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The increase in cohabitation  
and the role of marital  
status in family policies: A  
comparison of 12 European  
countries

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Nora Sánchez Gassen  
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## **ABSTRACT**

The role of marital status is seldom considered in welfare state research. This perspective however is important, since many welfare state policies focus on the married and do not apply to unmarried cohabitants. This may render them vulnerable in moments when state support is needed. Since cohabitation levels are increasing across Europe, understanding the role of marital status in welfare state policies becomes increasingly important. By analysing data from the European Social Survey and a self-constructed policy database, we answer three questions: 1) How many couples live in cohabiting unions across 12 European countries today? 2) Which rights do they have in different policy areas? 3) How many couples, therefore, are covered or fall outside the scope of policies in their country? We find that cohabitation is often, but not always, more strongly regulated in countries with high cohabitation levels, leaving more cohabitants legally unprotected in some countries than in others.

## **KEYWORDS**

Cohabitation; policies; welfare states; Europe; marital status.

## **EDITORIAL NOTE**

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# **THE INCREASE IN COHABITATION AND THE ROLE OF MARITAL STATUS IN FAMILY POLICIES: A COMPARISON OF 12 EUROPEAN COUNTRIES**

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## 1. INTRODUCTION

Relationships have undergone profound change over the past decades. Marriage rates have decreased, divorce rates have risen, and an increasing number of couples live together without being married (Sobotka and Toulemon 2008). While the extent and speed of these changes vary, the overall increase has been similar across Europe (Perelli-Harris et al. 2009; Kiernan 2004). These changes in partnership behaviour provide a challenge to welfare states and the way that governments interact with families. Originally, states placed marriage at the centre of the concept of the family and built family policies around this image. Although welfare states have developed in different directions, the concept of marriage remains fundamental to many welfare state policies (Lewis 2001). Today, however, life-long marriage upon entrance into adulthood is no longer predominant in most European countries (Billari and Liefbroer 2010). These changes bring into question whether current policies are equipped to deal with the new realities of the family. Although welfare state researchers have examined how welfare states have dealt with certain ‘non-traditional families,’ for example lone mothers (Chzhen and Bradshaw 2012; Knijn and van Wel 2001), divorced women (Uunk 2004; Aassve et al. 2007) and stepfamilies (Kreyenfeld and Martin 2011; Ermisch and Francesconi 2000), cohabitation has received less attention. Given the increase in cohabitation, this is surprising.

Demographic research suggests that cohabiting women may be at greater risk of experiencing union dissolution, becoming lone mothers and moving into poverty than married women (McLanahan 2009, Lichter et al. 2006, Heuveline et al. 2003, Galezewska et al. 2014). Nonetheless, it is important to keep in mind that the association between cohabitation and risk of poverty may be due to selection effects and not the type of union itself (Cherlin 2010; Tach and Edin 2013). Regardless of whether cohabitants are at greater risk of poverty due to selection effects or type of union, it is important to analyse how and whether these new families are covered by laws and policies. The legal differences between marriage and cohabitation vary widely across Europe (Perelli-Harris and Sánchez Gassen 2012; Waaldijk 2005; Scherpe and Yassari 2005). While cohabitants share many of the legal rights of married spouses in some European countries, almost no country has completely equalized cohabitation and marriage in terms of the law. A lack of legal protection

does not necessarily put cohabitants at a disadvantage. Many cohabitants may eventually marry and thereby fall under the scope of marriage laws or they may fill legal gaps with cohabitation contracts. Some cohabitants may also be financially independent from each other and not in need of state benefits and services, or they may purposefully cohabit in order to avoid the legal regulation of marriage. Nonetheless, a lack of legal regulation constitutes a risk for cohabitants who are financially dependent on their partner, e.g. because they maintain the household rather than being in paid employment. These cohabitants, usually women, may be in a vulnerable situation if the relationship ends by death of their partner or separation, when legal rules or state benefits would be needed to solve property disputes and avoid drops in income. Therefore, it is important to examine to what extent laws and policies *de jure* regulate cohabitation in current welfare states and to quantify how many cohabiting couples *de facto* remain outside the scope of family policies.

In this paper, we answer the following research questions: 1) How many couples currently live in heterosexual cohabitation, and how does this differ across the lifecourse and whether they have children? We analyse data from the European Social Survey (ESS) for twelve European countries representing different types of welfare regimes to quantify the proportion of cohabitants among all partnered persons in different countries. 2) Do family policies in these countries offer cohabitants the same rights and obligations as married spouses or is cohabitation unregulated? Drawing on a comprehensive policy database (Perelli-Harris and Sanchez Gassen 2012), we analyse a wide range of family-related issues, including social security, inheritance and housing. We pay particular attention to the situation of cohabitants with children since their legal rights and obligations may have consequences for the well-being of children as well. 3) What is the percent of couples that fall outside the scope of policies in each country? In this step, we compare legal information and cohabitation data to quantify the match or mismatch between family policies and union formation behaviours across Europe.

