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The parental leave regime as a tool to achieve gender equality in Portugal

Dissertation to obtain a Master's degree in Law

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September 2022

I've yet to be on a campus where most women weren't worrying about some aspect of combining marriage, children, and a career. I've yet to find one where many men were worrying about the same thing.

-Gloria Steinem

To Filipe, my love and my ally

To my daughter Camila and my son Matias, who inspire me every day to work for a gender equal and inclusive world

Acknowledgements

I set myself the challenge of writing this Master's dissertation almost twenty years after graduating in Law, a degree that I pursued in search for tools to fight against injustice and for a more equal society. I return to Nova Law School, married, with two small children, after living in London, Timor-Leste, USA and working in international development projects as a gender equality and women empowerment expert in dozens of countries across Asia and Africa. I want to thank Professor Nausica Palazzo for accepting the challenge to supervise this work (and for her invaluable advice) and to Professor Margarida Lima Rego for directing me to the right places at the right time.

I want to thank my husband Filipe, who walks the path of feminism with me, for the suggestions and emotional support throughout this process. I also want to acknowledge that finishing this work at this time in my life would not have been possible if we did not share equally the responsibilities of caring for our children and our house, and if we could not rely on our amazing mothers. Luzia and Maria João, thank you too!

I also need to recognise the impact of my time in the US and the experience at the Harvard Kennedy School of Government, where I began to truly reflect on my own experiences of gender based discrimination, and to articulate the negative impact gender norms and stereotypes had on my path, despite coming from a place of privilege – an educated, white, European, cisgender, heterosexual woman, who was mostly encouraged to pursue ambitious dreams.

This led me to take a more active role in promoting women's leadership around me. Thank you Project Girls for Girls for being the perfect vehicle for that. Thank you Izzana for encouraging me to launch the Portuguese chapter and to all the co-founders, global leads and to the Portugal core team: Emily, Francisca, Isabel and Tanya, for supporting me to continuously reflect on the way I see, think and talk about equality, feminism, support for parenthood, career progression, division of unpaid labour. All of which gave me the strength to take this work forward.

Thank you Joaquim and Liz for accepting to proofread this work and for your unvaluable suggestions. And thank you João for managing (as you always do) to find the time to help me keep the key diagrams I had planned to include.

Anti - Plagiarism Statement of Commitment

I declare on my honour that the work I present is original and that all my citations are correctly identified. I am aware that the use of unidentified elements from others constitutes a serious ethical and disciplinary fault.

Quotations and Citations

This work used the Mendeley Desktop bibliographic reference manager which was programmed to cite in accordance with the Norma Portuguesa 405.

References in the dissertation contain the name(s) of the author(s) and date. Quotes include the page number.

The full bibliography is included at the end of this work and is in alphabetical order.

Works available on the Internet are indicated in the footnotes and include the web site and the date and time of access.

The transcriptions of the texts are made in English, with translations made when required.

The body of the dissertation, including spaces and notes, contains 156,936 characters.

List of acronyms, abbreviations and acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIG	Commission for Citizenship and Gender Equality (Comissão para a Cidadania e a Igualdade de Género)
CITE	Commission for Equality at Work and in Employment (Comissão para a Igualdade no Trabalho e no Emprego)
DL	Decree-Law
EIGE	European Institute for Gender Equality
EU	European Union
FTE	Full-time equivalent employment rate
GE	Gender Equality
GEWE	Gender Equality and Women Empowerment
ILO	United Nations International Labour Organization
OFAP	Portuguese Observatory for Families and Family Policies
WLB	Work-Life Balance

Abstract

Recognizing and valuing women's unpaid work, while ensuring equal access to resources and to equal status within the family and in society, remains a challenge globally. Changing this pattern requires parenthood to be effectively integrated into men's world. In Portugal, three decades after the recognition of maternity leave (in 1976) Portugal abandoned the "male breadwinner / female carer" parental model in 2009 and adopted a regime that is gender equality oriented. Currently, for parents with social security contributions this is a relatively short (four months), well compensated, post-natal (or adoption) parental leave, that can be expanded to five fully paid months when leave is shared (to encourage fathers to take home alone leave after the mother goes back to work), with the option of adding one partially-paid month. Six weeks have to be taken by the mother and the remaining leave is gender flexible. Importantly, the model includes a fully paid leave exclusively for the father (25 days), with an initial leave period of compulsory use (20 days).

This work has two aims: the first is to understand the evolution of the parental leave regime from a gender equality lens, focusing on the changes to parental leave modalities. The second is to assess if, and how, the regime can be improved to become a stronger tool to promote gender equality in Portugal.

Based on the analysis of the evolutions of the principle of equality in the Portuguese Constitution and the Labour Code's provisions on parenthood, it concludes that the changes made to promote equality between women and men in the context of the work and family, and the resulting uptake of parental leave by men, have supported an important shift in the asymmetrical social normativity that places the responsibility of care on women. In addition, the literature review indicates that shared parental leave is instrumental to challenge unequal and discriminatory gender norms and support increased equality in the workplace.

However, this review also identifies aspects of the Portuguese regime that could be improved to support challenging the traditional gender order. Therefore, supported by a functional comparative analysis of the progressive regimes of Sweden and Spain, this work provides recommendations that would enhance the Portuguese parental leave regime as a tool to achieve gender equality.

Key words: parental leave, gender equality, gender norms, use of time, labour market, work-life balance

Resumo

Reconhecer e valorizar o trabalho não remunerado das mulheres, assegurando simultaneamente a igualdade no acesso a recursos e igual estatuto na família e na sociedade, continua a ser um desafio a nível mundial. A mudança deste padrão exige que a parentalidade seja efectivamente integrada no mundo dos homens. Em Portugal, três décadas após o reconhecimento da licença de maternidade (em 1976), Portugal abandonou o modelo parental do "homem providenciador /mulher cuidadora" e em 2009 adoptou um regime orientado para a igualdade de género. Actualmente, para beneficiários da segurança social, prevê uma licença parental relativamente curta (quatro meses) após o parto (ou adopção), bem remunerada, e que pode ser alargada para cinco meses totalmente remunerados quando a licença é partilhada (para encorajar os pais a tirarem uma licença sozinhos depois da mãe voltar ao trabalho), com a opção de acrescentar um mês parcialmente remunerado. Seis semanas têm de ser gozadas pela mãe e a licença restante é flexível em termos de género. O modelo inclui uma licença totalmente paga de uso exclusivo do pai (25 dias), com um período inicial de utilização obrigatória (20 dias).

Este trabalho tem dois objectivos. Primeiro, compreender a evolução do regime da licença de parentalidade a partir de uma perspectiva de igualdade de género, centrado nas alterações às modalidades de licença parental. Depois, analisar se, e como, o regime pode ser melhorado para se tornar um instrumento mais forte de promoção da igualdade de género em Portugal.

Com base na análise da evolução do princípio da igualdade na Constituição Portuguesa e das disposições do Código do Trabalho sobre a parentalidade, conclui-se que as alterações feitas para promover a igualdade entre mulheres e homens no contexto do trabalho e da família, e a consequente utilização da licença parental pelos homens, têm apoiado uma importante mudança na normatividade social assimétrica que coloca nas mulheres a responsabilidade de cuidar.

Além disso, a revisão bibliográfica indica que a licença parental partilhada é fundamental para combater normas de género desiguais e discriminatórias e apoiar uma maior igualdade no trabalho. Contudo, esta análise indica também que existem aspectos do regime português que podem ser

melhorados para apoiar a mudança do sistema tradicional de género. Com recurso a uma análise comparativa funcional dos regimes progressivos da Suécia e Espanha, este trabalho apresenta recomendações para reforçar o regime português de licença parental como instrumento para alcançar a igualdade de género.

Palavras-chave: licença de parentalidade, igualdade de género, normas de género, utilização do tempo, mercado de trabalho, equilíbrio entre o trabalho e a vida pessoal.

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Introduction

Overview

This work is grounded in the increasing global evidence that points to the regulation of parental leave as a tool for promoting gender equality. Over the last decades leave policies and the protection of working parents' rights have changed significantly across Europe. The most crucial components of leave policies are the length of leave, compensation, flexibility, eligibility rules and coordination with childcare services. All of these impact the behaviour of women and men taking leave and their participation in the labour market, with consequences for gender equality (EIGE, 2019).

The purpose of this work is to understand the extent to which the Portuguese parental leave regime is a tool to achieve gender equality, focusing specifically on promoting equality between women and men (therefore limiting the scope to the application of the parental leave regime to heterosexual parents). To do so, it explores the evolution of the parental leave regime through a gender equality lens, emphasizing the progressive recognition of the rights of fathers to parental leave.

The emphasis is put on the analysis of the leave modalities, length of leave and associated benefits, as well as flexible work regulations. There is a particular focus on the regime introduced with the approval of the 2009 Labour Code, which placed the parental leave regime under a gender equality policy, and the changes carried out since.

This analysis highlights the contributions of the Portuguese parental leave regime to promoting gender equality. But it also reflects on the barriers to achieving effective parity between the parental rights and responsibilities of fathers and mothers, emphasising their potential to hinder gender equality between women and men. This is complemented by an analysis of key gender equality indicators (on use of parental leave, work and use of time), and their progress since 2009, which aims to support a reflection on how changes to the parental leave regime can support progress in critical gender equality indicators in the workplace and at home.

Finally, this work draws on the examples of more progressive regimes (Sweden and Spain) to demonstrate the benefits (and challenges) of further equalizing maternity and paternity leave as a tool to achieving gender equality more broadly.

Context

I am undertaking this work almost twenty years after receiving my law degree and over fifteen years after shifting from practicing law to working in international development as a gender equality and women's empowerment expert. I am writing it from Portugal, where I returned after over a decade abroad, and influenced by the experiences I had living and working in a range of countries across the globe, from the United Kingdom to Timor-Leste (one of the youngest and poorest nations in the world), including also Brazil, USA, Tajikistan, Kenya and Bangladesh.

I am also looking through the lens of my own personal experience, which I have shared over the last decade with dozens of women (and men), in both Portugal and abroad. My personal journey is one of privilege (which is not the reality for most women and girls globally): a girl who grew up in a caring middleclass family, in a peaceful democracy, with equal access to health and education. A teenager who got a driving license, travelled alone, chose her friends, and was encouraged to pursue her dreams; a young woman who got a job in a law firm immediately after graduation, and who decided when and with whom she wanted to marry, and if and when to have children; but a woman who suddenly experienced gender norms and roles from a different standpoint after becoming a mother, even from this privileged position.

In fact, according to the thematic section on work-life balance from the 2019 Gender Equality (GE) Index¹, segregation and quality of work remains a gender equality challenge for the European Union (EU) and all Member States. And amidst slowly rising employment rates for both genders from 2015, the most acute gender gap observed is among the couples with children. It adds that being a parent continues to disproportionately hinder women in the labour market. (EIGE, 2020)

This reports highlights the EU full-time equivalent employment rate (FTE) for women and men in 2017, showing that FTE employment rates of women with children were around 60 %, regardless of the family type, while the FTE of fathers living in a couple was at 88 %. “These figures not only reveal the extent of fathers’ possibilities to participate in the labour market when living in couples, they also show that the arrival of a child has the greatest negative impact on the mothers living in

¹ The Gender Equality Index, developed by European Institute for Gender Equality (EIGE) is a composite indicator that measures the complex concept of gender equality and, based on the EU policy framework, assists in monitoring progress of gender equality across the EU over time.

couples. The disproportionate weight of care duties on mothers limits their participation in or forces their withdrawal from the labour market” (EIGE, 2020, p. 33). This leads to women’s predominant reliance on part-time work and on jobs with poorer career progression. “In 2018, 31 % of women and 8 % of men aged 20-64 worked part-time in the EU” (EIGE, 2020, p. 13).

When looking specifically at parental leave, despite the progress in policy and legislation across the EU, working parents who take time off from work to care for their children continue to face significant challenges. This GE Index concludes that while parental leave secures job protection “it does not protect against the negative impact of such breaks on career progression, pay and other aspects of working life” with women’s employment being most affected due to their disproportionate take-up of care duties and career breaks. (EIGE, 2020, p. 71)

In Portugal, there has been a steady change in the family policy in general and the parental leave regime in particular. Three decades after the recognition of maternity leave in 1976, the current 'parental protection' scheme, first implemented in 2009 (with changes in 2015 and 2019), marked a turning point in the family policy and in the parental leave regime.

With the Law 7/2009, 12 February, that approved the review of the Labour Code (Law 7/2009) and Decree-Law 91/2009, 9 April, that regulates the social protection of parenthood within the welfare system (DL 91/2009), Portugal placed the fundamental right to family-work reconciliation within a gender equality policy (Cunha, Atalaia and Wall, 2017).

This aimed to enable (and promote) men to enter the domestic sphere by caring for their children (promoting father-child bonding, family cohesion and increased sharing of care) while allowing women to keep their jobs, by preventing the birth of a child from negatively affecting their professional career progression. These changes in the family policies and in the labour law, alongside education and awareness raising campaigns, have resulted in impressive progress in men taking parental leave (from 8.6% of men sharing parental leave in 2009 to 39.3% in 2019). This shows how laws effectively change customs and habits and the influence of public policies on social practices.

Yet, despite this significant shift, in 2021 Portugal scored 62.2 out of 100 points in the Gender Equality Index, with gender inequalities being most pronounced in the domain of time dedicated

to care and social activities and a set-back in the domains of money, which looks at financial resources and economic situation (EIGE, 2021).

According to the Commission for Citizenship and Gender Equality (CIG, in the Portuguese acronym), women currently continue to disproportionately engage in unpaid activities such as housework and childcare, which reflect the engrained discriminatory gender stereotypes that still largely persist in Portugal (CIG, 2021).

As well noted by Maria do Céu da Cunha Rêgo in her article on “The construction of equality between men and women at work and in employment in Portuguese law” (Rêgo, 2010) equality between women and men in the workplace and in employment is only one of the dimensions of gender equality. But while multiple measures are necessary for the coherence of the system and the "construction" by law of *de facto* equality between women and men, this work aims to demonstrate that the parental leave regime can – and should – continue to be improved in order to be a more effective tool for promoting gender equality in Portugal.

Such improvements to the parental leave regime are critical for both men and women alike. Because while balancing family and career is a challenge that disproportionately affects women, the impact on men must also be highlighted. Quoting Professor Teresa Pizarro Beleza "both sexes are suffering from difficult pressures in their way of life: women are required to have "domestic" and "professional" perfection; men are required to have a new affective and paternal role, a "domestic" availability for which in general they have not been socially trained nor psychologically prepared, without the demands of their "professional" career having slowed down" (Beleza, 1997, p.5).

In fact, even in households where there is a strong commitment to gender equality, parenthood brings the spotlight on how individuals and institutions are negatively constrained by discriminatory social norms and harmful gender stereotypes - both external and self-imposed, conscious and unconscious - of what is a committed and successful professional, a caring mother and father, a good wife and husband.

Methodology

This work starts by analysing the evolution of the legal regime of parental leave in Portugal in the XX century, focusing on the shift from a male-breadwinner / female carer model to the recognition of fathers' exclusive rights to the exercise of childcare. It explores in detail the changes brought with the recognition of the right to family-work reconciliation within a gender equality policy in the XXI century. This was grounded first in the analysis of the fundamental principle of equality in the 1976 Portuguese Constitution, and specifically the changes made over the last three decades to the provisions that enshrine this equality in the context of the work and family. Secondly, it focused on the analysis of the changes to the parental leave regime in the Portuguese Labour Law.

This analysis was combined with the literature review of significant studies and reports that look at the evolution of the parental regime from a social policy to a family policy, and more recently to a policy that promotes gender equality. This includes the analysis of i) national and European doctrine on parental leave and work-life balance; ii) reports on the use of parental leave by women and men in Portugal, as well as data on gender equality indicators; and iii) studies that explore the empirical perspective from workers using parental leave.

Finally, to understand the impact of the parental regime in promoting and achieving (or, conversely, hindering) gender equality, this work used the functional comparative law method to analyse the parental leave regime in Sweden and in Spain, which are examples of equal paid parental leave as a tool to promote gender equality.

Sweden was selected for being the first country to offer paid parental leave rather than a gender-specific policy for new mothers, being also the European Union (EU) Member State with the most advanced gender equality indicators. The long period of existence of parental leave in Sweden and the support for the dual earner family had the potential to provide unique links between the policy (and the parental leave uptake) and the gender equality outcomes on work and use of time.

Spain was selected for being a country that has shared strong similarities with Portugal in this field over the last four decades but that recently approved one of the most progressive laws in Europe on the equalization of maternity and paternity leave, under the "Royal Decree Law on urgent

measures to guarantee equal treatment and opportunities between women and men in employment and occupation”.

This enabled a critical assessment of the Subsection IV of the Labour Code through a gender studies’ lens, with the ultimate goal of demonstrating why the parental regime should continue to be improved as a tool for promoting gender equality in Portugal and to provide recommendations for future policy making efforts.

