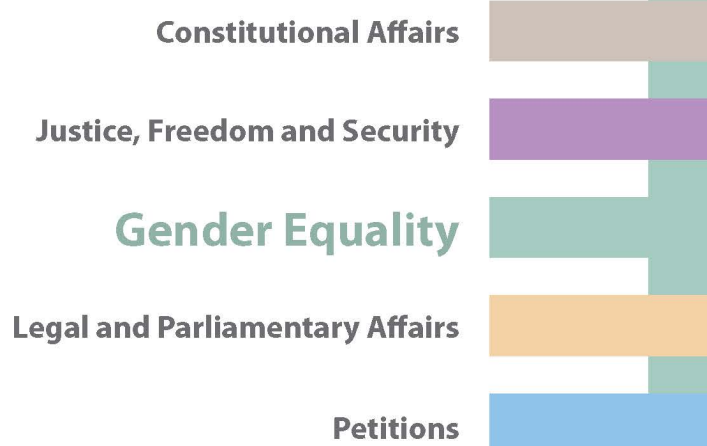


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**Maternity, paternity
and parental leave:
Data related to duration
and compensation rates
in the European Union**

Study for the FEMM Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

WOMEN'S RIGHTS & GENDER EQUALITY

Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union

STUDY

Abstract

Upon request by the FEMM Committee, the Policy Department C: Citizens' Rights and Constitutional Affairs has developed a number of figures visualising duration of and compensation rates of previous incomes during maternity, paternity and parental leave in the Member States of the European Union. The figures are based on data published notably by the European Commission and the International Labour Organisation between 2012 and 2014 which were cross-checked with data collected by the European Parliamentary Research Service and Eurofound in 2014. The data has been collected in relation to a possible revision of Council Directive 92/85/EEC 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 and include comparisons with the Commission proposal and EP's First Reading in this respect. Literature on the role of reconciliation policies for economic growth and gender equality as well as the important role of maternity leave provisions for such reconciliation policies is also summarized.

DOCUMENT REQUESTED BY THE
COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

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LIST OF ABBREVIATIONS

BPfA	Beijing Platform for Action
CBA	Cost Benefits Analysis
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
COM	European Commission
EP	European Parliament
EU	European Union
Eurofound	European Foundation for the Improvement of Living and Working Conditions
FEMM	Committee on Women's Rights and Gender Equality
ILO	International Labour Organisation
IMPA	Commission Impact Assessment of 2008
TEC	Treaty of the European Community
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom

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EXECUTIVE SUMMARY

On request of the FEMM committee and in relation to a possible revision of Council Directive 92/85/EEC 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, information has been collected on the provisions for maternity, paternity and parental leave in the European Union Member States. The Directive in force provides for a minimum duration and a minimum compensation rate of previous incomes during maternity leave.

The collected data has been used also for drawing conclusions on the relation between the duration of and the compensation rates during maternity leave, on the situation in the Member States as far as the First Reading of the EP and the recommendation of the International Labour Organisation are concerned, and on the provisions of paternity and parental leave.

Besides, the data lent themselves to a closer examination and comparison of the situation in Eastern European and non-Eastern European countries. The reasons for similarities between the Member States in these regions can be found in different legal and social legacies when it comes to maternity leave. The analysis shows that these legacies affected the provisions for the duration of and the average compensation rate not only during maternity leave but also regarding paternity and parental leave.

Maternity leave duration

The figures show that 25 Member States have more than 14 weeks of maternity leave. The average number of weeks in the EU is 23 weeks, with a higher average leave duration in Eastern European countries (27 weeks). 15 Member States comply already with the proposal amending Directive 92/85/EEC, which is identical to the ILO recommendation 191 for 18 weeks of maternity leave, while 10 Member States comply with 20 weeks of maternity leave as proposed in EP's First Reading.

Compensation rates during maternity leave

The average compensation rate during maternity leave in the EU is 90% of previous incomes. 13 Member States provide for an allowance covering 100% of previous incomes (some, however, with a ceiling at least for certain categories of workers). The average compensation rate is higher in non-Eastern European countries (93% of previous incomes).

The figures allow for the conclusion that there is some correlation between the duration of the maternity leave and the compensation rate of previous incomes during the leave: the longer the leave the lower the allowance.

Paternity leave duration and allowances

There is no European legislation on paternity leave. 23 Member States offer paternity leave, 17 of them with a compensation rate of 100% of previous incomes. However, the duration of paternity leave varies between 1 and 64 days.

Parental leave duration and allowances

Parental leave is based on Directive 2010/18/EU which sets the minimum duration of parental leave at 4 months but does not provide for a minimum compensation rate of previous incomes during parental leave. The average number of weeks for parental leave is 86.9 among EU Member States. The specificity of parental leave is that in a number of countries the duration of the parental leave depends on the up-take of the other parent. But take-up rates by fathers remain very low which could be related to the low compensation rates of previous incomes during parental leave.

8 Member States do not offer allowances during parental leave which brings down the average allowance to 50% of previous incomes. 5 Member States replace income during parental leave by a flat rate payment which varies between 139 Euros and 1.778 Euros.

Comparison of compensation rates during maternity, paternity and parental leave

While most Member States have the same or higher compensation rates of previous incomes during paternity leave compared to the compensation rates during maternity leave, only two Member States have a higher compensation rate during maternity than during paternity leave. 3 Member States provide for a compensation rate of 100% for all three leave.

The theoretical maximum duration of a combined maternity/paternity leave and parental leave

The shortest maximum duration of a combined maternity and parental leave is 34.4 weeks and the longest 195.5 weeks. The average length of the combined maternity and parental leave is 97.8 weeks. The shortest maximum period of combined paternity and parental leave around 17 weeks and the longest maximum period for a father to take leave to be with a child is 156 weeks, or in other words, three years. It is difficult to establish a relation between the duration of paternity and parental leave and the compensation rates during these leave.

Conclusions

- There is, in principle, a broad agreement among European institutions and Member States that reconciliation policies are important for both the labour market participation of women as a condition for growth and gender equality. While maternity, paternity and parental leave are an important factor among reconciliation policies, European measures have focused on the availability of childcare facilities in line with the so called Barcelona objectives.
- The advantage of leave policies compared to other reconciliation measures is, however, that they target the unequal division of paid employment and unpaid care and house work between men and women. The closing of this gender gap is, according to the ILO, "possibly the most significant social development of the twenty-first century".
- Although at first sight the provisions for maternity, paternity and parental leave differ sometimes widely between Member States, common characteristics among Eastern European on the one hand, and non-Eastern European countries on the other hand could be observed. In other words, while Member States developed a wide range of possible leave schemes, some convergence between Member States, at least regarding maternity leave, has taken place. Still, 13 Member States, mostly non-Eastern European, would not comply with 18 weeks of maternity leave as proposed by the Commission. Regarding the compensation rate, 15 Member States provide for less than 100% of previous incomes during maternity leave.

- Directive 92/85/EC has been considered outdated; firstly regarding the legal provisions with regard to the promotion of gender equality through the European Union; secondly, in respect to the increased importance of reconciliation policies for employment and growth in general and women's economic independence in particular. However, experts emphasise the role of maternity leave for the health of mothers and children and its role as "the cornerstone" of leave policies allowing men and women to combine work and family life. Besides, because of the lack of uniformity in the legal provisions, the labour mobility of women might also be hampered.
- In addition to the remaining discrepancies between Member States regarding maternity and pregnancy protection, the challenges related to demographic changes and the need to increase employment rates which are prevalent in all Member States lack a common approach. This has led to the introduction of a large variety in duration and compensation rates of paternity leave and the modification of parental leave schemes. It has to be concluded that the Parental Leave Directives, adopted on the basis of social partner agreements, were not able to guide all Member States in the transposition of effective parental leave. While they are meant to be tailor made to the national situation, the measures might not always have the desired outcomes in bringing more women into work, which is, however, a decisive condition to cover the costs related to the introduction of new leave schemes, as resulting from the ECORYS study.
- Mainly the low compensation rate of previous incomes could result in women continuing to take all the leave available with negative consequences for their participation in the labour market and for the more equal distribution of unpaid care work between men and women.
- Besides, the very long duration of combined forms of leave will continue to exacerbate the possibility for women and men to return to the labour market without wage and career penalties despite the guarantees provided in the Directives.

INTRODUCTION

KEY FINDINGS

- This study accompanies the revision of Council Directive 92/85/EEC 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.
- The information included in this document has been collected by the Policy Department from different sources recently published, namely research carried out by the European Commission, the International Labour Organisation, through a network of experts of the European Parliamentary Research Service, and Eurofound.

This study has been requested by the Women's Rights and Gender Equality Committee (FEMM) to support the revision of Council Directive 92/85/EEC 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 breastfeeding¹. While the proposal for amending this Directive was published by the Commission in October 2008 and the European Parliament adopted its First Reading in October 2010², the Council was not able to reach an agreement for a mandate for negotiations of the proposal and EP's First Reading. Consequently, the Commission declared to withdraw the proposal after the first semester of 2015 in case no progress for reaching an agreement of the two branches of the legislature would be made.

A summary of EP's First Reading can be found in the annex.

In consultation with the rapporteur, this background information provides an overview of the situation regarding leave provisions in the Member States with a particular focus on duration and allowances. The study also highlights the differences between Eastern and non-Eastern European countries.

In this respect, the table in Annex I provides an overview of the relevant provisions regarding maternity, paternity, and parental leave of the 28 Member States. The information has been used consequently to establish some figures for a quicker access to the overall situation in the European Union. This overview allows for drawing some basic conclusions regarding the relation between the duration of and the compensation rate of previous incomes during maternity leave, the situation in the Member States as far as the First Reading of the EP and the recommendation of the International Labour Organisation (ILO) are concerned as well as the provisions of paternity and parental leave.

The information included in this document has been collected by the Policy Department from different sources recently published, namely research carried out by the European Commission, the ILO, through a network of experts of the European Parliamentary

¹ COM(2008)0637

² [T7-0373/2010](#)

Research Service (EPRS), and Eurofound. It has nevertheless to be noted that this is a fast developing area and information on a particular Member State might be quickly outdated.

It has to be noted further that the European Foundation for the Improvement of Living and Working Conditions (Eurofound) will carry out a research project in cooperation with FEMM to be finalised in May 2015. This comparative analysis will focus on verifying and updating the existing information regarding the duration of and the compensation rate of previous incomes during maternity leave with special attention to the correlation of income compensation during maternity leave and sickness pay.

This study includes also in Annex III an Infographic of the EPRS, which was drafted on request of a Member, which also summarises information on maternity and paternity leave.

In addition to this study, attention is further drawn to the contribution of Dorota Szelewa to the FEMM Workshop of 3 September 2014 on Maternity, paternity and parental leave and unpaid care work.

Methodological note

Data collection

As set out above, the information provided in this study is based on publications of the ILO, the International Network on Leave Policies and Research, the European Commission, Eurofound and the General Directorate for Parliamentary Research of the European Parliament. The information used in these publications dates sometimes back to 2010 as more recent data is not available. Cross checks of the information have been carried out to ensure a high level of reliability regarding the present situation in the Member States. It has nevertheless to be noted that modifications of legislation that took place during 2014 or will take place in 2015 are very likely not to be reflected in the comparisons. The study that Eurofound is carrying out on request of the FEMM committee and due to be published by the end of May 2015 is supposed to up-date the available figures.

Visualisation and comparability of data

Furthermore it has to be noted that to make the provisions in the Member States comparable, some simplification measures were applied. For example, where Member States' provisions display their leave in working days or calendar days, they have been transformed into weeks³ or vice versa for paternity leave. Or in cases where Member States have flat rates in addition to compensation rates of previous incomes, the flat rates were not included in the calculations, for example for Ireland and the UK.

Considering the above, it is recommended to refer to the overview tables in the annex on maternity, paternity and parental leave for concrete information about the present situation in Member States. The figures in the study should be used for impressions of the current situation regarding certain aspects of leave schemes for the reconciliation of work and family life.

Regional common features of leave across Member States

The study confirms the findings of previous research that the provisions for maternity, paternity and parental leave in the Member States show a large variety. While the

³ <http://www.timeanddate.com/date/workdays.html>

provisions respect, mostly, the minimum provisions of the Directives, common features were also observed regarding the duration of maternity leave among Eastern European Member States and regarding remuneration among non-Eastern European Member States. These differences have been explored more in detail.

Definitions

The study is based on the following definitions of the three leave:

Maternity Leave

In Directive 92/85/EC, maternity leave is defined in Article 8, paragraph 1, as follows: "(...) workers within the meaning of Article 2⁴ are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and / or after confinement in accordance with national legislation and / or practice". Paragraph 2 adds that "the maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and / or after confinement in accordance with national legislation and/ or practice." Article 11 specifies regarding the period of maternity leave that "the allowance (during this period) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation. It has to be noted that the timeframes indicated in the Directive represent minimum standards and do not hamper the adoption of more favourable provisions in Member States and cannot be interpreted in a way that would justify the reduction of existing standards.

Parental Leave

In Paragraph 1 of the Clause 2 of the Social Partner Agreement, the Parental Leave Directive "entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years to be defined by Member States and/or social partners. Paragraph 2 specifies further that "The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. The modalities of application of the non-transferable period shall be set down at national level through legislation and/or collective agreements taking into account existing leave arrangements in the Member States".

It should be noted that many Member States provide parental leave in a way that allows for the parents deciding on who takes which period of leave (so called family leave) or a mixture of family leave and individual entitlements.

⁴ Article 2 specifies that for the Directive "pregnant worker shall mean a pregnant worker who informs her employer of her condition , in accordance with national legislation and / or national practice; (b) worker who has recently given birth shall mean a worker who has recently given birth within the meaning of national legislation and / or national practice and who informs her employer of her condition, in accordance with that legislation and / or practice; (c) worker who is breastfeeding shall mean a worker who is breastfeeding within the meaning of national legislation and / or national practice and who informs her employer of her condition , in accordance with that legislation and / or practice.

Paternity Leave

As there is no European legislation on paternity leave, no definition that is common to all Member States can be provided. However, on the basis of how "paternity leave" is implemented in the Member States, it can be interpreted as leave to be taken by fathers, mostly in parallel with maternity leave and before they take up parental leave. Regarding the latter, it should be noted that some Member States provide for non-transferable parts of the parental leave for fathers. This leave is, however, in this study, not considered as paternity leave.

It should be noted that questions of maternity, paternity or parental leave of parents in same sex partnerships or the issue of these leave in cases of surrogacy, whether or not regulated by law in the Member States, are not subject of this study.

1. LEGAL BASES AND PROVISIONS ON EU LEVEL FOR MATERNITY AND PARENTAL LEAVE

KEY FINDINGS

- The legal basis for European legislation in the area of maternity and pregnancy protection has developed considerably since the adoption of the Directive in force in 1992. The main development is the inclusion of "equality between man and women with regard to labour market opportunities and treatment at work" among the objectives of the Union in the area of Social Policy (Article 153). Furthermore, since 1992, the former Article obliging Member States to respect the equal pay for men and women for work of equal value was extended to include legislative powers for other measures ensuring "the principle of equal opportunities and equal treatment" of men and women at work (Article 157).
- The legal basis of the new Parental Leave Directive is the same as for the previous one, i.e. Article 155,2 which allows for the implementation of social partner agreements on the European level into European law.
- There is no European legislation on paternity leave.

1.1. Maternity Leave

1.1.1. The Directive in force

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 European Single Act which called upon the Member States to "pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made." To this end, the European Single Act enabled the Council to, "acting by a qualified majority on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee, (...) adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States".

It should be mentioned that the Directive has to be considered an individual Directive in the sense of Article 16(1) of the Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

Regarding the duration of maternity leave, the Directive foresees in its "Article 8 on Maternity leave that

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and / or after confinement in accordance with national legislation and / or practice

2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and / or after confinement in accordance with national legislation and/ or practice."

Regarding the allowance during maternity leave, Article 9 on Employment rights states in paragraph 2b that "in the case referred to in Article 8 , the following must be ensured: (...);

(b) maintenance of a payment to, and / or entitlement to an adequate allowance for, workers within the meaning of Article 2;"

And paragraphs 3 and 4 further state that "the allowance referred to in point 2 (b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation" and that "Member States may make entitlement to pay or the allowance referred to in points 1 and 2 (b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation. These conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement."

It should be noted that a recital points out that "Whereas the concept of an adequate allowance in the case of maternity leave must be regarded as a technical point of reference with a view to fixing the minimum level of protection and should in no circumstances be interpreted as suggesting an analogy between pregnancy and illness"

1.1.2. The proposal of the Commission amending the Directive in force

The proposal of the Commission to amend this Directive of 2008 is based on Articles 137,2⁵ and 141,3 of the Nice Treaty on the European Economic Community (Nice TEC).

While Article 137,1 listed a number of areas in which, "the Community shall support and complement the activities of the Member States, among which the improvement in particular of the working environment to protect workers' health and safety; working conditions; and equality between men and women with regard to labour market opportunities and treatment at work; (...), Article 137,2b foresaw the adoption of directives, establishing minimum requirements, in accordance with the co-decision procedure of Article 251 of the Nice TEC to reach these social policy objectives.

In the same vein, Article 141,3 of the Nice TEC specified that "the Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of

⁵ Article 137 of the Nice TEC amends Article 137 of the Amsterdam TEC which further developed Article 118 of the Maastricht TEC which referred to similar provisions of Article 118 and 118a of the European Single Act.

employment and occupation, including the principle of equal pay for equal work or work of equal value."

1.1.3. Provisions in the Lisbon Treaty

The Lisbon Treaty, in force since 1 December 2009, includes the unchanged provisions of ex-Article 137 Nice TEC in Article 153 Treaty on the Functioning of the European Union (TFEU) and the provisions of ex-Article 141 Nice TEC in Article 157 TFEU.

These legal bases on which the proposal of the Commission amending Directive 92/85/EEC is based were introduced by the Amsterdam Treaty. While Article 118a of the Single European Act did not yet refer to equality between men and women on the labour market and at work, these provisions were added to Article 137 of the Amsterdam TEC which was not changed by the Nice TEC.

The same counts for Article 141 of the Amsterdam TEC which complemented the equal pay provisions with paragraph 3 on measures to ensure the "application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation" and with paragraph 4 on the possibility of Member States regarding the adoption or maintenance of positive action.

1.1.4. The Charter of Fundamental Rights

Article 33 of the Charter of Fundamental Rights stipulates the protection of family and professional life. In particular paragraph 2 states that "To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child."

Article 34 on social security and social assistance further specifies in its paragraph 1 that "the Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

1.2. Parental leave

Council Directive 2010/18/EU is based on a social partner agreement⁶ on the European level and has been adopted as a European Union legislation on the basis of Article 155,2 TFEU.

The Directive in force replaced a previous one (Directive 96/34/EC) which had equally been based on a social partner agreement. It provides for an individual right of a minimum duration of 4 months to be taken until the age of 8 years of the child. However, as stated in clause 5, the provisions on compensation rates during parental leave are to be adopted on the national level.

⁶ Employers organisations, represented by BUSINESSEUROPE, UEAPME, CEEP, and Trade Unions on the European level, represented by ETUC.

1.3. Paternity Leave

There is no legal instrument of the European Union that requires from the Member States the introduction of a minimum standard regarding father's leave at the occasion of the birth of a child.

However, the European Parliament proposes a paternity leave of two weeks as a minimum standard in all Member States in its First Reading⁷ of the proposal of the Commission amending Directive 92/85/EEC.

It could be argued, according to the further development of the legal bases in the EU Treaty which are relevant for the adoption of measures in relation to maternity leave, that the repartition of competences between the European and national level would not prevent the adoption of legislative provisions on paternity leave on the European level as long as they have the objective to improve "equality between men and women with regard to labour market opportunities and treatment at work" (Article 153) in accordance with "measures that ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation" (Article 157).

⁷ Text adopted by the EP on 20 October 2010 amending the proposal of the Commission to amend Directive 92/85/EC in the framework of the ordinary legislative procedure as set out in Article 294 TFEU. The First Reading of the EP will be the EP's mandate for the negotiations with the Council.

2. POLICY OBJECTIVES RELATED TO THE DURATION OF AND REMUNERATION DURING MATERNITY, PATERNITY AND PARENTAL LEAVE

KEY FINDINGS

- Maternity Leave provisions are an important pillar among family leave for the reconciliation of work and family life as they protect the health of mothers and children.
- There is broad agreement that reconciliation policies, including family leave, contribute to higher employment rates of women which leads to higher fertility rates and higher economic independence of women.
- The cultures of the (single - male -) breadwinner or the dual earner model in a given Member States influence the compensation rates during leave. At the same time, it has been observed that low compensation rates of previous earnings lead to the mothers taking up the leave with no effects for the employment situation of women or gender equality.
- The burden of unpaid care work within the family is carried by women and is the main reason for their lower participation in the labour market compared to men. Leave schemes that do not provide high compensation levels and individual entitlements for men have no effects on the gender gaps in the distribution of paid and unpaid work.
- Flexible work arrangements have some advantages regarding the reintegration into the labour market after child birth and the reconciliation of work and family life. They nevertheless also bring about costs as they are less well remunerated which contributes to the gender pay gap and, on the long run, the gender gap in pensions. Part-time schemes also lower the career prospects for various reasons, among which the reduction in hours spent in training.
- It can be concluded from the ECORYS study that the balance between costs and benefits of longer and better remunerated leave depends on the resulting increase of female labour market participation and the higher GDP related to this increase of the workforce.

This chapter is based on a review of selected literature, mainly from international and national organisations⁸.

It shows that over the last 20 years, policies for the reconciliation of work and family life have gained considerable importance in relation not only to economic growth and employment but also because of the demographic change. The latter incites, on the one hand, the search for policy solutions which allow men and women to take decisions in favour of having children. On the other hand, there is the claim to address the question on

how the bulk of unpaid care work of women for children and elder relatives in need could be better distributed between both genders for a greater economic independence of women. Last but not least, it is recognised that all these policies play a decisive role for the achievement of a gender equal society as set out in articles 2 and 3 of the Treaty of the European Union and Member States' legal frameworks.

According to the Commission, the revision of Directive 92/85/EC should ensure a level playing field between Member States regarding the protection of pregnant and breast feeding women and to meet the challenges posed by the demographic change in a concerted way. In addition, the Commission had doubts that the leave arrangements existing in the Member States would "contribute to more gender equality and support women, who might wish to go back to work". In the first place, the Commission observed that mostly women would continue to take up the leave with little or no effect on their labour market participation as long as the allowance during leave remained low⁹.

2.1. Improving the health of parents, in particular mothers, and children

In the first place, maternity leave has been put in place to protect women who are pregnant and breast feeding. In this respect, maternity protection is a fundamental right enshrined in key human rights instruments¹⁰. In particular, the ILO adopted already in 1919 the first Maternity Protection Convention (ILO No 3) and also the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) calls for special measures to ensure this right in practice¹¹.

Directive 92/85/EC in force is a directive in the area of health and safety at work¹². In this sense, Articles 5, 6 and 7 request from the Member States to ensure the appropriate working conditions, and that women are not obliged to work at night. Article 9 provides for time off for ante-natal examinations.

Besides, the ILO reminded in 2014 that, beyond health and safety at work, "maternity protection offers numerous benefits. (...) (Among other benefits,) it contributes to the health and well-being of mothers and their babies and thus to the achievement of major development goals, including the reduction of child and maternal mortality and improvement of their health (United Nations, 2009)."¹³

⁸ European Commission, Organisation for Economic Cooperation and Development (OECD), ILO;

⁹ European Commission, Impact Assessment Report accompanying the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC 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, SEC (2008)2526/2.

¹⁰ ILO 2014

¹¹ From the introduction to the Convention: "Aside from civil rights issues, the Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The preamble sets the tone by stating that "the role of women in procreation should not be a basis for discrimination". The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in article 5, "a proper understanding of maternity as a social function", demanding fully shared responsibility for child-rearing by both sexes. Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health care or education. Society's obligation extends to offering social services, especially child-care facilities, that allow individuals to combine family responsibilities with work and participation in public life. Special measures for maternity protection are recommended and "shall not be considered discriminatory". (article 4)", <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

¹² See chapter 1 on legal bases.

¹³ ILO, 2014.

In the same vein, the Commission pointed in their Impact Assessment (IMPA) of 2008 to studies and stakeholder recommendations showing a social and health impact of a longer maternity leave. "A longer period of being at home and of breastfeeding helps the mother to avoid certain illnesses (...) ¹⁴. It would allow mothers to build up a stable relationship with their child and recover completely from giving birth."

Accordingly, but regarding leave policies more generally speaking, the ECORYS Study of 2007 ¹⁵ underlined the beneficial effects on the health of the child of generous leave periods following birth. They cite "evidence that job protected paid leave is associated with higher rates of breast-feeding which is by e.g. the WHO is considered important to child health." ¹⁶ However, they could not find evidence of positive effects of a longer maternity leave on the learning abilities of children. At the same time, there was proof that children are not hampered by mothers working when they are 3 months and older.

The study states further that partners reconciling work and family life are healthier with a higher productivity and less sick days. This could be related to the finding that "improved leave forms (...) give more family quality time and might reduce the stress level of the parents." ¹⁷

2.2. Increasing employment rates of women ¹⁸

In 2008, the Commission integrated the proposal for the revision of Directive 92/85/EC into the policy framework aiming at increasing employment levels and those of women in particular. Today, the EU2020 Strategy aims at an employment rate of 75% for men and women alike ¹⁹.

The Commission notes in their IMPA that there was broad agreement with Member States and the social partners that lower employment rates of women in general and of mothers with small children in particular could be increased by offering measures that reconcile better work and family life as long as this would not entail higher costs for employers. Consequently, extending the minimum provisions of the Directive in force to 18 weeks ²⁰ with a replacement of 100% of previous earnings, combined with a longer and remunerated parental leave, should help to close the gender gaps in employment ²¹. Besides, the Commission referred to the positive relation between high employment rates and high fertility rates since the 1990s ²².

¹⁴ Expert Consultation for the Commission IMPA, Annex II, Ordre des Sages Femmes. See also in the IMPA the opinion of the Advisory Group which plead for 24 weeks.

¹⁵ which fed into the Commission Impact Assessment accompanying the proposal for amending Directive 92/85/EC

¹⁶ ECORYS referring to International Review of Leave Policies and related Research 2006. Ed Peter Moss and Margaret O'Brien, University of East Anglia

¹⁷ ECORYS

¹⁸ This study focuses on the effects of Directive 92/85/EC but it is noted that, in 2010, the Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity (Directive 2010/41/EU) was adopted. This is the first provision at EU level for a maternity allowance for self-employed workers and their spouses or life partners. See also EIGE.

¹⁹ For more details on EU2020 see: http://ec.europa.eu/europe2020/index_en.htm

²⁰ Which corresponds to ILO's Recommendation 191 in connection with the Maternity Leave Convention of 2000 .

²¹ Besides, it was initially planned to enable more flexible conditions by reforming the Working Time Directive that was in the end rejected by the EP.

²² IMPA, p. 16

Data and many studies show a strong relationship between motherhood and disadvantages on the labour market. While the employment rate of women with children is not only lower than the employment rate of men, it is also lower than the employment rate of women without children. The lower employment rate of mothers is related to a large part to unpaid child care²³. The time out of paid employment leads to broken careers of women which contribute to the gender pay gap²⁴ and the gender gap in pensions²⁵. Probably due to the crisis²⁶, from 2007 to 2010, employment rates of women with children under 12 years of age have decreased between approximately 1 and 7% in 15 Member States and it remained more or less unchanged in Belgium, France, the United Kingdom and Slovenia²⁷. In this period, the employment rate for women with children under 12 years of age increased in Austria, Greece, Luxembourg, Malta²⁸, the Netherlands, and Poland.

The gaps in employment rates show for 2010 that in Sweden approximately as many women with children were in employment as women without children. Only in Denmark and Slovenia, more women with children under the age of 12 were working. In all other Member States, women with children under 12 work less than women without children with the biggest gaps in the Czech Republic, Hungary and Slovakia²⁹.

The ECORYS study as well as the Gender Equality Institute (EIGE)³⁰ observe that (parental) leave schemes reflect whether a Member State follows a culture of the (single - male -) breadwinner or rather the dual earner model³¹, in which men and women alike are in paid employment, also when they have children. For example, ECORYS concluded in 2008 that Belgium was not in a situation needing a long and paid parental leave as the country's social model was the (single - male -) breadwinner one. On the other hand, Denmark was considered a dual earner country with a "need to compensate both parents with a higher average compensation rate". However, it was also noted that, nevertheless, also in Denmark, mostly women take up the leave because they have a lower income than men.

²³ The time spent outside paid employment as well as the time spent in employment are reflected in two different domains of the Gender Equality Index, namely Time and Work. Both domains show considerable gaps between men and women, the domain time displays even the 2nd largest gap right after Power. "The amount of time spent by women and men in the EU on activities other than economic, shows strong differences. A wide gender gap exists in the time spent caring and educating children and grandchildren in addition to time spent on cooking and housework. Throughout all Member States, it is women who perform the bulk of these caring activities. Men are, however, more likely than women (in the vast majority of Member States) to participate in sporting, cultural or leisure activities on a regular basis."

²⁴ 17% in the EU in 2014; some publications start to talk about the motherhood gap, see for example Damian Grimshaw, Jill Rubery, [The motherhood pay gap : a review of the issues, theory and international evidence](#), ILO. Confirms M. Selmi, Family Leave and the Gender Wage Gap, 78 N.C. L. REV. 707, 2000, cited by EIGE: The data also suggest that the penalties suffered by women are disproportionate compared with the productivity loss associated with leave-taking.

²⁵ 39% in the EU in 2012. See contribution of Marcella Corsi to the FEMM Workshop on "A new strategy for gender equality post 2015", 2014.

²⁶ See EIGE: "As highlighted by several gender experts (Smith, 2009; Bettio et al., 2009; Villa and Smith, 2010a), policy responses to the crisis, such as budgetary cuts for public care services, risk jeopardising the advances made in women's employment and gender equality achieved over recent years, and as a consequence, conditions affecting work-life balance may worsen.

²⁷ Slovenia has the highest employment rate for women of about 85%.

²⁸ Malta has the highest increase between 2007 and 2010 with more than 8%, although still resulting in the lowest female employment rate in the Union.

²⁹ European Commission, Parents at work: men and women participating in the labour force, Short Statistical Report No 2, May 2014.

³⁰ See EIGE study [Reconciliation of work and family life as a condition of equal participation in the labour market: Report](#), 2011: <http://eige.europa.eu/content/document/report-review-of-the-implementation-of-the-bpfa-in-the-area-f-women-economy-reconciliation>.

³¹ More recent studies talk about the "adult worker model, in which it is assumed that each adult participates in the labour market according to his or her abilities". See Plantenga and Remery, Reconciliation of Work and Private Life, in: Ed. Bettio et al, Gender and the European Labour Market, 2013.

In Eastern European countries, represented in case studies of ECORYS on Poland and Hungary while not necessarily reflecting the (single - male -) breadwinner or the dual earner model, parental leave was very long with a low compensation level. This system seemed to match the "almost non existing institutionalised child care facilities".

In the same study, Spain was considered as an example showing that long parental leave without pay in a single breadwinner model forced young and well-educated young women not to take up the parental leave for fear of losing their job.

Based on the previous paragraphs, it has to be concluded that paid leave with individual entitlements for both mothers and fathers are essential for women's economic independence.

Regarding the costs of career interruptions, ECORYS observes that their effects on wages differ between men and women. For men the effects of recent breaks are high. For women, the effects are lasting longer and they do not catch up over time. So, even breaks which are years ago still have a negative effect on a woman's wage. ECORYS even suggests that individual costs of interruptions due to parental leave are higher than those due to unemployment³². Regarding non-monetary losses, it needs to be taken into account that career breaks entail a loss of skills and afford re-training³³. Consequently, ECORYS warn that "too long periods of leave³⁴ might in the longer run reduce the parents (especially the mothers) labour market value." It is consequently obvious that a balance needs to be found between a longer maternity leave for health reasons of the mother and the child and the economic independence of women ensured through a successful return to the labour market.

Furthermore, different policies are needed to address women with higher and lower education levels. "Labour market arrangements, such as part-time opportunities (when well-paid and protected), have a larger impact on the outcomes of women with higher educational levels, childcare and optional parental leave have a larger impact on the fertility and participation decisions of women at lower educational levels."³⁵

In this respect, EIGE notes that a lack in flexibility in working time arrangements and of high-quality part-time jobs are often important factors in determining gender gaps in the labour market. "In fact, flexible and part-time work has been shown to have a number of positive impacts on employment. In general, they can be a support measure to help employers to retain skilled and qualified staff in the recent economic crisis. Furthermore, when care responsibilities and full-time working hours are not compatible, flexible and part-

³² This is confirmed by the study of Gert Theunissen, Marijke Verbruggen, Anneleen Forrier and Luc Sels for the Faculty of Business and Economics, Katholieke Universiteit Leuven, Belgium published in *Gender, Work & Organisation* in 2011. They found on the basis of Belgian samples that different types of leave have different effects on wages. They conclude that, "individuals taking a lengthy family break may be stigmatised as being little career-oriented and may therefore be penalized more severely than unemployed individuals who may still be perceived as willing to work". Although family breaks turned out to be more harmful for men than for women, the persisting gender pay gap may lead to men "still earning more than female workers with a similar background. Also Amelia Roman found already in 2006 in her thesis on "Deviating from the standard", effects on labour continuity and career patterns that any type of leave of longer than one year has negative consequences on wages and career prospects, with a particular negative effect for family breaks taken by women.

³³ For more information on studies looking into the effects of career breaks, please see footnotes on pages 87 and 88 of the ECORYS study. In addition see also Amelia Roman, *Deviating from the standard: effects on labor continuity and career patterns*, 2006.

³⁴ Longer than one year.

³⁵ ECORYS, p.92. See also EIGE's references to studies of J. Plantenga et al.

time work are necessary alternatives for working parents to help them to balance work, private and family life."

"On the other hand, part-time work can have negative impacts on economic independence, long-term financial security and career prospects. Since working women are more likely to take reduced hours options, as a result of the dual burden they carry, their working patterns are more likely to have longer-term impacts on salaries and careers, given that part-time work is still predominantly clustered in lower-paid sectors and professions. Moreover, some part-time workers experience poorer job content, receive less training and have diminished promotion opportunities. From the gender equality perspective it is essential that the use of flexible work arrangements is supported for both women and men"³⁶

Finally, ECORYS states that statutory rights for long leave might be overturned by reality, for example because the job function disappeared, the employee was on a short term contract or human resource management of an SME failed.

2.3. Addressing demographic change and fertility rates

The demographic change results from increased life expectancy and reduced fertility rates.

As mentioned above, there is a positive correlation of fertility rates and the employment of women, meaning that higher fertility rates can be found in Member States with higher female employment rates. Besides, it is generally recognised that well-designed policies for the reconciliation of work and family life can have a positive effect on the employment rates of women.

In this respect, ECORYS finds that improved mandatory maternity leave could be an incentive for women who choose under the present circumstances not to have children. However, it is also proven that only improving the length of the leave will have marginal effects.

