



PATERNITY LEAVE IN THE EUROPEAN UNION: PRESENT AND FUTURE

A report of the Working Group on Gender Equality of the European Student Think Tank

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Table of Contents

Preface	4
PART 1: THEORETICAL ANALYSIS	5
Introduction	6
Feminism and Gender Equality	7
Gender Equality: A Legal Analysis	10
<i>Primary law: The Treaties</i>	<i>10</i>
<i>Secondary EU Law</i>	<i>12</i>
<i>Jurisprudence</i>	<i>19</i>
Stakeholders	26
<i>European Parliament (EP)</i>	<i>26</i>
The Elections to the EP	26
The Political Groups in the EP	26
Lobby organisations in the Transparency Register	31
Case Study: Sweden	33
Conclusion	34
PART 2: POLICY PROPOSAL	35
Introduction	36
Legal instruments	37
<i>The directive</i>	<i>37</i>
<i>The Open Method of Coordination (OMC)</i>	<i>38</i>
Policy Proposal ‘Parental Leave’	40
<i>Objective:</i>	<i>40</i>
<i>Scope & Competence:</i>	<i>40</i>
<i>Policy:</i>	<i>40</i>
Conclusion	41
Bibliography	42
Acknowledgments	46

Preface

The Working Group on Gender Equality, based in Amsterdam, the Netherlands, focuses on monitoring the state of gender equality in the European Union (EU). This group was initiated in the fall of 2016 and is part of the European Student Think Tank (EST). The EST involves students from all over Europe with EU policy-making processes. It organises debates, hosts an international network and publishes an academic journal: The European Policy Review. In this way, the EST is able to reach both European youth and European institutions.

This group has worked on a comprehensive report and policy proposal, which analyses parental leave in the EU and argues that differences in possibilities relating to paternity and maternity leave directly affect the possibilities for women in the labour market. The report explains what gender equality is, why it is desirable, how it relates to parental leave and how this could be implemented within the legal framework. The policy proposal aims at creating a piece of legislation that can be realistically used by the European Commission to create a fairer job market for both men and women as well as facilitate easier access for men to paid parental leave.

PART 1: THEORETICAL ANALYSIS

Introduction

The first part of the report explains a theoretical framework of information about gender equality and the current problems concerning paternity leave. Its aim is to analyse the current situation of gender equality and paternity leave in the EU. Furthermore it recognizes a number of problems and/or phenomena, which make the achievement of gender equality difficult.

The first chapter offers a short introduction into feminism and gender equality. Furthermore, it provides the basic definitions of the terms that are most important to paternity leave. In the second chapter, a comprehensive analysis of EU law on the topic of gender equality and paternity leave is provided, followed by an overview of the most important stakeholders that need to be kept in mind when talking about paternity leave.

Feminism and Gender Equality

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Feminism and gender equality have been a part of popular culture as well as academic discourse for a long time. This introduction focuses on the definitions of feminism and gender equality. It also explains the views of this research group on feminism and gender equality. Hereby it also elaborates on the reasons behind the methodology of this report and the policy proposal.

In the first part, definitions of feminism and gender equality are offered and there will be an elaboration upon the relation between these two terms. The second part of the chapter discusses the means how gender equality in socioeconomic matters should be achieved. Thereby, the methodology of the working group in this policy proposal in relation to gender equality will be explained.

The Oxford English Dictionary describes feminism as follows: “Advocacy of equality of the sexes and the establishment of the political, social, and economic rights of the female sex; the movement associated with this.”¹ Consequently, it can be stated that feminists seek equality between genders. Gender equality is at the core of feminism. However, gender equality and feminists do not (necessarily) disprove of physical differences between genders.

Therefore, gender equality is about the equal treatment of men and women. It is about equal positions for men and women at work, in their family and in society. Thus, gender equality does not only refer to equal political rights, but also to social, economic and cultural equality. It proposes equal opportunities for men and women.

Although the EU has already put gender equality high on the agenda, there is still room for improvement, as the European Commission aims to strengthen gender equality in its policies.² Even within the EU, there are significant differences in the level of gender equality. Nevertheless, as gender equality consists of several dimensions, it should be measured through the different aforementioned aspects.

¹ Oxford Dictionary, <https://en.oxforddictionaries.com/definition/feminism>, consulted February 6, 2017.

² European Union, *Strategy for equality between men and women 2010-2015*, Luxembourg: Publications Office of the European Union 2011, p. 3.

This report focuses on gender equality and parental leave in the EU. Fair and equal rules for maternity and paternity leave are an important aspect of gender equality. According to Eugenia Caracciolo di Torella, there is a traditional difference between the role of genders in bearing and begetting children.³ According to the traditional provision of gender roles, women are responsible for bearing children, while men have the task of begetting them. This implies that the world is divided in a domestic and public sphere. The domestic sphere is thus home to women, while men are expected to perform in the public sphere.⁴ This division of spheres and the related roles assigned to men and women is still pervasive in our present-day society, as it is still being imposed by legislation. Hence, this also considers parental leave.

Differences between maternity and paternity leave in the EU

In order to comprehend this topic, the differences between the various forms of 'leave' should be described. Maternity leave is the period that a biological mother takes her leave, often a short time before and a period after the child is born. Paternity leave is the leave for the father and is in most cases a short period after the child is born. Finally there is parental leave, in which case the father or mother takes a period off to look after their child. This is outside of the period for maternity and paternity leave.

In many EU Member States, the rules for maternity leave differ from the rules concerning paternity leave. Often, paternity leave is of a significantly shorter period than maternity leave. In line with the previous statement, women take more time for childcare than men (when also including parental leave). Research points out that men still have a better position on the labour market than women.⁴ Even despite legislation, which would allow for men to take paid paternity leave, women still take more time for childcare than men. This influences women's position on the labour market. This has several implications.

Firstly, men are believed to have greater economic value for employers, simply because they stay at work more often in times of the birth of a child. Employers are therefore more likely to employ men or put them in time consuming high positions, when you look at only the economic value of men around the time of childbirth. For women, you could argue it is the other way around. They are less likely to be put in time consuming high positions, as

³ Torella, E.C. Di, 'Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union', *European Law Journal*, Vol. 20, No. 1 (2014), p. 92.

⁴ C. Torella, 'Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union', *European Law Journal*, nr. 1 (2014), p. 92.

⁴ European institute for gender equality. (2015). *Gender Equality Index 2015. Measuring gender equality in the European Union*. Retrieved from <http://eige.europa.eu/rdc/eige-publications/gender-equality-index-2015-measuring-gender-equality-european-union-2005-2012-report>

they may have to take leave because of the birth of a child. Thus, the gender inequality remains. This inequality would be absent if the total parental leave of men and women were more evenly distributed. The economic benefits of employees would more or less be the same for men and women.

Secondly, this has cultural roots. The dogma that men are the breadwinners of the family and women stay at home is enforced by the inequality around parental leave. Women have more reasons to stay at home due the differences between maternity and paternity leave. There are fewer triggers for men to stay at home. A first step to break through this current pattern is to set up rules equal for men and women, in order for the dogma to disappear.

