave, so that citizens understand their rights (Høringssvar, 2021). Furthermore, they call for a digital planning instrument, which parents can use when discussing how to share or combine parental leave (FH, 2022; Interview Denmark 2, FH, 2022). More specifically, the digital planning instrument also takes account of parents with different employment statuses (i.e. self-employed and employed part-time as employee), so future parents can see what their rights are, including levels of compensation. Employer organisations, furthermore, emphasize that notice of employees to use parental leave should be sufficient, so employers, could, if necessary, hire temporary workers, when fathers are on leave (DA, 2022). *Udbetaling danmark*, which handles access to the delivery of rights online, has highlighted that a digital planning tool for parents



and a digital application procedure need to be developed, so they are user friendly and easily accessible.

*Extensive material to be made available to the union representatives, work-place representatives, is being prepared. This includes seminars as well as information pamphlets,* which are on the workplace, there is no central strategy being prepared by FH (Interview Denmark 1, 3F, 2022; Interview Denmark 2, FH, 2022). However, FH has highlighted that it is important to ensure that union representatives and work environment representatives are well informed about the new earmarked parental leave rights, so they can liaise with workers on the workplace (FH, 2022; Interview Denmark 2, FH, 2022). FH has highlighted that the trade union training entity (FiO) is planning a range of training seminars on administering paid parental leave on the workplace (Interview Denmark 2, FH, 2022). The employers have a slightly different perspective: they highlight that it is important to have a long period of notice, so that employers can plan for the eventual lack of labour for a longer period of leave among fathers/second carers (Interview Denmark 3, DA, 2022). Like the unions, they have no central strategy for information dissemination vis-à-vis HR departments, but they hope that the media attention to earmarked leave will help so that parents are aware of the existence of the possibility to take leave. And employers are expected to be informed.

As there are different take-up rates among different types of workers, *information campaigns* are relevant in areas, where take-up of leave is low. The union 3F, representing a large number of blue-collar workers the sector where fathers have the lowest take-up rates of parental leave<sup>6</sup>, is actively planning various activities targeted at fathers, including information campaigns, a game and videos (Interview Denmark 1, 3F, 2022). FH recognizes the importance of information campaigns, especially in sectors which are highly gendered (for instance, construction where there is an over-representation of men, or administrative jobs, where there is an over-representation of women) but there is no central strategy being prepared by the umbrella organization, FH, to ensure systematic organization of targeted information campaigns in sectors where take-up of leave among fathers is particularly low. All in all, in Denmark, the intention of the government, the unions and employer organisations, is to enhance take-up of parental leave among fathers. However, although the system will now be gender neutral (i.e. baseline 24/24), only the 9 weeks required by the WLBD will be earmarked. The efforts

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<sup>6</sup> Take-up of parental leave among fathers varies across sectors; data from 2019 shows that the highest take-up of parental leave among fathers -11,7 weeks – is for those with long education (Magistrene). This contrasts with the lowest use of leave among fathers with short educations, in the construction sector, at 4,7 weeks. This data is an overestimation, as the leave was counted per week, where even a single day in a week counted when parental leave benefit was included as a week. Although the numbers should be treated with caution, the trends in use of leave among higher educated vs. Lower educated fathers is revealing (3F, 2021).



being put into *instrumental resources* indicates the intention to enhance not just *de jure* rights, but *de facto* take-up rates among fathers. Thus, the aim with the legislative changes is to change practices of parental leave take-up among fathers and mothers.

#### 5.2.7 Carer days

In Denmark, there were, prior to the directive, carer days (the number varies per sector) with full wages, for parents with small children (with age limit) included in many collective bargains. However, there were no ‘non-specific carer days’, which could be used for taking care not only of small children, but also other family members, as intended by the directive. To implement the WLBD, the agreement is that carer days can be granted to workers following documentation in the form of a medical certificate, documenting a serious health issue. This requirement for documentation is assessed to be a disincentive to use the days more freely (Interview Denmark 4, HK, 2022; Interview Denmark FH, 2022).

#### 5.2.8 Flexible Work

Regarding flexible work, i.e. the right to request the right to work from home or to request flexible working time, this was not so much in focus. Thus, to ensure the WLBD is implemented workers will have a new right to ask for flexible work arrangement and flexible work time, but employers can decide whether or not to grant this (Interview Denmark 2, FH, 2022; Interview Denmark 3, DA, 2022). This can thus be considered as minimum implementation. At the same time, there are changes in work practices during corona have led to some employers looking into flexibility, for instance, having one day of work a week from home, but this is not due to the WLBD.

### 5.3 Poland

#### 5.3.1 Work-life balance in Poland prior to the WLBD: Use of leave among mothers and fathers prior to the adoption of the WLBD, and use of ECEC

The uptake of various parental leave schemes is predominantly taken by women. Taken together, women took 97 per cent of all benefit days paid for by the Insurance Institution for maternity, paternity, and parental leave. On average, fathers used 13.2 days of paternity leave in 2016, 12.6 days in 2017, and 12.3 days in 2018 (Kurowska et al., 2021). As for the relatively new parental leave scheme in force since 2014, although it is accompanied by the right to a relatively generous benefit, fathers

constitute only 1% of all persons using parental leave (i.e. 3,900 as compared to 395,000 women on parental leave in 2020) (Chądzynski, 2021). Although no data is available about the number of days, based on this data we can assume that men take between 2 and 3 days of parental leave out of 224 days available, i.e. around 1% of the total number of days (authors' estimation). This means that for father-specific leave (paternity and parental leave), fathers use ca 15 days of leave. This low engagement should be first explained by the current lack of individual and non-transferrable entitlement for the fathers, although in theory the parents can freely decide about who uses leave.

As far as ECEC is concerned, Poland has a split system, i.e., a separate system for children under the age of three and another one for children at the preschool age. Especially services for children under the age of three have remained underdeveloped and currently the enrolment rate stays at the level of 11,2% of all children within the age group (Eurostat). Addressing the issue of work-life balance, the government program Maluch ("toddler") was developed in 2011 providing local authorities and private entities which would like to establish a new childcare center the opportunity to apply for financial support from state funds, with the level of co-financing reaching 80% of the costs of starting the centre (Szelewa & Polakowski, 2022). This led to a partial development of care services for small children, as enrolment rate increased from 2% in 2010 to 11,2% in 2020 (Eurostat). Alternative forms of childcare were established: apart from a creche, forms such as daily carer, nanny and kid's clubs were formalised and available for co-financing. However, the co-financing system does not require an obligatory set-up of childcare centres, as financing is available after an application process. As a result, almost 70% of all municipalities in Poland do not have any form of childcare centres for small children (Szelewa & Polakowski, 2022). The current government is more oriented towards supporting families with children by offering them cash-for-care, rather than investing in care services. According to Eurostat data, female employment in Poland increased from 56,2% in 2011 to 68,4% in 2021, while the employment rate of men was 82,4%. This may be, at least partially, due to more ECEC and other forms of care.

### 5.3.2 Decision-making context on labour market/family policy issues

In Poland, the decision-making is centralised, as the government takes the main decisions, after a consultation process. Social partners are not involved much in designing and implementing various social policies. Instead, we see a hybrid model between the consultation model and lobbying, where societal actors (in Poland, this includes NGOs organised around family policies) use various alternative channels of influence to articulate their interest and preferred policy solutions. Therefore, the implementation of the WLBD in Poland should be viewed from the perspective of the political changes that took place in 2015, after the right-wing party – Law and Justice – took office. Since the beginning

of their term in office, Law and Justice presented an agenda for reforming social policies in line with its ideology of conservative gender roles.

### 5.3.3 Paid Earmarked Parental Leave: Regulatory Tensions

The right-wing, populist Law and Justice party, 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 programme, 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. The Law and Justice party was opposing the directive in multiple policy arenas, including the European Parliament. In contrast to the government, the major trade union organizations- NSZZ Solidarność - expressed their direct support for the directive or - OPZZ, All-Poland Alliance of Trade Unions - tacitly supported the EU's initiative

When it became clear that the directive would be adopted, the government refrained from commenting on the directive altogether. In addition to the issue of subsidiarity, the government interpreted earmarking leave from a value-based perspective, 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 (de la Porte et al., 2020).

The biggest opposition party, Civic Platform, a centre-right 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 group (during Civic Platform’s term in office), she advocated for adopting the WLBD to achieve gender equality, therefore positioning herself against ideological arguments relating to how the directive might interfere with internal family issues and violate the freedom of choice (European Parliament, 2018).

Finally, the regulatory tensions around the costs of implementation of the WLBD were important. The direct costs of two additional months of benefit are to be carried by the National Insurance Fund (with employers and employee contributions), possibly supplemented by the state budget. Therefore, a regulation of earmarked parental leave, decided at the EU level, could have fiscal consequences for the Polish state budget. If father’s use their new social right, this could have negative consequences for the fund. It is notable that the sickness and maternity funds have the biggest deficit among all funds in the National Insurance Fund. The employer and employee contributions cover 60 percent of

the costs, while the state covers 40% of costs (ZUS, 2016). Regarding indirect costs, since the government has decided to extend the existing leave by two months, this would mean longer breaks from employment, which would burden employers. Thus, employers' organizations preferred that two months should be earmarked out of the current six months, rather than adding two additional months. However, they also accepted the final solution (Interview with the representative of Employers' Organization 1, PL, 2022).

#### 5.3.4 Normative resources, including summary of decision-making on WLBD (Formal parental leave rights to paid parental leave and remuneration)

Parental leave is regulated as a statutory entitlement by the Labour Code that is then supplemented by specific Acts (adopted by the Parliament) and executive laws issued either by the Council of Ministers or the Ministry for Labour and/or Family issues. While some industry- and firm-based solutions may offer additional benefits, statutory entitlements are central for regulating the right to parental leave in Poland. Social partners are consulted on social policy reforms, but the legislator does not have the obligation to include social partners' suggestions if they have not reached an agreement.

Poland complies with the Directive when it comes to the provision of paternity leave (2 weeks, fully paid, since 2012). However, prior to the WLBD, parental leave was a family-based entitlement, and there was no individual and non-transferrable part for the father (the second parent). Parental leave as a separate scheme is relatively new, introduced in 2013 (in force since 2014), and combined with maternity leave, the scheme makes it possible to take a break from employment for 52 weeks in total (Szelewa, 2017). Formally, the father's possibility to use the leave is dependent on the mother taking maternity leave first. The parental leave benefit is available at the level of 100% of the previous income for the first 6 weeks, followed by 60% afterwards. For maternity leave, the replacement rate is 100%. There is a financial benefit for mothers who take not only maternity leave, but also parental leave. If the mother decides to take parental leave following the end of her maternity leave, there is an option of an 80% replacement rate for the whole duration of maternity + parental leave (52 weeks). To comply with the previous 2010 Parental Leave Directive, one month per each parent was reserved after 2010 (Kurowska, 2019).

This scheme co-exists with unpaid childcare leave (available only for employed parents), available for 36 months until the calendar year of the child's sixth birthday. The access of the scheme is not dependent on maternity or paternity leave use, however at least 6 months of previous employment is required (Kurowska et al., 2021). The leave is unpaid, however, parents can apply for a family allowance supplement for persons using childcare leave, after meeting income test requirements (647

PLN per person per month, i.e. around 141 euro). The flat-rate monthly allowance can be paid up to 24 months and amounts to 400 PLN (around 83 euro).

After the WLB Directive was adopted in 2019, the government has not proposed any concrete reform until February 2022, when a draft law implementing the WLBD and the two other social rights directives, were presented jointly for consultations (Ministerstwo Rodziny i Polityki Społecznej, 2022). After the changes, the right to parental leave would be an individual right. Each parent will be guaranteed 9 weeks of the leave, which will not be transferable to the other parent. In addition, it would no longer be conditional on the child's mother taking maternity leave, thus this does introduce an element of de-genderization. Another planned change is that the level of maternity allowance for the entire period of parental leave will be increased and set at 70% the previous salary. This means that currently maternity benefit for the period of parental leave is on average 67.5% of the allowance base, i.e., a slight increase as compared to the previous levels (60%). However, the bill introducing changes has still not been adopted as the legislative process is still ongoing. Therefore, the most likely scenario is that the changes will be implemented in January 2023 (Leśniak, 2022).

#### 5.3.5 Eligibility

The leave, together with the payment, is available for insured persons (no specific period of previous employment required), including all employees and self-employed people covered by social security insurance at the start of leave. In case the mother (even if she is uninsured) does not want to or cannot take care of a child, an employed father or another employed or insured member of the family may take the leave. A mother's non-eligibility for Parental leave does not cause the loss of the eligibility of an employed or insured father or employed or insured other member of the family (i.e. grandmother, uncle, brother, child etc.). Same-sex parenthood is not recognized in Polish law, making it impossible for same-sex parents whose child is born in Poland to share Parental leave (Kurowska et al., 2021). Currently, there are no plans to explicitly make the leave available to same-sex parents.