Research on the relation of "family friendly policies" on fertility rates is scarce. Bjoerklund observed at least measurable effects of policies directed at the spacing of children. He also remarks in relation to the stable fertility rate in Nordic countries that "no doubt there are strong a priori reasons for believing that the effects of various policies interact in such a way that the presence of one policy makes another one more (or less) effective in raising fertility". More particularly, "some scholars in the field, e.g. Neyer (2006), strongly argue that the effect of a specific policy depends on the institutional setting into which it is implemented."³⁷

2.4. Reconciling work and family life

While reconciliation policies are certainly important for the achievement of the other goals mentioned, they have become an objective on their own over time.

³⁶ EIGE.

³⁷ Anders Björklund, Does a family-friendly policy raise fertility levels?, SIEPS 2007: 3, p.36-38.

Consequently, the European Parliament has regularly drawn attention to the need for the reconciliation of work and family life in different resolutions among which the "European Semester for economic policy coordination: implementation of 2013 priorities"³⁸ or "Women's Working Conditions in the Service Sector"³⁹.

In the framework of the revision of the implementation of the Beijing Platform for Action (BPfA), the European Gender Equality Institute (EIGE) has published a report on the "Reconciliation of work and family life as a condition of equal participation in the labour market"⁴⁰ which was elaborated with the Polish Presidency in 2011. EIGE refers to M. Ibanez⁴¹ for a definition of reconciliation policies. These policies "directly support the combination of professional, private and family life or, most commonly, as policies to assist in maintaining a work-life balance. As such, they can be divided into those affecting labour relations and working time arrangements, and those more directly involving public intervention, such as the provision of childcare services, leave facilities, and child benefits."

Leave policies are consequently important but not the only tools of the reconciliation of work and family life. In principle, policies should allow men and women to spend time with their partner, children, and other family members, and on recreation while at the same time ensuring their economic independence⁴². Based on the data included in the Gender Equality Index (GEI) as well as the gender pay gap and the gender gap in pensions, it can be concluded that reconciliation policies were not able to improve significantly the imbalance between men and women during the last 10 years. This is partly due to their design of which nowadays more information becomes available on what works and what does not work given the experiences in Member States that have introduced paternity leave and reformed their parental leave schemes.

Still, paternity and parental leave arrangements, even more than maternity leave, vary greatly among Member States, despite the existence of a Directive on the latter. They consist either of so called family leave that can be shared between the mother and the father, or individual entitlements that cannot be transferred to the partner. Finally, these two options can also be combined by having a general family leave of which parts cannot be transferred⁴³.

For men, Eurofound finds on the basis of data collected on paternity and parental leave for an upcoming study that take-up rates depend on a complex mix of factors with compensation of previous incomes as the most important one as well as the possibility to return to the work place. Besides, also flexibility in sharing the leave and in take-up over time can make a positive difference for fathers as well as the support of mothers and the information available. The ECORYS study points out that there are also strong cultural

³⁸ T07_TA(2013)0447:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-447>.

³⁹ T07_TA(2012)322: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0322&language=EN&ring=A7-2012-0246>

⁴⁰ EIGE, *Reconciliation of work and family life as a condition of equal participation in the labour market: Report*, 2011: <http://eige.europa.eu/content/document/report-review-of-the-implementation-of-the-bpfa-in-the-area-f-women-economy-reconciliation>.

⁴¹ M. Ibanez, Fertility, Female Participation in Employment and Reconciliation Policies in Spain, REC-WP 3/2010, Working Papers on the Reconciliation of Work and Welfare in Europe, RECOWOE Publication, Dissemination and Dialogue Centre, Edinburgh, 2010.

⁴² Francavilla, Giannelli, Mangiavacchi and Piccoli, Unpaid Family Work in Europe, in: Ed. Francesca Bettio, et al, *Gender and the European Labour Market*, 2013 They assume that "the time devoted to domestic work plus the time spent in childcare exceeds, on average, time spent in the labour market" and is mostly carried out by women. Consequently, they refer to the strong interconnection between paid and unpaid work and point to the considerable contribution of unpaid work to GDP.

⁴³ Eurofound.

factors (stereotypes) that have an influence on take-up rates. Overall, for the time being, for paternity and parental leave, the take-up rates of fathers are increasing but they are still quite low. Usually, less than 10% of both forms of leave are taken by fathers.

For mothers, the minimum requirements for Member States to protect women who are pregnant or breast feeding are laid down in Directive 92/85/EC which for more than 20 years has not been updated and does not reflect the different steps taken on the international⁴⁴ or the national level regarding the duration of and the remuneration during maternity leave. The Directive has therefore been criticised as no longer able to provide a minimum standard on maternity protection in the EU⁴⁵ and it could therefore be considered insignificant for the reconciliation of work and family life today.

On the other hand, the ILO reaffirms that maternity leave policies play an important part in the package of policies necessary to support the position of women on the labour market and are a minimum but essential condition for a true reconciliation of work and family life of women⁴⁶. In their IMPA, the European Commission puts forward the positive characteristics of a longer maternity leave for the reconciliation of work and family life. A longer maternity leave does not only improve health conditions, for example through a longer time for breast feeding as set out above. In addition, "payment which reflects previous earnings would mean that women do not lose out financially during maternity leave. Also, it might become easier to return to the labour market after a longer period of maternity leave⁴⁷, when the child has become a little bit older, thus making it easier to find appropriate care facilities."⁴⁸

The ILO concludes regarding the effects of the economic crisis on the already existing tensions due to the distribution of paid and unpaid labour that "reconfigure the work, family and personal lives of both men and women, taking into consideration the role that maternity protection and work–family policies can play in this process (has become unavoidable). In this context, fathers undertaking a more active role in caregiving is likely to be one of the most significant social developments of the twenty-first century"⁴⁹.

⁴⁴ ILO recommendation 191

⁴⁵ See contribution of Dorota Szelewa to the Workshop on "A new strategy for gender equality post 2015".

⁴⁶ ILO 2014: In this context, it is important to view maternity protection as part of the broader framework of rights and protections set out in the ILO international labour standards on equality and non-discrimination, namely the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation)

Convention, 1958 (No. 111) and the Workers with Family Responsibilities Convention, 1981 (No. 156). In its 2012 General Survey on the Fundamental Conventions, the ILO Committee of Experts on the Application of Conventions and Recommendation (CEACR) has highlighted the importance of Convention No. 183 in recognizing that maternity protection is a precondition for gender equality and non-discrimination in employment and occupation. It has also considered that "ratification of this Convention constitutes important progress in achieving the broader objective of gender equality in employment and occupation, as enshrined in Convention No. 111, p. 2, Executive Summary .

⁴⁷ The Commission refers here to Rüling/Kassner, Familienpolitik aus der Gleichstellungsperspektive, Ein europäischer Vergleich, 2007, p.91; Schönberg/Ludsteck, Maternity leave legislation, Female Labor Supply and the Family Wage Gap, IZA DP No 2699, p.33. See also ILO 2014.

⁴⁸ IMPA. For more information on child care facilities in Member States please refer to European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, Barcelona Targets Revisited, Compilation of briefing notes, Workshop, 25 November 2013.

⁴⁹ ILO 2014, in reference to 1) UN, Men in families and family policies in a changing world, 2011. Available at <https://www.un.org/esa/socdev/family/docs/men-in-families.pdf>, on 2 Apr. 2014. 2) M. O'Brien, Fitting fathers into work–family policies: International challenges in turbulent times", International Journal of Sociology and Social Policy, Vol. 33, No. 9/10, 2013, pp. 542–564.

2.5. Achieving equality between men and women

As a follow-up of the previous chapter, it should be reminded that "Promoting reconciliation of work, private and family life for women and men is recognised at the European level as an important priority for achieving gender equality, increasing women's participation in the labour market, and promoting equal sharing of care responsibilities between women and men. It is also among the strategic objectives of BPfA in the critical area of Women and the Economy (area F)."⁵⁰

In this sense, the ECORYS study departs from the idea that better leave policies can contribute to more gender balance in the division of paid and unpaid labour, i.e. not only at the workplace but also in family caring and child care.

In this respect, although the Commission did not propose legislation regarding paternity⁵¹ and parental leave⁵², the IMPA nevertheless observes that leave for fathers was necessary to compensate the maternity leave for mothers to deploy a positive effect on gender equality in the labour market. Consequently, the Commission recommended in the IMPA the introduction in all Member States of a paternity leave of 10 days as a minimum standard. However, the IMPA also observed that such a leave would be too short to measure any effects on women's employment rates.

In the same vein, ECORYS argue that, because only used by mothers, "improvements of maternity leave will maintain the family roles rather than improve gender equality". Consequently, a "fathers' quota" in the leave seems to be the best way of scoring high benefits on gender equality at work and at home. Accordingly, the Commission took the view that offering additional choices for fathers, i.e. earmarking parts of the parental leave for fathers, would not only entail greater gender equality on the labour market but also active fatherhood⁵³.

Furthermore, flexible and part-time employment, as said above, are necessary alternatives for working parents to help them to balance work, private and family life when care responsibilities and full-time working hours are not compatible. However in the EU, as also pointed out, they can have comparable effects as career breaks, although to a lesser extent, meaning loss in wages over the career course, lack of social security payments with negative effects on pensions and reduced career opportunities due to the lack of training and promotions⁵⁴. The latter can be interpreted as good reasons for the low rates of men in part-time while women, due to their care responsibilities and overall lower wages could be faced with little alternatives.

2.6. Cost and Benefits

ECORYS observe in their study of 2007 that "the calculations of the costs and benefits of the different leave scheme options might signal (...) a need (for EU action). Hence, if it appears that the benefits from improving provisions of a given leave scheme more than

⁵⁰ EIGE, page 9

⁵¹ Provisions for paternity leave existed already in some Member States.

⁵² The revised Parental Leave Directive 2010/18/EU is based on a social partner agreement. See chapter on legal bases.

⁵³ IMPA.

⁵⁴ See EIGE. For more details see chapter 2.4.

outbalance the costs of doing so - there could be said to be a latent need for such improvement."⁵⁵ This counterbalances the views of national stakeholders that leave schemes should be regulated on the national level to match better the "national ways of carrying out welfare policies - hereunder because present leave schemes comprise integrated parts of the national labour market compensation systems or social security systems"⁵⁶.

In addition, ECORYS draws attention to the fact that Cost Benefit Analyses (CBA) of legislative provisions with effects on social phenomena carry the risk of overvaluing costs compared to benefits because "there can be a tendency that more costs are quantified than benefits - and so there could be a bias towards a negative result"⁵⁷. In their study, the quantitative part of the benefits focuses on "the prospects of the leave schemes leading to increased female labour market participation and thus increased productions values - i.e. a variable in Euros that is comparable with the increased costs associated with changing the leave scheme provisions."⁵⁸

With this in mind, ECORYS concluded in 2008 that extending the maternity leave to 18 weeks at a compensation level of 100% had higher benefits than costs.

At the same time, they warn that low compensation rates of previous earnings lead to women taking up the leave and, consequently, lead to inferior career prospects of women (see above chapter 2.2.) and consequently an increased gender pay gap.

Overall it can be concluded from the ECORYS study that the balance between costs and benefits of longer and better remunerated maternity leave depends on the resulting increase of female labour market participation and the higher GDP related to this increase of the workforce.

ECORYS reminds on the one hand that "there is in practice little knowledge about the direct effect on female labour market participation from improved leave scheme provisions, and so any assessments of whether these benefits outbalance the costs are associated with much uncertainty. There might, however, also be other benefits from improved leave scheme provisions than increased production, and in particular where this increase in production seems unrealistic, it might be worth scrutinising these". On the other hand, "the study shows that the requirements leading to increased female labour market participation to cover increased costs of improved leave schemes differ both between leave scheme options and between EU Member States. (...)"⁵⁹.

ECORYS's conclusion that poorly remunerated or too long leave schemes might turn out to be counterproductive for the achievement of more than one of the objectives related to the introduction of maternity, paternity and parental leave in 2008 has in the meantime been confirmed, in 2011 by the EIGE study and in 2014 by the study of Eurofound.

For parental leave in particular, ECORYS concluded that "introducing one month more parental leave compared with 6 months - i.e. an increase from 6 to 7 months with 66.6% compensation of previous pay - will lead to relatively minor increases in socioeconomic

⁵⁵ Including 8 case studies: Belgium, Denmark, Spain, Estonia, France, Hungary, Poland, and the U.K.

⁵⁶ ECORYS, p.95. See also contribution of Konstantina Davaki to the Workshop "Costs and Benefits of Maternity and Paternity Leave", European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, 5 October 2010.

⁵⁷ Ibid.

⁵⁸ ECORYS, p. 15.

⁵⁹ ECORYS, p. 95.

costs, that is for the Member States that do not already fulfil such leave scheme provisions. In fact there is only a need for an increase in the female labour market participation rate of between 0.01 and 0.05 percentage points in order to increase production so that it outbalances these costs. Taking into account that parental leave is a central reconciliation factor as it facilitates gender equality - both at work and at home - and increased parental health, the required increase in female labour market participation rates seems realistic to achieve."⁶⁰

⁶⁰

Ibid.

3. DURATION OF MATERNITY LEAVE

KEY FINDINGS

- The average maternity leave duration in the Member States of the European Union is 23 weeks.
- The shortest maternity leave corresponds to the Directive in force and is 14 weeks, the longest is 58,6 weeks.
- Eastern European Countries have a higher average length of maternity leave (27 weeks) than non-Eastern European countries (20.4 weeks).

The average maternity leave duration in the Member States of the European Union is 23 weeks.

In conformity with the minimal standard set by Council Directive 92/85/EEC, 14 weeks is the shortest maternity leave duration in the EU and can be found in three countries: Croatia, Germany and Sweden.

The country with the longest maternity leave is Bulgaria with 58.6⁶¹ weeks; the second and third one are the United Kingdom and Poland with 52 weeks, which are even compared to the third longest maternity leave (42 weeks in Ireland) way over the minimum standard.

The following Member States have a maternity leave of 20 weeks:
Italy and Estonia.

The following Member States have a maternity leave of 18 weeks:
Romania, Malta, Lithuania, Denmark, Cyprus, and Finland.

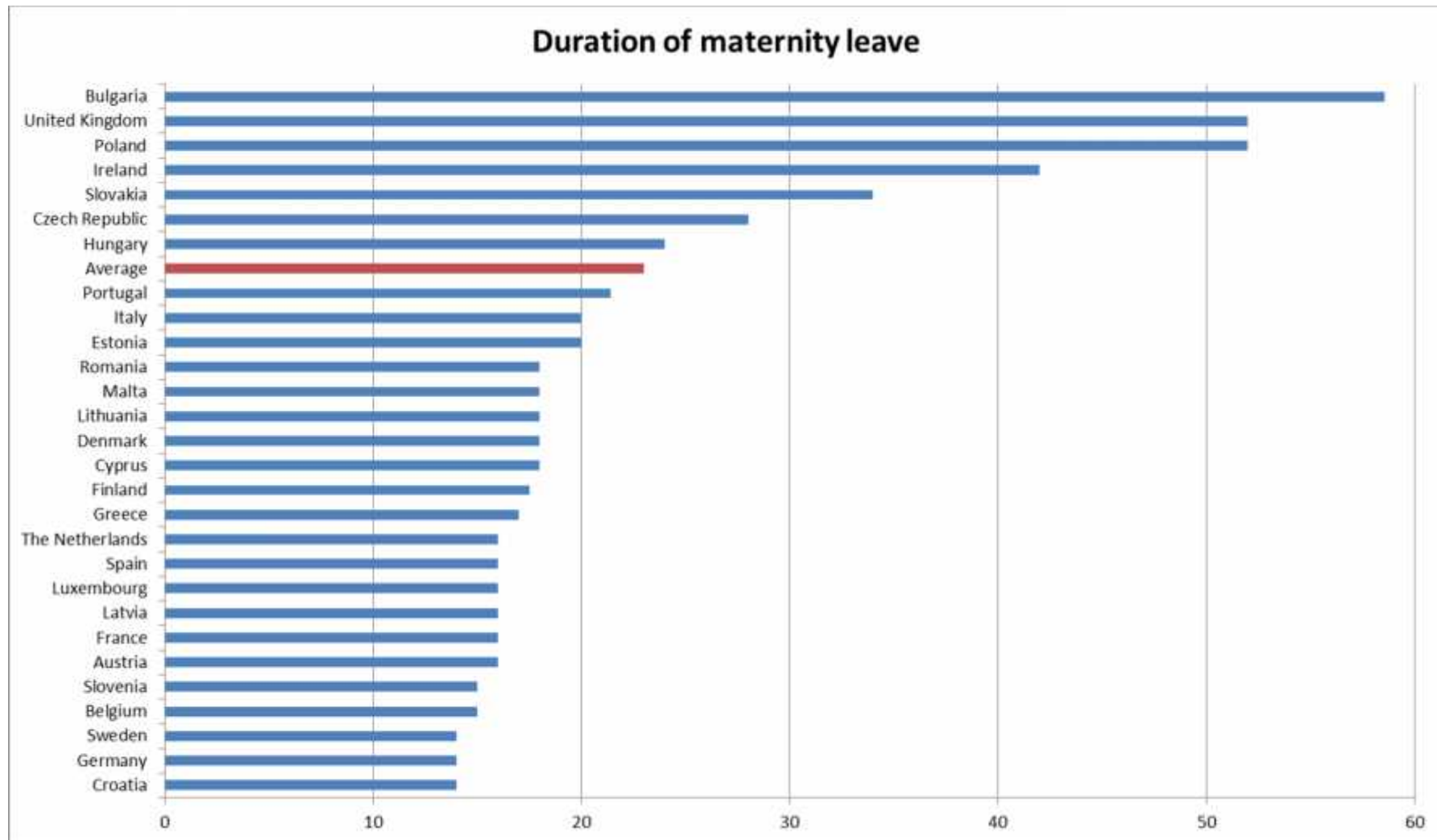
The following Member States have a maternity leave of 15/16/17 weeks:
Greece, the Netherlands, Spain, Luxembourg, Latvia, France, Austria, Slovenia, and Belgium.

Given the apparent similarities between Eastern European and non-Eastern European countries, their respective situation will be further explored. As figures 2 and 3 will show, the leave duration in non-Eastern European countries is generally shorter than in Eastern European countries. This can be explained by the different legal and cultural legacies regarding maternity leave in these regions.

(For a comparison of Member States provisions with the proposal of the Commission for an extension of the minimum duration to 18 weeks and the EP proposal for 20 weeks see Figures 11 and 13 respectively).

⁶¹ The maternity leave in Bulgaria is expressed in days (410 days) which have been transformed into weeks (58.6) to make it comparable with the other Member States which express the maternity leave in weeks.

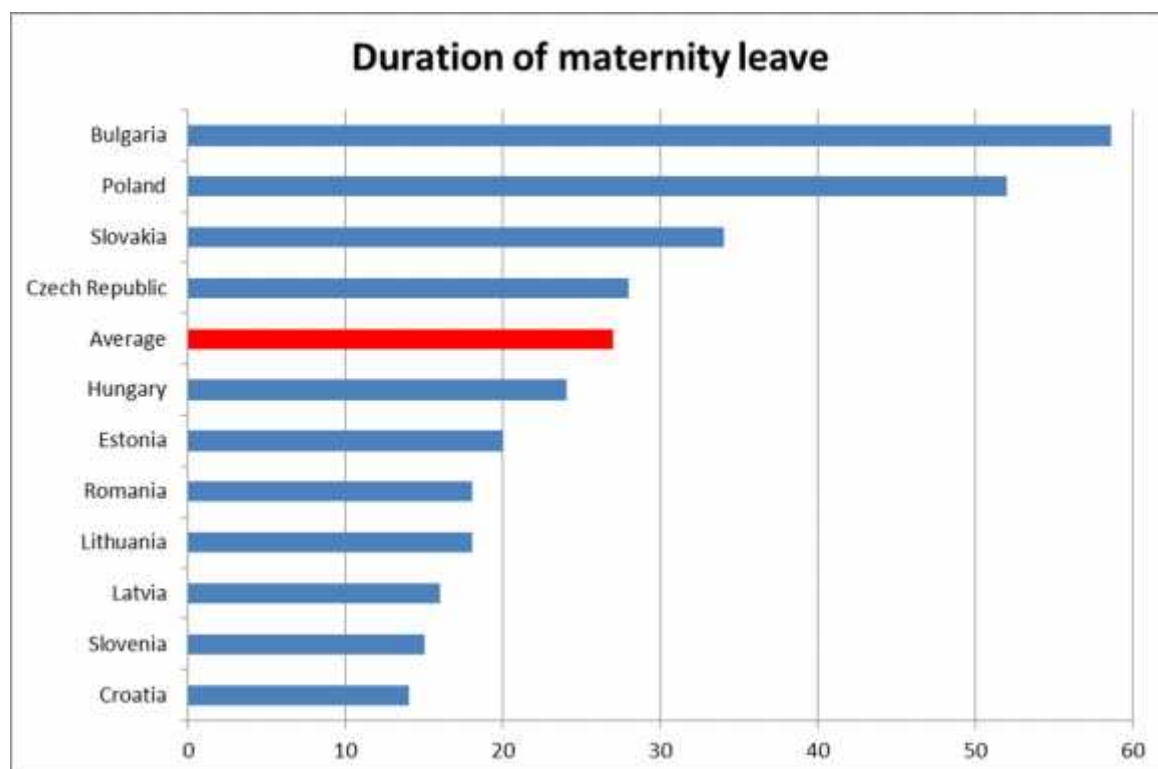
Figure 1: Duration of maternity leave in weeks in all EU Member States



3.1. Maternity leave duration in Eastern European countries

Except for Croatia, Eastern European countries⁶² enable women to have much longer maternity leave than the prescribed minimum. The average maternity leave in the Eastern European countries is 27 weeks. This is 4 weeks more than the EU average and 6.6 weeks longer than in non-Eastern European countries.

Figure 2: Duration of maternity leave in Eastern European countries in weeks

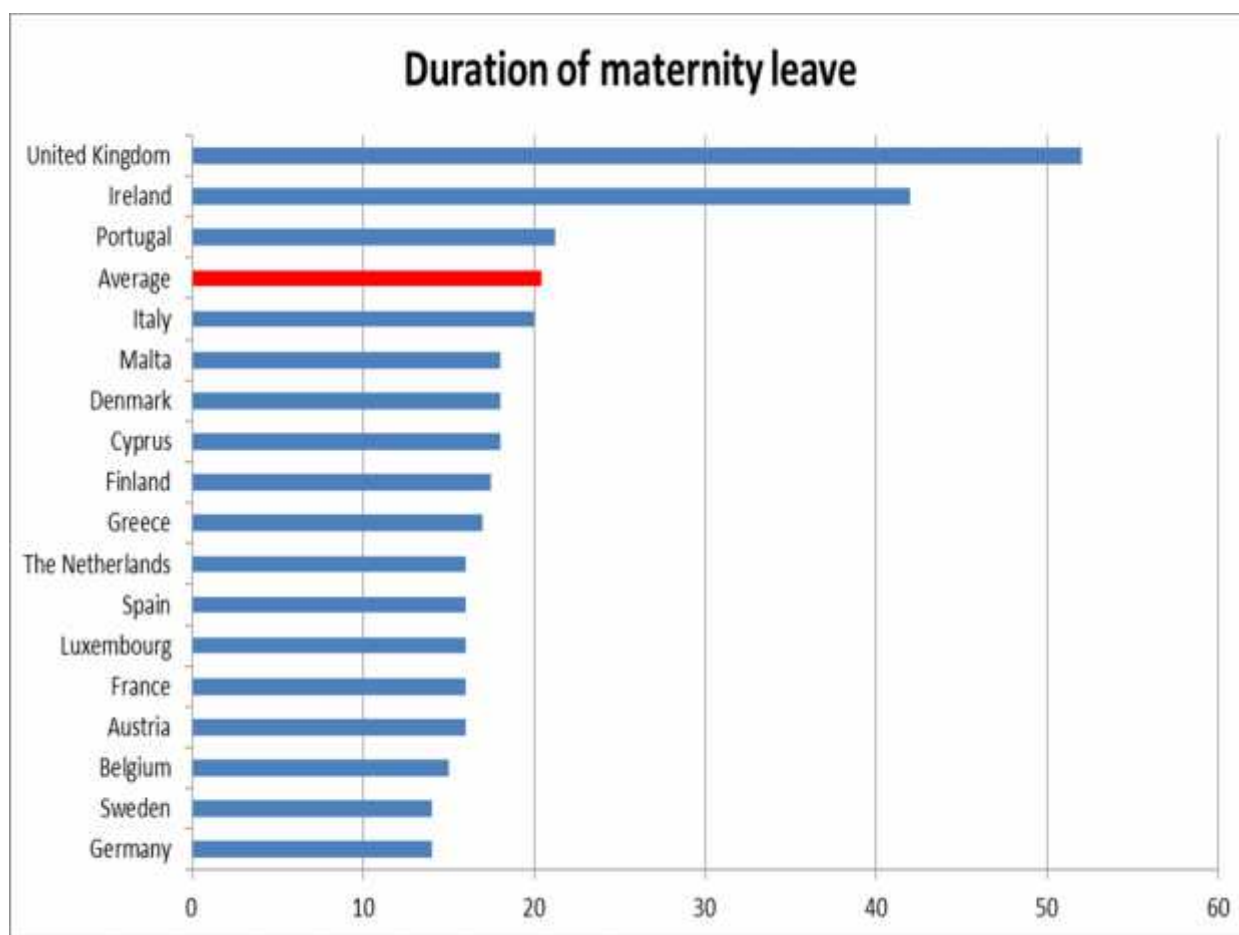


⁶² This includes: Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.

3.2. Maternity leave duration in non-Eastern European countries

In comparison, the non-Eastern European countries have an average maternity leave of 20.4 weeks. When excluding the United Kingdom, Sweden and Ireland, the average length of the maternity leave in non-Eastern European countries is 17.1 weeks⁶³.

Figure 3: Duration of maternity leave in non-Eastern European countries in weeks



⁶³ The reason for indicating two average lengths of maternity leave for non-Eastern European countries is that the United Kingdom, Sweden and Ireland will not be included in the tables on allowances as these are not comparable with the rest of the Member States.

4. COMPENSATION RATES OF PREVIOUS INCOMES DURING MATERNITY LEAVE

KEY FINDINGS

- The average compensation rate of previous incomes during maternity leave is 90%.
- 13 Member States replace previous incomes by 100% during maternity leave, while 12 Member States replace previous incomes by 90% or less. The remaining 3 Member States provide a flat rate allowance during maternity leave.
- Eastern European Countries have a lower average of compensation rates (86%) than non-Eastern European countries (93%).

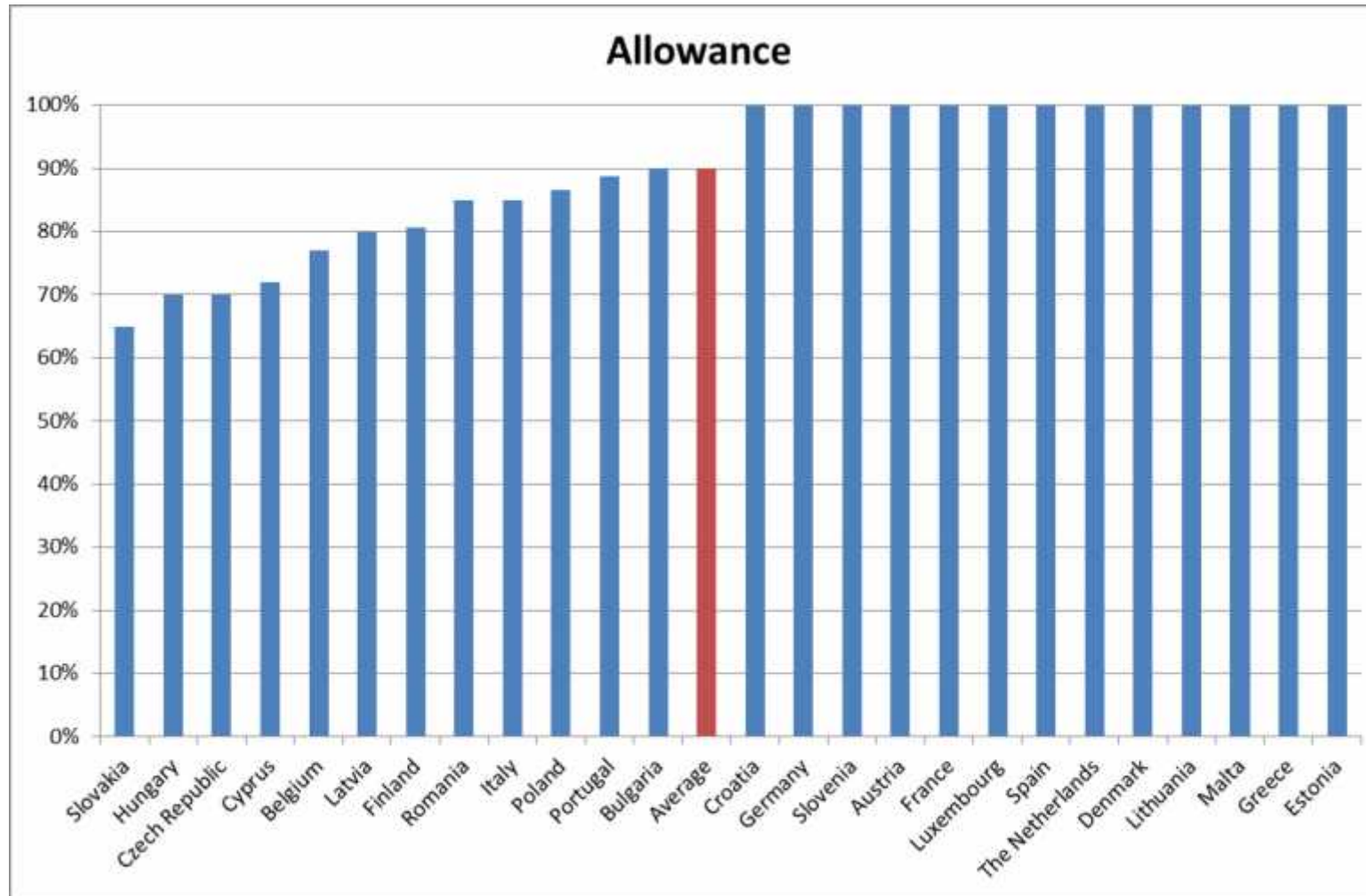
The average compensation rate of previous incomes used for the calculation of the allowance during maternity leave goes up to 90% , which puts a majority of Member States above the average percentage: 13 countries replace previous incomes by 100% , while the other 12 countries replace previous incomes by 90% or less⁶⁴.

The Member State with the lowest compensation rate of previous income during maternity leave is Slovakia with 65%, followed by Hungary and the Czech Republic with 70%.

The 13 Member States which cover 100% of previous incomes are: Austria, Croatia, Denmark, Estonia, France, Germany, Greece, Lithuania, Luxembourg, Malta, the Netherlands, Spain, and Slovenia.

⁶⁴ United Kingdom and Ireland are not included here because of their particular allowance system which makes it impossible to compare them with other Member States. Sweden is not included because it was not possible to distinguish the maternity leave from parental leave. This will probably be cleared up by the upcoming Eurofound study.

Figure 4: Compensation rates of previous incomes during maternity leave in all Member States that do not have a flat rate allowance

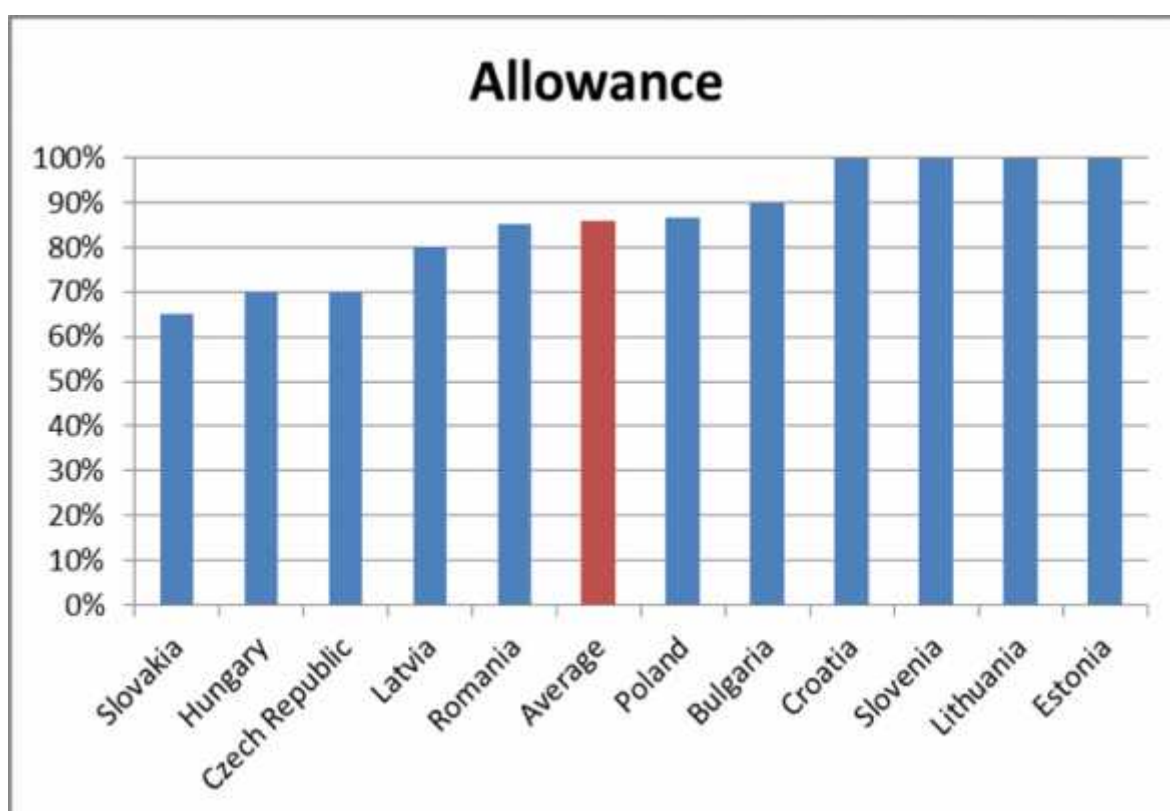


4.1. Percentages of previous incomes paid during maternity leave in Eastern European countries

Looking at the regional differences, there are more Eastern European countries amongst the countries that are below the average percentage of previous incomes during maternity leave. There are 6 Eastern European countries out of 12 in the group of countries with lower percentages of previous incomes than the average, while there are only 5 Eastern European countries out of 13 amongst those Member States where the allowance percentage of previous income is the same or higher than the overall average.

