

**FATHERS AT STAKE**

**ITALIAN LEGISLATION COMPARED TO THE EUROPEAN ONE**

2021-1-IT02-KA210-ADU-000034929



**Programme:** Erasmus+

**Key Action:** Partnerships for cooperation and exchanges of practices

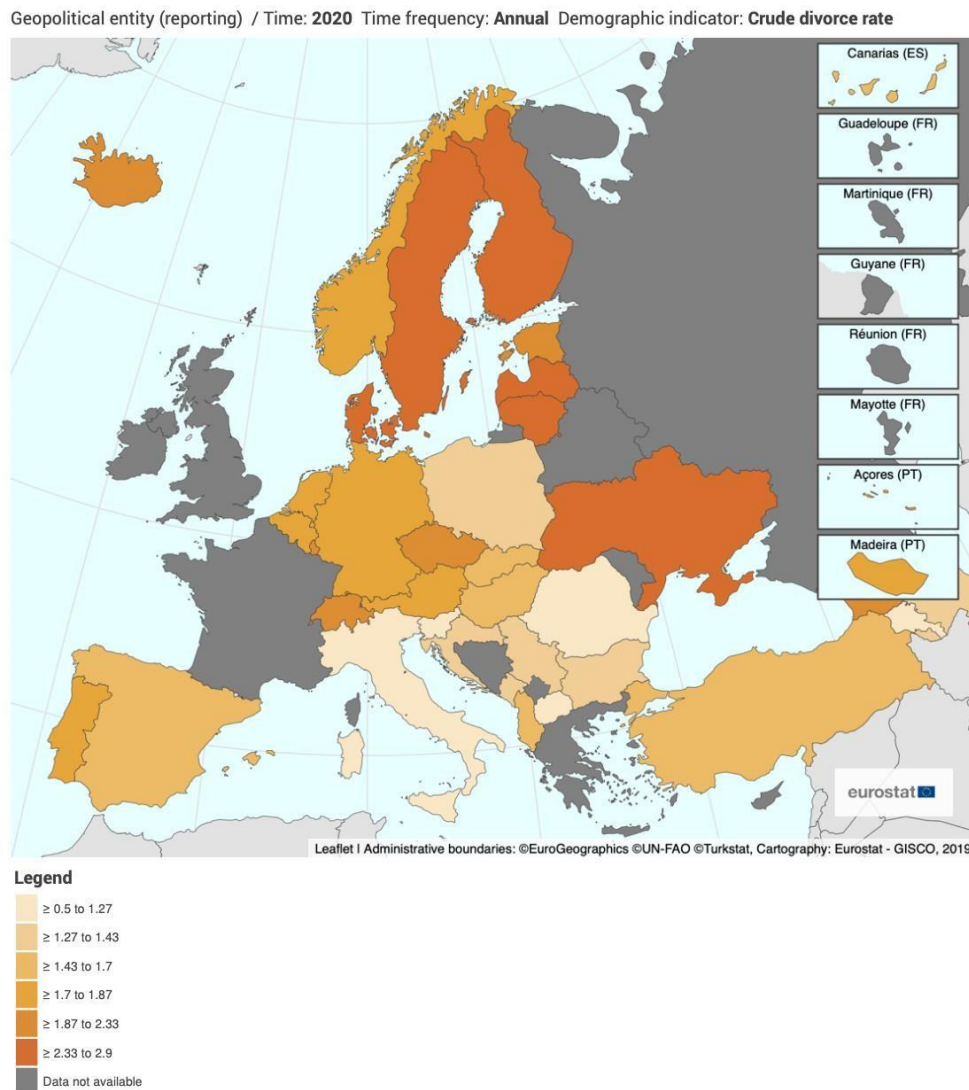
**Action Type:** Small-scale partnerships in adult education