Conclusively, this means that inequality concerning parental leave has consequences for both the economic and social position of women. It is therefore important to look at possibilities to change these rules. The current state of gender equality in Europe should be monitored and should be assessed where improvement is required and how it could be implemented. Each person deserves an equal position and equal opportunities in our society, because each person is born equal, regardless of gender. The EU propagates equality and has come a long way already, as it is one of its core values. But as long as there are still gaps in policy and practice, this topic is relevant and we should continue to endeavour for these purposes.

Gender Equality: A Legal Analysis

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EU law is one of the most important aspects of European integration, because the entire integration process is made through legislation. In order to know what the common rules in Europe are, a comprehensive legal analysis is necessary.

Primary law: The Treaties

This chapter analyses provisions in the primary law of the EU on gender equality (GE). Both the Treaty on the European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) have the same legal value (art. 1 TEU j. art. 1(2) TFEU). They will be referred to as ‘the Treaties’.

The aims and fundamental values of the EU

Values that lie at the foundation of the European Union according to article 2 TEU are

“... respect for human dignity, freedom, democracy, equality, the rule of law and respect of human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

Therefore, equality between men and women in general is a fundamental principle of the EU. Furthermore, it follows from article 8 of the TFEU that all activities of the EU must aim at eliminating inequalities including inequality between men and women.

The Internal Market & Gender Equality

From Article 4(2, b) of the TFEU follows that social and labour market policy is a shared competence of the EU and its Member States. Additionally, article 3(3) of the TEU states that the internal market shall, among other things, “... aim at a full employment and social progress, (...) combat social exclusion and discrimination, and (...) promote equality between women and men (...)”. It is therefore not only an incentive of fundamental rights, but also an economic reasoning supports it.

Article 145 of the TFEU elaborates on the means by which Article 3 of the TEU is to be achieved. It states that the Member States and the EU collaborate on creating a strategy to create a “... skilled, trained and adaptable work force and labour markets responsive to economic change (...)”. The achievement of a high level of employment is one of the main goals of EU economic policy in order to survive economic changes and crises. The role of the Member States in this process is to make employment policy, which accustoms this goal and creates a common employment policy in the EU.⁵ The underlying idea is that Member States apply their national traditions on employment in such a way that a common goal is achieved (in a similar way as a directive would). The EU has a coordinating role in this process.⁶ The coordination is to be assisted by an advisory Employment Committee of the European Parliament, which is to be established by a simple majority in the Council.⁷

The objective of EU social policy is set out in article 151 of the TFEU. It takes into account the European Social Charter (1961) and the Community Charter of Fundamental Social Rights (1989) and aims at a high level of employment, good living and working conditions and social protection by harmonisation of social systems of Member States.⁸

The ways of achieving the objectives of article 151 of the TFEU are laid out in article 153 of the TFEU. However, they must not affect the fundamental principles of the national systems of employment in the Member States. The measures are therefore aimed at cooperation between Member States, not at harmonisation of the systems.⁹

Equal pay is set as a basic principle of EU policy. The EU adopted a broad definition of the term ‘pay’, with the ordinary legislative procedure to be applied in the making of new legislation on gender equality in employment and occupation.¹⁰ However, Member States are allowed to take legislative measures, which empower the underrepresented sex.¹¹

Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the EU (furthermore addressed as the Charter) is a part of primary EU law¹² and lays out the basic fundamental rights of all EU citizens. Chapter III of the Charter, which contains articles on non-discrimination and equality, states “Equality

⁵ Art. 146 of the Treaty on the Functioning of the European Union.

⁶ Art. 147 TFEU.

⁷ Art. 150 TFEU.

⁸ Art. 151 TFEU.

⁹ Art. 153(2) TFEU.

¹⁰ Art. 157 TFEU.

¹¹ Art. 157(3,4) TFEU.

¹² Art. 6 (1) TEU.

between men and women must be ensured in all areas, including employment, work and pay.”¹³ Furthermore, “The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.” Therefore, article 2 of the TEU and article 23 of the Charter need to be read together as they have same legal weight.

European Social Charter & Community Charter of Fundamental Social Rights

The European Social Charter and the Community Charter of Fundamental Social Rights are two documents given legal weight by article 151 of the TFEU. As such, they can be used by the Court of Justice to interpret EU social policy. The European Social Charter is a binding document for all members of the Council of Europe, while the Community Charter of Fundamental Social Rights is a document originally signed by the members of the European Community except for the United Kingdom in 1989.

Secondary EU Law

‘Secondary EU law’ is a term used for types of legislation that are based in article 288 of TFEU: regulations, directives, decisions, recommendations and opinions.

All of the measures all have specific goals and legal effect. While regulations have a general application and binding effect in its entirety to all Member States¹⁴, directives are binding only towards its expected result, leaving the means of application to the Member States.¹⁵ Hereby directives leave room for differences between Member States’ national systems. This makes it is an ideal measure for a wide range of policy areas, because they do not address the different approaches in Member States. Directives can consider gender equality. Opinions do not have binding legal effect, but have an advisory role.¹⁶

This chapter will discuss concrete pieces of secondary law that relates to gender equality in general and paternal leave.

The Gender Recast Directive (Directive 2006/54/EC)

Probably one of the most important pieces of legislation on gender equality in the workplace is the Gender Recast Directive. The ‘Gender Recast’ Directive of 5 July 2006 on the

¹³ Art. 23 of the Charter of Fundamental Rights of the European Union.

¹⁴ Article 288, paragraph 2, TFEU.

¹⁵ Article 288, paragraph 3, TFEU.

¹⁶ Article 288, paragraph 4, TFEU.

implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation finds its legal base in article 141(3) TEC^{17, 18}. It combines measures from various previous directives¹⁹ in order to create a clear framework based on the rationale that equality between men and women is one of the fundamental principles of community law²⁰ based on Article 2 and Article 3 of the TFEU and case law of the CJEU²¹ and articles 21 and 23 of the Charter of Fundamental Rights of the EU²².

Article 1 of the Directive explains the purpose of the directive: “(...) to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation”²³ and it considers “(...) (a) access to employment, including promotion, and to vocational training; (b) working conditions, including pay; (c) occupational social security schemes.”²⁴ The goal of the directive is also to provide provisions for more effective implementation of legislation by creating specific procedures.²⁵

¹⁷ Now Article 157(3) TFEU, which gives the EP and Council the power to create legislation on equal treatment of men and women through the ordinary legislative procedure.

¹⁸ Point 4 of the remarks, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

¹⁹ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, , and working conditions, Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, Council Directive 75/117/ EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.

²⁰ Point 8 of the remarks, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

²¹ Point 2 of the remarks, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

²² Point 5 of the remarks, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

²³ Article 1 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

²⁴ Article 1 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

²⁵ Article 1 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

After providing the definitions necessary for this directive in article 2 of the Directive, article 3 still allows for the Member States to make stricter measures that cope with gender inequality and promote the less represented sex in a specific field of work in the workplace as article 141(4) TEC²⁶ allows.

Article 4 of the Directive clearly forbids direct and indirect discrimination: “For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.”²⁷ The second paragraph adds that discrimination is forbidden as to job classification systems and their determination of pay: “In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.”²⁸

Article 5 of the Directive forbids direct or indirect discrimination on grounds of sex in occupational social security schemes, specifically to (a) the scope and access to such schemes, (b) the obligatory contributions and their calculations and (c) the calculation of supplementary benefits and conditions of duration and retention of entitlement to such benefits.²⁹

The personal scope of the Directive is explained in article 6 of the Directive. It does not only apply to the working population including “(...) self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.”³⁰ Articles 7 and 8 specify the material scope of this Directive, while article 9 provides a non-exhaustive list of examples of direct or indirect discrimination, which is hereby forbidden.