Note that it is not the aim of this paper to determine the poverty risk of cohabitants on the micro-level or to analyse whether a correlation exists between the development of policies and level of cohabitation. With only twelve countries, such an analysis is not possible. Instead, we focus on whether the current setting of family

policies constitutes a potential risk by not offering cohabitants the same rights and access to state benefits as married spouses. This provides an essential step for understanding the scope of the issue across countries.

## **2. THE CHANGING ROLE OF MARRIAGE AND COHABITATION IN PARTNERSHIP FORMATION AND FAMILY POLICIES**

### **2.1. CHANGES IN PARTNERSHIP FORMATION**

During the 1950s and 1960s, marriage was nearly universal with most couples marrying at a young age. Cohabitation was only practiced by a few, for example, people who were unable to divorce a previous partner, those who could not afford to marry, or intellectuals who rejected the concept of marriage (Noack et al. 2014; Kiernan 2004). In the 1970s, cohabitation began to spread across Europe, first in the Nordic countries and later throughout Central Europe. In Southern Europe and some Eastern European countries, cohabitation has only recently started to emerge (Perelli-Harris et al. 2012; Sobotka and Toulemon 2008). Childbearing within cohabitation has also become more frequent, although again, with considerable variation between countries (Perelli-Harris et al. 2010; Perelli-Harris et al. 2012). In Norway and France, for instance, around half of all births occurred to cohabiting mothers between 1995 and 2004, while in the United Kingdom and the Netherlands around 20% to 25% of births occurred within cohabitation. In many Eastern European countries, births to cohabiting mothers constitute less than a quarter of all births (Perelli-Harris et al. 2012).

Cohabiting partnerships in Europe are quite heterogeneous, differing in terms of age, social characteristics, level of commitment, duration, first or higher-order union and the number of biological children and stepchildren (Hiekel et al. 2012; Kiernan 2001). Some researchers have classified cohabitation according to certain criteria. For example, depending on duration and whether the union ends in marriage or union dissolution, cohabitation can be seen as a trial marriage, a stage in the marriage process, an alternative to marriage, an alternative to being single or indistinguishable from marriage (Kiernan 2004, Heuveline and Timberlake 2004). The frequency of these cohabitation types differs within and across countries. Cohabitants in the Nordic countries and France, for example, are more likely to view

their partnership as indistinguishable from marriage than their counterparts in Eastern Europe (Hiekel et al. 2012; Perelli-Harris and Lyons-Amos 2013). Views on cohabitation may also vary across individuals' life courses due to individual experiences, social norms, economic trends or policies. Cohabitation may start out as merely a dating relationship, but end up as indistinguishable from marriage. This complexity poses a substantial challenge for policy makers when designing laws to account for the increase in this type of union.

## **2.2. CHANGES IN FAMILY POLICIES**

Previous to the 1970s, laws and policies focused on the institution of marriage. Upon marriage, individuals became eligible for state provisions and benefits that were not available for single persons, for instance the right to declare taxes jointly or to receive a widow's or widower's pension in case of the partner's death (Pateman 1987; Bradshaw and Finch 2010). In addition, welfare state policies regulated spouses' duties to financially and materially maintain each other, their rights towards assets and financial savings in case of divorce and the transmission of property in case of one spouse's death. One of the central goals of these regulations was to protect the economically weaker spouse, usually the woman, but also children (Fox Harding 1996; Noack et al. 2014).

In recent years, some countries, including Sweden, the Netherlands and France, have started to regulate cohabitation (Perelli-Harris and Sánchez Gassen 2012; Scherpe and Yassari 2005; Waaldijk 2005). Generally, we can see two different approaches: Some countries have extended rights and obligations that were previously reserved for married spouses to cohabitants. For instance, in Spain and Norway cohabitants have become entitled to apply for widow's and widower's pensions once certain conditions are fulfilled. In addition or as an alternative to this approach, some countries have adopted distinct laws on cohabitation or more generally on 'household communities'. France and the Netherlands, for instance, allow cohabitants to officialise their union by registration or contract. This entitles them to additional rights, for example to declare their income taxes jointly (in France) or inherit from each other in case one partner dies without a will (in the Netherlands). In some cases,

laws and policies on cohabitation do not apply to all cohabitants, but only to specific groups such as those with children (Perelli-Harris and Sánchez Gassen 2012).

Many factors have led to such changes in law. Some countries have been motivated by increasing cohabitation levels and changing family norms and values (Bradely 2001; Noack 2010). Other countries have enacted reforms to ensure neutrality towards different types of partnership (Noack 2010; Ryrstedt 2005). In France, for example, the original goal of legislation was to provide legal protection to homosexual cohabitants, with rights and obligations then being extended to heterosexual cohabitants as well (Ferrand 2005). Constitutional norms, legal traditions and political developments have also played an important role: In Germany, the Basic Law demands that marriage receives special protection from the state, while the Dutch constitution demands neutrality (Boele-Woelki and Schrama 2005). In Spain, changes in family policies were enacted after the transition to democracy in the 1970s and 1980s (González Beilfuss 2005). Where such developments have taken place, cohabitation has become more marriage-like in terms of the law. But while many countries have started to regulate cohabitation, almost nowhere has it reached the same degree of regulation as marriage (Perelli-Harris and Sánchez Gassen 2012; Scherpe and Yassari 2005; Waaldijk 2005).