Chapter I - The evolution of Portugal's parental leave: progress and limitations as a tool to promote gender equality

While there is no doubt that inequalities between men and women continue to exist within the family, there is also evidence of a movement towards men entering the universe of domestic and parental production. (Wall, Aboim and Cunha, 2010, p. 16)

2.1 Evolution of the parental leave in the global context – from the recognition of maternity leave to the promotion of fathers' care responsibilities

Without going into detail in the history of parental leave, it is relevant to place this work in a timeline, noting that the first maternity leave was established in Germany in 1883, as part of a new social insurance system that intended to bind workers to the state (Leitão, 2018). This influenced other industrialized countries and, at the start of World War I, twenty-one countries had implemented maternity leave regimes². In 1919, the International Labour Organization (ILO) adopted the first convention on maternity leave, ratified by thirty-three countries.

In post-World War II Europe, countries expanded their family policies. These were largely based on a male-breadwinner model, prescribing “breadwinning for men and caring/homemaking for women” (Gleichen, von and Seeleib-Kaiser, 2018). These have been steadily revised since the 1970s (Gauthier, 2011), with the recognition (and promotion) of the “increase in maternal employment, the growing diversity of work/family arrangements and working parents' needs for state support in caring for young children” (Wall and Escobedo, 2013, p. 103).

In 2014 the ILO reported that a total of 66 countries have ratified at least one of the three maternity protection Conventions adopted by ILO member States since 1919. This report adds that “virtually every country around the world provides some type of maternity protection legislation and many others also adopted measures to support workers with family responsibilities” (Addati, Cassirer and Gilchrist, 2014, p. 1). While this is an achievement to celebrate, it should not hide the fact that still only 28.4% of employed women worldwide receive cash benefits in case of maternity.

² Varying between four and twelve weeks and only paid in thirteen countries.

It is also critical to highlight that this protection is widest and more generous in Eastern Europe, Central Asia and in developed economies. And that, despite this global progress, we still find that the large majority of women workers in the world³ (almost 80% of whom live in Africa and Asia) do not have adequate maternity protection (Addati, Cassirer and Gilchrist, 2014).

The introduction of maternity leave as a tool to prevent discrimination against women and to ensure their effective right to work was also enshrined in the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) ratified by Portugal in 1980. The convention highlighted the need to give appropriate recognition to women for the contribution made to the welfare of the family and to the development of society. But, importantly, it emphasized the role of both parents in the family and in the upbringing of children. And it recognized that “change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women” (Preamble).

This balance between recognizing and valuing women's unpaid work while ensuring equal access to resources and to equal status within the family and in society remains a challenge globally, and it was recognized in the 1995 Beijing Declaration and Platform for Action. This highlighted that women continue to “take on more unpaid work, such as the care of children and those who are ill or elderly, compensating for lost household income, particularly when public services are not available” (Section F, 160). Changing this pattern requires paternity to be effectively integrated into men's world, as highlighted by Maria do Céu da Cunha Rêgo in the presentation of a comparative overview of “Fathers on Leave and Gender Equality” (Rêgo, 2014).

In 2000, the UN output document with further actions and initiatives to implement the Beijing Declaration and Platform for Action (also known as Beijing +5) celebrated the increased awareness of the “need to reconcile employment and family responsibilities and of the positive effect of such measures as maternity and paternity leave and also parental leave” (Section F, 20). But it highlighted that gender discrimination in hiring and promotion and related to pregnancy persist. And that women suffer disproportionately in the career progression “due to the lack of structures and measures that take into account maternity and family responsibilities” noting the insufficient

³ Equivalent to around 830 million women according to the ILO (2014)

encouragement for men to reconcile professional and family responsibilities (Section F, 21).

In recent decades an increasing number of countries have been implementing measures to support fathers' care responsibilities. The ILO notes that "Fathers undertaking a more active role in caregiving is likely to be one of the most significant social developments of the twenty-first century." (Addati, Cassirer and Gilchrist, 2014, p. 1).

The EU in particular has been a positive force in influencing the path for paternity and shared parental leave provisions as a tool for promoting gender equality across Europe. Parental leave has been high on the EU's social policy agenda, featuring in the 1989 Community Charter of the Fundamental Social Rights of Workers, which states that "measures should (...) be developed enabling men and women to reconcile their occupational and family obligations." (Hall, 1998). And in 1995 EU-level social partners established the first framework agreement on parental leave that was then given legal force by Council Directive 96/34/EC of 3 June 1996, to "facilitate the reconciliation of parental and professional life and to encourage fathers to play a more active role in the care and upbringing of their children by providing a right to parental leave of at least three months"⁴ establishing the non-transferability of this rights between parents.

This directive was repealed in 2010 and replaced by Council Directive 2010/18/EU of 8 March, which recognized that "more effective measures should be taken to encourage a more equal sharing of family responsibilities between men and women" (General Considerations 12). More recently, the EU approved the work-life balance (WLB) for parents and carers' directive (EU 2019/1158, 20 June 2019)⁵ which recognizes that despite the legal and social changes over the last decades, "because of caring responsibilities, women remain underrepresented in the employment market and that they are still paid considerably less than men"⁶ (Caracciolo di Torella, 2020, p. 72)

⁴<https://www.worker-participation.eu/EU-Social-Dialogue/Interprofessional-ESD/Outcomes/Framework-agreements/Parental-leave>, accessed on 5 August, 2022

⁵ This repeals and replaces the Council Directive 2010/18/EU

⁶ Data from 2017, before the WLB Directive came into force, put the EU gender employment gap at 11% and the gender pay gap at 16% (meaning women earn 16% on average less per hour than men), showing minimal change over the last decade (Caracciolo di Torella, 2020). The most recent data on the gender employment gap shows that in 2019 this gap was still 11.7% (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en) and that in 2020 the EU average gender pay gap had slightly decreased to 13% (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics)

This Directive establishes that WLB policies should “contribute to the achievement of gender equality by promoting the participation of women in the labour market, the equal sharing of caring responsibilities between men and women, and the closing of the gender gaps in earnings and pay” (Directive Whereas 6). And it clearly articulates the aim to “achieve equality between men and women with regard to labour market opportunities and treatment at work, by facilitating the reconciliation of work and family life for workers who are parents, or carers” (Article 1).

The WLB Directive therefore includes a range of provisions on employment law (including the right to fair wages and to fair and equal treatment) and WLB principles that go beyond the parental leave rights (including flexible working arrangements and access to care services). But it does strengthen parental leave and introduces two flagship rights: paternity and carers' leave (Caracciolo di Torella, 2020).

On the new paternity leave provision (10 working days), a praise is due to the Portuguese legislator which has this modality in place since 1999, currently with a length of 25 days. In addition, the compulsory nature of most of this leave actively acknowledges and fights the unequal and asymmetrical social normativity and harmful gender stereotypes that prevent fathers (by choice or by external pressures) from enjoying this right, and families from benefiting from this important entitlement.

With regards to the initial parental leave the WLB directive innovates by establishing an individual right to 4 months of paid leave⁷ (Article 5) to be taken before the child reaches a certain age (up to 8 years old). This means that each parent has an individual entitlement to 120 days of parental leave and reinforces that each parent should be able to “exercise their right to parental leave effectively and on an equal basis” (Article 5, 1). As we will detail in Section 3.2 below, this has been the option followed by the progressive model recently adopted by Spain and has been considered critical to effectively promote gender equality in the country. In the words of Tim Shand (from the renowned

⁷ The level of payment is to be set by Member States but should be “at least equivalent to that which the worker concerned would receive in the event of a break in the worker's activities on grounds connected with the worker's state of health, subject to any ceiling laid down in national law” (Article 8, 2).

organization Promundo-US⁸) in a background paper for the European Parliament, “assigning leave as an individual entitlement for each parent normalizes both men’s and women’s caregiving, does not require mothers to give up their leave days so that fathers can take leave, and better supports diverse family structures” (Shand, 2018, p. 2).

In addition, the directive determines that two of these months are non-transferable between the parents (Article 5, 2), similarly to what is in place in Sweden (as will be detailed in Section 3.1 below).⁹ This recognizes that if a portion of leave isn’t specifically designated for fathers, few men will take it “reinforcing inequalities at home and at work, and placing the responsibility for caregiving overwhelmingly on the mother” (Shand, 2018, p. 1).

There is literature suggesting that parental leave regimes in Europe are moving in a somewhat linear path across a continuum from the male-breadwinner model (where the father is the sole income provider in the family and the mother cares for the children and is responsible for the household chores) to a dual-earner / dual-carer model (see Table 1 below), where both parents engage symmetrically in paid work and in unpaid caregiving in the home (Janet C. and Meyers, 2002).

Ideological perspectives on employment, caregiving and gender relations:	Male breadwinner	Dual-earner / female part-time carer	Dual-earner/ state-carer or dual-earner/ marketized-carer	Dual-earner/ dual carer
“parents time with children”	emphasised	emphasised	-----	emphasised
“helping caregiver blend work and family”	-----	emphasised	emphasised	emphasised
“gender equality in the labor market”	-----	-----	emphasised	emphasised

Table 1 - Adapted from Rosemary Crompton (1999) continuum of parental leave models presented at the conference “Gender Inequalities in the 21st Century” (Janet C. *et al.*, 2009)¹⁰

⁸ Promundo-US, which grew out of Instituto Promundo in Brazil, and is currently called Equimundo – the Center for Masculinities and Social Justice, is an international organization doing community-based and evidence-based work to engage men and boys in gender equality

⁹ This means that under the WLB directive, parental leave is extended to up to 240 days that can be used if parents opt to share the leave fully (100% of entitlement each) or, at least 50% (one parent using at least 60 days and transferring the remaining 60 days to the other parent). This is a more generous leave length than the maximum of 180 days currently available for Portuguese parents who opt to share leave, even once the 25 days of exclusive use by the father are added.

¹⁰ Available at https://images.slideplayer.com/12/3530740/slides/slide_7.jpg, accessed on August 12

However, this seems to ignore the complexity of social and gender norms and also of individual choices. So, in this point, we agree with Birgit Pfau-Effinger who highlights there is a plurality of models based on gendered cultural models (Pfau-Effinger, 1999) and with Karin Wall and Anna Escobedo's further extended diversity of models, which are based on the "attitudes and practices related to the gendered division of paid and unpaid work" (Wall and Escobedo, 2013, p. 106), which we will explore in more detail in section 2.4 below.

2.2 The parental leave regime in Portugal in the XX century - from the male breadwinner / female carer model to the recognition of fathers' parental rights and responsibilities

2.2.1 The principle of equality of both sexes in the 1976 Constitution as the bedrock of a shift in the regulation of parental rights and responsibilities

In Portugal, the male breadwinner / female carer model was clearly the paradigm throughout the dictatorship that ruled the country from 1932 to 1974. This was a right-wing, anti-liberal and catholic regime that followed the "God, fatherland, family and work" doctrine. The family was seen as a churchgoing and hierarchical structure with the "male breadwinner 'head of family', subordinate homemaker wife, obedient children" (Wall and Escobedo, 2011, p. 209).

In this context the 1937 Law 1 952, 10 March (that regulated the Labour Contract) established that women had a right to leave from work for 30 days in order to recover physically from childbirth. And by determining that "if they had been providing good services for more than a year, they may be entitled to a benefit of one third of previous earnings", the law left the right to any compensation to the employers' goodwill (Wall and Escobedo, 2011). The legislation to protect women workers in the 1950s and late 1960s reinforced this paradigm, regulating women's work according to the demands of "domestic life, morality and social well-being" (Wall and Escobedo, 2011, p. 209) which included, for example, forbidding night work for women.

It was in 1969 that, for the first time, the law¹¹ forbade dismissal during pregnancy and for one year after birth and entitled mothers to a daily one-hour period for breastfeeding (Wall and Escobedo,

¹¹ DL 49 408, 24 November, regulating the individual employment contracts

2011), reinforcing the protection of women's work and anticipating the social and political change that was about to take place in 1974 with the downfall of the dictatorship and the recognition of the rights of both sexes in the 1976 Constitution of the Portuguese Republic (Constitution).

With one simple sentence: "all citizens have the same social dignity and are equal before the law", the 1976 Constitution established the fundamental principle of equality (Article 13, 1). From this principle follows the principle of gender equality in Portugal, expressed in unequivocal terms in paragraph 2 of the same article: "no one shall be privileged, favoured, undermined, deprived of any right or exempted from any duty on the basis of (...) sex (...)".

Thus the Constitution, influenced notably by the 1948 Universal Declaration of Human Rights, categorically recognised that men and women are equal human beings in dignity and rights, prohibiting unequal treatment in the various public and private spheres on the basis of sex. This legal recognition that men and women are free and equal human beings in dignity and rights was, as highlighted by Maria do Céu da Cunha Rêgo, the first step to "counteract the social normativity¹² that presupposes unequal and asymmetrical tasks, the so-called 'gender roles', and therefore unequal and asymmetrical 'rights' for men and women" (Rêgo, 2010, p. 57).

The 1982 the Constitutional amendment (Constitutional Law 1/82, 30 September) established that the State has the fundamental duty of promoting "real equality among the Portuguese" Article 9, d) with the current version reading "as well as the realisation of economic, social, cultural and environmental rights, through the transformation and modernisation of economic and social structures".

Since its approval in 1976, the Constitution establishes that "spouses have equal rights and duties with regard to civil and political capacity and the maintenance and education of their children" (Article 36, 3). On the rights to participation in public life and to work, the Constitution established the right of all citizens to participate in political and public affairs as part of the rights, liberties and guarantees' section (Article 48, 1), but established the right to work, including the right to "choose

¹² Meaning the generally accepted norms that regulate social behaviour.

freely a profession or type of work” under the economic, social and cultural rights and duties (Article 50, 1).

This is an important difference given that the provisions relating to rights, freedoms and guarantees are directly applicable (Miranda, 1986) meaning that they are protected regardless of the existence of laws that regulate them. They can always be invoked, and benefit from a specific constitutional regime that significantly limits their restriction or suspension. The effectiveness of economic, social and cultural rights, on the other hand, depends on the transformation of economic and social structures by the State and by society, which means their application is often deferred. They depend on the existence of social, economic or even political conditions to make them effective. And failure to do so does not in principle give a citizen the power to compel the State or third parties to act, or the right to compensation.

For this reason, it was relevant that the 1982 Constitutional amendment included the equal right to “choose freely his or her profession or type of work” (Article 47, 1) in the constitutional section that establishes this “fundamental core of living in a democratic society” (Fundação Francisco Manuel dos Santos, 2020).

The 1976 Constitution also established the protection for the “work of women during pregnancy and after childbirth” (Article 54, c) and specifically recognized the right to maternity leave, establishing the “right to time off work, before and after childbirth, without loss of pay or any benefits” (Article 68, 2). But in line with the prevailing cultural norms and social structure, the Constitution then established the State’s duty to guarantee women’s professional fulfilment and participation in the civic life of the country while also reinforcing the paradigm of “motherhood as an eminent social value” and the need of “protecting mothers in the specific demands of their irreplaceable action in the upbringing of their children” (Article 68, 1).

Importantly, less than a decade later the Constitution was amended (Constitutional Law 1/82, 30 September) to recognize the protection of both paternity and maternity¹³, establishing that

¹³ Article 68, 1 “Fathers and mothers have the right to protection from society and the State in the performance of their irreplaceable role in relation to their children, namely in their education, with a guarantee of professional fulfilment and participation in the civic life of the country”.

“motherhood and fatherhood constitute eminent social values” (Article 68, 2). This is, first and foremost, and as highlighted by Maria do Céu da Cunha Rêgo, the recognition of a new legal status for men but also “a clear signal to men, women, economic activity and society in general that Portuguese law refuses to understand human reproduction and the care work inherent to it as "a function", or "a mission", or "a destiny", or "an obligation", or "a task", or "a burden", or "a privilege" - depending on how each person or institution sees it - exclusive or specific or even the main privilege of women” (Rêgo, 2010, p. 68).

In addition, this change reflected an important shift in the politics of the parental leave regime in Portugal, following what was already being discussed in many European countries and implemented in the Nordic countries, notably Sweden which this work will analyse in Chapter III below. From the focus on the importance of work for women's emancipation, and on the link between maternity leave and the protection of women in the labour market, a family focus emerged and introduced for the first time the concept of 'parental' care rather than maternal care, opening the policy agenda to the problem of work-life balance (Wall and Escobedo, 2011).

2.2.2 Recognizing paternity and maternity as eminent social values

Law 4/84 (5 April) and Decree-law 136/85 (3 May) are key landmarks in maternity and paternity protection and in introducing a shared right to parental leave. This was the first time Portugal established the right to a paternity leave, even though solely in case of death or incapacity of the mother. It also introduced unpaid leave options, available to mothers and fathers, to care for young children. This was an important shift as the law emphasized the need for parental provisions (including mothers and fathers), and services “compatible with parents' working life”, also underlining the rights of both parents, on an equal basis, to professional self-fulfilment and participation in civic life, granting “a new legitimacy for leave to care for dependants and for gender sharing of such leave” (Wall and Escobedo, 2011, p. 211).

After the Decree-law 497/88 (30 December) introduced a two days of birth leave for fathers in the civil service, it was only in 1995 that Law 17/95 (9 June) introduced the generalized two days' birth leave for fathers. It also introduced the fathers' right to sharing the maternity leave by joint decision

of both parents, determining that in this case there was a 14 days compulsory leave for the mother. This law also established that the 30 days per year of leave to care for sick children under 10 years old would be remunerated at 65% of the salary (Cunha, Atalaia and Wall, 2017)¹⁴.

