
European Union and coercive isomorphism: case study parental leave in post-communist countries versus founding members

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Summary: European Union has played significant role within the changes of national legislation of its member states. There are a lot of areas where we can find the huge influence of the European Union. This position could be interpreted as position of dominant institution, which has power to coerce other entities to be more and more similar. The main aim of this article is to study how much the European Union has played role of institution which influence coercive isomorphism between its member states in concrete area. One of the important issue of the agenda of the European Union is gender equality. To study gender equality as a concept is hard because of huge amount of issues and tasks it includes. Because of that I have decided to look on the one issue, which correct setting could play important role in achieving gender equality – parental leave. This article is focusing on the role of the of the European Union in creation of parental leave legislation within the selected member states and is trying to identify whether the European Union has played role of institution which has created coercive isomorphism in the selected area.

Keywords: parental leave, European Union, isomorphism, coercive isomorphism, Slovakia, Germany, Poland, Netherlands, Czech Republic, Italy

1. Introduction

The aim of this paper is to focus on development of the concrete legislation within the selected member states of the European Union in context of institutional isomorphism and institutional isomorphic change. The European Union is in this case perceived as an institution, which has played significant role within the creation and development of a lot of national policies and legislation in its member states. This process has called the Europeanization. The European Union has created basic standards, which need to be achieved, but member states usually have possibility to

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decide, how they will deal with these issues. The final form of for example policies or laws within the member states of the European Union should not be similar necessary within the full range of concrete area. ‘States and other organisations follow and imitate each other but that there is room for domestic interpretation, editing and translation. Institutional isomorphism does not necessarily result in similarity in every aspect of policy, legal, organisational changes etc.’¹

The concepts of institutional isomorphism or institutional isomorphic changes was introduced by DiMaggio and Powell (1983) to bring other explanation for homogeneity of institutions. There are three mechanisms of institutional isomorphic change, coercive, mimetic and normative isomorphism.

This article will deal with the coercive one. Coercive isomorphism, or isomorphism achieved through power relationship (there is an entity, which has kind of power over other entity) is ‘the result of more subtle and indirect processes, such as the extension of the legal regulations that a state is obliged to follow.’² The example for this is ‘the expansion of lawmaking competence from the level of nation states to that of the European Union.’³ When we are talking about the European Union and its power to influence member states or potential member states, we are dealing with coercive isomorphism. From the legal point of view, the European Union has several options how to achieve similarity between member states in a concrete area. To achieved full homogeneity in an area, there is possibility of the Council of the European Union or/and the European Parliament to adopt a regulation. The content of a regulation must be applied across the whole European Union without any options to decide about its implementation.⁴ Better for study of the isomorphism are directives. The main goal of the directives is to achieve similar or the same results in an area. A directive consists of concrete goals, which need to be achieved and the way how to achieve this is upon a decision of concrete member state.⁵

¹ MÖRTH, Ulrike, BRITZ, Malena. *European Integration as Organising – Alternative Approaches to the Study of European Politics*. Stockholm Center for Organizational Research, 2002, p. 25. [online] available at: http://www.score.su.se/polopoly_fs/1.26591.1320939800!/20021.pdf

² DIMAGGIO, Paul, POWELL, Walter. The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields. 1983. In: BECKERT, Jens. *Institutional Isomorphism Revisited: Convergence and Divergence in Institutional Change*. *Sociological Theory*, 2010, vol. 28, no. 2, American Sociological Association, p. 153. [online] Available at: http://www.mpi-fg-koeln.mpg.de/pu/mpifg_ja/ST_28_2010_Beckert.pdf

³ BECKERT, Jens. *Institutional Isomorphism Revisited: Convergence and Divergence in Institutional Change*. *Sociological Theory*, 2010, vol. 28, no. 2, American Sociological Association, p. 153. [online] Available at: http://www.mpi-fg-koeln.mpg.de/pu/mpifg_ja/ST_28_2010_Beckert.pdf

⁴ EUROPEAN UNION. Regulations, Directives and other acts. europa.eu. [online] available at: https://europa.eu/european-union/eu-law/legal-acts_en#regulations

⁵ NOVÁČKOVÁ, Daniela, (et.al). *Európske právo: materiály a texty*. Bratislava, Slovenská republika: Euroinion, 1997.

