

Leave policies and practice for non-traditional families



Summary

The right to maternity, paternity and parental leave for families is now well established in many European Union (EU) Member States. As of 2019, most EU Member States offer some form of maternity, paternity and parental leave following the birth of a child. There remain several differences across Member States in terms of the length of leave, level of compensation and extent of flexibility allowed.¹

However, as policy is formulated and positioned towards the traditional nuclear family, the access that other, less traditional family types have to such leave is under-explored. This policy memo provides an introduction to the access that parents in adoptive families, reconstituted families (families with step-parents and step-children), and families with same-sex parents have to different types of family leave.²

Almost all Member States make provision for adoptive families, with some offering leave arrangements above and beyond what is offered to traditional families. However, access to parental leave is more complicated for families with same-sex parents and reconstituted families. Only a minority of Member States allow the partner of a parent to take parental leave to look after a child to whom they have no legal relationship. As same-sex couples' access to different types of family leave depends almost entirely on their legal rights to become parents, this too is developing

unevenly across Member States. These divergences result in different parental care provisions being available to children depending on the type of families and the Member State in which they grow up.

The new Work-Life Balance Directive sets a direction for the development of leave policies in the EU

The provision of family leave is a right that has long been discussed and included in policy documents, including the Charter of Fundamental Rights of the European Union (Articles 24 and 33)³ and in the United Nations Convention on the Rights of the Child (Articles 5, 18 and 27).⁴

Most recently, the Directive on Work-Life Balance for Parents and Carers was approved by the European Parliament and Council in the second quarter of 2019 and must now be transposed into national level legislation by 2024.⁵ The Directive aims to modernise the EU legal framework in order to allow parents and carers to better balance their life and work commitments, and to ensure equality between men and women regarding employment opportunities and treatment at work. To enable this, the Directive has the specific objectives of improving access to work-life balance provisions and increasing the uptake of paternity, parental and carers' leave by fathers.

BOX 1: THERE IS NO COMMON DEFINITION OF A 'NON-TRADITIONAL FAMILY' BUT IT IS CLEAR THAT THESE FAMILY FORMS ARE INCREASING

In recent years, increased policy and research attention has been paid to 'non-traditional families'. Definitions vary regarding what is included within this group, with no single definition consistently used in literature and policy documents.⁶ However, a non-traditional family can describe any family group outside of one that includes a mother and a father living together with their biologically-related children. Non-traditional families, therefore, might include families with single parents, families with same-sex parents, families with adopted or fostered children, families with parents living apart, families with step-parents and step-siblings ('reconstituted' families) and families that consist of other relatives living together in ways outside the traditional formulation.⁷

General trends across the EU show an increase in non-standard family forms over the last few decades due to changes in societal and family norms and economic contexts, as well as legislative rights.⁸ In particular, the declining marriage rate (which almost halved between 1965 and 2015), increasing divorce rates (which almost doubled between 1965 and 2015),⁹ and the increasing cohabitation rate among young people, has contributed to the increasing likelihood that children are born outside of marriage in a number of Member States and grow up with parents who are not married or do not live together: this was the case for 42.6 % of all children born in the EU in 2016 compared with 27.3 % of those born in 2000.¹⁰ Developments in social attitudes regarding the roles of men and women have also contributed to these changes in partnership forms.¹¹ In addition, changes in social attitudes regarding homosexuality and gender identity have led to the legal recognition of numerous rights for same-sex couples and parents in the past two decades. For example, since 2003, 14 Member States have passed legislation making it possible for same-sex couples to get married, often conferring a number of additional family rights in the process.¹²



In this way, through the EU legal framework, the Directive aims to reflect and promote a more modern conception of gender roles and families. To some extent, the Directive also acknowledges the existence of non-traditional family types:

- By introducing the right to paternity leave for at least 10 days upon the birth of a child for fathers or equivalent second parents where and in so far as recognised by national law.¹³ The Directive also states that the right to paternity leave shall be granted irrespective of marital or family status, as defined by national law and recognises Member States' competence in defining such marital and family status, as well as establishing which persons are to be considered to be a parent, a mother and a father.
- By restating the previous Parental Leave Directive (2010/18/EU) definition of parental leave as leave that can be taken upon the birth or adoption of a child.
- By specifying that Member States should assess the need for adapting parental leave to the needs of adoptive parents, parents with a disability, and parents with children with disabilities or long-term illnesses.¹⁴

