



COMPARATIVE ANALYSIS

GENDER-RESPONSIVE FAMILY POLICIES:

NATIONAL REGULATIONS IN THE LIGHT OF THE NEW EUROPEAN STANDARDS



MINISTERUL MUNCII ŞI
PROTECŢIEI SOCIALE AL
REPUBLICII MOLDOVA

**Expanding
Choices** through
Family-Friendly Policies



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Panilino, rest room for employees

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RATIONALE

Promoting an innovative approach to work-life balance through gender-responsive policies and concrete measures, which conducive to the desired family formation, birth and equal distribution of unpaid care work between partners, is a priority area for the European Union as well as many other countries globally. This is due to inequalities in the family, with women being more involved in unpaid care work, which limits their opportunities of participating in the labour market and achieving their career aspirations.

National statistical data (2012) highlighted inequalities in the distribution of household chores, with women being more involved in food preparation, washing dishes, housekeeping, washing clothes and caring for children than men (see Figure 1).

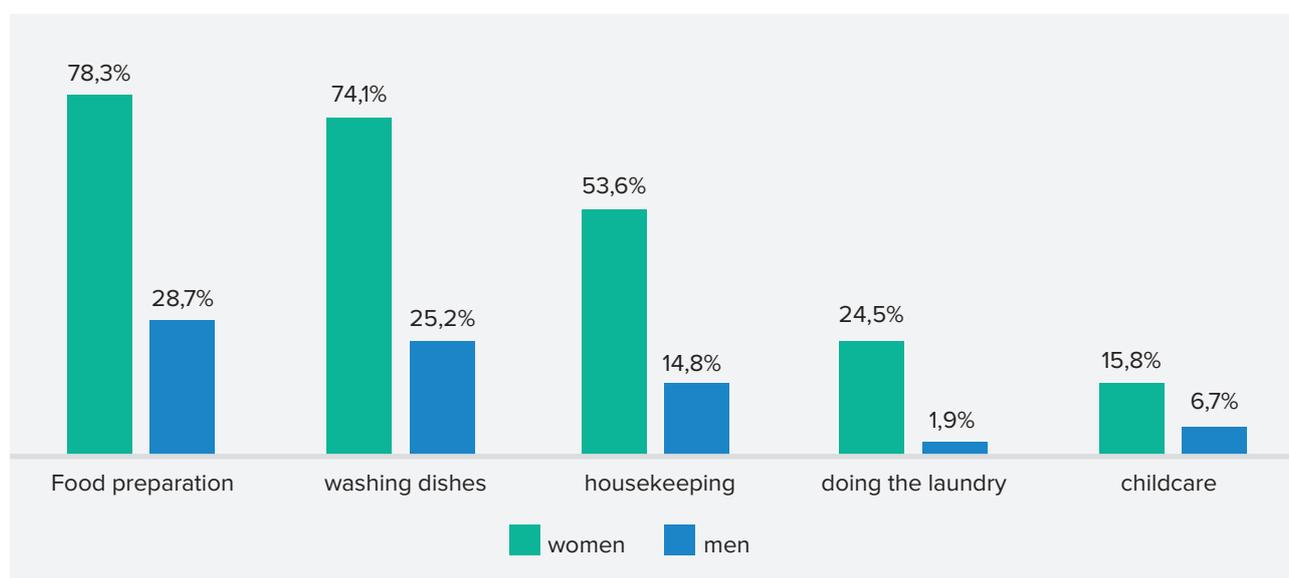


Fig.1 Distribution of household chores between women and men.

Source: National Bureau of Statistics

At the same time, the presence of children in the family influences the employment opportunities for women: the proportion of women with children in employment is 16.4 percentage point lower than that of men with children and 20.4 percentage point lower than that of employed women without children (see Figure 2).

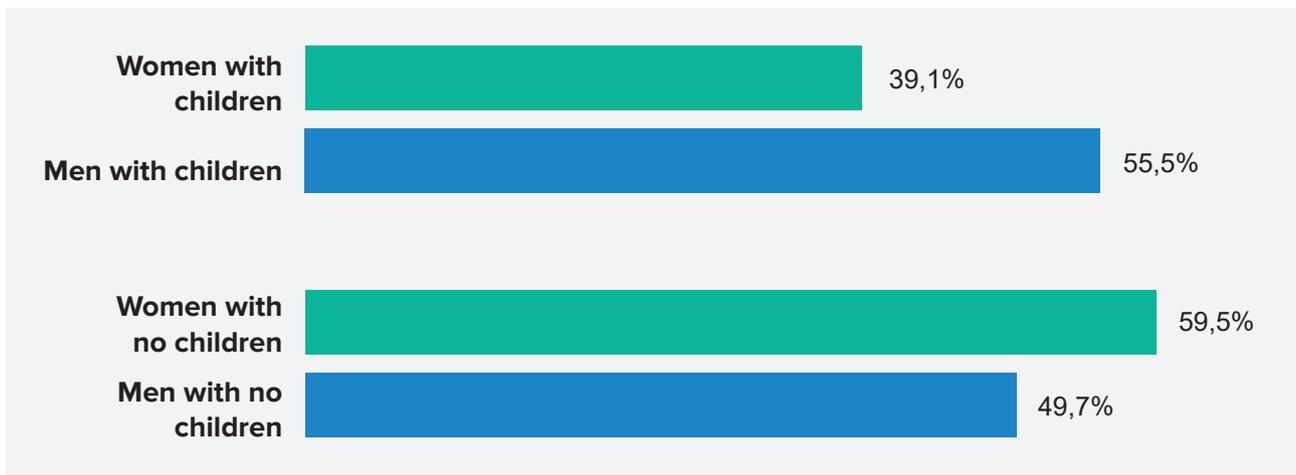


Fig.2 Employment rate of women and men depending on the presence of children aged 0-6 years..