#### 5.3.6 Instrumental

As mentioned above, the low engagement of fathers in parental leave should be first explained by the current lack of individual and non-transferrable entitlement for the fathers, although in theory the parents can freely decide about who is using the leave. However, there is a complicated and *administratively difficult* mechanism of establishing how the parents split the leave. As mentioned, parental leave can be used after the end of maternity leave, and it is normally mothers who use it.

As evidenced in the interviews, in relation to the current system, it is difficult for both the employers and employees to fully understand how the system works, so it is commonplace that the HR departments or employers encourage mothers to take the full duration of maternity and parental leave, with 80% replacement rate of wages. Moreover, in case of convictions of ‘active fatherhood’, if fathers take their part of leave, the benefit is only 60% of previous wages, which is a strong disincentive from taking leave, while an 80% replacement rate for mothers is a strong incentive to take the full period of parental leave.

Effectively, the new solution is a break from the past, responding to the intention of the Work-Life Balance Directive and will provide more than two months of additional paid parental leave for fathers (the second parents) from August 2022. However, despite strengthening the new rights for fathers, the reform plans may not contribute to improved execution of social rights because of how the new entitlements are (not) communicated. There are currently no plans to conduct information campaigns to raise awareness about the new entitlements, and the government has not initiated any public debate about the solutions (Interview, Trade Union expert 1, PL, 2022), while the issue does not seem to be salient among the social partners (Interview, Employers’ Organization 1, PL, 2022). In fact, the whole legislative process is far from being concluded, as the Ministry of Family has not yet presented a refined draft after receiving opinions from social partners and NGOs in the consultation process that concluded in March 2022.

Regarding the planned communication about the new social right, the Ministry does not plan to present the individual and non-transferable right as an important tool for reaching gender equality. Strategic documents, such as the demographic development strategy or ministerial family policy plans do not mention father’s rights to take the leave or the issue of more balanced division of labour within the family (Ministerstwo Rodziny i Polityki Społecznej, 2021). Instead, the Ministry has so far emphasised how the directive may contribute to strengthening a distinct role of the father, in a more traditional sense. Referring to the age limit of the child mentioned in the directive (eight years), the ministry reframes and repurposes the original argumentation presented by the directive (emphasising gender equality) to stress the role of engaged (but conservative) father, who will use his part of the leave to spend some time at home with an older child (Interview, NGO representative 1, PL, 2022). At the same time, it would still be the mother’s main role to take care of the small child.

In sum, although normative resources seem to be enhanced in order to strengthen and equalise the formal social rights of women and men to parental leave, so far, an almost complete negligence of instrumental resources can be observed in the case of Polish reforms. This is manifest through a lack

of any debate in the public sphere or reframing Polish parental leave in terms of gender equality or engaged fatherhood for children below the age of 3.

#### 5.3.7 Carer days

The Polish system does not include the solution that would respond to the way it is formulated in the Directive – the closest is the possibility of taking two days to take care of a healthy child, fully paid. A new five-day care leave will be introduced, which can be used, inter alia, for a child. The purpose of the time off during this period is to take care of a person who needs support for medical reasons. However, this leave is unpaid, so in practice it will be more profitable to use another (paid) leave available in case the child is ill. In addition, there will also be a new five-day leave to look after a family member (including a child) who has had an accident or requires care for another reason. This leave will be paid, and the salary will be 50% of the daily rate.

#### 5.3.8 Flexible Work

Currently an employee has the right to apply for flexible forms of work or telework in case of a complicated pregnancy, an employee who is the parent of a child with a disability certificate, as specified in the provisions on the vocational and social rehabilitation and employment of disabled people, for employees having children requiring special education or a ruling on the need for revalidation and education classes. The right to apply for flexible forms of working time and part-time employment is also available to employees whose children have already turned 18 years of age. The bill implementing the Directive also plans new solutions within this respect. The new regulations will allow parents of children up to 8 years of age to flexibly organize their working time. In order to take advantage of the new provision, the employee will be required to submit an appropriate application. The employer will have seven days to respond to it.

### 5.4 The Netherlands

#### 5.4.1 Work-life balance in the Netherlands prior to the WLBD: Use of leave among mothers and fathers prior to the adoption of the WLBD, and use of ECEC

In the Netherlands customarily the State has left the providing of care to the private sphere. The Dutch welfare state is “egalitarian regarding income distribution but highly segmented regarding gender relations” (Bussemaker, 1998 and Bleijenbergh, 2004) and due to the traditional role of motherhood “women plan their employment around their care obligations at home”. (Schipper,



2001 and Plantenga et al., 1999). Most people in the Netherlands are used to part-time work pattern, combined with children attending ECEC for a maximum of three days per week (Interview Netherlands 4, Ministry 1, 2022). Before the adoption of the WLB Directive the take-up rate of parental leave by both mothers and fathers was below the two months required by the directive. In 2007, it varied for mothers from 33% to 66% of eligible women, for fathers around 16% (Anxo, Fagan, Letablier, Perraudin, and Smith, 2007). Parents in the Netherlands use their parental leave in a very flexible way, part-time over a long period of time, probably to combine work & care responsibilities. In 2019, the uptake differences between mothers and fathers were quite small (20 per cent versus 15 per cent). On average, mothers took nine hours per week of Parental leave, while fathers took eight hours, though for fathers it was over a longer period of time (17 months compared to 15 months for mothers) (Den Dulk and Yerkes, 2022).<sup>7</sup> According to the statistical data published by the Central Statistics Bureau in the Netherlands in 2022, most employees with children aged eight or younger did not take parental leave in the past year. In 2021, women took parental leave relatively more often than men, but a relatively larger group of men did not take leave. The most frequently cited reason for not taking leave when there was a need for it, was that the compensation was too low or that it was not financially feasible for both men and women. Another reason that was mentioned relatively often was that it would be unfavourable for the career or simply not possible within the workplace (Perez and Souren, 2022). The majority of parents (almost 70 percent on average) did not make use of a parental leave scheme. In 2021, the take-up rate of women with children of 8 years or younger is 17,8 percent, vs. a take-up rate among men of 16 percent (Perez and Souren, 2022).<sup>8</sup>

Regarding ECEC, families have to pay fees, which are amongst the highest in Europe (Eurydice, 2019). Childcare allowances are available and regulated by legislation. In 2004, the Childcare Act<sup>9</sup> created a subsidized, demand-driven market for childcare, whereby parents receive a childcare allowance (Kinderopvangtoeslag) as a contribution towards the costs of a place at a nursery, after-school care or child-minder. Furthermore, the Dutch government reimburses a part of the cost of childcare, based on multiple factors, such as family income, the number of children, and the working hours of parents. When designing this childcare system, the main focus was on parents and their labour market participation. The aim was to generate sufficient affordable facilities to

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<sup>7</sup> Brakel, M. van den, et al. (2020) Emancipatiemonitor 2020: Wie zorgt er voor de kinderen?.[who is taking care of the kids?] <https://digitaal.scp.nl/emancipatiemonitor2020/wie-zorgt-er-voor-de-kinderen>.

<sup>8</sup> Module Arbeid, Zorg en Kinderopvang 2021, see: [4. Gebruik en behoefte ouderschapsverlof \(cbs.nl\)](#)

<sup>9</sup> Wet van 9 juli 2004 tot regeling met betrekking tot tegemoetkomingen in de kosten van kinderopvang en waarborging van de kwaliteit van kinderopvang (Wet kinderopvang), [wetten.nl - Regeling - Wet kinderopvang - BWBR0017017 \(overheid.nl\)](#)



enable parents to combine paid work with a family (Van Hooren, 2021). In recent years, however, there has been an enhanced focus on quality of care. Thus, in 2018 and 2019, new legislative acts on the Innovation and Quality of Childcare Act<sup>10</sup> and the Harmonization of Childcare and Playgroup Work Act<sup>11</sup> were passed to improve the quality and accessibility of childcare (Interview Netherlands 4, Ministry 1, 2022). As the current system in the Netherlands is expensive for parents, even when some costs are partially reimbursed, the new government's plans are to reform it. Concerning the relationship between care leave policy and early childhood education, research shown that there is a significant gap of nearly 44 months between the end of well-paid leave and an entitlement to Early Childhood Education and Care (ECEC) in the form of early admission to elementary school (Den Dulk and Yerkes, 2022). Policy advisers highlighted during the interviews that the link between a properly accessible and high quality child-care facilities (either through childcare institutions or childcare provided at home) is crucial to help working parents achieve an acceptable work life balance (Interviews the Netherlands 5 & 6, SER advisers, 2022). In the Netherlands, public child-care expenditure is 0,4%GDP, which is the lowest of the countries under examination.

In the first quarter of 2022 (according to the figures published by the Central Bureau of Statistics), there were over 9.4 million people aged 15 to 75 years in paid work in the Netherlands. Nearly half of them, 4.5 million, worked part-time. In contrast to many countries, there are also many men working part-time: 1.4 million of the men work part-time and 3 million women work part-time.<sup>12</sup> According to the data of the 2020 monitor, the labour market participation of women has increased since the end of the economic crisis and the gap with men is decreasing. The average working time of women has also increased slightly in the last years. However, the difference in working time per week between women and men is still considerable (on average 28 hours for women and 39 hours for men, in 2019). The stakeholders interviewed share the view that earmarking parental leave could be part of the solution to reduce the part-time gender gap in the Netherlands and incentivize female economic independence and career progression, especially if fathers actually use the part of paid earmarked leave that will be reserved to them. Studies show that when men are assuming more care responsibilities that helps with a more equal division between paid and unpaid work between men and women in the long term (IBO, 2019 and Interview the Netherlands 2, FNV, 2021).

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<sup>10</sup> [wetten.nl - Regeling - Wet innovatie en kwaliteit kinderopvang - BWBR0039785 \(overheid.nl\)](https://wetten.nl/Regeling-Wet%20innovatie%20en%20kwaliteit%20kinderopvang-BWBR0039785)

<sup>11</sup> [wetten.nl - Regeling - Wet harmonisatie kinderopvang en peuterspeelzaalwerk - BWBR0039656 \(overheid.nl\)](https://wetten.nl/Regeling-Wet%20harmonisatie%20kinderopvang%20en%20peuterspeelzaalwerk-BWBR0039656)

<sup>12</sup> Source: CBS [Deeltijd \(cbs.nl\)](https://www.cbs.nl/deel-tijd)

#### 5.4.2 Decision-making context on labour market/family policy issues

In the Netherlands, various actors have been involved in decision-making and implementation of the legislation on parental leave. The government decides on the formal legal transposition of the WLBD, but social partners have been involved in the decision making and implementation process through several consultation processes. The most important forum for that discussion on the legislation in the Netherlands dealing with work life balance and, in particular with the reform of parental leave, has been the Socio-Economic Council SER, (Interviews the Netherlands 5 & 6, SER advisers, 2022)<sup>13</sup>

This area is divided between several ministries. The main one is the Ministry of Social Affairs, while the Department of Equality and Emancipation policies at the Ministry of Education has been responsible for the gender mainstreaming screening of the new legislation (Interview the Netherlands 4, representative Ministry 1, 2022). The evaluation of the measures planned due to the WLBD from the gender point of view is positive, as their clear aim is to fight the “double discrimination” suffered by working mothers who are assuming most of the unpaid work tasks at home and not having same career progression possibilities as men (Erenaga de Jesús and Echaniz Barrondo, 2018). Prior to the WLBD, there was no statutory paid earmarked parental leave, although a number of sectoral collective agreements, mainly in the public sector but also in sectors such as banking and insurances, included the right to partly paid parental leave. Collective agreements at sector level tend to have more extensive work-family provisions than company level agreement (Schreuder, 2009). There was nevertheless for all workers a right to request unpaid parental leave prior to the WLBD.

#### 5.4.3 Paid earmarked parental leave: Regulatory Tensions

The Dutch government has had a clear sceptical position on EU legislation concerning labour market policy, due to subsidiarity concerns (Interview Netherlands 4, Ministry 1, 2022). However, regarding the social partners, research shows divergent positions on this issue. The employers were reluctant to

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<sup>13</sup> The SER is an advisory body where the social partners are represented but it is not directly involved in the implementation of an EU Directive. The following relevant advice documents issued by the Socio Economic Council in the Netherlands were mentioned during the interviews: SER-advies: Een werkende combinatie, [Een werkende combinatie | SER](#) (including an agenda of topics related to conciliation of working and family life); SER-advies: Optimalisering van verlof na geboorte kind. [Optimalisering verlof na geboorte | SER](#) (with important recommendations on reforms of the national legislation over care leaves); [SER verkenning Markt voor persoonlijke dienstverlening in internationaal perspectief](#) (Highlighting that a better regulation of the market for personal services offers opportunities for increasing the labour participation of women in particular); and the [SER-advies Maak kinderopvang toegankelijk, betaalbaar en eenvoudig.](#)

support EU level legislation concerning leave. This topic was seen as a policy matter that could be better regulated at national level (Interview Netherlands 1, Employers' Organisation 1, 2021). In contrast, the main trade union confederation in the Netherlands has supported the adoption of EU legislation in this field since the start of the EU legislative process (Interview Netherlands 2, FNV, 2021).