Children benefit when their parents have access to generous family leave policies

Existing research has established that children benefit most in terms of their early development and later outcomes when both their parents are able to take parental leave to look after them and spend time with them.¹⁵ As the Directive on Work-Life Balance will now require a minimum standard of paternity, parental and carers' leave in all Member States, it is important to examine whether there will be any children who cannot benefit from the same access to such leave because of their family composition. As emerging evidence suggests that there are increasingly more families of non-traditional form, an exploration of these families' access to parental leave is timely.

FAMILIES WITH SAME-SEX PARENTS

Over the last two decades, the legal status and social acceptability of same-sex couples has advanced considerably across the EU.¹⁶ As part of these developments, it is increasingly legally possible and socially acceptable for same-sex couples to become parents, either through joint adoption, second-parent adoption or by other means (including by surrogacy and IVF treatment). However, legislation regarding same-sex couples' rights to have a family remains a matter of national determination. As a result, there is considerable variation between Member States in terms of the legal recognition of same-sex relationships and regulations around parenthood.

There are increasing amounts of data that demonstrate the increasing social acceptability and visibility of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals and same-sex couples¹⁷: for example, the 2015 Eurobarometer



BOX 2: DIFFERENT MEMBER STATES HAVE DIFFERENT APPROACHES TO DEVELOPING FAMILY LEAVE POLICIES

Leave policies, as part of the child and family policies, aim to support families in raising children. While leave policies have a wide range of benefits for children, parents and society at large and typically have multiple objectives, there seem to be differences between countries regarding the focus of particular legal and policy arrangements. As Adema (2012) argues, in some countries, the primary focus of leave policies is the child and their rights, wellbeing and opportunities for development. However, in other countries, leave policies seem to be seen more as a health and socio-economic measure to resolve conflicts between work and family. Furthermore, there are also differences between Member States in terms of how leave policies are being introduced: either proactively, to encompass the changing social reality, or reactively, with new developments introduced as a consequence of adapting national laws and policies to EU or other regulations and requirements. Leave policy objectives and design also differ in the weight given to financial measures versus measures that focus more on providing parents with opportunities to spend more time with their children. Finally, there are also differences between European countries in terms of the level of coherence of various national leave policies and the available level of support during children's early life.

These dichotomies are also observed in the EU Member States' approach to leave policies for non-traditional families.

Source: Adema (2012)¹⁸

survey found that 61 % of Europeans agreed that same-sex marriages should be allowed across Europe.¹⁹ However, there remains very limited data regarding the numbers of same-sex couples and parents across the EU Member States, as such data are collected on a national scale, if at all.²⁰ Data from 2011 suggests that same-sex couples

across four Member States consisted of between 0.3 % and 5.9 % of the households reported; however, the small sample size and the many changes in partnership rights available to same-sex couples in the past eight years mean that this is unlikely to remain accurate.²¹ However, given the increase in the legality of various relationship forms and parenthood arrangements for same-sex couples over the past two decades, it is likely that the number of families with same-sex parents is also increasing.

Same-sex couples' access to family leave in each Member State depends on whether the Member State affords same-sex couples several other legal rights

These legal rights include:

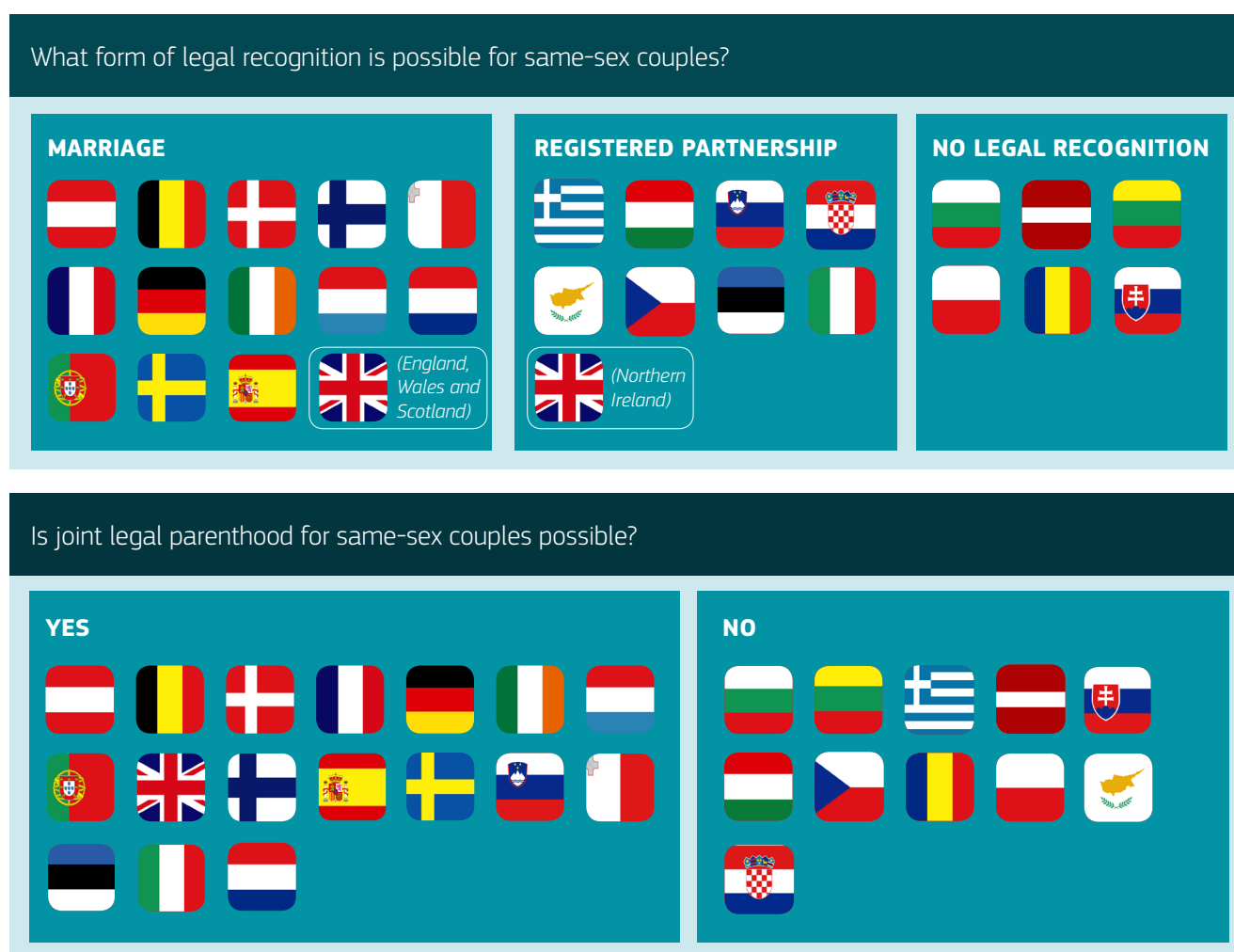
- Whether the country allows same-sex couples to have a legally recognised relationship (either through registered partnerships or marriage)

- Whether the country allows same-sex couples to both legally be parents (which might be through a combination of joint adoption, step-child adoption, surrogacy, artificial insemination and recognition upon birth)
- Whether the country allows the same-sex partner of a parent to take all forms of family leave that are available for different-sex couples (including, for example, allowing a birth mother's female partner to take paternity leave).

When Member States allow same-sex couples to be joint legal parents of a child, they almost always offer these families the same rights to family leave as are offered to other families

Of the 14 Member States that allow same-sex marriage, all also allow same-sex couples to become joint parents of children through adoption and nine allow joint parenthood

FIGURE 1: FACTORS THAT INFLUENCE SAME-SEX PARENTS' ACCESS TO FAMILY LEAVE



Source: ILGA-Europe Rainbow Europe 2019; LawsAndFamilies legal database; Leave Network country profiles; individual country ministries.

through automatic second-parent recognition.²² Almost all these Member States then grant same-sex parents the same access to maternity, paternity and parental leave as other parents.²³

Of the additional seven Member States²⁴ that allow registered partnerships, two allow parenthood only through the adoption of a partner's child (second-parent adoption) while the remainder do not allow same-sex couples to be joint parents at all.²⁵ When second-parent adoption is allowed in these Member States, the same-sex biological parent would have the same right as any other parent and the same-sex adopting parent would have the same right as any other adoptive parent.