In addition to recognizing cohabitation, policy makers across Europe have changed laws and policies on marriage and divorce. There has been an increasing tendency to stress the individuality and autonomy of spouses rather than assuming a lifelong interdependency and solidarity. Tax laws in Sweden, for instance, no longer treat married spouses as an interdependent economic unit, but as autonomous workers and employees. Therefore, spouses can no longer declare their income taxes jointly but have to file separate declarations (Lewis 2001; Lewis and Giulliarri 2005). Where such changes in laws have taken place, the situation of spouses has been assimilated to those of unrelated persons. Therefore, the harmonization in the legal treatment of married spouses and cohabitants has not only been the result of changing cohabitation laws but also the result of the deregulation of marriage (Glendon 1989).

Changes in the legal regulation of marriage and cohabitation have occurred to different extents across European countries; yet the welfare state literature has rarely

discussed the changing legal status of cohabitants. Existing welfare state typologies pay little attention to relationship status, focusing instead on institutional or ideological characteristics or gender (Esping-Andersen 1990; Lewis 2001). Yet paying attention to marriage and cohabitation is crucial, since many welfare rights and services have traditionally been allocated based on marital status and it still conditions men's and women's rights and claims within welfare states today.

### **3. DATA SOURCES AND METHODOLOGICAL APPROACHES**

In the following sections, we analyse the congruence or incongruence between family policies and union formation behaviour in 2010. To do so, we first examine survey data to quantify how many couples live in cohabitation in twelve European countries: Sweden, Norway, England, Germany, the Netherlands, France, Switzerland, Spain, Estonia, Lithuania, Russia and Ukraine. These countries represent a wide range of welfare state traditions, legal approaches to cohabitation and cohabitation levels. In the next step, we compare marriage and cohabitation laws in twelve policy areas in the same countries. Finally, we contrast survey data and legal information to establish how many cohabitants, particularly those with children, are covered or fall outside the laws in each country. We expect that in countries with a high percent of cohabiting couples cohabitation will be more extensively regulated. Conversely, in countries where cohabitation is not widespread, policies will be more focused on marriage.

#### **3.1. QUANTITATIVE ANALYSES**

To examine the proportion of people living in cohabitation and marriage, we analyse data from the fifth wave of the European Social Survey (ESS) of 2010 (which is the same year as our policy data). The ESS is a biennial cross-sectional survey which monitors attitudinal changes. In each country, between 1,100 and 3,000 randomly selected individuals who live in private households are interviewed in face-to-face interviews.<sup>1</sup> All results are weighted by Design Weights. Within the United Kingdom, we restrict our dataset to England, because Scotland and Northern Ireland have different legal systems. We also excluded cohabitants living with separated or divorced ex-partners (47 out of 22,831 respondents) and same-sex partnerships, since

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<sup>1</sup> Response rates in the individual countries range from 31% (Germany) to 69% (Spain).

their rights and obligations may differ substantially from those given to heterosexual couples.

We analyse demographic variables such as respondents' relationship status, age and sex, as well as whether children live in the household.<sup>2</sup> The relationship question is phrased: 'You just told me that you live with your husband/wife/partner. Which one of the descriptions on this card describes your relationship to them?' Respondents can specify whether they are legally married to their co-resident partner, in a registered partnership, cohabiting, separated or divorced. The exact wording of the answer options differs by country, depending on the types of partnerships recognised by law. In France and the Netherlands, for instance, cohabitants can enter into a cohabitation contract or register their partnership (Pacte Civil de Solidarité (Pacs) in France, registered partnership in the Netherlands). The French and Dutch questionnaires explicitly ask for these types of unions, in addition to marriage, unregistered cohabitation, divorce and dissolved Pacs/partnership. In some countries, registered partnerships are available only to same-sex couples, e.g. in Germany, Norway, Sweden or England.<sup>3</sup> Nonetheless, 23 heterosexual respondents in these countries claimed that they were in a registered partnership. It is possible that they have registered their union abroad or misunderstood the question, particularly since the questionnaire does not state that registered partnerships are only available to same-sex couples. We re-classify these cases as not legally recognized cohabitants. In all countries less than 1% of respondents did not answer the relationship question, except in Lithuania, where 3% of respondents did not answer. The survey question on children in the household does not distinguish between own children, step-children and adopted children. Therefore, it is not possible to identify whether all children in the household are joint children of the respondents and their partners.