The Gender Recast Directive does not exclude provisions relating to maternity leave, since discrimination, both direct and indirect, of women due to pregnancy is also deemed

²⁶ Article 157(4) TFEU.

²⁷ Article 4 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23.

²⁸ Article 4 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/27.

²⁹ Article 5 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/27.

³⁰ Article 6 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/27.

forbidden by the CJEU.³¹ This directive does not take away any legal power from Directive 92/85/EEC³² and Directive 96/34/EEC³³. In Article 2(2) of the Directive, discriminatory treatment of a woman related to pregnancy or maternity leave is included in the definition of discrimination as a whole. Article 15 of the Directive establishes that “(...) a woman on maternity leave shall be entitled, after the end of the period of maternity leave, to return to her job or to an equivalent post on terms, which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence”³⁴ Paternity leave as such is not mentioned in the Directive, but it does not exclude it either, as point 11 of the remarks of the Directive advises the Member States to make legislation, which will “(...) enable both men and women to combine family and work commitments more successfully”³⁵, and offers the option of parental leave as well as provisions for affordable child-care facilities.

The ‘Pregnant Workers’ Directive 92/85/EEC

The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding is based on article 118a of the Treaty of Rome, which lays out the differences between the competencies of Member States and the Community as to the improvement of the working environment of workers and sets the goal at harmonisation of conditions in this policy area.³⁶

³¹ Point 23 of the remarks, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/23, j° Article 28(2) of the same Directive, L 204/32.

³² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

³³ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC.

³⁴ Article 15 of the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/30.

³⁵ Point 23 of the remarks, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. *Official Journal of the European Union*. L 204/24.

³⁶ Article 118a(1) of the Treaty of Rome.

The purpose Directive, which is a legislative measure based on Article 16(1) of the Directive 89/391/EEC³⁷, implements measures “(...) to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.”³⁸ This directive is additional to the Directive 89/391/EEC and this directive applies in all measures, which are implemented by the Directive 89/391/EEC³⁹. The third paragraph of the first article of the Directive states that the level of protection for pregnant workers, workers that have just given birth or are breastfeeding provided by the Member States can be higher despite this Directive⁴⁰.

Article 2 of the Directive defines the term ‘pregnant worker’, a worker who has recently given birth and a worker who is breastfeeding. National legislation and/or practice are the most important in these definitions, as they define the concrete conditions for the workers. Point (a) of Article 2 leads to the fact that the Directive only protects a pregnant worker, if she informs her employer of her condition as national legislation and/or practice dictate. National legislation defines what the term ‘worker who has recently given birth’ means (point (b) of Article 2), as well as ‘worker who is breastfeeding’ (point (c) of Article 2).

The Commission shall, together with the Member States and other EU advisory organs (the Advisory Committee on Safety, Hygiene and Health Protection at Work), make a list of chemical, physical and biological agents and/or industrial processes, which can be harmful to women, which fall under the definition of Article 2 of the Directive. “(...) The guidelines referred to in the first subparagraph shall also cover movements and postures, mental and physical fatigue and other types of physical and mental stress connected with the work done by workers within the meaning of Article 2.”⁴¹

³⁷ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. Official Journal L 183 , 29/06/1989 P. 0001 – 0008.

³⁸ Article 1(1) of The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/2.

³⁹ Article 1(2) of The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/2.

⁴⁰ Article 1(3) of The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/2.

⁴¹ Article 3(1, subparagraph 2) of The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/3.

Maternity leave is also an important topic in this Directive. The Directive argues in the remarks that “(...) provision[s] concerning maternity leave would (...) serve no purpose unless [they are] accompanied by the maintenance of rights linked to the employment contract and or entitlement to an adequate allowance.”⁴² The technicalities of the adequate allowance, however, are not discussed in this Directive. Article 8 of the Directive obliges Member States to ensure that women that fall under the definition of Article 2 of the Directive are entitled to a minimum of 14 weeks continuous period of maternity leave, which can take place before and/or after the birth of the child, in accordance with national legislation and/or practice.⁴³ Additionally, during the pregnancy, women that fall under the definition of Article 2 are entitled to leave without the risk of loss of pay for prenatal examinations, if these examinations must take place during working hours.⁴⁴ Lastly, Article 10 provides the conditions under which a woman that falls under the definition of Article 2 of the Directive can be dismissed.⁴⁵

‘Parental Leave’ Directive 2010/18/EU

The ‘Parental Leave’ Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC⁴⁶ is legally based on Article 155(2) TFEU and Article 153 thereof. Dialogue between social partners, such as UEAPME, CEEP and ETUC on the European level, can, in accordance with Article 155(1) TFEU, lead to contractual relations and other agreements.⁴⁷

⁴² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/2.

⁴³ Article 8, subparagraph 1, of The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/4.

⁴⁴ Article 9 of The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/4.

⁴⁵ Article 10 of The Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. *Official Journal of the European Communities*. L 348/4.

⁴⁶ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

⁴⁷ Article 155(1) TFEU j° Point 2 of the remarks of the Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC. *Official Journal of the European Union*. L 68/13.

This directive gives direct legal effect to the revised Framework Agreement on parental leave⁴⁸. The penalties in case of breach of the Directive are the competence of the Member States, provided that the measures taken are proportionate, effective and dissuasive of further infringement.

The Revised Framework Agreement on Parental Leave

This Framework Agreement between European social partners of 18 June 2009 revises the Framework on parental leave from December 1995⁴⁹. It sets out “(...) the minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, taking into account the increasing diversity of family structures while respecting national law, collective agreements and/or practice.”⁵⁰ It considers the changing demographic situation in Europe that, among other things, is caused by ageing; and promotes changing the gap between generations by encouraging a more equal division of responsibilities between men and women.⁵¹ This is also one of the reasons why the old Framework agreement from 1995 needs revision on certain specific points.⁵²

The framework entitles men and women, who have an employment contract or employment relationship⁵³ to parental leave in case of birth or adoption of a child. This parental leave can be used up to a certain age of the child to be decided by national law, maximum being eight years.⁵⁴ The parental leave shall be at least four months long and is non-transferable between the parents for at least one month of the total amount.⁵⁵ “The

⁴⁸ Article 1 of the Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC. *Official Journal of the European Union*. L 68/14.

⁴⁹ The Framework has a broad legal basis, which considers gender equality in professional and private life as a fundamental human right. The social partners have derived their competence to make this agreement from Article 155(1) and 155(2) TFEU. The principles of equal treatment stem from Article 3 TEU, Article 8 TFEU and Articles 23 and 33 of the Charter of Fundamental Rights of the European Union.