Source: National Bureau of Statistics

In the same context, married women (5.5%) are employed part-time in a higher proportion than men (4.9%). Overall, the employment rate of women is lower compared to that of men by 4.2 percentage point (40.0% for women/44.2% for men)¹. In this context, a rethinking of national family policies is needed in order to increase the choices and opportunities for women to fulfil their career aspirations and the active participation of men in family life.

The implementation of gender-responsive family policies reveals a wide range of benefits that can be structured according to the impact they have at different levels: individual, family, business and social (see Figure 3). In this regard, the development of innovative, family-friendly policies requires using a holistic approach.

¹ Statistica gender// <https://genderpulse.md/ro/abilitare-economica/ocuparea-fortei-de-munca/rata-de-ocupare>



Fig.3 The benefits of gender-responsive family policies depending on the level

The analysis of practices at European level attests to a diversity of measures implemented in order to promote an innovative approach in relation to supporting families. Sweden, Norway and Iceland are the top three countries in the ranking according to family-friendly policies indicators². In this sense, national policies can be developed in the light of the measures implemented in these countries.

The need for state intervention through policies that would ensure the prerogative of women and men with family responsibilities to exercise their right to free choice of employment, taking into account their needs, is established by the **ILO Convention No 156 on Workers with Family Responsibilities** (adopted in 1981)³. At the same time, the Convention emphasizes

² The indicators for assessing a family-friendly national policy include: the number of weeks and a 100% payment of the paid maternity leave, the number of weeks and a 100% payment of the paid leave reserved for the father, the rate of inclusion in education of children under three years, the rate of inclusion in education of children between three years and school age.

³ International Labour Organization, Convention No.156 Workers with Family Responsibilities Convention (1981) // https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C156

the relevance of measures for the development and promotion of community, public and/or private facilities and services dedicated to the care of children and the family. So far, the Republic of Moldova has not ratified this convention, the examination of the possibility of ratification being a priority established in the Decent Work Country Programme for the 2016-2020 period⁴. The ratification of the Convention would ensure the necessary conditions for women’s empowerment, but also to combine family life with work life.

At EU level, the work–life balance policies were developed as part of the European equal opportunities agenda⁵. At the same time, the **European Pillar of Social Rights**, proclaimed in Gothenburg (Sweden) on 17 November 2017⁶, established the right of parents and people with caring responsibilities to family-friendly measures, such as the right to suitable leave, flexible working arrangements, access to care services and special leaves of absence in order to fulfil their care responsibilities, stressing the need for encouraging their use in a balanced way.

Taking into account the changes taking place in the European labour market and the reduced opportunities for women’s participation in the labor market and career advancements, as they take on most of the unpaid care work, as well as the provisions of the European Pillar of Social Rights, the **Directive 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the work-life balance of parents and carers** was adopted in July 2019. In order to comply with the new provisions, the member states will carry out compliance activities by 2 August 2022, with the possibility of extension for some by 2 August 2024.

The new directive introduces new rules in **four areas of intervention** (see Figure 4).

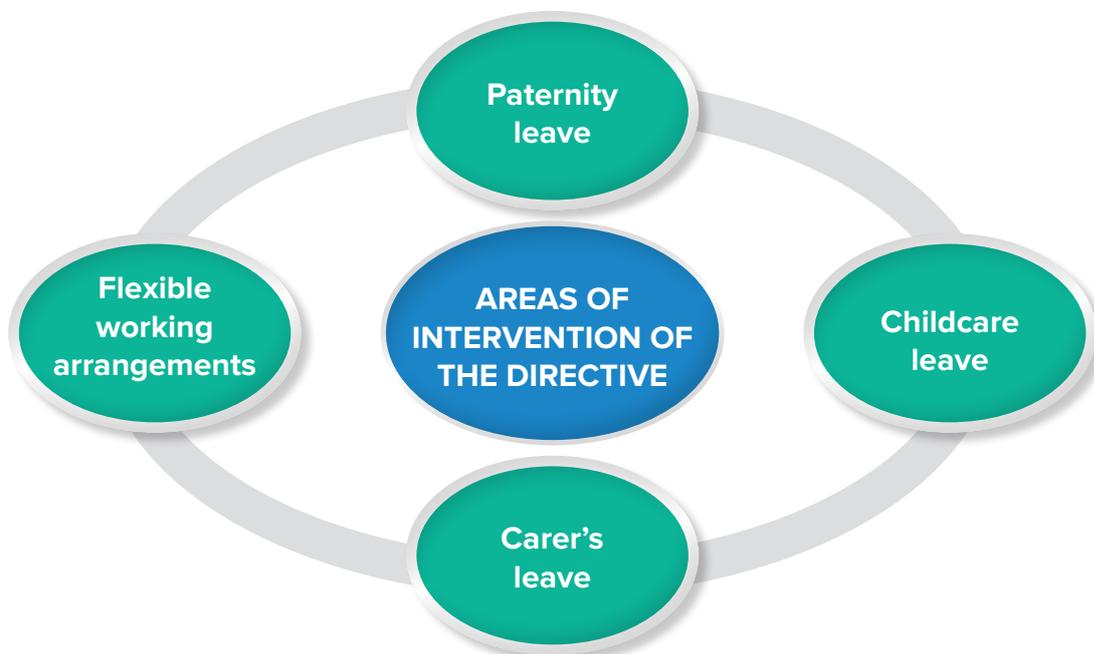


Fig. 4 The areas of intervention of the Directive 2019/1158

⁴ Decent Work Country Programme 2016-2020 // https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_453904.pdf