When it comes to allowances, Eastern European countries have a lower average percentage of previous incomes than the overall average. With the average amongst Eastern European countries being 86%, there are in fact more countries that are above that average, while 5 out of 11 countries are below both the overall average and the Eastern European average.⁶⁵

Figure 5: Percentages of previous incomes paid during maternity leave in Eastern European countries

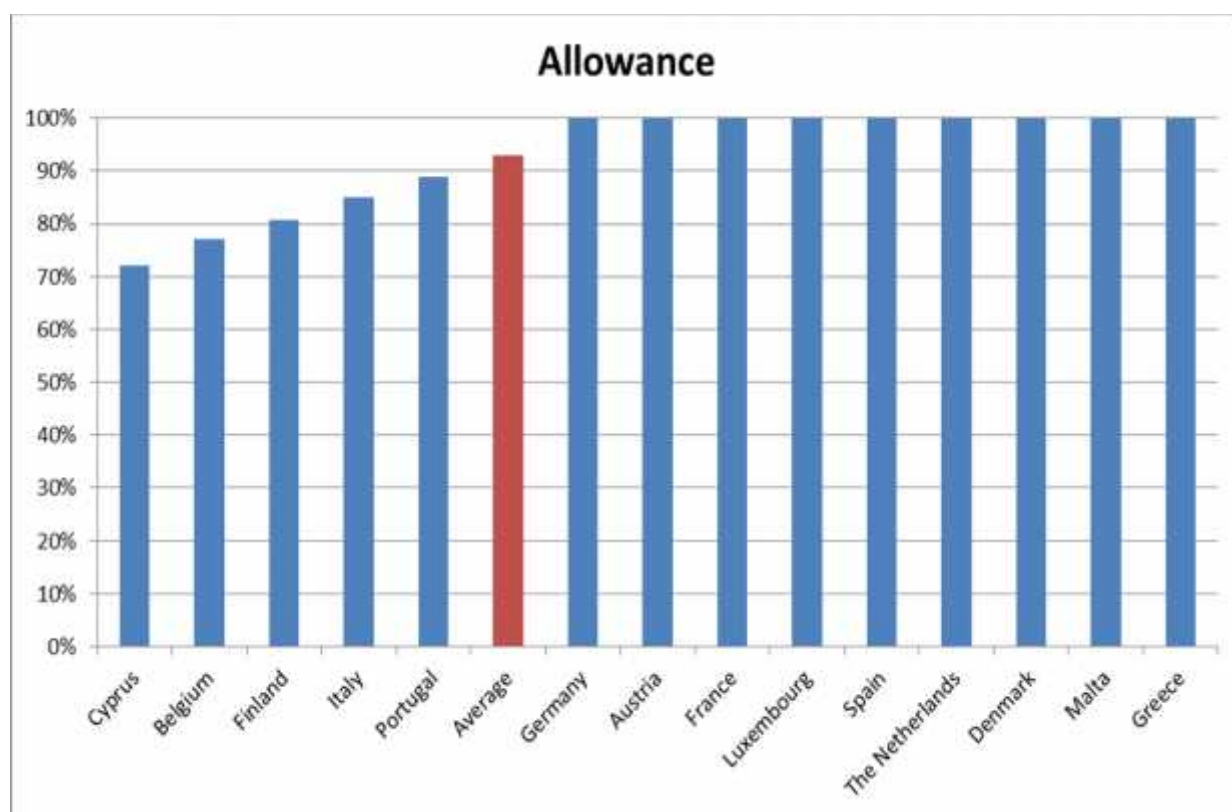


⁶⁵ These are: Czech Republic, Hungary, Latvia, Romania and Slovakia, .

4.2. Percentages of previous incomes paid during maternity leave in non-Eastern European countries

Non-Eastern European countries have a higher average than both the overall average and the Eastern European average when it comes to the percentage of previous incomes received as allowance during maternity leave. With an average of 93% of previous incomes, there are far more countries that are above this average. As much as 9 countries replace 100% of previous incomes, while the other 5 calculate allowances on the basis of percentages of previous incomes that go from 88.8% (Portugal) to as low as 72% (Cyprus). Even Cyprus, which has the lowest percentage of previous incomes amongst non-Eastern European countries, still has a higher percentage than the three Eastern European countries with the lowest percentage of previous incomes of all Member States.

Figure 6: Percentages of previous incomes paid during maternity leave in non-Eastern European countries



5. MATERNITY LEAVE: CORRELATION OF DURATION AND COMPENSATION RATES

KEY FINDINGS

- Among all Member States, there is some correlation between the duration of maternity leave and the percentages of previous incomes which are paid during maternity leave.
- While all Member States which have 14 weeks of maternity leave have an allowance of 100% of previous earnings, this comes down to only 1 out of 8 for the countries with 20 or more weeks of maternity leave.
- A similar conclusion can be drawn when only Eastern European or Non-Eastern European countries are analysed.

In this chapter, the focus will be on the correlation of allowances and the duration of maternity leave in order to see if the length of the maternity leave has any effect on the percentage of previous incomes received during maternity leave. It has to be noted that the Directive provides for all Member States not only a minimum duration but also a minimum allowance which should not be lower than the allowance received during sick leave.

The hypothesis is that the longer the duration of the maternity leave, the lower the compensation rate of previous incomes. Figure 7 shows that there seems to be some correlation between the level of the percentage and the duration of maternity leave in the Member States.

Both Germany and Croatia which have 14 weeks of maternity leave compensate previous incomes by 100 %.

Among the countries which have 15 - 17.5 weeks of maternity leave⁶⁶, 6 Member States out of 9 have a compensation rate of 100% of previous earnings.

Among the Member States with 18 - 19.5 weeks of maternity leave⁶⁷, 4 out of 6 Member States have a compensation rate of 100%.

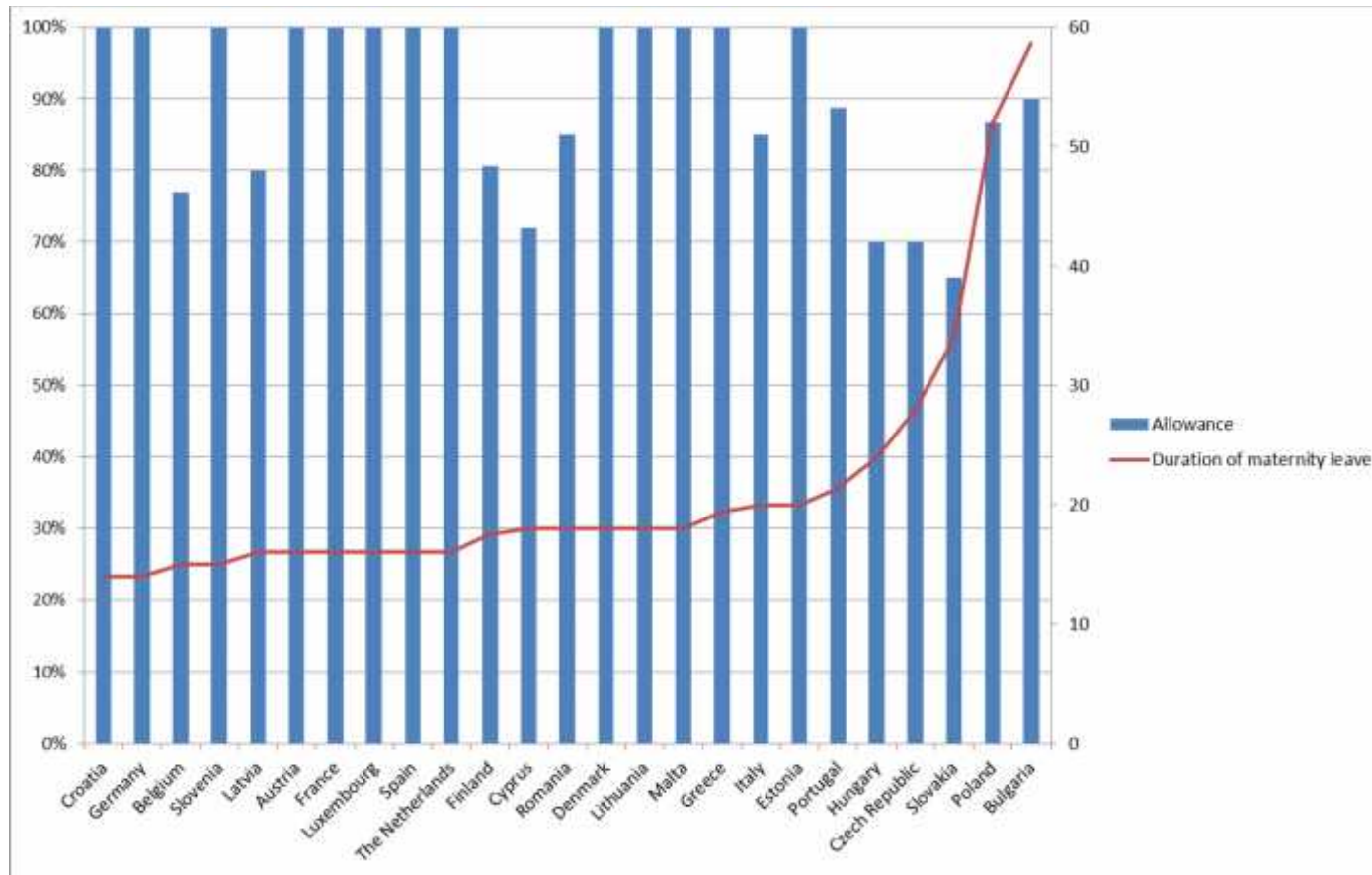
From the countries which have 20 weeks and above⁶⁸, only 1 out of 8 has a compensation rate of 100%.

⁶⁶ Belgium, Slovenia, Latvia, Austria, France, Luxembourg, Spain, The Netherlands, and Finland.

⁶⁷ Romania, Malta, Lithuania, Denmark, Cyprus, and Greece.

⁶⁸ Italy, Estonia, Portugal, Hungary, Czech Republic, Slovakia, Poland, and Bulgaria.

Figure 7: Duration of (in weeks) and compensation rates of previous incomes paid during maternity leave in Member States⁶⁹



⁶⁹ In this case United Kingdom, Ireland, and Sweden were not taken into consideration, as they do not have allowances on the basis of previous earning but provide flat rate benefits, which made it impossible to incorporate them in this analysis. Ireland has a flat rate benefit throughout the maternity leave, while in the United Kingdom and Sweden, the flat rate benefit is only part of the allowance during the maternity leave. Additionally, countries like Belgium, Finland, and Portugal offer a combination of different percentages of previous earnings for various periods during the maternity leave. Therefore, the percentages used in this graph were specifically calculated and represent an average allowance that those countries offer to women on maternity leave.

5.1. Duration of and compensation rates of previous incomes during maternity leave in Eastern European countries

Among Eastern European countries, there is also some correlation between the duration of and the compensation rate of previous incomes during maternity leave. In the countries which have the shortest maternity leave duration, the percentage is higher than in the countries that have longer maternity leave.

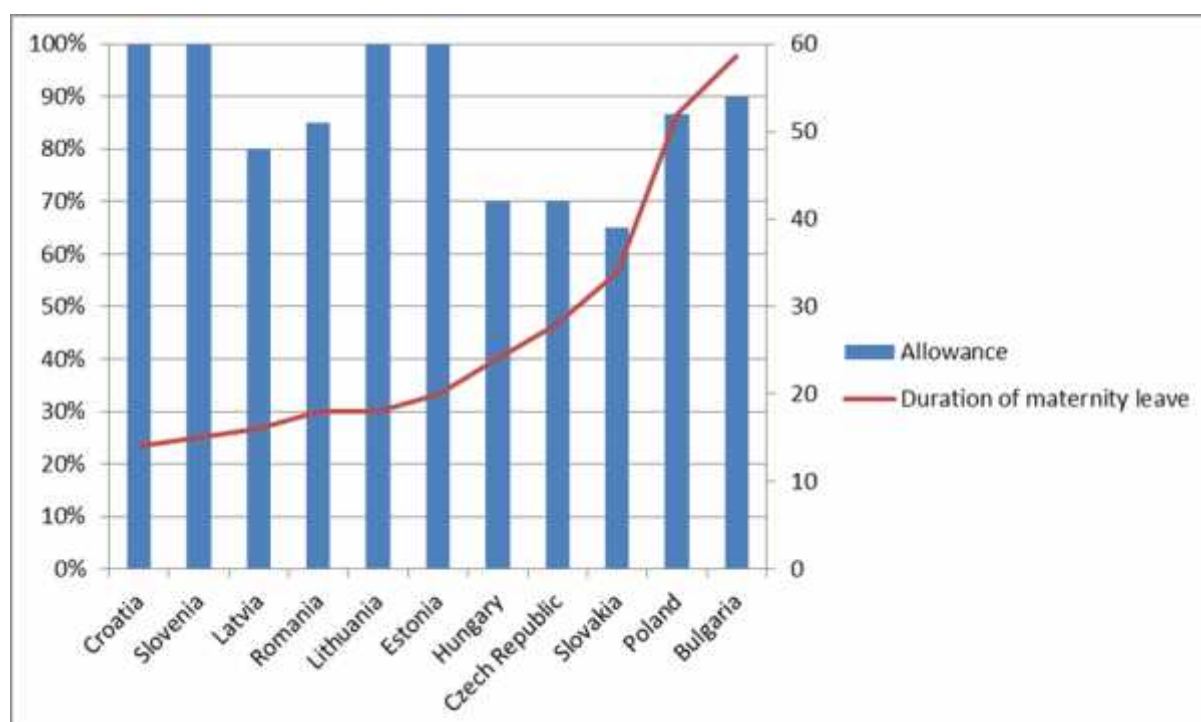
For example, the shortest maternity leave can be found in Croatia and Slovenia and both have compensation rates of 100% of previous incomes.

On the other hand, in the countries with the longest maternity leave (Slovakia - 34 weeks, Poland - 52 weeks, and Bulgaria - 58,6 weeks), the percentage is lower, as Slovakia offers 65%, Poland 87%, and Bulgaria 90% of previous incomes.

All countries that are above the average length of maternity leave for Eastern European countries (which is 27 weeks) have compensation rates that are less than 100% of previous incomes.

Exceptions to this hypothesis can be found in those countries that are under the Eastern European average, i.e. Latvia, Romania and Hungary which have compensation rates of 80% in Latvia, 85% in Romania, and 70% in Hungary although they can be considered to have short maternity leave. Bulgaria can also be considered an exception with a very long maternity leave and a comparatively high percentage (90% of previous incomes).

Figure 8: Duration of (in weeks) and compensation rates of previous incomes during maternity leave in Eastern European countries



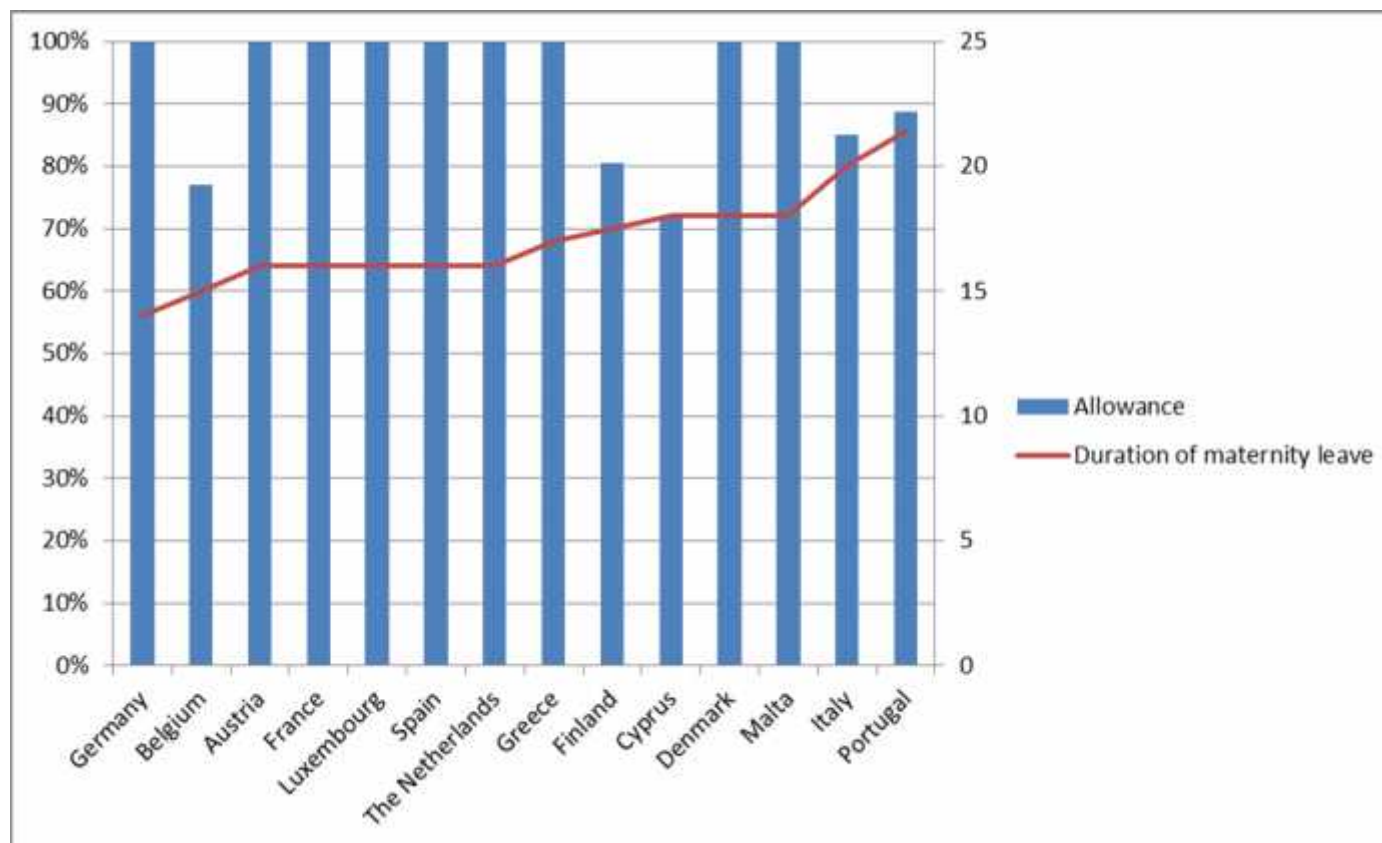
5.2. Duration of and compensation rates of previous incomes during maternity leave in non-Eastern European countries

Similar conclusions can be drawn for the non-Eastern European countries, i.e. the shorter the duration of the maternity leave, the higher the chances of previous incomes being better compensated.

As the average length of maternity leave for non-Eastern European countries (excluding United Kingdom, Ireland, and Sweden) is 17.1 weeks, almost all of the Member States that are below the average duration pay 100% of previous earnings to women on maternity leave, except for Belgium where the allowance is 77% of previous earnings.

Out of seven Member States that are above the average of non-Eastern European countries, only two provide an allowance of 100% of previous earnings (Denmark and Malta) while the others vary from Portugal with 88.8% of previous earnings to Cyprus which has the lowest allowance of all non-Eastern European countries (72%).

Figure 9: Duration of (in weeks) and compensation rate during maternity leave in non-Eastern European countries⁷⁰



⁷⁰ The United Kingdom, Ireland, and Sweden were not taken into consideration as they do not provide allowances on the basis of previous earnings but flat rate benefits which could not be incorporated into this analysis. Ireland has a flat rate benefit throughout the maternity leave, while in the United Kingdom and Sweden the flat rate benefit is only part of the remuneration during the maternity leave. Additionally, Belgium, Finland, and Portugal offer a combination of different percentages of previous earnings for various periods during the maternity leave. Therefore, an average of these percentages was calculated and included in the figure. For details, please see overview table in the annex.

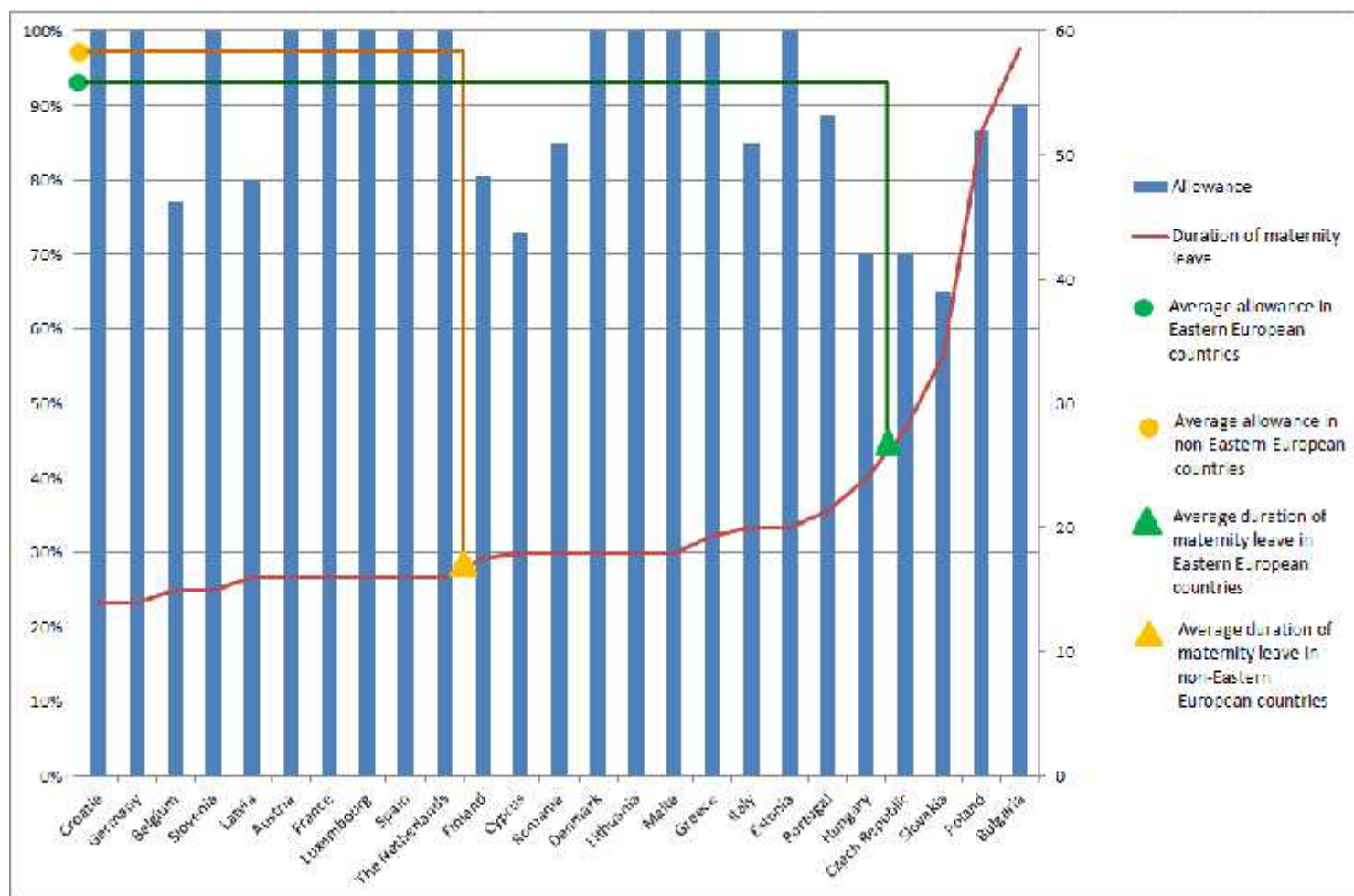
5.3. Comparison of the average duration of and the average compensation rate of previous incomes during maternity leave in all Member States

The hypothesis that there is a correlation between duration and compensation rates, is confirmed when the relations between the average duration and the average compensation rate in Eastern and non-Eastern European countries are compared.

In addition, when comparing the averages of Eastern European countries and non-Eastern European countries, it has to be noted that the average length of maternity leave for Eastern European countries is 27 weeks, and the average allowance is 86% of previous incomes.

Compared to that, the non-Eastern European countries have a lower average length of maternity leave of 17.1 weeks (excluding United Kingdom, Ireland, and Sweden) but their average allowance is higher than the one in the Eastern European countries and is 93% of previous incomes.

Figure 10: Correlation of the duration of maternity leave (in weeks) and compensation rates of previous incomes ⁷¹



⁷¹ For the same reasons listed above, United Kingdom, Ireland and Sweden have not been included in this figure.

6. ILO'S RECOMMENDATION FOR 18 WEEKS OF MATERNITY LEAVE

KEY FINDINGS

- ILO's Recommendation 191 states in connection with the Maternity Leave Convention of 2000 that the standard for the duration of maternity leave should be 18 weeks.
- 15 Member States comply already with the recommendation: Bulgaria, United Kingdom, Poland, Ireland, Slovakia, Czech Republic, Hungary, Portugal, Italy, Estonia, Rumania, Malta, Lithuania, Denmark and Cyprus.

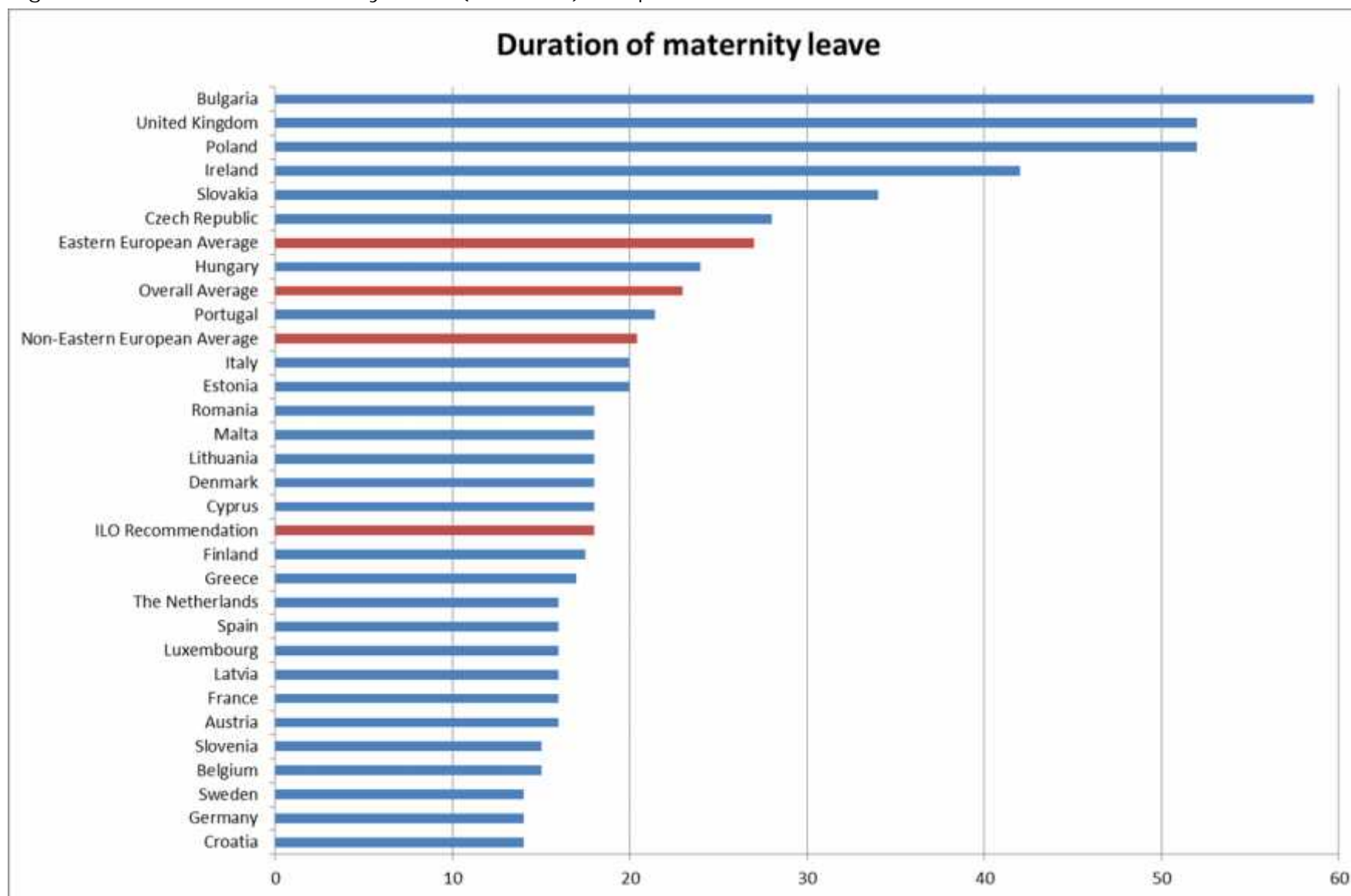
ILO's Recommendation 191 in connection with the Maternity Leave Convention (Convention 183) of 2000 says that the standard for the duration of maternity leave should be increased from 14 to 18 weeks.

This recommendation divides Member States into two groups: the ones that already guarantee at least 18 weeks of maternity leave, and the ones that are below that minimum. The majority of Member States complies already with the recommendation (15 of them), while the other 13 Member States are below the new minimum.

When considering again the two categories of Eastern European and non-Eastern European Member States, among those that are below the new recommended minimum for the duration of maternity leave are only 3 Eastern European but 10 non-Eastern European countries.

A different situation is to be found amongst the countries that already have the minimum of 18 weeks for maternity leave, as there are 8 Eastern European and 7 non-Eastern European countries. The majority of Eastern European countries already guarantee the minimum of 18 weeks, while amongst the non-Eastern European countries the majority guarantees women a shorter maternity leave.

Figure 11: Duration of maternity leave (in weeks) compared to ILO's recommendation of 18 weeks



7. THE FIRST READING OF THE EUROPEAN PARLIAMENT REGARDING THE DURATION OF AND COMPENSATION RATES OF PREVIOUS INCOMES DURING MATERNITY LEAVE

KEY FINDINGS

- 18 Member States have less than 20 weeks of maternity leave and would have to adapt their legislation to the EP proposal should it be adopted. Italy and Estonia both have 20 weeks of maternity leave, while Portugal, Hungary, Czech Republic, Slovakia, Ireland, Poland, United Kingdom, and Bulgaria have (much) longer maternity leave and would comply with such a requirement in the Directive.
- Nine non-Eastern European and four Eastern European Member States have a maternity leave allowance of 100% of previous incomes.

7.1. The duration of maternity leave in the Member States compared to the 20 weeks of maternity leave proposed in EP's First Reading

European Parliament's First Reading of the proposal amending Directive 92/85/EEC states that the minimum duration of maternity leave in every Member State should be 20 weeks. Unlike ILO's recommendation, where the majority of the countries are above the recommended duration of 18 weeks, the majority of countries are in this case below the EP's proposal of 20 weeks. Only 10 Member States⁷² have maternity leave that last for at least 20 weeks, while as much as 18 Member States have maternity leave which lasts shorter than the EP proposal.

The regional differences are now even more obvious than in comparison with ILO's recommendation of 18 weeks. There are only 4 non-Eastern European countries with the duration of maternity leave at 20 weeks or more (Italy, Ireland, United Kingdom and Portugal), while there are 6 Eastern European countries that have the same or a longer duration than the EP proposal for the duration of maternity leave.

In comparison to ILO's recommendation, there are less countries that are complying with the proposed minimum (six instead of eight in the case of Eastern European countries, and four instead of seven in the case of non-Eastern European countries). Furthermore, more Member States are now below the proposed minimum (5 instead of 3 for Eastern European countries, and 13 instead of 10 for non-Eastern European countries).

Figures 12 and 13 show the difference between respectively Eastern European and non-Eastern European countries regarding maternity leave duration in the Member States

⁷² Estonia, Italy, Portugal, Hungary, Czech Republic, Slovakia, Ireland, Poland, United Kingdom, and Bulgaria

compared to the EP's proposal of 20 weeks. Although both regions have one Member State that has exactly the same duration of maternity leave as the proposal (Italy and Estonia), there are more Eastern European countries that have the same or longer maternity leave than the non-Eastern European countries (6 Eastern compared to 4 non-Eastern countries).