On the voting of the Directive on work-life balance in the Council, the Dutch government voted against it. At the time, the majority of political parties in the Netherlands had expressed their negative assessment concerning the respect of the subsidiary principle regarding the WLB Directive<sup>14</sup>. The majority of the House of Representatives in the Netherlands took the view that the proposal was not dealing with a transnational problem. The House expressed that the benefit of equalising regulations on work-life balance between the Member States remained unclear. Besides, the issue of who will cover the costs of the newly paid parental leave right were definitively an issue on the employers' side (Interview Netherlands 1, Employers' Organisation 1, 2021 and interview the Netherlands 3, employers' representative 2 SMEs, 2021). On the Government's side, the response of the Minister of Social Affairs to the adoption of the Work-life balance directive was to send a letter to the Parliament stating that: 'The government in the Netherlands supports the aim of the directive to encourage women's labour participation and a more balanced division of work and care responsibilities but believes that designing leave arrangements is a national competence.'<sup>15</sup>

The main trade unions in the Netherlands clearly supported the objectives of the Directive and the earmarking of leave once the directive was adopted (Interview Netherlands 2, FNV, 2021). The main employers' associations also supported the general objectives of the Directive but expressed concerns about the additional costs for the employers. They considered that the costs associated with leave should not fall mainly on the employers (Interview Netherlands 1, Employers' Organisation 1, 2021). Besides, a representative of SME employers mentioned the additional problems that applying this new legislation might create in practice for small companies with a very reduced staff. For SMEs arranging a replacement for an employee who is taking up parental leave for some months is more difficult and costly (Interview the Netherlands 3, employers' representative 2 SMEs, 2021). In any case, in line with the traditional polder model approach in the Netherlands, the social partners discussed this issue in the context of the Socio Economic Council-SER and they reached agreements on WLB related issues

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<sup>14</sup> See letter of the Second Chamber of the Dutch Parliament of 27.06.2017 to the president of the European Commission with a motivated negative advice regarding subsidiarity - the EU proposal for a Directive on Work and private life balance ([1129697NL.pdf \(europa.eu\)](#)).

<sup>15</sup> See dossier: [E170021 - Voorstel voor een richtlijn betreffende evenwicht tussen werk en privéleven voor ouders en mantelzorgers - Europese Berichtgeving Eerste Kamer.](#)

and sent them to the new coalition government (Interview the Netherlands 3, employers' representative 2 SMEs, 2021 and Interviews the Netherlands 5 & 6, SER advisers, 2022). In the political arena, most political parties, covering a broad ideological spectrum, supported the general lines of the governmental implementation proposal, with the exception of the SGP (conservative Christian party with a traditional vision on the division of family roles between men and women). The base-line assessment of policy-makers (Interview Netherlands 4, Ministry 1, 2022), as well as the social partners (Interview Netherlands 2, FNV, 2021 and Interview the Netherlands 3, employers' representative 2 SMEs, 2021), was that this new legislation would help to increase the labour market participation of female workers in the Netherlands, to promote gender equality and to develop a more balanced and equal division of paid and unpaid work.

#### 5.4.4 Normative resources, including summary of decision-making on WLBD (Formal parental leave rights to paid parental leave and remuneration)

During the implementation process of the directive, the coalition government presented a legislative proposal for implementing the new WLBD and reforming the regulation of parental leave. The legal proposal introduced a new form of statutory paid parental leave for the first 9 weeks of the leave for each parent. The paid parental leave act is implementing the work-life balance Directive and it has amended the Work and Care Act (Wazo), the Flexible Working Act (Wfw) and other laws. Despite the original opposition of most political parties to the proposal of the EU for a WLBD due to subsidiarity reasons, the domestic proposal of implementation was adopted by the House of Representatives (Second Chamber) on 20 April 2021. The following political parties voted in favour: SP, GroenLinks, Volt, DENK, PvdA, PvdD, 50PLUS, D66, ChristenUnie, VVD, CDA, PVV, BBB and FVD. The political parties SGP and JA21 voted against it. The Senate (First Chamber of the Dutch Parliament) adopted the proposal on 12 October 2021. Nearly all political parties voted in favour of the proposed national legislation in the Senate. The motion submitted during the plenary discussion of the bill on 5 October 2021 by Mr. Van Gurp of the left Green party (GroenLinks), regarding the increase in the payment percentage of parental leave from the originally 50% proposed by the coalition government up to 70% was adopted by the Senate. All political parties represented in that Chamber voted in favour of that increase except the SGP. Finally, a Decree of 26 April 2022, amended the percentages of paid parental leave of the Act Paid Parental Leave, setting the payment level at 70%.<sup>16</sup>

During the negotiation of the implementation of the WLBD, the trade union FNV lobbied for an

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<sup>16</sup> Decree published on the Official Journal of 10<sup>th</sup> May 2022, Stb 174, 2022 [vlsscuclqkw2.pdf \(eerstekamer.nl\)](https://www.eerstekamer.nl/vlsscuclqkw2.pdf).

increase in the level of pay of the right to paid parental leave. The FNV considered that the first government's proposal to set the level of pay and 50% was insufficient and not fulfilling the standard of an acceptable level of pay mentioned by the WLBD (Article 8.3 WLBD states that the "payment or allowance (...) shall be set in such a way as to facilitate the take-up of parental leave by both parents"). According to that federation, that low level of pay would have made it difficult for parents to take up parental leave, especially for low income and middle income groups because those workers cannot afford it. That policy could create new class inequalities and that was problematic from the equality point of view. In the Netherlands, for the higher income groups the gap on the labour market participation between men and women and the hours they work is smaller than in the case of low income groups. If one of the objectives of this directive is to decrease the gap between men and women in the labour market, a higher level of pay was required (Interview Netherlands 2, FNV, 2021 and Interview Netherlands 4, Ministry 1, 2022).

From April 29 to May 24, 2020, a draft version of the Act on paid parental leave was open to internet consultation. Stakeholders and interested parties could respond to the draft bill and the explanatory notes thereto. The majority of the reactions were positive about the intention to introduce paid parental leave as an important step towards a better work-life balance for working parents and a higher participation of women in the labour market. However, there were several negative reactions about the proposed level payment of parental leave. The critics on this point focused on the insufficient financial compensation for parents foreseen by the original proposal of the government.<sup>17</sup>

The Act paid parental leave (*Wet betaald ouderschapsverlof*, Wbo) entered into force on 2 August 2022. According to this legislation each parent can take up to 26 weeks leave. Parents are entitled to receive payment (paid by the UUV- social security institution) during the first 9 weeks of parental leave. The amount of the paid parental leave is set at 70% of an employee's daily wage during those 9 weeks. 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 (unpaid parental leave) as they wish, up to the child's 8th birthday. The policy advisers interviewed highlighted that the implementation process of the Directive was not a very controversial dossier. Moreover, the new legislation fully complies with the obligations set by the WLBD (Interviews Netherlands 5 & 6, SER advisors, 2022).

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<sup>17</sup> See report on the results of the consultation process:  
<https://www.internetconsultatie.nl/wet invoering betalings ouderschapsverlof>

#### 5.4.5 Eligibility

Employees can request parental leave to their employers as soon as they are employed. It is to be noted that there is no minimum qualifying period (previously there was a period-of-service requirement in some collective agreement which partially paid parental leave, but this requirement is not included in the new legislation. An employee can take paid parental leave if he is the legal parent of a child, namely, the mother or the father, the adoptive parent, or if not being the legal parent lives with the child, takes care of him/her and raises him/her or in case the employee is the foster care parent. In addition, the following rules apply: the employee has at least 1 week left of unpaid parental leave; from 2 August 2022, the parent has taken paid parental leave at least once the number of hours of his/her working week; the parent should take the paid parental leave within 1 year after the birth of the child or within 1 year after joining the family; and the leave concerns an adopted or child in foster care and the child is not yet 8 years old.

#### 5.4.6 Instrumental resources

In the Netherlands, the implementation legislation of the WLBD is clearly intended to promote the use of parental leave among fathers. Politicians, policy makers, and the unions hope that the effect of the new legislation will be to facilitate an early return to work of mothers and a higher involvement of fathers in the care of children (Interview Netherlands 2, FNV, 2021 and Interview Netherlands 4, Ministry 1, 2022). In this process of transposition, the WLBD is seen as an opportunity to enhance gender equality, and from a values-based perspective, to stimulate a culture change, to prompt the take up of leave by fathers. During the open consultation process on the first draft proposal of the Act on Parental Leave, several organisations emphasized the need to promote the *awareness on the availability* of new paid parental leave to encourage its use by both parents, via information campaigns. They highlighted that this is important to prompt a cultural change that makes it normal for men to take parental leave and take a greater share of the day-to-day care of their children. In addition, a number of civil society organizations have united in the alliance Werk&Gezin (Family and Work) to develop various tools for awareness about the use of leave with a subsidy from the SZW (Ministry of Education) and OCW (Ministry of Education, Culture and Science).

Regarding instrumental *administrative* resources, the information about the paid parental leave is publicly available on the Dutch administration website. Also, there are summaries in English of the main changes introduced by the new legislation. Regarding these instrumental resources, most of the paid allowances will be requested to the employer but paid by a central, semi-public office dealing with social security (UWV). According to a policy advisor that is a positive development which makes

the application simpler. In addition, the fact that both leave allowances are now set at the same level of pay of 70% is evaluated as a positive step that facilitate for parents to understand and apply for those various leaves. It makes it easier for parents to exercise their rights to the different leaves. (Interview Netherlands 4, Ministry 1, 2022) Besides, to make these rights more accessible, the Ministry of Social Affairs, in cooperation with the Ministry of Education, has organised several information/awareness raising campaigns. There has been an information campaign on the leave for the partner of the mother and a process of evaluating the first year of that partners' leave is being launched. However, the results regarding uptake are difficult to evaluate, due to the fact that the new legislation on partners' leave entered into force in 2020, in the middle of the COVID-19 pandemic (Interview Netherlands 4, Ministry 1, 2022). In 2022, a new information campaign on the right to paid parental leave has been launched by the Ministry of Social Affairs.

Employers' organisations are also organising specific information campaigns for their members. For instance, AWWN is actively promoting the dissemination of information on the new regulation in the Netherlands regarding the various forms of parental leave in connection with birth. Detailed information is provided on the new right to paid parental leave and the fact that, with effect from 2 August 2022, benefits will be paid by the UWV. This Employers' federation provides online information on the new regulation and the paid part of parental leave in the form of questions and answers. There is also an available telephone and online assistance line for their affiliates to contact the Association for questions about parental leave.<sup>18</sup> Trade Unions are also organizing information campaigns. For instance, FNV is displaying online information on the new paid parental leave on their website, and an information brochure is available online, as well as several model letters for applying for the available care leaves.<sup>19</sup>

In the SER (Social Economic Committee) employers' and employees' representatives are also looking jointly at work life balance policies. They aim to clarify the whole policy package (Interviews Netherlands 5 & 6, SER advisors, 2022). Employers say that the differences between all the various sorts of leave schemes around the birth of children are an issue, i.e. the different levels of pay, some leaves are financed from premiums paid by employers, some are paid by the government (UWV), some are a combination of the two sources of financing and there are different periods for asking for the benefits being paid by UWV. The system of leaves for parenthood is currently very complex from the administrative point of view. There are different rules for each kind of leave and employers are aiming for a rationalisation of the system. Their preference would be one single simplified leave

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<sup>18</sup> See: <https://www.awvn.nl/publicaties/achtergrond/onbetaald-en-betaald-ouderschapsverlof/>

<sup>19</sup> [Ouderschapsverlof 2022: alles wat je moet weten - FNV](#)



mechanism because now it is very fragmented (Interview Netherlands 3, Employers' representative 2 SMEs, 2021). The trade unions recognise that the employers have a point on this issue (Interview Netherlands 2, FNV, 2021). So, the social partners are discussing in the SER how to streamline the leave policies. The aim is to make easier for parents/workers to exercise their rights, but for employers as well to arrange it. In any case, policy advisors highlighted that even when a simplification of the different sort of leaves might be desirable, it is important to consider that the various leaves have different policy objectives and those need to be respected in any amendments of the care policies (Interviews Netherlands 5 & 6, SER advisors, 2022). In the group at the SER dealing with this issue there are representatives from employers and employees, and crown members. They meet regularly to discuss the different types of leave, how to offer some guidance on the WLB policies, and also develop material for employers and employees to be used (Interviews Netherlands 5 & 6, SER advisors, 2022).