This seemed to reflect an option for promoting a dual breadwinner / dual carer model based on a symmetrical integration of both sexes into the employment system and redistribution of care responsibilities. However it was in fact the development of childcare facilities and the reliance on family care (mostly grandparents) that significantly impacted families' care strategies (Wall and Escobedo, 2011)¹⁵.

In the 1990's there was a stronger "emphasis on gender equality, on the need to involve fathers, and on the setting of precise goals for the expansion of childcare services" (Wall and Escobedo, 2011, p. 212). This was reinforced with the adoption of the EU Council Directive 96/34/EC, 3 June 1996 that "lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents" (Clause 1, 1) and that was applicable to "all workers, men and women, who have an employment contract or employment relationship" (Clause 1, 2).

In the same period, the 1997 Constitutional amendment recognized that all women have the right to special protection during pregnancy and after childbirth (Constitutional Law 1/97, 30 September), in addition to time off work without loss of pay or benefits (Article 68, 3) and that the law should regulate the granting to mothers and fathers of rights to time off work (Article 68, 4). This same Constitutional amendment introduced what Maria do Céu da Cunha Rêgo described as a "symbolic reinforcement for the elimination of the persistent social normativity, translated into "gender roles" (Rêgo, 2010, p. 71) by specifically highlighting the State's duty to "promote equality between men and women" (Article 9, h) and by recognizing the conciliation of professional activity and family life as a new right to be exercised without discrimination by male and female workers

¹⁴ Law 102/97, 13 September, which introduced a special subsidized leave (applicable to the father or mother) to assist a disabled or chronically ill child (leave of up to 6 months extendable to 4 years during the first 12 years of life) (Cunha, Atalaia and Wall, 2017)

¹⁵ Data from a national survey show that in the 1970s almost half of all mothers stayed at home to care for a child aged 12 to 24 months and in the 1990s only one in every four mothers did so. 18% used full-time childcare services (against 7% in the 1970s) while most other mothers used paid childminders or family care (Wall and Escobedo, 2011).

(Article 58, 2, b). This reinforced the notion that both paternity and maternity were eminent social values and created more room for actions aimed at encouraging the participation of male workers in the tasks of family life.

At this point the issue of reconciliation and promotion of work-life balance for men and women, with gender sharing of leave, was high on the public agenda. There was a strong engagement and extensive debates on the increased involvement of fathers from a family perspective (to promote father-child bonding and family cohesion) and from a gender perspective (to promote equal opportunities and gender sharing of care) but already making the link with the “labour market perspective, to reduce employer discrimination against women” (Wall and Escobedo, 2011, p. 213).

So in 1999 Portugal took the first step towards recognizing an exclusive right to entitlements for fathers (key landmarks summarized in Figure 1 below). The Law 142/99, 31 August, increased maternity leave to 120 days (recognizing the importance of a more extended time off work for the recovery of the mother but also for the bonding with and development of the baby) and established a five day paternity leave with full compensation for fathers. In addition, fathers were granted for the first time an individual right to 15 days fully compensated parental leave, which was optional. And under this law, fathers also became entitled to take up or share the 2-hour reduction in working time for feeding (which was previously granted to mothers alone).

This law also introduced, for the first time, the concept of parental leave for support to children. This was an individual right of both fathers and mothers (where one parent cannot accrue the rights of the other parent) to use 3 months or 6 months in part-time, unpaid leave, for assistance to children under 6 years old.

1999 and the first exclusive right to entitlements for fathers

- Introduction of ‘paternity leave’ of 5 working days in the first month after birth (at 100%)
- Introduction of father’s exclusive ‘parental leave’ of 15 days (at 100%)
- Introduction of unpaid parental leave of 3 months, or 6 months at part time, up to age of 6 years (an individual right of the father or the mother)
- Introduction of leave for feeding – 2 hours per day (father or mother)
- Special unpaid leave of 6 months and up to 2 years following parental leave is maintained, if taken immediately following parental leave, but extended up to age 6 years (for father or mother)

Figure 1 – Trends Fathers' Positions in Leave Policies, adapted from Policy brief II. Men and parental leaves: Legal framework, attitudes and practices (Cunha, Atalaia and Wall, 2017)

These were significant changes in leave policies and the promotion of a more participatory role for fathers. This work will explore in detail the take-up of maternity and paternity leave as well as the changes in gender equality indicators in this period in Chapter II below.

However, based on this analysis of the evolution of the parental leave regime, the conclusion is that, at the turn of the century, and despite these important steps forward, the signal to employers and families was still that “fathers could take the mother’s place in special circumstances, but were nonetheless still the main family provider; and the mother was still the main person responsible for childcare, particularly for very young children, even though she might be economically active” (Cunha, Atalaia and Wall, 2017, p. 6)

2.3 What changed in the Portuguese parental leave regime in the XXI century

When it comes to equality between men and women, it is common to hear people say that "in Portugal the law is good and even very advanced, the problem is that it is not enforced; perhaps because equality between men and women cannot be achieved by decree". With this manifestation of Portuguese obedience to its fate, with this comforting lack of responsibility in the face of destiny, people are generally reassured. (Rêgo, 2010, p. 58)

2.3.1 The 2003 Labour Code

While deep social changes cannot be effected only "by decree", this section aims to lay out how the changes introduced to the Portuguese parental leave regime in the XXI Century continued to counteract what was still an unequal and asymmetrical social normativity, notably by incorporating a gender equality focus in what was up to that point a social and family centred policy.

The first important change in the regime was made by the 2003 Labour Code (Law 99/2003, 27 August) and by the 2004 Law that regulated and complemented it (Law 35/2004, 29 July) by making the 5 working days’ paternity leave compulsory (Article 69, 1). This provision seemed to aim at promoting an increase in the leave uptake by fathers.

However, according to the 2014-2015 Report of Family Policies compiled by the Observatory for Families and Family Policies (that uses the OFAP acronym), the uptake was already increasing steadily before this change (Wall *et al.*, 2016). It started at 12% of total births in 2000¹⁶ and grew to over 46% by 2008 (Wall *et al.*, 2016)¹⁷.

Therefore this was an important provision, worth highlighting in this instance, because two major barriers for uptake by men are the existing gender norms and cultural expectations, on the one hand, and workplace cultures on the other (Belle, 2016).

Making a portion of fathers' birth leave compulsory helped to deter potentially negative employer's attitudes towards fathers who opted to take leave and it averted discriminatory reactions by co-workers and friends. As emphasized by Maria do Céu da Cunha Rêgo, this shift to a compulsory birth leave for fathers was a key advance since it resulted in "avoiding social, employment and economic pressure on men not to take it" (Rêgo, 2010, p. 74).

In addition, it was also in 2003 that the law established the principle of work-life balance, determining that companies had a responsibility to create conditions that "favour the compatibility of the worker's professional and family life" (Article 149). This acknowledges, firstly, that balancing work and family life is important for all workers (not just women). Secondly, it recognizes that even men who want to be more actively involved in raising their children (which is increasingly the case, particularly among younger generations) are confronted with negative reactions in society at large and the labour market in particular. Lastly, it emphasizes the critical role that employers have in this domain, encouraging the implementation of measures to improve the reconciliation of work and family life for all employees.

Interestingly, a 2020 guide on good practices to promote WLB for workers (CITE, 2020) shows that many companies in Portugal are rising to this call, notably by increasing the number of parental

¹⁶ This includes fathers who took the 5 days leave and fathers who shared the 120/150 days leave with the mother as this data only became disaggregated from 2003 onwards

¹⁷ According to Karin Wall in her analysis of "Men and Family Policy" (Wall, Aboim and Cunha, 2010), based on the number of women eligible for maternity allowance, the proportion of men taking the 5-day leave becomes higher: 42% in 2002, 61% in 2007 and 57% in 2008. Note that these numbers include only workers covered by the general social security system, excluding a significant proportion of men, notably civil servants and others covered by special welfare schemes.

leave days beyond those legally available to new parents, especially for men. It emphasises how providing extra leave days, especially for male workers, has been shown to work as a powerful mechanism to encourage fathers to take a more active role as caregivers and therefore to support challenging gender stereotypes at home and in the workplace. And it highlights the importance of linking the parental leave provisions and the responsibilities of employers, debating how the law can further encourage employer to adopt stronger gender-equality policies through, subsidies and grants, tax incentives, and public procurement incentives (Kronfol, Nichols and Tran, 2019).

2.3.2 The 2009 “New Labour Code” – setting the parental leave regime within a gender equality policy

In 2009 the New Labour Code was approved, marking a turning point in the parental leave regime by shifting the focus from the recognition of fathers' exclusive rights to parental leave to the promotion of parity between fathers and mothers. This placed the fundamental right to family-work reconciliation within a gender equality policy (Cunha, Atalaia and Wall, 2017). This law explicitly aimed to establish measures providing favourable conditions for increasing the birth rate (one of the lowest in Europe) (Eurostat, 2009) and actively strengthening the protection of working mothers and fathers, while establishing a system that sought to promote gender equality. This was done by blurring the differences between men and women regarding the combination of the right to work and the protection of the right to parenthood.

In its preamble, the 2009 Labour Code highlights the link with the Third National Plan for Equality - Citizenship and Gender (2007-2010) that provides for the adoption of measures and initiatives designed to fight gender inequalities notably by “promoting the reconciliation of work, personal and family life, setting as a priority, in particular, the creation of conditions of parity in harmonizing work and family responsibilities”.

The preamble further adds that strengthening fathers' rights and encouraging the sharing of leave are tools to set birth incentives and gender equality as priorities. This also aims to improve childcare in the earliest stages of infancy, notably increasing the period of leave when parental leave is shared between both parents, “thus ensuring a longer period of time with the baby in the early days of life

and making it possible for parents to share and be more flexible in reconciling family life with the management of their careers”.

The 2009 Labour Code lists, in its Article 35, the measures established for the protection of parenthood¹⁸ which must be taken as a whole in the efforts to achieve the goal of this regime. However, considering the scope of this work, we will highlight solely the provisions on parental leave, focusing particularly on those that most significantly targeted the promotion of parity between mothers and fathers.

A first change worth noting was the replacement of the concept of maternity and paternity leave with the concept of parental leave (Article 33). Some authors question the potential negative impact of this change in the promotion of fathers' parental rights and responsibilities. They consider that while the concept of parental leave is important, removing the concept of "paternity" from the world of work can have negative consequences in the efforts to change the unequal and asymmetrical social normativity that continues to place in women a disproportional burden of care (Rêgo, 2010). However, this is an important step in attempting to equalize the rights of both parents on the birth of a child and bring gender neutral language to the law, thus contributing to the regime's goal of promoting gender equality.

The key provisions of the 2009 Labour Code aimed at improving the conditions for equality in the exercise of rights related to maternity and paternity are summarized in Figure 2 below. In this instance we will analyse in detail the provisions on the modalities of parental leave and respective

¹⁸ a) Leave in situation of clinical risk during pregnancy; b) Leave for travel to a hospital unit located outside the island of residence to give birth; c) Leave for interruption of pregnancy; d) Parental leave, in any of the modalities; e) Adoption leave; f) Exemption from work by a pregnant worker, a worker who has recently given birth or who is breastfeeding, for reasons of protection of her safety and health, and the respective accompanying person, in inter-island journeys within the autonomous regions; g) Complementary parental leave in any of the modalities; h) Exemption from work by a pregnant worker, a worker who has recently given birth or who is breastfeeding, for reasons of safety and health protection; i) Exemption for prenatal consultation; j) Time off for adoption evaluation; k) Leave of absence for breastfeeding or lactation; l) Absence to care for a child; m) Absence to care for grandchild; n) Leave to care for a child; o) Leave to care for a disabled child, a chronic illness or an oncological illness; p) Part-time work for an employee with family responsibilities; q) Flexible working hours for workers with family responsibilities; r) Exemption from work in an adaptability regime; s) Exemption from overtime work; t) Exemption from night work.

subsidies, highlighting features that promoted, or hindered, the goal of promoting parity between mothers and fathers.

The 2009 changes to the parental leave regime: promoting increased parity between father and mother

- Maternity leave and paternity leave revoked
- Introduction of 'initial parental leave' of 120 days at 100% or 150 days at 80% (father and mother)
- Introduction of "initial parental leave with bonus" of 1 month when parents share the leave (if father and mother take 30 days or 2 periods of consecutive 15 days alone). Two possible scenarios in case of sharing : 150 days paid at 100% or 180 days paid at 83%
- Introduction of 'mother's exclusive leave' (6 weeks after birth) and of 'father's exclusive leave' of 10 compulsory days during first month of life (5 of which consecutively after birth) + 10 optional days to be taken together with the mother (at 100%)
- 'Extended parental leave' of 3 months for the father and 3 months for the mother, subsidised by 25% of relevant earnings, if taken immediately following 'initial parental leave'
- Introduction of 3 days off for the father to attend pre-natal consultations
- Introduction of 3 days off for adoption assessment
- Extension of age limit from 10 to 12 years in case of time off (30 days per year at 65%) to take care of sick child (father or mother)
- Introduction of 15 days of time off (father or mother, paid at 65%) to look after child aged 12 or over, provided that, if that child is of age, he or she is part of the household

Figure 2 - Trends Fathers' Positions in Leave Policies, adapted from Policy brief II. Men and parental leaves: Legal framework, attitudes and practices (Cunha, Atalaia and Wall, 2017)

Article 39 of the 2009 Labour Code established four parental leave modalities: a) the "initial parental leave"; b) the "initial parental leave exclusively of the mother"; c) the "initial parental leave to be taken by the father due to impossibility by the mother"; and d) the "exclusive parental leave of the father".

This analysis will focus primarily on the initial parental (shareable) leave, "which is generally understood to be a care measure intended to give both parents an equal opportunity to spend time caring for a young child" (EIGE, 2019, p. 1), as well as on the leave exclusively for use by the father (the previous paternity leave), a shorter leave taken after the birth or adoption of a child to enable the father to spend time with the partner and new child. It will focus less on the initial parental leave exclusively of the mother (previously maternity leave), which is mostly designed as a "health-and-welfare measure intended to protect the health of both the mother and the new-born child" (EIGE, 2019, p. 1).

2.3.2.1 The initial parental leave and the promotion of parents' shared care responsibilities

The initial parental leave can be considered the starting point of this regime. Article 40, 1 of the 2009 Labour Code set this leave at 120 consecutive days¹⁹ or 150 consecutive days and introduced the option of shared leave by both parents “after childbirth without prejudice to the rights of the mother referred to in following article”²⁰. Article 41 introduces a compulsory six weeks’ initial parental leave exclusively for use by the mother after birth (article 41, 2), and establishes that, in addition to this period, mothers can use up to 30 days of the initial parental leave before the birth.

To be clear, the law determines that the days of exclusive use by the mother (six weeks) as well as the days used before birth are “deduced” from the total days of initial leave, thus reducing the shared portion of the initial leave. However, the same does not apply to the days exclusively for use by the father, which are taken alongside the mother, therefore not reducing the portion of (potentially) shared parental leave available.

In addition to the provision of 120 or 150 days of initial parental leave, Article 40, 2 determined the possibility for a parent to take an additional 30 days as a “bonus” when each of the parents separately uses 30 consecutive days or two periods of 15 consecutive days of leave after the compulsory leave used by the mother. This is often referred to in literature as “parental leave with bonus” (Cunha, Atalaia and Wall, 2017) and is aimed at encouraging fathers to take more parental leave. However, it is necessary to articulate these provisions with DL 91/2009, 9 April (which regulates the subsidies awarded under the social protection to parenthood), to understand the parental leave structure and fully recognize how Article 40 of the 2009 Labour Code aims to encourage the sharing of parental leave.

This articulation clarifies that the initial parental leave was set to be paid at 100% of the reference salary of the beneficiary (either from the mother or the father, according to who takes leave) in the 120 days modality (Article 30, 1, DL 91/2009), regardless of how much, if any, leave was shared. The law then determined that in the 150 days option the subsidy would be reduced to 80% (Article

¹⁹ In line with the maternity leave provided under the 2003 Labour Code

²⁰ Note that this leave is equality applicable to parents adopting children under 15 years old (Article 44, 1)

30, 2 DL 91/2009), except if parents share at least 30 days of the initial leave, in which case the subsidy would be back at 100% for those 150 days.

In addition to this incentive for shared leave, Article 51 from the 2009 Labour Code introduced an optional supplementary parental leave for parents that opt for the shared 150 days' modality. In this case the initial parental leave was increased to 180 days paid at 83%. And finally, the law established that fathers and mothers are entitled to a complementary parental leave to care for biological or adopted children under 6 years old, which can be used as extended parental leave for a period of up to three months (Article 51, 1 a) but paid at only 25%.