⁵ Consolidated version of the treaty on European Union, art.III//https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bfa3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

⁶ The European Pillar of Social Rights in 20 principles. https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_ro

The interventions in these areas aim to create the conditions and support for parents to balance family and work life, thus allowing them to have the desired number of children⁷. The Organisation for Economic Co-operation and Development (OECD) includes in the family-friendly working arrangements leaves for raising and caring for the child, other additional leaves, childcare services provided at the workplace, support in caring for the elderly, flexible work schedules, including telecommuting, working from home, full-time work at non-standard hours, etc.⁸

At the national level, measures aimed to support working parents, including those for balancing family and work life, are outlined in the national labour law, developed in accordance with the International Labour Organization Conventions ratified by the Republic of Moldova and with European best practices. However, in the context of changes in the labour market and demographic situation, the national legislation needs to be continuously revised, including in the light of international and European models, in order to meet the demands of both employers and employees.

The purpose of this comparative study is to assess the degree of compliance of national legislation in Moldova, especially in the field of labour, with the provisions of the EU Directive 2019/1158 on work-life balance. The study will provide evidence-based recommendations for adjusting national legislation, with the aim of ensuring the respect of women's and men's rights to reconcile family and work life. The analysis focuses on the four areas of intervention of the Directive, presenting a number of best practices from OECD member countries. Even if the directive is not part of the reform package envisaged by the Association Agreement between the Republic of Moldova and the European Union, its provisions can be incorporated into national legislation in the context of promoting family-friendly policies to ensure demographic resilience and more equal and prosperous societies.

⁷ Shrinking populations in Eastern Europe. https://eeca.unfpa.org/sites/default/files/pub-pdf/Shrinking%20population_low%20fertility%20QA.pdf

⁸ http://www.oecd.org/els/family/LMF_2-4-Family-friendly-workplace-practices.pdf

CONCEPTUAL FRAMEWORK

The analysis of national legislation brought into focus the fact that some measures specific to family-friendly policies are regulated, but not in full compliance with the provisions of the new EU directive. The first analysed aspect refers to the conceptual framework. The text of the Directive covers notions such as: ‘paternity leave’, ‘childcare leave’, ‘carer’s leave’, ‘carer’, ‘relative’, ‘flexible working arrangements’, which are mainly defined by the national legislation, particularly by the Labour Code of the Republic of Moldova (No 154/2003), except for the notion of ‘carer’. The Directive confers the status of carer on any ‘worker who provides personal care or support to a person who lives in the same household and who needs significant care or support for a serious medical reason, as defined by each state member’ (EU Directive, Article 3(d)). Thus, given that this notion is not defined in the Labour Code, it is necessary to supplement the Article 1 of the Labour Code with a new definition, which will bring clarity including in the understanding and granting of carer’s leave.

At the same time, the analysis found that the provisions of Article 100(7) and (9) of the Labour Code partially include the definition of the notion of ‘flexible working arrangements’. Starting from the directive’s proposed definition – ‘flexible working hours’ means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours’ (EU Directive, Article 3(f)) – the national legislation, in this case the Labour Code, regulates through Articles 96, 97, 98 and 100 the aspects of the definition put forward by the directive, which nevertheless creates some difficulties in conceptualizing flexible work schedules. In this context, we consider it necessary to supplement the Article 1 of the Labour Code with a new notion that allows for an unequivocal understanding and application by employers of flexible working arrangements, with the following wording: ‘flexible working arrangements – the possibility for employees to adapt their work schedule, including through the use of remote work, flexible working schedules, part-time work or reduced working week’.

PATERNITY LEAVE

There are currently no minimum standards regarding paternity leave at EU level, and it is not being regulated by other international conventions either. The new provisions imposed by the directive establish the right of fathers to benefit from paternity leave of 10 working days that is to be provided on the grounds of the birth of a child (EU Directive, Article 4(1)), without being conditioned by a period of work qualification or a length of service qualification (EU Directive, Article 4(2)), the worker's marital or family status (EU Directive, Article 4(3)). At the same time, the directive provides for the possibility of granting this leave in flexible ways (before or after the birth of the child).

In order to provide the right of fathers in the Republic of Moldova to benefit from such a leave – named in the national legislation as ‘paternity leave’ – the Labour Code was supplemented with Article 124¹, with the aim of ensuring the right of fathers to effectively participate in child care and unpaid care work. The new regulations established the granting of this type of leave to the father, lasting 14 calendar days, based on a written request in the first 56 days after the birth of the child. Thus, the national legislation in force corresponds to the EU regulations regarding the duration of paternity leave (14 calendar days or 2 weeks correspond to those 10 working days) and respects the provision of granting this right unconditionally. On the other hand, the national law makes no provision for it to be granted in flexible ways. In the case of short-term paternity leave, it is more difficult to ensure its flexibility.

