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de la Porte, Caroline; Im, Zhen Jie; Pircher, Brigitte ; Szelewa, Dorota

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ORIGINAL ARTICLE

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The EU's work-life balance directive: Institutional change of father-specific leave across member states

Caroline de la Porte¹  | Zhen Jie Im^{1,2,3}  | Brigitte Pircher^{1,4}  | Dorota Szelewa^{1,5} 

¹Department of International Economics, Government and Business, Copenhagen Business School, Frederiksberg, Denmark

²Faculty of Social Sciences, University of Helsinki, Helsinki, Finland

³Department of Social Sciences, Lappeenranta-Lahti University of Technology, Lappeenranta, Finland

⁴Department of Political Science, Linnaeus University, Växjö, Sweden

⁵School of Social Policy, Social Work and Social Justice, University College Dublin, Dublin, Ireland

Correspondence

Caroline de la Porte, Department of International Economics, Government and Business, Copenhagen Business School, Frederiksberg, Denmark.
Email: cdlp.egb@cbs.dk

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Abstract

This paper examines institutional change in father-specific leave - a centre-piece of the EU's work-life balance directive (WLBD) - from the perspective of gradual institutional change. The WLBD, a highly contentious directive, represents a litmus test for the possible impact of the European pillar of social rights (EPSR), on welfare state institutions, which are responsible for the organisation, financing and delivery of social rights in member states. The analysis comprises in-depth case studies in Denmark, Germany, France and Poland, with different combinations of family and parental leave policies prior to the WLBD. The findings reveal that the EU's directive is leading to convergence in paternity leave, but to divergence in parental leave. Our study is important because it shows that even if EU directives in social policy in principle can lead to upwards social convergence across the EU, when they are relatively weak in terms of precise constraint, for instance, for the level of remuneration for leave, this leads to differentiated

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integration. This could undermine the very purpose of the EPSR, which seeks to improve social rights for all citizens across the EU. Similar dynamics are likely to be present in other areas at the welfare state-labor market nexus, such as minimum wages or platform work, where the EU is also developing regulation under the auspices of the EPSR.

KEYWORDS

Denmark, earmarked parental leave, EU social policy, European Pillar of Social Rights, father-specific leave, France, Germany, gradual institutional change, paternity leave, Poland, work-life balance

1 | INTRODUCTION

Emerging against the backdrop of Brexit and the *Great Recession*, the European Pillar of Social Rights (EPSR) from 2017 embodies the EU leaders' ambition to improve social rights for EU citizens. This calls for analyzing whether EU directives originating under the EPSR could lead to 'upward social convergence' - the Commission's leitmotif for the EPSR (Copeland, 2022; Vesan et al., 2021). While EU directives in social policy have previously had limited effects (Hartlapp and Graziano, 2018), the hope is that the EU's re-regulatory turn via the EPSR will yield more solid policies in member states (see also Crespy, 2022). Yet, the literature on Europeanisation emphasizes that EU directives lead to differentiated implementation in member states (Zhelyazkova & Thomann, 2022). This presents us with a crucial empirical puzzle centered on the EU's impact in the social policy area. Does the EPSR leads to convergent policy—which would be indicative of levelling up of social rights—or does it, instead, lead to divergent policy?

To explore this question, we focus on the Work-Life Balance Directive (WLBD) from 2019—which aims to enhance the active role of fathers in care, and thereby, to equalise caring responsibilities between men and women (de la Porte et al., 2022; OJEU, 2019). We focus on the WLBD's father-specific leave provisions¹: paternity leave and paid earmarked parental leave. To our knowledge, this is the first empirical analysis examining the impact of a specific initiative emanating from the EPSR. Analyses on gradual institutional change (Streeck & Thelen, 2005) are useful to reveal the longer-term trends in family policy (Daly & Ferragina, 2018). Inspired by this, we adapt the framework of gradual institutional change to capture precisely what has changed in member state father-specific leave policies, induced by the WLBD. It allows us to take account of institutional legacy, political parties, and interest organisations in characterizing institutionalization of father-specific leave in member states following the WLBD. Furthermore, we introduce a theoretical novelty, which is to focus on the *intention* of member state policy-makers with father-specific leave, enabling us to capture whether they intend fathers to use their new rights. This is possible due to original empirical data collected during the implementation process in four EU countries. Overall, we find that the WLBD has led to convergence on paternity leave, but divergence on earmarked parental leave. This finding represents a challenge for the EPSR's aim of upward social convergence, and thus, the legitimacy of the EU in the social policy area.