⁵⁰ Clause 1(1) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵¹ Point 8 of the Preamble of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵² Points 10 and 11 of the Preamble of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵³ Clause 1(2) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵⁴ Clause 2(1) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵⁵ Clause 2(2) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

conditions of access and detailer rules for applying parental leave shall be defined by law and/or collective agreements in the Member States, as long as the minimum requirements of this agreement are respected.”⁵⁶ Additional measures for adoptive parents shall be assessed and taken by national governments and social partners.⁵⁷

When the parental leave ends, workers shall have the right to return to the same job, or to a job consistent with their employment contract or relationship.⁵⁸ The worker may, for a set amount of time, request an adjustment of his or her working hours and/or patterns in order to make the reconciliation of family and professional life easier. The employer must consider this request and take into account the worker’s and his/her own needs.⁵⁹ In the case of an inevitable event, such as family sickness or accidents, which demand the immediate presence of the worker, the employer must allow this worker to take time off in accordance with national legislation, collective agreements and/or practice.⁶⁰ The final provisions state that Member States are allowed to take more favourable measures than the Framework prescribes.⁶¹

Jurisprudence

Plenty of EU jurisprudence can be found on issues concerning pregnant workers or maternity leave. However, this is certainly not true for *paternity leave*. As explained in Chapter 1, paternity leave is only reserved for the father, which means that it is the father’s individual and non-transferable entitlement.⁶² Compared to other issues concerning equal treatment, relatively few laws exist and relatively few cases (related to paternity leave) have been brought before the European Court of Justice (ECJ). One of the causes may be that cultural stereotypes are still very much alive across Europe. Within this discourse women are

⁵⁶ Clause 3(1) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵⁷ Clause 4 of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵⁸ Clause 5(1) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁵⁹ Clause 6(1) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁶⁰ Clause 7 of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁶¹ Clause 8(1) of the Framework Agreement on Parental Leave (Revised). 18 June 2009. Retrieved on 10 January 2017 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:en:PDF>.

⁶² European Parliament, *A new strategy for gender equality post 2015*, Brussels: European Union 2014, p. 77.

perceived as the main carer and men as the breadwinner.⁶³ This is not just the case at the EU-level, but also at the national level, paternity leave is, overall, very minimally formulated.⁶⁴

The existence of this discourse can also be identified within the judgement of the ECJ on topics such as paternity leave. Until now, most cases have been judged within the view of the mother having the traditional role as care taker. This could be seen as remarkable since the ECJ is overall quite a progressive institution. However, change might be on its way. With the case of *Roca Alvarez* (2010), important first steps might have been taken for equality of paternity leave on legislative level.⁶⁵ As Di Torella argues, the development of paternity leave could be divided in two different phases. On the one hand there is an ‘old century with old concepts’⁶⁶, but on the other hand, *Roca Alvarez* (2010) possibly brought a ‘new century and a new idea of equality’.⁶⁷

The first ‘old century phase’ is characterised by different cases where the ECJ judged within a more stereotypical discourse. One of the first cases relating to paternity leave was *Commission v Italy* (1983).⁶⁸ In this case, one of the complaints of the European Commission concerned an Italian national law giving compulsory maternity leave to the mother of an adopted child (or guardianship) under the age of six years, while the father did not have this right. According to the Commission this breached the Equal Treatment Directive 76/207.⁶⁹ The ECJ claimed this reasoning was acceptable because of the ‘special bond’ between mother and child.⁷⁰ It accepted Italy’s ‘legitimate concern to assimilate as far as possible the conditions of entry of the child into the adoptive family to those of the arrival of a new born child in the family during the very delicate initial period’.⁷¹ The ECJ concluded that this Italian national law could not be regarded as discrimination within the meaning of the

⁶³ A. Masselot, E.C. Di Torella and S. Burri, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood - The application of EU and national law in practice in 33 European countries*, Brussels: European Union 2012, p. 12.

⁶⁴ *Ibid.*, p. 23.

⁶⁵ E.C. Di Torella, ‘Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union’, *European Law Journal*, Vol. 20, No. 1 (2014), p. 105.

⁶⁶ *Ibid.*, p. 96.

⁶⁷ *Ibid.*, p. 99.

⁶⁸ Case 163/82 *Commission of the European Communities v Italian Republic* [1983] ECLI:EU:C:1983:295

⁶⁹ *Ibid.*, para. 11.

⁷⁰ P. Craig and G. de Burca, *EU Law: text, cases and materials*, Oxford: University press 2015, p. 917.

⁷¹ Case 163/82 *Commission of the European Communities v Italian Republic* [1983] ECLI:EU:C:1983:295, para. 16.

Directive.⁷² In other words, the Court assumed that it was the mother's natural role to look after a newborn child.⁷³

In the German case of *Hofmann* (1984), it was argued that maternity leave provisions which go beyond what is necessary to protect women, would breach the Equal Treatment Directive 76/207, if these provisions would only be available to women and not to men. In this case only the working mother (and not the working father) could qualify for a period of leave - which the state encouraged by a payment - after the expiry of the obliged eight-week protective period.⁷⁴ While the mother went back to work, Hofmann took care of his child during this period between the eight-week protective period and the child's age of six months. While women could qualify for a state-encouraged payment during this period, Hofmann's request for remuneration was rejected.⁷⁵ The ECJ argued that there was no unlawful discrimination and that German law was not in breach of the Directive. On the one hand, the Court stated that the law seeks 'to protect a woman in connection with the effects of pregnancy and motherhood' and, since only the mother can find herself subject to undesirable pressures to return to work, only she has this right.⁷⁶ On the other hand, the ECJ argued that it is 'legitimate to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth'.⁷⁷ The ECJ concluded that Member States 'enjoy a reasonable margin of discretion as regards both the nature of the protective measures and the detailed arrangements for their implementation'.⁷⁸ Therefore, from the ruling in this case, it could be derived that the ECJ supported a continuation of the vision in which the mother has the role of care taker and is designated to protect the 'special relationship between a woman and her child'.⁷⁹

In the case of *Abdoulaye* (1999)⁸⁰, it also concerned the implementation of Directive 76/207⁸¹ in an agreement on social benefits for Renault's employees. A group of male employees argued that they were being discriminated. When female employees would take

⁷² *Ibid.*, para. 17.

⁷³ E.C. Di Torella, 'Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union', *European Law Journal*, Vol. 20, No. 1 (2014), p. 96.

⁷⁴ Case 184/83 *Ulrich Hofmann v Barmer Ersatzkasse* [1984] ECLI:EU:C:1984:273, para. 6.

⁷⁵ *Ibid.*, para. 2 – 3.

⁷⁶ Case 184/83 *Ulrich Hofmann v Barmer Ersatzkasse* [1984] ECLI:EU:C:1984:273, para. 26.

⁷⁷ *Ibid.*, para. 25.

⁷⁸ *Ibid.*, para. 27.

⁷⁹ P. Craig and G. de Burca, *EU Law: text, cases and materials*, Oxford: University press 2015, p. 917.

⁸⁰ Case C-218/98 *Oumar Dabo Abdoulaye and Others v Régie nationale des usines Renault SA* [1999] ECLI:EU:C:1999:424.