The average duration of paternity leave in OECD countries is 1.4 weeks (10 calendar days), and in EU countries – 1.7 weeks (about 12 calendar days) (2018 reference year)⁹. The longest leave of this type is offered to fathers in Portugal (5 weeks or 25 working days), Slovenia and Spain (4.3 weeks or 30 calendar days), Lithuania (4 weeks or 28 calendar days).

In the case of Portugal, of the 5 weeks or 25 working days of paternity leave, 3 weeks are compulsory. Finland offers a 9-week paternity leave, of which 3 weeks can be used while the mother is on maternity or parental leave, and the remaining 6 weeks are to be used when the mother is not on parental leave.

⁹ PF2.1. Parental leave systems/https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

With regard to paternity leave, an important aspect of this leave is the **amount of compensation**. The directive establishes requirements for determining the amount of the allowance at a level that guarantees an income at least equivalent to that which the worker concerned would receive in the event of a break in the worker's activities on grounds connected with the worker's state of health, subject to any ceiling laid down in national law (EU Directive, Article 8(2)). At the same time, the directive provides for the possibility for a state to make the right to an allowance subject to periods of previous employment, which shall not exceed six months immediately prior to the expected date of the birth of the child. The national legislation, in this case the Labour Code (Article 124¹(4)), establishes that during the paternity leave the employee benefits from an allowance that cannot be less than the average monthly insured income for the concerned period and which is paid from the state social insurance budget. Government decision No 1245/2016 establishes that the right to paternity allowance is conditioned by:

- the length of the contribution period of at least 3 years or at least 9 months in the last 24 months prior to the date of birth of the child;
- having earned an insured income during the last 3 months prior to the month of the child's birth.

It should be noted that the provisions of this Government decision are, to some extent, discriminatory in relation to men, since in the case of insured women they are entitled to maternity allowance regardless of the duration of the contribution period, which is expressly provided for by Law No 289/2004 (Article 6(6)). Also, considering the demographic situation of the Republic of Moldova, characterized by a decrease in the number of births¹⁰ and the need for the full involvement of fathers in raising and educating their children¹¹, it would be fair and appropriate to establish **the right of employed fathers to a paternity allowance regardless of the length of the contribution period**. Such a regulation would help to remove discriminatory aspects in relation to men and support their greater involvement in the care of children from the first days after birth.

Practices regarding the calculation of paternity allowance applying the same rules as in the case of maternity allowance are already in place in the Czech Republic and Denmark.

Among the countries that provide a well paid paternity leave with a duration of at least one month are Norway – the amount of allowance/payment covers 95% of the gross average earnings, and Spain – where fathers are entitled to a full salary during the 30 days of leave.

Among the countries offering paternity leave of two weeks, a higher compensation is provided in Poland (100% of salary, with no payment ceiling).

¹⁰ According to NBS data, 6,173 (15.1%) fewer children were born in 2018 than in 2014 (40,909 newborns)

¹¹ According to the statistical data of MHLSP, during the 2016-2019 period 9,970 fathers benefited from paternity allowance, of which 3,940 in 2019. Also in 2020 (the first 4 months) 1,172 fathers benefited from such an allowance. <https://msmps.gov.md/ro/content/apel-la-solidaritate-si-respect-familie-contextul-zilei-internationale-familiei-marcata>.

In order to increase the protection of fathers on paternity leave against termination the Directive establishes the importance of preventive measures to prohibit their dismissal. The national legislation, in this case the Labour Code, contains only clauses regarding the prohibition of dismissal of the employee on maternity leave, partially paid childcare leave up to the age of three and additional unpaid childcare leave from the age of three to four years (Article 86(2)). Thus, in order to increase the protection of fathers on paternity leave and to comply with European norms, it is imperative to supplement this provision.

PARENTAL LEAVE

Raising and caring for the child involves special attention and sustained effort, as it is a proven fact that the first three years of life are critical to the child's well-being, and parents are the best carers for their own children (White B.)¹². Numerous studies confirm that during this period 60% of the fundamental life experiences is acquired¹³. In EU, around 10% of fathers take advantage of parental leave¹⁴. The statistical data reveal that in 2019 in the Republic of Moldova about 15.2% of the insured persons who benefited from allowances for caring for a child of up to three years of age were fathers¹⁵. This leave is supplementary to maternity and paternity leave periods and frequently, but not in all countries, follows the period of maternity leave.

The Directive establishes the right of working parents to parental leave, provided on the grounds of the birth or adoption of a child (EU Directive, Article 3(1)(b)). The national legislation also provides this right for employees (including in the case of adoption), defining it as 'child-care leave' (Labour Code, Articles 124, 126, 127). This type of leave can only be requested when the maternity leave entitlement has been exhausted.

The way in which parental leave is structured in terms of duration, payment and eligibility differ across OECD and EU countries¹⁶. The entitlement to parental leave is often individual, meaning that each parent is personally entitled to such a leave, but the allowance entitlements for the period of leave are often family-based – only one parent can claim this type of allowance (except for a short period after birth).

The directive provides an individual right for workers to parental leave with a total duration of four months, which is to be taken before the child reaches the age of eight, but each state can regulate the maximum age of the child in offering this type of leave (EU Directive, Article 5(1)). At the same time, the directive stipulates that two months of this leave cannot be transferred to the partner, ensuring in this way the involvement of both parents in the development and care of the child.