Article 51 also introduced different options regarding the timing and model of the supplementary parental leave, which aimed to give the system more flexibility to promote more work-life balance options adapted to new family and work structures²¹. This was reinforced by provisions on part-time work (Article 55) and flexible working hours (Article 56). As detailed in Chapter II below, these reconciliation measures have the important benefit of providing more options to families to balance their work and family life. However, they also raise concerns of reinforcing the still prevailing pattern of women working part-time in order to respond to the demands of care. In the Portuguese regime this is accentuated by the provision in Article 57, 1 b) iii), which determines that employees who aim to work part-time must submit a request to the employer stating that “the other parent has a professional activity and is not at the same time working part-time or is prevented or totally inhibited from exercising parental authority”. This provision, currently still in force, reinforces an unequal gender order and is, therefore, detrimental to the goal of encouraging equal sharing of childcare and to the regime's broader objective of promoting gender equality.

²¹ This includes: part-time work for 12 months, with normal working hours equal to half of the normal full-time working hours (Article 51, 1 b); intercalated periods of extended parental leave and part-time work (Article 51, 1 c); interspersed absences from work when this is regulated by a collective work regulation instrument (Article 51, 1 d).

2.3.2.2 The exclusive parental leave of the father and the peculiar case of the initial parental leave taken by the father due to impossibility by the mother

With regard to the exclusive parental leave of the father (Article 43, 1), the 2009 Labour Code did not increase the length of leave set in 1999, which remained at 20 fully paid working days (Article 15 DL 91/2009).

However, it did expand the days of compulsory leave from five to ten working days (to be consecutively or interspersed in the 30 days following the birth of the child). This recognized the importance of the compulsory nature of this leave, given that, as Chapter II will explore in detail, the uptake by fathers of the optional portion was then at 44.7%, below the 53.6% of uptake of the compulsory portion (which was still relatively low but steadily increasing).

In addition, Article 43, 1 established that five of these compulsory days had to be taken consecutively immediately after the birth. This was an important change since it promoted the bonding between father and child and support to the mother in the first days after birth, further supporting a change in traditional gender roles and responsibilities. After this period fathers were also entitled to take an additional, optional, ten fully paid working days of leave, consecutive or interspersed, simultaneously with the mother.

The last parental leave modality to highlight is the initial parental leave to be taken by the father due to impossibility by the mother. This was listed in Article 39, c) of the 2009 Labour Code as one of the four parental leave modalities. In that instance it seemed to follow the provision from the 2003 Labour Code (Article 36) that targeted the exceptional circumstances in which the father could use the mother's initial leave due to death or incapacity. However this modality is then regulated in Article 42 under a significantly different title: "Initial parental leave to be taken by one parent in case of incapacity of the other", which ensures that either parent can use the full initial parental leave in case of death or incapacity of the other parent, fully in line with the policy behind the changes to the parental leave regime. This is a peculiar situation since the Article 39 c) continues to remain in force despite two amendments done to the Labour Code since its approval in 2009.

As a final note, and while this work focuses on the parental leave regime, it should be mentioned that the 2009 Labour Code added other important provision to strengthen fathers' rights and

encourage participation in family life. This included introducing three days off to attend pre-natal appointments with the pregnant working woman (Article 46, 5) and expanding the right of both parents to take leave to care for sick or chronically ill children.

2.3.3 The 2015 and 2019 amendments to the Labour Code

The Labour Code was amended twice, in 2015 (Law 120/2015, 1 September) and 2019 (Law 90/2019, 4 September), alongside changes in complementary legislation (on subsidies and applicability of the regime to civil servants), with the purpose of “reinforcing maternity and paternity rights” (Article 1, Law 120/2015). This shows an ongoing effort from the legislator to continue strengthening the protection to parenthood (Correia, Wall and Leitão, 2021).

With these amendments the total leave exclusively for use by the father increased to 25 days (in 2015) and since 2019 fathers are entitled to 20 days of compulsory leave and five additional optional days, which aims to continue reinforcing fathers' rights and responsibilities, challenging traditional gender stereotypes and improving the work-life balance for working fathers. This is particularly relevant at a moment when empirical evidence seems to indicate that globally there is an increase in the percentage of men, and particularly fathers, that are experiencing significant work–family conflict (Belope-Nguema *et al.*, 2018) which has also been registered in Portugal (Wall *et al.*, 2017).

In addition, the 2015 amendment introduced the option for parents to take part of the parental leave simultaneously in the period between 120 and 150 days. This points to a focus on improving family cohesion and sharing of care. However, this provision has not only limitations but it has the potential to hinder the objective of using the parental leave regime as a tool to achieve gender equality.

As for the limitations, the first to note is that the objective of “improving family cohesion” would be more efficiently promoted if this option were available immediately after the birth (and the father's use of the compulsory leave). The other is that this prevents couples that opt for the 120 days' modality to share parental leave simultaneously, although this option may have the aim of promoting the preference for the 150 days' modality. In addition, it has the potential to reduce the

amount of time spent by the parents with the child, as highlighted by Guilherme Dray in the commentary to the Labour Code (Martinez et al., 2017). If the parents opt for the 150 days' modality under this provision the total amount of days would be 135 (120 used fully by the mother or partially by the father and then 15 days by each parent simultaneously, making up the legally allocated 30 days) and in the 180 days' modality it would be 165 days in total.

However, the most important point to highlight is that this amendment may in fact prevent fathers from taking leave alone, considering the pattern of leave uptake by fathers (significant use of compulsory leave, slowly increasing use of optional portion of exclusive leave and reduced uptake of the sharable initial parental leave), which will be detailed in Chapter II below. Widespread use of this option would result in fathers spending no leave time alone with their children, which is not only detrimental to the bond between father and child, but is also likely to negatively impact the objective of changing the asymmetrical social normativity that places the responsibility of care on women.

Changes introduced in 2019 to widen fathers' exclusive rights include the recognition of the possibility of absence from work three times to attend of pre-natal appointments regardless of the working status of the pregnant woman (Article 46, 5), since the previous drafting of this provision referred specifically to the "working woman".

In addition, this amendment introduced as important new article (Article 33-A) establishing that all references made to "mother" and "father" in the Subsection IV on parenthood are considered made to the holders of parental rights, except those that result from their biological condition. This change reinforces the option of the legislator to adopt a gender-neutral approach, which is relevant since it further promotes equal expectations from both parents (in heterosexual and non-heterosexual relationships).

Finally Article 35-A is a welcome provision that clearly articulates the "Prohibition of discrimination for the exercise of maternity and paternity rights", establishing that this includes discrimination in terms of remuneration related to the attribution of assiduity and productivity bonuses and, importantly, decisions that undermine the workers' career progression (Article 35-A, 2).

This work will not detail the amendments made to subsidies provided under DL 91/2009 since the

structure of the parental leave modalities has not been subject to changes. It is only worth mentioning that the State has continued to (modestly) expand and increase subsidies available to both parents in the pre-natal period and also to care for small and chronically ill children. While this is not sufficient to change the engrained perception of women being primary carers, it is a key recognition that the duty and responsibility of care belongs to both fathers and mothers, and both have the option to exercise this right.

2.4 The Portuguese Parental Leave Regime as an 'Early Return to Full-Time Work' Gender-Equality-Oriented Leave Model – a summary

As mentioned above, this work adopts the perspective that there is a plurality of parental leave models based on gendered cultural models and on prevailing attitudes and practices regarding the division of paid and unpaid work. Based on the analysis of the evolution of the regime, it follows the classification of the Portuguese regime as an 'Early Return to Full-Time Work' Gender-Equality-Oriented Leave Policy (Wall and Escobedo, 2013), considering that the protection of women's employment and gender equality is apparent but the influence of cultural norms (and also budgetary constraints) led to a specific model that promotes a relatively short well paid shared leave.

The current work-family policies in Portugal, and the parental leave model in particular, have a clear gender equality focus. It emphasizes the importance of providing favourable conditions for increasing the birth rate and actively strengthening the protection of working mothers and fathers while establishing a system that promotes gender equality. This is notably reflected in:

Provisions that promote fathers' uptake of parental leave. In this model, the promotion of fathers' uptake of child-related leave entitlements is done, in a first instance, by establishing a fully paid 25-day parental leave exclusively for use by the father. This is reinforced by introducing a compulsory leave period, currently set at 20 days, to be taken consecutively or interspersed in the six weeks following the birth of the child, with a mandatory five days' period taken consecutively and immediately after the birth. The additional five working days are optional and should be used simultaneously with the mother during her exclusive leave period.

This leave modality is a critical feature to promote men's caregiving rights and responsibilities, challenging traditional gender norms and cultural expectations, as well as workplace cultures, still currently prevailing in Portugal. It brings fathers from a somewhat satellite figure in the birth and raising of a new-born child to the central stage of this great change that a child brings to any family and household dynamics.

Other incentives for sharing leave. Portugal has established incentives referred to as bonus months (which have also been used in Germany and Italy). This means that “if fathers take a specific amount of child-related leave, the total amount of leave available per child, or per family, is extended” (Bartova and Keizer, 2020, p. 385). Currently the regime provides for an initial parental leave of 120 days that can be shared by both parents after the 42 days that must be taken by the mothers, but which is fully paid at 100% regardless of how much, if any, leave is shared. Parents can decide to take the 150 days' parental leave option, in which case the subsidy is reduced to 80% except if they share the leave at least for 30 days, in which case it is also paid at 100%. This leave can now be used simultaneously after the 120 days (used fully by the mother or partially by the father) adding 15 days from each parent simultaneously, in a total of 135 days of leave. Parents that opt for the shared 150 days' modality can decide to benefit from the option of “parental leave with bonus” which increases the initial parental leave to 180 days paid at 83%. In this modality parents can also use leave simultaneously, reducing the total amount of leave days to 165. After this period, parents can take up to 90 days of additional leave paid at 25%. This can be used by either parent.

As Chapter II will detail, these incentives to share parental, despite being well compensated when looking at cross-national comparison, have not yet managed to achieve the success of father's quotas in Nordic countries, which Portugal tried to mimic. This is not only the case in Portugal. Research shows that in Northern Europe, the uptake of individual non-transferable entitlements is at around 80%, while in countries that introduced the bonus month the uptake has not been higher than 35% (Bartova and Keizer, 2020). This difference may be influenced by cultural differences between these countries, since Nordic countries have a stronger tradition of promoting gender equality while Portugal (but also Germany and Italy) have a more traditional approach to family and gender roles. However, research also suggests that generous financial benefits, which are undoubtably a key motivating factor (EIGE, 2019) must be associated with an individual non-transferable right to leave that effectively promotes parity (Bartova and Keizer, 2020). This is

supported by the high uptake of the compulsory non-transferable entitlement by fathers against the modest uptake of the initial leave by fathers. Considering the progress of key gender equality indicators on leave uptake, work and use of time (that will be explored in Chapter II below) this is the model this work considers Portugal should progressively adopt, as recommended in Chapter IV.

Progress, and challenges, on equal entitlements to provide care. In addition to the regulation of parental leave modalities (the central focus of this work), it is important to highlight that the current regime includes provisions for equal caregiving entitlements. These are also key to challenge the asymmetrical social normativity that places the responsibility of care on women. Examples include the 2-hour reduction in working time for feeding or to care for sick children.

However, as detailed in Chapter II below, this remains a highly gendered domain, with women taking a disproportional burden of care, preventing progress on all other domains of gender equality. And in some instances the legal provisions seem to reinforce the unequal and discriminatory gender norms and stereotypes this regime aims to fight. For instance, Article 47, 2 of the Labour Code restricts the use by fathers of the work hours reduction for feeding to when “breastfeeding does not take place”. This goes against the World Health Organization’s recommendations to exclusively breastfeed for the first six months and disregards that there are options for mothers to extract milk for the father to give, which “can be seen as a hindrance to the father’s taking more than the bonus month of leave” (Wall et al., 2017, p. 45). This is also the case in the provision (Article 40, 11 of the Labour Code) that presumes the initial parental leave will be fully used by the mother when parents don’t inform the employer of their decision with regards to the sharing of leave. This provision reinforces the assumption that women should be the primary providers of childcare, which is detrimental to promoting gender equality. As recommended in Chapter IV, the provision should be amended to eliminate this assumption.

2.5 Does the 2022 Decent Work Agenda draft bill enhance the parental regime as a tool to promote gender equality?

In July 2022 the Government submitted to the Parliament the "Decent Work Agenda and Valuing Young People in the Labour Market" bill. This bill was approved in general (solely by the MPs of the Socialist Party, that has a majority of members in Parliament) and is presently being discussed in detail, which means that the final version may have changes. However it is useful to understand that there are no structural changes to the current parental leave and no provisions that address the limitations identified in previous section.

The draft law has a focus on the conciliation between work, family and personal life, and it includes the “parental leave within a framework of promoting equality between men and women, the protection of informal caregivers and the promotion of leisure time”.

The most significant change to the parental leave regime²² is increasing the exclusive leave of the father (Article 43) from the current total of 25 to 35 working days, as well as expanding the compulsory portion from 20 to 28 days (to be taken in the 42 days after birth). The additional days (increased from 5 to 7) continue to be optionally taken consecutive or interspersed jointly with the mother. This is a welcomed increase in parental leave for fathers, considering that the compulsory leave modality has resulted in significant and growing uptake by Portuguese men. The draft law does not change, however, the limit of five days to be taken consecutively and immediately after the birth (Article 43, 1), which could be increased in the context of this expanded entitlement. This would foster bonding with the child and support to the mother, and enhance the efforts to challenge unequal gender norms and expectations at home and in the workplace.

In addition, the draft bill includes an amendment to the initial parental leave modality, aiming to bring more flexibility to the use of the shared portion of the leave. It establishes a new provision in Article 40 where, if parents opt for the 150 days’ modality (shared or not) or the 180 days’ (shared) modality they may, “after 120 consecutive days, cumulate, on each day, the remaining days of the

²² The draft bill also includes a provision on the prohibition of discrimination by employers “due to the enjoyment of parental rights and other rights foreseen within the scope of conciliation of professional activity with family and personal life” (Article 25, 1) covering the full range of parental entitlements (instead of the previous option of selecting the main categories of entitlements) which brings clarity to the law. It also extends this protection to other rights foreseen under the scope of work-life balance, which is important, but fails to clarify the rights included under this scope, which would add clarity to the regime.

leave with part-time work” (Article 40, 4). And it adds that this leave period can be taken by both parents simultaneously or sequentially (Article 40, 5, b). Interestingly this provision keeps the assumption that if parents don't inform the employer of the decision with regards to the sharing of initial parental leave the leave is fully taken by the mother (Article 40, 11), which this work considers harmful to the goals of the parental leave regime.

While flexibility in the use of parental leave can be considered a tool to improve work-life balance, the numbers presented in Chapter II below will show that, in the current social structure, the most effective measure to date has been to grant clear, exclusive, non-transferable and compulsory entitlements to fathers. Because this supports breaking cultural norms and discriminatory gender stereotypes. And because it pushes for new social structures where both women and men (at individual, family and workplace levels) normalize fathers' parental and caregiving rights and responsibilities.

The (lack of) progress on the Gender Equality Index and the Gender Equality Indicators on work and the use of time detailed below shows that Portugal is still very far from reaching this new and equal social structure. It therefore anticipates that the use of part-time options under the initial parental leave could be disproportionally taken by women (for cultural but also financial reasons). As reported by CIG, while part-time employment is advocated as a tool to promote greater work-life balance, “this solution has perpetuated the idea that women are "naturally" caregivers, relegating them to the domestic space, limiting their career progression and reinforcing the pattern of reduced male allocation of time to the domestic space” (CIG, 2021, p. 10).

This work therefore considers that the draft bill under discussion does not enhance the parental regime as a tool to promote parity between the parental rights and responsibilities of fathers and mothers and can, in some instances, hinder the efforts to promote gender equality.

Chapter II - A theoretically informed and empirically grounded analysis of key gender equality indicators influenced by the parental leave regime

Leave for fathers has benefits at all levels of society, contributing to the recognition and redistribution of care work, and to the transformation of deeply rooted inequalities between men and women (Shand, 2018). The previous chapter detailed the evolution of the Portuguese parental leave regime and key contributions to promoting gender equality. It also highlighted barriers to achieving effective parity between the parental rights and responsibilities of fathers and mothers, reflecting on their potential to hinder gender equality between women and men.

This work will now analyse key gender equality indicators (on use of parental leave, work and use of time) in Portugal, and their progress since 2009. This reveals that in the last two decades there has been significant uptake of fathers' exclusive parental leave and that currently most fathers use not only the compulsory days but also the optional days. However, the trend of disproportional use of initial parental leave by mothers is still apparent, with less than 40% of men sharing initial parental leave in 2019. In addition, it shows that women continue to disproportionately engage in unpaid childcare and domestic chores and that engrained discriminatory gender stereotypes are still largely dominant in Portugal. Finally, it shows that the difference in employability of women and men grew between 2015 and 2020 and that care responsibilities continue to be a significant factor for this gap.

The present chapter aims to reflect on how addressing barriers identified in Chapter I can support progress in critical gender equality indicators in the workplace and at home, to inform Chapter IV's recommendations for future policy making efforts.

2.1 Progress on use of leave

2.1.1 Parental leave uptake by 2015

The changes to leave policies at the onset of the XXI century undoubtably supported promoting the equivalence of fathers' and mothers' rights and rewarded the sharing of parental care, while

reserving a portion of non-transferable individual rights to be used exclusively by each parent (Wall *et al.*, 2017).

