



Opinion on  
**New Forms of Leave**  
**(Paternity Leave, Adoption Leave and Filial  
Leave)**



Advisory Committee  
on  
Equal Opportunities for Women and Men

The opinion of the Advisory Committee does not necessarily reflect the positions of the Member States and does not bind the Member States.



# Table of Contents

Context ..... 4

Principles ..... 5

Issues ..... 6

Conclusions..... 10



## Context

The Advisory Committee welcomes this opportunity to bring forward this opinion on New Forms of Leave (Paternity Leave, Adoption Leave and Filial Leave) for consideration by the European Commission. The topic for this opinion focuses on a policy area that is of central importance for gender equality.

Statutory leave entitlements make an important contribution to the reconciliation of work and family life as part of a wider policy framework including high quality, affordable and accessible care infrastructure and flexible working arrangements. Gender equality in the labour market requires effective leave policies and workplace practices that enable women and men with caring responsibilities to balance those responsibilities with their ongoing labour market participation.

The manner in which statutory leave entitlements are framed and made available also impacts on gender equality in the domestic sphere. The provision of statutory leave entitlements in a manner that supports and secures take up by men creates the condition for a more balanced sharing of caring responsibilities between women and men.

The European Union has an important role to play in this policy area by establishing minimum standards and a coherence of approach to statutory leave entitlements across the Member States. This role reflects the provisions of the European Treaties that establish the promotion of gender equality as part of the mission of the European Union (Articles 1,2,141). This role reflects the European Union's Lisbon Strategy for growth, prosperity and competitiveness where gender equality in the labour market has been identified as a pre-requisite to achieving growth, prosperity and competitiveness. Reconciliation of work and family life is one out of six priority areas of action in the Commission's road map for equality between men and women.

The European Union faces a significant demographic challenge with falling birth rates and increasing levels of dependency. Statutory leave entitlements should form part of the response to this challenge. It is of note in this regard that Sweden, with one of the most progressive systems for leave entitlements has one of the highest fertility rates in the European Union. However the relationship between fertility rates and leave entitlements is not necessarily linear and there are examples of countries with different systems of leave entitlements to Sweden which have high fertility rates.



Statutory leave entitlements need to be considered as part of a broader approach to reconciliation of work and family life if they are to contribute effectively to gender equality. For this reason this opinion addresses issues of maternity leave, flexible working arrangements within the workplace and a caring infrastructure alongside a core focus on paternity leave, adoption leave and 'filial' leave. It is important also to note that this broader approach to reconciliation of work and family life should also involve steps to ensure that there is coherence between policies on reconciliation and relevant policies in other fields.

The social partners have played a valuable role at European and Member State levels in the development of statutory leave entitlements and of this broader approach to reconciliation of work and family life. It is important that the social partners should continue to play this role and that this role and contribution should be acknowledged.

This opinion does not necessarily reflect the positions of the individual Member States or organisations represented on the Advisory Committee and does not in any way bind their position.

## Principles

There are a number of principles that should be established to guide and inform any review and further development of policy and practice in relation to reconciliation between work and family life and in particular in relation to statutory leave entitlements.

The Advisory Committee proposes the following key principles to inform any policy development in this policy area. Any such policy development should:

1. be based on the goal of gender equality and the achievement of full equality in practice between women and men in both the public and the private spheres of life – enhancing participation by women in the labour market and by men in household tasks and caring work.
2. guarantee and secure financial security and economic independence for women and men while they care for someone else.



3. challenge societal stereotypes of men as 'breadwinners' and of women as 'homemakers'. It should be designed to increase men's participation in care work.
4. take account of family diversity – including same-sex families and cohabiting families.
5. take account of different caring situations – for example shared models of caring, different levels of caring responsibility, and different needs such as care for children with disabilities, care in families with many children and care in families with many small children.
6. take account of particular needs that arise for adoptive parents and for those availing of artificial insemination.
7. include new legislation alongside other policy instruments. It should reflect the particular role and impact of binding legal instruments.
8. be poverty proofed to ensure that it enables take up by those on low pay and by those in atypical forms of employment, including self employed, assisting spouses and domestic workers.
9. form part of a broader approach that embraces statutory leave entitlements, a care infrastructure and flexible working arrangements and that secures a coherence with policies developed in other areas.