All six Member States (Bulgaria, Latvia, Lithuania, Poland, Romania and Slovakia) that do not allow legal recognition of same-sex couples also do not allow these couples to hold joint legal parenthood of the same child.²⁶ As a result, these couples have no joint right to family leave. Regardless of the role that the parent's partner played in a child's life, only the legal parent of a child would have the same rights as any other single parent in the Member State.

A number of Member States have parental leave legislation and policies in place that particularly accommodate same-sex couples



In France and Luxembourg, paternity leave is gender-neutral in terminology and legislation: 'welcome leave' (*congé d'accueil*) and 'extraordinary leave' (*congé extraordinaire*). Each can be taken by the partner of the mother giving birth, regardless of their gender.^{27,28}



Since 2009, maternity, paternity and parental leave in Portugal have been replaced by gender-neutral terms, in terms of initial parental leave (*licença parental inicial*), parental leave reserved for the father (*licença parental exclusiva do pai*) and additional parental leave (*licença parental complementar*). While this change was designed to increase an equal sharing of leave across mothers and fathers, rather than to accommodate same-sex couples, because same-sex marriage and adoption have since been introduced, these leave provisions also apply to non-standard families.²⁹



In Spain, leave legislation does not establish any distinction between same-sex and different-sex parents. Instead of maternity and paternity leave, since March 2019, either parent may be entitled to a benefit for the birth and care of a child.³⁰



Parental leave in Sweden was made gender-neutral in 2014, with new legislation describing parental leave in ways that do not refer to parents' genders.³¹

RECONSTITUTED FAMILIES

Reconstituted families, also known as 'blended families', 'step-families', 'patchwork families' and 'recomposed families', consist of a couple with children from previous relationships, as well as any children that a couple may have had together.

While reconstituted families are increasingly visible in terms of research and policy attention at the national and EU-level, these families remain underreported in the official data sources.³² While there is presently limited data about the prevalence of such families, initial analysis of EU SILC suggests that the average proportion of separated, single parent or no parent families across the EU Member States was around 16 % of all families in 2016 and further data collection is planned for 2021.³³

As with same-sex parents, the right to family leave for reconstituted families depends on individual Member State legislation

There are two main approaches taken to family leave for reconstituted families by Member States. In some Member States, the partner of a parent has a right to parental leave, whether they are spouses, registered partners or a cohabitant (with some conditions around definitions). In other Member States, only legal parents can take parental leave to care for the child in the family.³⁴ In at least one Member State, this right is available for partners who are in a registered partnership or marriage with a parent, but not for partners who are cohabiting. Figure 2 gives an indication of the direction that different Member States took regarding policies (as was the case in 2015 and 2016).

Member States that do not allow parental leave for non-parents often also do not recognise same-sex relationships or allow same-sex couples to be joint parents

Member States where non-parents cannot take parental leave are often the same Member States that do not allow same-sex couples to become parents.³⁵ Of the six Member States that do not recognise same-sex relationships, five also do not allow non-parents to take parental leave (Bulgaria, Poland, Latvia, Lithuania and Romania).³⁶ Of the Member States where the partner of a parent is allowed to take parental leave, the majority also extend this right equally to the same-sex partners of parents.