Figure 12: Overview of the duration of maternity leave in weeks of all Member States compared to European Parliament's First Reading and the average durations of Eastern and non-Eastern European countries

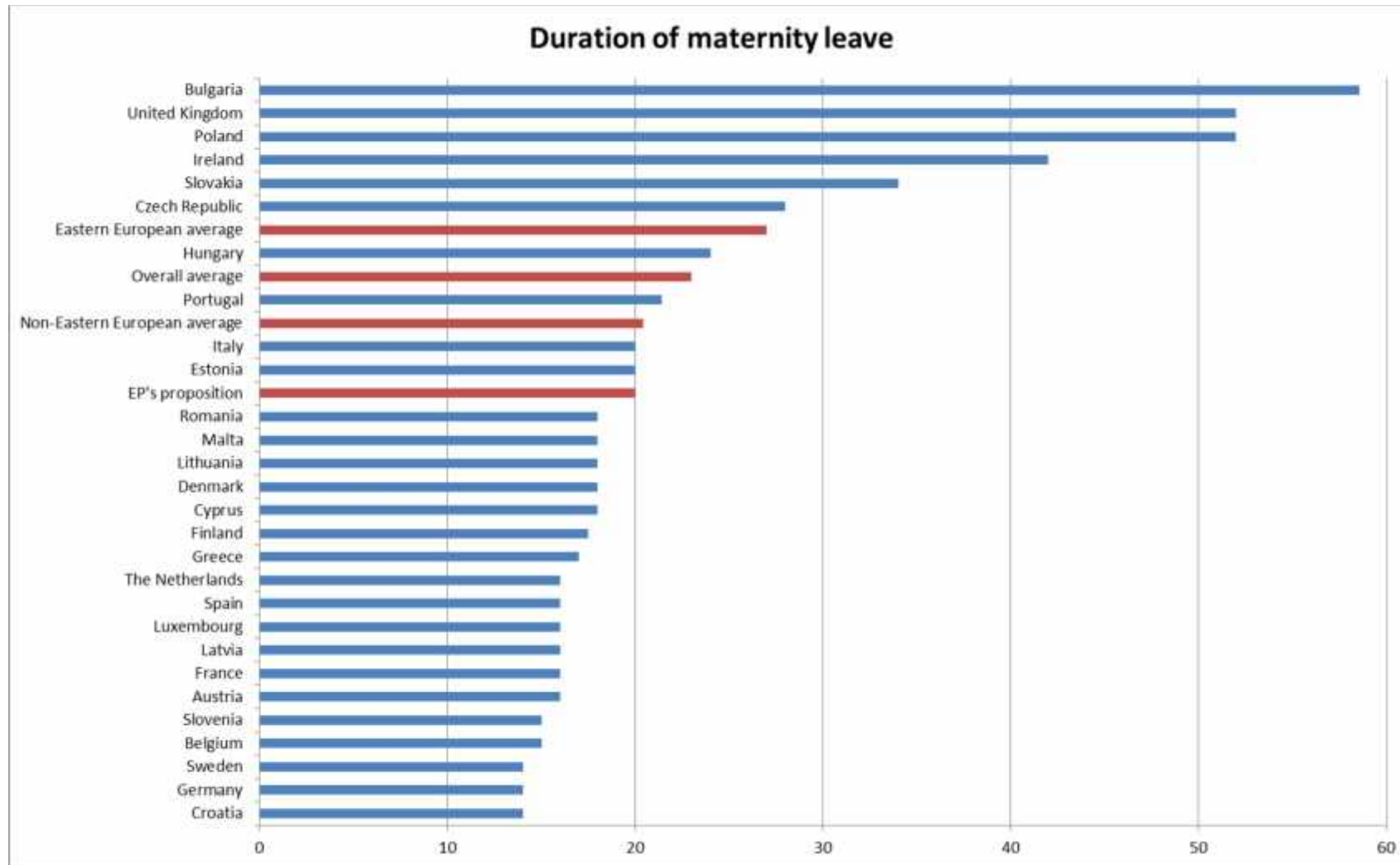


Figure 13: Comparison of maternity leave duration in weeks in the Member States with EP's First Reading proposal of 20 weeks

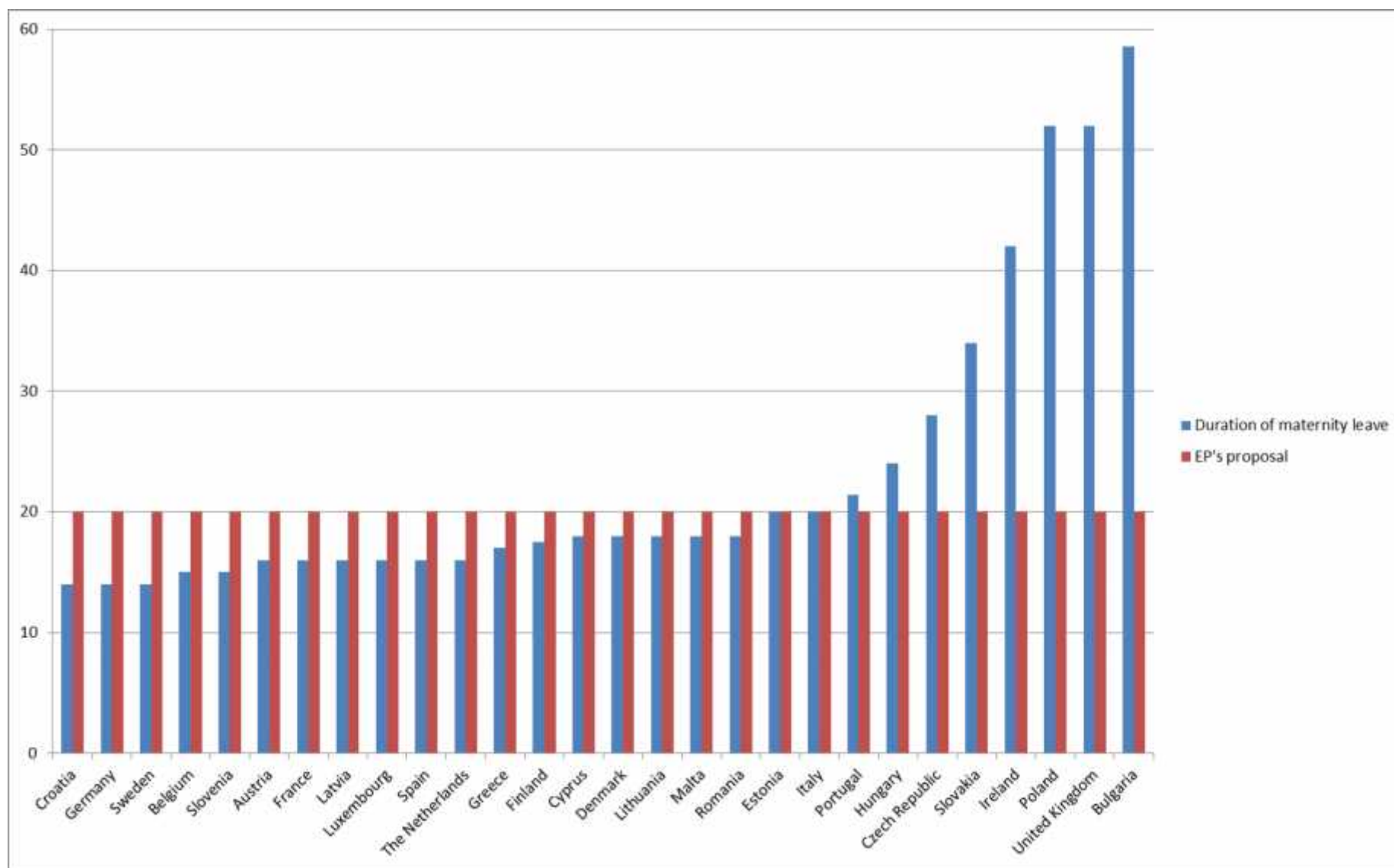


Figure 14: Comparison of maternity leave duration in weeks in Eastern European Member States and EP's 1st reading

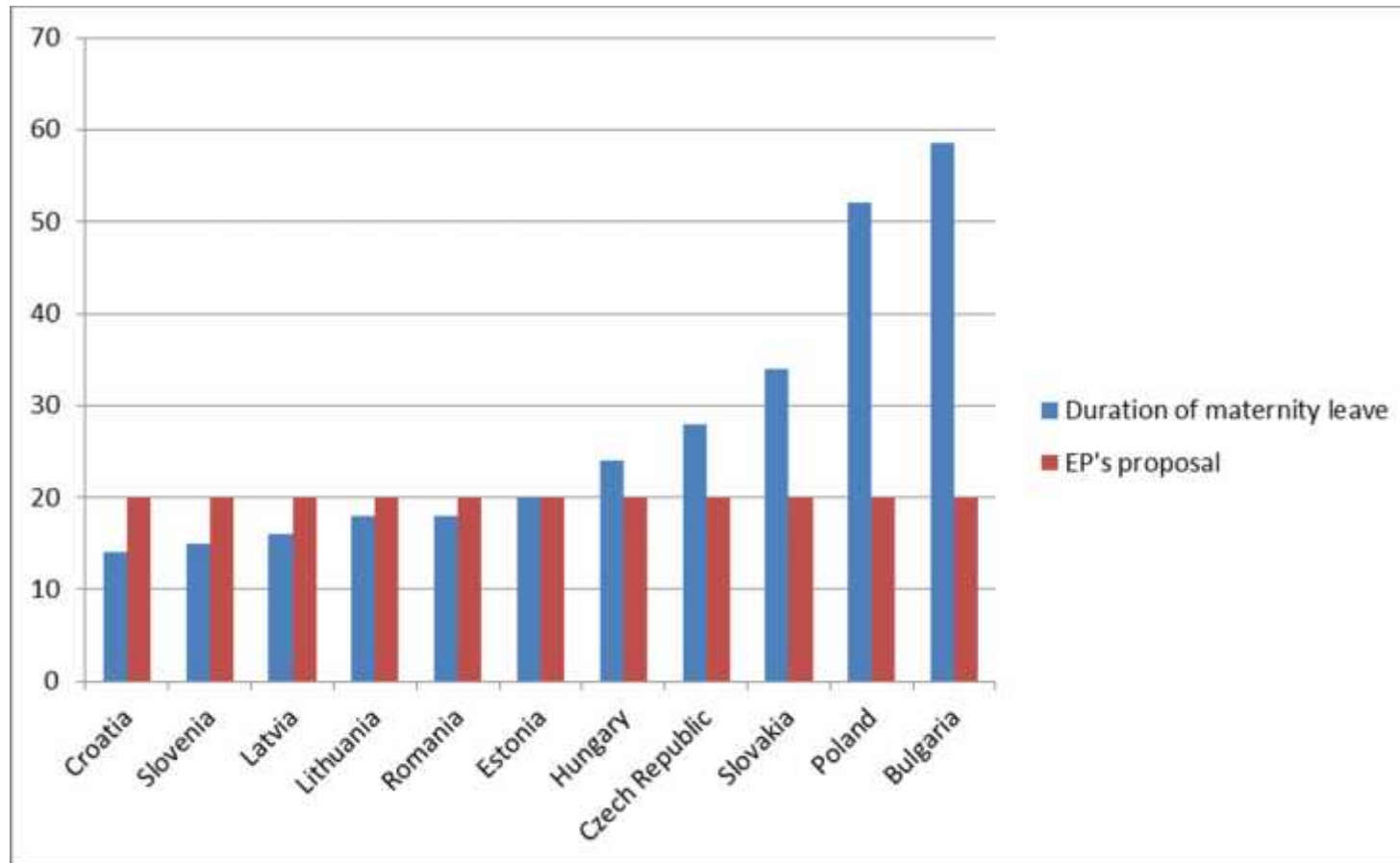
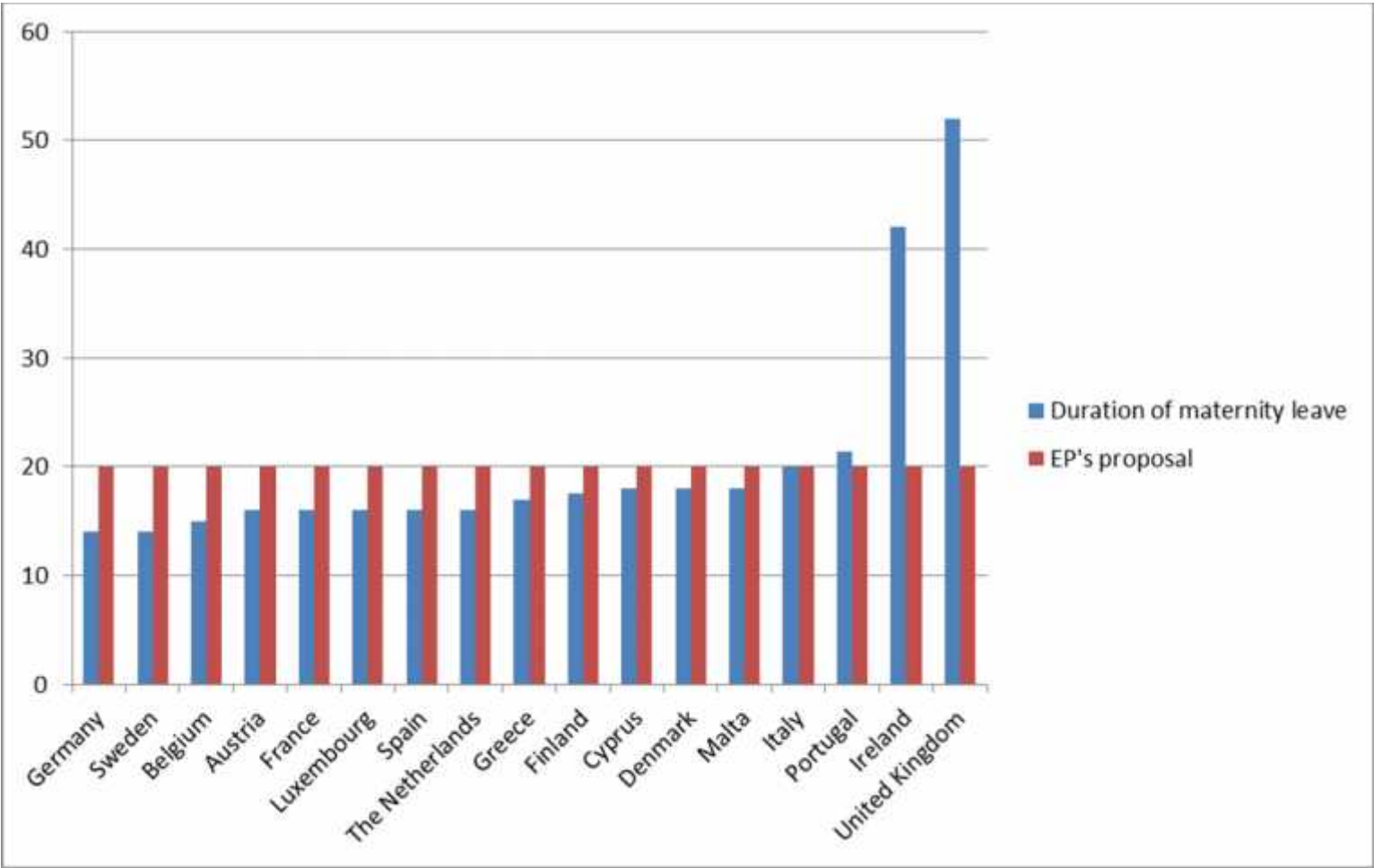


Figure 15: Comparison of maternity leave duration in weeks in non-Eastern European Member States with EP's Frist Reading Proposal of 20 weeks



7.2. Compensation rates of previous incomes during maternity leave compared with the EP's First Reading proposal of 100%

The EP showed agreement with the proposal of the Commission that the compensation rate during maternity leave should be 100% of previous incomes⁷³. 50% of all Member States (14 of them) already have a compensation rate of 100% of previous incomes, while 11 of them have lower rates than the proposed percentage⁷⁴.

When it comes to the difference in compensation rates during maternity leave, non-Eastern and Eastern European countries quite differ compared to the proposal of 100% of previous incomes. Amongst non-Eastern European countries, there are only 5 countries that are below the EP's 1st reading, while there are 9 that have compensation rates of 100% of previous incomes. On the other hand, there are as much as 5 Eastern European countries that do not have compensation rates at 100% of previous incomes, and only 5 countries that do.

⁷³ No amendments were tabled to the Commission proposal of an allowance of 100% of previous earnings.

⁷⁴ As set out above, the United Kingdom, Sweden and Ireland cannot be included in the comparison of allowances due to their special allowance system.

Figure 14: Comparison of the compensation rate of previous incomes of all Member States and EP's First Reading proposal of 100% of previous incomes

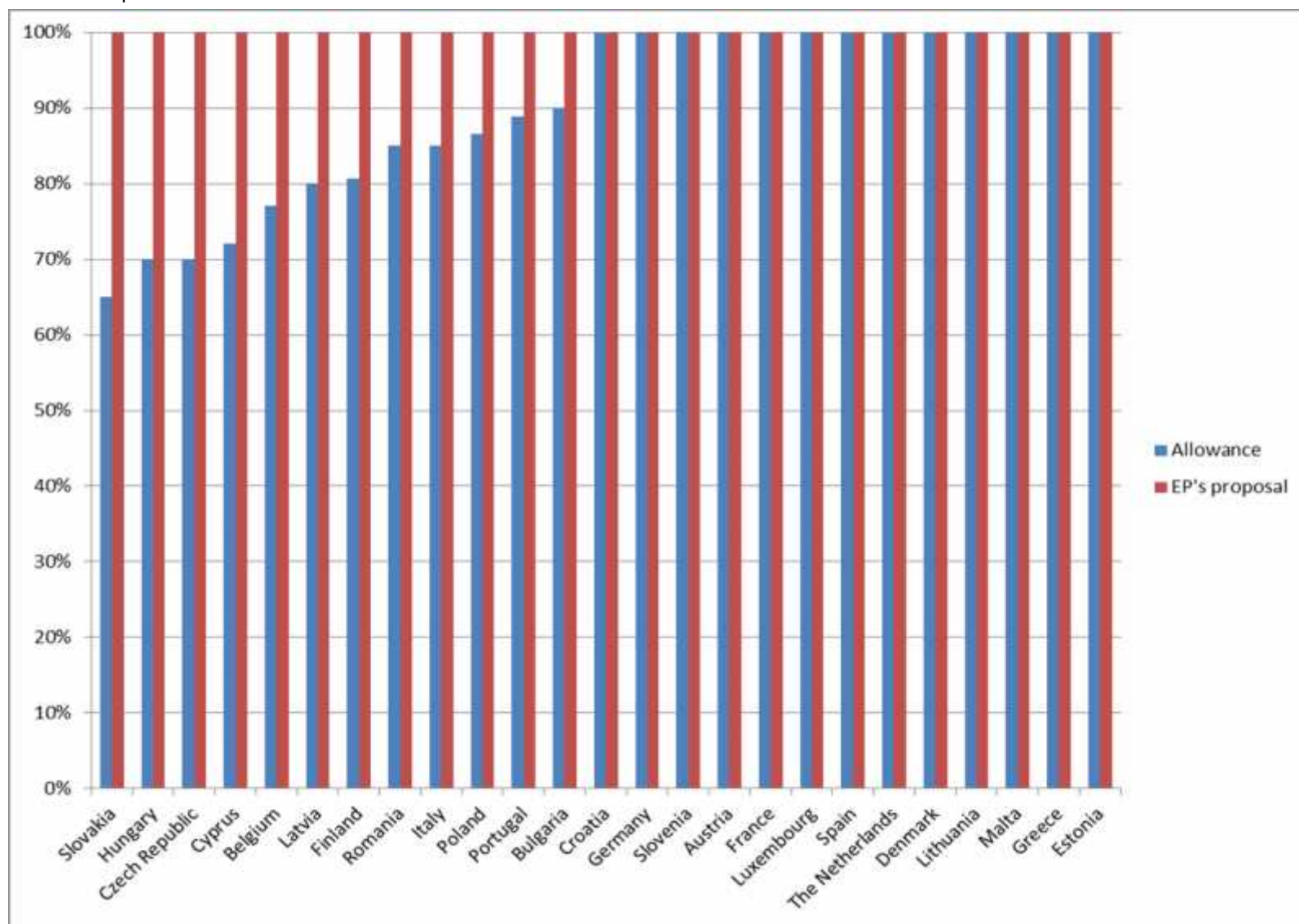


Figure 15: Comparison of the compensation rate of previous incomes in the non-Eastern European countries and EP's First Reading proposal of 100%

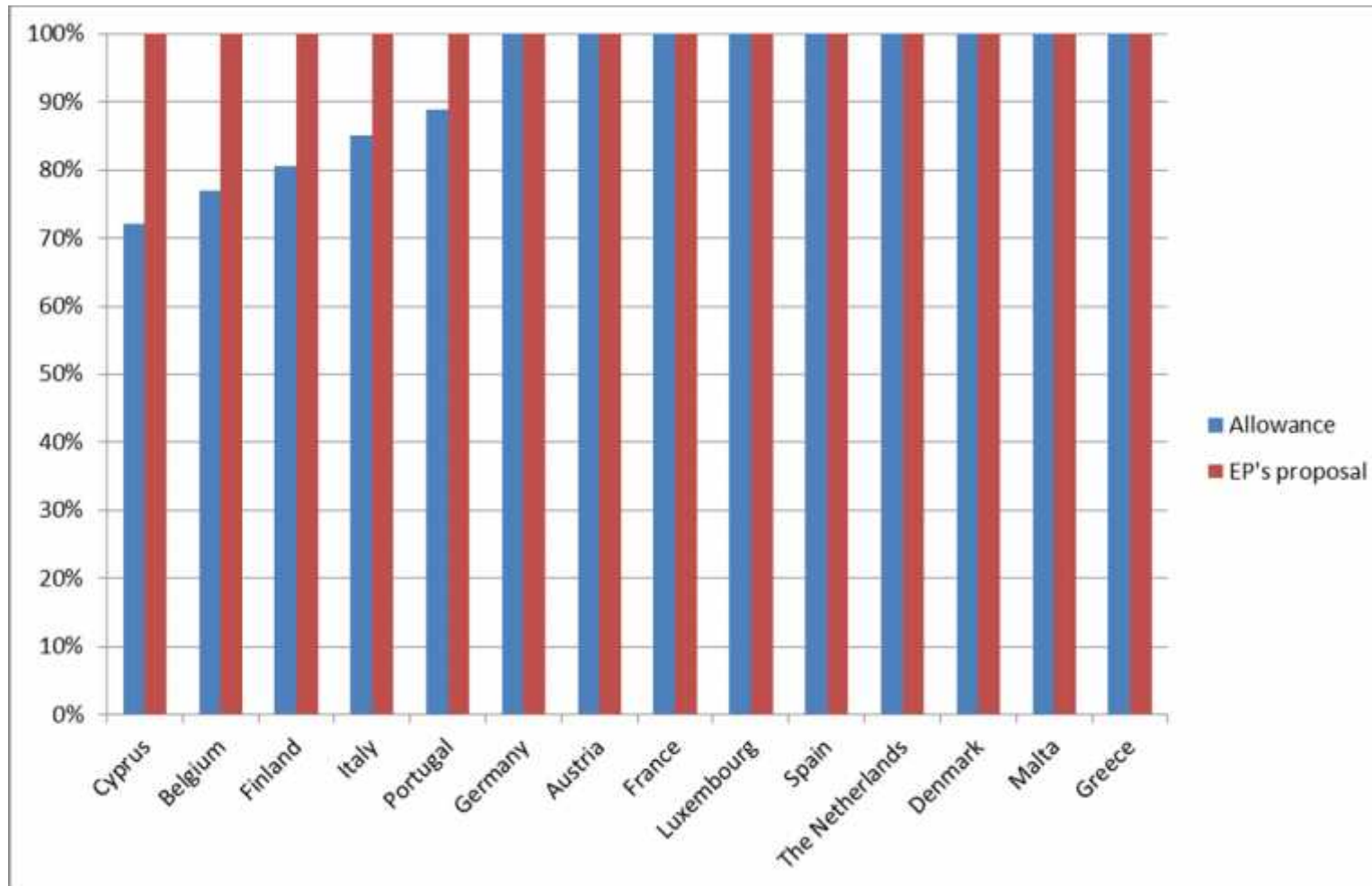
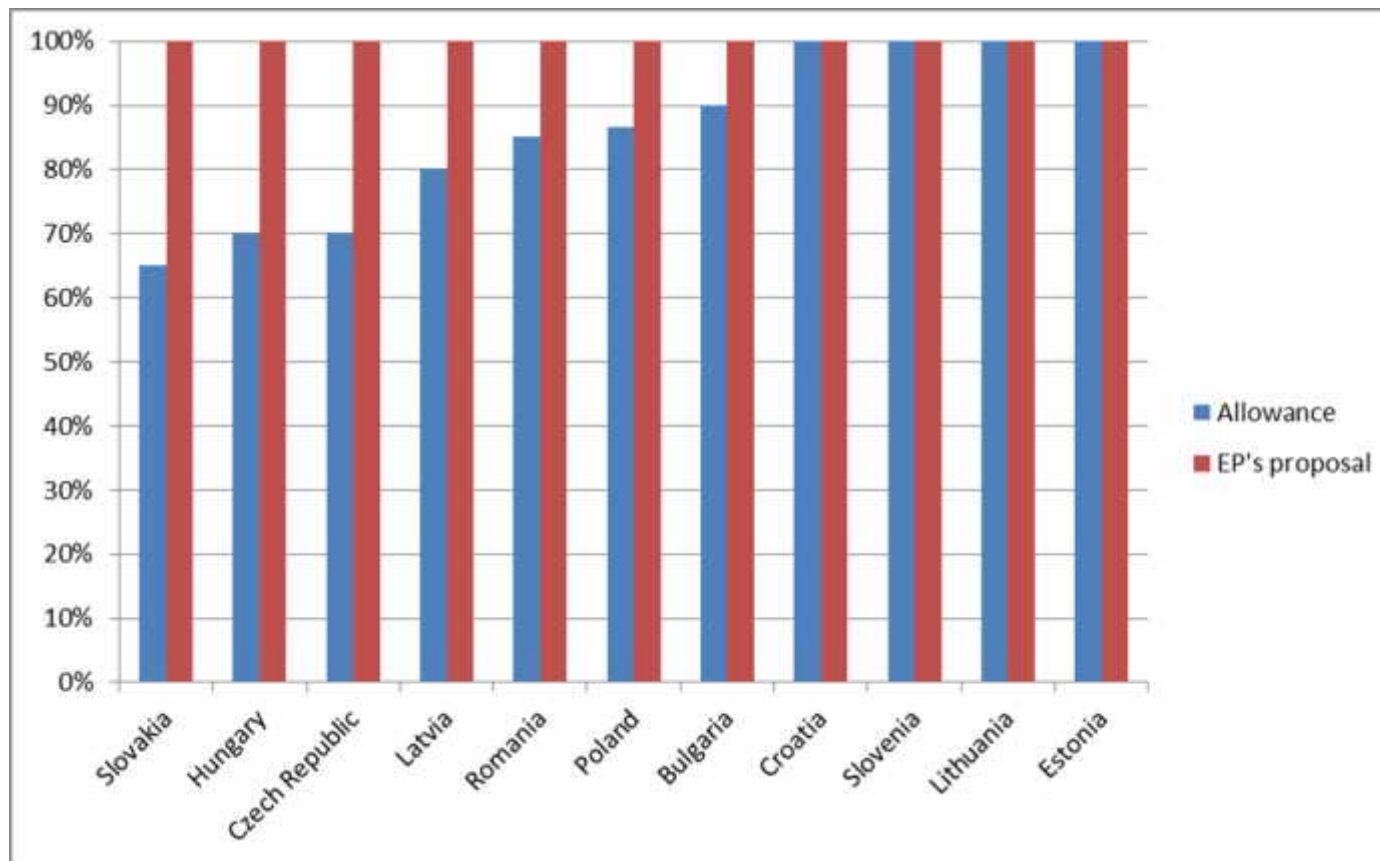


Figure 16: Comparison of maternity leave allowances in Eastern European countries and EP's 1st reading proposal of 100% of previous earnings



8. PATERNITY LEAVE

KEY FINDINGS

- 23 Member States offer some sort of paternity leave apart from Cyprus, Czech Republic, Germany, Ireland and Slovakia.
- The duration of paternity leave varies considerably amongst Member States. At one side of the spectrum, fathers in Italy are entitled to only one working day while on the other side Slovenia offers fathers 64 working days. The average number of working days for paternity leave is 12,5.
- When the duration of paternity leave is 7 working days or shorter, the allowance is 100% of previous incomes.
- 17 out of 23 Member States offering paternity leave have allowances of 100% of previous incomes. The average allowance is 92% of previous incomes.

Paternity leave is available in 23 Member States. The countries that do not offer paternity leave are Cyprus, the Czech Republic, Germany, Ireland and Slovakia⁷⁵. In Austria, there is no statutory paternity leave, but workers in the public sector are entitled to 20 working days of unpaid leave.

8.1. Duration of paternity leave

The duration of paternity leave varies considerably among Member States. At one side of the spectrum, fathers in Italy are entitled to only one working day while at the other side Slovenia offers fathers 64 working days.

The average number of working days for paternity leave is 12,5 which is higher than the proposal of two weeks (or 10 working days) for paternity leave included in the First Reading of the EP. There are more countries that comply with the requirement of 10 working days than those that do not comply. 13 countries have paternity leave of 10 or more working days, while 10 countries have paternity leave that last between one and eight days. The countries that comply with the requirement are presented in a light red colour.

Only five countries have a paternity leave (Slovenia, Finland, Portugal, Lithuania, and Austria) that is longer than the average, while the other 18 countries are below the average.

The following group of countries has a paternity leave of 9 working days or less: Italy, Greece, Luxembourg, Malta, the Netherlands, Hungary, Romania, Croatia, Latvia, Sweden.

⁷⁵ These countries will not be included in this chapter's graphs.

The following countries have a paternity leave between 10 and 20 working days:

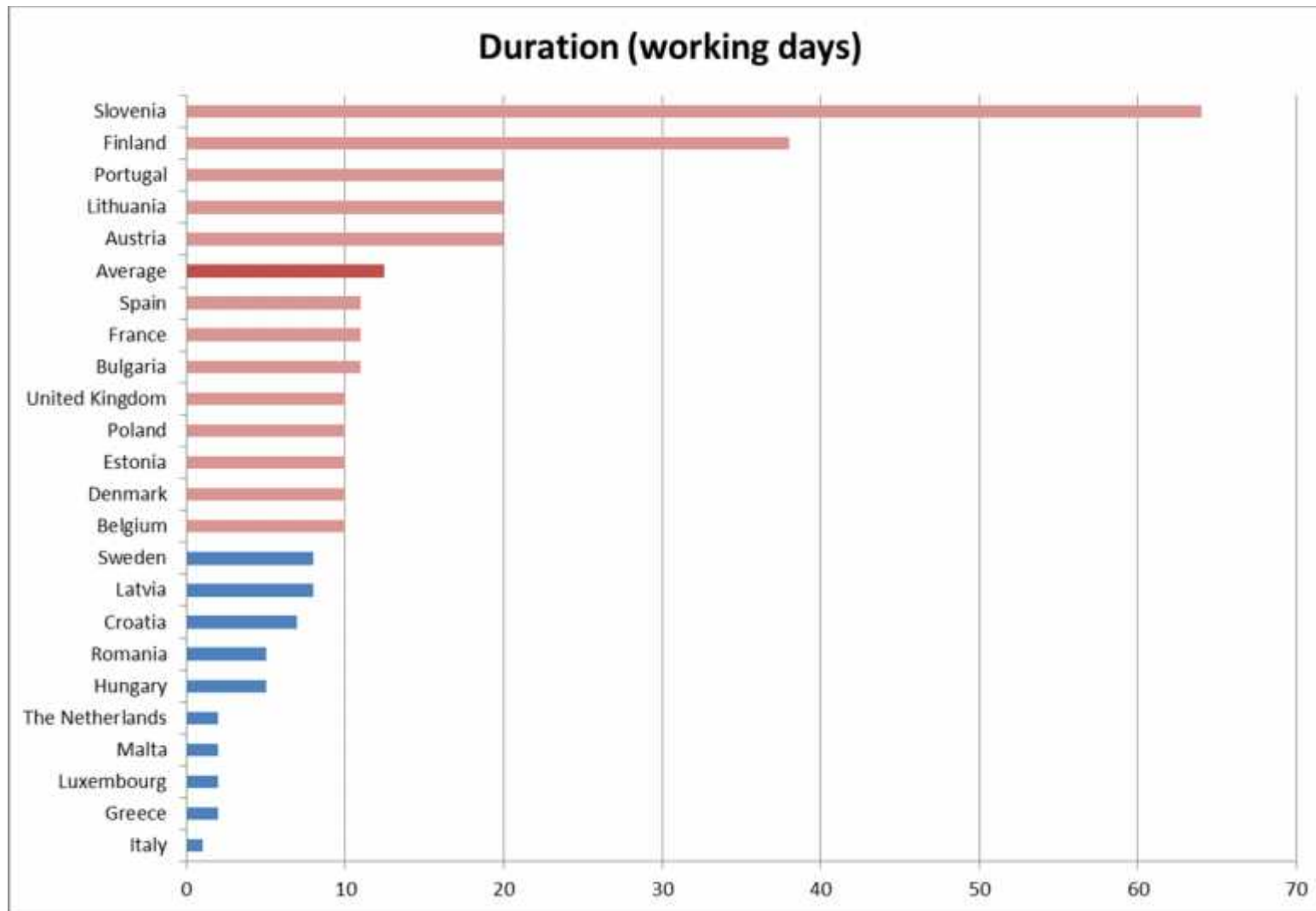
Belgium, Denmark, Estonia, Poland, the United Kingdom, Bulgaria, France, Spain, Austria, Lithuania, and Portugal.

The following countries have a paternity leave that is longer than 20 working days:

Finland and Slovenia.

The countries that comply with the requirement are presented in a light red colour.

Figure 17: Duration of paternity leave of all Member States

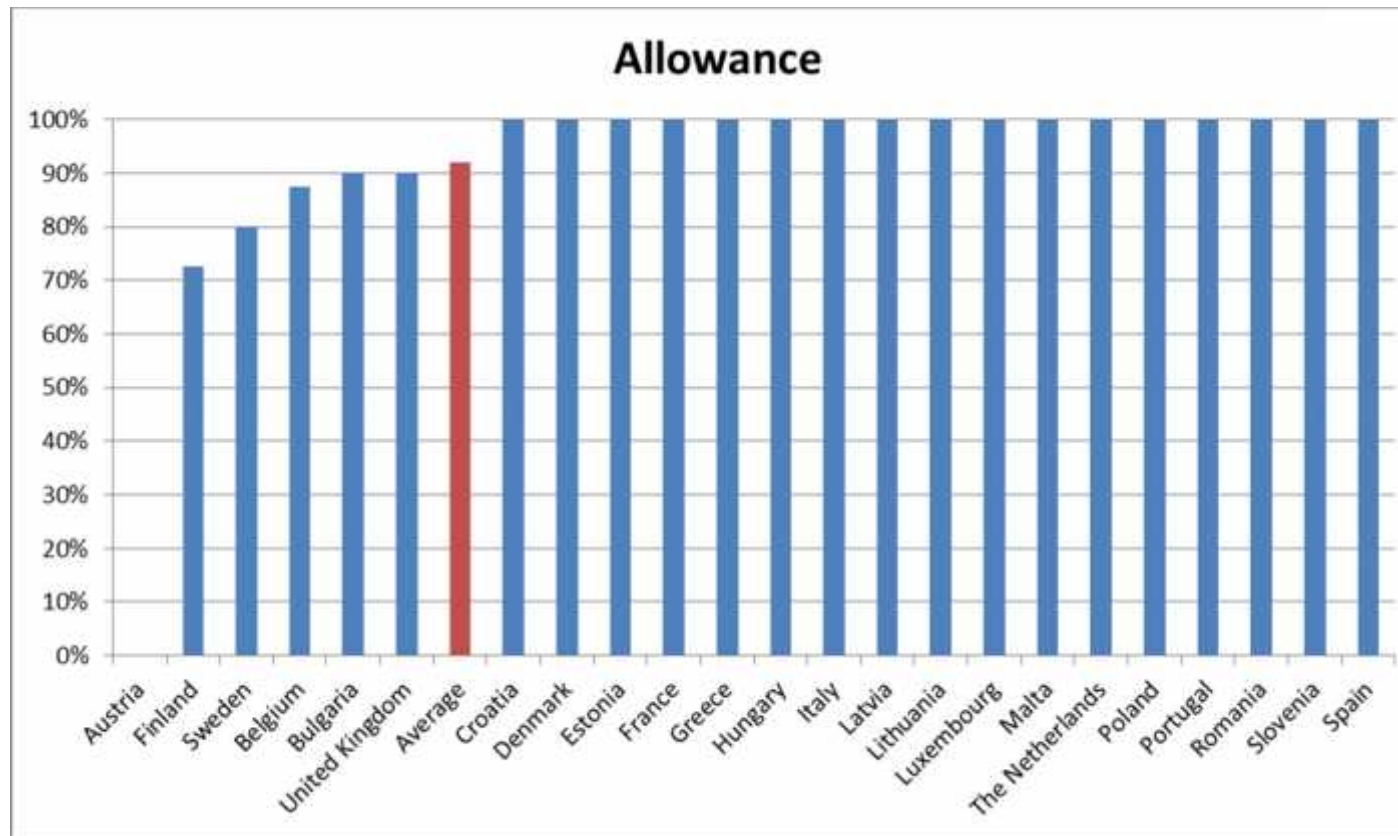


8.2. Compensation rates of previous incomes during paternity leave

17 out of 23 Member States offering paternity leave have compensation rates of 100% of previous incomes. The average compensation rate is 92% of previous incomes, which is in fact 2 percent more than the average compensation rate for maternity leave.

The only country that offers no allowance is Austria, while five other countries have compensation rates below 100%. It is interesting to note that almost all countries that do not provide 100% of previous incomes during paternity leave are non-Easter European countries.