A 2017 Policy Brief that looks at Men and Parental Leaves: Legal Framework, Attitudes and Practices (Cunha, Atalaia and Wall, 2017) analysed the **uptake of fathers' exclusive leave**²³ (

Figure 3 below) and concluded that between 2000 and 2015 this leave increased by over 60%. And while this was a trend before a portion of this leave modality became compulsory, it is significant to note that the uptake was at 46% in 2009 and by 2010, one year after it increased from 5 to 10 compulsory days' it represented 63%, growing to 71% by 2015.

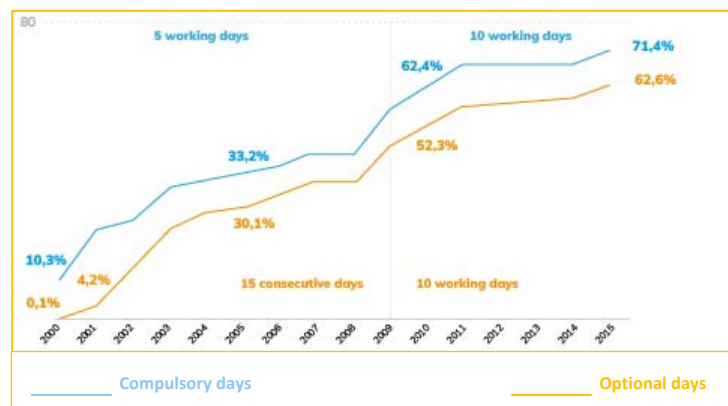


Figure 3 - Percentage of take-up of fathers' exclusive parental leave (compulsory and optional days) by number of births 2000-2015, adapted from Men and Parental Leaves: Legal Framework, Attitudes and Practices (Cunha, Atalaia and Wall, 2017)

Importantly, a similar trend was registered for the father's 10-day optional leave, with an uptake of close to 63% in 2015. This shows not only that the number of fathers who take up the exclusive parental leave by 2015 was significant but also that, although the compulsory nature of the leave is an incentive to use it, many fathers were already using more than the compulsory days and taking up the optional days (Cunha, Atalaia and Wall, 2017).

With regards to the impact in the effective sharing by couples of the **initial parental leave**, the analysis of the number of births and benefits awarded between 2009 and 2015 shows that the new

²³ This was done by referencing the number of benefit applications approved and comparing them to the number of births

regime improved the sharing of parental leave within the couple. Considering that the OFAP estimated that until 2008 only roughly 582 couples had shared leave to some extent (Cunha, Atalaia and Wall, 2017), the increase to 12,506 between May and December 2009 is significant and shows receptiveness to better work-family life balance in the first months of the child's life.

However, and while this number almost doubled until 2015 (with 20,941 applications for the benefit approved), it is important to highlight that it only represented 24% of births and 29% of the initial parental leave approved in 2015. This is extremely modest when it comes to achieving effective parity in the sharing of parental rights and responsibilities and transformative change in the asymmetrical social and gender normativity.

This is confirmed by qualitative studies, based on in-depth interviews with fathers (Cunha, Atalaia and Wall, 2016; Leitão, 2018; Wall, Aboim and Cunha, 2010) who often refer back to the burden of the traditional male and female attitudes to gender roles, “in which the mother has a central (and possibly irreplaceable) position in looking after the children” (Wall et al., 2017, p. 43).

The White Paper “Men and Gender Equality in Portugal” (Wall et al., 2017) summarises these studies²⁴ and highlights that, in addition to traditional male and female attitudes to gender roles, other **obstacles identified by men to share parental leave** include: i) lack of awareness by parents of their parental leave rights; ii) lack of openness from and support in the workplace, with challenges to negotiate the exercise of their right²⁵; iii) contractual conditions that make it challenging to exercise the right to parental leave (job insecurity and the nature of workers' responsibilities)²⁶; iv) the priority given to investment in career.

²⁴ These results are emphasized by a case study on the impact of leave policies. This case study was undertaken on men's views of shared initial parental leave in heterosexual couples where both were working full time. This included 20 in-depth interviews with men (Lisbon and Covilhã), aged between 27 and 54, married or living together in a partnership, and with various educational and occupational backgrounds. All had at least one child born after the 2009 New Labour Code and had taken at least the minimum one month of initial parental leave. The case study focused on the impact of leave policies, on how paternity is experienced and on how gender roles are structured following the birth of a child.

²⁵ Specially in private sector companies but also in the public sector.

²⁶ This can be based on the worker's perception but sometimes it is clearly articulated by the employers.

2.1.2 Progress after 2015

Data from 2019 shows that men's uptake of **fathers' exclusive leave** has continued to increase steadily since 2015, in both the compulsory (72.7%) and optional (67.6%) modalities –detailed progress in

Figure 4 below. According to Portugal's Country Report in the 17th International Review of Leave Policies and Related Research 2021, the uptake of the fathers' compulsory leave in 2020 continued to increase, representing 74.6% (Correia, Wall and Leitão, 2021). The authors consider there are two key reasons for compulsory leave not reaching 100%. The first is that data continues to exclude employees with special social protection regimes. And the second is that some employees do not fit the eligibility criteria (not having a sufficient record of social contributions and a household income that is not as low as required to be entitled to the flat-rate benefit²⁷).

Data also shows a significant progress in men's uptake of the **shared initial parental leave**, with 39.3% of men sharing parental leave in 2019. This represents a 43% increase from the uptake registered in 2015 (24% out of all children born). This is a relevant progress, that can be linked to a combination of changes in the family policies and in the labour law (detailed in Chapter I above), accompanied by significant statistical and qualitative studies and important awareness raising campaigns (CIG, 2018)²⁸.

The 2017 White Paper “Men and Gender Equality in Portugal” (Wall et al., 2017) concluded that data collected in their case study (and the narratives of fathers who shared initial parental leave) confirmed that key motivations for sharing leave are “conjugal negotiation regarding the child's well-being” and “parity in the harmonization of work and family responsibilities” (two of the objectives of current parental leave regime).

However, the assessment, by men who shared the leave, of how society sees the current system of ‘parenthood protection’ reveals “there is still a very broad range of differing expectations regarding

²⁷ The social welfare system establishes a “means test”, i.e. a set of conditions that a household must meet in order to be eligible for State benefits, including parental benefits. It defines the maximum income limit up to which people are entitled to these social benefits. This enables parents that would not be eligible, for not working and contributing to the Social Security fund for six months (consecutive or not), to receive a flat rate benefit.

²⁸ For example, a video about the stigma of men taking parental leave (https://youtu.be/wQD8DLW_nl8)

the role of men and women in society, and for this reason they feel there is a great deal of resistance from employers, who are reluctant to let go of their male workers in favour of family life and parental responsibilities.” (Wall et al., 2017, p. 46)

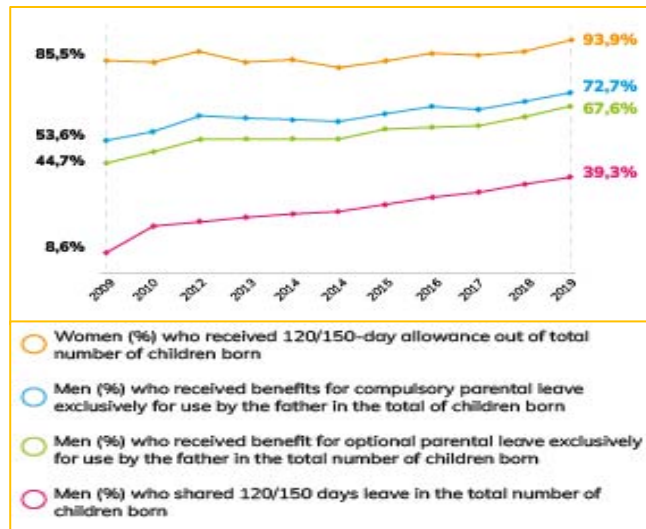


Figure 4 – Use of parental leave by sex and by total children born, adapted from Key Indicators on Gender Equality in Portugal 2021 (CIG, 2021)

Note that while this work does not focus on the eligibility criteria for parental leave subsidies, it is relevant to highlight that Portugal has an ineligibility rate within the EU average but is the only EU country where, according to data from 2019, a higher percentage of women (32 %) than men (23%) are ineligible for parental leave (EIGE, 2019) – see Figure 5 below.

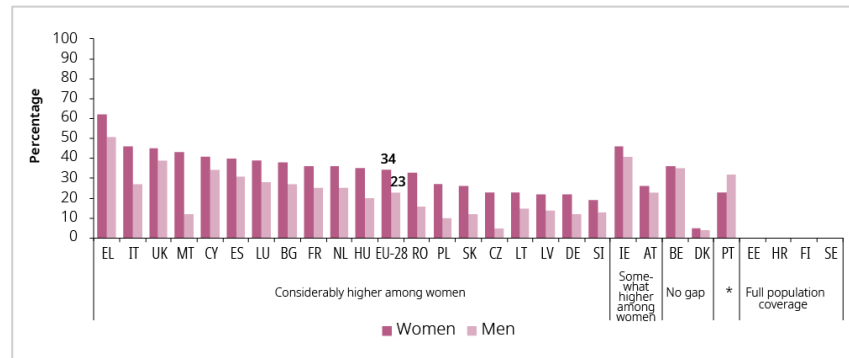


Figure 5 - Percentage of women and men not eligible for statutory parental leave (20-49 years old), from the Gender Equality Index 2019 Work-life balance report (EIGE, 2020, p. 74), used with permission

There are only four Member States (including Sweden) where all women and men with children have access parental leave²⁹. In the remaining Member States the gender gaps on ineligibility show a disadvantage to men across the EU, with strict eligibility rules preventing more men than women from accessing parental leave. This difference in Portugal may result from the efforts from the legislator to promote men's access to this entitlement.

In conclusion, while fathers' uptake of the initial parental leave has been slowly and steadily changing, the trend of disproportional use of this leave by mothers is still apparent. The vast majority of parents that do share the leave period tend to allocate four or five months to the mother (depending on the leave modality) and one month to the father (usually the last month of initial parental leave) when the mother goes back to work (Correia, Wall and Leitão, 2021). The majority of couples sharing leave in 2020 (70.8%) chose the longer leave period (six months paid at 83% of earnings) with 29.2% opting for the five-month option, paid at 100%. (Correia, Wall and Leitão, 2021).

2.2 Gender equality indicators on work and use of time

²⁹ In these Member States there are no restrictive eligibility criteria regarding being in employment, the length of time in current work, the type of occupation or whether an individual is in a heterosexual or same-sex partnership

The recognition of the rights of both sexes by the 1976 Constitution was the first step towards a new cultural, social and political regime. As detailed in the previous chapter, the changes done to the parental leave regime have significantly supported this shift. However, the Gender Equality Indicators on work and use of time published by CIG in 2017 and 2021 show that this progress did not “dismantle gendered cultural norms, which continue to be ascribed to male and female roles in the form of social expectations of performance, thereby structuring, conditioning and defining attitudes and practices of men and women in different contexts of Portuguese life” (Wall et al., 2017, p. 4).

2.2.1 Use of time

While men spent, on average, only 27 more minutes per day than women on paid work, women in 2015 continued to be primarily responsible for domestic and caregiving tasks (Perista *et al.*, 2016), spending on average 1 hour and 45 minutes more per day at home than men³⁰ (CIG, 2017).

According to the Key Indicators on Gender Equality in 2021 (CIG, 2021), this trend did not significantly change. Women continue to disproportionally engage in unpaid activities such as housework and childcare. This report does not allow for a comparison with the 2015 data, but it details areas of time distribution in childcare and domestic chores.

For example, Figure 6 below shows that despite the legal amendments to the parental leave regime (and other care entitlements), 63.7% of women reported staying home to care for small children when they are ill, against only 9.3% of men. In addition it reports 64.7% women dressing small children, and 55.6% taking small children to doctor’s appointments, against 0% of men in both fields.

³⁰ The topic of unequal use of time was also prioritized in CIG’s campaign “Minutes of Equality”. Video available at <https://youtu.be/wQqLNUltLgU>

A theoretically informed and empirically grounded analysis of key gender equality indicators influenced by the parental leave regime

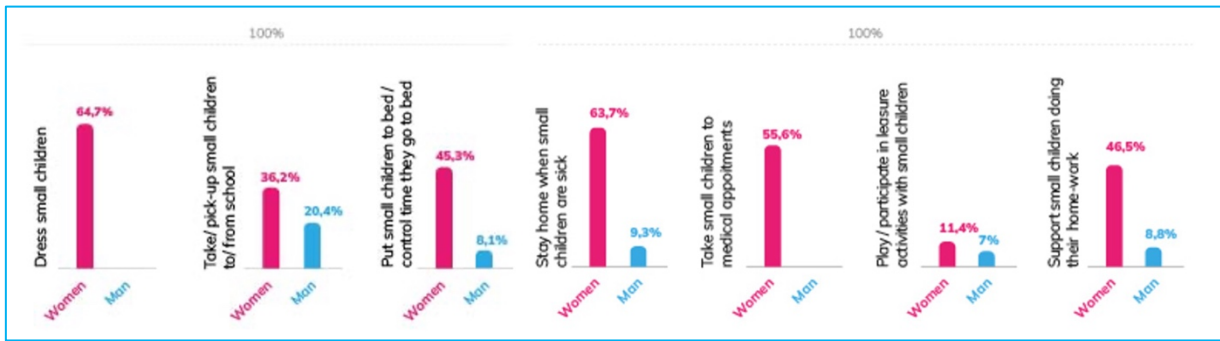


Figure 6 - Percentage of distribution of childcare tasks, adapted from Key Indicators on Gender Equality in 2021 (CIG, 2021)

With regards to domestic chores, as detailed in Figure 7, data shows that while women and men share, almost equally, the tasks of paying bills and managing expenses, 65% of women reported preparing daily meals (against 11% of men). In addition 59.3% of women reported cleaning the house and 77.8% doing the laundry, against 0% of men in both fields.

This points to the persistence of an essentialist/individualist perspective on gender equality, in which "gender inequality is refused, preferring a model based on the individual skills of a 'superwoman', capable of great professional success while maintaining a primary function within the family (Oliveira, Batel and Amâncio, 2010, p. 251)

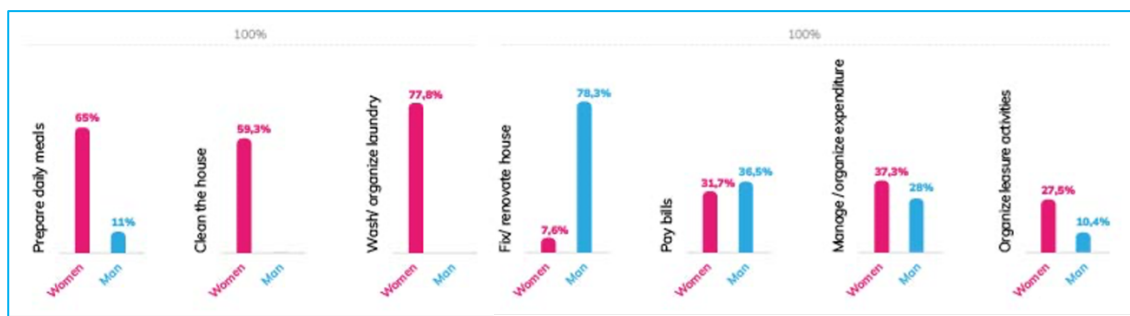


Figure 7 - Percentage of distribution of domestic chores, adapted from Key Indicators on Gender Equality in 2021 (CIG, 2021)

In contrast, 78.3% of men reported fixing things in the house or doing improvements against only 7.6% of women, which reflect the engrained discriminatory gender stereotypes that still largely persist in Portugal (CIG, 2021).

This is reiterated in the 2021 Gender Equality Index, where Portugal scored 62.2 out of 100 points³¹, with gender inequalities being most pronounced in the domain of time dedicated to care and social activities (EIGE, 2021). Data for the domain of time in the EU Member States (see Figure 8 below) show that Portugal not only scores extremely low (when compared with the EU average and the vast majority of EU countries), but also that the score virtually did not change in the comparison between 2005 and 2017 data.

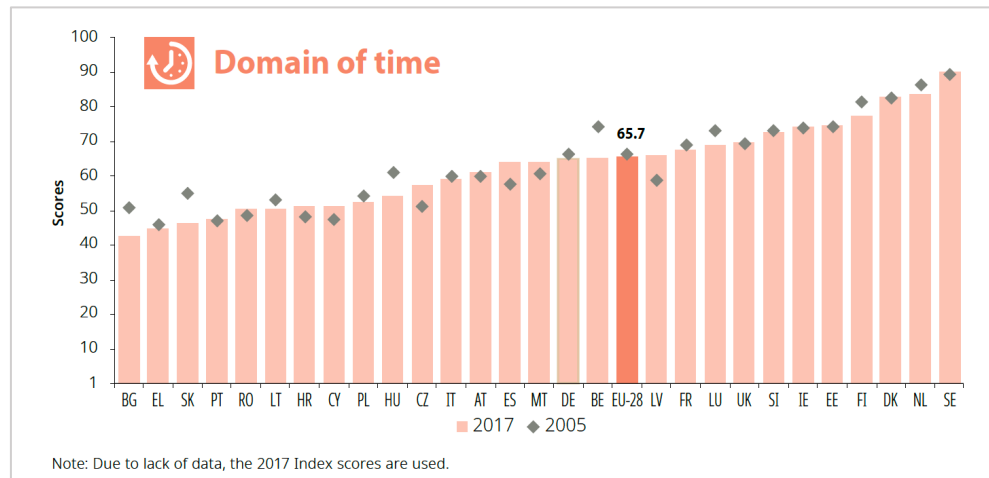


Figure 8 - Scores for the domain of time, EU Member States, 2005 and 2017, from the Gender Equality Index 2019 Work-life balance report (EIGE, 2020, p. 49), used with permission

2.2.2 Equality at work

The Key Gender Equality Indicators published in 2017 showed that in 2015 / 2016 women were still 6.8% less employed than men, a difference that was influenced by greater participation of men in professional activity and by the greater difficulty for women to get a job (CIG, 2017).