## Issues

There is a wide diversity of provision of and approach to statutory leave entitlements and reconciliation across the Member States. Much progress has been made. Leadership and innovation are evident from both governments and the social partners. However a range of challenges that need to be met in this policy area are quickly identifiable and are largely experienced across all Member States. This makes a response at European Union level to these issues both valuable and necessary. Any intervention at European Union level should be about establishing standards so that differing approaches and circumstances in individual Member States can be recognised in a manner that ensures Member State legislative and policy approaches that create systems conferring benefits beyond these standards are not compromised.



Demographic change is one such challenge. Birth rates have fallen across the European Union. Fertility rates have dropped below replacement level. The population is getting older and dependency rates are increasing. In such a context statutory leave entitlements, flexible working arrangements and care infrastructures become a matter of corporate social responsibility.

Another challenge is that the take up of statutory leave entitlements and flexible working arrangements is unbalanced between women and men with low take up by men. This underpins and reflects inequalities in the sharing of care and household duties in the domestic sphere. Gender equality in the public sphere depends on gender equality in the domestic sphere. There are a number of developments across the Member States that reflect innovative responses to this issue – developments that will be drawn on in the recommendations made in this opinion.

In Slovenia a research project on the 'Prospects of New Fatherhood in Slovenia: the influence of paternal leave on active fatherhood' demonstrated that generally fathers support the idea of a more active role for men in the family. The introduction of paternity leave is identified as a good mechanism of promoting active fatherhood. Paternity leave lasts for 90 days and fifteen of these are fully paid. It is of note that the percentage of fathers who avail of these first fifteen days was 74% in 2006 but was much less for the remainder of the leave which is unpaid. Paid parental leave in Slovenia lasts for 260 days and is available to both mothers and fathers. Less than 3% of this leave in 2006 was taken by fathers. This raises the importance of non transferable leave arrangements. This is further reinforced by the experience in Hungary where three years paid parental leave is available on a transferable basis to mothers and fathers and where less than 5% of this leave is taken up by fathers.

In Portugal paternity leave, which already involves five working days leave for fathers, is to be increased. Maternity leave may be shared between both parents after 6 weeks leave confined to the mother. Currently the first fifteen days of parental leave when taken by fathers immediately after the paternity leave or the mother's maternity leave are paid which has increased take up by men. It is now proposed in Portugal that all leave entitlements would be replaced by an initial parental leave with different kinds of payments according to the share of the leave between both parents.



In Germany, the Parental Allowance and Parental Leave Act came into effect in 2007. Parents of children born after the 1<sup>st</sup> January 2007, that take time out to care for their newborn child, get 67% of their net income for a period up to twelve months. Two further months will be subsidised if the other partner seeks parental leave too. These so-called "partner-months" are much appreciated. The share of fathers taking up leave for childcare increases. Before the introduction of this Act the share of fathers taking parental leave was only 3.5%. Now one in five fathers apply for this parental allowance.

In Sweden parental leave is available for 480 days and is paid. The proportion of parental cash benefit days used by men has increased from 3% since the option was introduced in 1974 to 19.5% in 2005. In order to improve freedom of choice for families the Swedish Government has proposed a reform consisting of a child raising allowance and a gender equality bonus. The gender equality bonus is to be given when parents share parental leave between themselves. It is important that any such arrangements could also be adapted to include same sex couples and other family situations.

Another key challenge is the limited provision of high quality and affordable care infrastructure. This is an issue that is more serious in some Member States than in others. A limited care infrastructure diminishes the potential for statutory leave entitlements and flexible working arrangements to contribute to gender equality in the domestic sphere or in the public sphere.