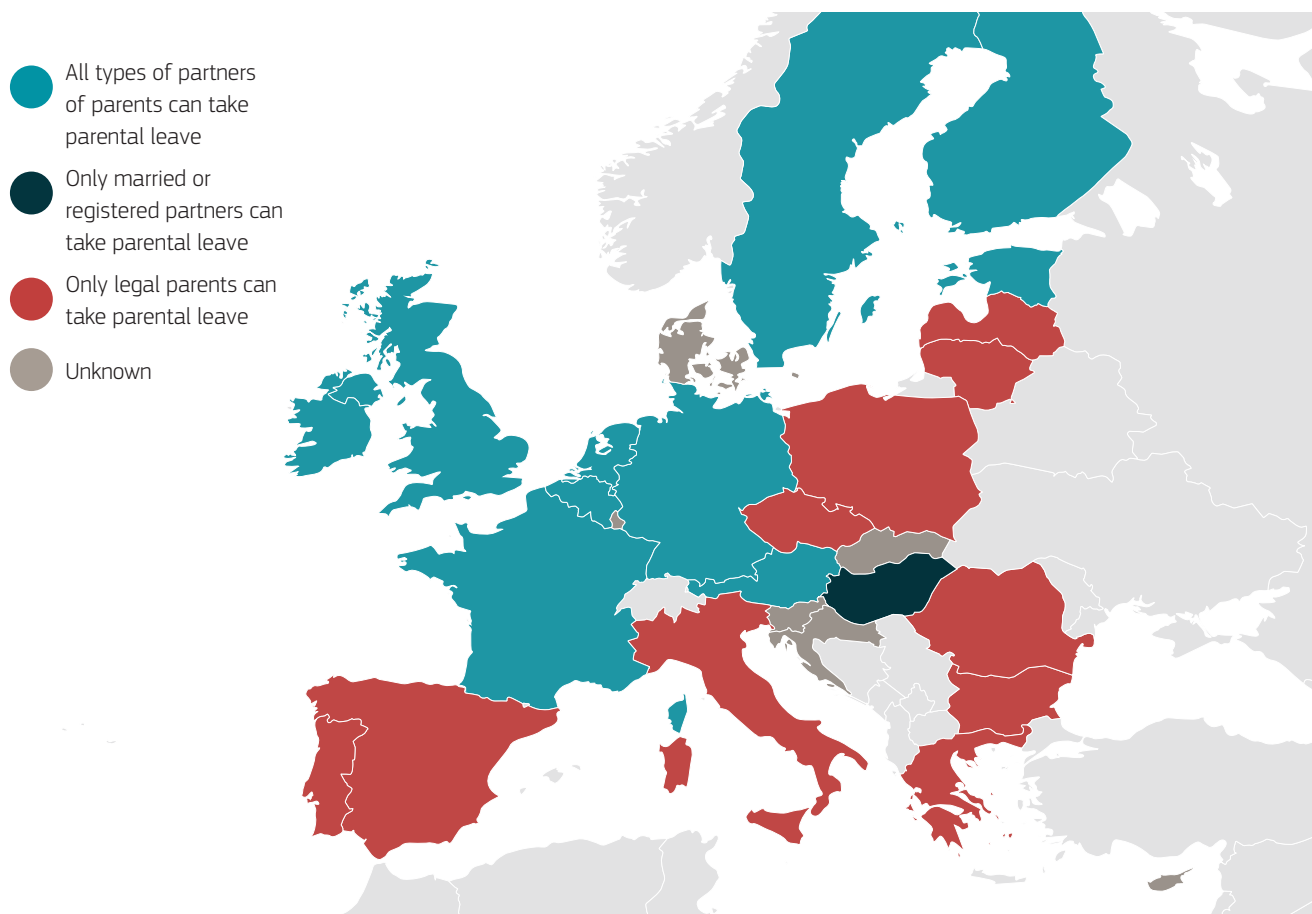
There are some variations in the rights of reconstituted families to parental leave

Some examples include:





In Belgium, a partner must be legally cohabiting or have cohabited with the parent for at least three years in order to take parental leave.³⁷

FIGURE 2: THERE IS CONSIDERABLE VARIATION ACROSS MEMBER STATES AROUND RIGHTS TO PARENTAL LEAVE FOR CHILDREN OF PARTNERS



Source: LawsAndFamilies legal database; data collected in 2015 and 2016. We received corrections from the country ministries of Germany, Poland and Slovenia. We received confirmation that information was correct from the country ministries of Spain, Finland, Italy, Lithuania, Latvia, Romania and Sweden.