³¹ This score is 5.8 points below the EU's score and ranks Portugal in 15th in the EU on the Gender Equality Index. Note that most data collected in this index is from 2019.

This difference is aggravated when considering data on part-time work, work qualification and pay gap. Portugal registered a significant difference between women in part-time work (12.5%) and men (7.1%)³², with a higher a proportion of women in involuntary part-time work and with most women in this category reporting that they were unable to work full-time (CIG, 2017). And the pay gap between women and men in 2015 was at 16.7%, growing significantly as the qualification level increased, reaching 26.4% among senior managers³³.

These numbers help to explain why the Gender Equality Index 2021 results for Portugal in the domain of work (EIGE, 2021) show only marginal improvement until 2019 in the areas of participation³⁴ (a 2.6 points' increase from 2010) and segregation and quality of work³⁵ (a 1.3 points' increase from 2010).

According to the Key Gender Equality Indicators published in 2021 this gap did not improve and, in some domains, it increased. In fact, the difference in employability of women and men grew from having 6.8% less women employed than men in 2015 to 8.9% in 2020 (CIG, 2021). Note that while research on the gendered impacts of COVID-19 is still ongoing, there is sufficient data to put Portugal in line with the global paradigm where women³⁶ suffered disproportionately the impacts (and ongoing effects) of this pandemic, which could contribute to this increased gap.

Globally economic crises in general tend to be more severe for women than for men. But the COVID-19 pandemic had specific characteristics that enhance this effect. In the world of work this includes the fact that COVID-19 affected predominantly economic sectors that required close contact between people (health, education, domestic work, social protection, retail, tourism, beauty and well-being), and that those are sectors where women's employment is largely concentrated,

³² Note that when these percentages are compared with the EU average, the difference in men is marginal (only 2.5%) but it is quite significant in the case of women (28.7% more women in part-time work in Portugal than the EU average)

³³ This goes in line with the indicator on lack of women participation on the boards of PSI 20 companies (14%, against 86% of men). Interestingly a similar gap was registered in the representation of women in Parliament, which was only possible to increase from 21.3% in 2005 to 33% in 2015 through the approval of the Parity Law in 2006 (Organic Law 3/2006, 21 August, which introduced gender quotas in Portuguese politics).

³⁴ FTE employment rate and years of working life

³⁵ Which includes an analysis of people employed in education, human health and social work activities (30% women against 7% men), ability to take time off work to take care of personal or family matters and Career Prospects Index.

³⁶ Mainly (but not solely) those from lower socio-economic status

both globally and in Portugal specifically.

In addition, considering the data on use of time detailed above, women in Portugal suffered disproportionately the burden of care and domestic work when support services (notably schools) became unavailable. This further reduced women's availability for paid work in general and full time work in particular, with an impact that is not yet quantifiable in the availability to career progression. Data from 2020 shows that women's part-time employment (at 10.1%) continues to exceed that of men (at 4.9%) by roughly 5%³⁷, “resulting in lower earnings in the present, lower pensions in the future, and less chances of career advancement over their working lives” (CIG, 2021, p. 10)

The overall pay gap between women and men registered in 2019 was 14%, showing a slow but important decrease from the 16% gap registered in 2015. However, there was virtually no change in the gap among senior managers, which remains at roughly 24% (CIG, 2021).

While this work will not focus on the area of power and decision making, it is interesting to note that the 2021 indicators show a very significant evolution in the number of women on boards of directors, which increased from 14% in 2015 to 16.2% in 2017 and 26.6% in 2020. While this is likely to have been influenced by the approval of Law 62/2017, 1 August, that established balanced representation between women and men in the management and supervisory bodies of business public sector entities and of companies listed on the stock exchange (CIG, 2021), it still seems to point to an important shift in workplace culture.

However, considering the combined indicators presented above on parental leave uptake, work and use of time, it is not surprising that more women than men stop actively seeking work because they care for children or due to other family responsibilities. The 2021 indicators on percentage of inactive population (aged 20-64) due to care responsibilities show that, in 2020, women represented 22% of inactive population in this category, against only 4.5% of men (CIG, 2021).

Given the data above there was also increased recognition that stronger laws, policies and programmes were required to ensure equality and non-discrimination are implemented in practice. Therefore, in 2018 Portugal approved a national strategy for equality and non-discrimination (2018-

³⁷ With slightly more women (46.3%) reporting this situation as involuntary (against 40.5% of men)

2030) (Presidência do Conselho de Ministros, 2018) with the aim of strengthening these efforts in a more integrated and holistic manner. This strategy is in line with the UN 2030 Agenda and establishes among its strategic priorities³⁸ “mainstreaming the dimensions of fighting gender discrimination and promoting gender equality between women and men and fighting discrimination (...)” and “full and equal participation in the public and private sphere”.

This includes a specific Action Plan³⁹ detailing the non-discrimination and equality between women and men, which contains measures to develop national actions and campaigns on parental leave, the role of men in care and parenting, and to promote literacy and information on these rights, as a tool to ensure the conditions for the full and equal participation of women and men in the labour market and in professional activities.

The question at this juncture is to what extent can changes to the parental leave regime support challenging the current discrepancy between the gender equality oriented legal normativity in force and the prevailing unequal social normativity. In the words of Maria do Céu da Cunha Rêgo, once there is the legal recognition of the equality of men and women, this requires a social reorganisation so that there is no longer any "inherent" gender inequality and asymmetry in paid and unpaid family care work, so that there is a balanced distribution between men and women of these two key dimensions of human life, which are indispensable to the very existence of society” (Rêgo, 2010, p. 57).

To support answering this question the next Chapter will do a comparative analysis to extract relevant takeaways from the progressive (yet different) regimes adopted in Sweden and Spain.

³⁸ The other priorities are “Equitable, inclusive and future-oriented scientific and technological development” and “Elimination of all forms of violence against women, gender-based violence and domestic violence, and violence against LGBTI people”

³⁹ Available at https://www.cig.gov.pt/wp-content/uploads/2018/07/Resol_Cons_Ministros_61_2018.pdf

Chapter III - Comparative analysis: extracting takeaways from the parental leave regimes adopted by Sweden and Spain

Having analysed the Portuguese parental leave regime and the progress on key gender equality indicators in the domains of leave uptake, work and use of time, this Chapter will highlight the parental leave regimes of Sweden and Spain focusing on leave modalities (and the increased recognition of the rights of fathers to exclusive and shared leave), the length of leave and associated benefits, with a reference to provisions on flexible work regulations.

In the case of Sweden, the first country to offer paid parental leave rather than a gender-specific policy for new mothers, and the EU Member State with the most advanced gender equality indicators, this work will explore literature that provides an insight into the link between the parental leave regime and the progress on gender equality. It reveals that it is widely accepted, and empirically demonstrated, that gender neutral parental leave is a cornerstone for the progress on gender equality and women's empowerment. However, it also shows that this does not, on its own, change asymmetrical social norms and practices and that targeted provisions are required to encourage men's uptake of leave and care responsibilities.

In the case of Spain, which was selected due to the recent approval of one of the most progressive laws in Europe on the equalization of maternity and paternity leave, the analysis will focus on the key provisions of the new regime and a literature review of the motivations behind these changes and expected outcomes with regards to leave uptake, work and use of time. It reveals that, similarly to Portugal, the parental leave and measures to support equal sharing of care responsibilities were not sufficient to promote the gender equality aimed by the legislator. It shows that it is urgent to promote structural changes to the parental leave regime and its modalities to effectively support change. And it presents a new approach to parental leave, introducing an individual, non-transferable and well compensated 16 month entitlement to each parent, with a compulsory use of an initial period by both parents, creating conditions for parity in harmonizing work and family responsibilities.

3.1 Sweden

3.1.1. The parental leave policy as a tool to promote gender equality

According to the Swedish Ministry of Employment⁴⁰, one of the most important reforms for promoting gender equality in Sweden was the establishment of a gender-neutral parental leave benefit⁴¹. This motivation, which created the first “dual-earner” parental model, is considered to have been critical to “set the country on a path of individual rights to leave for both parents and normalized the caring responsibilities of fathers over time” (Bartova and Keizer, 2020, p. 373). This model is described by the Ministry of Employment as “a cornerstone for the development of gender equality, women’s empowerment and an important part of gender equality policy”.

Diverse literature links the achievements of the Swedish model to a combination of the parental leave insurance, publicly financed and subsidized child care and separate taxation of spouses⁴² (Duvander, Ferrarini and Thalberg, 2005). However, this work will focus solely on the parental leave component which, according to Linda Haas, was based on three concerns: worry over low birth rates; the need to encourage women's employment; and “a desire to liberate men from gender stereotypes”, an important perspective that does not come across in literature strongly enough.

Parental leave in Sweden is regulated by the Parental Leave Act (SFS 1995:584)⁴³ and the Social Insurance Code (SFS 2010:110)⁴⁴. The Parental Leave Act specifies who is entitled to leave, leave

⁴⁰ Information available in the website of the Government Offices of Sweden, available at <https://www.government.se/articles/2020/11/three-important-welfare-reforms-to-promote-gender-equality-in-sweden/#:~:text=Today%2C%20women%20and%20men%20are,transferred%20to%20the%20other%20parent,> accessed on August 5, 2022

⁴¹ One of the other key reforms was the development and expansion of public childcare and the third the individual income taxation.

⁴² These authors add that this was also facilitated by the high labour demand in the 1960s and 1970s and the expansion of the public sector, which was dominated by female workers.

⁴³ This regulation with the amendments done until 2015 (SFS 2015:760) are available in English at the Ministry of Employment’s web page, at <https://www.government.se/government-policy/labour-law-and-work-environment/1995584-parental-leave-act-foraldradighetslagen/> (accessed on August 11, 2022)

⁴⁴ Which has been subject to multiple amendments until 2018 (SFS 2018:1290). An English summary of the key provisions (in the 2016 version) is provided by the Ministry of Health and Social Affairs and available at: https://www.government.se/495457/globalassets/government/dokument/socialdepartementet/socialinsuranceinsweden_august-2016.pdf (accessed on August 11, 2022)

modalities and rights of employees and employers. The Social Insurance Code regulates the length of paid parental leave and applicable benefits.

Section 3 of the Parental Leave Act provides six types of parental leave for care of children, which include maternity leave; full-time leave with or without parental benefit; part-time leave with parental benefit; part-time leave without parental benefit; leave for temporary care of a child; leave with child-raising allowance. This work will focus on the regulation of shared parental leave and rights and responsibilities exclusive to fathers⁴⁵, with an overview of the flexibility provisions.

In 1974, Sweden became the first country in the world to introduce a gender-neutral paid parental leave benefit. This leave is regulated under Section 5, and currently entitles each parent to “a 16 months full-time leave for the care of a child” regardless of whether they are using paid benefits⁴⁶. This right ends when the child reaches the age of eight years or when the child concludes its first year of school, whichever occurs later. This regulation of this individual right to leave (16 months for each parent) is complemented by regulation on benefits, which determines that parents with joint custody are eligible for 240 days of parental leave benefit each and single parents are entitled to the full 480 days. This differs from the option taken by the Portuguese legislator that provides for a number of days jointly to both parents and then establishes “bonuses” (in length and benefits) to encourage sharing.

However, despite providing an individual entitlement to parental leave, taking the onus from women of having time off work for childcare, this did not significantly change gender roles with childcare. According to an article by Aamna Mohdin⁴⁷ “Mothers were still taking the vast majority of leave and the few men who did take it were nicknamed “velvet dads” (Mohdin, 2016).

⁴⁵ The Parental Leave Act provides for a full maternity leave “during a continuous period of at least seven weeks prior to the estimated time for delivery and seven weeks after the delivery” with a compulsory two weeks maternity leave before or after delivery (Section 4). This section also determines the right to breastfeed, without details on the conditions of this entitlement (periodicity, length, etc). Women can decide whether to take part of the paid parental insurance benefit during this period of leave.

⁴⁶ The parental leave length was originally 6 months (paid at 90%).

⁴⁷ In “How Sweden’s “daddy quota” parental leave helps with equal parenting”, available at <https://qz.com/587763/how-swedens-daddy-quota-parental-leave-helps-with-equal-parenting/>, accessed on August 8, 2022

It is interesting to note the similarity with men's resistance to use parental leave in Portugal (as detailed in Chapter II above). To counter this trend the Government introduced in 1995 a non-transferable quota, establishing one month of paid leave entitled for the exclusive use of each parent. While this was not provided specifically for fathers, contrarily to the option taken by the Portuguese legislator, the main intention of the legislator was also to promote uptake by men, which is how the provision became known as the "daddy quota". This was the first time fathers were entitled to a period of leave which only they could use, to encourage them to stay at home. This was established as a non-transferable right, a "take it or leave it" option, where failure from fathers to take the leave resulted in the loss of that benefit.

Since then, the parental leave regime has been revised several times and the "daddy quota" policy was later expanded to a second month in 2002 and a third month in 2016. These ninety days are reserved for each parent and cannot be transferred to the other parent, "with the goal of promoting a more even distribution of unpaid household and care work, and gender equality in the labour market" (Ministry of Employment).

Note that empirical evidence shows that this "take-it or leave it" approach has shown to be most effective (with fathers more likely to use their individual non-transferable leave) when is paired with sufficiently high financial compensation (Bartova and Keizer, 2020), which is the case in Sweden.

Sweden calculates the benefits for each parent based on the individual earnings (as does Portugal), with 195 of the 240 leave days being income-based, paid at 77.6% of earnings and up to an earnings ceiling of SEK465,000 (€45,218.07)⁴⁸ (Duvander and Löfgren, 2020), and the remaining 45 days paid at a daily flat-rate of SEK180 (€17.50)⁴⁹. One of the parents may only take the "90 untransferable benefit days" in cases of one custodian, or the other parent being permanently sick and not able to care for the child. The remaining 105 income-based days for each parent can be transferred to the other by signing a consent form.

⁴⁸ Data from 2020

⁴⁹ Similarly to Portugal, parents who are not eligible to earnings-related leave receive a flat-rate (in the case of Sweden of SEK250 (€24.31) per day for 240 days)

In addition to the parental leave, Section 8 provides for temporary parental benefits which, in articulation with the Social Insurance Code, entitle the other parent (or carer) to a leave of 10 days⁵⁰ to attend delivery, take care of older siblings while the mother is in hospital, and/or participate in childcare when the mother comes home. Contrary to the Portuguese regime, the law does not specifically provide this entitlement to fathers, allowing its use by same sex couples. However, as we saw with the quota policy above, this was used mostly by the father, becoming known as “father days” (Ministry of Health and Social Affairs, 2016). This modality also differs from the Portuguese “exclusive parental leave of the father” in length (much shorter) and nature (it is not compulsory).

This indicates that while providing for individual parental leave entitlement is important to normalize both men’s and women’s caregiving, it does not, on its own, change the asymmetrical social norms and practices in this domain and requires targeted provisions to encourage men’s uptake of leave and care responsibilities.

An important component of the Swedish model is flexibility, which is summarized for reference below, using the information available in the 2020 Sweden Country Note in the International Review of Leave Policies and Research (Duvander and Löfgren, 2020):

- Parents can take paid leave days full-time, part-time, quarter- time, or one-eighth time, with the length of leave extended accordingly.
- Paid and unpaid leave can be combined to enable parents to stay at home longer.
- Parents can take leave in one continuous period or in several blocks of time. Officially, employees taking parental leave have the right to a maximum of three periods each year. However, many employers allow for more periods.
- Both parents can take up to 30 days of paid leave at the same time, until the child reaches one year of age. These days have been labelled ‘double days’. Parents cannot use any of the mother’s quota or father’s quota when using double days. Parents must use the remaining 105 income-based days that they are each entitled to if they want to stay home at the same time.

⁵⁰ Five for adoptive parents.

According to Karin Wall and Anna Escobedo's comparative analysis of parental leave models, Sweden follows the "one-year-leave gender equality oriented model"⁵¹ (Wall and Escobedo, 2013), since the leave arrangements provide a compulsory initial short maternity leave, an optional temporary 10 days leave or "father days" which are followed by approximately one year of paid leave with full or very high compensation of previous earnings (as detailed above, up to 16 months if both parents fully use their entitlement or use their quota and transfer remaining entitlement).

