

PARENTAL LEAVE
Report on the implementation of
Directive 2010/18

Maria do Rosário Palma-Ramalho
Petra Foubert
Susanne Burri

Main focus of the report

- National picture of the several leaves and other measures intended to promote the reconciliation of professional and family life
- Implementation of Dir. 2010/18 and compliance of national law with EU law in this respect

Directive 2010/18

- Wide application (cl. 1 of the Framework Agreement)
- Right to parental leave (**minimum 4 months**); **at least 1 month of the leave non transferable** (cl. 2 and 3)
- Protection against discrimination for the taking up of the leave, including dismissal and the right to return to the same or equivalent job (cl. 5)
- Right to change working hours after PL(cl. 6)
- Right to force majeure leave (cl. 7)
- Extension of these rights in case of adoption (cl. 4)
- Sanction system (Article 2 of the Directive)

National context

- All countries have complex schemes to protect pregnancy and maternity and to promote the reconciliation of family and working life
- These schemes include several leaves, as well as time-off from work and specific working-time arrangements for family reasons
- The combination of such schemes and even the identification of the several measures differs a lot from country to country

Parental leave and other leaves

- In some countries, there is a clear distinction between the leaves and they are put in place separately : pregnancy and maternity leaves; paternity leave; parental leave; adoption leave; childcare leave; other care leaves
- In other countries, parental leave is a comprehensive leave, incorporating other leaves (sometimes even maternity leave)
- Finally, in other countries, maternity leave is a comprehensive leave, including other leaves, but it is possible to extend maternity rights to the father

Parental leave and other leaves at national level (1st conclusion)

- Both the name and the content of PL at national level are often different from the EU notion of PL (e.g. the leave following maternity leave and granted to both parents)
- These differences make it difficult to assess the MS legislation and the role of PL in relation to maternity leave and to other measures aiming to facilitate the reconciliation of family and working life

Implementation of Directive 2010/18

- Several MS have not formally implemented the Dir. since national legislation already complied with EU law
- Other MS have made a formal transposition or small adjustments on specific issues
- Others indicate that the implementation is still in progress

Purpose and scope (Clause 1)

- As a rule, PL provisions are applicable to all employment contracts, in the private and in the public sectors
- Some exceptions are indicated:
 - in some MS, the provisions applicable in the public sector are more favourable (Greece);
 - In other MS, some categories of workers are out of the scope of the PL provisions (short fixed-term workers; executive workers - Hungary)

Right to parental leave (clause 2)
ISSUES

- Relationship between PL and other family-related leaves
- Duration of the leave
- Age-limits of the child
- Individualisation of the right to the leave / non-transferability provision

Parental leave and other family-related leaves

- PL and Maternity leave – in some countries, PL must immediately follow ML and its duration depends on the duration of ML; in other a part of PL can be postponed to a later stage
- PL and paternity leave – some countries have an autonomous paternity leave, granted only to the father; in others ‘paternity leave’ is treated as time-off
- PL in strict sense / PL in wide sense – some countries have a wide PL, while others have a clear distinction between PL and other childcare leaves

Duration of parental leave

- Minimum duration (4 months) – only a few MS had to change national legislation in order to comply with EU law
- Maximum duration
 - in many MS it surpasses the EU limit;
 - The duration of PL depends upon several factors: relation to ML (taken immediately after ML or partially postponed); strict or wide sense of PL; modalities of application (full-time or part-time); increased when taken by the father (positive action)
- Effective length (in line with the payment of the leave)

Parental leave – Maximum age of the child

- Depends upon the relation between PL and ML
 - Countries where PL immediately follows ML → 2 to 5 years of the child
 - Countries that separate PL from ML → 8 years or more
 - Higher age-limits in case of handicapped or severely ill child in many MS
- The payment of the leave is often restricted to a shorter period, or reduced in longer leaves

Parental leave – individualisation of the right

- PL is in general a right of each parent (except Poland)
- In some MS, the period of the leave is granted as a unit to be divided between the parents
- In some MS, both parents can take the leave (or a part of the leave) simultaneously, while in other they enjoy alternative periods
- In some MS, other effective carers aside the parents have the right to PL (actual carer or grand-parent)
- Surrogacy – no answer from the majority of the experts; PL as a right to the biological parent; possibly adoption leave for the non-biological parents

Non-transferability^{FP11} of the right to PL

- Some MS have a general principle of transferability of PL to the other parent, with the exception of a certain period (equal or longer than 1 month)
- Other countries have a general principle of non-transferability of the PL to the other parent, with the exception of a certain period
- In other countries, the entire period of PL is still transferable (Austria)

Modalities of application of PL (Clause 3)

- Full-time PL is the more common situation, part-time depending upon the agreement of the employer; the exception is Netherlands, with an opposite rule
- In several MS, it is up to the worker to chose; piece-meal schemes are available in several countries
- In a few MS, the modality of application always depends upon the agreement of the parties
- In some MS, the duration of PL is longer when taken on the part-time modality^{FP13}
- In other MS the access to part-time PL is easier in case of handicapped or severely ill child

Slide 14

FP11 transferability?
FOUBERT Petra; 21-11-2014

Slide 15

FP13 part time?
FOUBERT Petra; 21-11-2014


Other requirements

- **Notice period** – very common
- **Seniority** – some MS establish a minimum seniority of the worker either to have access to the leave, and/or to have access to the social benefit attached
- **Interests of the employer** – request of the agreement of both parties on how to take the leave; possibility of refusing or postponing the leave under operational reasons

Adoption leave (Clauses 2 and 4)