The article is structured as follows. We begin with a background section on EU parental leave. Thereafter, we present the literature review and our theoretical approach, followed by a section on methodology, including case selection. In the analysis, we conduct in-depth case studies to characterize the type of policy change in father-specific leave induced by the directive in four countries. Then, in our comparative section, we assess whether EU-initiated paternity and parental leave policies are convergent or divergent. Lastly, we conclude, with reflections on the implications of our findings for the legitimacy of the EU in social policy, and suggestions on future research.

2 | BACKGROUND: EU PARENTAL LEAVE POLICY

The WLBD is a good case to examine the impact of the EPSR in member states, since it focuses on gender roles in care, as a complement to employment policy. It builds on the previous revised Parental Leave Directive of 2010, which harks back from the 1996 directive on parental leave and an (unpassed) 1983 proposal by the European Commission. EU regulation on care-related leave is noteworthy for being one of the few social issues where the EU has well-established activity, although policy on financial compensation for leave before the WLBD was weak (Im et al., 2022). While the 2010 directive introduced reserved parental leave of one month, there was no requirement for financial compensation during leave. Yet, as the care literature shows, remuneration *with* reservation is essential to encourage fathers to take parental leave (Duvander & Cedstrand, 2022; Eydal & Rostgaard, 2023). Unsurprisingly, then, the 2010 directive did not yield the desired outcome of equalizing take-up of parental leave between mothers and fathers (see Adema et al. (2023), which shows that the largest share of leave is still taken by mothers). The WLBD seeks to alter this trend, via well-compensated and reserved leave for each parent (see Table 1 below).

Despite the EU's limited competence in social policy, the WLBD underscores that father-specific leave should be remunerated generously, inducing fathers to take-up leave. Paternity leave, following the WLBD, 'should be taken around the time of the birth of the child and should be clearly linked to the birth for the purposes of providing care' (OJEU, 2019, §19). Furthermore, 'Member States should therefore set a level for the payment or allowance with respect to the minimum period of paternity leave that is at least equivalent to the level of national sick pay' (OJEU, 2019, §30). In addition, regarding intention, the WLBD encourages a higher level of remuneration, equivalent to remuneration during maternity leave. The directive stipulates that 'Since granting rights to paternity and maternity leave pursue similar objectives, namely creating a bond between the parent and the child, Member States are encouraged to provide for a payment or an allowance for paternity leave that is equal to the payment or allowance provided for maternity leave at national level.' (OJEU, 2019, §30).

Regarding parental leave, the directive underlines the importance of reserved leave to enhance take-up of leave among fathers: 'As most fathers do not avail themselves of their right to parental leave (...) this Directive extends from one to two months the minimum period of parental leave which cannot be transferred from one parent to the other in order to encourage fathers to take parental leave' (OJEU, 2019, §20). And, since the intention is to encourage fathers to take leave, the WLBD stipulates that 'Member States should set the payment or allowance for the minimum nontransferable period of parental leave guaranteed under this Directive at an adequate level (...) Member States should take into account that the take-up of parental leave often results in a loss of income for the family and that first earners in a family are able to make use of their right to parental leave only if it is sufficiently well remunerated, with a view to allowing for a decent living standard.' However, despite these intentions at the EU level, the lack of specification of a level of remuneration - to respect the principle of subsidiarity - gives member states the

TABLE 1 Stipulation on paternity and parental leave in EU-level proposals and directives

	Proposal in 1983	Framework directive in 1996	Framework directive in 2010	European Commission directive in 2019
Paternity leave				
Duration	No stipulation	No stipulation	No stipulation	> = 10 days
Remuneration	No stipulation	No stipulation	No stipulation	At least at level of sick pay
Parental leave				
Duration	> = 3 months	> = 3 months	> = 4 months	> = 4 months
Remuneration	Optional	No specification	Optional	Mandatory
Reservation	3 months	In principle	1 month (unpaid)	2 months (paid)

Source: Adapted from Im et al., 2022.

authority to decide on the level of remuneration, following their own practices and political priorities, which then opens the door for differentiated implementation, and crucially, differentiated institutional change.

3 | LITERATURE REVIEW AND THEORETICAL APPROACH

3.1 | Literature review

Different approaches could be used to analyse the role of the EU in national social policy development, with a focus on father-specific leave. One approach is to examine the role of interest organisations and lobby groups, especially those focused on the rights of mothers and/or fathers. Another is to scrutinize the role of political parties and political leaders, which is relevant, since family policy is marked by strong partisan positions, with the left-leaning parties supporting more gender equalising family policy, and the right-leaning parties supporting more traditional female-carer/male-breadwinner gender roles and family policy. A third approach is to examine how institutions and policies change due to EU law, in the vein of Europeanisation (Thomann, 2015). The Europeanisation literature underscores that directives include in-built means for member states to implement and to transpose EU directives suited to their domestic institutions (Princen et al., 2022). Furthermore, it highlights the importance of looking not only at legal implementation, but also at practical implementation, which involves 'domestication' of directives, that is how different political and societal actors, with different aims, play a role in adapting EU law to domestic institutions (Pircher et al., 2023; Thomann & Sager, 2017). A fourth approach starts from the perspective of social policy—including the care literature—and focusing on policy change in leave rights by examining legislative decisions (Kosłowski et al., 2022) or available quantitative databases to assess policy change (Daly & Ferragina, 2018). The feminist strand of care literature highlights that policies should be examined according to their effects on men and women, that is, examining whether policy support the traditional male-breadwinner/female-carer model or the dual-earner/dual-carer model (Saxonberg & Szelewa, 2021). However, the literature does not systematically engage with how EU decisions affect national level parental leave and care policies.