⁸¹ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

maternity leave, they would be granted a sum of FRF 7.500, while male employees did not have this right when taking paternity leave. The plaintiffs did understand that maternity leave is exclusively granted to women since it is related to the physiological characteristics of one sex, but they saw this extra allowance of FRF 7.500 to women only as an unlawful discrimination. The group of male employees stated that the birth of a child is a social event that concerns the whole family.⁸² In its judgment the ECJ firstly mentioned that the principle of equal pay ‘presupposes that male and female workers whom it covers are in comparable situations’.⁸³ After a comparison, the Court concluded that men and women are not in a comparable situation since women are exposed to ‘several occupational disadvantages, inherent in maternity leave, which arise for female workers as a result of being away from work’.⁸⁴ The ECJ concluded that the lump-sum payment exclusively to female workers who took maternity leave was not an unlawful discrimination to male workers, because they were not in comparable situations.⁸⁵ Obviously, the judgment of the Court is very positive for pregnant female workers. They are indeed in a special situation when being pregnant and it is important that they receive the right protection when enjoying maternity leave. However, the Court did not address the importance of the father in a situation where the birth of a child is indeed a very social event, which not only concerns the mother, but both parents. From this point of view it could be argued that the ECJ failed to stress the importance of not only maternity leave, but also of paternity leave. The role of men should not only be ‘the traditional breadwinner’, but he should also be able to take care of the child while not missing essential income.⁸⁶

A few years later the ECJ seemed to be more balanced in its judgment about the traditional role of mothers and fathers.⁸⁷ In the case of *Griesmar* (2001) the French government argued that differential service credits for the calculation of retirement pensions for female and not male workers who had children did not constitute discrimination.⁸⁸ Their reasoning was that the positions of male and female workers were not comparable. However, the ECJ rejected this argument on the basis that the situation of male and female workers

⁸² Ibid., para. 7.

⁸³ Ibid., para. 16.

⁸⁴ Ibid., para. 17 – 18.

⁸⁵ Ibid., para. 22.

⁸⁶ E.C. Di Torella, ‘Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union’, *European Law Journal*, Vol. 20, No. 1 (2014), p. 98.

⁸⁷ Ibid.

⁸⁸ P. Craig and G. de Burca, *EU Law: text, cases and materials*, Oxford: University press 2015, p. 929.

could indeed ‘be comparable if the male worker had assumed the task of bringing up his children and had thereby been exposed to the same career-related disadvantages’.⁸⁹

Di Torella argues that unfortunately, after a more progressive judgement in the case of *Griesmar* (2001), a year later in the case of *Lommers* (2002), the discourse where the mother is seen as ‘main care taker’ was being reiterated again.⁹⁰ In this case Mr. Lommers, an official at the Netherlands Ministry of Agriculture, argued that there was a breach of the Equal Treatment Directive 76/207. The Dutch Minister for Agriculture refused to give Mr. Lommers’ child access to the subsidised nursery scheme, on the grounds that access in principle only was reserved for female officials.⁹¹ Only in cases of emergency, such as in the case of a single father as sole caregiver, could he be given a place in the nursery facility.⁹² The Court concluded that there was no breach of the Equal Treatment Directive. As the Ministry argued, there was a significant under-representation of women working at the Ministry and the Court agreed that ‘a proven insufficiency of suitable and affordable nursery facilities is likely to induce more particularly female employees to give up their jobs’.⁹³ So the Court argued that such a policy to improve women’s abilities to compete on the labour market on an equal footing with men would be in line with the Directive (as long as it complied with the principle of proportionality).⁹⁴ According to the ECJ’s judgement, this was the case. Since men still had the right to make use of this policy as long as they were fulfilling a primary caring role.⁹⁵ Besides this, men would still have access to other nursery places for their children on the relevant services market, just like other female staff who had not been able to obtain a nursery place under the policy.⁹⁶

An important remark of Di Torella is that the ECJ did not take into consideration that Mr. Lommers’ wife might have experienced difficulties in pursuing her career as a result of this policy.⁹⁷ So while also in this case it is positive that there is support for pregnant women and mothers at work, it is a pity that the Court never explicitly promoted the idea of fathers

⁸⁹ Case C-366/99 *Joseph Griesmar v Ministre de l'Economie, des Finances et de l'Industrie and Ministre de la Fonction publique, de la Réforme de l'Etat et de la Décentralisation* [2001] ECLI:EU:C:2001:648, para. 56.

⁹⁰ E.C. Di Torella, ‘Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union’, *European Law Journal*, Vol. 20, No. 1 (2014), p. 98 – 99.

⁹¹ Case C-366/99 *Joseph Griesmar v Ministre de l'Economie, des Finances et de l'Industrie and Ministre de la Fonction publique, de la Réforme de l'Etat et de la Décentralisation* [2001] ECLI:EU:C:2001:648, para. 12 – 13.

⁹² *Ibid.*, para. 13.

⁹³ *Ibid.*, para. 36 – 37.

⁹⁴ Case C-476/99 *H. Lommers v Minister van Landbouw, Natuurbeheer en Visserij* [2002] ECLI:EU:C:2002:183, para. 38 – 39.

⁹⁵ *Ibid.*, para. 45.

⁹⁶ *Ibid.*, para. 44.

⁹⁷ E.C. Di Torella, ‘Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union’, *European Law Journal*, Vol. 20, No. 1 (2014), p. 99.

having childcare responsibilities.⁹⁸ The ECJ predominantly stayed within the discourse of the mother being the most important caretaker and the father being the main breadwinner.

From cases such as *Commission v Italy* (1983), *Hofmann* (1984), *Abdoulaye* (1999) and *Lommers* (2002) it could be concluded that, as Di Torella argues, the ECJ indeed had an old century, stereotype-like approach. Instead of promoting the idea that fathers could carry the role of caretaker, it actually confirmed the stereotype role for women.⁹⁹

An important criticism needs to be placed with the approach of Di Torella. From her reasoning it sometimes seems as if she expects too much initiative from the ECJ. In the previous explained cases, the Court is mainly protecting existing values and laws regarding the equal treatment of women. This could in itself be regarded as a positive development. Thus when there are only few EU laws available on paternity leave, how can one expect the Court to take initiative on such matters? The ECJ does not usually answer other matters than the ones being questioned in a case. It could be noted that Di Torella fails to point out the positive aspects of the ECJ's ruling on equal treatment for women.

The case of *Roca Alvarez* (2010) is seen as turning point.¹⁰⁰ With this case the Court might have been taking her judgement in a slightly different direction. This case questioned the legitimacy of a Spanish law, which entitled mothers whose status is that of employee to be paid 'breastfeeding leave' during the first nine months following the birth of a child. A Spanish company refused to accord Alvarez this 'breastfeeding' leave.¹⁰¹ Within the Spanish domestic courts this right was interpreted in such a way that it was a measure devoted to the child. The 'breastfeeding leave' could be taken by the mother or the father without distinction, provided that they were both employed. Roca Alvarez was denied this leave because the mother of the child was not employed, but self-employed.¹⁰² According to the Spanish Court, this meant that the father could not take the leave, since his right was only a derived entitlement and not an automatic one (as for mothers).¹⁰³ The ECJ agreed that the execution of this Spanish law was in breach with the Equal Treatment Directive and

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ E.C. Di Torella, 'Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union', *European Law Journal*, Vol. 20, No. 1 (2014), p. 99.

¹⁰¹ Case C-104/09 *Pedro Manuel Roca Álvarez v Sesa Start España ETT SA* [2010] ECLI:EU:C:2010:561, para. 2.

¹⁰² Ibid., para. 11.