#### 5.4.7 Carer days

In the Netherlands, there were, prior to the directive, carer days in the form of a so-called short-term care leave. However, according to union representatives, their perception is that it not much used. Also, because both employees and employers often do not know about that possibility. Finally, the fact that the cost of this carer leave is fully assumed by the employer might be a deterrent factor (Interview Netherlands 2, FNV, 2021). There is short-term care leave that employees can take to provide essential care to someone who is ill or in need. Employees can request that care leave if he or she needs to take care of: children or grandchildren, partner, parents or grandparents, resident members of the household or even in case of friends, neighbours or acquaintances, provided there is a social relation and it is plausible and logical that the employee is the care giver. During the period of leave, employers pay 70% of the employee's salary. If this is less than the minimum wage, the employee will be paid at least the minimum wage.

#### 5.4.8 Flexible Work

Regarding flexible work, the Netherlands was a forerunner on regulating the right of employees to request flexible working time and in prohibiting discrimination of part-time workers (Ramos Martín & Blázquez Cuesta, 2007 and Ramos Martín, 2011). Since 2000, the law on Adjusting working Time (Wet Aanpassing Arbeidsduur) recognized the right to request a shortening or lengthening of the weekly working time. The employer can only deny that request in case there are serious organizational reasons justifying the denial and the case law has been restrictive in accepting those kind of business



organizational reasons. This legislation has been reformed later by the Flexible Working Act (Wet Flexibel Werken).<sup>20</sup> According to that legislation, an employee has the right to request an adjustment of working hours, working time, and workplace. The aim of the Flexible Working Act is to facilitate combining work and private life. This law does not apply to companies with less than ten employees. Requesting flexible working time is quite normal in the Netherlands and there is no discrimination on working conditions. The predominant trend is the one-and-a-half family income model (with men working full-time and women part-time). The problem of this model is that it reinforces the “motherhood ideology” with women assuming most unpaid work (Niphuis-Nell and Brouwer, 1995). Therefore, it jeopardizes social change and a more balance redistribution of care tasks between men and women. In the Netherlands, working part-time does not gives less rights or less secure position and it is predominantly voluntary<sup>21</sup> (Sirvent García del Valle, 2009) but it has a problematic side, ie. the gender career gap, the gender pension gap in the old-age and the perpetuation of the economic dependence of women on men. A policy maker stressed the fact that all employees should be able to combine work and family life, but the policies/regulations should also promote gender equality. So, the fact that it is more normal for women to work part-time has to do with the societal assumption in the Netherlands that unpaid care for the family is female work. From that point of view, the new legislation on parental leave, which facilitates a more equal division of care roles between men and women, is a step in the right direction. It helps to change those cultural patterns and achieve substantive gender equality. The policy maker interviewed expressed the opinion that an important aspect of work life balance is that it should not just be an individual balance for every employee, but should also aim to achieve equal balance between men and women in the society (Interview the Netherlands 4, representative Ministry 1, 2022) This is in line with the theories that argue that “solving the dilemmas of de-familialization” requires to rethink social citizenship fundamentally (Lister, 1995) and is “the logical completion of the long historical arguments made by women for inclusion” (Knijn and Kremer, 1997 and Tronto, 1998).

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<sup>20</sup> The last time on 2021, see [Wet Flexibel Werken \(WFW\) - voorheen Wet Aanpassing Arbeidsduur - Arbeidsrechter.nl](https://www.rijksoverheid.nl/onderwerpen/flexibel-werken/wet-flexibel-werken)

<sup>21</sup> Voluntary in the sense that women choose to work part-time expressly to combine it with other unpaid work tasks and not because they cannot find a full-time job.

## 5.5 Germany

### 5.5.1 Work-life balance in Germany prior to the WLBD: Use of leave among mothers and fathers prior to the adoption of the WLBD, and use of ECEC

In Germany, the take-up rate of parental leave among fathers increased sharply after the introduction of parental leave allowance with earmarked leave from 3% to 21,1% in 2008. It has continued to increase since then. According to the latest data from 2019, the share of fathers taking parental leave was 43,5%. The average duration of parental leave by men in 2021 was 3,7 months (Destatis, 2021).

The German ECEC system is an integrated system and targeted to children until the end of primary school. Next to the Nordics, Germany is one of the few OECD countries where a legal entitlement to ECEC exists since 1996 for all children aged from 1 to school entry. Thus, Germany has more children enrolled aged under 3 and at pre-primary level in ECEC service than the OECD average. More precisely, 39% of all children under the age of 3 were enrolled in ECEC in 2019, compared to 25% as OECD average (OECD, 2021). Public expenditure for ECEC has risen constantly over the past decades to 0.58% in 2016 (OECD, 2016a). However, differences in ECEC across the federal states (Länder) have been huge since Eastern Germany had a well-developed childcare system with a dual earner model whilst the Federal Republic of Germany promoted the male breadwinner model (West et al., 2020; Pfau-Effinger and Smidt, 2011). This led to childcare coverage rates for children up to 3 ranging from 54% in Brandenburg to only 1% in Rheinland Pfalz in the 1990s before a legal right to childcare was introduced (West et al., 2020). Over the decades, ECEC remained a political issue between the Christian Democrats promoting more the breadwinner male model and the Social Democrats promoting the dual earner model. For example, after the reunification, more left-wing Länder governments were more willing to invest resources in ECEC than the right-wing governed Länder (Busemeyer and Seitzl, 2018). The main controversy involves the fact that the legal entitlement to daycare in Germany does not specify the number of hours. This means that a full-time place is not guaranteed, complicating the re-entering in the labour markets for women (Schober, 2014; Blome, 2018). Many services in Western Germany still lack to offer full-time opening hours allowing for fulltime employment for both parents (Reimer et al., 2021: 285). Furthermore, the responsibility for childcare is decentralized, which means that each Land has its own policy and regulations. However, it is notable that public child-care expenditure in Germany has increased significantly between 2009 and 2019, from 0,5% GDP to 0,8% GDP.

However, when childcare facilities are lacking, it is mainly the women that take very long periods of parental leave (Interview Germany 3, Family policy expert 2, 2021). This fact is also reflected in the

high proportion of part-time employment among women. Even though the female employment rate stayed stable during the last 10 years, ranging from 70-75%, part-time employment is high (it was 48% in 2021, which is a decrease from 2019, when it was 56%). Compared to men with 83% in employment in 2021 and only 10% in part-time employment, the proportion of women in part-time jobs is significantly higher, which creates various disadvantages for women on the labour markets.

### 5.5.2 Decision-making context on labour market/family policy issues

In the decision-making and implementation of family policies, social partners are involved in the industrial policy formulation via consultation. This means that the social partners can express their positions, but there is no common decision-making between the state and the two sides of the industry. In the case of the WLBD, the German social partners issued a position while negotiating the directive in the Council of the EU and, subsequently, when implementing the directive at the national level. Even though Germany lacks Denmark's autonomy for social partners, their positions are considered important in decision-making. For employees, the German Trade Union Confederation (Deutscher Gewerkschaftsbund; DGB), which is an umbrella organisation of eight trade unions with over 6 million members, is the most crucial lobby. Germany already complies with the WLBD in terms of an earmarked non-transferable part. However, implementing a paid paternity leave was contested at EU level since Germany so far does not have such an explicit legal right to paternity leave (Agence Europe, 2018).

### 5.5.3 Paid earmarked parental leave: Regulatory Tensions

In the EU decision-making, Germany slowed down the negotiations in the Council of the EU as the government in 2018 - consisting of the Christian Democratic Union of Germany (CDU) and the Social Democratic Party of Germany (SPD) - feared additional costs resulting from the introduction of a paid paternity leave (Agence Europe, 2018b; Interview Germany 1, DGB Bundesvorstand official, 2021). Since the right to paternity leave is not yet in place, it means that introducing such a right creates new costs for employers and social security institutions to grant this right.

During the national negotiations, the additional costs concerning an explicit paternity leave remained. However, different political views and arguments have prevailed in the phase of implementation. On the one hand, the previous CDU-SPD government was against introducing paid paternity leave, since it would clash with the national regulations (Agence Europe, 2018). This view was also supported by the German industry and employers, who feared additional costs resulting from a separate paid paternity leave (Interview Germany 1, DGB Bundesvorstand official, 2021). Moreover, the ministry

further argued that Germany would already comply with the directive, and therefore, no transposition measures were needed (Interview Germany 4, Federal Ministry for Family Affairs, 2021; Die Welt, 2021a). On the other hand, trade unions and lawyers in the field argued that Germany needs to implement the regulation on paternity leave (DGB Frauen, 2021; Die Welt, 2021; Treichel, 2021), and stressed the importance and need to add new rules on paid paternity on top of the existing parental leave to enhance gender equality (Interview Germany 1, DGB Bundesvorstand official, 2021).

During the implementation, Germany first aimed to preserve the status quo of parental leave policies. Since there have been elections by end-2021 and the responsible ministry had a total of four different ministers between the adoption of the directive until its implementation, a long-term strategy was complicated. However, in the coalition agreement between the newly elected government consisting of the Social Democrats, the Greens, and liberal Free Democratic Party Germany, the reconciliation of family and work is one important area. Therefore, the most far-reaching suggestions stemmed from the previous minister Anne Spiegel (the Greens) who suggested two weeks of specific leave to the second parent to be directly granted after the child's birth and compensated with full wage (Die Zeit, 2021), as also stated in the coalition agreement (Die Bundesregierung, 2021: 79). However, Spiegel resigned in April 2022 after heavy criticism in her capacity as environment minister during the flood in Rhineland-Palatinate in 2021, as she was on holidays in France with her family. As of early September 2022, there are no concrete plans on the two weeks specific of leave for the second parent, to comply with the WLBD. The current minister Lisa Paus seems to be more focused on a guaranteed child allowance.

Despite the controversy of the two weeks of paternity leave stemming from the directive, the governing coalition aims to promote a more equal sharing parental and carer leave in order to improve work-life balance for parents and carers. The plans also include the introduction of a paid paternity leave after the birth of a child. To improve equality in uptake of the parental leave allowance, the current plans foresee an increase in the so-called partner months (extra months if both parents take their reserved parental leave) to one more month. Moreover, the plan is to dynamise the minimum and maximum allowance and to introduce an entitlement to parental leave allowance for foster parents. Additionally, the entitlements for self-employed shall be improved. Lastly, parents with a premature born child receive up to three additional months parental leave (Die Bundesregierung, 2021).

#### 5.5.4 Normative resources, including summary of decision-making on WLBD (Formal parental leave rights to paid parental leave and remuneration)

The German parental leave time (Elternzeit) is decoupled from the parental leave benefit (Elterngeld). Additionally, there are 14 weeks maternity leave with 100% income, of which eight weeks follow after the birth of the child. The parental leave time is up to three years after the childbirth for each parent, of which 24 months can be taken up until the child turns eight. The parental leave benefits are paid for at most 14 months in total if parents share the parental leave with a maximum duration of 12 month per parent. In case of ElterngeldPlus the duration is a maximum of 32 months if parents decide to work half-time. The parental leave benefit is based on the individual parent's income at a level of sick pay, which is 65% of former net earnings. However, there exists a maximum of € 1.800 and a minimum of € 300 per month, which also applies to self-employed parents. Hartz 4 recipients have the same right to parental leave time as all other groups (up to three years) and receive the minimum allowance of € 300. The second parent is entitled to two exclusive parental leave benefit months, which are often taken up by the fathers directly after birth (Reimer et al., 2021). If the second parent takes at least two months of parental leave, an additional bonus of these two months is paid. These extra months soon became the so-called 'daddy-months' in the German debate implying that fathers usually take these parts (Reimer, 2020; Reimer et al., 2021). Even if the share of fathers taking leave has increased, the lower levels of fathers' uptake of parental leave compared to women, and the shorter period of leave taken by fathers is mainly due to negative career consequences for fathers and family income losses (Interview Germany 2, Family policy expert 1 DE, 2021; Interview Germany 5, Official pme Familienservice, 2021; Reimer, 2020). Since there are no changes planned in the existing legislation when implementing the WLBD, the uptake levels by fathers most likely will remain lower than that of mothers.

#### 5.5.5 Eligibility

The eligibility for parental leave rights in Germany is, in principle, universal. It is sufficient to have a work contract on the day of the child's birth. There are no other requirements needed (e.g., certain length of employment) in order to be granted these rights. However, there have been tendencies in Germany to restrict this universal system and to introduce stricter rules for granting parental leave rights. For example, exemptions were introduced in the past to grant fewer financial allowances to Hartz IV recipients (Interview Germany 3, Family policy expert 2, 2021).