3.2 | Theoretical approach: Conceptualizing the influence of EU social regulation

The recent wave of activism of the European Commission in regulating social rights (Copeland, 2022; Im et al., 2022; Vesan et al., 2021) requires theorization and empirical examination about how EU social policy under the EPSR affects member states' policies, and whether it leads to convergence or divergence in policy. To examine this question, we focus on institutional change instigated via EU social legislation in member states, prompting us to apply the theory of gradual institutional change. The concepts of gradual institutional change (Hacker, 2005; Streeck & Thelen, 2005) capture the connection between policy and the *type of institutional change* that it leads to. The framework also takes account of the role of interest groups and political parties in the policy process.

For our specific interest, it analyses how *formal policy change* is adapted to national institutions and to policy legacies, taking account of the *policy intention* of decision-makers. Policy intention of actors is important, because institutions are ambiguous and cannot be understood without agents (Mahoney & Thelen, 2010; Schmidt, 2008). The open nature of the legal changes required by the WLBD for the level of remuneration for father-specific leave, provides leeway for interpretation by governmental and other actors during implementation (Zhelyazkova & Thomann, 2022). *Policy intention* is also particularly relevant in parental leave, since there is a significant gap between formal leave rights and the actual use of leave rights, due in part to differences in remuneration (Eurofound, 2018). Theoretically, we distinguish between two broad intentions of policy-makers with regards to father-specific leave, that is, supporting gendered care practices, which reflects the male-breadwinner/female-carer model, or supporting de-gendered care practices, which reflects dual-earner/dual-carer model (Lewis & Giullari, 2005). Put differently, the intention of policy-makers regarding father-specific leave captures the desired behaviour of fathers.

TABLE 2 Variations in institutional change

	Policy output	
	Low change	High change
Policy intention		
Low Change	Drift	Layering
	Conversion	Elimination/replacement
High Change		

Source: Adapted from Streeck & Thelen, 2005; Hacker, 2005.

Combining *policy intentions* of national policy-makers with the *depth of institutional change* allows us to distinguish four ideal-types of EU-induced institutional change. Drift refers to a lack of institutional change characterized by an absence of change in policy intention and policy design. In practice, this means that decision-making actors in member states ignore the EU regulations. Conversion and layering represent institutional change, but achieved through distinct means. Conversion relies on re-purposing existing social policies to achieve the aims of EU regulation. Layering reflects governments introducing policy reform, which are added on the top of existing schemes to meet the minimum requirements of EU social regulation. Conversion would suggest that the member state intend to comply with the aim of the EU regulation, while layering would suggest that the member state intend to comply with the minimum requirement of the regulation, but *not necessarily* to enhance fathers' participation in parental leave, which is the aim of the WLBD. Stylistically, layering refers to change in form - adding new institutional layers - more than substance, whereas conversion refers to change more in substance than in form. Lastly, elimination, which sometimes takes place in conjunction with replacement, refers to eliminating former policies and in parallel to introducing new social policies and adjusting the purpose of these social policies to meet the formal minimum requirements and aims of the EU regulation. Table 2 below depicts our ideal-typical framework, to capture policy intention with policy output.

In our analysis we focus on the following research questions: What type of institutional change does the WLBD lead to in member states? Is this institutional change in line with the aims of WLBD? And lastly, does the WLBD lead to convergence or divergence of father-specific leave in member states? We answer the first question in our four case studies, while the last two are answered in the comparative discussion.

4 | METHODOLOGY, DATA AND CASE SELECTION

4.1 | Methodology and data

Using the case study method, we conducted detailed, structured analyses (Bennett & George, 2004). Our data sources include official government documents on implementation and implementation plans, and position papers from social partners and other interest organisations. We conducted 20 individual interviews, including 17 elite interviews (five for Denmark, three for Germany, four for Poland, and five for France). Our elite interviews were conducted with individuals involved in influencing or deciding on the implementation of the directive. Moreover, we conducted three expert interviews with academic specialists in family policy: two in Germany and one in France, to capture the political context when the WLBD was being implemented. The interviews were semi-structured (see Annex 1 for interview guide) and conducted between February 2020 and October 2022 (interviews are listed in references). The interviews allowed us to identify changing dynamics during the implementation process from 2019 (adoption of directive) until April 2023, after the transposition deadline in August 2022. While eight interviews have been carried out online due to the COVID-19 pandemic, 12 have been conducted in person. For each country, the

interviews were conducted by the country author in the local language, lasted around one hour, were recorded and transcribed in full, as well as pseudonymised. In case of doubt about a datapoint from the interviews, we checked this with the interviewees, thereby ensuring robustness (Appendix).