### **3.2. LEGAL ANALYSIS**

We compiled a database which synthesizes national-level laws and codes in force in early 2010 by consulting legal documents as well as governmental publications and

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<sup>2</sup> Information on duration of cohabitation and whether cohabitants have signed a private cohabitation contract was not available.

<sup>3</sup> In Sweden, same-sex couples are no longer able to enter a registered partnership since 2009, when marriage was extended to same-sex couples. Existing registered partnerships remain valid.

ministerial webpages. In some countries, certain policies are adopted at the regional level and cannot be included.

For each country, we document whether married spouses have specific legal rights and obligations in 12 policy areas and compare whether cohabitants share these rights fully, to some extent, or not at all. Laws fall in the ‘to some extent’ category if cohabitants enjoy some, but not all rights of married spouses or if they only enjoy rights once specific conditions are fulfilled, for instance living together for two years. We analyse the legal status of cohabitants with children and childless cohabitants separately because previous research has revealed that cohabitation may be more intensively regulated if the couple has children (Perelli-Harris and Sánchez Gassen 2012). In addition, in the Netherlands and France we evaluate unregistered and registered partnerships separately.

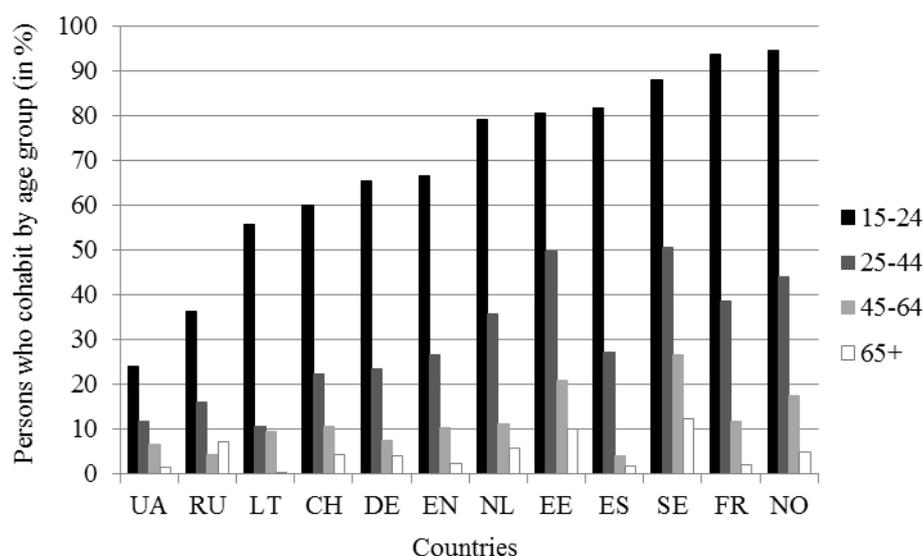
Although states regulate numerous policy areas with respect to marriage and cohabitation (see Perelli-Harris and Sanchez Gassen 2012, Waaldijk 2005), here we specifically analyse 12 policy areas that are particularly relevant in the context of what DiPrete and McManus (2000) have termed ‘trigger events’: Events which may lead to drops in income and material wellbeing. We analyse whether married spouses and cohabitants have specific rights and access to state benefits in these circumstances or specific duties to provide for their partner. For example, moves into unemployment can lead to a dependence on one income. We analyse income tax law and health insurance laws to see whether partners can declare their taxes jointly, which potentially saves money, and include the non-employed partner in an existing health insurance scheme of the employed partner. In addition, we analyse whether maintenance and social security regulations require partners to provide support to each other rather than rely on the state. Another trigger event is separation or divorce, when policies dealing with the division of assets, the allocation of the joint home and furniture, household debts and alimony may influence the financial and material conditions of partners. Finally, the death of a partner can lead to losses of income and a drop in living standards. We compare whether welfare states support surviving partners by entitling them to inherit even in the absence of a will, to pay beneficial inheritance tax rates, to remain in a rented family home, even if only the deceased had

signed the lease, and to apply for survivors' pensions. For all these policy areas, we analyse whether rights and welfare support depend on relationship status.

## 4. RESULTS

### 4.1. THE INCIDENCE OF MARRIAGE AND COHABITATION ACROSS EUROPE

In this paper, we are interested in the incidence of marriage and cohabitation across European countries in order to identify the proportion of the population that is covered by laws and policies. Figure 1 shows the proportion of partnered ESS respondents who were cohabiting per age group in 2010. Countries are ordered by the percentage of partnered respondents who are cohabiting in the youngest age group. We do not distinguish by gender to increase the sample size in each age group.