The targets set by the European Council of Barcelona – to provide childcare by 2010 to at least 90% of children between 3 years of age and the mandatory school age and at least 33% of children under 3 years of age – are important in this regard. There is a need to make progress in achieving these targets and to enhance the ambition in these targets. There is also the need to develop relevant targets for the development of a care infrastructure to maximise the independence of and to meet the needs of older people.

The workplace is an arena that shapes and influences the inclusion of men in the active caring of children and other people. Challenges that arise in the workplace in this regard include:-

- a workplace culture that stereotypes women as 'homemakers' and men as always available and which creates employer and fellow employee expectations of men and women that impede gender equality





- the lack of adequate and appropriate provision of flexible working arrangements to women and men
- the perception of women employees as 'high-risk' or 'second choice' or 'inconvenient' employees due to their likelihood of playing caring roles and taking up leave entitlements.

In Ireland the Equality Authority forms part of a Worklife Balance Committee that involves the social partners in developing information campaigns on worklife balance and in providing support to enterprises in putting in place flexible working arrangements. The Equality Authority is also working to develop resource materials to support action to address stereotyping in the workplace.

The social partners are also playing an important role in Denmark. There is a high level of self regulation in Denmark and recently the social partners negotiated six weeks of paid paternity leave.

In the United Kingdom employees are afforded the right to request flexible working arrangements and the right is devised in a manner to encourage a positive response from employers.

Gender stereotyping across the wider society also presents challenges to the effective development and implementation of statutory leave entitlements. This gender stereotyping limits the choices made by women and men and shapes societal expectations of men and women – with men as 'breadwinners' and woman as 'homemakers'. It is important that statutory leave entitlements are not structured in a manner that reflects or reinforces such stereotypes.

The gender pay gap presents a financial barrier to the effective implementation of statutory leave entitlements. In the context of a gender pay gap it can often be more economically viable for families to choose for the mother to stay at home. This is particularly relevant where payment rates for statutory leave entitlements are low.

It is important to identify the challenge of the duration of statutory leave entitlements. These vary considerably across the Member States. However it is clear that the length of



time afforded is inadequate in many Member States – inadequate to respond to the caring needs, inadequate to secure an active role by men in caring and inadequate in a context of the limited care infrastructure available.

Concern is often expressed that further developments of statutory leave entitlements would have a negative impact on the employability of women. There is no basis for such a concern to block the further development of statutory leave entitlements. Society needs women to have babies, children need access to adequate and appropriate care provided by both parents, employers need access to the skills, knowledge and engagement of women and men. Statutory leave entitlements and reconciliation measures are required to be adequate and effective if all these different needs are to be met. Issues of employability of women will be addressed where there is

- an increase in take up by men of statutory leave entitlements.
- an understanding and awareness of corporate social responsibility in the face of equal rights and of demographic challenges.
- a role for the state in making the payments made under statutory leave entitlements.
- further investment in an equality infrastructure to combat any form of discrimination against women or men availing of statutory leave entitlements or flexible working arrangements.
- further investment in labour market measures to assist women and men who take leave returning to work.
- support by partners, employers and employment agencies for women who intend to return to work after periods of leave.

## Conclusions

The majority of the Advisory Committee believes that there is a need for further European Union legislation in this policy area of reconciliation of work and family life with a particular emphasis on further developing statutory leave entitlements. This position is not shared by some members. However such legislation is deemed necessary to:

- promote gender equality by enhancing the participation, the role and position of women in the labour market



- promote gender equality by enhancing the role and position of men in family life in terms of caring roles and household duties
- meet the caring needs of children, people with disabilities and older people
- contribute to growth, prosperity and competitiveness through enhanced gender equality in the labour market
- provide societal leadership in relation to the importance of adequate statutory leave entitlements and reconciliation measures.