¹² Fine M.J. The Second Handbook on Parent Education. Contemporary Perspectives. Academic Press, 1989. p.116

¹³ Caruta A. The importance of parental involvement in the development of the child aged 0-3 years. In: **Psychology**, No 3, 2012, pp. 72-81. Available at: https://ibn.idsi.md/sites/default/files/imag_file/Importanta%20implicarii%20parintilor%20in%20dezvoltarea%20copilului%20la%20virsta%20de%200_3%20ani.pdf

¹⁴ <https://www.workforcesoftware.com/blog/new-eu-directive-for-parents-and-caregivers/>

¹⁵ The data provided by MHLSP show that during 2019, from allowances for caring for a child of up to 3 years benefited 46,929 insured persons, of which mothers – 39,459, fathers – 7,136, 335 – other persons

¹⁶ Chzhen Y., Gromada A., Rees G. Are the world's richest countries family friendly? Policy in the OECD and EU. UNICEF Office of Research, Florence, 2019. p. 5

Some of the countries with the longest paid parental leave are Estonia and Germany (up to the age of three). One model that, for the most part, is in line with the Directive's provisions is the one implemented in Croatia: each parent has the individual right to four months of leave, of which two months are transferable to the other parent. In effect, this produces a four month shareable family leave plus a two month individual non-transferable leave for each parent¹⁷.

The national legislation of the Republic of Moldova establishes the right to a partially paid childcare leave until the age of three, which can be used entirely or partially, including by the father or one of the grandparents/relatives. In this respect, according to the legislation, the parents are under no obligation to share the childcare leave, which is partially in line with the Directive's provisions. In order to encourage the involvement of both parents in raising the child, it becomes clear the need to supplement the national legislation by applying one of the proposed scenarios:

1. Making it compulsory to transfer half of the childcare leave to the second parent, by applying more attractive payment schemes than in the case when the parent does not share the leave or by paying an additional month to the other parent;
2. Making it compulsory to transfer at least two months of leave, in the case the parents share it, until the child reaches the age of one year.

These scenarios are not possible in the case of single-parent families or families with a sole provider.

In some countries, certain periods of parental leave are reserved only for the mother or only for the father and cannot be transferred. For instance, in Iceland there are two types of leaves for caring after a child: paid parental leave with a duration of 39 weeks provided until the child reaches the age of two years, and unpaid childcare leave until the age of eight. The parental leave is divided according to the following scheme: 13 weeks are reserved for each of the parents and 13 are a shareable family entitlement.

In Slovenia, the leave lasts 130 calendar days, of which the mother has the right to transfer up to 100 days to the father, and the father all 130 days to the mother¹⁸.

One of the directive's articles establishes the need to offer parents the possibility to benefit from parental leave in **flexible ways**, such as part-time (EU Directive, Article 5(6)). The national legislation provides for the possibility of using childcare leave entirely or partially at any point, right until the child reaches three years of age (Labour Code, Article 124(3)). The law also provides for the obligation of the employer to establish a part-time work day or week

¹⁷ PF2.1. Parental leave systems/https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

¹⁸ ibidem

schedule for a pregnant woman, an employee who has children up to 10 years or children with disabilities (including under his guardianship) (Labour Code, Article 97(2)). In order to support the families with children, national legislation provides the right to combine work with child care while simultaneously enjoying wage and childcare allowance. Certain studies (Rostgaard T., 2002) found that fathers are more likely to take childcare leave if there are possibilities to combine professional activities with raising children¹⁹.

An example of a fully flexible parental leave is that of Sweden: it may be divided into full days, half days, 1/4 days, or 1/8 days (one hour). Parents can take up to 30 days at the same time²⁰.

In Italy, this leave, lasting 6 months, can be taken part-time, and both parents can take leave at the same time, the total length not exceeding 10 months. If both parents use at least three months, the total length of leave can be extended to 11 months, with the additional month going to the father. The possibility for both parents to take leave at the same time is a practice also applied in Iceland, Germany, Ireland, Luxembourg, the Netherlands, etc.

In Estonia, parents have the possibility to work while receiving parental benefit. Thus, if the monthly income is smaller than half of the maximum limit of the benefit (EUR 1,774.05 in 2020; EUR 1,910.77 in 2021), the amount of the child benefit will not decrease, and if the income exceeds this figure, the amount of the parental benefit paid will be lower. Similarly to salaries, parental benefits are taxed with the income tax²¹.

The directive also sets out a number of other provisions regarding the granting of parental leave:

- **a reasonable period of notice** that the worker gives to the employer when exercising their right to parental leave, specifying the expected beginning and end of the leave period (EU Directive, Article 5(3)). The national legislation does not contain such provisions, and it is therefore recommended that the labour legislation be amended (Labour Code, Article 124) with the indication of the requirements regarding the filing procedure and filling the application form;
- **subjecting the right** to parental leave to a period of work qualification or to a length of service qualification, which shall not exceed one year (EU Directive, Article 5(4)). The labour legislation of the Republic of Moldova does not contain provisions regarding the conditioning of the right to childcare leave, but the legislation in the field of social insurance (Law No 289/2004) imposes conditions on establishing the allowance depending on a contribution period of at least three years or at least nine months in the

¹⁹ ESPN Flash Report 2017/62. Estonia: Reform of the parental leave and benefit system to better reconcile work and family life, July, 2017 apud Rostgaard T. Setting time aside for the father: father's leave in Scandinavia, Community, Work and Family, 2002, 3(5): 343–364./

²⁰ Parental Leave Act (Föräldraledighetslag)(Svensk Författningssamling, 1995, 584) // http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=43732