Figure 18: Compensation rates of previous incomes during paternity leave in all Member States



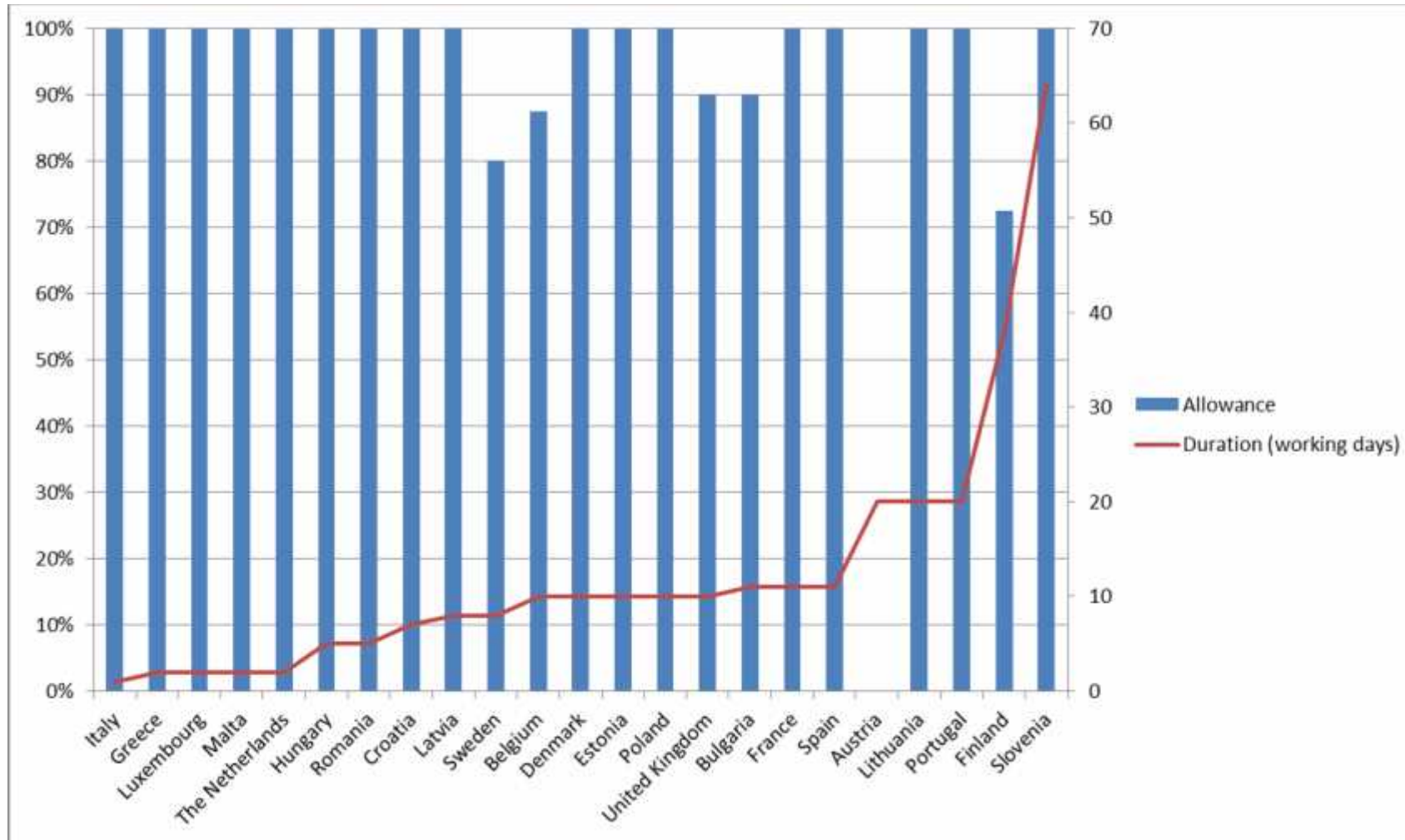
8.3. Paternity Leave: Correlation of duration and compensation rates

Out of the 10 countries that have a paternity leave of less than 10 working days, 9 countries, have compensation rates of 100% of previous incomes. These countries are: Italy, Greece, Luxembourg, Malta, The Netherlands, Hungary, Romania, Croatia, and Latvia. Only Sweden provides for 80%.

Among the countries with a duration of paternity leave between 10 and 64 working days, there are five countries with compensation rates of less than 100% of previous incomes. These countries are mostly non-Eastern European countries: Belgium, United Kingdom, Bulgaria, Austria, and Finland. On the other hand, there are eight countries with compensation rates of 100% of previous incomes: Denmark, Estonia, Poland, France, Spain, Lithuania, Portugal, and Slovenia.

It can be concluded that there is a little correlation between the duration of the leave and the compensation rates of previous incomes. In Member States with very short paternity leave the compensation rate is almost always 100% of previous incomes (except for Sweden). When the paternity leave is 10 working days or longer, the number of Member States with compensations less than 100% of previous incomes are less than 1/3 of these countries, so still not a dominant group.

Figure 19: Correlation of the duration in working days of and the compensation rates of previous incomes during paternity leave in all Member States



9. PARENTAL LEAVE

KEY FINDINGS

- The shortest parental leave can be found in Cyprus with 18 weeks and the longest in Greece in the public sector (208,7 weeks or two years per parent).
- The average number of weeks for parental leave is 86.9.
- The specificity of parental leave is that in a number of countries the duration of the parental leave depends on the uptake of the other parent.
- The average compensation rate of previous incomes during parental leave is at 50% if also those Member States are considered that offer no allowance to parents on parental leave. These Member States are Cyprus, Greece, Ireland, Malta, the Netherlands, Spain, and the United Kingdom.
- Six Member States offer allowances for parental leave in the form of a flat rate: Austria, Belgium, France, Luxembourg, Poland and Slovakia. The flat rates differ widely between 139 Euros in Poland and 1778 Euros in Luxembourg.

9.1. Duration of parental leave

The difference in the duration of parental leave between Member States is much more pronounced than in the cases of maternity and paternity leave. The shortest parental leave can be found in Cyprus with 18 weeks⁷⁶ followed by Bulgaria with 26 weeks and Portugal with 26.1 weeks.

The longest duration is found in Greece⁷⁷ in the public sector (208,7 weeks or two years per parent). The second longest period of parental leave is 156 weeks (or three years). In cases of Austria⁷⁸ and Latvia it is explicitly three years regardless of the maternity leave, while in countries such as Slovakia, Czech Republic, Hungary, Estonia, Lithuania, France, Spain, Germany, and Poland the parental leave can be taken from the end of maternity leave until the child is three years old.

Because of the high number of countries that have such a long duration of parental leave, the average number of weeks is 86.9. Except for the countries with the longest duration of parental leave, there is only Romania that is above the average.

⁷⁶ The information was provided by Eurofound, while the ILO study "Maternity and Paternity at Work" states that the duration is 13 weeks.

⁷⁷ Greece is a specific case when it comes to the duration of parental leave as there are two widely spread options. One applies to the private sector (abbreviation in the figure Greece - Pr) and it lasts 17 weeks. The other applies to the public sector (abbreviation in the graph is Greece - Pu) and it lasts 2 years per parent. Therefore, both options were included in the calculations and the figure. The allowance for both options is the same.

⁷⁸ As with the previous graph, option 1, or in other words the most used option, has been taken into consideration when it comes to Austria.

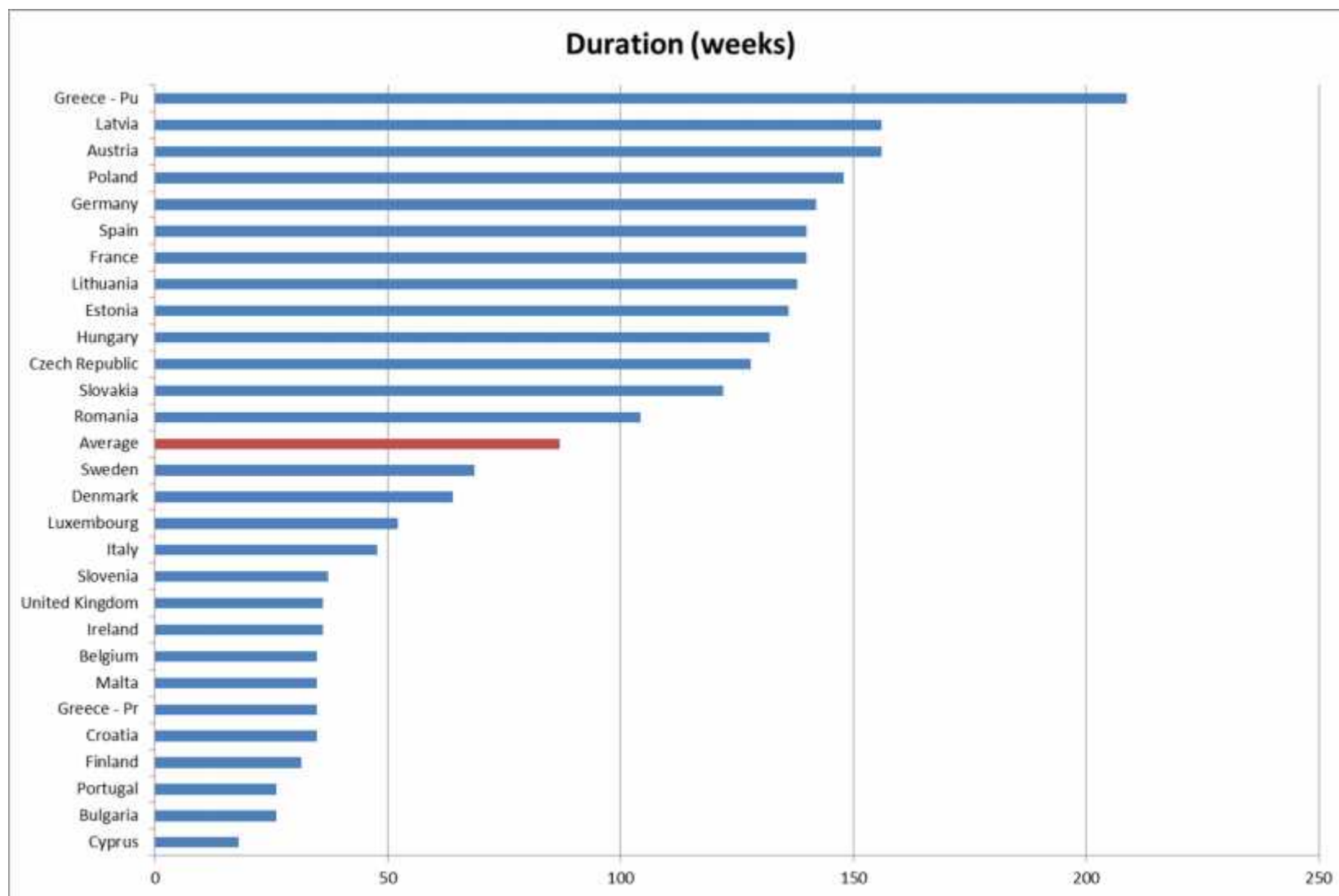
Countries that have parental leave lasting between 30 and 40 weeks are Portugal, Finland, Croatia, Greece (in the private sector), Malta, Belgium, Ireland, United Kingdom, and Slovenia.

Countries that have parental leave between 40 and 60 weeks are Italy and Luxembourg. Countries with parental leave between 60 and 88.3 weeks (the average) are Denmark and Sweden.

The specificity of parental leave is that in a number of countries the duration of the parental leave depends on the uptake of the other parent. In Austria, Belgium, Croatia, Denmark, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, and the United Kingdom the number of weeks for parental leave increases if the other parent (in most cases the father) takes up parental leave. For this figure, the duration of the parental leave in these countries was considered as if both parents took up a share of the parental leave.⁷⁹

⁷⁹ The Netherlands is excluded from this figure as the way the duration is calculated is highly individualistic: twenty-six times the number of working hours per week per parent per child.

Figure 20: Duration of parental leave in weeks



9.2. Compensation of income during parental leave

As for other forms of leave, a majority of Member States compensate incomes during parental leave calculated on the basis of a percentage of the previous income of the parent. However, 6 Member States pay a flat rate during parental leave.

9.2.1. Compensation in form of percentages of previous incomes

The average parental leave allowance is only at 50% of previous incomes which is due to the large amount of countries that offer no allowance to parents on parental leave⁸⁰. When excluding the countries that have unpaid parental leave⁸¹, the average compensation rate of previous incomes during parental leave amounts to 73%.

The 7 countries that do not offer allowances are Cyprus, Greece, Ireland, Malta, the Netherlands, Spain, and United Kingdom, all of which are non-Eastern European countries.

Among countries that offer allowances below 50% of previous incomes, two out of three are non-Eastern European countries (Portugal and Italy). On the other hand, two out of three countries that have allowances at a rate of 100% of previous incomes are Eastern European countries (Estonia⁸² and Slovenia).^{83 84 85}

⁸⁰ Austria, Belgium, France, Luxembourg, Poland, and Slovakia are not included in this table as they provide flat rates; please see sub-chapter 7.1.1..

⁸¹ These are Austria, Cyprus, Greece, Ireland, Malta, The Netherlands, Spain and United Kingdom

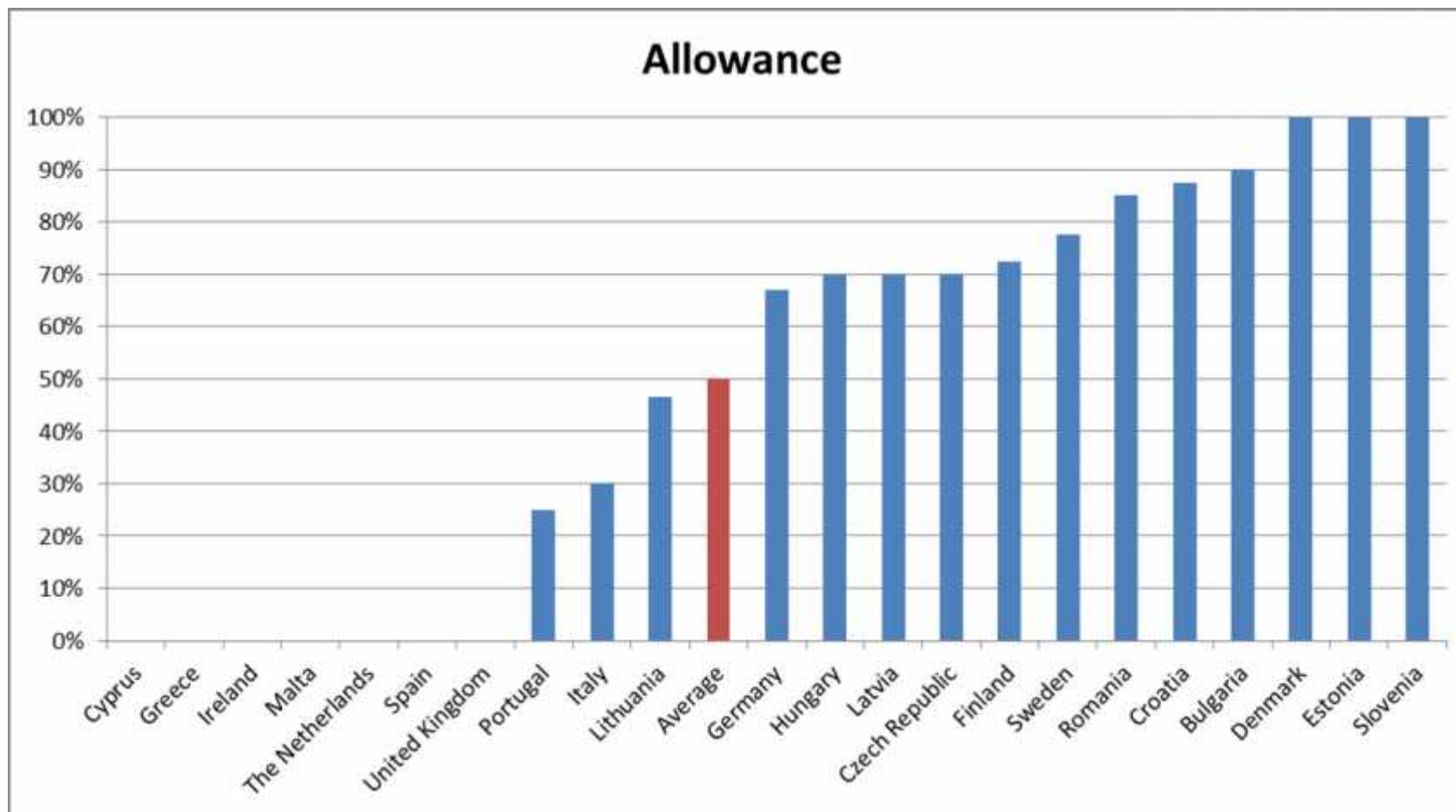
⁸² Estonia offers an allowance of 100% of previous incomes for the first 435 days and afterwards, there is a flat-rate benefit. Because of the incompatibility of those two types of allowances, only the first part (the 100%) is shown in the figure.

⁸³ Croatia offers an allowance of 100% of previous income for the first six months of parental leave, but when the leave is extended by two more months, the allowance drops to 50% of previous income, meaning 87.5% of previous allowance on average.

⁸⁴ Italy has a different allowance for the public and the private sector. In this figure, there is only information on the private sector, because the information available on the public sector is incomplete (the information available is that the allowance is 100% of previous incomes for the first 30 days of the leave).

⁸⁵ Hungary has an allowance of 70% previous incomes for the first two years, and after that a flat rate. For the purpose of this table, only the allowance of 70% of previous incomes was taken into consideration.

Figure 21: Overview of the compensation rates of previous incomes during parental leave and unpaid parental leave in all Member States that do not have a flat rate allowance



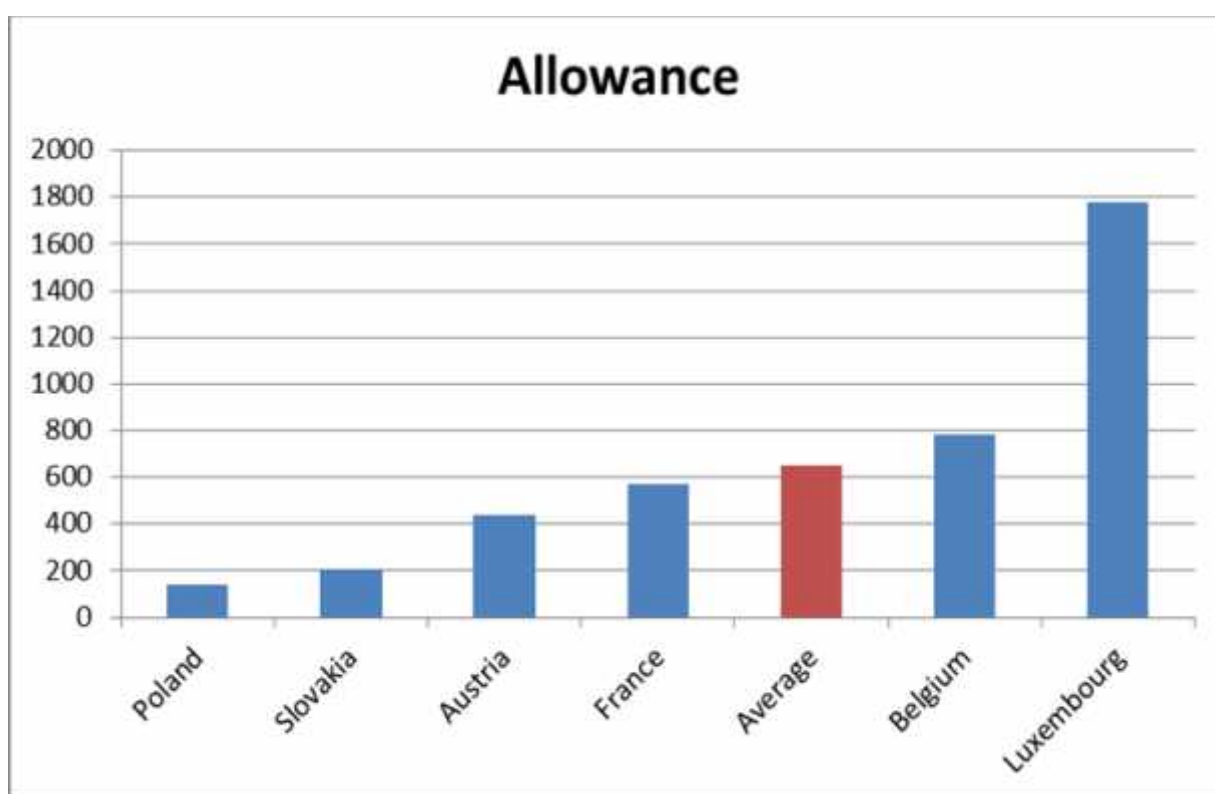
9.2.2. Flat rate for parental leave

Six countries offer allowances during parental leave in the form of a flat rate: Austria⁸⁶, Belgium, France, Luxembourg, Poland and Slovakia.

The differences between the amounts of the flat rates are enormous. The lowest amount is found in Poland which offers only 139 Euros to parents on parental leave. On the other hand, in Luxembourg the amount is as high as 1778 Euros.

The average flat rate amount is 653.3 Euros, meaning that two out of four countries that are below the average are Eastern European countries, while the countries that offer higher allowances fall into the non-Eastern European category.

Figure 22: Flat rate for parental leave in Austria, Belgium, France, Luxembourg, Poland and Slovakia



⁸⁶ Austria offers a wide range of different parental leave options (five in total). For this analysis only the most used option (Option 1) has been taken into account. For more information on other options see Annex.

9.3. Take-up of parental leave by fathers

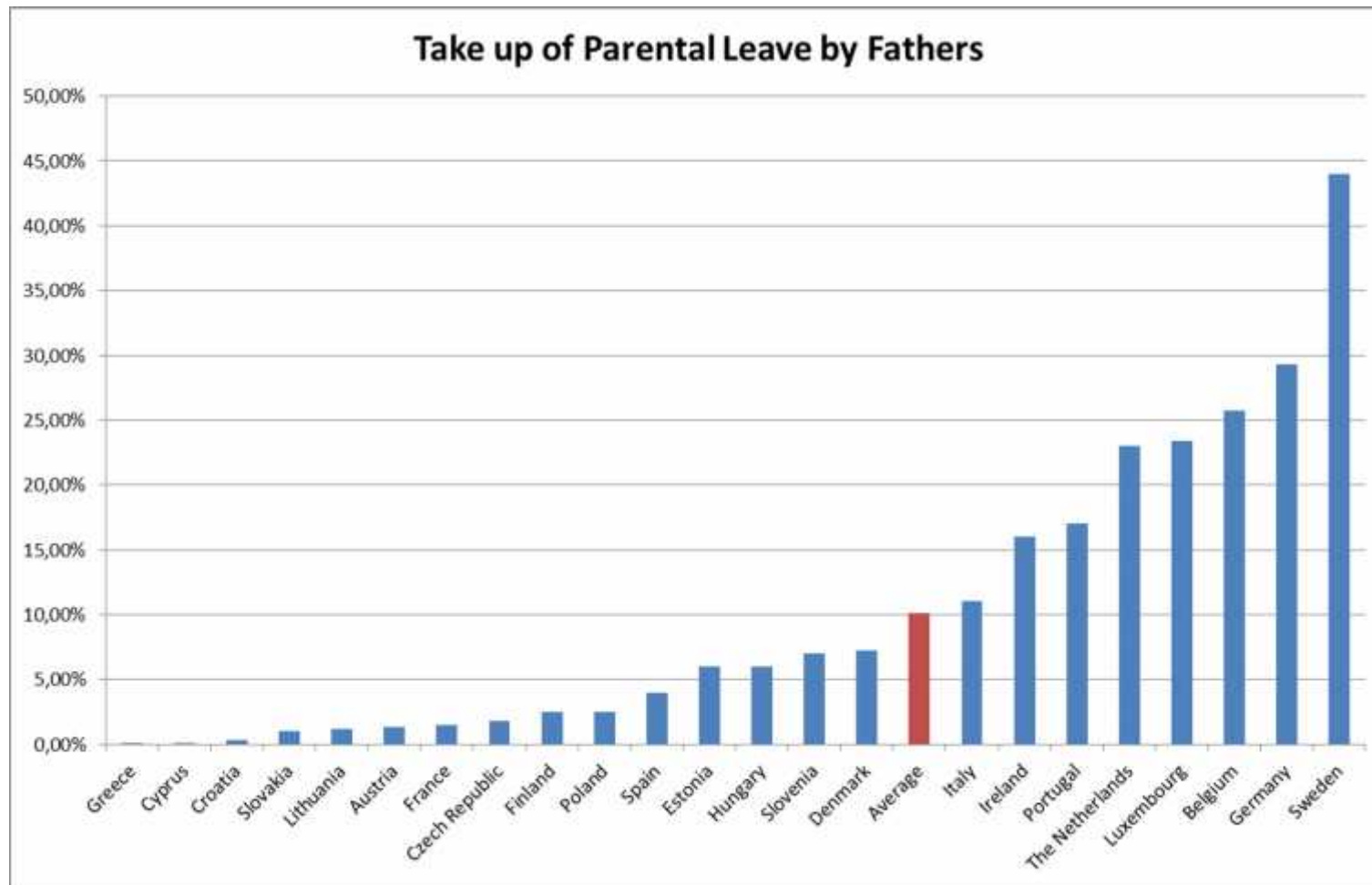
Very little research and even less statistics are available for the take-up of parental leave, especially in the cases of Bulgaria, Latvia, Malta and Romania. Therefore, both in the table and in the annex on the take-up of parental leave, the aforementioned countries will not be included. For the other countries it has to be noted that not all information was collected at the same time and the types of information also differ.⁸⁷

The lowest take-up of parental leave by fathers can be observed in Greece with only 0.02% percent while on the other side of the spectrum Sweden has a 44% take-up rate.

The average percentage of fathers who take up parental leave in the EU is 10.1%, meaning that in 15 out of 23 countries, father take up less than the average.

⁸⁷ Eurofound, to be published in February 2015.

Figure 23: Take-up of parental leave by fathers in 23 Member States in percentages of the available leave⁸⁸



⁸⁸ Because of incomparable statistics, United Kingdom could not be included. Additionally, in the case of three countries, the statistics were not specific, which resulted in calculating the average for those three countries. The take up for Austria is between 0.6% and 2%, for France between 1% and 2%, and for Finland between 2% and 3%.

10. COMPARISON OF COMPENSATION RATES OF PREVIOUS INCOMES DURING MATERNITY, PATERNITY AND PARENTAL LEAVE⁸⁹

KEY FINDINGS

- While most Member States have the same or higher compensation rates of previous incomes during paternity leave compared to the compensation rates during maternity leave, two Member States have a higher compensation rate during maternity than during paternity leave: Austria and Finland.
- 3 Member States offer 100% of previous incomes during maternity, paternity and parental leave: Denmark, Estonia and Slovenia.
- The average of all three forms of leave can be considered as low in many Member States because 3 of them do not provide any allowances (Greece, Malta and Spain) while another 3 provide allowances of less than 50% of previous incomes (Portugal, Italy, and Lithuania).

10.1. Comparison of compensation rates of previous incomes during maternity and paternity leave

In relation to the compensation rate of previous incomes during maternity leave, the compensation rate during paternity leave is the same or higher in all Member States, except for Austria and Finland. In Austria, previous incomes are covered during the maternity leave up to 100%, while the paternity leave is unpaid. The compensation rate of previous incomes during maternity leave in Finland is 81%, while the compensation during paternity leave is slightly lower with 73% of previous incomes.

In Belgium, Hungary, Italy, Latvia, Poland, Portugal, and Romania, the compensation rate of previous incomes during paternity leave is higher than during maternity leave. In all these countries, except for Belgium, the compensation rate is 100% of previous incomes during paternity leave.

Most countries have the same allowance for maternity and paternity leave. These countries are: Bulgaria, Croatia, Denmark, Estonia, France, Greece, Lithuania, Luxembourg, Malta, The Netherlands, Slovenia, and Spain.

⁸⁹ Figures 26 + 27 do not include countries that do not provide paternity leave such as Cyprus, Czech Republic, Germany, Ireland and Slovakia. Countries that have flat rate payments for parental leave have also been excluded from the second table (such as Poland, Slovakia, France, Belgium and Luxembourg).

Figure 24: Comparison of compensation rates of previous incomes for maternity and paternity leave of all Member States

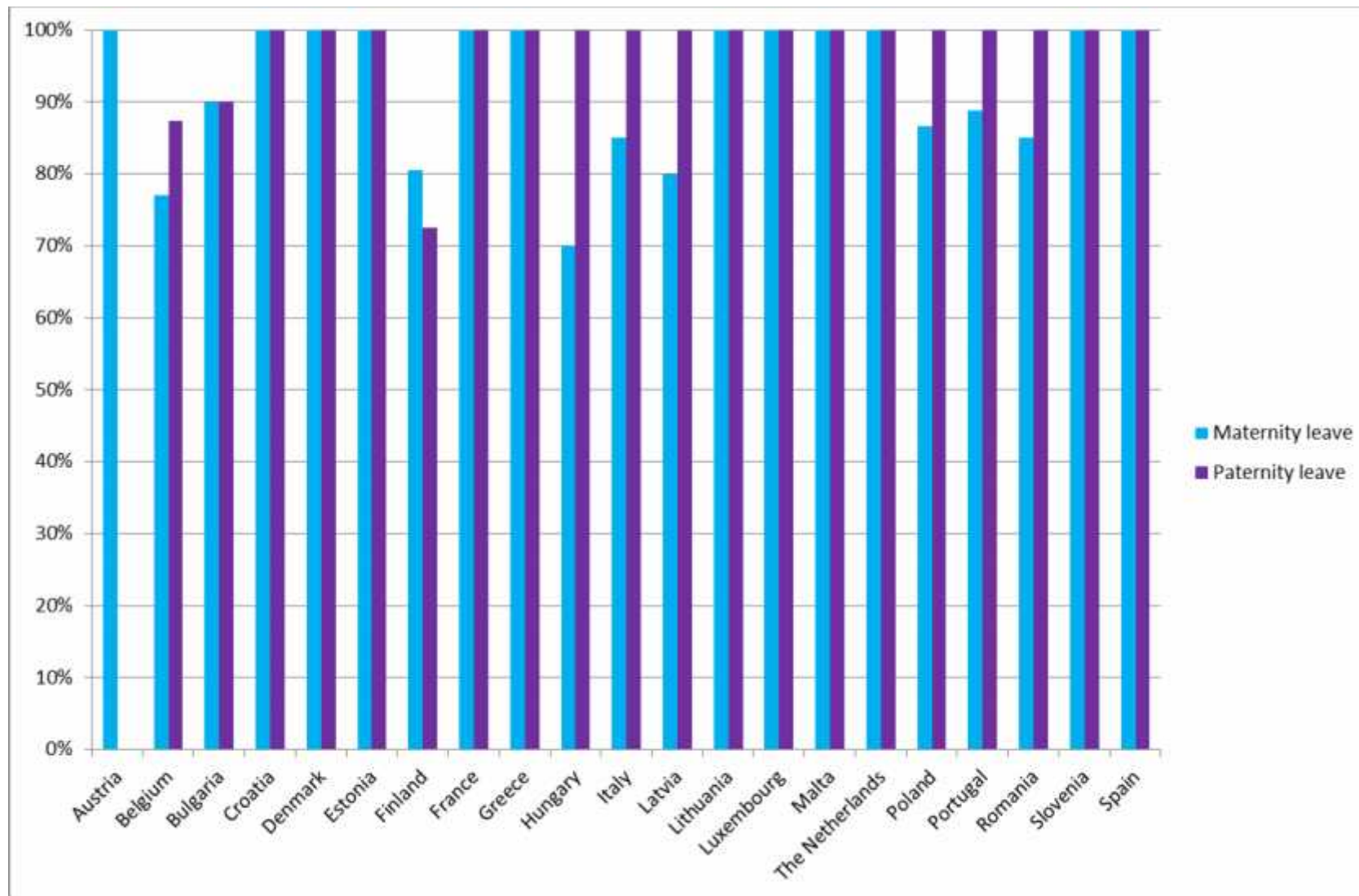
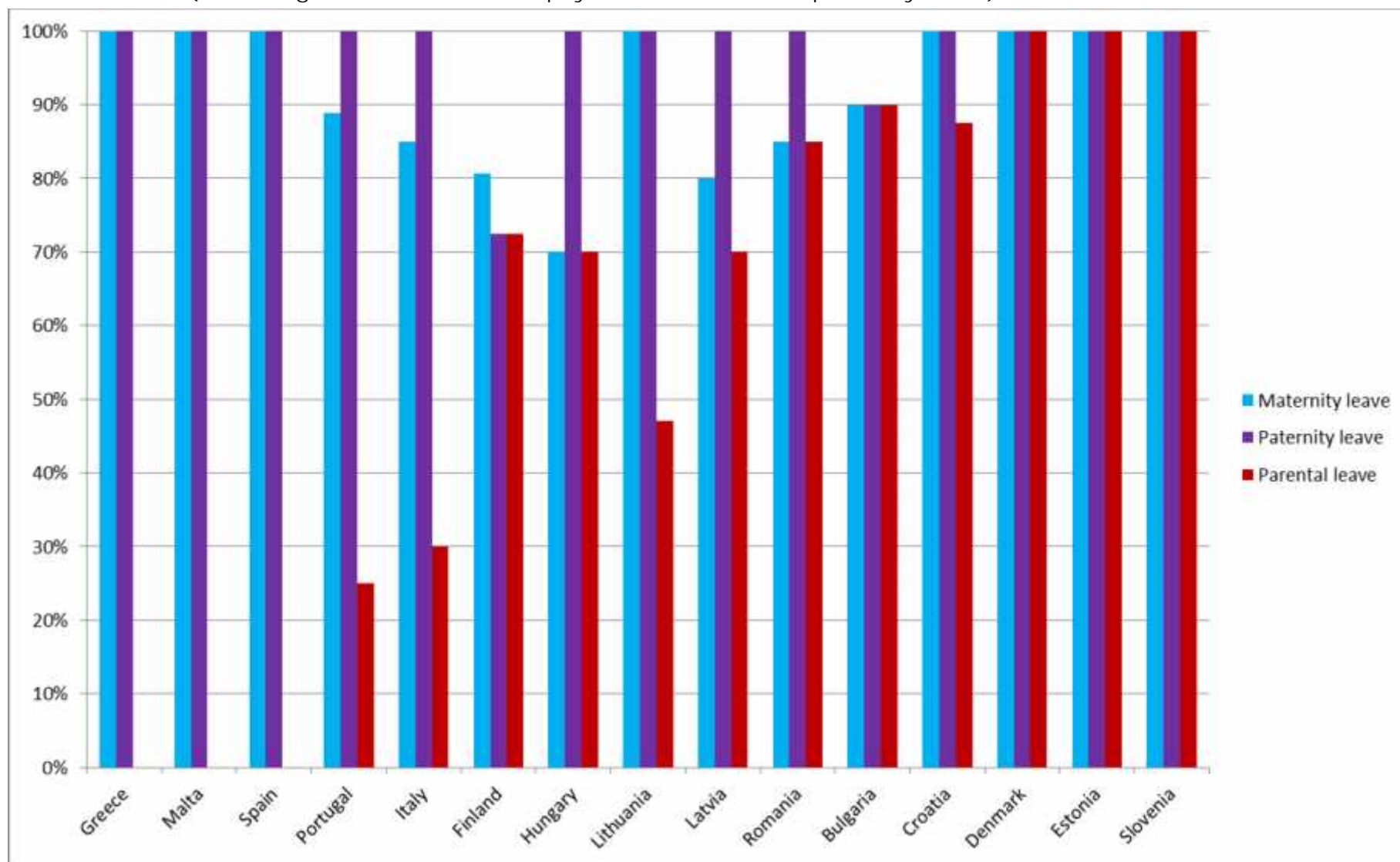


Figure 25: Comparison of the compensation rates of previous incomes for maternity, paternity and parental leave in all Member States (excluding those with flat rate payments and without paternity leave)



10.2. Comparison of compensation rates of previous incomes during maternity, paternity and parental leave

In Figure 27, the compensation rates of all three forms of leave are displayed per Member State.