While the official government documents, especially implementation plans, have enabled analysis of output, the position papers of governmental and other actors, as well as elite interviews, provided us with detailed information on the policy intentions. As far as possible, this data was triangulated—that is, having at least two data points for our analytical conclusions—to ensure validity and reliability (Berry, 2002). All data points were analysed via directed qualitative content analysis (Hsieh et al., 2005), where our focus was driven by our analytical framework, focusing on the policy intention and policy output of the implementation of the WLBD.

4.2 | Case selection

The cases are selected on a most different systems design logic, to capture the types and degrees of variation, which are present across EU countries. The cases are selected based on *policy legacy*, representing varieties of family and parental leave policy prior to the implementation of the WLBD. Family policy aiming to enable labor market participation of men and women, especially ECEC, is captured by the concept of de-familiarizing, while policy to strengthen the role of families in unpaid care, such as compensation for caring for children at home, is captured by the concept familiarizing (Leitner, 2003). Regarding leave, policy to encourage men and women to engage in care is captured by the notion of de-genderising, while policy to maintain traditional gender roles is captured by genderising (Saxonberg & Szelewa, 2021). These two sets of concepts are presented as a continuum, and we place our cases in the relevant quadrants, reflecting their combination of family and parental leave policy prior to the WLBD.

Denmark has de-familiarizing family policy focused on employment-based gender equality, which is enabled through universally accessible ECEC for children from the age of 6 months. Regarding parental leave, prior to the WLBD, parental leave was generously remunerated, but genderising, primarily targeting mothers. France has similar characteristics to Denmark, with well-developed and widely used ECEC, but its parental leave has a different policy intention, as it is poorly remunerated, disincentivising long leave, especially for fathers. Since the mid-2000s, Germany underwent a paradigm shift in family policies (Gülzau, 2020) towards a dual-earner/dual-carer model, prompting investments in ECEC (Stahl & Schober, 2018). Yet, regional differences in public childcare still prevail (Mätzke, 2019) and old familiarizing policies, such as a family-based taxation (Ostner, 2010) have not been replaced by de-familiarizing measures. Finally, Poland has a high degree of familiarization, due to a low investment in formal ECEC, and it has genderising parental leave, with no incentives for fathers to be involved in care (Table 3).

TABLE 3 Case selection matrix



Source: Adapted from Saxonberg and Szelewa (2021).

Below, our analysis uses the framework on institutional change, focusing on the *policy intention* of decision-making actors with the actual *policy of the father-specific provisions*, including paternity leave and parental leave, prompted by the WLBD.

5 | ANALYSIS: INSTITUTIONAL CHANGE IN DENMARK, FRANCE, GERMANY AND POLAND

5.1 | Denmark: Conversion of parental leave

Regarding paternity leave, Denmark complied with the provisions of the directive pre-directive, as fathers have 10 days of fully paid leave in conjunction with child-birth. Also, as paternity is compensated with full wages, it is in line with the intention of the WLBD. However, Denmark was not compliant with earmarked parental leave. While 48 weeks of leave were available, parents could voluntarily share the leave. The compensation was the level of unemployment benefit, but it was topped up to full wages for weeks for those covered by collective bargaining, ca. 84% of the workforce. Despite these features, it was genderising, since there was no earmarked leave.

EU directives at the intersection of labor markets and welfare involve the government and social partners in designing policy implementation. Thus, FH (representing employees) and DA (representing employers) were given the mandate to make a proposal on earmarked leave, which was followed by a political agreement in parliament. Based on their model, 9 weeks of leave were earmarked per parent, and thus, the *formal social rights* regarding earmarking and statutory level of remuneration were adopted as a legislative proposal, in March 2022 (Folketinget, 2022). Then, the implementation committee paved the way for formal legal implementation. Normally, the work of the implementation committee is technical, with no adaptations to the politically agreed implementation plans. However, the political parties on the left, especially the red-green alliance and the socialist party, had high ambitions regarding the dual-earner/dual-carer model. Thus, they proposed a 'gender neutral' model of leave for the whole leave period of 48 weeks (Interviews Denmark 3 & 5), which complicated the work of the implementation committee (Interview Denmark 5). In this model, each parent receives 24 weeks of leave as a default, including the right to a flat-rate benefit (unemployment benefit level). Previously, this was *ex-ante* allocated to the mother. Yet, of the 24 weeks per parent, only 9 weeks are earmarked to comply with the WLBD, while 13 weeks which are not earmarked (Beskæftigelsesministeriet, 2021). Furthermore, mothers continue to have four weeks of maternity leave prior to child-birth and fathers have two weeks of fully paid leave when they. While the earmarking of two months was a requirement of the directive, the 24 + 24 model, is not required by the EU. Yet, it is not accompanied by formal earmarking, and thus, it remains implicitly genderising. The compensation remains unchanged, at the level of unemployment benefit level.