²¹ <https://www.sotsiaalkindlustusamet.ee/en/family-and-child-protection/kinds-family-allowances#Parental%20Benefit>

last 24 months prior to the child's date of birth. However, making the childcare leave subject to conditions may influence families' or individual's decisions to have a child;

- **the possibility for the employer to postpone** the granting of parental leave for a reasonable period of time on the grounds that the taking of parental leave at the time requested would seriously disrupt the good functioning of the employer (EU Directive, Article 5(5)). At present, the national legislation does not contain express regulations in this regard. However, the inclusion of such provisions may discourage women/men in their decision to have children, but at the same time it would provide the possibility for employers to plan their activities. Given that a social dialogue is ensured at the unit level and this legal rule is applied in conjunction with that of offering leaves in flexible ways, the possibility of postponing leaves can benefit both parties. Also, this provision could be applied under certain conditions: after the child reaches the age of one year, provided that in the community there are early education services for children over one year. This provision could not be applied in the case of families with children with disabilities or families with a sick family member and a sole provider (single-parent families).

A motivating factor in the father's involvement in raising and educating the child is the financial one, in this case **the amount of the child-raising allowance**. In this sense, the directive states that its size should facilitate the take-up of parental leave by both parents, without specifying a ceiling (EU Directive, Article 8(3)). The national legislation currently provides for two options for calculating the amount of the monthly allowance for each child according to its duration, as follows:

OPTION 1: in case of claiming the benefit **until the child reaches the age of three**, it will constitute 30% of the average monthly insured income earned during the last 12 calendar months preceding the month of the insured risk, from which social insurance contributions were calculated and paid. Its amount cannot be less than the amount of the minimum monthly child-raising allowance for an insured person (in 2020 – MDL 640 or about USD 36.5);

OPTION 2 (regulated in 2018): in the case of claiming the allowance **until the child reaches the age of two years and two months** the amount of the monthly allowance will be calculated as follows: until the child reaches the age of one year – 60% of the average monthly insured income earned during the last 12 calendar months preceding the month of the insured risk, from which social insurance contributions were calculated and paid, but not less than the double amount of the minimum monthly child-raising allowance for an insured person (i.e. MDL 1280 or USD 73); from one year until the age of two years and two months – 30% of the average monthly insured income earned during the last 12 calendar months preceding the month of the insured risk, from which social insurance contributions were calculated and paid, but not less than the amount of the minimum monthly child-raising allowance for an insured person (MDL 640). If the leave was taken until the age of three years, and the allowance is valid until the date of reaching the age of two years and two months, the remaining 10 months will not be paid.

Some of the highest-paid parental leaves are in Croatia (four months, at 100% of average earnings up to a ceiling of HRK 3,326 (USD 477) per month), Chile (12 weeks at 100% of net earnings), Luxembourg (two main options: 100% of earnings up to a maximum of EUR 3,204.93 per month for four months and 100% of earnings up to a maximum of EUR 1,922.96 per month for six months)²². A number of countries implement allowance payment systems with the possibility of several options: Norway, Portugal, Romania, Sweden, Poland, etc.

In the case of Estonia, in 2019 there were changes in the payment of benefits for raising and caring for children. The monthly child-raising allowance (parental benefit) is calculated based on the income for which the social tax was paid in the last 12 months prior to the nine months of pregnancy, with an upper limit of EUR 3,548.1 (in 2020), which is three times the average Estonian salary in the last year. In the case of not earning any income taxable with the social tax, the benefit is paid in the amount of the minimum wage that applied on January 1st of the previous calendar year (in 2020 – EUR 540, the minimum wage in 2019²³), and if the average monthly income is below the minimum salary rate, the parental benefit will be equal to the minimum salary rate applied on January 1st of the current year (EUR 584 in 2020). Starting from September 1st, 2019, the payment of the monthly childcare allowance for a child of up to three years in the amount of EUR 38.36 stopped²⁴. Previously, the childcare allowance system included a monthly allowance (parental benefit) in the amount of 100% of average earnings for 62 weeks after the maternity leave, with a ceiling of EUR 3,089.55 per month, and a childcare benefit at a flat-rate of EUR 38.36 per month from the end of the parental benefit until the child reaches three years of age²⁵.

The options established at national level offer parents the freedom of choice, but still the allowance amount is an unattractive one and does not fully cover the needs for raising and educating a child. According to the data of the National Bureau of Statistics, in 2019 the subsistence minimum for children was MDL 1,927 per month, amounting to MDL 771.7 for children up to one year and MDL 1,682.9 for children between one and six years²⁶. In this context, it is proposed to review the way to calculate the child raising allowance, including exploring the possibility of reducing the duration of leave, but increasing the amount of compensation instead, ensuring extensive public discussions on this subject, including representatives of employees and employers.

²² PF2.1. Parental leave systems/https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

²³ <https://countryeconomy.com/national-minimum-wage/estonia>

²⁴ <https://www.sotsiaalkindlustusamet.ee/en/family-and-child-protection/kinds-family-allowances#Parental%20Benefit>

²⁵ PF2.1. Parental leave systems/https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

²⁶ The subsistence minimum in 2019. The National Bureau of Statistics// <https://statistica.gov.md/newsview.php?!=ro&idc=168&id=6615>

CARER'S LEAVE

The new EU directive introduces carer's leave for employees who provide personal care or support to a relative or a person who lives in the same household and who needs significant care or support for a serious medical reason (EU Directive, Article 3(1)(c)). In this respect, the Directive establishes the right to a leave of five working days per year, which can be subject to proof requests (EU Directive, Article 6(1)). At the same time, it stipulates that the states are free to allocate carer's leave on the basis of a reference period other than a year (EU Directive, Article 6(2)). In the context of this article, the directive does not provide for special rules for the compensation of this type of leave. In addition, according to the directive, employees will have the right to time off from work for urgent family reasons, such as accident or illness (EU Directive, Article 7).