Gender equality has been one of the key value within the structures of the European Union. The most important aspect of this area of equality has been the economic one and strongly interconnected with market. The first mention about gender equality is from the Treaty of Rome (1957), which introduced the equal payment for equal work without focus on gender.⁶ However, dominant position of this issue in the values of the European Union has not brought huge progress in the area.⁷ To study gender equality whole as a policy is hard. The reason why it is so is because ‘gender equality is a concept with transformative connotations, covering women’s empowerment, nondiscrimination and equal rights regardless of gender. It embraces a multi-dimensional and intersectional view on inequalities between women and men, girls and boys. It points towards change of gender-based power relations in all sectors of society, private as well as public.’⁸ With respect to that I have decided to deal with one aspect, which development and proper implementation contribute to the achieving of gender equality within the European Union – the parental leave and more inclusive role of men within the childcare. This more inclusive role of men within the childcare can bring a lot of advantages and support progress within the gender equality especially through reducing of job market inequalities as well as gender pay gap; can contribute to better pensions of women and better division between unpaid work at home and paid work in employment.⁹

This paper will focus on how concrete member states have dealt with selected legal measure and how and when they implemented it in to their national legislations. The aim is to find reasons for the implementation within the nation states and whether the European Union and its legislation have played significant role within the change of the national legislation. The hypothesis is, that legal changes in selected post-communist states, which became members of the European Union in 2004, and their legal system, were more influenced by the Directive 2010/18/EU in comparison to selected countries from the group of founding countries of the European Union. The legal system of founding countries should be similar to the selected Directive and they were not coerced to change it so much or they did not change it at all. The purpose of the paper is to

⁶ EUROPEAN COMMISSION: Gender Equality. Justice. [online] available at: <http://ec.europa.eu/justice/gender-equality/>

⁷ MAYCOCK, Joanna. *Gender equality is a founding value of the EU, so why the lack of progress?*. The Guardian, 2015. [online] available at: <https://www.theguardian.com/global-development/2015/jun/27/gender-equality-founding-value-eu-so-why-lack-of-progress>

⁸ SIDA. Hot issue: Gender Equality and Gender Equity. 2016. [online] available at: <http://www.sida.se/contentassets/3a820dbd152f4fca98bacde8a8101e15/brief-hot-issue-equity-equality.pdf>

⁹ VAN BELLE, Janna. *Paternity and parental leave policies across the European Union*. Santa Monica, CA: RAND Corporation, 2016. [online] available at: http://www.rand.org/content/dam/rand/pubs/research_reports/RR1600/RR1666/RAND_RR1666.pdf

find out how much the European Union coerced states to change their legislation within concrete area.

The first part of the article deals with the theory of isomorphism with direct focus on coercive isomorphism. The following part will bring up content of selected legal measure and the last part will consist of information about concrete member states and will show whether the European Union is responsible for change within the legislation dealing with parental leave in each country. For the purposes of this paper I decided to use three countries of Visegrad group – Slovak republic, Czech Republic and Poland as post-communist countries which all became members in 2004, and Germany, Italy and Netherlands as three of founding counties of the European Union.

2. Isomorphic change and coercive isomorphism

As has been already mentioned, the institutional isomorphism and institutional isomorphic change have been introduced by DiMaggio and Powell in 1983.¹⁰ The whole concept of isomorphism is dealing with the institutions and their acting in relations to other institutions, how much and because of what they are, more or less, similar to each other. There are different reasons behind, their similarity is influenced by the environment they exist, requirements for the technical efficiency as well as expectations of society.¹¹

This behaviour of institution and this isomorphism not only change them but also could be limited with respect to development of their ‘ [...] structures, processes, culture, norms, and, in the long run, its organizational goals [...] change its course or develop new structures in the future. ‘¹² Isomorphic change is a process, when organizations are influenced by different elements, which has possibility to somehow modify the organization in order to for example make them more successful. DiMaggio and Powell identified also three kinds of isomorphism to identify reasons for isomorphic change.

The first one is mimetic, where one institution represents model for the other institutions. This process is usually influenced by negative development in an

¹⁰ DIMAGGIO, Paul, POWELL, Walter. The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields. *American Sociological Review*, 1983, Vol. 48, No. 2, pp. 147-160.