The promotion of gender equality in leave arrangements is high on the policy agenda and is implemented through an individual entitlement to well-paid leave with additional mechanisms incorporated to increase uptake by fathers. This is complemented by a very generous leave of 120 days/ year to care for sick children paid at 77.6% of earnings.

The reserved months (or "daddy quota") are the most widely known policy reforms, but fathers' leave has been highly promoted in national and regional information campaigns to encourage and emphasize shared responsibility for children, including the engagement of employers actively supporting fathers to use the parental leave (Almqvist and Duvander, 2014).

In addition, with the aim of reinforcing gender equality Sweden introduced other incentives for fathers to take up more leave, notably the gender equality bonus, introduced in 2008, giving tax credits to parents who shared the leave equally. Note that while this is a unique innovative policy, a study from 2010 on the effects of Swedish reforms on the division of parental leave indicated a strong effect from the first reserved month, a more modest but clear effect from the second reserved month and no immediate effect from the gender equality bonus (Duvander and Johansson, 2010). According to the 2021 Economic Gender Equality produced by the Government of Sweden⁵² "all three reserved months have contributed to reducing gender inequality, even though the direct effects are smaller for each additional reserved month" (Government Offices of Sweden, 2021).

⁵¹ The other countries the authors include in this model are Iceland, Denmark and Slovenia.

⁵² Available in English at <https://www.government.se/49c881/contentassets/20cfe7b78745414fa1e58cadbb3f91e6/economic-gender-equality-2021.pdf>, accessed on August 12, 2022

3.1.2. Gender equality indicators: achievements and tensions in one of the most gender equal country in the world

Sweden is undoubtedly the most advanced EU Member State when it comes to Gender Equality indicators. In the 2021 EIGE Gender Equality Index⁵³ it scored 83.9 out of 100 points, not only ranking first but 15.9 points above the EU's score. The score is high in the domain of both work participation at 95.9 points (Portugal scored 73.2) and use of time at 90.1 (Portugal scored 47.5). This is highlighted only as a point of reference, as it is not possible to draw significant conclusions from a comparison of these indicators for the purpose of this work, considering the deep differences in the development indicators of both countries at all levels.

What this section will emphasize is the progress of paid leave uptake by men (based on social security data) and how this has been influenced by the policies described above. It will also aim to identify how the parental leave has impacted progress on the gender equality indicators on use of time and work, while also reflecting on existing tensions and limitations.

The 2021 Social Security Numbers Report from the Swedish Social Insurance Agency (Försäkringskassan, 2021) shows that, in 2020, roughly 87,500 people received temporary parental benefits in connection with the birth or adoption of a child and approximately 99% were men (mainly between 25 and 39 years old). The average days taken was 9.6 out of the 10-days' limit, showing a very high uptake by men.

However, the same report shows that in 2020 women received 70% of the days paid for parental leave benefit, with only 30% being paid to men. While this represents close to 43% increase from 2006 (when men took 21% of the total number of days), the proportion of leave shared is still far from the parity promoted by the Swedish model. In addition maternity leave benefits have been stable since 2014, with a only a slight decrease registered in 2019.

An analysis of the number of recipients of these parental benefits in 2020 (in Table 2 below), shows that while the average total number of days taken by women is 81 against 45 by men, the difference in number of days changes significantly throughout life. This difference is at its peak in the 20-24

⁵³ Available at <https://eige.europa.eu/gender-equality-index/2021/country/SE>

age group, decreasing significantly in the 35-39 age group and becoming even in the 45-49 age group (from which point men take slightly more parental leave than woman).

<i>Age</i>	Number of recipients		Number of days on average	
	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>
-19	731	36	164	79
20-24	15,370	3,259	142	52
25-29	76,900	34,185	113	45
30-34	147,360	98,825	90	46
35-39	129,341	115,802	68	42
40-44	70,921	84,464	48	36
45-49	19,760	40,294	33	33
50-54	1,999	12,664	34	33
+55	156	4,982	41	37
Total	462,538	394,511	81	45

Table 2 - Parental benefits in 2020, adapted from the 2021 Social Security Numbers Report (Försäkringskassan, 2021)

As reported in the 2020 Sweden Country Note, in 2002, fathers took about 12% of all parental leave days used in that year and by 2018 this had increased to 29%. In 2018 the percentage of couples sharing parental leave equally (40 to 60%) is very slowly increasing and, for children born in 2017, 18.4% of couples equally shared leave during the child's first 24 months (Duvander and Löfgren, 2020).

Interestingly this note reports that for children born in 2011 parents used on average 451 days of the 480 total paid days available, meaning that on average 29 days were forfeited. But most importantly this note shows that women used 339 days against 112 days by men, which means that men transferred close to 100 days of their entitlement to the mother.

These numbers show that while men use a significant portion of the non-transferable “daddy’s quota”, the remaining leave is being disproportionately used by women. It can be argued that this is a manifestation of equality: the system provides equal options for women and men and couples make their choices according to their specific circumstances, desires and needs.

However, this can also be an indicator that discriminatory gender stereotypes and social norms are still engrained in a country like Sweden, despite the progress of the past decades. According to Anne Lise Ellingsæter⁵⁴, who has led a Nordic inquiry into parental leave, mothers often take the majority of that flexible leave due to (still persistent) traditional gender dynamics within couples, as well as corporate expectations where fathers are pressured to only take the weeks specifically allotted to them. According to the researcher, “that is why flexibility creates a problem for men. They must argue with their employers for why they should stay at home with the child for parts of the flexible period. This creates imbalance.” (Lindahl, 2018)

According to the 2021 Economic Gender Equality Sweden, women’s labour income is lower, on average, than men’s, but this difference has decreased since the mid-1990s, with the labour income gap decreasing from 30% to 24 % between 2009 and 2019. However, this gap was largest for women in the 25–34 age group, “where many people have young children and (women) are on parental leave to a larger extent than men” (Government Offices of Sweden, 2021).

This report adds that a large part of this difference in couples arises when they have their first child, with women’s average labour income decreasing after the birth of the first child, not only during parental leave but also because many women reduce their working time afterwards. Men’s labour income also decreases but to a much lesser degree.

One key reason for the gender pay gap is therefore that women work fewer hours than men and this is, to a significant extent, due to being more absent from work on account of parental leave and child care. However, in 2020 the difference between women and men in time worked decreased by approximately 33% (4 hours per week against 6 hours in 2010), with women’s working time increasing during this period and men’s working time decreasing slightly, which may indicate an important change of pattern.

In addition, women continue to work more in part-time jobs than men (26% of women, compared with 12% of men), mostly in long-part time options (20-34 hours weekly). Note that in 2020 Portugal registered much lower part-time work, at 10.1% for women and 4.9% for men, which is

⁵⁴ See report in the Nordic Labour Journal, available at <http://www.nordiclabourjournal.org/i-fokus/in-focus-2018/nordic-working-life/article.2018-06-14.5410895249>, accessed on August 11, 2022

interesting considering that the second most reported reason in Sweden for women to engage in part-time work (after lack of full time work options) is looking after a child or other close relative. And that, despite the progressive policies from Sweden, the number of men reporting that they work part time to look after a child or other close relative has remained at a low level over the past 10 years. The share of women who give this reason is much higher, but it did decrease from 18% in 2010 to 12% in 2020.

On the use of time and sharing of tasks, the results of a 2014 study (using data from surveys and interviews between 2003 and 2009) indicated that longer leave taken by fathers had a positive impact in a more equal sharing of childcare as well as household tasks after the leave (Almqvist and Duvander, 2014). However, some tasks, such as staying home to care for a sick child, are more often shared than others (such as buying/organizing clothes for children and being the primary point of contact in school). Other child-related tasks (such as putting a child to bed) seem to be fairly gender equal and do not seem to be impacted by the leave length. This report also showed that, despite finding a more indirect link between sharing parental leave and sharing housework, respondents where the father had taken long leave tended to share the housework more often, even after the leave. And it concludes that “change in leave patterns will certainly not solve an unequal gender division of childcare or housework, but it will matter” (Almqvist and Duvander, 2014, p. 26).

3.1.3. Key takeaways

The main takeaways of this analysis from the perspective of informing recommendations to the Portuguese regime are:

- It is important to have an individual entitlement to parental leave in order to normalize the caring responsibilities of fathers over time and liberate both women and men from gender stereotypes.
- It is critical to have targeted provisions that encourage men’s uptake of leave and care responsibilities, and this can go beyond introducing a fathers’ exclusive leave and a bonus month (including, for example, tax benefits).

- The regulation of parental leave is only one of multiple measures that are required to support equality between women and men. However, and while change is slow, the regulation of gender-neutral parental leave supports challenging – and changing – unequal and discriminatory gender stereotypes and cultural norms at home and in the workplace.

3.2 Spain

3.2.1 The parental leave regime before 2019 and main similarities and differences between Spain and Portugal

Until the 1970s Spain was a very traditional society with a predominantly gendered division of care and household labour. Similarly to Portugal, it was with the end of the dictatorship (in 1975) that values and social norms, including gender norms, saw a quick change.

In 2013, Karin Wall and Anna Escobedo described the Spanish parental leave model as “The Short-Leave Modified 'Male-Breadwinner' Model”, conforming strongly to the idea of the male-breadwinner/female home-carer pattern (Wall and Escobedo, 2013)⁵⁵.

The authors added that, despite the changes in expectations and attitudes to gender roles across Southern European countries, women continued to be regarded as having the prime responsibility for work in the household, “not only during the phases of active motherhood but also during married life in general” (Wall and Escobedo, 2013, p. 115). Overall, female employment rates continued to be amongst the lowest in Europe (52% in Spain) with part-time work below average but, increasing, indicating a shift from male breadwinning to the “one-and-a-half earner” model.

The leave regime was based on a short well-compensated leave for mothers and a parental leave that was an unpaid or very low-paid individual entitlement. In Spain, parental leave takers represented 6.9% of all births and 96% of the uptake was done by mothers.

⁵⁵ For a detailed evolution of the parental leave regime in Spain from the 1930's until 2006 see Gerardo Meil's article on “The evolution of family policy in Spain” (Meil, 2006)

Gender equality in parental leave was not, up to that point, a major guiding principle, which led to low emphasis on fathers' specific entitlements. It was only in 2007 that Spain, in the context of new gender-equality objectives, introduced a two weeks well-paid paternity leave, which resulted in a 45% take up increase by fathers in the first year. However, this regime and the existing poor formal child-care services at the time did not support a dual-earner model.

Portugal and Spain shared many social and demographic similarities over the mid-1900s and the early 2000s, with both countries transitioning from a right-wing dictatorship to democracy around the same time. In a comparison of their parental leave policy progress, key highlights (Wall and Escobedo, 2011) include:

- In 2007, both countries had a short, fully compensated maternity leave of 4 months where mothers had to take 6 weeks, the rest being transferable to fathers. Paternity leave was also similar with both countries, although Portugal introduced this entitlement in 1999, almost one decade before Spain. Both countries offered a short paid leave to be taken after birth (2 days in Spain, 5 in Portugal) and optional paid parental leave for fathers (13 in Spain and 15 days in Portugal).
- By 2010 both countries had introduced some flexibility in the use of parental leave: in Portugal leave could be taken for 4 months at 100% or 5 months at 80%, while in Spain flexibility was between full and part-time leave.
- In addition both countries maintained and adapted the previous 'breastfeeding leave', turning it into a work-time reduction that could be used by either parent during the first year after birth.
- And finally both countries were highly influenced by EU initiatives and debates that were important policy drivers in this domain.
- However, in 1996 the focus of Spanish policy was highly centred on flexibility for working mothers (with longer leave and more part-time options) while Portugal was prioritizing gender sharing of parental leave, which also included a stronger focus on sharing parents' entitlement to take time off work to care for sick children (30 days per year with partial public benefits against two days paid by the employer in Spain).

3.2.2 From the 2007 Gender Equality Act to the Royal Decree Law 7/2019

In 2007 Spain had approved the Gender Equality Act to promote the effective equality of women and men. This law aimed to effect the principle of equal treatment and opportunities between women and men, with a focus on “eliminating all direct and indirect discrimination against women”.

This law acknowledged the that the right to reconcile personal, family and working life should be granted to men and women workers in a way that balanced the “family responsibilities, avoiding any discrimination based on their exercise” (Article 44, 1). In this context the provision established that, in addition to maternity leave and maternity benefits, fathers would be “entitled to paternity leave and paternity allowance” (Article 44, 3). This provision, articulated with the labour and social security regulations, entitled fathers to an individual non-transferable right to a two-week paternity leave (two days for the birth of the child and 13 consecutive days) with 100% wage benefit⁵⁶. This leave was not compulsory. However, by 2012 the uptake by working fathers was 75%, of which 97% used the full entitlement (Meil, Romero-Balsas and Rogero-García, 2018).

In 2017 the paternity leave was extended to four weeks of fully paid leave (subject to a ceiling) for birth, adoption or fostering of a child for working fathers with social security contributions for a minimum time. These changes supported Spain to evolve from the ‘short leave modified breadwinner model’ to an ‘extensive early return to work model’ (Meil, Romero-Balsas and Rogero-García, 2018).

However, by 2019 the Spanish legislator considered that, given the lack of progress on equal treatment and opportunities between women and men in employment and occupation and the persistent inequalities in the working conditions of women and men, a “new comprehensive and transversal law on employment and occupation” (Royal Decree Law 7/2019) was needed to effect the principle of equality established in the Spanish Constitution (based on Articles 9.2 and 14 of the Constitution).

Interestingly, the Spanish legislator argued that, although this inequality was a structural and persistent, the delay in fulfilling the objectives of equality and the urgency to achieve gender equality

⁵⁶ This regime is applicable to adoption.

in the country, qualified this as a situation able to be addressed by means of emergency legislation. This enabled the Government to approve the Royal Decree-Law 7/2019 with the aim of encouraging Spanish men to take a more active role in child-care and, with that, opening more work opportunities to women and decreasing the likelihood of gender discrimination in the workplace.

The preamble of this Royal Decree-Law 7/2019 explicitly states that “equal time off after the birth of a child implies equal responsibility between both partners” and that changing the legal normativity to achieve this change in social normativity responds to a clear social will and demand.

Therefore, Royal Decree-Law 7/2019 was approved to provide a legal framework that aims to enable Spain to take a further step towards full equality. This regime contains seven key articles that amend seven legal regulations that are considered to have a direct impact on equality between women and men, notably the 2007 Gender Equality Act (Organic Law 3/2007, 22 March). Given the scope of this work we will focus on the provisions on parental leave.

With the 2019 Royal Decree legislation, Spain recognizes that the promotion of the reconciliation of personal and family life (revised by Article 2)⁵⁷ must be closely articulated with the principle of co-responsibility between both parents, considering that both are “essential elements for the fulfilment of the principle of equal treatment and opportunities between men and women in all areas”. In this context, the most significant provision on parental leave rights (also applicable to the public sector) is the innovative introduction of a model that equalizes the duration of paid leave for the birth of a child for both parents (Articles 2 and 3 of Royal Decree-Law 7/2019)⁵⁸.

This was done progressively, with incremental increases from five to eight weeks (starting in April 1, 2019), which were extended to 12 weeks starting on January 1, 2020 and were recently extended to a total of 16 weeks on January 1, 2021. This is an individual and non-transferable entitlement to each parent, with a compulsory use of the first six weeks after birth by both mothers and fathers,

⁵⁷ This provision highlights the right of workers to the reconciliation of personal, family and working life; expressly establishing the worker's right to the remuneration corresponding to their work, proposing equal remuneration without discrimination.

⁵⁸ This measure is critical to fulfil Articles 9.2 and 14 of the Constitution; Articles 2 and 3.2 of the Treaty on European Union; and Articles 21 and 23 of the Charter of Fundamental Rights of the European Union.

after which parents have flexibility to negotiate with employers the exercise of this right in part-time.

It can be argued that the option of part-time should not be subject to negotiation with employers, since this can open the door to employers reinforcing existing discriminatory practices in the workplace, since this is a practice that challenges traditional cultural and gender norms. According to María Pazos, from the Platform for Equal and Non-transferable Birth and Adoption Leave (PPiINA)⁵⁹, this means that the right of fathers to decide to use this option is not guaranteed (Sparks, 2021). This is especially relevant since studies from multiple countries⁶⁰ have shown that many fathers who would be potential users of work-life reconciliation measures (such as part-time work) do not consider that these measures are made for them. This is caused by a confluence of attitudes and behaviours influenced by unequal gender norms, by lack of awareness of fathers (and families) themselves, and by the “lack of a sensitive corporate culture concerning the adjustment of men to the use of reconciliation measures” (Belope-Nguema *et al.*, 2018, p. 2).