The analysis of the national labour legislation revealed that the right to such leave is also provided in the Republic of Moldova. The Labour Code establishes the right of employees to take leave for looking after a sick family member, subject to a medical certificate, for up to two years (Article 78(1)(b)). Also, employees have the right to suspend their employment contract contingent on both parties' agreement (employer and employee) to look after a sick child up to 10 years (Article 77(d)).

Taking time off from work is also a right established in the national law, the employee having the obligation to inform the employer and present supporting documents within five working days after returning to work (Labour Code, Article 9(2)(g)). In this case, national law does not limit the right of employees to take time off from work only in cases of family emergency. Thus, in terms of carer's leave regulation, the national legislation is largely in line with European regulations.

FLEXIBLE WORKING ARRANGEMENTS

A last matter covered by the EU directive refers to ensuring the right to flexible working arrangements for employees with children up to at least eight years old and for working carers (EU Directive, Article 9(1)). These arrangements create the possibility to combine work and family activities, while at the same time aiming to reduce the pressure on the formal (institutional) care system. In addition to paternity and parental leave, flexible working arrangements aim to increase fathers' involvement in the care and education of their children, as well as to balance the distribution and carrying out of other household tasks²⁷.

The data from the **European Working Conditions Survey** (2015),²⁸ conducted by the European Foundation for the Improvement of Living and Working Conditions, show that flexible arrangements programs are not implemented uniformly across EU countries. At the top of the ranking are the Nordic countries: Norway (44%), Sweden (41%), Denmark (40%) and Finland (35%), followed by the Netherlands (32%), Belgium (27%), Estonia (25%), Great Britain and France (24%), Austria (21%) and Germany (20%). In the context of varying implementation and access to flexible working arrangements, the directive will standardize the right of every EU worker to flexible ways of working.

In this respect, the Directive covers several aspects regarding flexible working arrangements, including:

- their duration may be subject to a reasonable limitation (EU Directive, Article 9(1));
- employers shall respond to employees' requests within a reasonable period of time, taking into account the needs of both the employer and the employee (EU Directive, Article 9(2));
- the employee's right to return to the original working pattern at the end of the agreed period, as well as the right to request to return to the original working pattern before the end of the agreed period in the event of a change of circumstances (EU Directive, Article 9(3));
- the right of states to subject the requests to such arrangements to a period of work qualification or to a length of service qualification, not exceeding 6 months (EU Directive, Article 9(4)).

At the national level, the need to guarantee flexible working arrangements for parents with preschool children is expressly established in the **Child Protection Strategy for 2014-2020**, Chapter IV, Item 64. However, the provisions on flexible working arrangements are not widely implemented in the Republic of Moldova, implementation difficulties being noted by both employers and employees. The survey conducted by the National Institute for Economic Research in 2019, '**Mothers with preschool children: between work and family obligations**', revealed that 36.2% of all respondents requested flexible working schedules, and 17.9 % of

²⁷ Shagvaliyeva S., Yazdanifard R. Impact of Flexible Working Hours on Work-Life Balance. In: American Journal of Industrial and Business Management, 2014, 4, 20-23 Published Online January 2014. <http://dx.doi.org/10.4236/ajibm.2014.41004>

²⁸ European Working Conditions Survey (2015)// <https://www.eurofound.europa.eu/ro/data/european-working-conditions-survey>

respondents – the employer to offer additional days off, in the context of reconciling family and work life.

The analysis of the national labour law reveals that it contains provisions on flexible working arrangements. Until July 2020, the employer had the right to establish, with the consent of the employee, individualized flexible work schedules (Labour Code, Article 100(7)) – a rule repealed in the context of amending the Labour Code.

In July 2020, the provision on flexible work schedules was amended with the approval of the Law No 115/2020 on amending the Labour Code of the Republic of Moldova No 154/2003²⁹. The new amendments establish the need to regulate the work schedules in the individual employment contracts or in collective agreements or any regulatory act at the unit level, expressly specifying in the individual contract employee's working conditions under the flexible working arrangements. At the same time, the right to such arrangements is an extension of an existing one, not an exclusive right of parents or working carers, thus exceeding the limits of the directive.

The analysis of the new amendments attests to the need to supplement the regulations in accordance with the EU Directive, especially those concerning employee's right to return early to the original working pattern, and to return to the original working pattern before the expiry of the individual employment contract, in the event of a change of circumstances. To this end, it is proposed to supplement Article 100¹ with two new paragraphs (paragraphs 4¹ and 4²). At the same time, some employers may face implementation difficulties, such as the need to establish additional mechanisms for monitoring the employees' work schedule, issues related to the poor understanding of how to implement the new provisions, etc.

However, in May 2020, due to the COVID-19 pandemic, which resulted in many categories of employees starting to work remotely, the national legislation was amended by introducing special rules in this regard³⁰. Following the analysis of the new provisions, it was established the need to introduce a separate notion incorporating the particularities of flexible working arrangements, in accordance with the provisions of the Directive. Thus, it is proposed to revise the Article 100¹ by excluding the paragraph 2, which includes an evasive definition of the notion, and to supplement Article 1 with the notion of flexible working arrangements, formulated in accordance with Article 3(f) of the EU Directive: 'flexible working arrangements' means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours.