¹⁰³ E.C. Di Torella, 'Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union', *European Law Journal*, Vol. 20, No. 1 (2014), p. 102.

acknowledged that ‘to subordinate the use of the right to the employment status of both parents was contrary to EU law’.¹⁰⁴

So it could be said that the ECJ seems to have made a certain change in approach regarding the role of law in preserving traditional gender roles within family life.¹⁰⁵ It is a remarkable turn, which the ECJ made between the conclusions of *Hofmann* and *Roca Alvarez*. They each had another outcome, but both the judgements were based on the Equal Treatment Directive 76/207.¹⁰⁶ However, it must be noted that the Court based its judgement in the first case on ‘the protection of the mother for biological reasons’ and in the last case on ‘the need of the child’.

Having analysed both the primary and secondary law and the jurisprudence on paternity leave, it could be concluded that fathers’ rights are still rather underdeveloped within the EU. Although in later years there may have been a change in discourse of the ‘traditional role of the mother as carer’, the ECJ rarely emphasized the possibility and importance of the fathers’ role as a main caretaker of the child. As mentioned in the introduction of this chapter, this is quite remarkable since the ECJ usually seems to be a progressive institution. In order to promote the development of fathers’ rights, a strong legislative framework - including hard law - would be necessary.¹⁰⁷

¹⁰⁴ *Ibid.*, p. 103.

¹⁰⁵ P. Craig and G. de Burca, *EU Law: text, cases and materials*, Oxford: University press 2015, p. 918.

¹⁰⁶ E.C. Di Torella, ‘Brave New Fathers for a Brave New World? Fathers as Caregivers in an Evolving European Union’, *European Law Journal*, Vol. 20, No. 1 (2014), p. 103.

¹⁰⁷ A. Masselot, E.C. Di Torella and S. Burri, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood - The application of EU and national law in practice in 33 European countries*, Brussels: European Union 2012, p. 30 – 31.

Stakeholders

Stijn Dollekamp, Angelique Truijens, Gilles de Valk

On every level, from regional to the EU, there are stakeholders which have a vested interest in a specific policy area. This chapter contains an overview of the main stakeholders and lobbyists in the EU, which have interest in keeping paternity leave as it is or changing it in a specific way. Knowing what these stakeholders want is important for the creation of policy, because they are a part of the legislative process in one way or another.

European Parliament (EP)

The European Parliament is one of the most important organs of the European Union, because it is a direct representation of the citizens of the EU (art. 10(2) TEU). EU citizens get to vote for the European Parliament every five years (art. 14(3) TEU).

The Treaty on the European Union gives the EP the role of lawmaker and budget setter (together with the Council; art. 14(2) TEU). Furthermore, it has an advisory role and the ability to exercise political control to the extent allowed for in accordance with the Treaties.

In total there are 750 MEPs plus one Chairman MEP. Each Member State (MSs) has a minimum of six and maximum of 96 of seats in the EP (art. 14(2) TEU). The next election for the EP will take place in 2019.

The Elections to the EP

The elections to the EP take place in all MS. Politicians seek candidacy in their MS of origin and from their own political parties in the respective MS (for example, Bas Eickhout from the GreenLeft/GroenLinks representing the Netherlands). This results in there being many political parties within the European Parliament. Parties with similar ideas form coalitions in the EP; these coalitions function as ‘political parties’ in the EP.

The Political Groups in the EP

Group of the European People’s Party (Christian Democrats)

The European People's Party (EPP) is one of the oldest factions in the EP, having been established in 1953 as the Christian-Democratic Group by Konrad Adenauer or Alcide de Gasperi. In 1979, when the EP introduced direct elections, the party's name was changed to its current form. The views of the EPP Group are rooted in the common Christian values that all parties within the group share. It defines itself as a centre-right party.

The EPP Group "...believes in the European social model as the foundation of the social market economy. [It wants] to improve and protect social welfare and competitiveness, which needs constant adaptation to a rapidly-changing world."

The EPP group is committed to anti-discrimination legislation, on gender equality as well as other topics. Point 2.3 of the Position Paper¹⁰⁸ is dedicated to views on balancing family and work life for women and men, including childcare. *"The primary aim of social policy is to offer citizens the tools to become and remain self-reliant. Social policy should be regarded in terms of investment that will bring long-term returns, in the form of self-sustained and independent citizens, and to avoid costs related to long-term reliance on state assistance."*¹⁰⁹

Apart from the famous founding fathers, the EPP group also is the home of Angela Merkel's party CDU and the Dutch CDA. Netherlands has three delegates in the assembly.

Group of the Progressive Alliance of Socialists and Democrats in the EP

The Socialists & Democrats group (S&D) connects socialist, social democratic and labour parties across Europe. The S&D Group "... stands for an inclusive European society based on principles of freedom, equality, solidarity, diversity and fairness."¹¹⁰

In February 2016, the S&D Group published a position paper on the revision of the maternity leave directive. It stated: "The EP calls on the Commission and the Member States to study all the possibilities to establish paid paternity leave of at least ten working days."¹¹¹ as well as "(...) encourages measures, legislative and otherwise, that will enable men, and

¹⁰⁸ EPP Group. 'A Modern Social Europe'. Retrieved on 7 March 2017 from: http://www.eppgroup.eu/system/files_force/publications/2016/04/Final.EPP_Position_Paper_%20Moden_Social_Europe_EN.pdf. Pg. 15.

¹⁰⁹ Ibidem, pg. 5.

¹¹⁰ <http://www.europarl.europa.eu/elections-2014/en/political-groups/group-of-the-progressive-alliance-of-socialists-and-democrats>.

¹¹¹ http://www.socialistsanddemocrats.eu/sites/default/files/position_paper/Unblock_maternity_leave_directive_en_150226.pdf.

fathers in particular, to exercise their right to achieve work-life balance, one example being to promote parental leave, to be taken either by the father or by the mother, but without swapping between them, until their child has reached a given age.”¹¹²

European Conservatives and Reformists Group

The ECR Group was established in 2009 and wants to reform the European Union and its systems on the basis of ‘Eurorealism’: respect for national sovereignty and economic recovery, growth and competitiveness. It is the third largest group in the EP.

Since one of ECR’s main goals is the reform of the EU bureaucratic system, its aims for gender equality are to be achieved without imposing complex targets on Member States. They believe that the EU should promote and facilitate useful practices on the issue of parental leave, asserting: “The ECR group believes that member states need to develop policies which suit the needs of the differing populations across the EU.”¹¹³

Examples of the national political parties are the Conservatives in the UK, or the Dutch SGP and ChristenUnie.

Group of the Alliance of Liberals and Democrats for Europe

The Alliance of Liberals and Democrats for Europe (ALDE) was founded in 1976. The ALDE Gender Equality Network is the network for liberal women to promote gender equality. It was launched in 1999.

The ALDE group supports the EP Strategy for Gender Equality post-2015.¹¹⁴ Flo Clucas, the president of the ALDE Gender Equality Network, has called upon stronger data collection on sexual harassment in Member States in order to create better policy. She also supports the notions that fight women’s poverty: “ALDE GEN hopes that the role of women’s enterprise would also be improved by the proposed measures as the fight against poverty is an economic as well as a political one.”¹¹⁵

Confederal Group of the European United Left – Nordic Green Left

The European United Left – Nordic Green Left Parliamentary Group (GUE/NGL) brings together parties from the alternative left from 19 MS. The Dutch party in this group is the

¹¹² http://www.socialistsanddemocrats.eu/sites/default/files/position_paper/Unblock_maternity_leave_directive_en_150226.pdf.