#### 5.5.6 Instrumental

The parental leave system in Germany is marked by complexity (see Eurofound, 2018). As parental leave time (Elternzeit) is decoupled from the parental leave benefit (Elterngeld), there exists many different options on how to take these rights. Moreover, the parental leave is an entitlement granted to employees by their employer, while the parental leave allowance is a social benefit. There are specific services or companies in place that serve as consultants for businesses and companies to advise their employees. However, filling in the online form and finding a combination that suits best for both parents in their specific life situations is often highly complex, especially as remuneration is decent, but not very high. Thus, simplifying the system and providing better guidance for individual cases would help couples with less time or fewer resources (Interview Germany 2, Family policy expert 1, 2021; Interview Germany 3, Family policy expert 2, 2021). The coalition of the 2021 elected government aims to simplify the access to parental leave allowance and enhance its digitalisation (although this was independent from the implementation process around the WLBD). The idea behind is to lower the administrative burden for parents in accessing their rights (Die Bundesregierung, 2021: 78-79).

Another problem involved with the complexity of system is that many parents tend to choose the most common division of leave, which means that mothers take 12 months and fathers take between 0 and 2 months. This most common parental leave model is also communicated as '12+2' model, which *de facto* prevents an equal sharing of parental leave (Interview Germany 2, Family policy expert 1, 2021; Interview Germany 3, Family policy expert 2, 2021). In addition, the differentiation between parental leave time and parental leave benefits leads to difficult situations for women in some federal states, especially if there is not sufficient ECEC. More precisely, depending on the living area, the mothers often take very long parental leave time (usually three years) due to lacking childcare facilities, but without the corresponding parental leave benefit. Additionally, since the fathers' uptake can be taken together with the parental leave time of the mother, it is unclear to assess who primarily does the care work in practice during this period (Interview Germany 2, Family policy expert 1, 2021; Interview Germany 3, Family policy expert 2, 2021).

In Germany, it is primarily the government departments, municipalities, social services, and trade unions that provide the information and material to citizens. However, it would be crucial to obtain more information and encouragement also from the workplaces. This would also reduce the stigma of fathers taking parental leave, especially in workplaces with somewhat stereotypical work cultures (Interview Germany 2, Family policy expert 1, 2021; Interview Germany 3, Family policy expert 2, 2021). Since the remuneration of parental leave is income-based, the Matthew effect is often confirmed where parents who already lack the resources face more difficulties in understanding their rights and thus, receive less. On the other side, there is a maximum limit of parental allowance, which

is perceived as too low (max of € 1.800 per month) to create sufficient incentives for fathers who earn more (Interview Germany 2, Family policy expert 1, 2021). Thus, those at the lower and higher ends of the income scale take less parental leave.

#### 5.5.7 Carer days

In case of sickness of a child or other time needed for care, each worker can take up to 10 days of paid carer days per year. Parents who take care of their children receive 70% of their gross salary, but no more than 90% of their net salary and the maximum annual leave period per working parent is 25 days even in case of three children or more (Reimer et al., 2021: 284). Carer days can be used not only for children, but also for other relatives requiring care. The current government that was elected in 2021, aims to increase the carer days up to 15 days (Die Bundesregierung, 2021: 79). Moreover, there is the possibility to reduce time in paid employment to a minimum of 15 hours per week in case of care time that can last for a maximum period of two years. This family caring time is a legal entitlement since 2015 (Reimer et al., 2021: 284-285). The regulations already in place in Germany are thus sufficient to comply with the EU directive since the directive only requires five carer days per. Thus, no transposition measures are needed or expected (Interview Germany 2, Family policy expert 1, 2021).

#### 5.5.8 Flexible Work

If parents decide to work part-time up to a maximum of 32 hours per week after the birth of a child, the ElterngeldPlus is an attractive option in Germany. This is due to the following. If parents decide to take the standardised Basiselterngeld, the parental leave allowance is 65% of their net income which. However, if parents shortly after the childbirth work again and have an income. The ElterngeldPlus is half of the former net earnings (but in some cases with good earnings may be as high as the Basiselterngeld with income). Since it is however paid double so long as the Basiselterngeld, this form is especially attractive for parents working in part-time. However, the period for ElterngeldPlus has been reduced in 2021 from 46 to 32 months after childbirth (Reimer et al., 2021).

Both parents are entitled to take leave at the same time and the parental leave time can be divided into a maximum of three leave parts (Reimer et al., 2021). Moreover, mothers have the right to 60 to 90 minutes for breastfeeding per day, which must be fully paid. During the Covid-19 pandemic, there have been a lot of discussions on revising the regulations on flexible work in Germany. Moreover, some short-term measures have been introduced during this time. However, these discussions or measures were decoupled from the implementation of the WLBD.



## 5.6 France

### 5.6.1 Work-life balance in France prior to the WLBD: Use of leave among mothers and fathers prior to the adoption of the WLBD, and use of ECEC

Paternity leave was legislated in 2022 which allowed fathers or second parents to take leave of 11 consecutive days or 18 consecutive days in the cases of single for multiple births respectively.<sup>22</sup> The leave must be taken within 4 months of childbirth and is available to all employees and self-employed workers (Boyer and Fagnani, 2019). It is also remunerated at 100% of earnings up to a ceiling of €3,269 per month. However, there is no ceiling for public sector workers and employees in a small number of (usually big) companies (based on local agreements). The take-up rate of paternity leave among fathers has been stable at around 67% to 69% according to a 2019 report by the Inspection Générale des Affaires Sociales (IGAS) (2019). In this respect, paternity leave in France already meets the provisions set out under Article 4 of the WLBD.

By contrast, the take-up rate of parental leave is much lower, and fathers use it much less than mothers (HCFEA, 2019; IGAS, 2019; Pak, 2016), as the remuneration is below the level of unemployment benefit. In 2018, 13% of parents with a child 0-3 used their right to parental leave, of which leave was predominantly taken by mothers (94%), with only a smaller fraction of that leave taken by fathers (6%) (Ministère des Solidarités et de la Santé, 2020). Calculations by Périvier and Verdugo (2021, p.88) showed that the take-up rate of part-time parental leave among fathers is 0.9% which contrasts with 13.2% among mothers in 2015.<sup>23</sup> For full-time parental leave, the take-up rate among fathers is 0.5% which contrast with 13.7% among mothers.

In France, the right to take parental leave is separate from the eligibility to be remunerated for taking this leave (Boyer and Fagnani, 2019). The right to parental leave is an individual entitlement and parents can take it until the child reaches an age of 3. To be eligible for parental leave, parents must have worked at least one year of their employer before the birth of their child. To be remunerated, eligible parents must apply for the Prestation Partagée d'Education de l'Enfant (PrePARE) which was formed with the objective of having 25% of eligible fathers taking up parental leave (full-time or part-time). To be eligible for remuneration, the parent must have worked without break for two years preceding birth if the parent has one child. However, if the parent has more children, the length of work service becomes less restrictive. Additionally, for parents with one child, each eligible parent can

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<sup>22</sup> For ease of legibility, fathers in the rest of text refer to both fathers and second parents.

<sup>23</sup> Values calculated for parent with first child of rank during the first year of the child.



only receive remuneration for 24 months. To obtain the last 12 months of remuneration, the other parent must take the parental leave (e.g. reduced their work or suspend their work completely).

On paper, this condition could incentivize fathers to take parental leave. In reality, the poor remuneration strongly disincentivizes fathers (and also some higher-educated and higher-income mothers) from taking this leave (Collombet, 2016; HCFEA, 2019; IGAS, 2019; Maurot, 2014; Pak, 2016; Périvier, 2018; Interview France 2, CNAF, 2021; Interview France 4, UNAF, 2021). In 2020, the level of remuneration ranges from €148,12 to €397,20 for partial suspension and complete suspension of work respectively (Ministère des Solidarités et de la Santé, 2020, p.94). The values correspond to 9.62% and 25.8% of the minimum wage in France respectively, which is very low. A study conducted by the Caisse Nationale des Allocations Familiales (CNAF) thus finds a steep drop in the use of parental leave after 24 months, which can be interpreted as few fathers taking their share of remunerated parental leave, after mothers have taken it for the first 24 months (see Périvier, 2018, p. 80). The use of remunerated parental leave fell by 56% between 2009 and 2017, which can be attributed to the very poor level of remuneration (HCFEA, 2019, p.8). Taking parental leave would lead to a substantial loss of disposable household income. Instead, using early childhood care facilities would lead to a smaller loss in disposable income, especially for parents with higher income (Interview France 6, DGCS, 2021). In households which do take parental leave, the poor remuneration disincentivizes fathers from taking parental leave to avoid fracturing the employment biography of both parents (rather than just one) (Maurot, 2014, p.40). As women continue to suffer worse labour market prospects than men, it is often women who would take parental leave and suffer fragmented employment biography, on behalf of the household. Hence, Brin et al. (2005) find that fathers whose income is greater than the income of their partners generally do not take parental leave.

Both the poor remuneration of parental leave, and its consequent low take up rate by fathers as well as higher-educated higher-income mothers (Brin et al., 2005), can be explained by how French society perceives parenthood. Fagnani (2001) described how public policy followed the development of societal views on the French family model which moved from the stay-at-home-mother (*la mère au foyer*) to the working mother (*la mère qui travaille*). Relatedly, Maurot (2014) underscored that the French society continues to have a negative view of mothers on parental leave – considering them to be stay-home-mothers that do not fit the working mother model. Brachet et al. (2010) therefore highlighted how French mothers who work do not suffer social stigmatization, unlike their counterparts in Germany. Relatedly, Fagnani (2001) noted that this shift in societal views led to the expansion of ECEC (e.g. crèche collectives, écoles maternelles, jardins d'enfants) to support employed mothers with very younger children. Crucially, these substitutes

were often favoured over parental leave (see Maurot, 2014). This societal view continues to influence the development of parental leave vis-à-vis early childhood care facilities today (Interview France 4, UNAF, 2021; Interview France 5, CGT, 2021).<sup>24</sup> Funding for family policies including parental leave and ECEC facilities comes from the social security scheme which suffers from substantial budget deficits (Interview France 1, CNRS, 2021). Therefore, especially when the government operates within a context of budget constraint, new permanent costs for parental leave are a challenge (Périvier, 2018, p.79). This places pressure on the French state to prioritize selected family policies, and it is easier to improve ECEC, which already works well, rather than parental leave, which is completely new, apart from for disadvantaged groups. Périvier (2018, p.80) found that public spending on remuneration for parental leave fell by 10% whereas public spending on early childhood care facilities grew by 21% from 2010 to 2014. These cuts reflect a reduction in generosity of remuneration of parental leave by 38% in relation to wages since 1994 (HCFEA, 2019, p.19). These spending patterns reflect a public policy prioritization and re-allocation of financial resources from parental leave towards early childhood care facilities. Relatedly, Dauphin and Letablier (2013, p.125) noted that reforming early childhood care facilities rather than parental leave is the French response to the European demand to improve women's employment rate (see also Périvier, 2018, p.77). Hence, governmental impetus to substantially reform parental leave (including remuneration) is held back by budgetary constraints, which compounds dominant societal views on parenthood that favor ECEC (Interview France 2, CNAF, 2021; Interview France 5, CGT, 2021; Interview France 6, DGCS, 2021).<sup>25</sup> In short, parental leave continues to be perceived as an inferior substitute, rather than a complement to ECEC among policy-makers.

All in all, the take-up of parental leave is highly gendered and socio-economically stratified in France. Specifically, the French parental leave scheme with its long duration and low remuneration is doubly-punitive: it is mothers with low income and who are socioeconomically disadvantaged who use it most. Use of parental leave (temporary or in full) by socio-economically disadvantaged French mothers may entrench or worsen their future employment prospects (see for related HCFEA, 2019, p.10). This status of parental leave contrasts with a more positive perception and intention in other countries, where parental leave schemes are seen as a means to correct gender imbalances in the labour market, such as in Sweden. Maurot (2014) notes that parental leave in France has a negative effect on father's ability to take parental leave and engage in active

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<sup>24</sup> Note however that societal view on this subject is also changing. There is a share of younger generations who adopt a view of active parenthood in which both fathers and mothers are involved in early-stage parenthood, but such views are not yet dominant (Interview France 3, CFDT, 2021).

<sup>25</sup> It is not to say that this is the only viewpoint on parenthood in wider French society. However, Maurot (2014) notes that it is the dominant one.

parenthood.