Regarding policy intention, it is not only the left-of-centre parties which have intended that parental leave should be more gender equalising. Trade unions and employers have highlighted that they aimed to enhance parental leave rights for fathers, not just *de jure*, but also *de facto*. The trade unions and employers have agreed that 8 of 9 weeks of earmarked leave should be compensated with full wages (Interviews Denmark 1, 2). The representative from the trade union federation notes that 'we have made an extra effort to develop the information and digital guidance, so that parents easily can access their rights' (Interview Denmark 2). The trade union representative representing blue-collar workers noted that 'I think it [take-up of leave among fathers] will improve, because there has been such an extensive public debate and focus on it (...) The change will not happen magically because there is a new law, but I think it can contribute to a cultural change (...) we represent workers where fathers take least leave, but I think the law and public awareness there is on this now will push towards a change' (Interview Denmark 1). Also, the employer organisation has noted that 'we acknowledge that there is a lack of taking up parental leave for fathers, so we need to facilitate that' and noted that 'we hope that it [leave earmarked for second carers] will have an effect' (Interview Denmark 3). Thus, regarding *policy intention*, employers, trade unions and political parties (left-

of-centre) prioritized an enhancement of parental leave for fathers in line with the ambitions of the WLBD. The aim was to ensure that this legislative initiative would lead to change not only in policy, but also in take-up, breaking with the traditional Danish approach to EU social policy, which has mainly focused on minimal implementation (Interviews Denmark 1, 4, 2).

After the implementation of the WLBD, the total length of parental leave remains the same, and Denmark only earmarks 9 weeks, which is required by the EU. However, after the WLBD was adopted at EU level, the political signal by the political parties and the social partners, has shifted explicitly to promotion of gender equality, as reflected by earmarked leave with a high level of compensation and with the 'gender neutral' model. The public debate continues to be extensive, as most political parties have changed position from being against earmarked parental leave to full support (except on the far-right) (Pircher et al., 2023). Combining the formal changes with the policy intention, we conclude that institutionalization of change of parental leave is comprehensive in Denmark, representing *conversion*.

5.2 | France: Drift

In France, no new policy has been adopted to implement the WLBD. Although paternity leave legislation was partially revised in 2022, the legislative changes were already in the pipeline prior to the WLBD (Interviews France 1, 2). Currently, the duration of paternity leave is 25 days or 32 days in the case of multiple births, and it is renumeralized at 100% of earnings of the last 3 months up to a quarterly limit set by social security of €10,284 as of January 2022.² Thus, paternity leave in France meets the minimum requirements of the WLBD. Additionally, the legislative revision has the objective of raising French fathers' use of paternity leave, which overlaps with the aim of the WLBD. However, as this legislative revision is not triggered by the WLBD, EU regulations is not the source of institutional change on paternity leave in France. In France, ECEC - available from when the child is 3 months - are well-developed and known to be of high quality. ECEC is the cornerstone of family policy, as it fits the public policy preference for the working mother - 'la mère qui travaille' (Brachet et al., 2010; Dauphin & Letablier, 2013; Fagnani, 2001; Maurot, 2014).

In contrast to paternity leave, France was not *ex-ante* compliant to the provisions of the directive in parental leave. And no changes are planned, that is, there have not been any public announcements regarding changes to existing legislation since the directive was adopted. Although parental leave is long (up to 24 months per parent) and reserved (12 months), it is poorly renumeralized.³ All elite and expert interviewees stated that the poor level of remuneration is the key factor behind the low take-up rates by fathers, and to some extent also of mothers. In 2020, the level of remuneration ranged from €148,12 (partial leave) to €397,20 (complete leave), corresponding to 9.62% and 25.8% of the minimum wage, respectively (Ministère des Solidarités et de la Santé, 2020). Several governmental councils and agencies (Le Haut Conseil de la famille, de l'enfance et de l'âge (HCFEA) and l'Inspection générale des affaires sociales (IGAS)) have recommended an increase in parental leave remuneration, but this has been opposed politically, with reference to limited budgetary room for manoeuvre (see CNAF, FRANCE STRATÉGIE & HCFEA, 2021; HCFEA, 2019; Gosselin & Lepine, 2018; Interview France 2).