The following further legislative developments on statutory leave entitlements are therefore recommended at EU level:

1. Maternity leave should be developed to

- guarantee an income equivalent to full salary during maternity leave, paid through social insurance or statutory payments and with particular priority to those on low pay
- extend the duration of paid maternity leave or paid leave available for mothers in connection with childbirth to a minimum standard of 24 weeks
- ensure that the pre-natal portion of maternity leave is extended by any period elapsing between the presumed date of childbirth and the actual date
- ensure that, on production of a medical certificate, leave shall be provided before or after the maternity leave period in case of illness, complications arising out of pregnancy or childbirth without shortening the period of maternity leave
- extend the entitlements to all workers in atypical forms of employment
- make specific provisions for those using artificial insemination methods
- strengthen the rights to breastfeeding breaks and facilities.
- include additional leave in the case of premature childbirth, children hospitalised at birth or children with disabilities.
- ensure that whole duration of maternity leave should be transferred to the father or same-sex partner of a mother who dies at childbirth.
- ensure that mothers have full rights to maternity leave where the child dies at birth.

2. Paternity leave should be introduced to

- provide an entitlement of one month's paid leave for fathers, payment to be made through social insurance or other statutory payments



- extend a similar leave entitlement to same-sex partners of women giving birth.
3. Parental leave should be further developed to
- extend the duration of parental leave to a minimum of 24 weeks
  - introduce a payment for parental leave that guarantees an adequate income at least equivalent to the average industrial wage, payment to be made through social insurance or other statutory payments.
  - introduce measures to improve men's participation in caring for children including making certain periods of leave non transferable, and introducing a gender equality bonus in the structure of the payment where the leave is equally shared between partners on the basis of the model proposed in Sweden
  - extending the age of child in respect of which parental leave can be taken to 12 years of age
  - ensure equal entitlements for same sex partners
  - ensure equal entitlements for cohabiting partners
  - give specific attention to parents of children with disabilities
4. Carers leave should be introduced to
- enable men and women to meet the care needs of family members or other dependents who have a disability or who need care as older people
  - address the diversity of caring situations required to meet these caring needs – in particular supporting models where caring is shared between family members and in ensuring a flexibility in the leave available to respond to diversity in the intensity of care required in different situations
  - introduce a payment for carers leave that guarantees an adequate compensation for loss of income, payment to be made through social insurance or other statutory payments
  - ensure that any person taking up carers leave should not be disadvantaged as regards social benefits and should be guaranteed the right to return to their former position at work.



5. Adoptive leave should be introduced to

- provide equal treatment of adoptive parents with regard to access to the different forms of leave set out above.
- meet needs that might be specific to adoptive parents in particular where foreign adoptions are involved
- enable a sharing of adoptive leave between both partners involved in the adoption.

Three accompanying developments at European Union level are recommended:

1. The Equal Treatment Directives should be further developed to

- ensure that discrimination of any kind based on the uptake of these entitlements is prohibited and that those taking up these entitlements are fully informed of their rights in this regard by employers
- establish an explicit right to request flexible working arrangements (such as job sharing, term time, flexi-time options) in a manner that encourages a positive response from employers
- introduce a requirement on employers to make a reasonable accommodation of people with caring responsibilities in terms of flexible working arrangements subject to this not causing a disproportionate burden on the employer.

2. The guidelines developed for the Member State National Reform Programmes should be further developed to

- secure a regular peer review across Member States on approaches to reconciliation of work and family life and to statutory leave entitlements
- stimulate Member States to establish support programmes for enterprises to introduce planned and systematic approaches to worklife balance with particular attention to those enterprises that explicitly address men as care-givers.
- stimulate Member States to develop labour market initiatives that seek to ensure no disadvantage accrues to women or men availing of their statutory leave entitlements.



3. The Barcelona targets for a childcare infrastructure should be reviewed and targets should be developed relevant to the care infrastructure required by older people.