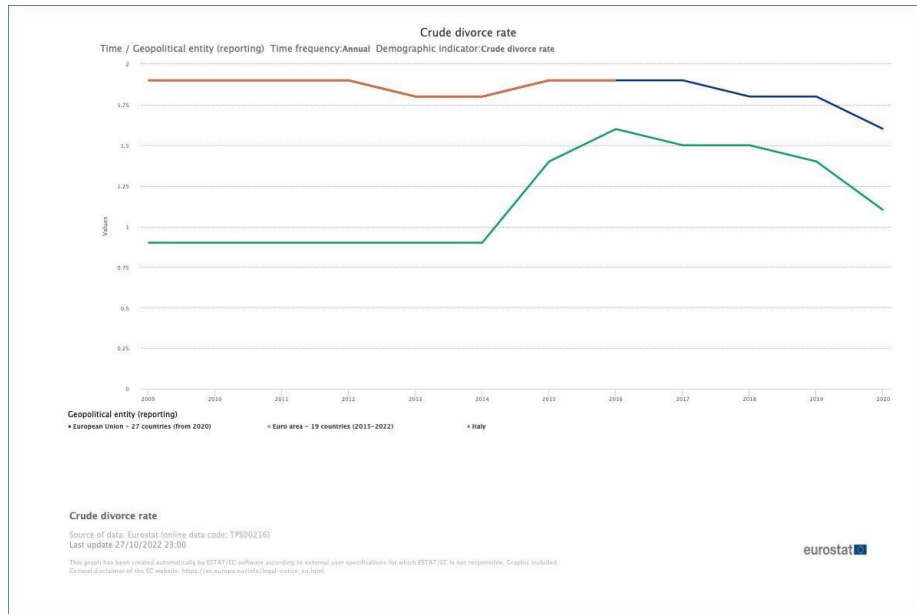
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## DIVORCE RATE IN EU

The graphs below show the gradual decrease in raw divorce rates both in Europe and specifically in Italy from 2009 to 2020.





From ec.europa.eu

Compared to the Eurozone that looks to be more balanced, the divorce rate in Italy seems to decrease more sharply due to a previous spike in divorce in 2016.

### COUNCIL REGULATION 2019/1111

On the 25<sup>th</sup> of June 2019 was approved the Council Regulation 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction with the aim of standardizing laws on divorce, custody, parental responsibility.

This regulation gives us the European definition of «parental responsibility», which means the rights and duties which a natural or legal person has by virtue of a judgment, by operation of law or by an agreement in force in respect of the person or property of a child, including rights of custody and rights of access, and of «rights of custody», that shall include rights and duties relating to the care of the person of a child, and in particular the right to intervene in the decision as to his or her place of residence.

### THE CASE OF ITALY

In Italy, a filiation reform (law 2012 no. 219) entrusts parental responsibility to both parents if they are married. If they are not married but both recognize the child, then responsibility is entrusted as if they were married, so to both parents.

In the event of divorce or separation the general custody model, suitable for ensuring bigenitorialism, is shared custody in which both parents have the exercise of parental responsibility. Unfortunately, sometimes shared custody of the child may not correspond to the child's interest. There are some recurring cases of sole custody: 1. if one of the parents is dangerous for the child's

physical and psychological safety (violent parent, parent with a serious criminal record, drugaddicted or alcoholic parent); 2. if the parent is incapable of providing moral and material assistance to the child, or has never shown an interest in the child; 3. if the parent discredits the other parent with regard to the child; 4. if there is serious conflict between the parents such as to alter the child's balance and psychophysical development.

The parent who has sole custody of the children has sole exercise of parental responsibility unless the court orders otherwise. In particular, he or she may also independently take decisions of extraordinary administration.

However, even in the case of sole custody of one of the parents, decisions of major interest to the children (those relating to education, upbringing, health) must be taken by both parents, unless otherwise stipulated in the custody decision.

#### **PATERNITY LEAVE IN EUROPEAN UNION: THE 2019/1158 DIRECTIVE**

In 2019 has been approved the directive 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and careers and repealing Council Directive 2010/18/EU based on parental equality between men and women, fundamental principle of the Union. The directive lays down minimum requirements related to paternity leave, parental leave and careers' leave, and to flexible working arrangements for workers who are parents, or careers. This Directive should contribute to the Treaty-based goals of equality between men and women with regard to labour market opportunities, equal treatment at work and the promotion of a high level of employment in the Union.

#### **ART. 4**

1. Member States shall take the necessary measures to ensure that fathers or, where and insofar as recognized by national law, equivalent second parents, have the right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.
2. The right to paternity leave shall not be made subject to a period of work qualification or to a length of service qualification.

3. The right to paternity leave shall be granted irrespective of the worker's marital or family status, as defined by national law.

Transpositions from member States, art. 20: member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive by 2 August 2022.