On the basis of these figures, average compensation rates of previous incomes during maternity, paternity and parental leave can be calculated.

Regarding the averages of the three forms of leave, three countries stand out because of their high rates of their average compensation rates: Denmark, Estonia and Slovenia have compensation rates of 100% of previous incomes in the case of all the three forms of leave. They are at the same time the only Member States with a compensation rate of 100% of previous incomes during parental leave. Croatia comes also close to an average of 100% but its compensation rate of previous incomes during parental leave is less than 90%.

Bulgaria and Romania have an average compensation rate of 90% of previous incomes for all three forms of leave. Latvia, Lithuania and Hungary have compensation rates around 80%, Finland, Portugal and Italy around 70% for all three forms of leave.

The same lowest average compensation rate of previous incomes for all three leave can be found in Spain, Malta and Greece where the average compensation rate is 67% of previous incomes. This average relates to compensation rates of 100% of previous incomes for maternity and paternity leave, while their parental leave is unpaid.

Generally speaking, the average compensation rate of all three forms of leave turns out to be low in many Member States because of the low compensation rates during parental leave. As much as three countries do not provide allowances during parental leave and low compensation rates are also found in Portugal (25%), Italy (30%) and Lithuania (47%).

In the case of paternity leave, most countries have compensation rates of 100% of previous incomes. The only exceptions are Bulgaria with 90%, Finland with 72.5%.

11. COMPARISON OF THE DURATION OF THE COMBINED MATERNITY/PATERNITY LEAVE AND PARENTAL LEAVE IN MEMBER STATES

KEY FINDINGS

- In all Member States, maternity leave and paternity leave (where it exists) can be combined with parental leave.
- The shortest maximum duration of a combined maternity and parental leave has been calculated for Greece for the private sector and Portugal (34.4). On the other hand, the longest duration for the combined forms of leave was calculated for Poland with 195.5 weeks and Estonia with 156 weeks. The average length of the combined maternity and parental leave is 97.8 weeks.
- The shortest maximum period of combined paternity and parental leave was calculated for Portugal, Greece (in the private sector) and Malta at around 17 weeks. The longest maximum period for a father to take leave to be with a child has been calculated for the Czech Republic which is in total 156 weeks, or in other words, three years. The average maximum duration of the combined paternity and parental leave (or just one leave in cases where there is no paternity leave) is 74.06 weeks.
- All countries with no paternity leave have either unpaid parental leave (Ireland and Cyprus) or have compensation rates of previous income below the average (Germany, Czech Republic, and Slovakia) during parental leave. For the rest, it is difficult to establish a relation between the duration of paternity and parental leave and the compensation rates during these forms of leave.

In all Member States, maternity and paternity leave can be combined with parental leave. It should be remembered that, according to the two relevant Directives, the minimum maternity leave is 14 weeks, the minimum parental leave is 4 months, while for paternity leave, no European minimum standard exists.

Against this backdrop, this chapter explores the theoretical maximum duration a mother or a father could take up leave in one of the Member States. Some methodological difficulties were related to this exercise and are explained in the respective chapters where applicable. First and foremost it should be noted that in cases of so called family leave, i.e. both parents are entitled to use the parental leave, the whole parental leave period was allocated to mothers and fathers respectively to achieve the theoretical maximum duration of the combined forms of leave⁹⁰.

This exercise nevertheless seems important in relation to an evaluation of the effectiveness of the leave existing in the Member States for the reconciliation of work

⁹⁰ This means that in cases of family leave the whole parental leave is attributed to one parent. This is why these graphs should be considered theoretical.

and family life aiming at improving the economic independence of women through increased labour market participation and at more gender balance in the distribution of paid and unpaid care work between men and women.

11.1. Comparison of combined maternity and parental leave duration

In this chapter the maternity and parental leave will be combined in order to see what the maximum duration is that a mother could theoretically stay at home with the child.⁹¹ The calculation takes into account that in some Member States mothers can only take up a part of the parental leave because a certain period of the leave is reserved for the father.⁹² Besides, as set out above, in cases of so called family leave, i.e. both parents are entitled to use the parental leave, the whole parental leave period was used for the calculation (maximum) of the combined forms of leave.

The shortest maximum duration of a combined maternity and parental leave has been calculated for Greece for the private sector and Portugal (34.4).

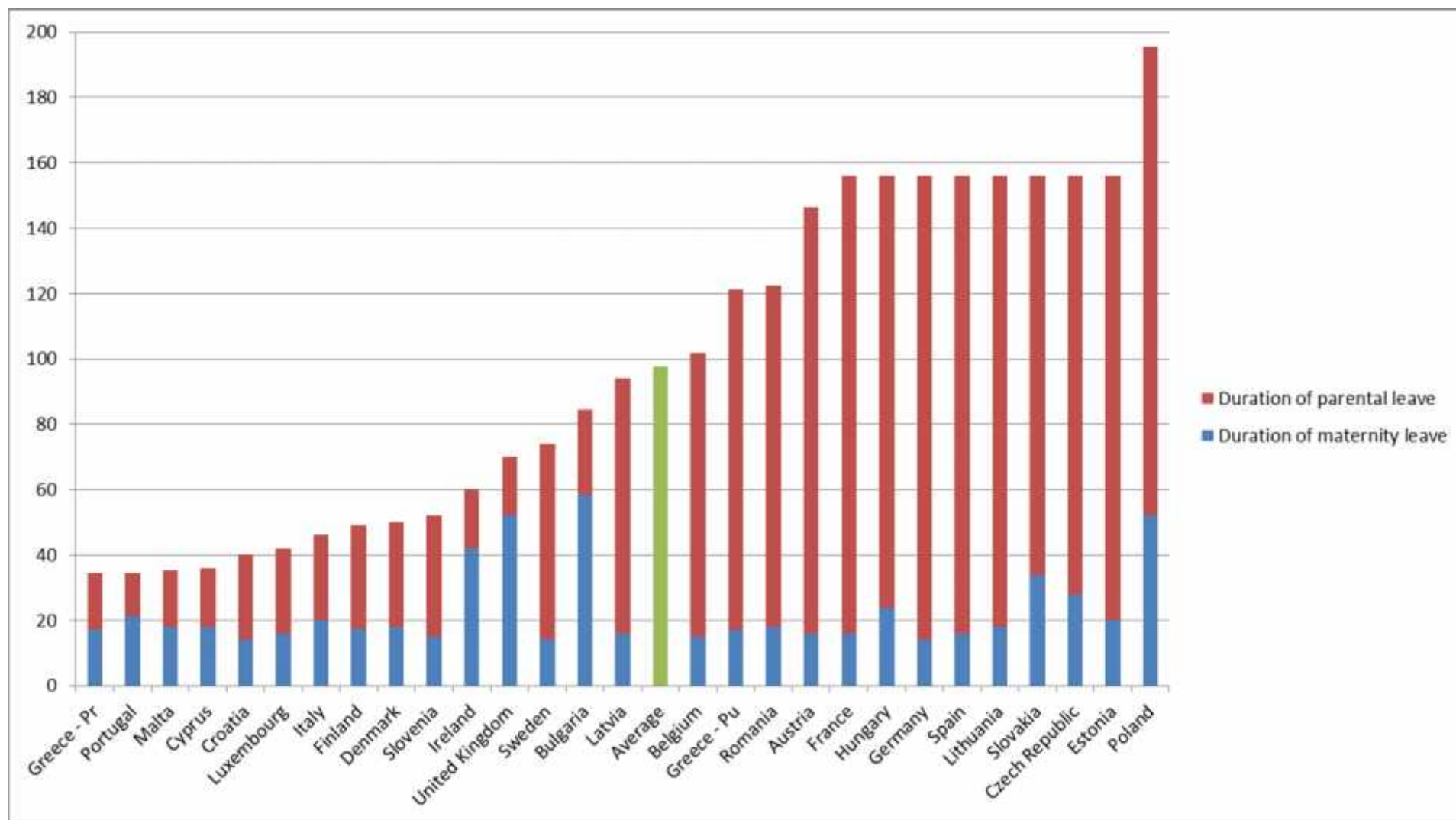
On the other hand, the longest duration for the combined forms of leave was calculated for Poland with 195.5 weeks and Estonia with 156 weeks.

The average length of the combined maternity and parental leave is 97.8 weeks and 12 Member States have a longer total duration while the other 16 are below the average. The majority of the Member States that are below the average are non-Eastern European countries (11 out of 15), while the Eastern European countries are more prevalent amongst the Member States with a total duration above the average (7 out of 13).

⁹¹ The Netherlands were excluded because of the specific way how the duration of parental leave is calculated.

⁹² In Austria, if the leave is shared, it gets prolonged for 4 months. Because of that, only the minimum length has been taken into consideration. In Croatia, two months are reserved for fathers and are not transferable. In Greece (both private and public sector) four months are reserved and not transferable for each parent. In Ireland 18 weeks are reserved for each parent. In Italy the father can take from 3 to 7 months of parental leave. As the allowance is only 30% of previous incomes, for this graph we have decided to take the shorter duration as there is no incentive for the fathers to take the longer leave. In Latvia half of the leave (78 weeks) is reserved for each parent. In Luxembourg every parent has 6 months. Malta has four months reserved for each parent. In Poland one month is reserved for the father. In Portugal each parent has 3 months. In Sweden 60 days are reserved for each parent. In the United Kingdom each parent has 18 weeks. For Slovenia both parents have 130 days of parental leave, but 100 days of the mother's leave can be transferred to the father and 130 days of the father's leave to the mother.

Figure 26: Comparison of the combined maternity and parental leave duration per Member State in weeks



11.2. Comparison of the combined paternity and parental leave duration in relation to the average compensation rate of previous incomes

In this section the theoretically longest possible period for fathers to spend time with their child will be calculated.⁹³ In most cases this means combining paternity and parental leave, but for some Member States, only parental leave can be taken into considerations as no paternity leave is provided. As set out above, in cases of so called family leave, i.e. both parents are entitled to use the parental leave, the whole parental leave period was used for the calculation (maximum) of the combined forms of leave⁹⁴. In one case, the whole parental leave is constructed as an individual entitlement of the mother meaning that no parental leave could be added to the paternity leave⁹⁵, which equals in these cases the maximum duration of a father's leave. In other cases, not the whole parental leave is constructed as an individual entitlement but only a part of it. This system is called "mixed", i.e. it combines a period of the parental leave earmarked either for the mother or the father and a period of family leave which can be shared between the parents.⁹⁶

This chapter also takes into account the proposal in EP's first reading of 2 weeks paternity leave.

11.2.1. The theoretical maximum duration of the combined paternity and parental leave

Parental leave in Figure 29 is displayed in red of three different shades. The lightest shade means that the parental leave is unpaid, the medium red implies that the compensation rate of previous income during parental leave is below the EU average (either the average flat rate of 653.3 Euros or the average compensation rate⁹⁷ which is 73% of previous incomes) The dark red shows the countries that have compensation rates during parental leave above the average.

The shortest maximum period a father can be with a child was calculated for Portugal, Greece (in the private sector) and Malta where it is possible to stay with a child for around 17 weeks (17,04 for Portugal, 17.7 for Greece and Malta). All three countries provide fathers with compensation rates of previous income that are lower than the average. Besides, in Greece and Malta the paternity leave is extremely short (2 days) and the parental leave is unpaid.

On the other hand, the longest maximum period for a father to take leave to be with a child has been calculated for the Czech Republic which is in total 156 weeks, or in other words, three years. In the Czech Republic, these 156 weeks refer only to the parental leave, as there is no paternity leave. The compensation rate of previous income during paternity leave in the Czech Republic is below the average.

⁹³ The Netherlands were excluded because of the specific way how the duration of parental leave is calculated.

⁹⁴ This is the case in Austria, Croatia (where the father would have to have a written permission of the mother for using the entire parental leave on his own), Cyprus, Estonia, Finland, France, Germany, Lithuania, Romania, Slovakia, and Spain.

⁹⁵ This is the case in Bulgaria.

⁹⁶ This is the case in Belgium, Czech Republic, Denmark, Greece, Hungary, Latvia, Luxembourg, Malta, Poland, Portugal, Slovenia, Sweden (where one parent must sign a consent form that they are giving up their days, still 60 days are not transferrable), and United Kingdom.

⁹⁷ Excluding the countries that have unpaid parental leave

The average maximum duration of the combined paternity and parental leave (or just one leave in cases where there is no paternity leave) is 74.06 weeks. This means that 13 Member States are above the average duration and 15 are below. Out of the 13 Member States that are above the average duration, 8 are Eastern European and 5 are non-Eastern European countries. Among the Member States that are below the average maximum duration, three are Eastern European countries while 12 are non-Eastern European countries.

Only two countries out of those with a maximum duration longer than the average duration of the combined paternity and parental leave have compensation rates of previous incomes that are also above the average. The first one is Romania with duration of combined forms of leave of more than 100 days and with a compensation rate of 100% during the paternity leave of 5 days and of 85% during parental leave. The second country with a combined maximum duration and a compensation rate above the average is Estonia with 10 days of paternity leave at a compensation rate of 100% of previous incomes and a parental leave of also 100% compensation rate of previous incomes.

When taking into account the proposal of two weeks (or 10 working days) for paternity leave included in the First Reading of the EP, out of the those two countries only Estonia complies with the proposal.

11.2.2. The theoretical maximum duration of the combined paternity and parental leave in relation to the compensation rate of previous incomes

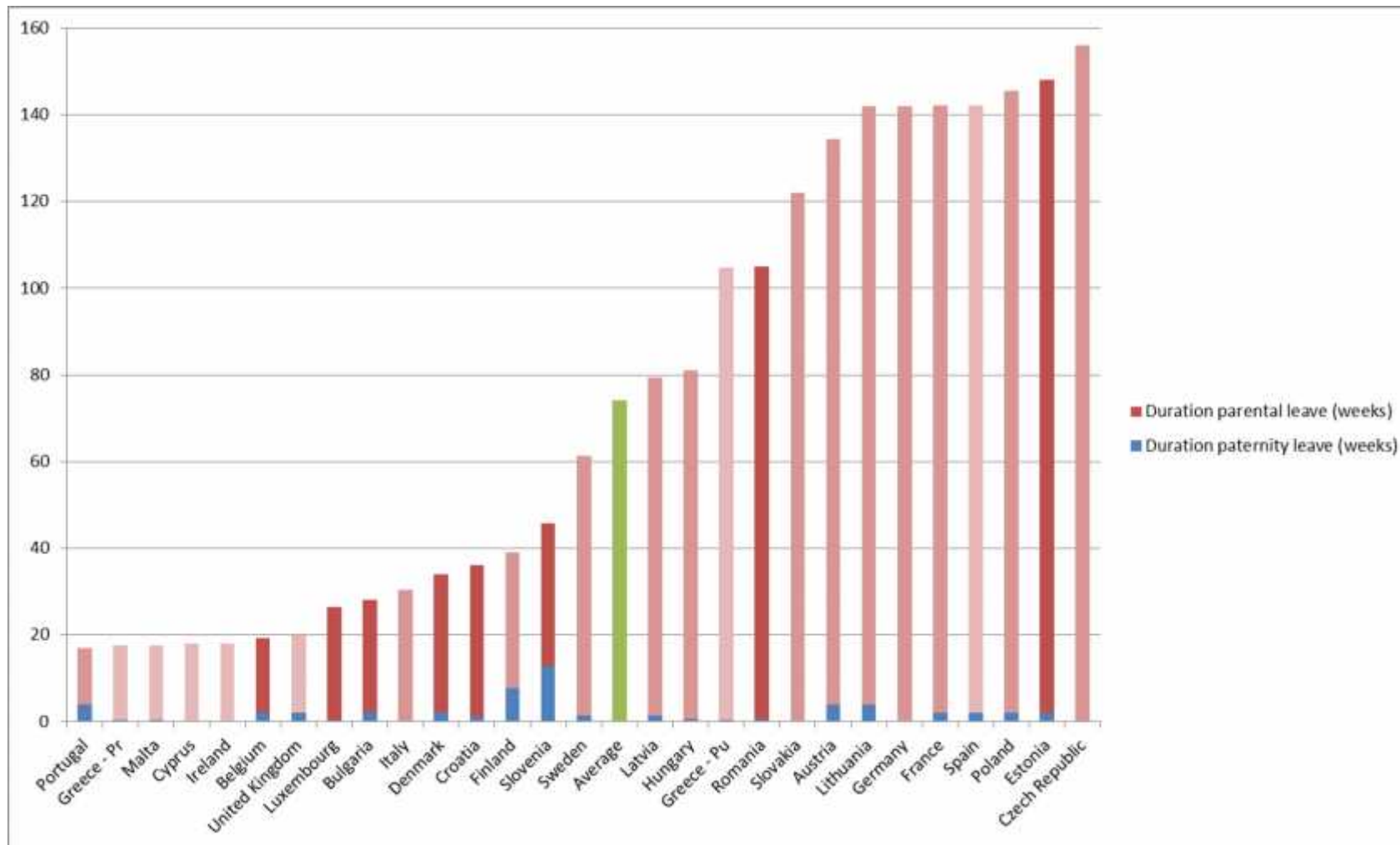
All countries with no paternity leave (such as Cyprus, Ireland, Slovakia, Germany and Czech Republic) have either unpaid parental leave (Ireland and Cyprus) or have compensation rates of previous income below the average (Germany, Czech Republic, and Slovakia) during parental leave.

Member States with paternity leave longer than the 2 weeks proposed by the EP have in most cases compensation rates during parental leave that are below the average (France, Spain, Portugal, Austria, Lithuania, and Finland). Only Bulgaria with 90% of previous incomes and Slovenia with 100% of previous incomes are above the average compensation rate.

Regarding the Member States that have paternity leave but with a duration below the 2 weeks proposed by the EP, the situation regarding wage compensation rates is mixed. While in some of them parental leave is unpaid (Greece and Malta) or the compensation rates of previous income are below the EU average (Italy, Hungary, and Latvia), in 4 Member States the compensation rate of previous incomes during parental leave is above the average (Luxembourg, Romania, Croatia, Sweden).

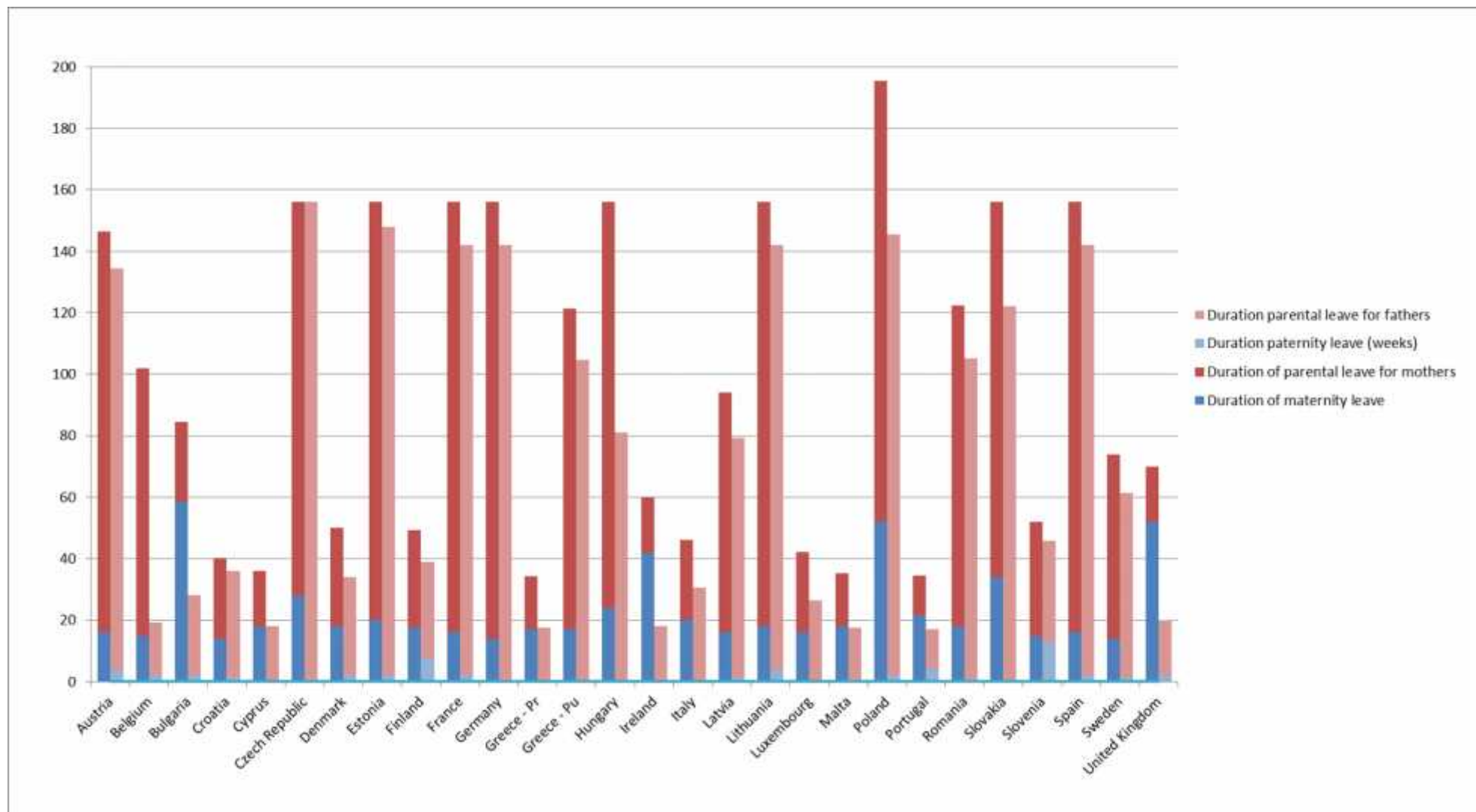
The last group of countries are the ones with exactly 2 weeks of paternity leave. Out of five countries, three countries have compensation rates of previous incomes above the average (Belgium, Denmark, and Estonia). The United Kingdom offers no allowance for parental leave and Poland has a flat rate allowance of only 139 Euros.

Figure 27: Compilation of the paternity and parental leave duration per Member State in weeks⁹⁸



⁹⁸ Light red means unpaid parental leave. Light red stands for compensation rates of previous incomes below the EU average of 73%. Red means compensation rates above the EU average.

Figure 28: Comparison of combined maternity and parental leave duration (dark blue and red) with paternity and parental leave duration (light blue and red) per Member State in weeks



12. CONCLUSIONS

Policy Papers show that there is, in principle, a broad agreement among European institutions and Member States that reconciliation policies, of which leave policies are a part, are important for both the labour market participation of women as a condition for growth and gender equality.

While Member States agreed in 2010 to achieve a labour market participation of men and women of 75% in 2020, it can be observed that the employment situation differs not only between men and women but also considerably among Member States. Recommendations to bridge the gaps in the framework of the European Semester process include reconciliation of work and family life policies. They have, however, focused on the availability of childcare facilities in line with the so called Barcelona objectives.

While formal and informal childcare represent very important conditions for the labour market participation of women and their economic independence, the Gender Equality Index shows clearly that the unequal distribution of time use between men and women is a serious impediment to gender equality. The gender gap regarding the GEI domain Time is more or less twice as large as the gender gap in Work and is for a large part due to the unpaid care work delivered by women. It could therefore be argued that leave policies - which have, according to the Commission Impact Assessment, the potential to change these structures - are equally important policy tools for the labour market participation of women and gender equality.

In this sense, the ILO has qualified the reformed division of paid and unpaid labour between men and women at work and at home as possibly the most significant social developments of the twenty-first century. While the question whether these developments could better be accompanied by policy measures on the national or the European level remains open, it has to be noted that the targets for employment rates and the availability for child care facilities have already been set and measures are coordinated on the European level.

This study provides for accessible evidence that could be used to come to a decision that takes into account the different cultures and social systems reflected by the available data. They confirm, on the one hand, that the provisions for maternity, paternity and parental leave differ sometimes widely between Member States. On the other hand, common characteristics between Eastern European and non-Eastern European countries could be observed. In other words, while Member States developed a wide range of possible leave schemes, some convergence between Member States, at least regarding maternity leave, has taken place. Still, 13 Member States, mostly non-Eastern European, would not comply with 18 weeks of maternity leave as proposed by the Commission. Regarding the compensation rate, 15 Member States provide for less than 100% of previous incomes during maternity leave.

Directive 92/85/EC has been considered outdated at the Workshop on "A new strategy for gender equality post 2015" as it provides no longer a level playing field in this area, neither as far as the legal provisions with regard to the promotion of gender equality through the European Union are concerned, nor in respect to the increase in the importance of reconciliation policies for employment and growth in general or women's economic independence in particular. However, experts confirm the importance of maternity leave for the health of mothers and children and as "the cornerstone" of leave policies allowing men and women to combine work and family life. Besides, because of the lack of uniformity in the legal provisions, the labour mobility of women might also be hampered.

What experts have observed in the absence of guidance from the European level can be described as a lack of common approach to tackle the same challenges prevalent in all Member States which are a more equal distribution of paid and unpaid work between men and women and addressing the demographic change by encouraging men and women to have children.

The call for a better reconciliation of work and family life has led in many Member States to the introduction of a large variety in duration and compensation rates of paternity leave and the modification of parental leave schemes. It has to be concluded that the Parental Leave Directives, adopted on the basis of social partner agreements, were not able to guide all Member States in the transposition of effective parental leave. Compared to the conditions set out in the studies commissioned by the Commission in preparation of the proposal for a revision of Directive 92/85/EC, these measures might not always have the desired outcomes in bringing more women into work, a decisive condition to cover the costs related to the introduction of new leave schemes, as resulting from the IMPA.

Mainly the low compensation rate of previous incomes in some Member States could result in women continuing to take all the leave available with negative consequences for their participation in the labour market and for the more equal distribution of unpaid care work between men and women.

Besides, the very long duration of combined forms of leave in a few Member States will continue to exacerbate the possibility for women and men to return to the labour market without wage and career penalties despite the guarantee provided in the Directives.

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ANNEX I: MATERNITY LEAVE PROVISIONS IN THE EUROPEAN UNION MEMBER STATES

Country	Explanation	Duration	Remuneration	Law
Austria	Obligatory	16 weeks (8 weeks before and after birth)	Paid (100% of previous earnings)	
Belgium	10 days are compulsory (1 before the delivery and 9 after)	15 weeks	Paid (82% of previous earnings for the first 30 days, 75% for the remainder (up to a ceiling)	Articles 39 through 45 of the Working Conditions Act of 16 March 1971, plus Articles 111 through 117 of the Consolidated Act of 14 July 1994 concerning the Healthcare and Sickness Insurance Scheme
Bulgaria	45 days obligatory	58.57 weeks	Paid (90% of previous earnings)	Article 163 LC
Croatia		98 days (28 days before and 70 after birth)	Paid (100% of previous earnings)	Act on Maternity and Parental Benefits
Cyprus		18 weeks	Paid (72% of previous earnings. Changed in 2012. Parents also receive a maternity grant)	The Parental Leave and Time Off on Grounds of Force Majeure Law No. 69(I)/2002
Czech Republic	Obligatory to take 14 weeks	28 weeks (6-8 weeks before the birth, 20-22 weeks after)	Paid (70% of previous earnings up to a ceiling) (raised from 60% to 70% as of 2011)	Section 157 of the Labour Code

Denmark	The first two weeks after birth are compulsory	18 weeks (4 weeks before and 14 weeks after the birth)	Paid (100% of previous earnings up to a ceiling)	The Maternity, Paternity and Parental Leave and Benefit Act
Estonia	Obligatory	140 calendar days	Paid (100% of previous earnings)	Parental Benefit Act, State Family Benefits Act
Finland	Obligatory to take 2 weeks before and after birth	17,5 weeks	Paid (90% of previous earnings for the first 56 days up to a ceiling, after it is 70% of previous earnings up to a ceiling)	Chapter 9, Section 3 of the Sickness Insurance Act
France	Obligatory	16 weeks (at least two before the birth)	Paid (100% of previous earnings up to a ceiling, there is no ceiling in the public sector)	
Germany	Obligatory to take 8 weeks leave after birth	14 weeks (6 weeks before the birth and 8 weeks after)	Paid (100% of previous earnings)	Maternity Protection Act, Maternity Protection Order
Greece		17 weeks (8 weeks before and 9 after birth)	Paid (100% of previous earnings)	Civil Servants' Code
Hungary	Obligatory to take 2 weeks leave	24 weeks	Paid (70% of previous earning)	
Ireland		42 weeks (at least two weeks before the birth)	230 per week (changed in 2014 replacing a previous earnings-related payment) for 26 weeks, the remaining 16	Maternity Protection Act, 1994

			weeks are unpaid, mothers on social welfare payments are entitled to half-rate maternity benefit	
Italy	Obligatory	20 weeks - compulsory (at least 4 weeks before the birth)	Paid (85% of previous earnings, 80% for home helps, self-employed workers and agricultural temporary laborers)	No. 1204 of December 30, 1971
Latvia	Compulsory two weeks before and two weeks after	16 weeks	Paid (80% of previous gross salary) (changed in 2011, before it was 100%)	
Lithuania		18 weeks (70 days before and 56 days after the birth)	Paid (100% of previous earnings up to a ceiling)	
Luxembourg	Obligatory	16 weeks (8 weeks before and 8 weeks after the birth)	Paid (100% of previous earnings up to a ceiling)	
Malta		18 weeks (increased in 2013)	Paid (100% of previous earnings for 14 weeks, the rest at a flat rate)	
The Netherlands	Obligatory	16 weeks (4-6 weeks before and 10-12 weeks after birth)	Paid (100% of previous earnings up to a ceiling)	Work and Care Act
Poland	Obligatory to take 14	26 or 52 weeks	Paid (The option of 26 is	The Labour Code (LC) of

	weeks, the 26 weeks of the 52 week Maternity option is referred to as Parental leave		paid 100% of previous earnings; the option of 52 weeks is paid 80% of previous earnings)	26 June 1974
Portugal	Obligatory to take 45 days following the birth, called Initial Parental leave	120 or 150 calendar days (extra 30 days if both parents share the leave)	Paid (100% of previous earnings for 120 days or 80% of previous earnings for 150 days if they do not share the leave; 100% of previous earnings for 150 days or 83% for 180 days if they do share the leave)	Labour Code (Law No. 7/2009 of 2 February 2009)
Romania		18 weeks	Paid (85% of previous earnings)	
Slovakia	Obligatory	34 weeks (6-8 weeks before the birth)	Paid (65% of previous earnings up to a ceiling)	
Slovenia	Obligatory to take 15 days	105 calendar days (4 weeks before and 11 after the birth)	Paid (100% of previous earnings up to a ceiling, introduced in 2014)	
Spain	6 weeks are obligatory and must be taken by the mother following the birth; the remaining ten weeks can be transferred to the father.	16 weeks	Paid (100% of previous earnings up to a ceiling)	
Sweden	Obligatory 2 weeks	14 weeks	Paid (80% of previous earnings)	Parental Leave Act (1995:584)

United Kingdom	Obligatory to take 2 weeks after birth	52 weeks	Paid (90% of previous earnings for 6 weeks, a flat-rate benefit for 33 weeks, the remaining 13 weeks are unpaid)	
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ANNEX II: PATERNITY LEAVE PROVISIONS IN THE EUROPEAN UNION MEMBER STATES

	Explanation	Duration	Remuneration	Law
Austria	No statutory paternity leave, but public sector workers are entitled to a month of unpaid leave	20 working days	Unpaid	
Belgium	3 days are obligatory	10 working days	Paid (100% of previous earnings for first 3 days, 82% for remaining 7 days)	
Bulgaria		15 days (11 working days)	Paid (90% of previous earnings)	Article 163 LC
Croatia	Entitled if transferred from the mother	7 working days	Paid (100% of previous earnings)	Act on Maternity and Parental Benefits
Cyprus	No paternity leave	/	/	/
Czech Republic	No paternity leave	/	/	/
Denmark	Has to be taken during the maternity leave, same-sex partners included	14 consecutive days (10 working days)	Paid (100% of previous earnings)	The Maternity, Paternity and Parental Leave and Benefit Act
Estonia		10 working days	Paid (100% of previous earnings) (change since 2013, before unpaid)	Parental Benefit Act, State Family Benefits Act

Finland	18 days can be taken simultaneously with the mother during her maternity leave and the rest (or the full 54 days) can be taken after maternity and parental leaves	54 days (as of 2013, before it was 18 weekdays)	Paid (75% of previous earnings up to a ceiling for the first 30 days if it is taken after maternity and parental leave, for the remaining period and if it is taken while the mother is on maternity or parental leave payment is at 70% of previous earnings up to a ceiling)	
France	Must be taken within the four months following the birth	11 working days	Paid (100% of previous earnings up to a ceiling, there is no ceiling in the public sector)	
Germany	No paternity leave	/	/	/
Greece	At the time of the child's birth	2 working days	Paid (100% of previous earnings)	
Hungary	To be used during the first 2 months of the child's life	5 working days	Paid (100% of previous earning)	
Ireland	No paternity leave	/	/	/
Italy		1 day of compulsory leave, father can take 2 more days if the mother agrees to transfer those	Paid (100% of previous earnings)	Article 4 of Act No. 92/2012

		days from her Maternity leave (introduced in 2013)		
Latvia		10 calendar days (8 working days)	Paid (100% of previous gross salary, from 2013)	
Lithuania		28 days after childbirth	Paid (100% of previous earnings up to a ceiling)	
Luxembourg		2 working days	Paid (100% of previous earnings)	
Malta		2 working days	Paid (100% of previous earnings)	
The Netherlands	To be taken at the birth of a child, same-sex partners included	2 working days	Paid (100% of previous earnings)	Work and Care Act
Poland		2 weeks	Paid (100% of previous earnings)	The Labour Code (LC) of 26 June 1974
Portugal	10 are obligatory and must be taken during the first month after birth	20 working days	Paid (100% of previous earnings)	Labour Code (Law No. 7/2009 of 2 February 2009)
Romania		5 working days (10 days if the father attends infant care courses)	Paid (100% of previous earnings)	

Slovakia	No paternity leave	/	/	/
Slovenia	Available to same-sex partners also	90 calendar days	Paid (100% of previous earnings up to a ceiling for the first 15 days, the rest on the basis of flat-rate benefit)	
Spain	2 days of Birth leave and 13 days of Paternity leave (with regional differences)	15 calendar days (11 working days)	Paid (100% of previous earnings up to a ceiling)	
Sweden	Gender neutral and applicable for adoption	10 days	Paid (80% of previous earning up to a ceiling)	Parental Leave Act (1995:584)
United Kingdom	Available to same-sex partners also	2 weeks (14 calendar days or 10 working days)	Paid (flat-rate benefit) or 90% of average weekly earnings if the person earns less than 167 Euros	The Paternity and Adoption Leave Regulations 2002

ANNEX III: PARENTAL LEAVE PROVISIONS IN THE EUROPEAN UNION MEMBER STATES

	Explanation	Duration	Remuneration	Law
Austria	Either parents	Option 1 with an entitlement of 36 months (30 if not shared); Option 2 reduced the benefit duration to 24 months (20 if not shared), Option 3 to 18 months (15 if not shared), Option 4 to 14 months (12 if not shared), and Option 5 is also limited to 14 months (12 if not shared)	Option 1: 440 euros (per month), Option 2: 630 euros, Option 3: 806 euros, Option 4: 1000 euros, and Option 5: 80% of previous incomes (up to 2000 euros)	Maternity Protection Act 1979 and Law 651/1989
Belgium	Both parents	4 months full-time parental leave per parent (since 2012), or 8 months part-time parental leave, or 20 months 1/5 parental leave	Paid (Flat rate benefit)	National Agreement CCT 64 April 1997
Bulgaria	Parental leave is provided for women alone, although men may take a portion of parental leave if the	26 weeks	Paid (90% of previous earnings)	Article 167a LC

	mother agrees.			
Croatia	Both parents	6 months, 2 months cannot be transferred, but can be prolonged for 2 more months if the father takes up his 3 months.	100% of previous incomes, 50% after the first 6 months.	Act on Maternity and Parental Benefits
Cyprus	Either parent	18 weeks	Unpaid	The Parental Leave and Time Off on Grounds of Force Majeure Law No. 69(I)/2002
Czech Republic	Either parent, possibility of taking maternity and parental leave concurrently	156 weeks	70% of previous incomes	Section 196 of the Labour Code
Denmark	Either parent, but fathers are eligible for parental benefit when their child has reached 70 days of age.	32 weeks per parent	Paid (100% of previous earnings) just the first 32 weeks, the rest is unpaid	The Maternity, Paternity and Parental Leave and Benefit Act
Estonia	Either parent	Until the child reaches three years (156 weeks)	Paid (100% of previous earnings up to a ceiling for 435 days, afterwards flat-rate benefit until the child reaches 3 years)	Parental Benefit Act
Finland	Either parent	158 working days	Paid (75% of previous earnings up to a ceiling	Contracts of Employment Act and

			for the first 30 days, after it is 70% of previous earnings up to a ceiling)	Sickness Insurance Act
France	Either parent, can be taken simultaneously	Until the child reaches three years (156 weeks)	Flat rate benefit (per household)	Articles L. 1225-47 et seq. of the Labour Code and L.161-9 of the Social Security Code
Germany	Either parent	Until the child reaches three years (156 weeks)	Paid (67% of previous earnings for the first 12 months; if both parents take at least two months of leave, the overall length of benefit payment is extended to 14 months)	Sections 15-21 of the Federal Law on Parental Allowance and Parental Leave
Greece	1) private sector: 4 months per child for each parent, cannot be transferred	1) private sector: 4 months per parent	1) Unpaid	
		2) public sector: 2 years per parent	2) Unpaid (paid in the case of three or more children where three months of the leave are fully paid)	
Hungary	1) for non-insured parents	1) Until the child reaches three years (156 weeks)	1) Paid (flat-rate benefit)	Act No. XXII 1992 on Labour Code, Act No. LXXXIII 1997 on Health Insurance and Act No.