Therefore, although the government acknowledged in 2021 that parental leave - due to low financial compensation - did not provide parents time to interact with their young children, there were no plans to change this (Secrétariat Général des Affaires Européennes, 2021). Instead, it recommended further development of ECEC facilities. Policy-makers have prioritised funding ECEC facilities over increasing remuneration for leave. Périvier (2018) found, between 2010 and 2014, that expenditure on remuneration for parental leave fell by 10%, whereas public spending on ECEC grew by 21%. The intention of the French government - supporting the existing ECEC model at the expense of improving parental leave - is exemplified by President Macron's response to the WLBD proposal. He acknowledged the value of well-remunerated parental leave, but argued that it would be too expensive and unsustainable for French public finances.⁴ Likewise, the then Minister for Labor, Muriel Pénicaud, claimed that it was not for Brussels to decide on the details of how parental leave.⁵ These views on the lack of ambition of policy-makers on parental leave remuneration were confirmed by five of the six interviewees. Interviewees from a trade

union, interest group, government observatory, and a government department stated that there was little possibility to improve remuneration due to the dire state of French public finances. Interviewees from the government observatory and government department stated that any improvements to remuneration will have to be funded by cutbacks elsewhere.

In short, in France policy-makers argue that dire public finances, and the primacy of the ECEC model in family policy, create limited scope for generous parental leave. This explains the lack of substantive change in transposition plans for the WLBD. However, the deadline for transposition plans for remuneration is August 2024 (Article 20.2), which means that changes to remuneration of parental leave could be introduced. Based on current transposition plans and the intentions reflected by public statements from political leaders and suggested by elite and expert interviewees, however, *drift* seems more likely as the parental leave policies are not updated to meet demands of possibilities for equalising care duties between mothers and fathers, which is one of the key objectives of the WLBD.

5.3 | Germany: Layering

After the transposition deadline passed, Germany adhered to the *status quo* and did not undertake any transposition measures. While Germany already complies with the WLBD in terms of paid and nontransferable parental leave, the question about whether Germany needs to implement an explicit legal right to paternity leave provoked controversy (Agence Europe, 2018). The intention of the previous CDU-SPD government, supported by the German industry, was to reject the introduction of paid paternity leave, since it would clash with the national regulations (Interview Germany 1). Moreover, the ministry further argued that Germany would already comply with the directive: 'according to the Commission and its impact assessment, no transposition measures are needed' (Interview Germany 4; de Die Welt, 2021). Thus, the policy intention of the ministry was to maintain the status quo arguing that this paternity right exists in practice as parental leave can be taken directly after child-birth. Yet, trade unions and lawyers in the field advocated policy changes in father-specific leave, arguing that Germany needs to implement paternity leave (DGB Frauen, 2021; de Die Welt, 2021; Treichel, 2021). They stressed the importance of adding new rules on paid paternity on top of the existing parental leave (Interview Germany 1). 'Our claim is that parental leave should be shared equally and we will continue pushing for that; it was a great disappointment that the government was not interested in doing more' (Interview Germany 1). It was further stressed by employers' and employees' representatives that citizens are increasingly in favour of an equal division of parental leave with a high level of remuneration, 'that would definitely increase the uptake of the second parent' (Interview Germany 5).

The new government elected in 2021 enshrined plans in the government programme to improve equality in uptake of the parental leave allowance, for example by increasing the so-called partner months (extra months if both parents take their reserved parental leave) by one additional month (Die Bundesregierung, 2021; Interview Germany 4, 2021). Yet, it was not before April 2023 that Lisa Paus – the minister for family affairs – announced a new legislative proposal for an exclusive paternity leave to be implemented by January 2024. The argument was that it would be important for 'securing skilled workers and the life satisfaction of families' in Germany (ntv, 2023). The new law will grant second carers 10 days of leave with full wages after the birth of the child, which is compliant with the WLBD. Thus, after a longer period of controversy, the exclusive paternity right will most probably come in 2024. However, it is best classified as layering, since one regulation is added to the already existing ones. Furthermore, there are plans to simplify the access to parental leave allowance and to improve the digital application procedure, to lower the administrative burden for parents in accessing their rights (Die Bundesregierung, 2021, pp. 78–79). Simplifying the system and providing better guidance for individual cases would help couples with less time or fewer resources (Interview Germany 2, 3, 52,021). The updating of the existing administrative system can be considered as instrument to prevent institutional drift, as the German system has been described as particularly cumbersome (Eurofound, 2018). Yet, the Germany system is not comprehensively re-purposed, as in the Danish case. Thus, it is best qualified as a case of layering.