### 5.6.2 Decision-making context on labour market/family policy issues

In France, decision-making and implementation of parental (and paternity) leave is conducted by the French state. While the opinions of different stakeholders (e.g. interest groups, social partners etc.) are solicited, it is ultimately the decision of multiple governmental agencies and ministries: Direction de la Sécurité Sociale, Direction Générale de la Cohésion Sociale, Direction de la Législation Fiscale, CNAF, Caisse Centrale de Mutualité Sociale Agricole, as well as local-level administrators (IGF and IGAS, 2021, p.1). However, the administering and coordination of parental leave and its remuneration is conducted by the Ministry of Labour, Employment and Integration and the Ministry of Health and Solidarity respectively. Consequently, the right to take these leaves falls under the labour code, whereas the remuneration falls under the social security code (Collombet, 2021). Collective and local agreements on these leaves do exist in France but are not widespread unlike in the Nordic countries. For instance, the public sector did not have a remuneration ceiling for paternity leave, which contrasts with the provisions stated in the statutory code. Some bigger companies also have their own provisions on these leaves, but they are few and far between (Boyer and Fagnani, 2019).

### 5.6.3 Paid earmarked parental leave: Regulatory Tensions

The main tensions were between the French government and the trade unions (Confédération Française Démocratique du Travail (CFDT), Confédération Générale du Travail (CGT), Confédération Française des Travailleurs Chrétiens (CFTC), Union Nationale des Syndicats Autonomes (UNSA)) alongside interest groups like Union Nationale des Associations Familiales (UNAF). The tension was about the level of remuneration for parental leave which led to the French government's opposition to the initial draft of the WLBD. In the initial Commission draft, the duration of non-transferable parental leave was set at four months for each parent. Crucially, the draft proposed a minimum level of remuneration at the level of sick pay. In France, this would mean that parents on parental leave would be remunerated at the level of 50% of their last salary.

The French government's position on it was summarised by President Macron who acknowledged the principles behind better remunerated parental leave, but rejected it on the grounds that it would be too expensive and unsustainable for the French public finances.<sup>26</sup> The Minister for Labour, Muriel

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<sup>26</sup> The quoted text is "J'en approuve les principes, mais c'est une belle idée qui peut coûter très cher et finir par être insoutenable" (quoted in Le Monde, 2018).

Pénicaud, added that it was not for Brussels to decide the details of how parental leave was to function in each country.<sup>27</sup> The resistance of the French government to the initial draft was opposed by the trade unions listed above together with interest groups like UNAF. This opposition culminated in an open letter, collectively signed by these organizations on 30 April 2018, which argued that the patchwork of parental leave policies hindered women's labour market participation in France. This letter was then sent to President Macron. Despite this opposition, provisions in the initial draft of the WLBD including remuneration were watered down substantially. Additionally, a representative of UNAF disputed President Macron's claim that better remuneration would lead to an unsustainable rise in fiscal costs (quoted in Marianne, 2018).

Notably, some governmental councils and agencies France have recently proposed to substantially reduce the duration of parental leave, but improve the level of remuneration to incentivize fathers and higher-educated and higher-income mothers to choose to take parental leave (e.g. France Stratégie, 2021; HCFEA, 2019; IGAS, 2019; Interviewee France 2, CNAF, 2022). Such reforms may overcome the budgetary constraints that the French states faces. However, there appears to be little legislative traction in pursuing such reforms. A 2021 action plan by the French government acknowledged that there were substantial limitations to the system of parental leave in France in terms of providing parents time to interact with their young children but stopped short of suggesting improvements to it (Secrétariat Général des Affaires Européennes, 2021, p.12). Instead, it recommended improving the French system of parenthood through further developing ECEC facilities.<sup>28</sup>

In short, the tensions in France were primarily about parental leave policies, specifically the level of remuneration. However, it is important to point out that the level of remuneration has been continuously identified and is publicly recognized as the main impediment behind the low take-up rate of parental leave by eligible fathers as well as the by socioeconomically advantaged mothers (e.g. Collombet, 2016; HCFEA, 2019; IGAS, 2018; Maurot, 2014; Ministère des Solidarités et de la Santé, 2020; Périvier, 2005; Interviewee France 2, CNAF, 2021). Yet, calls to improve it are often confronted

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<sup>27</sup> The quoted text is "la France est absolument pour une directive sur le congé parental [*mais*] ce n'est pas à Bruxelles que l'on doit décider dans le détail comment il doit fonctionner pays par pays" (quoted in Le Monde, 2018)

<sup>28</sup> The specific text is "L'allongement du congé paternité, porté à 28 jours depuis le 1er juillet 2021 et rendu obligatoire sur une durée de 7 jours, et la réflexion sur une réforme du congé parental afin de donner aux parents le temps nécessaire aux interactions précoces avec leur enfant. Plus largement, il s'agit de relancer le modèle français de conciliation entre parentalité et vie professionnelle, notamment par le développement de modes d'accueil du jeune enfant de qualité (une charte nationale a été adoptée en 2021 et s'impose à tous les modes d'accueil, collectifs comme individuels), et un nécessaire travail sur leur accessibilité, en particulier pour les enfants en situation de handicap et les parents en insertion professionnelle et sociale, notamment issus de la migration." (Secrétariat Général des Affaires Européennes, 2021, p.12-13)

by reservations about rising costs as well as a tendency for public policy to drift towards expanding early childhood care facilities because it is often perceived to be better (rather than complementary) at reducing labour market inequalities for mothers (e.g. IGAS; 2019; 2021, p.3; Secrétariat Général des Affaires Européennes, 2021, p.12-13).

Finally, a reporter from Le Figaro (2022) reported that France had submitted partial transposition plans which is in line with two different deadlines for transposition of the Directive. All provisions contained in the Directive were due to be transposed by 2<sup>nd</sup> August 2022, but the provision about remuneration for parental leave is due to be transposed by 2<sup>nd</sup> August 2024. According to the reporter, transposition plans regarding remuneration for parental leave would be submitted later in line with the 2024 transposition deadline.<sup>29</sup> It is worth emphasizing that this report has not been carried by other major broadsheets. The information used by this report is also not publicly available at the moment.<sup>30</sup> However, and if the French government has indeed delayed transposing remuneration of parental leave to the deadline of 2<sup>nd</sup> August 2024, it would suggest that tensions about costs of parental leave remain.

#### 5.6.4 Normative resources, including summary of decision-making on WLBD (Formal parental leave rights to paid parental leave and remuneration)

France has submitted a partial transition plan to comply with the WLBD. Broadly speaking, France complies with the minimum standards laid out in the Directive with regards to both paternity and parental leave. Nevertheless, whether parental policies reflect the broader intentions behind the WLBD remains a separate question.

Regarding paternity leave, a recent legislative change on 1st July 2021 increased its duration for fathers. Paternity leave is now prolonged to 25 calendar days or 32 calendar days for single and multiple births respectively. Out of these days, 4 days must be used immediately after birth. The legislative change also introduced an additional clause which bans fathers from performing work when

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<sup>29</sup> The specific text is " L'Hexagone fait ainsi l'impasse sur l'élément principal de cette législation, la rémunération à un «niveau adéquat» du congé parental, visant à «inciter davantage les travailleurs, en particulier les hommes, à prendre les périodes de congé» [...] La transposition partielle opérée par la France n'a certes rien d'illégal: lors des négociations, le gouvernement, qui craignait les «coûts potentiellement explosifs» du projet, était parvenu à obtenir un délai de deux ans supplémentaires dans la détermination de la rémunération. " (Le Figaro, 2022).

<sup>30</sup> There will be more information in due course on different Member States' transposition plans when the European Commission replies to a priority question for a written answer (P-002835/2022) on Transposition of the Work-Life Balance Directive. In this question, the Member of the European Parliament has requested information on which Member States had transposed the directive by 2 August 2022.

See: [https://www.europarl.europa.eu/doceo/document/P-9-2022-002835\\_EN.html](https://www.europarl.europa.eu/doceo/document/P-9-2022-002835_EN.html)).

they are on paternity leave during both periods (first 4 days and after). The remuneration rate is equal to the employed father's average income over the last three months (quarterly ceiling of €10,284) preceding the leave. However, these legislative changes were already in the pipeline prior to the WLBD. Therefore, it is uncertain if they were a direct result of the Directive (Interviewee France 2, CFDT, 2021; Interviewee France 4, CNAF, 2021).

Regarding parental leave, it is an individual entitlement which parents can take until their child reaches 3 years old. However, each eligible parent will only receive a maximum of 24 months of remuneration. This condition was designed to incentivize the other parent (often fathers) to take parental leave for 12 months to obtain the full remuneration (36 months). On paper, this condition may fulfill the WLBD's provision of having 2 months of non-transferable parental leaves. However, and as explained in the foregoing sections, the low level of remuneration dissuades parents (especially fathers) from taking parental leave. In short, although current parental leave policies in France do meet the minimum requirements laid out in the Directive, they fall short of the intentions behind it, which is to increase fathers' take-up of parental leave to reduce the gender gap on the labour market. As stated above, France has requested a two-year delay to formulate and transpose legislation pertaining to the level of remuneration for parental leave which meets the intentions behind the Directive

#### 5.6.5 Eligibility

There are no changes to the eligibility for paternity leave, the right to parental leave and remuneration for parental leave. Paternity leave is made available to all employees and self-employed. The right of parental leave is available to employees who have worked at least one year before the birth of their child. For parents with one child, the right to remuneration for taking parental leave is available to employees who have worked without break for at least two years preceding birth (Boyer and Fagnani, 2019). This employment condition is less restrictive for parents with more children. However, atypical workers without employment relations (e.g. platform workers) may not be eligible for parental leave and/or its remuneration (Interviewee France 2, CNAF, 2021; Interviewee France 6, DGCS, 2021).

#### 5.6.6 Instrumental

There is nothing stated in the partial national transposition plans on improving the public's knowledge of parental leaves in France, despite a 2019 report highlighting the need for it (HCFEA, 2019). The report estimates that at least 20% of eligible mothers who are working part-time do not benefit from remunerated parental leave because they lack knowledge about it. The report suggests that governmental agencies dealing with family issues should disseminate information through various

communication channels, companies should inform their employees about it, and the responsible governmental agency(ies) should introduce a system that informs parents with newborn about the availability of remunerated parental leave. These suggestions do not feature in France's partial transposition plans of the Directive.

#### 5.6.7 Carer days

While a carer's leave existed in France prior to the directive, it was for children who have been diagnosed as having a severe sickness or disability that required parents' sustained presence for care. There was no carer's leave per se for taking care of children or family members that had not been borne out of severe illness. A collective agreement concluded on 15 March 2021 was extended by the government to become statutory law, and it provides for 3 days of unremunerated leave per year to care for sick children (5 days if the employee has 3 children or more younger than 16 years old). While these changes bring France closer to the provisions on carer's leave contained in the Directive, the duration of the leave as well as its applicability beyond sick children still fall short of those provisions.

#### 5.6.8 Flexible Work

Employees are allowed to telework under specific conditions, and their employment contract cannot be terminated by employers upon employers' refusal to grant their telework request. However, the transposition plans do not explicitly state care duties as one reason for employers granting telework which is one of the stated provisions of Article 9 of the WLBD.

### 5.7 Spain

#### 5.7.1 Work-life balance in Spain prior to the WLBD: Use of leave among mothers and fathers prior to the adoption of the WLBD, and use of ECEC

Prior to the WLBD, paternity leave was remunerated at 100 percent of earnings with a ceiling of 3751.20 euros per month and it was 8 weeks long in 2019 (Meil et al. 2019). The leave could be split into two parts of which the first two weeks must be taken full-time after birth. The remaining six weeks could be taken part-time or full-time spread over the first year. This right to remunerated paternity leave occurred in 2007. Before 2007, fathers only had three days of paid leave. It is also interesting to point out that fathers may receive four weeks of paid maternity leave, if employed mothers transfer them. This right to transfer four of sixteen weeks of remunerated maternity leave is however based



on strict conditions: (a) the father fulfils contributory requirements; (b) the transfer does not endanger the mother's health.

Beneficiaries of renumerated paternity leave rose from 173 161 men in 2007 to between 230 000 and 275 000 men in 2018, according to official Social Security data<sup>31</sup>. It is noteworthy that reforms to paternity leave meant that the number of men and women who take time off work to care for a newborn child has almost equalized. In fact, in 2017 and 2018, fathers used paternity leave more than mothers used maternity leave (Jurado-Guerrero and Muñoz-Comet 2020). Jurado-Guerrero and Muñoz-Comet (2020) argue that the social norm of taking paternity leave has strengthened across different social groups (education, social class, contract, employment type) which may explain this increase in take-up rates by fathers.