¹¹ BOXENBAUM, Eva, JONSSON, Stefan. *Isomorphism, Diffusion and Decoupling*. In: GREENWOOD, Royston, OLIVER, Christine, SAHLIN, Kerstin, SUDDABY, Roy (eds.) *The SAGE Book of Organizational Institutionalism*. Sage Publications, 2008, pp. 78

¹² CARAVELLA, Kristi. *Mimetic, Coercive, and Normative Influences in Institutionalization of Organizational Practices: The Case of Distance Learning in the Higher Education*. A Dissertation, 2011, p. 3.

organization, which try to find solution in the success of the other organization (use more successful organization as an inspiration).¹³ Problem of this could arise at the moment when there will be so high level of homogeneity between organizations, that there will be no more space for inspiration.

The second one, normative isomorphism is caused by professionals, who working within the same area. There are limited generators (schools or other educational institutions which) of those, who are skilled within a profession. These generators or sources of professionals educate these people in the same way and insert concrete norms and way of acting in to their students. Students become professionals and they are hired by organizations. It leads to fact, that in several organizations are professionals with the same education, similar way of thinking and acting. The second reason for isomorphism is networking of professionals as well as their moving between organizations, how they socialized in between and it once again lead towards homogeneity within nor only the behaviour of them as individuals, but also how they act within organization and at the end it causes homogeneity of organizations in general.¹⁴

The last kind of isomorphic process is the most important for the purpose of this paper. Coercive isomorphism is “a game” where somebody or something more powerful decide about the less one and shape its structures, behaviour and functioning. State or government is in the position with power, and have right to set the rules of the game. If organizations want to play, they will respect the rules. Not only state but also dominant organizations, which have power over others (for example they are in position of donors) have right to set the rules. This acceptance of general rules leads towards homogeneity of organizations with respect to same aspects of their specifications.¹⁵ How much the European Union was in the role of institution, which influenced coercive isomorphism within the area of parental leave will be examined in further parts of this article.

¹³ KOURTIKAKIS, Konstantinos. *SOMORPHIC PRESSURES AND THE EUROPEAN UNION The Transfer of Public Accountability Organizations to the Supranational Level*. Dissertation, 2007, p.11. [online] available at: http://d-scholarship.pitt.edu/7288/1/Kourtikakis_Konstantinos_April_2007.pdf

¹⁴ Ibid. p. 12

¹⁵ DIMAGGIO, Paul, POWELL, Walter. The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields. *American Sociological Review*, 1983, Vol. 48, No. 2, pp. 146-160.

3. Content of the selected legal measures

The parental leave regulation and its settings, according to the European Union, can be found in the Council Directive 2010/18/EU¹⁶, through which was implemented and achieved legal effect the Revised Agreement between European social partners on parental leave. This new directive follows Directive 96/34/EC, entered in to force on 07.04. 2010 and states had to incorporated its goals in to national legislation till 08.03.2012. ‘It represents a means of better reconciling workers’ professional and parental responsibilities and of promoting equal treatment between men and women. ‘¹⁷ I decided to deal with this Directive and not the previous one (Directive 96/34/EC), because at the time of its adoption, selected post-communist states were not members of the European Union. At the time of the selected Directive, all countries have been members for more than five years.

The key points are that this Directive 2010/18/EU has brought right for both, mother and father of a child, to get parental leave at least for four months (up to 8 years of a child) for each and should be based on non-transferable basis. The European Union encourages states to create at least one month on this non-transferable basis to achieve more equality between both parents (Clause no. 2, point. 1-2 of the Council Directive 2010/18/EU). The incorporation of this Directive should be through law as well as by Collective agreements, which could include possibility of parental leave for any kind of employment contract (part-time, full-time...). This law could also include justifiable reasons for rejecting of the parental leave by an employer (Clause 3, point 1 of the Council Directive 2010/18/EU), ‘shall establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave. Member States and/or social partners shall have regard to the interests of workers and of employers in specifying the length of such notice. ‘ (Clause 3, point 2 of the Council Directive 2010/18/EU) as well as possibility of changes with respect to standards of parental leave in case of special needs – for example disability or health conditions of a child (Clause 3, point 3 of the Council Directive 2010/18/EU). This legislation about parental leave is applied also in case of adoption of a child and these cases should also be assessed in the light of the specifications, with which they are connected (Clause 4, point 1 of the

¹⁶ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC [online] available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32010L0018>

¹⁷ European Union, <http://eur-lex.europa.eu/>. Parental leave. 1998–2017. [online] available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Aem0031>