²⁹ Law No 115/2020 on amending the Labour Code of the Republic of Moldova No 154/2003. In: Official Journal, No 1994-197, Article 386

³⁰ Law No 69/2020 on the establishment of measures during the state of emergency in public health and the amendment of some regulatory acts. In: Official Journal, No 124-125, Article 222

REGULATION FOR PROTECTING EMPLOYEES

In order to protect the rights of employees who request or benefit from leaves and working arrangements covered by the Directive, it includes provisions on:

- **discrimination**, which prohibits less favourable treatment of the above-mentioned employees (EU Directive, Article 11);
- **protection against dismissal**, being prohibited the dismissal and any preparations for the dismissal of these employees (EU Directive, Article 12(1));
- employees who consider that they have been dismissed on the grounds that they have applied for, or have taken, leave provided for in the Directive, or have exercised the right to request flexible working arrangements, have the right to request the employer to **provide duly substantiated reasons for their dismissal**. (EU Directive, Article 12(2));
- laying down the rules on **penalties** applicable to infringements of national provisions adopted pursuant to this Directive (EU Directive, Article 13).

The national legislation **prohibits discrimination** in labour field (Labour Code, Articles 8, 971, 1241, 199). However, in order to ensure the observance of employees' rights to non-discriminatory treatment, in accordance with the provisions of the EU Directive, it is necessary to introduce amendments, in particular to the Article 98 (on prohibiting through regulation less favourable treatment of employees with a reduced work week in comparison with those working a full work week) and to the Article 124 (on ensuring protection against discrimination of employees requesting childcare leave).

Also, there are regulations in place **prohibiting the dismissal** of an employee during the partly paid leave for the care of a child up to four years old (Labour Code, Article 86(2)). In order to extend the protection against dismissal of employees on paternity leave, on leave for the care of a sick family member or a child with disabilities, it is necessary to supplement the labour legislation (Labour Code, Article 86(2)).

Applying penalties to employers who violate the labour law, in this case when granting social leave (childcare leave is included in this category), is a regulation established in the national law (Contravention Code, Article 55(1)(e)). However, in order to ensure the protection of employees on leave for the care of a sick family member or a child with disabilities, it is proposed to supplement the previous regulation by specifying that the employer who refuses to suspend the employment relationship with the employee requesting such leave is to be penalized.

CONCLUSIONS AND RECOMMENDATIONS

The demographic changes and the state of socio-economic systems at European and national level call for measures to be taken to support families. Expert studies have shown that gender-responsive family policies can generate benefits at both macro and micro levels, when adapted to the national contexts.

The new EU directive delivers a unified approach to work-life balance, while ensuring the observance of the rights of employees and employers and at the same time providing the states with the freedom to regulate these issues. In the time to come, the family policies within each EU Member State will be brought into alignment with the new provisions, a context in which the ranking of countries according to their family-friendly policy indicators may change.

Given that in the Republic of Moldova, the maternal model of care for children and family members is perpetuated and there is a discriminatory approach in relation to fathers, it is necessary to revise the legislation in the field of labour, social security and contravention liability in accordance with the Directive's provisions and in a manner that ensures that both parents and carers can enjoy rights that allow them to give the necessary time to family members, especially children or those with health conditions.

In the context of the above, the following is recommended:

1. Clarify the notions of the Labour Code by defining or supplementing them, in particular the notions of carer and flexible working arrangements;
2. Regulate the right of the working fathers to a paternity allowance regardless of the size of the contribution period (Article 124¹ of the Labour Code). If the required contribution period is not confirmed, the paternity allowance shall be covered by the State Budget;
3. Make it mandatory through regulation to transfer half/a part of the childcare leave to the second parent and ensure an effective monitoring mechanism (Article 124 of the Labour Code);
4. Set out requirements regarding the filing procedure and filling the application form and reviewing the conditions for benefiting an allowance for persons pursuing a professional activity on the basis of a contract for the provision of services (Labour Code, Article 124);
5. Review the rule on the conditionality of the right to child-raising allowance by reducing the contribution period from three years to one year (Article 18 of the Law No 289/2004);
6. Increase the age of the child for granting the leave for the care of a sick child from 10 years to 12 years;
7. Revise the provisions on the amount of the child raising allowance in relation to the subsistence minimum (the minimum amount of the allowance should not be less than the subsistence minimum for the previous year) (Article 18 of the Law No 289/2004);

8. Regulate the right of the employee with a flexible work schedule to return early to the original working pattern (Article 100¹ of the Labour Code);
9. Prohibit through regulation less favourable treatment of employees with a reduced work week in comparison with those with a full work week (Article 98 of the Labour Code);
10. Introduce a regulation to ensure the protection against discrimination of employees requesting childcare leave (Articles 98 and 124 of the Labour Code);
11. Extend the categories of employees protected against dismissal to those who are on paternity leave, on leave for looking after a sick family member or a child with disabilities (Article 86 of the Labour Code);
12. Supplement the regulation on applying penalties to the employer who refuses to suspend the employment relationship with the employee requesting carer's leave (Article 55 of the Contravention Code).
13. Develop nursery services and facilitate employers in setting up their own childcare services within the company;
14. Regulate the activity of individual childcare providers in order to ensure a legal activity and children's safety;
15. Increase the social dialogue with the social partners in order to consult and negotiate interventions for promoting work–family balance.

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