¹¹³ <http://whyttip.eu/wp-content/uploads/2016/02/Womens-Rights-and-Gender-Equality.pdf>.

¹¹⁴ <https://www.aldeparty.eu/en/news/alde-supports-ep-strategy-gender-equality-eu>.

¹¹⁵ Ibidem.

Socialist Party (SP) and the Party for the Animals (PvdD). Syriza represents the Greeks in this group.

The GUE/NGL fights for the ideal of a transparent, “human” Europe, which listens to its citizens and promotes active participation of citizens in the European process. In the area of gender equality, the Group strives for the elimination of the gender pay gap, equal representation in decision-making and to combat violence against women.

Group of the Greens/European Free Alliance

The Greens/EFA Group is an alliance of the green parties (e.g. GroenLinks). They are adamant about fighting for human rights and women’s rights. The group has not published specific policy papers on gender equality and women’s rights, but they have published frequent press releases on their website, which concern different issues related to gender equality and women’s rights.

The Greens/EFA group argues for the appeal of Article 7 TEU to Poland in relation to the alleged withdrawal of the MS from the Council of Europe (CoE) Istanbul Convention on violence against women.¹¹⁶ Another example of the Greens/EFA Group’s involvement in gender equality is the initiative to end gender bias in taxation (e.g. the tampon tax).¹¹⁷

Europe of Freedom and Direct Democracy Group

This group is Eurosceptic, generally not a good sign for creating gender equality legislation in the EU, with the most famous national parties being the UK Independence Party (UKIP) and Alternative für Deutschland. Netherlands does not have a party represented in this group.

The Group strives to make the Euro a voluntary currency, supporting “*an open, transparent, democratic and accountable co-operation among sovereign European States and rejects the bureaucratization of Europe and the creation of a single centralized European superstate. (...)*”¹¹⁸, while upholding respect for differences between the cultures and customs across Europe. In addition to their opposition of the bureaucracy of the European Union, they also strive for direct democracy in the European Union.¹¹⁹ Gender equality or women’s rights are not specifically elaborated upon in any position papers.

Europe of Nations and Freedom Group (ENF Group)

¹¹⁶ <http://www.greens-efa.eu/en/article/poland/>.

¹¹⁷ <http://www.greens-efa.eu/en/article/tax-is-a-feminist-issue/>.

¹¹⁸ <http://www.efddgroup.eu/about-us/our-charter>.

¹¹⁹ <http://www.efddgroup.eu/about-us/direct-democracy>.

This is the second Eurosceptic group in the EP. Examples of national parties that are part of this Alliance are Front National (FR), PVV (NL) or the Austrian Freiheitliche Partei Österreichs (AT). The Co-President of the Group, the French Marine le Pen, has argued that the ENF Group fights to oppose the EU's role in “(...) *deconstructing nations in order to build a new world order, which is dangerous for the security, prosperity, identity and survival of European peoples. (...)*”¹²⁰ The group has not published any position papers on specific issues on their website.

EP Committee on Women's Rights and Gender Equality (FEMM)

In order for the European Parliament to work as effectively as possible, it is divided into committees, which discuss and prepare policy on specific topics. The Committee on Women's Rights and Gender Equality (FEMM) is one of such committees. This committee meets on a regular basis and votes on legislation proposals from the Commission or the Council concerning gender equality or women's rights.

¹²⁰ <http://www.enfgroup-ep.eu>, translation A. Truijens.

Lobby organisations in the Transparency Register

Gilles de Valk

This chapter elaborates upon the different lobby organisations that are concerned with gender equality. The lobby organisations in Europe are a crucial component in establishing gender equality. They do not only reach politics, but also society. Furthermore, they connect politicians and people. This is of vital importance, because policy and decision-makers need to be either supported or stimulated in their decisions. Lobbying can thus be useful in the legislative process.

Within the EU, there are many lobby organisations that strive for gender equality. Some of them are deployed in many or all Member States, while others are operating on a regional or local level. Most of them emphasise the importance of social and economic equality.

The European Women's Lobby, which wants 'a holistic, transformational socioeconomic vision, based on well-being, equality, social justice, and a powerful voice against women's poverty', claims to be the largest European network of women's associations, as it has departments in all Member States. It tries to reach the aforementioned goal by bringing women's voice into the EU's political sphere, while at the same time it tries to unite other actors in order to establish a unified, collective voice.¹²¹

Other lobby organisations, like Gender5Plus, are not only active on the political level, but also try to bring the debate into the public sphere. Gender5Plus organises debates, conferences, seminars and films. Meanwhile, it sponsors research in the area of gender equality, and it facilitates discussions between EU decision-makers, national decision-makers and relevant stakeholders.¹²²

Although legislation considering gender equality still does not meet the lobby organisations' requirements, some companies provide equal regulations without being forced by law. Such companies should be used as an example for all other stakeholders.

Among these companies are some of the world's biggest, like Netflix, Amazon and Twitter. They all offer paid paternity leave.¹²³ Many companies based in the US have initiated not only maternity leave, but also paternity leave, despite the fact that 'the United

¹²¹ European Women's Lobby, 'Mission, vision and values', <http://www.womenlobby.org/Mission-vision-and-values-588?lang=en>, consulted February 6, 2017.

¹²² Gender5Plus, 'Mission Statement', <http://gender5plus.eu/g5-who-we-are/>, consulted February 6, 2017.

¹²³ S. Kuta, 'Dads Change Diapers Too: 13 Companies That Offer Paid Paternity Leave', <http://www.thepennyhoarder.com/companies-that-offer-paid-paternity-leave/>, consulted February 6, 2017.

States [is] the only country to offer no statutory entitlement to paid leave on a national basis'.¹²⁴ Therefore, legislation does not have to be necessary, as these companies prove that legislation is not the only possible solution for gender inequality. However, legislation can support these changes by making it easier for companies to give their male employees the same parental leave benefits as their female employees.

¹²⁴ Organisation for Economic Co-operation and Development (OECD), 'Key characteristics of parental leave systems', https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf, consulted February 6, 2017.

Case Study: Sweden

Stijn Dollekamp

There are few countries, which have an active policy concerning parental, paternity and maternity leave in order to improve the gender equality in their respective country. Most countries only follow the minimum guidelines of the European Union.¹ Therefore, there is just a small amount of data available. One exception is Sweden, a country with a very clear method to improve gender equality and with proven success.

Sweden has the highest percentage of working women in the European Union, namely 77 percent.² A reason for this figure could be the active gender equality policy the Swedish government applies.³ Firstly, it is important to mention that Sweden has a system in which both father and mother together have 480 days of parental leave. The Swedish government, however, has another rule concerning gender equality. Just one parent cannot take up these 480 days of paid parental leave. One parent should at least take 3 months of this paid parental leave in order to fully benefit from the policy. This means that men are more stimulated to also contribute in childcare.

The Swedish government finances the gender equality model, which is made possible as Sweden is a large welfare state. Nevertheless, it is also possible to encourage more gender equality, which is not heavily financed by the state, as seen with several examples found in the United States.