				LXXXIV on Family Allowances 1998
	2) for insured parents, but only the mother can take up the leave up to the child's first birthday	2) from the end of Maternity leave until the child's second birthday, from the second until the third birthday same as option 1)	2) Paid (70% of previous earning, up to a ceiling)	
Ireland	Not transferable, but can be simultaneous, available to same-sex partners	18 weeks per parent per child (changed in 2013)	Unpaid	Parental Leave Act 1998
Italy	Both parents, can be simultaneous	1) Private sector: Each parent can take 6 months, the maximum being 10 months: if the father takes at least 3 months the maximum length of the leave for the couple is 11 months and the father can extend his leave to 7 months	Paid if the child is under 3 (30% of previous earnings), unpaid if the child is 3-8 years old (unless annual earnings are under approximately 2.5 times the amount of minimum earnings in which case parents are entitled to 30 per cent of earnings)	Law 53/2000 D.Lgs 151/2001
			2) Public sector: 100% of previous earnings during the first 30 days of leave	

Latvia		78 weeks for each parent	Paid (70% of previous earnings) but available only to one parent	Labour Law 2002, Article 156 on Childcare Leave; Law on Social benefits 2003 and Rules of the Cabinet of Ministers December 2004 relating to Childcare Benefit
Lithuania	Either parent	Until the child reaches three years (156 weeks)	Paid (Either 100% of previous earnings up to a ceiling until the child is 12 months or 70% of previous earning up to a ceiling until the child is 12 months and 40% until the child is 24 months. The last period is unpaid.)	Labour Code 146
Luxembourg	Both parents cannot take leave at the same time. If both parents apply for the leave, the mother has priority. The first parent who takes the leave must take it following Maternity leave, except in the case of lone parents.	6 months per parent	Paid (flat-rate payment)	Law of February 1999
Malta		4 months (each parent)	Unpaid	Legal Notice 225 of

				2003 - Employment and Industrial Relations Act 2002 Parental Leave (Entitlement) Regulations, 2003
The Netherlands	Has to be taken part time	Twenty-six times the number of working hours per week per parent per child	Unpaid	Work and Care Act, Parental Leave Law July 1997 amended February 2001
Poland	Thirty six months after Maternity leave until the child is five years old; 34 months is a family entitlement	34 months is a family entitlement, with one month as an individual entitlement for the mother and another month for the father (changed in 2013)	Paid (flat rate payment)	Labour Code Art 186 and 189 1998on family, childcare and nursing allowances and ordinance of MOLSP 28 May 1996 on leaves and childcare allowances
Portugal		3 months per parent	Paid (25% of previous earnings)	Labour Code (Law No. 7/2009 of 2 February 2009), Decree-law 230/2000 which amends 1984 law
Romania	Either parent	1) monthly allowance until the child is 12 months old, monthly allowance until the child is 2 years old if the parent decides to go to work. If not, the last year of the parental	1) Paid (85% up to ceiling and incentive pay if the parent returns to work)	

		leave is unpaid.		
		2) monthly allowance (lower than in the first option) until the child is 2 years old, if the parent decides to go to work before the child is one year old, there is another monthly allowance (same as in the first option for the period between the child's first and second year)	2) Paid (85% with a different ceiling and incentive pay if the parent returns to work)	
Slovakia	Only for one parent	Until the child reaches three years	Paid (flat rate payment)	Labour Code Act No. 311/2001 amended by Act No. 165/2002, Act No. 408/2002, Act No. 413/2002 and Act No. 210/2003
Slovenia	Every parent has the right to 130 days of parental leave. The mother can transfer 100 days of parental leave to the father, while 30 days is non-transferable. The father may transfer to the mother all of 130 days	260 calendar days	Paid (as for the first 15 days of Paternity leave)	Parental Protection and Family Benefit Act

	of parental leave			
Spain	Each parent	Until the child reaches three years (156 weeks)	Unpaid	Law 39/1999
Sweden	60 days reserved for each parent, not transferrable. Out of the remaining 360 days, half are reserved for each parent; if days are transferred from one parent to another, the parent giving up his or her days must sign a consent form	480 days per family	Paid (77.6% of previous earnings for the 390 days, 90 days at a flat-rate benefit)	1995 Parental Leave Act/584 and 1998/209 Act on Leave for Family Reasons
United Kingdom		18 weeks per parent per child	Unpaid	1999 Parental Leave Law amended under Maternity and Parental Leave (Amendment) Regulations 2001)

ANNEX IV: TAKE UP OF PARENTAL LEAVE⁹⁹

Country	Take up of mothers	Take up of fathers	General take up
Austria	Between 93% and 96% of mothers take up Parental leave	Between 0.6% and 2% of fathers take up Parental leave	
Belgium		1.8% in the Flemish Region, 0.9% in the Walloon region and 0.8% in the Brussels region of all men took Parental leave. The proportion of men taking Parental leave is 25.7%	
Croatia	84.0% for 6-12 months after childbirth, falling to 18.0% during 12-24 months (of all employed mothers)	0.3% in the first year after birth of all employed fathers)	
Cyprus			During 2007 a total of 113 employees made use of their right to parental leave (7 men, 106 women). Since the law was put into force in 2003 a total of 357 employees made use of their right to parental leave (17 men and 340 women)
Czech Republic		1.8% of all recipients were men	

⁹⁹ International Network on Leave Policies and Research.

Denmark		Danish fathers on average only take 7.2 per cent of the Parental leave period	
Estonia		6% of the recipients were men	
Finland	Less than one percent of mothers entitled to Parental leave did not take the whole leave period	2-3% of fathers have taken Parental leave	
France	98-99 per cent of parents taking leave		
Germany		29.3% of all fathers take up parental leave	
Greece	1.2% of women made use of the paid childcare leave, and 0.3% of women made use of the non-paid leave	0.02% of men made use of the paid childcare leave	
Hungary		About 6% of fathers take the leave	
Ireland	84% of Parental leave is taken by women		
Italy	89% of employees using Parental leave are women	11% of employees using Parental leave are men	
Lithuania		17800 persons took child care leave in 2002, 179 of them were men (1%), in 2004 - 18590 took child care leave, 172 of them	

		were men (0.925%) and in the first term of 2005 19612 took child care leave, 241 of them were men (1.228%).	
Luxembourg	80.1 % of all leave takers are women	23.4 % of men used Parental leave	
The Netherlands	57% of women use Parental leave	23% of men use Parental leave	
Poland	Nearly 50% of mothers took Parental leave	2.5% of fathers took Parental leave	
Portugal	In 2010 1851 parents took Parental leave, out of which 83% were women		in 2013 to 2,321 parents took Parental leave
Slovakia		1% of recipients are men	
Slovenia	All mothers take Parental leave	7% of men take Parental leave	
Spain	96% of users are mothers. 10.4% of women make use of Parental leave (ages 25-59)	0.5% of men aged 25-59 make use of Parental leave	
Sweden	56% of recipients are women	44% of recipients are men	
United Kingdom	11% of mothers who were entitled to parental leave had used it	8% of fathers who were entitled to parental leave had used it	
Austria	Between 93% and 96% of mothers take up Parental leave	Between 0.6% and 2% of fathers take up Parental leave	

Belgium		1.8% in the Flemish Region, 0.9 % in the Walloon region and 0.8% in the Brussels region of all men took Parental leave. The proportion of men taking Parental leave is 25.7%	
Croatia	84.0% for 6-12 months after childbirth, falling to 18.0% during 12-24 months (of all employed mothers)	0.3% in the first year after birth of all employed fathers)	
Cyprus			During 2007 a total of 113 employees made use of their right to parental leave (7 men, 106 women). Since the law was put into force in 2003 a total of 357 employees made use of their right to parental leave (17 men and 340 women)

ANNEX V: OEIL SUMMARY 2008/0193(COD) - 20/10/2010 TEXT ADOPTED BY PARLIAMENT, 1ST READING/SINGLE READING

The European Parliament adopted by 390 votes to 192, with 59 abstentions a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Council Directive 92/85/EEC 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.

The Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are the result of a compromise reached between the European Parliament and the Council. Parliament amends the Commission's proposal as follows:

Purpose: Parliament extends the scope of the Directive. It states that the Directive also aims to improve the conditions for pregnant workers and workers who have recently given birth to remain in, or return to, the labour market and to ensure better reconciliation of professional, private and family life.

Definitions: the term 'pregnant worker' shall mean a pregnant worker employed under any type of contract, including in domestic work. The term 'worker who has recently given birth' shall also mean a worker who recently adopted a child.

Guidelines: Members consider it important to update guidelines in accordance with circumstances and knowledge. There are health and safety risks that are considered hazardous for the reproductive health of male and female workers. These guidelines shall be reviewed and shall, from 2012, be updated at least every five years. These guidelines to the attention of the social partners.

Assessment, information and consultation: Members stipulate that in the risk assessment carried out under Directive 89/391/EEC, the employer shall include an assessment of the reproductive risks for male and female workers. To promote a preventive approach, the assessment should cover workers likely to be in one of the situations covered by the directive. Provisions regarding consultation and participation of workers and/or their representatives for questions falling within its scope were introduced.

Working conditions: Parliament considers that the current text of this article gives a far too wide opportunity to employers to argue that they cannot adapt the workplace or offer an alternative job. Accordingly, it has deleted the words 'or cannot reasonably be required on duly substantiated grounds' in order to ensure that protection of the employment opportunities for women is increased.

Tasks involving serious physical effort or presenting a risk to health: an amendment specifies that pregnant women shall not be required to perform tasks such as carrying and lifting heavy weights or tasks that are dangerous or exhausting or which pose health risks.

Night work and overtime: according to the amended text, workers within the scope of the text must not be obliged to perform night work and are not obliged to work overtime: a) during the 10 weeks prior to the due date of childbirth; (b) during the remainder of the pregnancy should it be necessary for the health of the mother or the unborn child; and c) during the entire period of breastfeeding. There must be the alternative of transfer to daytime work which is compatible.

Workers wishing to be exempted from night work shall inform their employer and, in the case of workers who have recently given birth submit a medical certificate to the employer.

For single parents and parents of children with severe disabilities, these periods may be extended in accordance with the procedures laid down by the Member States.

Maternity leave: Members propose that workers be entitled to a continuous period of maternity leave of at least 20 weeks allocated before and/or after confinement (the Commission proposed 18 weeks and current legislation provides for 14).

- With respect to the last four weeks of the period in question, a scheme of family-related leave available at national level may be considered to be maternity leave for the purposes of this Directive, on condition that it provides an overall protection to workers that is equivalent to the level laid down in this Directive.

- The remuneration for the last four weeks of maternity leave shall be no lower than a certain threshold or, alternatively, it may be the average of the remuneration for the 20 weeks of maternity leave, which shall be at least 75 % of the last monthly salary or of the average monthly salary as stipulated according to national law, subject to any ceiling laid down under national legislation.

- Where a Member State has made provision for a period of maternity leave of at least 18 weeks, that Member State may decide that the last two weeks are met through paternity leave available at national level, with the same level of pay.

- The maternity leave shall include compulsory fully paid maternity leave of at least six weeks after childbirth, without prejudice to existing national laws which provide for a period of compulsory maternity leave before childbirth. The six-week period of compulsory maternity leave shall apply to all working women regardless of the number of days worked prior to confinement.

- New provisions state that this period may be shared with the father, in accordance with the legislation of the Member State concerned if the couple agrees and so requests.

- To protect the health of both mother and child, Member States shall take the necessary measures to ensure that workers can decide freely and without compulsion whether or not to take the non-compulsory period of maternity leave before childbirth. For multiple births the compulsory period of maternity leave shall be increased for each additional child in accordance with national legislation.

- Member States shall protect mothers' and fathers' rights by ensuring that there are special working conditions so as to help the parents of children with disabilities. The total period of maternity leave shall be extended by at least eight weeks after the birth in the case of the birth of a disabled child and Member States shall also ensure an additional period of leave of six weeks in the case of a stillbirth.

Lastly, Member States shall adopt suitable measures for the recognition of postnatal depression as a serious illness, and shall support awareness campaigns aimed at disseminating accurate information on the illness and correcting the prejudices and possible stigmatisation

which it can still attract.

Paternity leave: Members call for measures to ensure that workers whose life partner has recently given birth are entitled to a continuous period of non-transferable paid paternity leave of at least two weeks, granted on an equivalent basis ? except with regard to its duration ? to maternity leave, to be taken after the confinement of the worker?s spouse or partner within the period of the maternity leave. Member States that have not already introduced it are strongly encouraged to implement it in order to promote equal participation of both parents in balancing family rights and responsibilities.

Members also wish to ensure that workers whose life partner has recently given birth are granted a period of special leave including the unused portion of maternity leave in the case of death or physical incapacity of the mother.

Adoption leave: the necessary measures should also be taken to ensure that the provisions of this Directive concerning maternity and paternity leave also apply in the event of adoption of a child of less than 12 months old.

Prohibition of dismissal: this is extended to at least six months following the end of the maternity leave. Dismissal during that period shall be duly justified in writing.

Member States shall take the necessary measures to prohibit discrimination against pregnant women in the labour market by creating equal opportunities for them with regard to recruitment, should they meet all the requirements for the applicable position. They should also be encouraged to adopt measures that ensure that a worker may choose to work part time for a period of no longer than one year, with full protection from the possibility of dismissal and full rights to recover their full-time position and pay at the end of this period.

Health and safety: Members consider that the protection of pregnant women?s health and safety is the main objective of this Directive. Member States shall take appropriate measures to ensure the health and safety of pregnant workers, with regard to ergonomic conditions, working time (including night work and change of job), work intensity, and increasing protection against specific infectious agents and ionising radiation.

Employment rights: Members stipulate that entitlements should be based on full pay, to prevent women losing out financially because they are mothers.

They consider that it is the right of workers on maternity leave to receive automatically any increase of salary, where applicable, without temporarily having to terminate their maternity leave so as to benefit from the salary increase.

In addition, a period of maternity leave must not be prejudicial to the worker?s pension rights and must be counted as a period of employment for pension purposes, and workers must not suffer any reduction of pension rights through taking maternity leave

Time off for breastfeeding: an amendment states that a mother who is breastfeeding her child shall be entitled to a period of leave for that purpose that shall be taken in two separate periods, each of which shall be of one hour, unless another arrangement has been agreed with the employer, without losing any privileges connected to her employment. There are additional provisions for cases of multiple births and part-time work.

Prevention of discrimination and gender mainstreaming: Member States shall encourage employers through collective agreements or practice, to take effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.

Burden of proof: Parliament deleted the Commission?s proposals on burden of proof stating that discrimination on grounds of pregnancy already fulfils the criteria for sex discrimination. The existing reversal of the burden of proof enshrined in Directive 2006/54/EEC can also be brought to bear.

Prevention of discrimination: Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners at appropriate levels with a view to putting in place effective measures to prevent discrimination against women on the grounds of pregnancy, maternity or adoption leave.

The provisions laid down in this Directive shall be incorporated into the text of collective work contracts in the Member States.

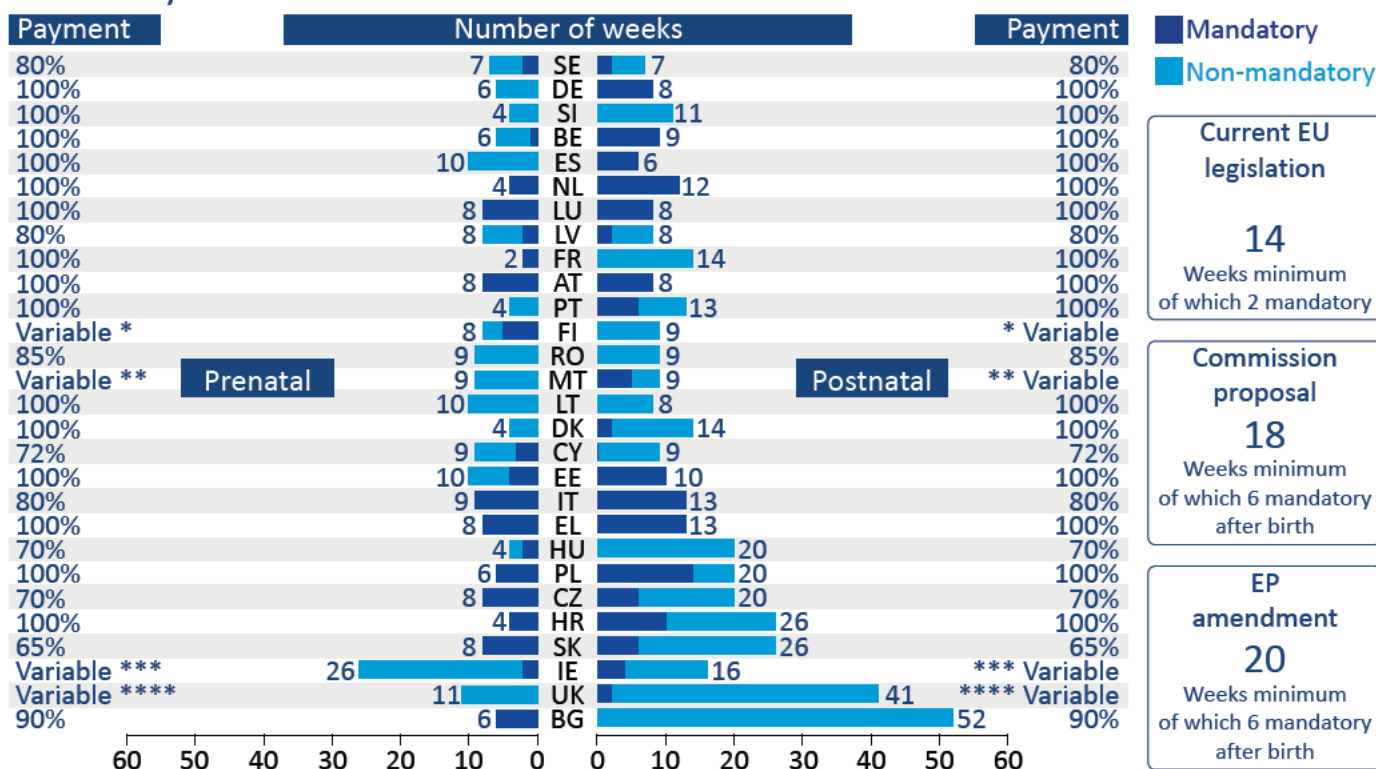
Communication of information and report: Member States and national equality bodies shall communicate to the Commission, within three years of the adoption of this Directive and every three years thereafter, all the information necessary for the Commission to draw up a report. The report must also include an impact study analysing the social and economic effects, in the EU as a whole, of a further increase in the duration of maternity leave and of the implementation of paternity leave.

ANNEX VI: EPRS INFOGRAPHIC - MATERNITY AND PATERNITY LEAVE IN THE EU - DECEMBER 2014

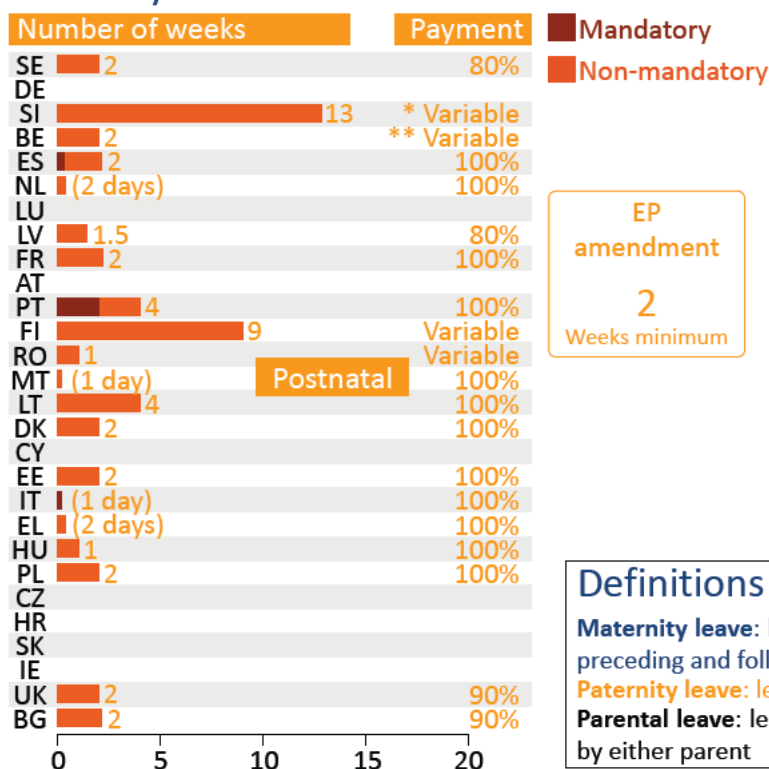
Maternity and paternity leave in the EU

In light of the recent developments regarding the issue of maternity leave, this infographic aims to present the current state of affairs of maternity and paternity leave in EU Member States.

Maternity leave



Paternity leave



Notes on payment

- * FI First 56 days, 90% of salary; remainder (49 days) 70%
- ** MT 100% of earnings (for 14 weeks) + 4 weeks flat rate
- *** IE Weekly rate (€230) paid for 26 weeks; the remaining 16 weeks unpaid
- **** UK First 6 weeks, 90%; next 33 weeks, flat-rate payments of either £138.18 [€170] or 90% of average gross weekly earnings (whichever is lower); the remaining 13 weeks are unpaid.
- * SI 15 days 'paid' + 75 days 'non-paid' (non-paid means that the state pays social security contributions based on the minimum salary (approximately €174 per month))
- ** BE 100% for 3 days (paid by the employer), 82% of salary for the remaining period

Definitions

Maternity leave: leave from work for mothers in the period immediately preceding and following birth.

Paternity leave: leave from work for fathers similar to maternity leave

Parental leave: leave after maternity/paternity leave which can be taken by either parent

State of affairs

With recent news of Jean-Claude Juncker giving six more months to the Council and the Parliament to reach agreement on the maternity leave proposal, the issue of the Maternity Leave Directive has yet again come into focus. Proposed by the EC in 2008 and accepted by the Parliament (with some amendments) in 2010, the directive reached an impasse in the Council more than four years ago and there have been few developments since. The new directive should replace the current 1992 Directive, which sets the minimum period for maternity leave at 14 weeks, with 2 weeks compulsory leave before and/or after confinement and an adequate allowance subject to national legislation. The 2008 proposal set the maternity leave period at 18 weeks with at least 6 weeks compulsory leave after confinement and an allowance amounting to full salary. The Parliament proposed prolonging the maternity leave period to 20 weeks and added 2 weeks of paternity leave under the same conditions as maternity leave.

Explanation of the graphs

Due to the complexity of national legislation and differences between the Member States, and to facilitate presentation of the data in graphic form, simplifications have had to be made in respect of a number of countries.

Countries are ordered by total number of weeks of maternity leave, and paternity leave respectively. Public-sector terms have been chosen in cases where there is a difference with those of the private sector.

Given that national legislation may express leave periods in months, weeks, calendar days or working days, for comparison, they are presented here in rounded weeks.

Some countries also have ceilings on the amount of money paid during maternity/paternity leave but these are not addressed in this publication.

Complementary information on selected Member States

Belgium	Maternity leave in the private sector: first month 82% + remaining weeks 75%.
Spain	From 1 January 2015 paternity leave will last 4 weeks.
Netherlands	The total amount of maternity leave is 16 weeks. Leave must start 4 weeks before birth; up to 6 weeks can be taken before birth, with 10 weeks to 12 weeks after.
Luxembourg	Fathers can have 'leave due to extraordinary circumstances' (congé extraordinaire) of 2 days in case of birth or adoption of a child. Covers 100% of earnings.
Austria	According to collective agreement, fathers employed in the public sector may take a month off work unpaid.
Portugal	No maternity or paternity leave, just parental leave. There is an option to have 120 or 150 consecutive days (150 if the leave is shared by both parents). Father can take any part except the initial parental leave reserved for the mother (licença parental inicial exclusiva da mãe): up to 30 days of voluntary leave before birth and 6 weeks of compulsory leave after.
Malta	Paternity leave is called 'birth leave'.
Denmark	In the private sector there is a minimum level of maternity benefit, subject to negotiation with the employer.
Estonia	Fathers can take paternity leave before or after birth.
Italy	One month before birth and four months after is also an option for maternity leave, but with a certificate that this does not harm the mother's health.
Poland	There are two options for maternity leave - 52 weeks paid 80% or 26 weeks paid 100%. 20 weeks in total is obligatory (14 weeks obligatory for the mother; the next 6 weeks can be transferred to father).
Czech Republic	Maternity leave is 28 weeks total: 6 to 8 weeks before birth and 20 to 22 weeks after birth. 14 weeks are obligatory, at least 6 of which after birth. Father can claim maternity benefit to replace the mother under the same conditions but no earlier than 6 weeks after the birth.
Croatia	After obligatory maternity leave, the mother is entitled to additional maternity leave until the child reaches 6 months of age, which may be transferred to the father.
Ireland	Mothers who are already on certain social welfare payments are entitled to half-rate maternity benefit.
Bulgaria	Fathers who have at least 12 months of insurance may take paternity leave

Sources: national legislation (e.g. MISSOC), websites of national institutions and relevant reports (e.g. International Network on Leave Policies and Research, Maternity and paternity at work: Law and practice across the world). Additional EP sources: A new strategy for gender equality post 2015.

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ANNEX VII: 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 (TENTH INDIVIDUAL DIRECTIVE WITHIN THE MEANING OF ARTICLE 16 (1) OF DIRECTIVE 89/ 391 / EEC)

II

(Acts whose publication is not obligatory)

COUNCIL

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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission, drawn up after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at work ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to protect the safety and health of workers;

Whereas this Directive does not justify any reduction in levels of protection already achieved in individual Member States, the Member States being committed, under the Treaty, to encouraging improvements in conditions in this area and to harmonizing conditions while maintaining the improvements made;

Whereas, under the terms of Article 118a of the Treaty, the said directives are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

Whereas, pursuant to Decision 74/325/EEC ⁽⁴⁾, as last amended by the 1985 Act of Accession, the Advisory Committee on Safety, Hygiene and Health protection at Work is consulted by the Commission on the drafting of proposals in this field;

Whereas the Community Charter of the fundamental social rights of workers, adopted at the Strasbourg European Council on 9 December 1989 by the Heads of State or Government of 11 Member States, lays down, in paragraph 19 in particular, that:

'Every worker must enjoy satisfactory health and safety conditions in his working environment. Appropriate measures must be taken in order to achieve further harmonization of conditions in this area while maintaining the improvements made';

Whereas the Commission, in its action programme for the implementation of the Community Charter of the fundamental social rights of workers, has included among its aims the adoption by the Council of a Directive on the protection of pregnant women at work;

Whereas Article 15 of 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 ⁽⁵⁾ provides that particularly sensitive risk groups must be protected against the dangers which specifically affect them;

Whereas pregnant workers, workers who have recently given birth or who are breastfeeding must be considered a specific

⁽¹⁾ OJ No C 281, 9. 11. 190, p. 3; and
OJ No C 25, 1. 2. 1991, p. 9.

⁽²⁾ OJ No C 19, 28. 1. 1991, p. 177; and
OJ No C 150, 15. 6. 1992, p. 99.

⁽³⁾ OJ No C 41, 18. 2. 1991, p. 29.

⁽⁴⁾ OJ No L 185, 9. 7. 1974, p. 15.

⁽⁵⁾ OJ No L 183, 29. 6. 1989, p. 1.

risk group in many respects, and measures must be taken with regard to their safety and health;

Whereas the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women on the labour market unfavourably nor work to the detriment of directives concerning equal treatment for men and women;

Whereas some types of activities may pose a specific risk, for pregnant workers, workers who have recently given birth or workers who are breastfeeding, of exposure to dangerous agents, processes or working conditions; whereas such risks must therefore be assessed and the result of such assessment communicated to female workers and/or their representatives;

Whereas, further, should the result of this assessment reveal the existence of a risk to the safety or health of the female worker, provision must be made for such worker to be protected;

Whereas pregnant workers and workers who are breastfeeding must not engage in activities which have been assessed as revealing a risk of exposure, jeopardizing safety and health, to certain particularly dangerous agents or working conditions;

Whereas provision should be made for pregnant workers, workers who have recently given birth or workers who are breastfeeding not to be required to work at night where such provision is necessary from the point of view of their safety and health;

Whereas the vulnerability of pregnant workers, workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least 14 continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least two weeks, allocated before and/or after confinement;

Whereas the risk of dismissal for reasons associated with their condition may have harmful effects on the physical and mental state of pregnant workers, workers who have recently given birth or who are breastfeeding; whereas provision should be made for such dismissal to be prohibited;

Whereas measures for the organization of work concerning the protection of the health of pregnant workers, workers who have recently given birth or workers who are breastfeeding would serve no purpose unless accompanied by the maintenance of rights linked to the employment contract, including maintenance of payment and/or entitlement to an adequate allowance;

Whereas, moreover, provision concerning maternity leave would also serve no purpose unless accompanied by the

maintenance of rights linked to the employment contract and or entitlement to an adequate allowance;

Whereas the concept of an adequate allowance in the case of maternity leave must be regarded as a technical point of reference with a view to fixing the minimum level of protection and should in no circumstances be interpreted as suggesting an analogy between pregnancy and illness,

HAS ADOPTED THIS DIRECTIVE

SECTION I

PURPOSE AND DEFINITIONS

Article 1

Purpose

1. The purpose of this Directive, which is the tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC, is to implement 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.
2. The provisions of Directive 89/391/EEC, except for Article 2 (2) thereof, shall apply in full to the whole area covered by paragraph 1, without prejudice to any more stringent and/or specific provisions contained in this Directive.
3. This Directive may not have the effect of reducing the level of protection afforded to pregnant workers, workers who have recently given birth or who are breastfeeding as compared with the situation which exists in each Member State on the date on which this Directive is adopted.

Article 2

Definitions

For the purposes of this Directive:

- (a) *pregnant worker* shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice;
- (b) *worker who has recently given birth* shall mean a worker who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;
- (c) *worker who is breastfeeding* shall mean a worker who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice.

SECTION II

Article 5

GENERAL PROVISIONS

Action further to the results of the assessment

Article 3

Guidelines

1. In consultation with the Member States and assisted by the Advisory Committee on Safety, Hygiene and Health Protection at Work, the Commission shall draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous for the safety or health of workers within the meaning of Article 2.

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.

2. The purpose of the guidelines referred to in paragraph 1 is to serve as a basis for the assessment referred to in Article 4 (1).

To this end, Member States shall bring these guidelines to the attention of all employers and all female workers and/or their representatives in the respective Member State.

Article 4

Assessment and information

1. For all activities liable to involve a specific risk of exposure to the agents, processes or working conditions of which a non-exhaustive list is given in Annex I, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned, of workers within the meaning of Article 2, either directly or by way of the protective and preventive services referred to in Article 7 of Directive 89/391/EEC, in order to:

- assess any risks to the safety or health and any possible effect on the pregnancies or breastfeeding of workers within the meaning of Article 2,
- decide what measures should be taken.

2. Without prejudice to Article 10 of Directive 89/391/EEC, workers within the meaning of Article 2 and workers likely to be in one of the situations referred to in Article 2 in the undertaking and/or establishment concerned and/or their representatives shall be informed of the results of the assessment referred to in paragraph 1 and of all measures to be taken concerning health and safety at work.

1. Without prejudice to Article 6 of Directive 89/391/EEC, if the results of the assessment referred to in Article 4 (1) reveal a risk to the safety or health or an effect on the pregnancy or breastfeeding of a worker within the meaning of Article 2, the employer shall take the necessary measures to ensure that, by temporarily adjusting the working conditions and/or the working hours of the worker concerned, the exposure of that worker to such risks is avoided.

2. If the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the employer shall take the necessary measures to move the worker concerned to another job.

3. If moving her to another job is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds, the worker concerned shall be granted leave in accordance with national legislation and/or national practice for the whole of the period necessary to protect her safety or health.

4. The provisions of this Article shall apply *mutatis mutandis* to the case where a worker pursuing an activity which is forbidden pursuant to Article 6 becomes pregnant or starts breastfeeding and informs her employer thereof.

Article 6

Cases in which exposure is prohibited

In addition to the general provisions concerning the protection of workers, in particular those relating to the limit values for occupational exposure:

1. pregnant workers within the meaning of Article 2 (a) may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardize safety or health, to the agents and working conditions listed in Annex II, Section A;
2. workers who are breastfeeding, within the meaning of Article 2 (c), may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardize safety or health, to the agents and working conditions listed in Annex II, Section B.