5.4 | Poland: Layering

Poland complies with the Directive when it comes to the provision of paternity leave (2 weeks, fully paid, since 2012), however, due to the lack of individual and nontransferrable entitlement, the Polish rules on parental leave do not comply with the Directive. The current leave system (in place since 2014) can be combined with maternity leave, making it possible to take a break from employment for 52 weeks in total (32 parental leave +20 maternity leave) (Szelewa, 2017). A peculiarity of the system is that fathers' possibilities to use their right to leave requires mothers to take their 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. However, there is also an option to have 80% replacement rate for the whole duration of maternity and parental leave combined. 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. Altogether, due to a family-based entitlement and dependence on mothers taking leave prior to fathers, the system is highly genderising.

This gendered character of parental leave is strengthened by the ECEC system, as especially services for children under the age of 3 have remained underdeveloped. Reforms initiated by the previous governments (centre-right, in office 2007–2015) led to a partial development of care services for small children, as the enrolment rate increased from 2% in 2010 to 11.2% in 2020 (Eurostat). However, almost 70% of all municipalities in Poland do not have any form of childcare centres for small children (Szelewa & Polakowski, 2022).

Polish reforms are the result of a weak intention to reform the system of parental leave in line with the Directive, due to the political domination of the right-wing populist party Law and Justice, in office since 2015. The government did not propose any concrete reform before February 2022, when a draft law implementing the WLBD and the two other EU social rights directives, were presented jointly for consultations (Ministerstwo Rodziny i Polityki Społecznej, 2022). A bill introducing the reform was adopted on 9 March 2023 to be effective from 26 April 2023. It gives an option for all parents that would have been eligible beginning of 2 August 2022 (transposition deadline) to use the additional 9 weeks of the leave. The proposed changes are based on the existing parental leave, but two months are added to the existing scheme and reserved for the second carer/father. To be compliant with the WLBD, each parent is guaranteed 9 weeks of the leave, which is not transferable to the other parent. In addition, it is no longer be conditional on the child's mother taking maternity leave, thus this introduces an element of de-tenderization. When it comes to compensation, the level of parental leave will be set at 70% the previous salary for the whole period.

Effectively, the new solution is a break from the past, however, despite strengthening parental leave rights for fathers, the reform plans are unlikely to lead to an improved use of social rights because of the intention of policy-makers. There are currently no plans to conduct information campaigns to raise awareness about the new entitlements although the need for information campaign was raised by the employers' organization expert who suggested that "change in regulations will not bring in the expected consequences (...) an emphasis should be placed on promoting the solutions" (Interview Poland 3). At the same time the issue is not salient among the social partners: as the trade union expert mentioned: "we have not devoted much time to these parental leave entitlements" (Interview Poland 1). Extending the existing leave in the form of two nontransferrable months with a low intention of the policy-makers to introduce change can be classified as *layering*. In contrast to the Danish case, the purpose of parental leave in Poland, to enable mothers to take long leave, has not change despite formal compliance with the WLBD.

6 | COMPARATIVE DISCUSSION

This section discusses whether the institutionalization of father-specific leave aligns with the aims of the WLBD and whether it led to convergence or divergence across member states.

Our cases reveal that for *paternity leave*, there is a significant degree of convergence prompted by the WLBD. France and Germany had initially been reluctant to change their paternity leave provisions, although for different reasons. In France, changes to paternity leave pre-empted the WLBD, and the priority was to secure well-paid but shorter leave. This fits with de-familializing policy in France, which prioritises early access of small children to ECEC, to ensure working parents quickly return to work after child-birth. Germany, on the other hand, is reluctantly implementing a separate paternity leave, thus complying with the WLBD. However, there is no aim to change the core of their parental leave system, which is formally gender-neutral, although mothers still take longer leave than fathers. Poland and Denmark made no changes to their paternity leave, as their schemes were already compliant prior to the WLBD. Overall, paternity leave, for a short period and with high compensation – full wages in our four cases – is the provision of the WLBD on which there is, thus far, most convergence. It is striking that in all countries, compensation is beyond the minimum requirements of the directive, although in Germany it is still only a legislative proposal. Thus, the institutionalization is in line with, and even beyond, the intention of paternity leave as stipulated in the WLBD.

Regarding the provisions on *parental leave*, the WLBD has prompted enhanced divergence, since the costs for member states, such as France, that do not already have paid parental leave, could be substantial. The country with the most significant change in parental leave is Denmark, regarding formal rights and the level of compensation, as well as the intention of policy-makers, which is explicitly to enhance gender equality in leave. Poland, like Denmark, has made extensive changes, to reduce the pre-existing bias towards mothers in the system, and the compensation for leave is high. However, in Poland, these planned formal changes are de-coupled from the intention of the policy-makers, which is to maintain traditional gender roles. In France and Germany, no changes are planned in parental leave. Overall, the divergence between countries in implementation of parental leave is not surprising, considering the weaker EU provisions regarding compensation and the stronger link with values regarding the dual-earner/dual-carer model (see also Pircher et al., 2023).