Council Directive 2010/18/EU). The Clauses no. 5 and 6 focus on the situation connected with return to the work after parental leave. First of all, this process must be without any kind of discrimination, member state should create that kind of conditions, which will protect workers against less beneficial treatment from the side of employer or dismissal from work because of the willing of workers to apply their right for the parental leave. Workers should have right to get back to the same work position as before and if it is not possible, then to a position which is in accordance to their employment contract (should be similar or equivalent to previous one), they have right for the same conditions or rights as before the start of the parental leave as well as for any kind of rights or benefits, which have been created during the time of their parental leave within the law or internal collective agreements. There should be possibility to adjust the working time of a worker in case of his/her ask for it for the purpose of better work-life family-life balance. This measure should be in favour of both, employer as well as employee (Clause 5, points 1-5, Clause 6, points 1-2 of the Council Directive 2010/18/EU). There should be right for workers to get special ‘time off from work, [...] on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable’ and there should be stated the limitation as well for this right of a worker (Clause 7, point 1-2 of the Council Directive 2010/18/EU).

4. Selected states and their interpretation of the Council Directive 2010/18/EU

Within this part of the paper I would like to look on the concrete interpretation of selected member states of the European Union with respect to the Council Directive 2010/18/EU. The selected states are Slovak Republic, Czech Republic, Germany and the Netherlands. Through their comparison with minimal standards, which were created by the European Union in this Council Directive 2010/18/EU, I would like to check whether selected countries and their legal system were influenced by the coercive isomorphic change. I will look on the changes, which these countries need to make to fulfil criteria set by the Directive 2010/18/EU. As Beckert claimed, and I have already mentioned, the fact that the European Union has right to influence the law of member states at national level is form of coercive institutional isomorphism¹⁸. Question about how much had to

¹⁸ BECKERT, Jens. Institutional Isomorphism Revisited: Convergence and Divergence in Institutional Change. *Sociological Theory*, 2010, vol. 28, no. 2, American Sociological Association, p. 153. [online] Available at: http://www.mpi-fg-koeln.mpg.de/pu/mpifg_ja/ST_28_2010_Beckert.pdf

change selected countries their legal system in this area with respect to selected Directive, and whether homogeneity in this case is result of coerced changes will be answer in following parts of the article.

4.1. Slovak Republic

Slovakia is one of those countries, which had to change the whole legislation about the parental leave to transpose the Council Directive 2010/18/EU.¹⁹ This Directive was implemented mostly through amendment of the Labour Code. There was transposition of the Directive 2010/18/EU with respect to its clauses in to a lot of further legislative acts in Slovakia such as Act on Social Insurance and several additional acts dealing with work in public services, police, in fire departments, in army, Act on Custom Officers or Act on Parental Allowance.²⁰ All together there was amendment of ten legal acts.²¹ Within the Labour Code there was big amendment especially with respect to possibility of an employee to get the same workplace or similar to that before the parental leave and was created the obligation for an employee to let know to employer in writing about the date, when he/she starts the parental leave as well as the expected end day.²²

The changes were done in similar way with respect to majority of changed acts, mostly in order to fulfil minimal criteria created by the Directive. Basically, all of the clauses of the Directive 2010/18/EU we can find in aforementioned acts and as an example what kind of changes there were I choose the Act No. 346/2005 Coll. on the state service of professional soldiers in the Armed Forces of the Slovak Republic. Within the Reasoning Report about the changes in a legislation (*Dôvodová správa*) Slovakia referring directly to the Directive 2010/18/EU

¹⁹ PRPIC, Martina. Maternity, paternity and parental leave in the EU. Briefing, European Parliament. 2017 [online] available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI\(2017\)599323_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI(2017)599323_EN.pdf)

²⁰ EPI.SK. Smernica Rady 2010/18/EÚ z 8. marca 2010, ktorou sa vykonáva revidovaná Rámcová dohoda o rodičovskej dovolenke uzavretá medzi BUSINESSEUROPE, UEAPME, CEEP a ETUC a zrušuje smernica 96/34/ES – Implementácia v predpisoch Zbierky zákonov. [online] available at: <http://www.epi.sk/eurlex-rule/32010L0018.htm>

²¹ MAGUROVÁ, Zuzana. Slovakia. In: PALMA RAMAHLO, Maria, FOUBERT, Peter, BURRI, Susanne. *The Implementation of Parental Leave Directive 2010/18 in 33 European Countries. The European Commission*. Luxembourg: Publications Office of the European Union, 2014. [online] available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/parental_leave_report_final_en.pdf