It is also important to point out that the Royal Decree-Law 6/2019 of 1<sup>st</sup> March has implications on the length of paternity leave. Both paternity leave and maternity leave will have a maximum duration of 16 weeks, and both will be reclassified together as "birth leave" (Rädl and Partner 2019). These changes will occur progressively. From 1<sup>st</sup> April 2020, paternity leave had a duration of 12 weeks of which the first 4 will be compulsory and uninterrupted. From 1<sup>st</sup> April 2021, the full changes were in force. Birth leave for fathers and for mothers can be taken for a maximum duration of 16 weeks, of which the first 6 weeks will be obligatory and uninterrupted. This leave is also an individual entitlement unlike previously when it could be partially transferred. As of 2022, it is renumerated at 100 percent of earnings up to a ceiling of 4 139.40 euros per month for mothers and fathers who are eligible (see section on eligibility) (Meil et al. 2022). Thus, even if reserved for each parent, because these leave schemes are called maternity and paternity leave, they do not fully meet the requirements of the directive, i.e. earmarking parental leave.

Regarding parental leave, each employed parent is entitled to take parental leave until the child is three years old. This leave is an individual entitlement and is thus non-transferable. Employees on temporary contracts can only claim leave that is shorter than their contract period, and the unemployed and self-employed are not eligible (Meil et al. 2019). Additionally, there are regional variations to the level of renumeration of parental leave. While it is non-renumerated in most regions, it is renumerated in Basque Country and La Rioja. It was 277.08 euros per month in 2019 for families with an annual income below 20 000 euros and 250 euros per month for families with annual income below 40 000 euros respectively.

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<sup>31</sup> Available at <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST45/EST169>



As parental leave is generally unremunerated, Meil et al. (2018) find that it is taken primarily by women. Among women, those with higher incomes were more willing to take unremunerated parental leave and temporarily forgo their salary, whereas men with higher incomes were less willing to do so. Additionally, the authors also find that men take parental leave for a shorter duration than women, especially when it is not remunerated. In short, non-remuneration appears to influence the use of parental leave in Spain between father and mothers.

### 5.7.2 Decision-making context on labour market/family policy issues

In Spain, family policies including leaves is typically statutory, which means that it is based on state legislation. The drafting of these policies often occurs in consultation with main trade unions and employers' associations. Collective bargaining can supplement statutory legislation. Today, it is common to find collective bargaining agreements where companies top-up the amount of salary forgone by fathers taking paternity leave because of the maximum earnings ceiling for remuneration. Additionally, collective bargaining may also specify criteria by which employees can take time off in a workday to care for family members.

### 5.7.3 Paid earmarked parental leave: Regulatory Tensions

The Workers' Statute (WS) is the main piece of national legislation on labour law, including parental and paternity leave policies. Since 2019, it regulates the suspension of an employee's employment contract due to a birth of a child and subsequent care for child. This reform to the statute recognizes leave to be non-transferable and an individual entitlement for employees. It was adopted with broad political and social consensus. While the opposition party (Partido Popular) opposed certain reforms to this statute, their objections stem primarily from costs, questioning the governments' ability to finance the reforms. Also, trade unions and employer associations appeared positive. While the CEOE (the main employers' association) objected to limiting male labor market participation to facilitate female participation in its 2017 study, few of such reservations were raised in 2019.

### 5.7.4 Normative resources, including summary of decision-making on WLBD (Formal parental leave rights to paid parental leave and remuneration)

Most of the legislation required to transpose the 2019 WLBD was adopted prior to the publication of this Directive, especially regarding paternity leave, through national reforms in 2019. However, the same cannot be said for parental leave. Although it is already an individual entitlement as required by

the Directive, it remains unremunerated, which means that it does not comply with the Directive's minimum requirement of remunerated parental leave.

#### 5.7.5 Eligibility

It is worth pointing out that paternity leave is broadly available for the employed, regardless of whether they are employee or self-employed, employed on open-ended or fixed-term contracts, or working full or part-time. In contrast, eligibility of parental leave is somewhat narrower. More specifically, those who are employed (employee or self-employed; working on open-ended or fixed-term contracts; working full or part-time), need to be making social security contributions at the beginning of the leave or be receiving an unemployment contributory benefit, be in the first year of the parental leave, and have contributed to social security for at least 180 days in the previous seven years (or 360 days during working life).<sup>32</sup> If employed mothers do not meet these requirements, they are entitled to a flat-rate benefit of up to 579.02 euros per month for 42 calendar days. However, if employed fathers do not meet these requirements, they are not entitled to this flat-rate benefit. In short, these policy differences imply that employed fathers who do not meet these eligibility requirements will not receive remuneration. Although all employed are eligible, those on temporary contracts can only claim leave that is shorter than their contract period (Meil et al. 2019). Additionally, the unemployed and self-employed are not eligible. In short, coverage gaps in paternity leave, but especially parental leave, exists in Spain.

#### 5.7.6 Instrumental

Based on interviews (Interview Spain 1, Interview Spain 2), citizens appear to be aware of their rights on parental and paternity leave. The reforms in 2019 (RD 6/2019) were widely publicized by newspapers and social media which may help explain this high level of public awareness. There are also several organisations which help disseminate information to the public about their leave-related rights. They include the Institute of Women which is attached to the Ministry of Health, Social Services and Equality. It gives non-discriminatory counselling that citizens can access online, provide information on these rights, and also how to file complaints in the case that citizens feel that their rights have not been respected. Additionally, research groups from Universities have been a relevant channel to inform the public about their leave-related rights through blogs or websites.

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<sup>32</sup> Women under 21 years of age do not need to have had a previous period of social security contribution, and women between 21 and 26 years of age need only 90 days in the previous seven years, or 180 days during their working life. This requirement is more flexible for women who work part-time. Self-employed mothers are exempt from paying social security contributions while on leave (Meil et al. 2022, p.470).

#### 5.7.7 Carer days

Any employee is entitled to a period of unpaid leave of up to 2 years (collective bargaining agreements may allow a longer duration) to attend to the care of a family member up to the second degree of consanguinity or affinity, who for reasons of age, accident, illness or disability cannot fend for himself, and does not perform paid activity. During the leave, the employee receives no salary and no cash benefit from social security. The employee may decide to take intermittent leaves as long as the total duration does not exceed 2 years (or longer if established by collective agreement).

#### 5.7.8 Flexible Work

The Spanish labour law grants any employee the right to request adaptations of the duration, organization and distribution of the working time. They may also request adaptations to the way in which the work is provided, including home-based work, to make effective their right to work life balance. The adaptations must be reasonable and proportionate in relation to the needs of the worker and the organizational or productive needs of the company.

The company, upon request to adaptation, will open a negotiation process with the worker for a maximum period of thirty days. After that, the company, in writing, will communicate the acceptance of the request, will propose an alternative proposal that enables the conciliation needs of the worker or will express the refusal to exercise it. In the latter case, the objective reasons on which the decision is based will be indicated. The worker has the right to request a return to their previous working schedule or arrangement once the agreed period has ended or when the change in circumstances so justifies it, even if the foreseen period has not elapsed.

## 6. Discussion and Conclusion

Considering that the European pillar of social rights aims to lead to upwards social convergence across the EU, it is relevant to examine not only how EU directives are implemented, but also, how they are likely to impact the take up rights in different EU countries. The EU's work-life balance is of particular interest, due to its integrated gender dimension, focusing on a range of initiatives that are designed to enable women *and* men to combine paid labor with family life. It is embedded in the presumption at EU level – and increasingly in member states – that men and women should both be in gainful employment, but also, that both should be involving in caring for their children (Lewis and Giullari, 2005). The timing of the WLBD is relevant, considering the incremental shifts in fathers' social norms towards 'active fatherhood'. One important instrument to prompt this change, as highlighted in the pre-amble of the directive, is earmarked and highly compensated parental leave, because there is higher take-up of leave among employed fathers in EU countries with non-transferable leave *and* a high level of remuneration. Thus, with the directive, EU social policy could improve gender equalization of social rights across EU member states, at least the formal right to paid paternity leave, compensated at the level of sick pay and earmarked paid parental leave. With regards to paternity leave, it is in most countries (too) short to have a broader impact on men's involvement in caring for their children. This is why the directive earmarks parental leave for both parents, as this is put forward as being conducive to gender equality in the household and on the labour market (OJEU, 2019). However, if the level of payment for parental leave is not high, we know from the care literature that take-up rates tend to remain persistently low. Thus, if level of compensation for parental leave is not high *across* EU member states, there is a risk that the WLBD, even if providing a floor of parental leave rights, could lead to differentiated social rights. Thus, countries with higher levels of compensation for earmarked leave would probably see a higher level of take-up of leave by fathers.

Our country cases show that for *normative resources*, there is some variation in implementation in father-specific leave. Poland has planned to implement a new leave scheme, with a high level of compensation for fathers (70% of wages). This is in addition to the long and generous parental level, which is normally used by mothers. However, this legislation is not expected to be passed before January 2023. In principle, if it passes, this could thus prompt fathers to take more leave than currently, while mothers still have a long parental leave right. This is a highly ambitious implementation of the directive, with an additional leave scheme and payment for leave. The governments of Denmark and the Netherlands, that did not previously have earmarked leave, also

made significant change in terms of normative social rights. But they did so in a way that was potentially more gender equalizing for labour market integration than in Poland, as no new leave scheme will be added. Rather, part of the pre-existing parental leave scheme will be earmarked for fathers/second parents. In the Netherlands, the level of compensation increased from being unpaid to 70% of wages, and thus it does represent a new cost, and it can be considered quite path-breaking. In Denmark, the level of compensation is the level of unemployment benefit, but in many sectors there are top-ups to full wages for 8 weeks (and the last week is expected to be part of the negotiations in the 2022 round of collective bargaining). Thus, in terms of normative resources, the implementation is quite impressive in these countries. In Spain, there was a 16 week paid paternity scheme for fathers, prior to the directive, while parental leave was most often not remunerated. Thus, even if not formally complying with the directive, it is a reserved leave for fathers. Furthermore, it is now renamed ‘birth leave’, where there is a reserved part for mothers and a reserved part (still 16 weeks) for fathers. By contrast, the French government has not yet decided on the remuneration for parental leave – where the remuneration falls significantly under the level intended by the directive. The German Government planned to implement 10 days of paternity leave in October 2022, after the transposition deadline.

When we take account of *instrumental resources*, devoted to ensuring that the new social rights are used, the picture is more complex. Our study underscores that, irrespective of implementation of formal social rights, there are differences in the intentions of governments and stakeholders with father-specific leave, and different levels of resources devoted to the shift from *de jure* to *de facto* rights. In Germany, France and Poland, the intention of the decision-making actors, suggests a preference for a *status quo* scenario. Furthermore, in these countries, there are also low levels of commitment to new instrumental resources in parental leave, leading to a risk that the pre-existing practices persevere. In Spain, it seems that the 2019 reform was widely publicized, yet, we do not know about the extent of instrumental resources.

In Denmark and the Netherlands, there is a high level of commitment to instrumental resources, by government and by stakeholders, to enable that the newly adopted changes to parental leave prompted by the WLBD to be used in practice. This includes *publicly available and well communicated information* on the leave schemes, especially digitally. Denmark here is a case-in-point, where there is a digital tool available to parents to plan leave, and the intention to integrate this in the digital administrative application process at a later stage. This is relevant because in most countries under study (Poland, Germany, the Netherlands, France), the *administrative application procedure* for leave is highly complex, involving separate applications for the right to leave, and the compensation. In the Netherlands there are plans to make this more simple and at least to communicate what citizens

should do to access their social rights. Related to this, in most, if not all countries, there is a confusion about the terms ‘maternity’, ‘paternity’ and ‘parental leave’, leading to lack of clarity among citizens about their rights. This has been raised as an issue of concern among stakeholders in the negotiations on the WLBD, in the countries we have examined. Furthermore, these complications lead to dominant ‘models’ or practices of parental leave proposed by employers and HR personnel. For instance, in Germany, it is ‘12+2’ currently; while in Poland, mothers are most often encouraged to take parental leave, although it can in principle be shared.

Also, *information campaigns*, are relevant instrumental resources, especially in countries and/or sectors, where the change in take-up is expected to be more challenges. Information campaigns targeted at fathers, especially in sectors with lower proportions of fathers taking leave, are planned in Denmark and the Netherlands. These are organized and initiated by the main stakeholder representatives, and there are no generalized strategies for this.