- Most MS grant a leave to adoptive parents (exceptions – Turkey and FYR-Macedonia)
- Different approaches to this leave:
 - Separate and autonomous adoption leave (welcoming leave, than can be followed by other leaves)
 - No autonomous adoption leave; maternity rights or PL rights are applicable, according to the age of the adopted child
- More frequent specific provisions (maximum age of the child, duration, social security benefit)

Employment rights and non-discrimination (Clause 5) ISSUES

- Protection against dismissal on the grounds of  for applying to PL
- Prohibition of less favourable treatment
- Right to return to the same or equivalent job
- Protection of acquired rights during PL
- Continuity of social security coverage
- Payment / social security benefit attached to the leave (main differences between MS)

Slide 18

FP15 I do not understand this part of the sentence ...
FOUBERT Petra; 21-11-2014

Employment rights and non-discrimination

- All countries prohibit dismissal on these grounds and many qualify such dismissal as discriminatory
- Such dismissal is considered unlawful and gives right to reinstatement or to damages compensation
- Other grounds for the termination of the employment contract are allowed

Right to return to the same job, acquired rights and social security coverage

- Most MS establish the right to return to the same or equivalent job explicitly in the law; some experts consider such a right as a consequence of the contract being suspended during PL and of non-discrimination principle
- Some experts indicate that some rights are reduced during PL (seniority, right to annual leave)
- Social security and healthcare services are granted

Payment of the parental leave

- Payment by the employer is rare; it may be granted by employment contract or by collective agreement, as a complement/replacement of social benefit
- Social security allowance is granted in most MS under very different conditions, as regards:
 - The amount paid (fixed rate / percentage of the salary)
 - Duration of the benefit (variable / not in line with the duration of the leave / may decrease in longer leaves)
 - Other conditions (minimum contribution period, family income)
- In some countries, PL is not paid at all

Specific working-time arrangements (Clause 6)

- Most MS allow for specific working-time arrangements after PL:
 - Reduction of working-time for breastfeeding
 - Exemption of overtime work for a limited period
 - Flexible working hours /reduction of working hours
 - Part-time work
- Conditions: in some MS these requests prevail over the employers' interest; in others, they can be refused or postponed on the ground of serious entrepreneurial reasons; in other MS, these arrangements always depend upon the employers's agreement

Time-off from work on grounds of force majeure (Clause 7)

- MS generally recognise this right in relation to 'care' situations, related to children and to other dependant relatives
- The force majeure requirement is interpreted in a strict way (as an 'urgent' situation)
- Other conditions: notice period and/or justification / time-limits per year/per child
- Time-off is in general not paid, but may give right to a social security benefit

Sanctions (Article 2)

- The sanctions for the breach of the rights related to PL seems to be similar in the MS
 - Right to damages compensation
 - Right to reinstatement /or dismissal compensation
 - Application of fines
 - Loss of public contracts or public funds (Italy)

↓

The link of PL rights with equality issues is considered important for the purposes of the sanction system (e.g, no upper limits of the damages compensation or the burden of the proof, and amount of the fines).

**Compliance of national legislation with the
Directive – opinion of the experts**

- The majority of experts consider that national legislation is in compliance with the Directive
- Some experts indicate problems regarding specific issues^{FP28}, and many consider the national legislation confusing
- More favourable provisions at national level are also indicated (payment, duration of the level, non-transferability^{FP29} principle)

National Case Law

- In most countries there is no case law on PL
- In some countries, the following questions have been discussed
 - Early return from parental leave and subsequent maternity leave (Finland – Kiiski case)
 - PL and the calculation of rights related to pay (Finland)
 - Notion of force majeure for the purpose of 'sick leave' to take care of children (UK)
 - Surrogacy and parental leave (Austria)
 - Duration of PL in case of twins (Greece)



Most experts consider that national case law is in line with the developments of the EC^{FP31} in this area

**Parental leave in practice -
questions asked to the experts**

- Are PL and other family-related leaves taken in practice and to what extent?
- Is the taking of PL shared by both parents in practice?
- Is there positive action to promote a more balanced share of family responsibilities in relation to these leaves?

Slide 25

FP28 give an example?
FOUBERT Petra; 21-11-2014

FP29 transferability
FOUBERT Petra; 21-11-2014

Slide 26

FP31 ECJ case law?
FOUBERT Petra; 21-11-2014

Practical use of parental leave

- In some MS, PL is seldom taken, while in others it is growing; however, in MS where PL is taken, it is not always possible to distinguish PL from maternity leave
- All experts convey to the conclusion that the practical use of PL depends upon the payment of the leave → if not paid, PL is seldom taken; when the paid period is shorter than the period of the leave, PL is taken only while paid

Share of the leave between the parents

- PL and other family-related leaves are predominantly taken by the mother
- Reasons indicated by the experts:
 - Traditional perspective on the social roles of men and women (male breadwinner model/ social pressure over women to take the leave)
 - Gender pay gap (especially in MS where PL is not paid) and lack of pay in general
 - Lack of child-care facilities / level of education

Positive action regarding parental leave

- Longer PL when taken by the father (fathers month in Finland)
- Larger periods of non-transferability (father's and mother quotas in PL – Norway)
- Increased payment of PL if the other parent takes it (Germany / Portugal)
- Enlargement of subsidised care facilities (Sweden, Greece)
- Specific employment contracts that facilitate reconciliation (tele-work, job sharing and part-time)

Slide 29

FP33

sharing?

FOUBERT Petra; 21-11-2014

General conclusions

- The implementation of Dir. 2010/18 was not problematic; to the contrary, national provisions often go beyond the Directive, and the link between reconciliation provisions and gender equality is well established
- The main weaknesses are the following:
 - The relation between the several leaves (including ML) is not clear, making it difficult to assess the level of protection that they offer → should an integrated approach be considered in the future?
 - The payment is the key-issue for the practical use of PL

Thank you!