²² NAJPRAVO.SK (n.d.): Dôvodová správa k novele Zákonníka práce z 8.2.2011. [pdf], [online] available at: <https://www.google.sk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwj8oJ7m29jUAhVHQJoKHYZWAEoQFggnMAE&url=http%3A%2F%2Fwww.najpravo.sk%2Fcms%2FcmsLink.php%3FID%3D2188&usg=AFQjCNFiVj365svQvWTJCheqRhIqh10bw>

as a reason for these changes. One of important change was, that soldier after parental leave will not be part of military backup for temporary unclassified professional soldiers, but has right to go back to his/her previous position. A soldier during parental leave will have right to get financial contribution for housing as well.²³ There was no financial contribution for housing during parental leave of a soldier, because this soldier was moved to unpaid military backup.²⁴ It is visible, that the Directive 2010/18/EU had significant influence on the changes in legislation in the area of parental leave and change the way of functioning in different aspects. These changes were not voluntary, they were coerced.

4.2. Czech Republic

Czech Republic is between those countries, which did not have to change their legislation because of the Directive 2010/18/EU.²⁵ According to the *Country report: Gender equality – How are EU rules transposed into national law?* prepared by Kristina Koldiská²⁶, there were no explicit changes because of the Directive. The Labour Code no. 262/2006 and Act No. 117/1995 Coll. on state social support included at that time at least minimal standards, which were created by the Directive. For example, right to get back the same work position or similar one after the end of parental leave has been part of the Labour Code since the year 2007. The same version of the Labour Code (valid since the year 2007) include protection of an employee against dismissal during the parental leave as well.²⁷ (Act no. 262/2006)

There is no evidence, that changes with respect to parental leave within the Czech Republic, are results of the Directive 2010/18/EU. In this case, it is not possible to say, that the legislation of Czech Republic on the parental leave has been changed coercively, and these changes are not result of coercive isomorphism from the side of the European Union and the Directive 2010/18/EU.

²³ RADIČOVÁ, Iveta, GALKO, Ľubomír. Dôvodová správa. 2011[online] available at: http://www.rokovania.sk/html/m_Mater-Dokum-133730.html

²⁴ TASR. Vojaci na rodičovskej dovolenke dostanú príspevok na bývanie. Spravy.pravda, 2011. [online] available at: <https://spravy.pravda.sk/domace/clanok/171756-vojaci-na-rodicovskej-dovolenke-dostanu-prispevok-na-byvanie/>

²⁵ PRPIC, Martina. Maternity, paternity and parental leave in the EU. Briefing, European Parliament. 2017 [online] available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI\(2017\)599323_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI(2017)599323_EN.pdf)

²⁶ KOLDISKÁ, Kristina. Country report Gender equality – How are EU rules transposed into national law? – Czech Republic. European Commission, 2015. [online] available at: http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-cz-country_report_ge_final.pdf

²⁷ Act no. 262/2006 – The Labour Code of Czech Republic (2006, valid since 2007). [online] available at: <https://www.zakonyprolidi.cz/cs/2006-262/zneni-0>

4.3. Poland

With respect to Poland, they amended labour code regarding maternal or paternal leave in year 2013.²⁸ This period is after the adoption of the Directive but the important information is, that parental leave Directive was major reason for these changes when we are talking about Poland. These changes were mostly about better position of fathers and to achieve lower dominance of women within the issue of rights of parents. There were few amendments also before, but major changes have been introduced by the amendment in 2013.²⁹ Even though we are talking about the most important changes, these changes were not in the scale of full change of national law. Within the table with comparison of the Directive and amendments within the national law, there are a lot of parts of the Directive, which have already been part of national legislation of Poland or provisions of the Directive were on the voluntarily base and there was no obligation to implement it. There was not necessity to implement sixteen of thirty-two articles or clauses.³⁰ This fact includes Poland between those countries, which needed to make only partial changes and not implement Directive through completely new law.