Yet, this regime (of fully paid and equal length leave) puts Spain ahead of the rest of Europe, given that “leave is longer in northern Europe but since it is transferable, it is usually used by women, which is a trap in the end”. In an El País article on the extension of paternity leave in Spain⁶¹, the sociologist Constanza Tobío highlights how having an individual entitlement, that is non-transferable and is well compensated, is critical because “it conveys the message that fathers have the right and obligation to be a carer, under exactly the same conditions and on the same terms as

⁵⁹ Available at <https://www.barcelona-metropolitan.com/living/family/spain-progressive-paid-paternity-leave-leads-europe/>, accessed on July 31, 2022

⁶⁰ Abril, Paco, and Alfons Romero 2008. Public and private companies with gender and conciliation policies for men. In *Genres, temps sociaux et parenté's*, ed. P. Gaborit, 217–39. Paris: Harmattan; Burnett, Simon B., Caroline J. Gatrell, Cary. L. Cooper, and Paul Sparrow. 2013. Fathers at work: A ghost in the organizational machine. *Gender, Work & Organization* 20(6): 632–46; Bustelo, María, and Elin Peterson. 2005. Conciliación y (des)igualdad. Una mirada debajo de la alfombra de las políticas de igualdad entre mujeres y hombres. *SOMOS Revista de Desarrollo y Educación Popular* 7: 32–37; Gatrell, Caroline J., Simon B. Burnett, Cary. L. Cooper, and Paul Sparrow. 2015. The price of love: The prioritisation of child care and income earning among UK fathers. *Families, Relationships and Societies* 4(2): 225–38

⁶¹ Available at https://english.elpais.com/spanish_news/2021-01-06/something-to-celebrate-for-new-fathers-in-spain-as-paternity-leave-extended-to-16-weeks.html#:~:text=As%20of%20January%201%2C%202021,cannot%20take%20advantage%20of%20it, accessed on July 31, 2022

women”. This encourages fathers to take leave and employers to accept this and adapt, “placing Spain at the forefront of paternity rights” (Saldaña, 2021).

In addition, this law, articulated with amendments to Social Security regulations, redefined the benefits in light of this new right (Article 4) and added other new benefits for co-responsible exercise of infant care, all of which extended to self-employed or self-employed social security workers (Article 7)⁶².

Updated data on childbirth and childcare benefits in Spain⁶³ (Figure 9 below) show that, in the first quarter of 2022, there were 123,076 birth and childcare benefits provided by Social Security, of which 58,768 were for the first parent, who is usually the mother, and 64,308 for the second parent, usually the father. While this data may be influenced by the fact that there are more men in the workforce, this still represents a relevant 12% increase of childbirth and childcare leave taken by both mothers and fathers when compared to the same period in 2021⁶⁴.

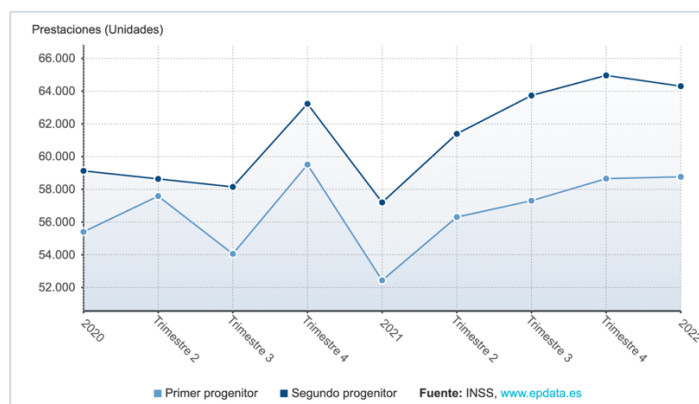


Figure 9 - Data on childbirth and childcare benefits in Spain

⁶² This regime highlights the importance of non-professional care (done by women to a disproportionate extent), and their need for increased protection given that they interrupt their career to assume the care of dependent persons. The law notably provides for a support fund for the promotion and development of infrastructures and services to support this care work and for specific actions such as a plan for the universalisation of education from 0 to 3 years old. Other measures adopted include requirement to companies with fifty or more workers to draw up and register equality plans (extending the provisions from the 2007 regulation) with revised sanctions for non-compliance and promotion of public equality policies that enable women’s access to the fields of science, research and technology.

⁶³ Available at <https://www.epdata.es/datos/permiso-prestacion-paternidad-maternidad-datos-graficos/264>, accessed on August 12, 2022

⁶⁴ In this period 109,644 were processed, 52,441 to the first parent and 57,203 to the second.

It is still too early to assess the impact of this progressive legislation in achieving the gender equality that motivated this regime. However it is clear that the Spanish parental leave regime has a unique model for promoting fathers' rights. And it is also apparent that, by giving legal recognition to the importance and responsibility for the co-sharing of care, the Spanish regime has the potential to reduce significantly discrimination against women in the labour market and promote gender equality.

3.2.3 Key takeaways

The main takeaways of this analysis from the perspective of informing recommendations to the Portuguese regime are:

- Although inequality can be systemic and persistent, the delay in fulfilling the objectives of equality requires urgent and structural changes to the parental leave regime and its modalities.
- Having an individual, non-transferable and well compensated entitlement to each parent, with a compulsory use of an initial period by both parents, creates conditions for parity in harmonizing work and family responsibilities.
- This model conveys the message that fathers have the same right and obligation to be a carer and provide care exactly the same conditions and on the same terms as mothers. It encourages fathers to take leave and employers to effect structural changes in the workplace in order to adapt.

Chapter IV - Conclusions and Recommendations

4.1 The power of shared parental leave to advance gender equality

There is overwhelming global evidence demonstrating that shared parental leave (at the time of birth and adoption) increases men's engagement and active participation in their children's life, benefiting children and fathers. As highlighted in a 2018 assessment of provisions on paternity and parental leave policies across the EU (Janta and Stewart, 2018), and expanded in Tim Shand's paper on "The need for fully paid, non-transferable parental leave" (Shand, 2018), studies have shown that fathers' participation in children's lives has positive, long-lasting outcomes for children's emotional and intellectual development. This is in addition to the early and long-term bonding between children and fathers, which is beneficial for both. These studies also indicate that men who take on caregiving roles have reported biological and psychological changes, living "longer, healthier lives, better relationships and more personal satisfaction" (Janta and Stewart, 2018, p. 3).

But this work aimed to explore whether, in addition to these benefits, encouraging men to be co-responsible for caregiving, and creating the conditions for this to happen through the regulation of parental leave, can contribute to promoting gender equality.

One important consequence of adopting "gender equal parental leave models", where men effectively use exclusive and shared leave, is the positive impact in **challenging unequal and discriminatory gender norms**. Stronger use of shared parental leave appears to result in more active participation of fathers in their children's lives and to promote more engagement in childcare, with some men reporting "a significant expansion in their personal identities, including a redefinition of what it means to be a man" (Shand, 2018, p. 5).

In addition, and while this impact is hard to measure given the multiple forces at play, there is growing evidence that children whose fathers shared parental leave and care responsibilities have a more gender equal view of society and challenge traditional unequal gender norms. In the words of Tim Shand, "children who see their fathers participating in their daily care are less likely to adhere to rigid gender norms later in life: girls, when they become women, may feel empowered to pursue

less traditional jobs, and boys, when they are men, are more likely to do housework themselves” (Shand, 2018, p. 4)

Furthermore, this current work has shown evidence to support the argument that shared leave has the potential to contribute to a decrease in women’s care and domestic burdens, although this is a slow process in Portugal and globally. This in turn can promote improved health and well-being for women. A survey conducted in Norway almost 20 years after the “daddy quota” was established showed that parents with children born after the reform reported 11% less conflict over domestic work.

In Spain, evidence indicates that when both parents enjoy parental leave from the start, together and individually, this helps to create routines within the family where the father is not just helping but actively participating. In a 2021 article by Noemí López Trujillo in *Newtral*⁶⁵, the political scientist Sílvia Claveria⁶⁶ highlights how important it is for the new regime to establish that one and a half months (of the total of four months available to each parent) must be taken by both parents at the same time.

This is even more critical given that couples tend to “traditionalise the gender division of domestic labour with the arrival of the first child” (Gonzalez et al., 2018, p. 342) and that even in couples that are egalitarian before having children, once children are born, the time spent on care and household responsibilities becomes unbalanced.

In the context of a traditional asymmetrical social normativity, when women have a long maternity leave from the beginning (especially when this is the case for a longer period) there is a tendency that they will more naturally take on the responsibility of doing the required care and household tasks. In addition, as Sílvia Claveria highlights in the *Newtral* article, since “they have done them from the beginning, they are more efficient in doing them ”.

In the words of Gerardo Meil, “while an unquestionable causal relationship is difficult to establish, men's use of parental leaves proves to be a mechanism for facilitating more active male participation

⁶⁵ Available at <https://www.newtral.es/permisos-maternidad-paternidad-iguales-intransferibles-espana-paises-europeos/20210116/>, accessed on August 10, 2022

⁶⁶ Silvia Claveria is a researcher at the Carlos III University in Madrid who specialises in gender inequality.

in the domestic domain with regard to both childcare and the performance of domestic chores. It therefore constitutes not only a vehicle for encouraging a paternal role model more involved in child rearing but also a tool for furthering greater gender equality.” (Meil, 2013, p. 569)

As demonstrated in this work, another key contribution of gender equal parental leave models is increased **equality in the workplace**. The acknowledgement by employers that both mothers and fathers have caring responsibilities opens more space for women to participate and advance in the paid labour force. This supports women keep their jobs and have career prospects in the labour market. A new study of close to 22,000 companies in 91 countries⁶⁷ found that women’s corporate leadership is positively correlated with the provision of leave for fathers (Noland M, Moran T, 2022). This leads to improved gender equality in the labour market.

Until a time when both men and women are equally likely to reduce their work intensity, increase work flexibly and take leave after having children, women (especially those of child-rearing age) will continue to be viewed (consciously but also unconsciously) by employers as a potential liability. They will continue to be discriminated against at work, getting lower wages, having fewer opportunities for career progression, especially for senior management and leadership positions that carry more power and influence. When men and women share the same amount of leave, employers will be less likely to be influenced by the candidate’s gender when it comes to hiring and promotion.

This is particularly relevant when we look at flexible work arrangements. These have been implemented across Europe as a tool to achieve better work life balance and gender equality. In fact, according to the Gender Equality Index 2019 on Work-life balance, when workers try to find individual solutions for their personal situation as parents and carers this is challenging, especially when working in an organisation that is not prepared for these situations and does not allow flexibility. Both women and men can face negative reactions and see their rights denied. But this has been particularly damaging for women since they carry the overwhelming share of care responsibilities. This leads to women reducing their working time or leaving the labour market all

⁶⁷ Noland M, Moran T, Kotschwar B. Is Gender Diversity Profitable? Evidence from a Global Survey. Washington, DC: Peterson Institute for International Economics available at <https://www.piie.com/publications/working-papers/gender-diversity-profitable-evidence-global-survey>, accessed on August 12, 2022

together, with negative impact on women's careers, earnings and pensions, but also on the labour market.

When men are expected to have similar working patterns to women after having a child (immediately after birth but also in the following years), this changes assumptions of motherhood and fatherhood in the workplace, bringing equality to expectations and, as a consequence, enables the full enjoyment of parental rights and eliminates the penalties that have been associated with motherhood.

To public and private employers this has the benefit of bringing equality and diversity to the workforce, which has been shown to increase innovation, productivity and performance (International Labour Organization (ILO), 2022). Globally, paid leave is increasingly shown to be good for business, improving retention of employees, increasing morale and productivity, reducing absenteeism and staff turnover, and reducing training and staff-replacement costs (Janta and Stewart, 2018).

However, to effect this change countries must change the pattern of parental leave being primarily taken by women, since this increases the chance that they will exit the workforce or continue only in part-time work, affecting their job prospects. According to Tim Shand, a study in Sweden found that “for every month a father took paternity leave, the mother’s income increased by nearly 7 percent, as measured 4 years later; this was, notably, more income than she lost taking her own leave” (Shand, 2018, p. 4).

4.2 Strengthening the Portuguese parental leave regime

Governments can reinforce or challenge the traditional gender order (Adler and Lenz, 2015) and the regulation of parental leave is foundational in this process. Based on the analysis of the current parental leave regime in Portugal (including what is expected to change in 2022), and considering the takeaways from the Swedish and Spanish case studies, this work recommends:

Strengthening the constitutional principle of gender equality by recognizing a fundamental right to equality for men and women in the exercise of family responsibilities.

A discussion of how the Constitution can strengthen the principle of gender equality, and improve progress in key gender equality indicators, has been suggested by Maria do Céu da Cunha Rego. The author advocates for a new paragraph in Article 13 of the Constitution (inspired in paragraph 2 of article 3 of the German Constitution), recognising non-discrimination on the grounds of sex and the equality of men and women as autonomous fundamental rights. This should be accompanied by an **obligation of the State to ensure these rights, “namely through positive actions for the elimination of the asymmetries evidenced by the human development indicators”** (Rêgo, 2010, p. 95).

Expanding the length of parental leave exclusively for use by the father and its compulsory nature.

As the Swedish case study shows, while providing for individual parental leave entitlement is significant as a policy to normalize both men’s and women’s caregiving, it does not, on its own, change the asymmetrical social norms and practices in this domain. Achieving parity requires targeted provisions to encourage men’s uptake of leave and care responsibilities.

In Portugal this was advanced by introducing parental leave exclusively for use by the father partially as a compulsory measure, which has resulted in high levels of uptake. Given the unequal and asymmetrical social normativity that persists in Portugal (illustrated by the limited progress registered in the key gender equality indicators of work and use of time) this provision remains critical and should be expanded. The 2022 Decent Work Agenda draft bill signals a move in this direction, proposing an increase of the parental leave exclusively for use by the father from 25 to 35 working days, of which 28 days would be compulsory and to be taken in the 42 days after birth. **This works recommends the progressive expansion of parental leave exclusively for use by the father with a compulsory nature to equal the 42 days of compulsory leave exclusively for use by mothers.** This would foster bonding with the child and support to the mother, while enhancing the efforts to challenge unequal gender norms and expectations at home and in the workplace.

The impact of this shift could be strengthened by **creating incentives for employers who promote fathers' use of parental leave** (for example through subsidies and grants, tax incentives, public procurement incentives benefits and systems of certification as a “family friendly employer”), in addition to ongoing awareness raising campaigns and actions for individuals and companies, to support the effective implementation of a shared parental leave.

Introducing a non-transferable and progressively equal parental leave model.

Father's uptake of parental leave is higher in countries with an individual entitlement that includes a non-transferable father's quota (90% in Sweden and Iceland compared to 24% in Denmark and 6% in Slovenia) (Wall and Escobedo, 2013). This strengthens fathers' sense of entitlement to use parental leave and other measures that enable reconciliation of work and family responsibilities. But it also compels institutions to recognize (and internalize) that “all workers have needs outside of work and that the need to reconcile has no sex” (Belope-Nguema *et al.*, 2018, p. 23). Portugal already introduced the father's quota, going further by making it partially compulsory. The next step should be, instead of promoting shared leave option for parents to take part of the parental leave simultaneously in the period between 120 and 150 days, to **introduce a progressively equal individual leave that is non-transferable**, as a tool to eliminate a critical structural obstacle to gender equality between women and men and promote equality and non-discrimination in Portugal.

Amending provisions that sustain unequal and discriminatory practices.

Article 57, 1 b) iii of the Labour Code – this provision should be amended to make part-time work an individual entitlement available to both parents without the currently required justification that “the other parent has a professional activity and is not at the same time working part-time or is prevented or totally inhibited from exercising parental authority” (Article 57, 1 b) iii) of the Labour Code). Currently this provision has the potential to reinforce the paradigm of women taking part-time work and deter their career progression instead of promoting alternatives for parents to equality share rights and responsibilities of care.

Article 47, 2 of the Labour Code - the Labour Code should not restrict fathers' entitlement to the 2-hour work reduction for feeding dependent on children not being breastfeed, as currently provided in Article 47, 2. This goes against the World Health Organization's recommendations to exclusively

breastfeed for the first six months and does not consider that there are options for mothers to extract milk for the father to give, which has been reported by fathers as a barrier to taking more parental leave (Wall *et al.*, 2017).

Article 40, 11 of the Labour Code – this provision presumes the initial parental leave will be fully used by the mother when parents don't inform the employer of their decision with regards to the sharing of leave. This provision reinforces the assumption that women should be the primary providers of childcare, which is detrimental to promoting gender equality. As recommended in Chapter IV, the provision should be amended to eliminate this assumption and the legislator should consider a provision that establishes that initial parental leave will be shared unless it is declared otherwise.

Consideration on flexible working arrangements.

As a final note, and while this work did not focus on flexible working arrangements, it is critical to highlight the importance of understanding the gender impact of such measures and minimizing backlash against women. Despite all the progress achieved in challenging gender inequalities in the workplace, for the most part work continues to be designed for the so-called ideal worker, “an individual who is unencumbered by family responsibilities” and who is expected to (and reward for) demonstrating full commitment to work (Rehel and Baxter, 2015, p. 2).

Promoting flexible working arrangements for parents should therefore be linked with progressively equal and non-transferable parental leave. This would challenge the persistent reliance on women taking part-time work and jobs with poorer career progression. And it could support reducing men's experience of work-life conflict, which studies have shown to have significantly increased (in some instances to higher levels than women) (Belope-Nguema *et al.*, 2018). This could be further strengthened by progressively making all jobs flexible (under the WLB agenda), which would support to remove the stigma often linked to flexible working and allow workers to use it to shape their jobs around their family demands, and challenge some of the conscious and unconscious biases that work against mothers.

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