**Figure 1:** Partnered respondents who live in cohabitation by age group of respondent (in %), 2010

**Source:** European Social Survey, 2010

**Note:** In France and the Netherlands, data on cohabitation include registered partnerships

**Country abbreviations:** CH = Switzerland    DE = Germany    EE = Estonia  
 EN = England    ES = Spain    FR = France  
 LT = Lithuania    NL = Netherlands    NO = Norway  
 RU = Russia    SE = Sweden    UA = Ukraine

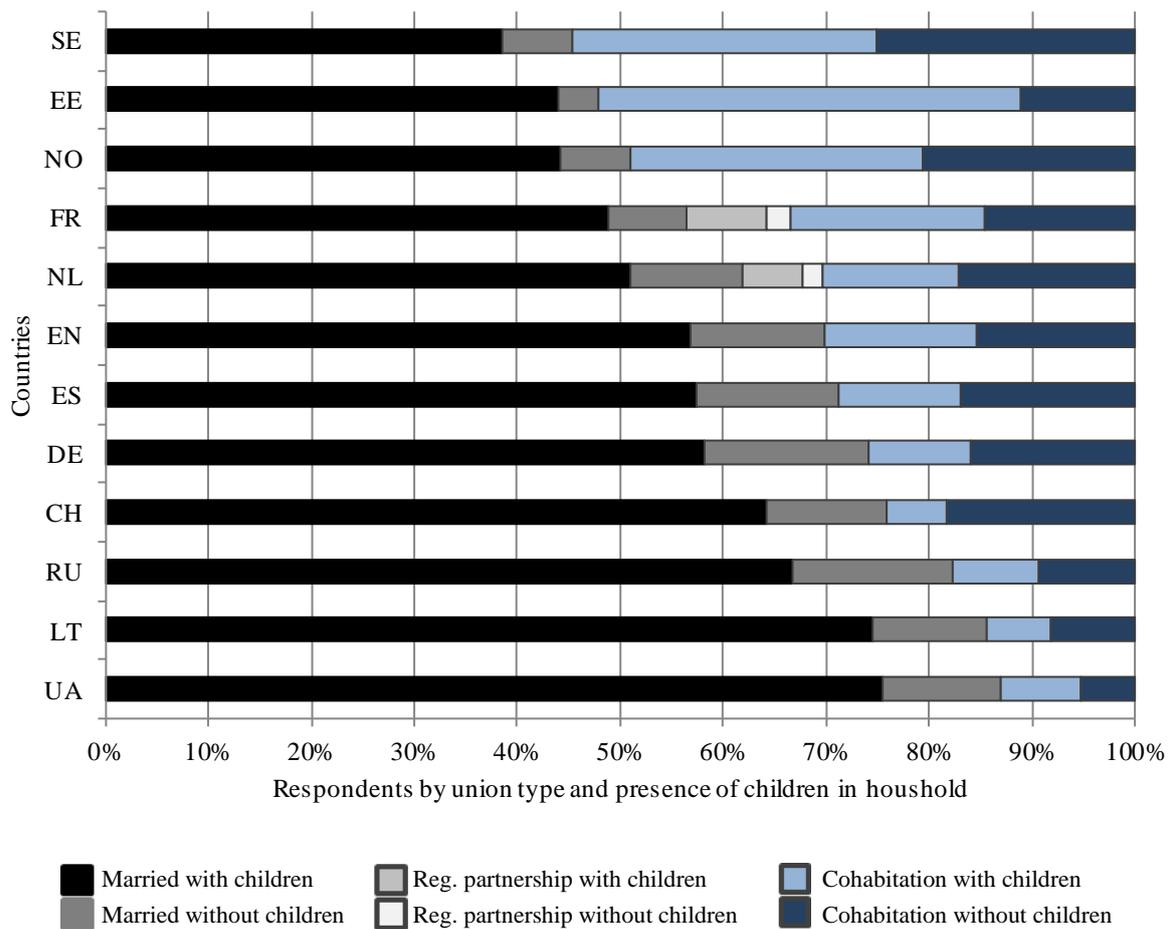
In all twelve countries, cohabitation was most popular among 15- to 24-year-olds, even though substantial cross-country differences exist. In Norway and France,

almost all partnered respondents in this age group cohabited (note that in France, this includes Pacs partners). In Ukraine, only 24% of young partnered respondents cohabited. The other countries range from 37% to 88%, with large proportions of young persons cohabiting in Sweden, Spain and Estonia. In all countries, cohabitation was less common among respondents in the prime childbearing ages (25-44 years), either because of a cohort effect, with older cohorts less likely to cohabit, or an age effect, with cohabiting couples eventually marrying. Nonetheless, in some countries, the proportion of middle aged cohabitants is relatively high; about half of all partnered individuals aged 25 to 44 were cohabiting in Sweden and Estonia. In the two oldest age groups (45-64 years and 65+ years) cohabitation was least widespread: In most countries, 10% or less of partnered respondents in these age groups cohabited. Only in Estonia, Sweden and Norway between 18% and 27% of 45-64-year-old partnered respondents were cohabitants. Sweden is the only country where more than 10% of respondents in the oldest age group cohabited.