### **PATERNITY LEAVE IN EU MEMBER STATES AT MARCH 2022**

Austria	Since 1 September 2019, all Austrian employers must allow fathers to take one month's unpaid leave after the birth of their child. The leave entitlement – the so-called 'Papa Monat' – previously applied only to federal-sector employees and any private-sector employees who were covered by a collective agreement.
Belgium	From 1 January 2021, paternity leave increased from 10 days to 15 days. From 2023, it will be extended with another five days, to a total of 20. The extension will apply to employees as well as to self-employed workers and civil servants.
Czechia	As of 1 January 2022, paid paternity leave has been extended from the previous 7 days to 14 days.
Estonia	Fathers can take paternity leave before or after the birth; a new law which entered in force on 1 June 2020 provides for leave of 30 days (4 weeks; paid at 100 %). For mothers, a new law will enter in force on 1 April 2022 and provide for leave of 60-100 days; the rest (40 days) will be added to parental leave.
Finland	Fathers may not work during paternity leave, while mothers may, except during the mandatory leave period. Maternity and paternity allowances are affected by the beneficiaries' circumstances and income.
France	From 1 July 2021, the duration of paternity leave is doubled: it is now 28 days, including the 3 days of birth leave financed by the employer, which are added to the 25 days compensated by the social security system.
Ireland	An additional three weeks of <a href="#">parent's</a> leave and parent's benefit are available to each parent of a child born or adopted on or after 1 November 2019 (bringing the total to five weeks).
Italy	Paid paternity leave was increased from four days to five days in 2019 and from five days to seven days in 2020. On 1 January 2021, the mandatory government-paid paternity leave was increased from seven working days to ten working days, with an optional extra day if the mother gives up one day of her statutory maternity leave.
Netherlands	Since August 2021, fathers or partners (including same-sex partners) are entitled to a paid full work week (five days) paternity leave. They can access an additional five-week paternity leave within the first six months of childbirth which is paid by the Employee Insurance Agency at 70 % of earnings.
Portugal	There is no maternity or paternity leave, only parental leave. There is an option to take 120 or 150 days of leave: 120 days is paid at 100 % and 150 days at 80 %. An extra 30 days are available if parents share the leave period. The father can take any part except the initial parental leave reserved for the mother, which is shown in the graph.
Sweden	Swedish legislation on this issue is more gender neutral than in other Member States. Rather than maternity leave, as shown on the graph, parental leave is the most relevant. Each parent is eligible for up to 240 days paid parental leave (all but 90 days of which may be transferred to the other parent), plus unpaid leave until the child is 18 months old. Maternity leave can be taken before or after birth within 60 days of delivery.

## Paternity leave

Number of weeks		Payment
DE	No paternity	/
HR	No paternity	/
LU	No paternity	/
SK	No paternity	/
HU	1	100 %
MT	1	100 %
NL*	1	100 %
RO	1	80 %
LV	1.4	100 %
IT*	2	78 %
BG	2	72 %
CY	2	70 %
CZ*	2	Variable
DK	2	▲ 100 %
EL	2	100 %
IE*	2	● Flat rate
PL	2	100 %
SE*	2	90 %
BE*	3	◆ Variable
AT*	4	Flat rate
EE*	4	100 %
FR*	4	100 %
LT	4	78 %
SI	4	100 %
PT*	5	100 %
FI*	9	Variable
ES	16	100 %

From [Europarl.europa.eu](http://Europarl.europa.eu)

**PATERNITY LEAVE (CONGEDO DI PATERNITÀ) IN ITALY**

What is it: ten-day compulsory paid leave which can be taken separately and can be claimed within five months of the child's birth, granted at the same time as the maternity paid leave. In the presence of serious conditions that prevent the mother from taking care of the baby, the right to absence from work and the relative allowance is granted to the father. In the five months after the child's birth, the father can be entitled to one more day of unpaid leave (which can be paid if the mother agrees to transfer it from her own maternity leave).

Who is entitled: You are entitled to the maternity/paternity leave for the period of obligatory absence from work if you are an employed worker and, under certain conditions, if you are an agricultural worker, domestic worker or caregiver, if you work from home, are unemployed or are a worker with a suspended employment contract. If you belong to the categories of self-employed workers, freelancers, workers with a fixed-term contract signed up to a separate INPS scheme, you are not obliged to take a leave of absence from work. You are entitled to paternity leave if you are a working father. You can take 10 days of leave during the mother's obligatory leave plus one-day optional unpaid leave. In addition, you are entitled to the same period of maternity leave if the

mother is unable to take care of the child in the following cases: death or serious illness, abandonment, sole custody of the child with the father.

Amount: equal to 100% of pay for ten days.

Italian law:

Article 4, paragraph 24, letter a), of Law No. 92 of 28 June 2012 established compulsory leave and optional leave, as an alternative to mother's maternity leave, available to the employed father, including adoptive and entrusted, no later than the fifth month of the child's life.

The 2022 Budget Law has stabilized both father's leave, therefore, as of 2021, leave is no longer experimental and employed fathers can benefit from it in the event of the birth, adoption, custody, or temporary placement of minors, but also in case of perinatal death of the son.

Legislative Decree 105/2022 repealed the provisions that stabilized the compulsory and optional leave of the father, therefore from the entry into force of the decree it will be possible to enjoy the compulsory paternity leave referred to in Article 27-bis, Legislative Decree 151/20010 (message 4 August 2022, n. 3066).

**SOURCES:**

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