Overall, various *policy recommendations* surface from this study. First, the level of remuneration should be generous – preferably at least 80% of wages - to incentivize take-up of leave by mothers *and* fathers. For low income households, the replacement rate is even more important to consider than in medium or high income households. If the replacement rate is low, the risk is, as in France, that the take-up is predominant among the socio-economically disadvantaged groups. Secondly, systems with separate application for leave and for remuneration, should be simplified and joined, or, once an application for leave is submitted, the applicant should automatically be directed towards the system of application for remuneration. Thirdly, if there are highly gendered sectors, resources could be devoted to information campaigns targeted at fathers. Fourth, resources on the workplace (HR and unions) could enable easily communicable information for parents, including communication on new gender equalizing aspects of parental leave, rather than previous models (this holds for Poland and France, but also Denmark, The Netherlands and Germany, even if the system in principle is gender-neutral, take-up is still gendered). This could, fifth, entail clear definitions regarding terms associated with leave, i.e. maternity, paternity and parental leave. In Spain, as well, there are various different terms, maternity and paternity birth leave, and then there is parental leave. Thus, the WLBD has the potential to alter take-up rates and to increase the length of leave among fathers, if the normative resources are in place for this (i.e. earmarking with high remuneration), but it also requires that instrumental resources are devoted to ensure the take-up of new social rights.

Yet, even when there are comprehensive instrumental resources, take-up among fathers is not so straightforward, especially for those that are reluctant, as we know from experiences in the Swedish case. Also, while we focus on employed fathers who are eligible for parental leave, we do not cover

a group of fathers who may not be eligible due to their type of labour contract and/or length of service. If policy-makers aim to close the gender care gap, these fathers should not be excluded from parental leave, especially with the rise of highly precarious atypical work like zero-hour contracts and solo self-employed among socio-economically disadvantaged men.

Moving further on from the work-life balance directive, it is clear that having earmarked leave with a high replacement rate, as intended by the EU decision-makers, is a necessary but not sufficient condition to spur an improvement of social rights in and across EU countries. Yet, the Matthew effects which are apparent in take-up of leave, even in countries with generous leave schemes, suggests that policy-makers should pro-actively engage with measures to enhance take-up of leave among lower household incomes. Here, a high replacement rate is key, and thereafter, various instrumental resources. It is important that domestic decision-makers and stakeholders seriously consider replacement rates to incentivize leave and that they actively engage in the design and communication of the new social rights, including via clear and as simple administrative application procedures as possible, clarification of the meaning of key terms associated with the new social rights, information campaigns as well as targeted information for actors on the work-place (unions and HR personnel).

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## Appendix 1: Interview Guide WLBD (Generic)

- a) What is your position and how long have you been in the organisation?
- b) What were the key points of contention for your organisation regarding the WLBD and why were they controversial ?
- c) Has the position of HK changed, during the process of the adoption (and now implementation) of the directive?
- d) Do you know what the plans are for implementation, beyond the legislative framework, in collective bargaining? Are there any issues which are difficult to implement and if so, why?
- e) The EU's work-life balance directive aims to gender equalization in care by having 2 months of earmarked leave per worker. Do you think that the EU directive will improve the formal rights of workers in this area? What do you expect the level of compensation for earmarked leave to be in the national legislative framework?
- f) In many countries, there is a distinction between formal rights and 'instrumental' resources to facilitate the take up of right. In fact, there is not always information available at the workplace about rights to leave, and procedures can be complex. What are the **resources** currently available *for access to* paternity/parental leave, and do you expect the WLBD will alter that?

Feel free to elaborate on any of the following that you may find most relevant (or other resources):

- Information provided through workplace (i.e. training material for HR personnel or union reps) ?
  - Information provided through unions?
  - Information provided through municipality?
  - Information campaigns (targeted at fathers, for example)?
  - Simple accessible (online) application form?
  - Access to legal assistance/appeals boards, etc?
- g) Do you think there are different obstacles to leave among different categories of citizens and workers? If so, what are the issues and how could they be solved?
  - h) The EU's work-life balance directive aims to enhance work-life balance by having 5 (unpaid) carer days per worker per year. Do you think that the EU directive will improve the formal rights of workers in this area?
  - i) What is considered appropriate paid leave level in country A? Do you consider the XXX level (planned or discussed in country A) to be sufficient for all groups? Which groups are most likely to be able to use leave, on the basis of such a level of compensation?

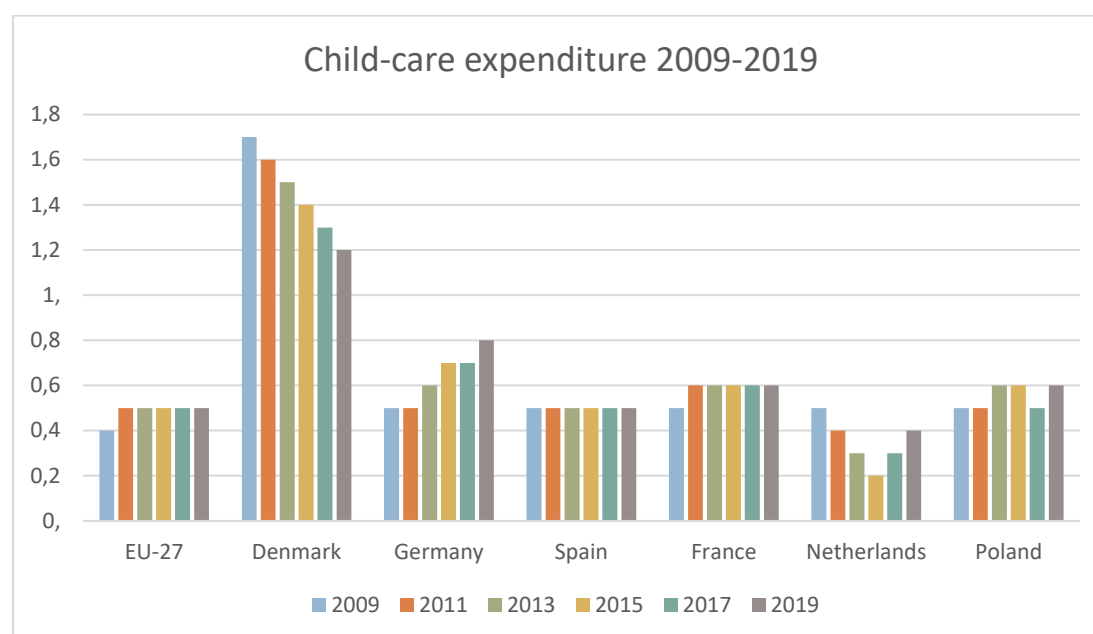
- j) Are there other colleagues (in unions, employer organisations or government) that we should speak to with regards to the implementation of the directive?

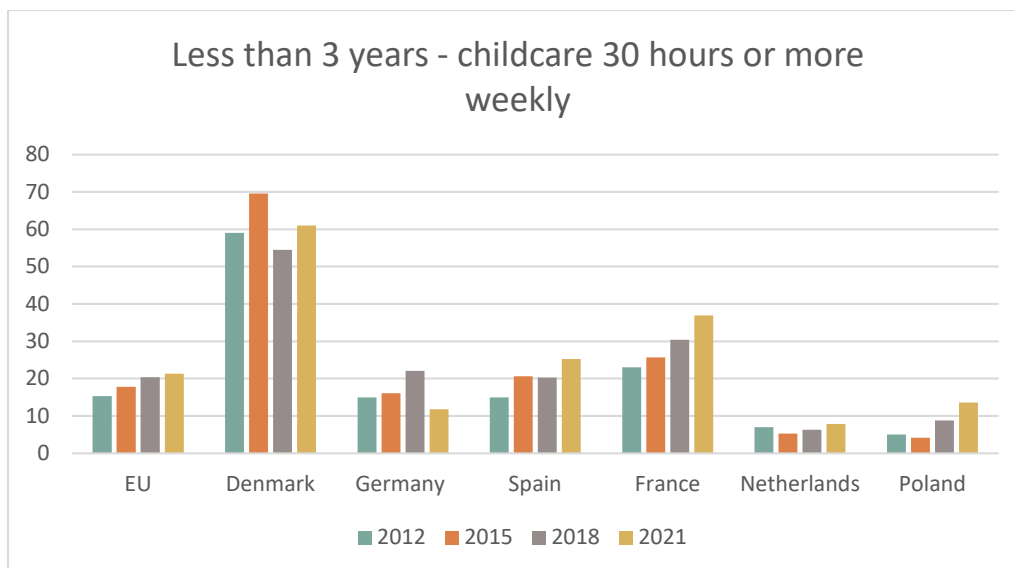
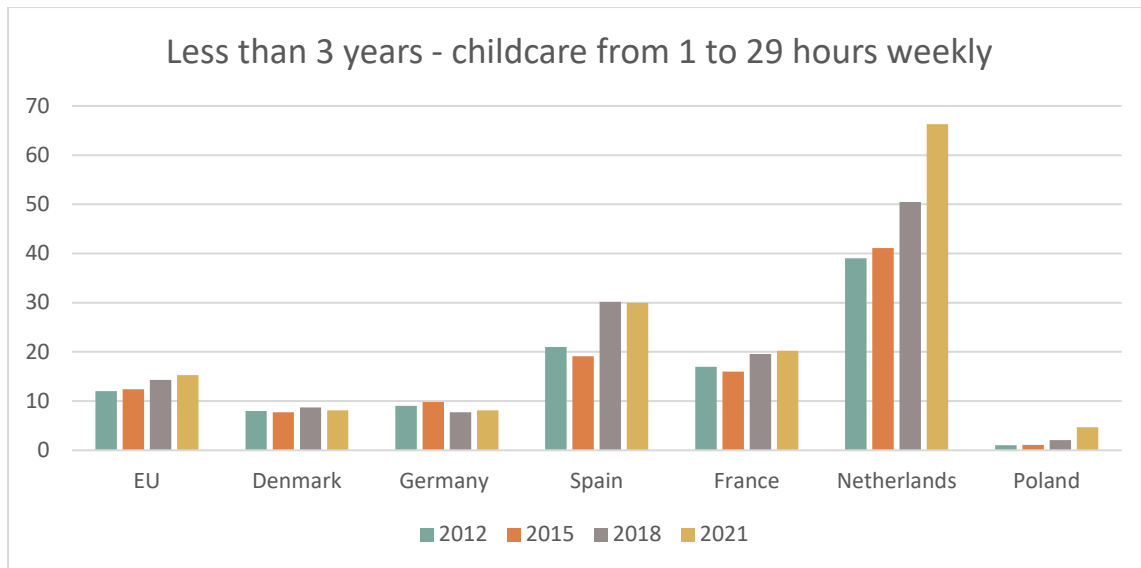
Thanks for your time!

## Appendix 2: Overview of indicators on employment rates, absence from the labour market and ECEC

The indicators show that there are different practices, institutions and traditions in terms of child-care as well as different patterns of labour market participation of men and women. We have also included an overview of inactivity due to child-care, which is very revealing from a gender perspective, but also a cross-country perspective.

**Appendix 2.1.** Child expenditure, Children less than three years in ECEC (1-29 hours weekly), and children less than three years in ECEC (30 hours or more weekly)

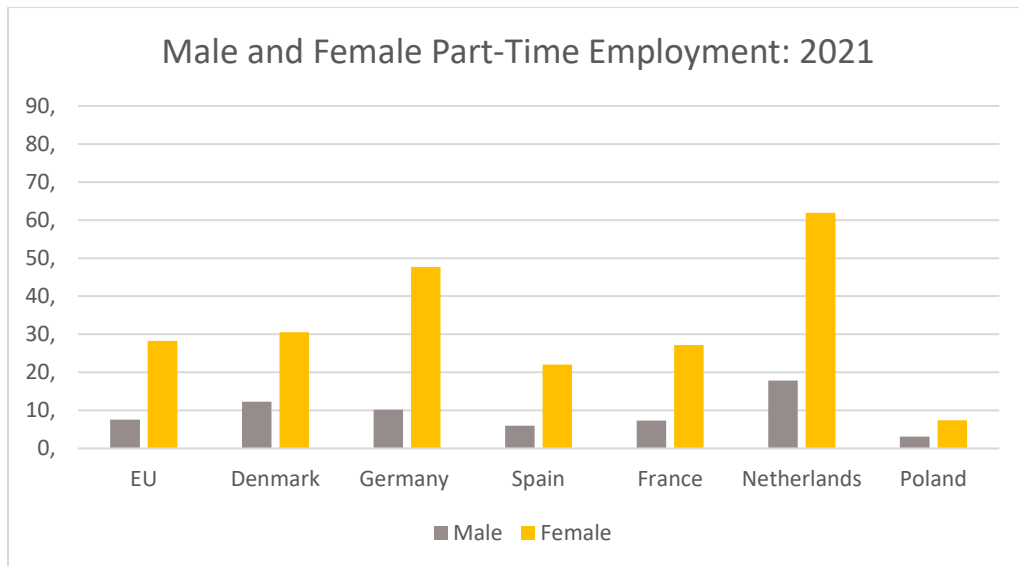




## Appendix 2.2. Male and female employment rates & males and females In part-time jobs (2021)







#### Appendix 2.3. Women and Men not on labour market, due to care responsibility