The reasons for cohabiting can differ across the lifecycle: For example, cohabitation is often an informal or trial union before marriage for younger couples; it can be a long-term alternative to marriage for middle-aged persons, while older couples may cohabit after divorce or the death of a previous partner (Hiekel et al. 2012; Noack et al. 2014). The data do not allow us to distinguish between pre-marital and post-marital cohabitation here, but it is important to note that the status of cohabitation in family policies may be of varying importance to couples, depending on the meaning they attach to their union.

Legal rights and obligations may also be more or less relevant for different age groups. For instance, the question whether surviving cohabitants will have access to a survivor's pension is more likely to affect cohabitants in the older age groups than younger couples (Vespa 2012). Nonetheless, younger age groups may be most affected by the laws, since cohabitation is more widespread among younger people. For this reason, the main focus of the following analyses will be on respondents aged 44 and younger. We acknowledge that cohabitation may become more common among older age groups in the future as young cohorts who are more likely to cohabit age, and if cohabitation continues to increase across age groups in general.

At the moment, however, the largest numbers of cohabitants who are affected by the legal regulation of cohabitation are of younger ages.



**Figure 2:** Partnered respondents by type of union and presence of children in the household (in %, ages 25-44), 2010

**Source:** European Social Survey, 2010

Figure 2 shows partnered individuals aged 15 to 44 by type of union and the presence of children in the household in 2010. We distinguish by marriage and cohabiting unions, and in the case of France and the Netherlands by registered cohabitation. Countries are ordered by the proportion of respondents who are married, with high-marriage countries located at the bottom of the figure. The data show that there is a large degree of diversity in the incidence of cohabitation across Europe. At one extreme, between 80% and 90% of partnered respondents in Ukraine, Lithuania and Russia were married, and less than 20% were cohabiting. At the other end of the spectrum, more than half of all respondents cohabited in Sweden and Estonia. The other countries fall in between these extremes with proportions cohabiting ranging

from around 25% to 50%. In France and the Netherlands, respectively, 10% and 8% of all partnered respondents lived in a registered partnership in 2010.

Countries also differ with regard to the presence of children in households. While a large majority of married spouses lived with children in all countries, we find larger cross-country variation among cohabitants. A majority of cohabitants lived with children in the high-cohabitation countries France, Sweden and Norway and particularly in Estonia. In addition, more than half of all cohabitants lived with children in Ukraine, which has the lowest level of cohabitation among the twelve countries. This suggests that cohabitation in Ukraine may be selective of different characteristics than elsewhere. It may also be more likely to include children from previous unions, especially because divorce rates are high and second unions are likely to be cohabiting unions. The majority of registered partners in France and the Netherlands also had children present in the household. Childrearing in cohabitation was less common in the other countries, particularly in Switzerland where only one in three couples lived with children. Note that the ESS data may underestimate the percent of cohabitants who have children, since some may live in a different household, e.g. with a former partner, or overestimate the percent of cohabitants with own children if they are living with an adopted or stepchild.

In order to understand how many couples in Europe currently fall under the scope of family policies, it is important to consider both the individuals' union status and whether they raise children. As we will see in the following, both factors may be instrumental in determining the legal rights and responsibilities of couples.

#### **4.2. THE LEGAL REGULATION OF MARRIAGE AND COHABITATION ACROSS EUROPE**

The legal status of married spouses and cohabitants varies widely both across and within countries. This becomes apparent when comparing the country results in Table 1. For each country, we have looked at laws in policy areas where married couples have traditionally had rights and obligations that were not available to unmarried persons and which become particularly relevant in case of trigger events: i.e. unemployment of one partner, divorce or separation and death of one partner. Table 1

shows the legal status of married spouses (M), cohabitants with children (C-C) and childless cohabitants (C-NC). A black tick indicates that the laws in a given policy area grant rights or responsibilities to married spouses, and that these rights are fully shared by cohabitants or registered partners. A grey tick indicates policy areas in which cohabitants share the rights of married spouses to some extent or once specific conditions are fulfilled. Policy areas in which no specific rights are granted to married or cohabiting couples are left blank. In a few policy areas, no national laws apply, either because no laws exist (e.g. taxes on inheritance have been abolished), or because subnational regions have the competence to legislate; these cases are indicated with a comment.

We have ordered the countries by the degree to which they acknowledge cohabitation in their policies, with countries with fewer differences between marriage and cohabitation on the left side of Table 1 (first page) and countries where cohabitants have few rights and obligations located at the right side (second page). The last row in Table 1 shows the proportion of partnered ESS respondents aged 15 to 44 by type of union: marriage (including spouses with and without children), cohabitation with children and childless cohabitation. The proportions for each country sum to 100 percent. By comparing these proportions with the policy information, the number of couples who are covered or fall outside laws of their country can be quantified. We now summarize the legal consequences of different types of unions.