7 | CONCLUSION

From a theoretical perspective, our cases show that the gradual institutionalist framework – focus on policy output with policy intention – is a useful way to capture the impact of Social Europe on member states' social policies. Other instances of EU social legislation, such as the minimum wage directive, or the planned directive on platform work, could be examined from the perspective of gradual institutional change, because it takes account of policy legacies, as well as changes prompted by the EU level. As our analysis reveals, policy intention should be factored into the analyses, as there can be significant differences between formal policy output and policy-making actors' plans for actual use of new social rights.

Empirically, our study reveals that there is convergence in paternity leave. Yet, on parental leave, which is considered important for gender equalisation in care, with a knock-on effect for gender equality on the labor market, divergence has increased. This is because of the EU's weak authority in setting precise levels of compensation, due to the principle of subsidiarity, and due to differing policy legacy in paid parental leave among member states. Thus, there is a risk that the WLBD, could lead to differentiated social rights. Yet, once rights are integrated in Member States, provisions about generosity of financial compensation could be adjusted, incrementally. Although some governments in power during the implementation phase of the WLBD opposed strengthening father-specific leave, subsequent governments could have different intentions for these new social rights (e.g. Germany). Future research could extend this analysis to other countries, to assess whether the findings from our cases hold for other EU countries. Furthermore, future research could explore the role of other facilitating factors in policy change, like female legislators, public opinion, and policy learning.

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DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

ORCID

Caroline de la Porte  <https://orcid.org/0000-0002-4844-3017>

Zhen Jie Im  <https://orcid.org/0000-0001-7854-1382>

Brigitte Pircher  <https://orcid.org/0000-0002-9664-1456>

Dorota Szelewa  <https://orcid.org/0000-0002-6343-2025>

ENDNOTES

- ¹ The directive refers to 'second carers', rather than fathers, to be gender neutral and take account of different sexual orientations. However, as gendered practices of care are mainly between mothers and fathers, this is our focus. See Pircher et al., 2023, for analysis of how the provisions of the WLBD for same-sex couples are implemented.
- ² European Commission, France - Maternity and paternity allowances, available at: <https://ec.europa.eu/social/main.jsp?catId=1110&langId=en&intPageId=4533#:~:text=The%20duration%20of%20paternity%20leave,adoption%20benefit%20from%2018%20weeks> (accessed 8 April 2023).
- ³ The total duration of parental leave afforded to both parents is 36 months. However, since each parent can only take a maximum of 24 months, the remaining 12 months is de facto reserved for the other parent.
- ⁴ 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).
- ⁵ The quoted text is "la France est absolument pour une directive sur le congé parental [mais] ce n'est pas a Bruxelles que l'on doit décider dans le détail comment il doit fonctionner pays par pays" (quoted in Le Monde, 2018)

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SUPPORTING INFORMATION

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APPENDIX

Interviews

Elite Interview Denmark 1, 3F, 21.01.2022.

Elite Interview Denmark 2, Fagbevægelsens Hovedorganisation (FH), 30.04.2022.

Elite Interview Denmark 3, Dansk Arbejdsgiver (DA), 12.04.2022.

Elite Interview Denmark 4, HK, 15.08.2022.

Elite Interview Denmark 5, Ministry of Employment, 16.08.2022.

Elite Interview France 1, Union Nationale des Associations Familiales (UNAF), 03.09.2021.

Elite Interview France 2, Caisse Nationale des Allocations Familiales (CNAF), 19.07.2021.

Elite Interview France 3, Confédération Générale du Travail (CGT), 11.10.2021

Elite Interview France 4, Confédération française démocratique du travail (CFDT), 22.06.2021

Elite Interview France 5, Service des droits des femmes et de l'égalité (DGCS), 26.01.2022

Interview France 6, Family policy expert, 23 June 2021.

Elite Interview Germany 1, DGB Bundesvorstand official, 21.5.2021.

Interview Germany 2, Family policy expert 1, 15.5.2021.

Interview Germany 3, Family policy expert 2, 10.6.2021.

Elite Interview Germany 4, Federal Ministry for Family Affairs, Women and Youth official, 03.09.2021.

Elite Interview Germany 5, Official pme Familienservice (2021) 10.05.2021.

Elite Interview Poland 1, Trade Union representative, 17.05.2022.

Elite Interview Poland 2, NGO representative, 10.05.2022.

Elite Interview Poland 3, representative of Employers' Organization 1, 16.05.2022.