4.4. Germany

Germany, as well as Czech Republic, is in the group of those states, which did not have to change their legislation to be in line with the Council Directive 2010/18/EU. There was no formal transposition, because the legislation in Germany was recognized in accordance with the Directive.³¹ This position of the country was caused by the adoption of the new legislation relatively short period before the adoption of the Directive 2010/18/EU. 'In January 2007, the Federal Law on Parental Allowance and Parental Leave entered into force. The Law was amended in 2012 and 2014, but although it covers the core requirements of the directive, it

²⁸ European Network of legal experts in the field of labour law. ANNUAL FLASH REPORT – VC/2012/1232 – SI2.641178. pp. 32-33. [online] available at: <http://www.labourlawnetwork.eu/frontend/file.php?id=681>

²⁹ SKUPIEŃ, Dagmara, ŁAGA, Maciej, PISARCZYK, Łukasz. Polish labour law: the impact of the economic crisis and demographic problems. *Hungarian Labour Law E-Journal*, 2016, Vol. 1. [online] available at: http://hlj.hu/letolt/2016_1_a/A_01_Skupien_Laga_Pysarczyk_hlj_2016_1.pdf

³⁰ SEJM RZECZYPOSPOLITEJ POLSKIEJ. Druk nr. 909 – Tabela Zbieżności. 2012, pp. 1-17. [online] available at: <http://orka.sejm.gov.pl/Druki7ka.nsf/0/46B9AEDDC6193074C1257AB-D005294AF/%24File/909.pdf>

³¹ PRPIC, Martina.: Maternity, paternity and parental leave in the EU. Briefing, European Parliament. 2017 [online] available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI\(2017\)599323_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI(2017)599323_EN.pdf)

does not provide for a direct reference to the EU acquis.³² This law has brought for example moths of parental leave exclusively for fathers and this step has brought also increase interest of fathers in to childcare.³³ The provisions of this Federal law are not possible to limit by for example collective agreements within the employment. There have been complaints about the incomplete transposition of the Directive 2010/18/EU in to national legislation but the government of Germany at that time stated, that the newly introduced national legislation is not only fully in line with the Directive, but it exceeded the minimal standards created by it.³⁴

In the case of Germany, it is not possible to say, that changes within the selected legislation was influenced by the European Union and the Council Directive 2010/18/EU. Legislative in Germany, which were in accordance to provisions of the Directive was accepted years before the European legislation.

4.5. The Netherlands

The Netherlands had to change its legislation but there were necessary only small amendments. In this case once again it was necessary to amend the Act on Labour and Care, which ‘implement the recast Parental Leave Directive (2010/18/EU). The main modification concerns the inclusion of a new provision, Article 4 (1) (b), which implements Clause 6 (1) Return to Work of the Framework Agreement that is given erga omnes effect by the Directive.’³⁵ Except this amendment (right to ask for change in working hours through Working Time Act) there was one more major amendment. There was created prohibition to dismissed

³² LEMBKE, Ulrike. *Country report Gender Equality How are EU rules transposed into national law? – Germany*. European Commission, 2016. [online] available at: http://ec.europa.eu/information_society/newsroom/image/document/2017-3/2016-de-country_report_ge_final_en_41876.pdf

³³ ALBRECHT, Clara, FICHTL, Anita, REDLER, Peter. Fathers in Charge? Parental Leave Policies for Fathers in Europe. *ifo DICE Report*, 2017, vol. 15, pp.49-51. [online] available at: <https://www.cesifo-group.de/ifoHome/facts/DICE/Social-Policy/Family/Work-Family-Balance/DR-2017-1-alb-fi-red--par-leave-pol/fileBinary/DR-2017-1-alb-fi-red--par-leave.pol.pdf>

³⁴ LEMBKE, Ulrike. Germany. In: PALMA RAMAHLO, Maria, FOUBERT, Peter., BURRI, Susanne. *The Implementation of Parental Leave Directive 2010/18 in 33 European Countries. The European Commission*. Luxembourg: Publications Office of the European Union, 2014. [online] available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/parental_leave_report_final_en.pdf

³⁵ EUROPEAN LABOUR LAW NETWORK. Implementation of Parental Leave Directive (2010/18/EU) (05-12-2011). 2008–2017. [online] available at: http://www.labourlawnetwork.eu/national%3Cbr%3Elabour_law/national_legislation/legislative_developments/prm/109/v__detail/id__1689/category__25/index.html

a person because he or she ask for parental leave. There is also prohibition of less favourable behaviour of an employer based on the ground that somebody asks for parental leave or decides to go on parental leave.³⁶