Although the United States is not very supportive of paternal leave, many companies based in the US have initiated not only parental leave, but also paternity leave. Such progressive policies are especially implemented in relatively new technological companies. These companies believe that this contributes to a good atmosphere at the workplace.⁴ Legislation does not have to be necessary, but it still can support more companies instituting gender equal policies, as the aforementioned companies are exceptions.

Conclusion

The first part of this report explained that the lack paternity leave is a complex problem, which is not being explicitly harmonised by the EU through the current legal framework. This is partially caused by the variety of stakeholders and their interests, but maybe more so by the unwillingness of Member States to harmonise their social policies. Sweden has the most generous social system regarding paternity leave, which is leading to complex societal changes related to the image of women and men and their roles in society.

These findings are used in the next part of the report to improve the European system and create a fairer job market for all.

PART 2: POLICY PROPOSAL

Introduction

The second part of this report explains how gender equality could be improved via laws on parental leave and what are realistic possibilities within the EU legal framework for addressing this issue. As this report aims at creating a piece of legislation that can be realistically used by the European Commission, it is based on the idea that it is desirable that possible new legislation can be explained not only as an improvement of gender equality, but also as a boost for economic prosperity for each Member State.

Equal rules on parental leave could create a fairer job market for both men and women and facilitate easier access for men to paid parental leave. This would eliminate a number of arguments against hiring women. The tendency to choose men over women for a job would be taken away at least to some extent, because the possible absence caused by the current difference between maternity and paternity leave would be lessened. Furthermore, this could reduce the unemployment rate and enlarge the labour forces across Europe.

Legal instruments

Esmée Meyer

The directive

The aim of this report is to make a policy proposal, which we would like to present before the different legislative institutions of the European Union. Since we aim to achieve a realistic proposal, we would like to suggest the legal instrument, which, in our opinion, should be used to achieve new EU legislation on the topic of paternity leave.

The EU has several types of legal acts at its disposal to achieve the aims set out in the EU treaties. The different types of instruments can be found in art. 288 TFEU:

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.¹²⁵

The legal act that we suggest would be most suitable is a directive. Art. 288 TFEU defines: it shall be binding for the result to be achieved but will leave the choice of form and methods to the national authorities. This means that discretion as to how the directive is to be implemented is left to the Member States, and it should be done within a given period. In this way the national authorities have more time to transpose it into national law which is mostly seen as beneficial, because they are given the time and space to implement the direction as efficient as possible. A directive establishes common binding rules, but also takes into account the differences between the systems and characteristics of the Member States.¹²⁶ This means that a directive is particularly useful when the aim is to harmonize the laws within a certain area, in this case paternity leave.¹²⁷

¹²⁵ Article 288 TFEU.

¹²⁶ W. G. Werner and R. A. Wessel, *Internationaal en Europees Recht: een verkenning van grondslagen en kenmerken sinds het Verdrag van Lissabon*, Groningen: Europa Law Publishing 2011, pp. 102-103.

¹²⁷ P. Craig and G. de Burca, *EU Law: text, cases and materials*, Oxford: University press 2015, p. 108.

Although a regulation is directly applicable in all Member States of the Union, it does not leave any space/sovereignty for the Member States to implement the new legislation. Like Werner and Wessel argue, a regulation is useful to introduce a general law which applies to all the Member States, but it is not very subtle.¹²⁸ Besides this, a regulation and directive both are binding, so the effect of the legal act will in the end be the same.

When all the characteristics of a directive are taken into consideration, we conclude that a directive is the most suitable legal act in order to achieve the aim of our policy proposal. It is a legal instrument that is binding for all addressed Member States, but it does leave some sovereignty/space for implementation. This is why we think that the creation of EU legislation on a subject such as paternity leave, which is still approached very differently in each Member State, would have the most efficient result with enactment into national law.

The Open Method of Coordination (OMC)

This chapter explains why the application of the Open Method of Coordination (OMC) will be the next logical step for the EU to support gender equality. Since the EU has little to no competence on social policy and gender equality legislation has to be connected to the internal market, it is much more difficult to promote gender equality through legislation because of the political forces in the EU. If a measure is orchestrated to collect more data on paternity leave from each Member State every year, the Commission will be able to monitor paternity leave in the Member States, and through comparison, motivate them to harmonize their policies which promote gender equality. The non-legislative Open Method of Coordination would be an ideal instrument for these purposes.

The Open Method of Coordination can be described as ‘a procedure by which EU Member States are encouraged to cooperate and agree on voluntary action in policy areas where the EU institutions have limited formal competence’.¹²⁹ As can be deduced from the definition, the OMC has three important characteristics. Firstly, it is a form of ‘soft law’ without binding legal force. Secondly, it is based on reciprocal learning. Lastly, the participation of Member States is on a voluntary basis.¹³⁰ It is a flexible instrument that

¹²⁸ W. G. Werner and R. A. Wessel, *Internationaal en Europees Recht: een verkenning van grondslagen en kenmerken sinds het Verdrag van Lissabon*, Groningen: Europa Law Publishing 2011, pp. 102-103.

¹²⁹ J. McCormick, *European Union Politics*, Hampshire: Palgrave Macmillan 2011, p. 314.

¹³⁰ *Ibid.*

facilitates both a degree of policy coordination, by directing national policies towards certain common objectives, and accommodates diversity among the Member States.¹³¹

The technique used for the functioning of the OMC is called benchmarking. This means that the performances of the Member States are compared and that the best practices are exchanged, with monitoring by the Commission.¹³²

¹³¹ P. Craig and G. de Burca, *EU Law: text, cases and materials*, Oxford: University press 2015, p. 171.

¹³² http://eur-lex.europa.eu/summary/glossary/open_method_coordination.html

Policy Proposal ‘Parental Leave’

Stijn Dollekamp, Esmée Meyer, Angelique Truijens, Gilles de Valk

Objective:

The policy proposal aims at equalizing the job market for both male and female workers in opportunities and salary through providing levelling opportunities in childcare for both sexes.

Scope & Competence:

This policy proposal applies to all Member States and institutions of the European Union.

Policy:

1. A mandatory minimum of paternity leave in all Member States

The creation of a binding directive concerning paternity leave sets a mandatory minimum of days for paternity leave in all Member States. This will provide access to paternity leave for all fathers in the EU.

2. Supply of data on paternity leave on a yearly basis

Supply of data on paternity leave on a yearly basis to the European Commission would provide an up-to-date image of the state of affairs concerning paternity leave. With this data, the Commission will have enough information to promote paternity leave amongst Member States through the Open Coordination Method and/or make new EU-wide legislation.

Conclusion

This report analysed the state of paternity leave in the European Union from a legal perspective. Moreover, it proposed the next steps for further equalizing the job market in the EU for men and women by using legislative and non-legislative methods.

Since specific paternity leave legislation is missing from the EU legal framework, there are major differences between the provisions of the Member States. We proposed that the European Union would make such legislation for further harmonization of paternity leave provisions with a minimum amount of mandatory paid paternity leave.

While we realize that the European legislative procedure is complicated, we advise the European Commission to, as soon as possible, create a system of annual data collection on the state of paternity, maternity and parental leave in the Member States of the EU and use this data to motivate Member States through the Open Coordination Method to create national legislation, which supports the gender equalization of the job market in the EU.

Keeping in mind that the European societies are changing, we hope that with more legislative and non-legislative action from the EU and its Member States, gender equality within the job market will soon be a reality.

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