 In Poland, the cohabiting or married partner of a parent is not eligible for paternity or parental leave but is eligible to take paid childcare leave (*urlop wychowawczy*) of up to 36 months before a child turns six.³⁸

 In England and Wales, partners of parents must be granted parental responsibility for a child before they have a right to take parental leave. Parental responsibility can be granted on several grounds, including whether a partner is married to or in a registered partnership with a parent or cohabiting with a child.³⁹

ADOPTIVE FAMILIES

Adoptive families, understood as families with parents who have adopted a child, are not always included in the definitions of non-traditional family forms. However, the type and extent of leave that adoptive families can access varies between Member States.

Data on the number of children adopted is gathered by Member States and reported only voluntarily to EU bodies, meaning it is necessarily incomplete.⁴⁰ Nevertheless, historic data and existing research suggest that there are significant disparities in adoption rates between different Member States.⁴¹ While on average there were 19 adoptions per 10,000 children across EU Member States between 2004 and 2014, this varied from fewer than 10 per 10,000 in France to 47 per 10,000 in Cyprus.⁴²

Adoptive families may have the same rights to family leave as other families or they may have the right to (specific or additional) adoptive leave

In some Member States, leave arrangements for adoptive families mirror arrangements made for traditional family forms, with adoptive parents able to access maternity, paternity and parental leave (or equivalents). For example, adoptive parents in Italy and Poland may take maternity,



BOX 3: EXAMPLES OF HOW SOME MEMBER STATES APPROACH FAMILY LEAVE FOR ADOPTIVE PARENTS



In **Ireland**, adoptive parents are eligible to take adoption leave, paternity leave and parental leave. The adoptive mother (or a sole male adopter) may take 24 weeks that is paid and an additional 16 weeks of unpaid leave. If a child is being adopted from abroad, adoptive leave may start before the time of the child's placement with the family. In this regard, adoptive leave closely mirrors the maternity leave that other mothers can take (26 weeks of paid leave with 16 weeks of unpaid leave).⁴³

While parents in Ireland must usually take parental leave before a child turns 8, if a child is adopted between the ages of 6 and 8, parental leave may be taken for up to two years after adoption.⁴⁴ A new Parental Leave Scheme is planned for November 2019 that will allow all parents (including adoptive parents) to take two weeks of paid parental leave within the first year of their child's birth. This will rise to seven weeks per parent over the next three years. This Scheme will also widen access to adoptive leave and benefits to male same-sex couples for the first time.⁴⁵



Adoptive families in **Spain** are eligible for all types of family leave in the same way as other families, including the benefit for the birth and care of a child (which replaced maternity and paternity leave in March 2019) and parental leave. In addition, employees in the public sector who are adopting children internationally are eligible to take two months of paid leave in addition to the regular entitlement if they are staying in the country of origin of their adopted child.⁴⁶



In **Finland**, parents can take longer parental leave when adopting a child. The usual length of parental leave is 158 days. However, if a child is adopted, parents can access parental leave lasting 233 days (if the child is under two months old) or 200 days (if the child is between two months and seven years old).⁴⁷

paternity and parental leave with the same level of access as other parents.⁴⁸

Alternatively, Member States may offer specific adoption leave that is available for adoptive families. This may sometimes replace maternity leave (or maternity and paternity leave) and is almost always available alongside parental leave. For example, adoptive parents in Sweden and France have the right to take adoptive leave alongside the same parental leave that is granted to other families.⁴⁹

Further examples of how countries approach leave for adoptive families can be found in Box 3. The length and compensation level of adoption leave varies considerably depending on which leave it replaces in each country. As it is not always clear from legal or policy documents which family leave laws and policies apply to adoptive families, this information is necessarily limited and requires further research.

Overall summary

Non-traditional family forms are becoming more visible in both social discourse and legislation in Member States, albeit to varying degrees and at varying rates. In some countries, access to leave provisions for these types of non-traditional families is already on a par with access for more traditional family forms, due to several changes implemented in recent years. However, there remain countries in which children from non-traditional families cannot benefit equally from the same parental leave provisions as children from other families. This is particularly likely to be the case for children of families with same-sex parents and for children living in reconstituted families. Further data collection and research is needed at an EU-level in order to understand the prevalence and needs of non-traditional families. This will aid researchers and policy-makers to better understand the provision already available for these children and to guide future EU-level and national policy endeavours in this area.

Endnotes

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