It was the government of the Netherlands at that time, which claimed that the legislation in the Netherlands is in line with the Directive 2010/18/EU, and that was true. A lot of minimal standards have already been in the Netherlands at the time of adoption of the Directive 2010/18/EU. For example, The Netherlands created right for employee to ask for more flexible work time in year 2000.³⁷ Work and Care Act on 2001 has already included leave on grounds of force majeure such as death in family or poor health conditions of a child as well as provisions about parents who take care of their adoptive child.³⁸ However, there are few parts of legislation, which should not be in line with the Directive 2010/18/EU. According to Rikki Holtmaat, Independent Legal Consultant Expert in the Netherlands, ‘[t]here is no explicit legal right to return to the same or a comparable job after having taken parental leave...’³⁹ Government argued, that this protection of an employee is part of the right to not be discriminate or not to deal in less favourable way with an employee by the employer.⁴⁰

The Netherlands were not coerced so much to change their legislative settings within the selected area. Even though those small amendments within the legislation are still results of the influence of the European Union as more powerful entity. This changes in the Netherlands are therefore still result of coercive mechanism of isomorphism.

³⁶ PALMA RAMAHLO, Maria, FOUBERT, Peter., BURRI, Susanne. *The Implementation of Parental Leave Directive 2010/18 in 33 European Countries. The European Commission*. Luxembourg: Publications Office of the European Union, 2014. [online] available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/parental_leave_report_final_en.pdf

³⁷ MOSS, Peter (eds). *International Review of Leave Policies and Related Research 2011. The international network on leave policies and research*, 2011. [online] available at: http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2011_annual_review.pdf

³⁸ PLANTENGA, Janneke, REMERY, Chantal. Parental leave in the Netherlands. *Reform Models. CESifo DICE Report*, 2009, Vol. 2, pp. 47-51 [online] available at: <https://www.cesifo-group.de/pls/guestci/download/CESifo%20DICE%20Report%202009/CESifo%20DICE%20Report%202/2009/dicereport209-rm2.pdf>

³⁹ HOLTMAAT, Rikki. The Netherlands. In: PALMA RAMAHLO, Maria, FOUBERT, Peter, BURRI, Susanne. *The Implementation of Parental Leave Directive 2010/18 in 33 European Countries. The European Commission*. Luxembourg: Publications Office of the European Union, 2014, p. 167. [online] available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/parental_leave_report_final_en.pdf

⁴⁰ Ibid. pp.163-169.

4.6. Italy

Italy, as third of the selected founding member states of the European Union, has had a lot of provisions of national law in accordance to the Directive and system of parental leave within the Italy have provided more than the provisions of the Directive and law of the European Union.⁴¹ Even though there was influence of the Directive on national law. The main, but still small, changes were made within the Decree No. 151/2001 through Act No. 228/2012. Direct influence of the Directive we can see within the rule, that there is necessity to provide concrete information from employee to employer about the exact start and the end of the parental leave.⁴²

Italy has introduced only small changes to implement the Directive. There was a petition by Dario Messineo about insufficient implementation of the Directive. ‘The petition claims that Italian Law No 92 of 28 June 2012 does not appropriately preserve the right to parental leave, in violation of Council Directive 2010/18/EU. In particular, the above legislation allegedly does not apply to civil servants, and is furthermore only a transitional framework.’⁴³ The European Commission declared this petition as admissible but at the end concluded there was no violation of the legislation of the European Union.⁴⁴ These circumstances of changes and implementation of the Directive include Italy between those member states of the European Union, which were not coerced to change whole national legislation to be in harmony with the provisions of the Directive. Italy made only few amendments and a big part of national legislation dealing with the parental leave has already exceeded the legislation of the European Union.

⁴¹ RENGA, Simonetta. Italy. In: PALMA RAMAHLO, Maria, FOUBERT, Peter, BURRI, Susanne. *The Implementation of Parental Leave Directive 2010/18 in 33 European Countries. The European Commission*. Luxembourg: Publications Office of the European Union, 2014, pp. 128-133. [online] available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/parental_leave_report_final_en.pdf

⁴² RENGA, Simonetta. Country report Gender equality How are EU rules transposed into national law?. *Luxembourg: Publications Office of the European Union*, 2016. [online] available at: http://ec.europa.eu/justice/gender-equality/files/ge_country_reports_d1/2015-it-country_report_ge_final.pdf