		Netherlands					France					Ukraine			Sweden			Norway		
		M	RP-C	RP-NC	C-C	C-NC	M	RP-C	RP-NC	C-C	C-NC	M	C-C	C-NC	M	C-C	C-NC	M	C-C	C-NC
Protection in case of unemployment	Income tax	✓	✓	✓	✓	✓	✓	✓	✓									✓	✓	
	Health insurance						✓	✓	✓	✓	✓							✓	✓	
	Financial maintenance	✓	✓	✓			✓	✓	✓			✓	✓		✓			✓		
	Social security	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓		
Protection in case of divorce/separation	Household goods/ Joint home	✓	✓	✓			✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
	Other assets	✓	✓	✓			✓	✓	✓			✓	✓	✓	✓			✓		
	Alimony	✓	✓	✓			✓					✓	✓	✓	✓			✓		
	Household debts	✓	✓	✓			✓	✓	✓			✓	✓	✓				✓		
Protection in case of death	Right to remain in rented apartment	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Inheritance rights	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
	Inheritance tax	✓	✓	✓	✓	✓	✓	✓	✓			✓			Inheritance tax has been abolished			✓	✓	✓
	Survivor's pension	✓	✓	✓	✓	✓	✓					✓			✓	✓		✓	✓	
Partnered persons aged 15-44 living in each type of union (in %)		62	6	2	13	17	56	8	2	19	15	87	8	5	45	30	25	51	28	21

**Table 1:** Legal regulation of marriage, cohabitation with children and childless cohabitation

**Source:** Own analyses; more information on policies is available upon request

**Notes:** M = married spouses with and without children, age 15-44    RP-C = registered partners with children, age 15-44    C-C = Cohabitants with children age 15-44  
 RP-NC = registered partners without children, age 15-44    C-NC = Cohabitants without children, age 15-44

Black tick mark = Law makes specific provisions for marriage/cohabitants fully share the rights of married spouses

Grey tick mark = Law makes specific provisions for cohabitants, but rights apply only under certain conditions or to a certain extent

		England			Germany			Spain			Russia			Switzerland			Lithuania			Estonia		
		M	C-C	C-NC	M	C-C	C-NC	M	C-C	C-NC	M	C-C	C-NC	M	C-C	C-NC	M	C-C	C-NC	M	C-C	C-NC
Protection in case of unemployment	Income tax				✓			✓						✓						✓		
	Health insurance				✓			✓	✓	✓										✓		
	Financial maintenance	✓			✓	✓		✓			✓			✓	✓					✓		
	Social security	✓	✓	✓	✓	✓	✓	Comunidades Autónomas are responsible			✓	✓	✓	Swiss Kantons are responsible			✓	✓	✓	✓	✓	✓
Protection in case of divorce/separation	Household goods/ Joint home	✓			✓			✓			✓			✓			✓			✓		
	Other assets	✓			✓			✓			✓			✓			✓			✓		
	Alimony	✓			✓	✓		✓			✓			✓	✓		✓			✓		
	Household debts				✓			✓			✓			✓			✓			✓		
Protection in case of death	Right to remain in rented apartment	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓		
	Inheritance rights	✓	✓	✓	✓			✓			✓			✓			✓			✓		
	Inheritance tax	✓			✓			✓			Inheritance tax has been abolished			Swiss Kantons are responsible			✓			Inheritance tax does not exist.		
	Survivor's pension	✓			✓			✓	✓	✓	✓			✓			✓			✓	✓	
Partnered persons aged 15-44 living in each type of union (in %)		70	15	15	74	10	16	71	12	17	82	9	9	76	6	18	86	6	8	48	41	11

**Table 1:** Legal regulation of marriage, cohabitation with children and childless cohabitation

**Source:** Own analyses; more information on policies is available upon request

**Notes:** M = married spouses with and without children, age 15-44    RP-C = registered partners with children, age 15-44    C-C = Cohabitants with children age 15-44  
 RP-NC = registered partners without children, age 15-44    C-NC = Cohabitants without children, age 15-44

Black tick mark = Law makes specific provisions for marriage/cohabitants fully share the rights of married spouses

Grey tick mark = Law makes specific provisions for cohabitants, but rights apply only under certain conditions or to a certain extent

The Netherlands and France provide extensive regulation of cohabitation by allowing cohabitants to register their partnership. In the Netherlands, registered partners enjoy the same rights and obligations as married spouses, irrespective of whether they have children. In France, Pacs partners (or ‘Pacsés’) also have similar legal rights in many policy areas. Differences only persist in laws governing property relations after separation and inheritance rights after death. In addition, laws on alimony and survivor’s pensions do not apply to Pacsés. Cohabitants who do not register their union have fewer rights in both countries. For example, in the Netherlands, laws that apply to married couples and registered partners in case of divorce or separation do not apply to unregistered cohabitants. In France, unregistered cohabitation is only taken into account in laws on social security, tenancies and health insurance.