Article 7

Night work

1. Member States shall take the necessary measures to ensure that workers referred to in Article 2 are not obliged to

perform night work during their pregnancy and for a period following childbirth which shall be determined by the national authority competent for safety and health, subject to submission, in accordance with the procedures laid down by the Member States, of a medical certificate stating that this is necessary for the safety or health of the worker concerned.

2. The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of:

- (a) transfer to daytime work; or
- (b) leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds.

Article 8

Maternity leave

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

Article 9

Time off for ante-natal examinations

Member States shall take the necessary measures to ensure that pregnant workers within the meaning of Article 2 (a) are entitled to, in accordance with national legislation and/or practice, time off, without loss of pay, in order to attend ante-natal examinations, if such examinations have to take place during working hours.

Article 10

Prohibition of dismissal

In order to guarantee workers, within the meaning of Article 2, the exercise of their health and safety protection rights as recognized under this Article, it shall be provided that:

1. Member States shall take the necessary measures to prohibit the dismissal of workers, within the meaning of Article 2, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8 (1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent;
2. if a worker, within the meaning of Article 2, is dismissed during the period referred to in point 1, the employer must cite duly substantiated grounds for her dismissal in writing;
3. Member States shall take the necessary measures to protect workers, within the meaning of Article 2, from consequences of dismissal which is unlawful by virtue of point 1.

Article 11

Employment rights

In order to guarantee workers within the meaning of Article 2 the exercise of their health and safety protection rights as recognized in this Article, it shall be provided that:

1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;
2. in the case referred to in Article 8, the following must be ensured:
 - (a) the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;
 - (b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2;
3. the allowance referred to in point 2 (b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation;
4. Member States may make entitlement to pay or the allowance referred to in points 1 and 2 (b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation.

These conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.

Article 12

Defence of rights

Member States shall introduce into their national legal systems such measures as are necessary to enable all workers who should themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process (and/or, in accordance with national laws and/or practices) by recourse to other competent authorities.

Article 13

Amendments to the Annexes

1. Strictly technical adjustments to Annex I as a result of technical progress, changes in international regulations or specifications and new findings in the area covered by this Directive shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.

2. Annex II may be amended only in accordance with the procedure laid down in Article 118a of the Treaty.

Article 14

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than two years after the adoption thereof or ensure, at the latest two years after adoption of this Directive, that the two sides of industry introduce the requisite provisions by means of collective agreements, with Member States being required to make all the necessary provisions to enable them at all times to guarantee the results laid down by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference of this Directive

or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the texts of the essential provisions of national law which they have already adopted or adopt in the field governed by this Directive.

4. Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the points of view of the two sides of industry.

However, Member States shall report for the first time to the Commission on the practical implementation of the provisions of this Directive, indicating the points of view of the two sides of industry, four years after its adoption.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

5. The Commission shall periodically submit to the European Parliament, the Council and the Economic and Social Committee a report on the implementation of this Directive, taking into account paragraphs 1, 2 and 3.

6. The Council will re-examine this Directive, on the basis of an assessment carried out on the basis of the reports referred to in the second subparagraph of paragraph 4 and, should the need arise, of a proposal, to be submitted by the Commission at the latest five years after adoption of the Directive.

Article 15

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

D. CURRY

ANNEX I

NON-EXHAUSTIVE LIST OF AGENTS, PROCESSES AND WORKING CONDITIONS

referred to in Article 4 (1)

A. Agents

1. *Physical agents* where these are regarded as agents causing foetal lesions and/or likely to disrupt placental attachment, and in particular:

- (a) shocks, vibration or movement;
- (b) handling of loads entailing risks, particularly of a dorsolumbar nature;
- (c) noise;
- (d) ionizing radiation (*);
- (e) non-ionizing radiation;
- (f) extremes of cold or heat;
- (g) movements and postures, travelling — either inside or outside the establishment — mental and physical fatigue and other physical burdens connected with the activity of the worker within the meaning of Article 2 of the Directive.

2. *Biological agents*

Biological agents of risk groups 2, 3 and 3 within the meaning of Article 2 (d) numbers 2, 3 and 4 of Directive 90/679/EEC ⁽¹⁾, in so far as it is known that these agents or the therapeutic measures necessitated by such agents endanger the health of pregnant women and the unborn child and in so far as they do not yet appear in Annex II.

3. *Chemical agents*

The following chemical agents in so far as it is known that they endanger the health of pregnant women and the unborn child and in so far as they do not yet appear in Annex II:

- (a) substances labelled R 40, R 45, R 46, and R 47 under Directive 67/548/EEC ⁽²⁾ in so far as they do not yet appear in Annex II;
- (b) chemical agents in Annex I to Directive 90/394/EEC ⁽³⁾;
- (c) mercury and mercury derivatives;
- (d) antimitotic drugs;
- (e) carbon monoxide;
- (f) chemical agents of known and dangerous percutaneous absorption.

B. Processes

Industrial processes listed in Annex I to Directive 90/394/EEC.

C. Working conditions

Underground mining work.

(*) See Directive 80/836/Euratom (OJ No L 246, 17. 9. 1980, p. 1).

⁽¹⁾ OJ No L 374, 31. 12. 1990, p. 1.

⁽²⁾ OJ No L 196, 16. 8. 1967, p. 1. Directive as last amended by Directive 90/517/EEC (OJ No L 287, 19. 10. 1990, p. 37).

⁽³⁾ OJ No L 196, 26. 7. 1990, p. 1.

ANNEX II

NON-EXHAUSTIVE LIST OF AGENTS AND WORKING CONDITIONS

referred to in Article 6

A. Pregnant workers within the meaning of Article 2 (a)

1. *Agents*(a) **Physical agents**

Work in hyperbaric atmosphere, e.g. pressurized enclosures and underwater diving.

(b) **Biological agents**

The following biological agents:

— toxoplasma,

— rubella virus,

unless the pregnant workers are proved to be adequately protected against such agents by immunization.

(c) **Chemical agents**

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. *Working conditions*

Underground mining work.

B. Workers who are breastfeeding within the meaning of Article 2 (c)

1. *Agents*(a) **Chemical agents**

Lead and lead derivatives in so far as these agents are capable of being absorbed by the human organism.

2. *Working conditions*

Underground mining work.

ANNEX VII: PROPOSAL FOR A DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL
AMENDING COUNCIL DIRECTIVE 92/85/EEC 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

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
COM(2008) 600/4

2008/xxxx (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 92/85/EEC 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

{SEC(2008) 2526}

{SEC(2008) 2527}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

The aim of this proposal is to improve the protection offered to pregnant workers and workers who have recently given birth or are breastfeeding. In particular, the proposal extends the minimum length of maternity leave from 14 to 18 weeks. This is to help the worker to recover from the immediate effects of giving birth, while also making it easier for her to return to the labour market at the end of her maternity leave. The Directive also improves the employment rights of pregnant workers and workers who have recently given birth or are breastfeeding. The proposal will contribute to better reconciliation of professional, private and family life.

The proposal is a priority initiative¹ in the Commission's work programme for 2008² (ref. 2008/EMPL/025).

General context

In the Roadmap for equality between women and men 2006-2010³ adopted by the Commission in March 2006, the Commission committed itself to reviewing the existing EU gender equality legislation that was not included in the 2005 recasting exercise, with a view to updating, modernising and recasting texts where necessary. Directive 92/85/EEC was not included in the recasting exercise.

The March 2006 European Council stressed the need for a better balance between work and private life in order to achieve economic growth, prosperity and competitiveness, and approved the European Pact for Gender Equality. In December 2007⁴, the Council called on the Commission to evaluate the legal framework supporting reconciliation and the possible need for improvement. The March 2008 European Council reiterated that further efforts should be made to reconcile work with private and family life for both women and men.

The European Parliament has consistently called for improvements to the existing legislation relating to the protection of pregnant workers and the granting of parental leave, and for measures to improve the reconciliation of professional, private and family life. For example, in its resolution of 21 February 2008 on the demographic future of Europe⁵, Parliament called on the Member States to adopt best practices as regards the length of maternity leave and pointed out that it is possible to influence birth-rate curves favourably through coordinated public policies, by creating a family- and child-friendly material and emotional environment.

In its resolution of 27 September 2007⁶, Parliament also urged the Member States to mutualise the costs of maternity and parental leave allowances in order to ensure that women

¹ The roadmap is published at:
http://ec.europa.eu/atwork/programmes/docs/clwp2008_roadmap_priority_initiatives.pdf

² COM(2007) 640.

³ COM(2006) 92.

⁴ SOC 385 Council Conclusions: Balanced roles of women and men for jobs, growth and social cohesion 2007/2156 (INI), points 14 and 15, at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0066+0+DOC+XML+V0//EN&language=EN>.

⁵ 2007/2156 (INI), points 14 and 15, at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0066+0+DOC+XML+V0//EN&language=EN>.

⁶ 2007/2065(INI) at:
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2007-0423>, point 13, 28 and 29.

no longer represent a more costly source of labour than men and welcomed the consultation procedure on reconciliation with the social partners. It also called on the Member States, in conjunction with both sides of industry, to combat discrimination against pregnant women on the labour market and to take all necessary steps to ensure a high level of protection for mothers, and asked the Commission to make a more detailed assessment of compliance with Community law in this area and to determine whether it needed to be revised.

Existing provisions in the area of the proposal

Directive 92/85/EEC (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) provides for a minimum of 14 continuous weeks' maternity leave. The Directive also lays down requirements on health and safety at the workplace to protect pregnant workers and workers who have recently given birth or are breastfeeding. A woman cannot be dismissed during maternity leave. The rights linked to the employment contract are ensured.

According to Article 2(7) of Directive 76/207/EEC⁷, a woman has the right, after maternity leave, to return to the same or an equivalent post. According to the same provision, less favourable treatment of a woman related to pregnancy or maternity leave constitutes discrimination.

Consistency with other policies and objectives of the Union

The aim of this proposal is consistent with EU policies and in particular with the Lisbon Strategy for Growth and Jobs. According to the Treaty, the Community aims to eliminate inequalities and promote equality between men and women in all its activities. Gender equality lies at the heart of the Lisbon Strategy: since the gender gap in employment rates of women with children and men with children is wide, bridging that gap is vital if the EU target for female employment rates is to be met. Reducing the gap is also crucial to achieving greater gender equality.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation

All the consultations mentioned below were conducted on the basis of a number of options to improve legislative support for reconciliation. For the reasons explained below, the Commission's current proposal is limited to amendment of Directive 92/85/EEC.

In 2006 and 2007, the Commission consulted the European social partners on better reconciliation of professional, private and family life related to Directives 92/85/EEC and 96/34/EC⁸ in a two-stage consultation. The Commission looked at ways in which the existing legislation on maternity protection and on parental leave could be improved and also identified new types of family-related leave (paternity leave, adoption leave, leave to care for

⁷ 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 (OJ L 39, 14.2.1976, p. 40). Directive as amended by Directive 2002/73/EC of the European Parliament and of the Council (OJ L 269, 5.10.2002, p. 15).

⁸ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ L 145, 19.6.1996, p. 4).

family members). As regards other measures, the Commission highlighted childcare and care facilities for other dependants, new ways of working (including telework), and incentives for men to avail themselves of opportunities in this area.

The replies varied⁹: some of the social partners welcomed the Commission's initiative while others opposed any change to the current provisions. However, in July 2008, the European social partners notified the Commission of their intention to start the negotiation process under Article 139 of the Treaty in respect of certain family leave arrangements. At the end of the period of negotiations between the social partners (maximum nine months), the Commission will take the necessary action to give legal effect to the new agreement by means of a Directive or, if the negotiations fail, will consider whether to make its own legislative proposal.

As the social partners have confirmed that they do not intend to address maternity leave in their negotiations, the Commission considers it appropriate to bring forward this proposal now so that the social partners know, when reviewing parental leave, what the mother's entitlement would be as regards the minimum amount and conditions of the leave.

In December 2007 the Commission consulted the Member States on the same range of options which had been included in the consultation of the social partners. As regards maternity leave, some Member States were in favour of (modest) increases in the duration, some were in favour of increasing the payment and some were against any changes at EU level. Some other Member States did not reply to the questionnaire.

The Commission has also consulted European NGOs¹⁰ which are active in this area. In general they support initiatives to achieve better reconciliation.

The Advisory Committee on Equal Opportunities for Women and Men¹¹ was also consulted. The majority of members believe there is a need for further EU-level legislation to extend the length of maternity leave to 24 weeks and to increase the rate of payment to the equivalent of a full salary during this leave¹².

Finally, the Advisory Committee on Safety and Health at Work was consulted on the draft proposal.

The replies to the consultation process have been taken into account in the formulation of this proposal. Lengthening the duration of maternity leave by four weeks is a modest increase which ties in with the current situation in many Member States. A full payment ensures that women do not lose out financially when giving birth to a child.

⁹ See under: http://ec.europa.eu/employment_social/gender_equality/legislation/new_legislation_en.html.

¹⁰ See under: http://ec.europa.eu/employment_social/gender_equality/legislation/new_legislation_en.html.

¹¹ Including members from the Member States, equality bodies, social partners and NGOs.

¹² Opinion of 3 July 2008 published at:
http://ec.europa.eu/employment_social/gender_equality/docs/2008/opinion_newforms_en.pdf.

Collection and use of expertise

In preparing this initiative, the Commission commissioned a study on costs and benefits of reconciliation measures¹³. The study came to the conclusion that amending the maternity leave provisions in the sense proposed here is a promising option because the provisions in the Member States do not differ much.

The Network of independent legal experts on gender equality has delivered a report on Pregnancy, Maternity, Parental and Paternity Rights¹⁴ in the Member States as well as a stocktaking report on national measures as to flexible working patterns¹⁵.

Impact assessment

The Commission prepared the Impact Assessment¹⁶ on the basis of the legislative options outlined in the 2007 second-stage consultative document sent to the social partners. While the Commission is currently limiting its proposal to maternity leave, the assessment of the other options may support the social partners in their negotiations, while respecting their autonomy.

The Impact Assessment Report¹⁷ sought to identify the best policy options for achieving the objectives set and improving support for reconciliation. It looked at a broad range of measures, including amendments to the existing Directives providing for family-related leave, namely Directives 92/85/EEC and 96/34/EC, and the introduction of new/other forms of leave, namely adoption leave, paternity leave and filial leave. A number of possibilities were looked at before the options were narrowed to the following: no action at EU level, dissemination of good practice, amending the maternity leave rules (Directive 92/85/EEC), amending the parental leave rules (Directive 96/34/EC), making more specific provision for adoption leave and introducing two new forms of leave, namely paternity and filial leave.

The conclusion is that failing to act would not improve the effectiveness of reconciliation measures. Non-legislative measures (for example, exchange of good practice and social partners' initiatives) will continue in any case, as will other measures to increase the employment rate of women.

Improving the entitlement to family-related leave alongside other measures notably the better provision of childcare will help women and men to achieve better reconciliation between work and private life. The starting point is an adequate maternity leave provision for the mother complemented by parental leave to be taken by either parent. The impact assessment therefore concludes that a proposal for amending the maternity leave rules (Directive 92/85/EEC) remains at this stage a very useful measure in order to improve reconciliation and can be taken into account by the social partners in their negotiations on other forms of family-related leave.

In the light of the results of the consultation process and of the study commissioned by the Commission, the option of extending the duration of maternity leave and increasing the payment was considered a proportionate way of improving the health and safety of women as

¹³ See under: http://ec.europa.eu/employment_social/gender_equality/legislation/index_en.html.

¹⁴ See under: http://ec.europa.eu/employment_social/gender_equality/legislation/bulletin_en.html.

¹⁵ http://ec.europa.eu/employment_social/gender_equality/docs/reconciliation_final_28_august_en.pdf

¹⁶ SEC (2008) 2526

¹⁷ See under: http://ec.europa.eu/employment_social/gender_equality/legislation/new_legislation_en.html.

well as allowing women to better reconcile their professional and family obligations, thereby fostering equal opportunities between women and men in the labour market.

Currently, the duration of maternity leave varies from 14 weeks in a small number of Member States to 28 weeks in other Member States, and in certain circumstances to up to 52 weeks, not all of which is paid.

Longer leave will have a positive impact on the mother's health. It will help women to recover from giving birth and to create a solid relationship with the child. Furthermore, it is easier for women to return to work when the child is older and hence it could incite women to have less recourse to parental leave. Longer leave and the strengthening of the rights of women when returning from maternity leave will also contribute to ensure equality between women and men with regard to labour market opportunities and treatment at work. Increasing the payment given during maternity leave ensures that the women concerned do not lose out financially.

From the employer's point of view, there will be greater certainty as to the length of absence of the mother, since women are expected to have less recourse to parental leave. This is especially pertinent for smaller organisations for which the impact of family-related leave is proportionally greater than for larger organisations.

The costs of this option arise from longer leave and higher compensation in those Member States where change is needed as well as from the costs of replacing the absent worker. To avoid that these costs fall unduly on businesses especially smaller ones, the Commission proposal allows Member States to cap the maternity allowance. Member States also remain free, as is the case now, to determine the share of the allowance which is financed by the state.

3. LEGAL ASPECTS

Legal basis

The proposal is based on Articles 137(2) and 141 (3) of the EC Treaty. Although Directive 92/85/EEC is based on Article 118a of the EC Treaty (now Article 137) and is an individual Directive under the framework of the Directive on Health and Safety (Directive 89/391/EEC), Article 141 EC is added to the legal base of this proposal. Maternity leave is essential for the protection of the health and safety of pregnant workers or workers who have recently given birth. The protection from dismissal or discrimination due to pregnancy or motherhood is instrumental for the protection of women's health and safety, as well as the remuneration of maternity leave. But the rules pertaining to maternity leave, its length, remuneration and the rights and obligations of women taking maternity leave or returning from it are also intrinsically linked to the application of the principle of equal opportunities and equal treatment between women and men as established in Article 141(3). Therefore the legal bases for this proposal are combined.

Subsidiarity and proportionality

The proposal aims to amend an existing Directive. Such an amendment can only be effected by another Directive.

The overall objectives of this proposal can only be achieved by a Community-wide measure, since the necessary level playing-field between the Member States for the protection of pregnant workers and workers who have recently given birth or are breastfeeding can only be ensured by a common minimum standard. Besides protecting the health and safety of the

women concerned at work, the proposal will also have a beneficial effect on these women's ability to reconcile private, family and professional obligations. The importance of policies and measures to foster better reconciliation has been recognized and emphasised by the other European institutions as well as the main stakeholders.

The proposal goes no further than necessary to ensure that the objectives are met. It is a minimum standards instrument and allows the Member States who wish to go further, to do so. The proposal does not go beyond what is absolutely necessary at EU level in order to achieve the objectives set.

Choice of instrument

Since the aim is to amend an existing Directive, a further Directive is the only legal act that can be envisaged.

In any case, Article 137(2) of the Treaty states that action by the EU legislator is to involve directives establishing minimum requirements for gradual implementation.

Correlation table

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive, together with a correlation table between those provisions and the Directive.

European Economic Area

This is a text of relevance to the European Economic Area and the Directive will be applicable to the non-EU Member States of the European Economic Area, following a decision of the EEA Joint Committee.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS

Article 1

The proposed Directive amends the existing 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC, and in particular its Articles 8 (Maternity leave), 10 (Prohibition of dismissal) and 11 (Employment rights).

Article 8 (Maternity leave) is amended so as to increase the duration of maternity leave to 18 weeks, six of which must be taken after childbirth. This corresponds to the length of leave provided for in the ILO Maternity Protection Recommendation, adopted in 2000, and is intended to generally improve the health and safety of women giving birth to a child. This increase is designed to allow women to recover from pregnancy and childbirth, to have more

time with their children, and to be able to breastfeed for a longer period. Under the current Directive the duration is 14 weeks, two weeks of which are compulsory before or after confinement.

National laws which provide for an entitlement to the mother of at least 18 weeks of leave allocated before and/or after confinement, and remunerated at least at the level provided for in this Directive, should be deemed to be maternity leave for the purposes of this Directive.

Women falling within the scope of the Directive would be able to choose freely the time at which the non-compulsory portion of the leave is taken (before or after childbirth), and would thus no longer be obliged to take a specific portion of the leave before childbirth as is presently the case in some Member States. It is for the Member States to decide on notification periods.

Where childbirth occurs after the due date, the prenatal portion of the leave is extended to the actual date of birth, without any reduction in the post-natal portion of the leave, in order to guarantee that women have sufficient time to recover from giving birth and to breastfeed.

The Member States are to decide on the length of additional leave to be granted in the event of premature childbirth, children hospitalised at birth, new-born children with disabilities and multiple births. The extra time should allow women to recover from the particular stress that premature childbirth, children hospitalised at birth, the birth of children with disabilities and multiple births usually cause.

Any period of sick leave, up to four weeks before confinement, in the event of illness or complications arising out of pregnancy or childbirth shall not shorten the period of maternity leave, again in the interest of women's health.

Points 1 and 2 of Article 10 (Prohibition of dismissal) are amended: in order to take account of the case law of the European Court of Justice, it is proposed to prohibit all preparations for a possible dismissal not related to exceptional circumstances, during the maternity leave. Under the current Directive, the employer must duly substantiate the grounds for such dismissal in writing only in cases where a woman is dismissed while on maternity leave. The proposed amendment extends this duty of the employer to cases where a woman is dismissed within six months of the end of her maternity leave, if the woman requests such a written motivation. The aim of this provision is not to amend any rules on individual or collective dismissal, but only to provide, in the interest of both the business and the worker concerned, that during a certain period after the return from maternity leave, any dismissal should be duly motivated in writing if the worker so requests.

The new point 2(c) of Article 11 (Employment rights) makes it clear that following maternity leave, the woman has the right to return to the same job or to an equivalent post on terms and conditions that are no less favourable, and the right to benefit from any improvement in working conditions to which she would have been entitled during her absence. This is taken from Directive 2002/73/EC, as recast in Directive 2006/54/EC, because it is highly relevant within the context of a proposal to modify Directive 92/85/EEC.

Point 3 modifies the existing rule on the payment given during maternity leave: it provides for the principle of the payment of the full monthly salary received prior to the maternity leave. However, this is not mandatory since this payment may be subject to a ceiling, to be determined by the Member State, provided that it is not set below the rate for sick pay. Member States may determine if the level of the payment during maternity leave corresponds

to the one of the last monthly salary before maternity leave or to an average to be calculated over a certain period.

According to the case-law of the European Court of Justice¹⁸, despite the exception provided for in Article 137(5) EC, it is acceptable that EC law based on that Article regulates questions of pay 'otherwise some of the areas referred to in Article 137(1) EC would be deprived of much of their substance'.

According to new point 5 of Article 11, a worker during maternity leave or when returning from maternity leave has a right to ask her employer to adapt her working patterns and hours to the new family situation and the employer is obliged to consider such a request. However, the employer has no obligation to accept or follow-up on the request. The detailed rules on the exercise of this right are to be laid down by the Member States. This new provision is necessary to strengthen the protection of workers' health and could allow, with the consent of employers, for greater flexibility of working hours and patterns. A similar provision is included in Article 2b of the proposal to amend Directive 2003/88/EC on the organisation of working time. Should this Article be adopted, the amendment proposed here could refer to Article 2b of the proposal to amend Directive 2003/88/EC and no further change to Directive 92/85/EEC would be needed.

The provision on the burden of proof is common to most Directives on equal treatment between women and men. In judicial procedures, the general rule is that a person who alleges something must prove it. However, in equal treatment cases, it is often extremely difficult to obtain the evidence necessary to prove the case, as it is often in the hands of the respondent. This problem was recognised by the European Court of Justice¹⁹ and the Community legislator in Directive 97/80/EC²⁰, 2000/43²¹, 2000/78²², 2004/113²³ and 2004/56²⁴.

The provision on victimisation is also commonly found in equal treatment Directives. Effective legal protection must include protection against retaliation. Victims may be deterred from exercising their rights on account of the risk of retaliation, and individuals must therefore be protected from any adverse treatment where they exercise the rights conferred by the Directive.

In accordance with the case law of the Court of Justice²⁵, the provision on penalties provides that there should be no upper limit on the compensation payable in the event of a breach of the principle of equal treatment. This provision does not require criminal penalties to be introduced.

The proposal provides for the scope of the existing equality bodies established pursuant to Directive 2002/73/EC, as recast by Directive 2006/54/EC, to the issues covered by the Directive, where these issues pertain primarily to equal treatment and not to the worker's health and safety.

¹⁸ Case C/307/05, *Del Cerro Alonso*.

¹⁹ Case 109/88 *Danfoss* [1989] ECR-3199.

²⁰ OJ L 14, 20.1.1998.

²¹ OJ L 180, 19.7.2000.

²² OJ L 303, 12.12.2000.

²³ OJ L 373, 21.12.2004.

²⁴ OJ L 204, 26.7.2006.

²⁵ Cases C-180/95 *Draehmpaehl* [1997] ECR I-2195 and C-271/91 *Marshall* [1993] ECR I-4367.

Article 2

This provision is a standard provision, which allows the Member States to provide a higher level of protection than that guaranteed by the Directive and confirms that there should be no lowering of the level of protection already afforded by the Member States when implementing it.

Article 3

This provision gives the Member States a period of two years to transpose the Directive into national law and to communicate the relevant texts to the Commission. It also requires the Commission to report to Parliament and the Council on the application of the Directive, on the basis of information from the Member States.

Article 4

This is a standard provision providing the obligation for Member States to periodically communicate to the Commission information concerning the application of the amended Directive and for the Commission to report to the Community legislator on this point and, where necessary, to join proposals to revise and update the Directive.

Article 5

This is a standard provision stipulating that the Directive is to enter into force on the day it is published in the Official Journal.

Article 6

This is a standard provision on addressees, making it clear that the Directive is addressed to the Member States.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 92/85/EEC 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 137(2) and 141(3) thereof,

Having regard to the proposal from the Commission²⁶,

Having regard to the opinion of the European Economic and Social Committee²⁷,

Having regard to the opinion of the Committee of the Regions²⁸,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Article 137 of the Treaty provides that with a view to achieving the objectives of Article 136 of the Treaty, the Community shall support and complement the activities of Member States in improving the working conditions to protect the safety and health of workers and in ensuring equality between women and men with regard to labour market opportunities and treatment at work.
- (2) Article 141 of the Treaty provides that the Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- (3) Since this Directive addresses not only the health and safety of workers who are pregnant, or have recently given birth or are breastfeeding, but also, inherently, issues of equal treatment, such as the right to return to the same or an equivalent working place, the rules on dismissal and employment rights, or on better financial support during the leave, Article 137 and 141 are combined to form the legal base for this Directive.

²⁶ OJ C , , p. .

²⁷ OJ C , , p. .

²⁸ OJ C , , p. .

- (4) Equality between men and women is a fundamental principle of the European Union. Articles 21 and 23 of the Charter of Fundamental Rights of the European Union prohibit any discrimination on grounds of sex and require equality between men and women to be ensured in all areas.
- (5) Under Article 2 of the Treaty establishing the European Community, promoting such equality is one of the Community's essential tasks. Similarly, under Article 3(2) of the Treaty the Community must aim to eliminate inequalities and to promote equality between men and women in all its activities.
- (6) Directive 92/85/EEC²⁹ implements measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
- (7) One of the six priorities laid down in the Roadmap for equality between women and men 2006-2010³⁰ is to achieve a better balance between work and private and family life. In this connection the Commission undertook to review the existing legislation in the field of gender equality with a view to modernising it, where necessary. The Commission also announced that in order to improve governance of gender equality, it would 'review the existing EU gender equality legislation not included in the 2005 recast exercise (...) with a view to updating, modernising and recasting where necessary'. Directive 92/85/EEC was not included in the recasting exercise.
- (8) In its Communication *Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe*³¹, the Commission affirmed the need to improve reconciliation of private and professional life.
- (9) The vulnerability of pregnant workers and of workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least 18 continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least six weeks allocated after confinement.
- (10) The International Labour Organization recommends a minimum duration of maternity leave of 18 weeks remunerated at the full amount of the woman's previous earnings. The ILO Maternity Protection Convention of 2000 provides for a period of six weeks' compulsory leave after childbirth.
- (11) The Court of Justice of the European Communities has consistently recognised the legitimacy, in terms of the principle of equal treatment, of protecting a woman's biological condition during and after pregnancy. It has, moreover, consistently ruled that any unfavourable treatment of women related to pregnancy or maternity constitutes direct sex discrimination.
- (12) On the basis of the principle of equal treatment, the Court has also recognised the protection of employment rights of women, and in particular their right to return to the

²⁹ OJ L 348, 28.11.92

³⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions *A Roadmap for equality between women and men* - COM(2006) 92.

³¹ COM(2008) 412.

same or an equivalent job, on terms that are no less favourable, as well as to benefit from any improvement in working conditions introduced during their absence.

- (13) Women should therefore be protected from discrimination on grounds of pregnancy or maternity leave, and should have adequate means of legal protection.
- (14) This Directive is without prejudice to Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions³², as recast in Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation³³.
- (15) The protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should be guaranteed and not run counter to the principles enshrined in the Directives concerning equal treatment for men and women.
- (16) In order to improve the effective protection of pregnant workers and workers who have recently given birth or are breast feeding, the rules on the burden of proof should be adapted where there is a prima facie case of a breach of the rights granted under this Directive. For those rights to be applied effectively, the burden of proof should fall on the respondent when evidence of such a breach is brought.
- (17) The effective implementation of the principle of equal treatment requires adequate judicial protection against victimisation.
- (18) Member States should provide for effective, proportionate and dissuasive penalties in the event of any breach of the obligations under this Directive.
- (19) Experience shows that protection against breaches of the rights guaranteed by this Directive would be strengthened by giving the equality body or bodies in each Member State competence to analyse the problems involved, to consider possible solutions and to provide practical assistance to victims. Therefore, provision should be made to this end in this Directive.
- (20) This Directive lays down minimum requirements and thus offers the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation prevailing in each Member State.
- (21) Since the objectives of the action to be taken, namely to improve the minimum level of protection of pregnant workers and workers who have recently given birth or are breastfeeding and to improve the effective implementation of the principle of equal treatment cannot be sufficiently achieved by the Member States in view of their diverging levels of protection, and can therefore be better achieved at Community

³² OJ L 269, 5.10.2002, p. 15.

³³ OJ L 204, 26.7.2006, p. 23.

level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve the stated objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/85/EEC is amended as follows:

1. Article 8 is replaced by the following:

"Article 8

Maternity leave

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of at least 18 weeks allocated before and/or after confinement.

2. The maternity leave stipulated in paragraph 1 shall include compulsory leave of at least six weeks after childbirth. The Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to choose freely the time at which the non-compulsory portion of the maternity leave is taken, before or after childbirth.

3. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date and the actual date of childbirth, without the remaining portion of leave being reduced.

4. Member States shall take the necessary measures to ensure that additional leave is granted in the case of premature childbirth, children hospitalised at birth, children with disabilities and multiple births. The duration of the additional leave should be proportionate and allow the special needs of the mother and the child/children to be accommodated.

5. Member States shall ensure that any period of sick leave due to illness or complications arising out of pregnancy occurring four weeks or more before confinement does not impact on the duration of maternity leave."

2. Article 10 is replaced as follows:

"Article 10

Prohibition of dismissal

In order to guarantee that workers within the meaning of Article 2 can exercise their health and safety protection rights as recognised under this Article:

1. The Member States shall take the necessary measures to prohibit the dismissal and all preparations for a dismissal of workers within the meaning of Article 2 during the period from the beginning of their pregnancy to the end of the maternity leave provided for in Article 8(1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

2. If a worker within the meaning of Article 2 is dismissed during the period referred to in point 1 the employer must cite duly substantiated grounds for her dismissal in writing. If the dismissal occurs within six months following the end of maternity leave as provided for in Article 8(1), the employer must cite duly substantiated grounds for her dismissal in writing at the request of the worker concerned.

3. The Member States shall take the necessary measures to protect workers within the meaning of Article 2 from the consequences of dismissal which is unlawful by virtue of points 1 and 2.

4. Less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Article 8 shall constitute discrimination within the meaning of Directive 2002/73/EC, as recast by Directive 2006/54/EC."

3. Article 11 is amended as follows:

(a) The following point 1a is inserted:

"1a. workers, within the meaning of Article 2, who are excluded from work by their employer who considers them not fit for work without medical indication supplied by the worker, shall, until the beginning of the maternity leave in the sense of Article 8(2), receive a payment equivalent to their full salary."

(b) In point 2, the following point (c) is added:

"(c) the right of workers within the meaning of Article 2 to return to their jobs or to equivalent posts on terms and conditions that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence;"

(c) Point 3 is replaced by the following:

"3. the allowance referred to in point 2(b) shall be deemed adequate if it guarantees income equivalent to the last monthly salary or an average monthly salary, subject to any ceiling laid down under national legislation. Such a ceiling may not be lower than the allowance received by workers within the meaning of Article 2 in the event

of a break in activity on grounds connected with the worker's state of health. The Member States may lay down the period over which this average monthly salary is calculated."

(d) The following point 5 is added:

"5. Member States shall take the measures necessary to ensure that workers, within the meaning of Article 2, may, during maternity leave or when returning from maternity leave, as provided for in Article 8, request changes to their working hours and patterns, and that employers shall be obliged to consider such requests, taking employers' and workers' needs into account."

4. The following Article 12a is inserted:

"Article 12a

Burden of proof

1. Member States shall take such measures as are necessary in accordance with their national judicial systems to ensure that when persons who consider that their rights under this Directive have been breached establish, before a court or other competent authority, facts from which it may be presumed that there has been such a breach, it shall be for the respondent to prove that there has been no breach of the Directive.

2. Paragraph 1 shall not prevent the Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal proceedings.

4. Member States need not apply paragraph 1 to proceedings in which the court or competent body investigates the facts of the case.

5. Paragraphs 1 to 4 shall also apply to any legal proceedings commenced according to Article 12."

5. The following Article 12b is inserted:

"Article 12b

Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence resulting from a complaint they have lodged or proceedings they have initiated with the aim of enforcing compliance with the rights granted under this Directive."

6. The following Article 12c is inserted:

"Article 12c

Penalties

Member States shall lay down the rules on penalties applicable to breaches of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. Penalties may comprise payment of compensation, which may not be limited by the fixing of a prior upper limit, and must be effective, proportionate and dissuasive."

7. The following Article 12d is inserted:

"Article 12d

Equality body

Member States shall ensure that the body or bodies designated under Article 20 of Directive 2002/73/EC as recast by Directive 2006/54/EC for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not to the worker's health and safety."

Article 2

1. Member States may introduce or maintain provisions which are more favourable to workers than those laid down in this Directive.
2. Implementation of this Directive shall under no circumstances constitute grounds for reducing the level of protection in the fields covered by this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by at the latest [two years after adoption]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
2. The measures thus adopted by the Member States shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 4

1. Member States and national equality bodies shall communicate to the Commission, by [five years after adoption] at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of Directive 92/85/EEC as amended by this Directive.
2. The Commission's report shall take account, as appropriate, of the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, the report shall *inter alia* provide an assessment of the impact on women and men of the measures taken. In the light of the information received, the report

shall, where necessary, include proposals to revise and update Directive 92/85/EEC as amended by this Directive.

Article 5

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament For the Council

The President

The President

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

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