⁴³ European Parliament – Committee on Petition. Notice to Members – Subject: Petition No 1997/2014 by Dario Messineo (Italian) on parental leave in Italy. 2015, p. 1. [online] available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-571.565&format=PDF&language=EN&secondRef=01>

⁴⁴ Ibid. p. 3

5. Conclusion

As Beckert claimed, the possibility of the European Union to influence the legislation at national level is example for the coercive isomorphism.⁴⁵ There are no doubts, that the European Union is full of homogeneity between its member states especially within the national legislation of member states. It was one of the condition for becoming of a member of the European Union, to accept *acquis communautaire* and created the most similar conditions for all citizens of the European Union across the member states. However, the existence of homogeneity in an area does not necessary means that it has been created by coercive mechanisms. The legislation about parental leave is good example to prove it.

The hypothesis was, that post-communist states were coerced to change much more in their legislation in comparison to states, which are founding countries of the European Union. This hypothesis is not valid. It seems, that it does not matter, whether states are in the European Union since the beginning or only little bit more than five years⁴⁶. As I showed, Czech Republic as post-communist country and Germany as one of the founding country were not coerced to change their legislation, because has already been in line with the Directive 2010/18/EU. The Netherlands were coerced to make just small changes, to fully transpose the Directive, as well as Poland – post-communist country and Italy – founding member of the European Union. Slovakia was coerced to change a lot and in several cases to create new form of legislation or change standards, which were used for a long time. Huge change within the Slovakia is example for coercive change, and partly also small changes in the Netherlands, Poland and Italy. None of these countries would change their legislation at that time, without pressure from the side of the European Union. However, as has been already mentioned, system of parental leave and legislation in Italy in several cases exceeded the minimum standards created by the Directive. Germany, as well as Czech Republic, introduced new legislation not long time before the Directive (2007 in Germany and 2006 in Czech Republic), but still without pressure from the side of the European Union.

The fact that in this case it does not matter, whether states is founding member or member, which entered the European Union later is proved also by following table by Martina Prpic.⁴⁷

⁴⁵ BECKERT, Jens. Institutional Isomorphism Revisited: Convergence and Divergence in Institutional Change. *Sociological Theory*, 2010, vol. 28, no. 2, American Sociological Association, p. 153. [online] Available at: http://www.mpi-fg-koeln.mpg.de/pu/mpifg_ja/ST_28_2010_Beckert.pdf

⁴⁶ At the time of the approval of the Council Directive 2010/18/EU states which entered the European Union in 2004 have been members for more than 5 years.

⁴⁷ PRPIC, Martina.: Maternity, paternity and parental leave in the EU. Briefing, European Parliament. 2017 [online] available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI\(2017\)599323_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599323/EPRS_BRI(2017)599323_EN.pdf)

Transposition of Parental Leave Directive in Member States

Not formally transposed because legislation considered already compatible	Austria, Czech Republic, Finland, Germany, Latvia, Lithuania, Portugal, Spain, and Sweden
Formally transposed	Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Slovakia, and Slovenia
Small amendments necessary	Belgium, Croatia, Luxembourg, Malta, Romania, United Kingdom, Denmark, Italy, the Netherlands, France, and Poland

Source: PRPIC, Martina.: Maternity, paternity and parental leave in the EU. Briefing, European Parliament. 2017, p. 6.

It is possible to find post-communist countries in all three groups. First one, which did not have to change the legislation at all, second which had to change a lot and last which did just small changes. Interesting could be fact, that none of founding members is in the group, which had to change the legislation a lot but majority of them is in group with small amendments. However, these small amendments were coerced from the side of the European Union and therefore the homogeneity within these amendments is also result of mechanism of coercive isomorphism. It would be interesting to find out, what caused homogeneity within the first group of states, but now is possible to say that it was not caused by mechanism of coercive isomorphism. Even though not all changes in the area within all member states have been coerced by the European Union, there is significant role of the Directive, through which the member states ‘achieved parental leave systems to which fathers are entitled’⁴⁸, what could increase level of gender equality in the member states of the European Union.

⁴⁸ EUROFOUND. *Promoting uptake of parental and paternity leave among fathers in the European Union*, Luxembourg: Publications Office of the European Union, 2015.p.10. [online] available at: <https://www.ucm.es/data/cont/docs/85-2016-04-20-Promoting%20uptake%20of%20parental%20and%20paternity%20leave.pdf>