In Ukraine, Sweden and Norway, cohabitation entails similar consequences as marriage in some policy areas. In Ukraine, for instance, cohabitants who have children or who have lived together for an extended period have at least limited rights and responsibilities in case of separation. In addition, laws on income tax and health insurance focus on the individual and neither marriage nor cohabitation entails specific rights. In Sweden, laws in these policy areas have also been individualized. In addition, at least some rights that apply in case of death and which were previously reserved for spouses have been extended to cohabitants with children and those living together for longer periods of time in Sweden and Norway.<sup>4</sup> By contrast, most laws that regulate divorce do not apply, with the exception of the allocation of furniture and the joint home, which is regulated in laws on cohabitation or household communities. Laws that are relevant if one partner becomes unemployed are mixed: Cohabitants or at least cohabitants with children share the rights of married spouses in some policy areas, but differences remain in others, e.g. the obligation to maintain a partner in need.

In Germany, Spain, and England many differences persist in the legal status of married spouses and cohabitants. For instance, laws that regulate property relations and

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<sup>4</sup> In addition, some laws cover ex-spouses who cohabit after divorce; however, they are not considered here.

financial obligations of spouses in case of divorce do not apply to cohabitants.<sup>5</sup> The only limited exception is Germany, where a former cohabitant who raises children and does not work due to lack of childcare may be entitled to maintenance payments for a limited period of time. All three countries entitle cohabitants to remain in the family home after a partner's death; in Spain, childless cohabitants must have lived together for at least two years, while no waiting period applies to cohabitants with joint children. In England, rights to remain depend on the type of tenancy contract. Cohabitants in Spain also have access to a survivor's pension once an extensive list of conditions has been met. In England, surviving cohabitants who lived with the deceased for two years may appeal to a court to order a 'reasonable financial provision' for their benefit if their partner has not provided for them in a will. Apart from these cases, cohabitants do not share the rights of married spouses if their partner dies. During the union, cohabitants also have few rights and obligations: In Germany, cohabitants may be required to financially maintain a non-working partner for a limited period of time if they are caring for a joint child, and in Spain a non-working cohabitant can be co-insured in a health insurance after one year of co-residence. In England, joint income taxation for spouses has been abolished<sup>6</sup> and access to health care is universal. In all three countries, social security benefits are granted to the household, with cohabiting partners included in the calculation. Apart from these exceptions, cohabitants do not share the rights and responsibilities of married spouses.

In Estonia, Lithuania, Switzerland and Russia, the legal status of married and cohabiting couples differs substantially. Married spouses enjoy specific rights and obligations in most policy areas, but cohabitants are rarely recognized, irrespective of whether they have children. Cohabitation is particularly unregulated in case of separation: laws on the allocation of the joint home, household goods and other assets, alimony and the distribution of household debts apply to married spouses only.

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<sup>5</sup> In England, cohabitants who live with joint children after a separation may be given the right to remain in the family home, even if owned by the other partner (Children's Act of 1989). Nonetheless, such regulations are generally made for specific periods of time, e.g. until the youngest child reaches a certain age, and generally do not lead to a permanent redistribution of property. Therefore, this law is not considered here.

<sup>6</sup> Spouses can receive a married couple's allowance if at least one of them was born before 6. April 1935.

Cohabitants have to refer to general property law to solve conflicts.<sup>7</sup> The only limited exception is Switzerland, where a former cohabitant who has given birth may be entitled to maintenance payments for a few weeks before and after delivery. In all other cases, cohabitants are expected to financially maintain themselves immediately after separation. In case of death, laws that support surviving spouses of a marital union also do not apply to cohabitants. Only in Russia and Lithuania<sup>8</sup> do cohabitants have the right to remain in the apartment rented by their deceased partner and in Estonia they may apply for a survivor's pension if they are unemployed and care for their deceased partner's young child. Legal differences between marriage and cohabitation are less pronounced in case of unemployment of one partner: Laws on income taxation focus on the individual rather than on couples in Russia and Lithuania, and relationship status does not entail specific rights in health insurance laws in Russia, Lithuania and Switzerland. In addition, social security laws focus on household communities and effectively treat marriage and cohabitation the same. Differences between marriage and cohabitation persist with regard to maintenance obligations. Only married spouses are legally obliged to support a dependent partner in the four countries. Switzerland is an exception, since male cohabitants may be obliged to support their female partner for a limited period of time after childbirth. Overall, Table 1 illustrates that the legal status of cohabitants differs widely across Europe and to varying degrees, marital status continues to determine access to rights and benefits in welfare states.

#### **4.3. (MIS-)MATCHES BETWEEN UNION FORMATION BEHAVIOUR AND FAMILY POLICIES ACROSS EUROPE**

Levels of legal regulation partly correspond with levels of cohabitation (Table 1: last row). For instance, family policies focus on marriage to a stronger degree in Lithuania and Switzerland, where more than 75% of partnered persons of ages 15 to 44 are married, than in Sweden and Norway, where cohabitation is more common. Nonetheless, a few exceptions exist: Estonia has one of the highest cohabitation levels of

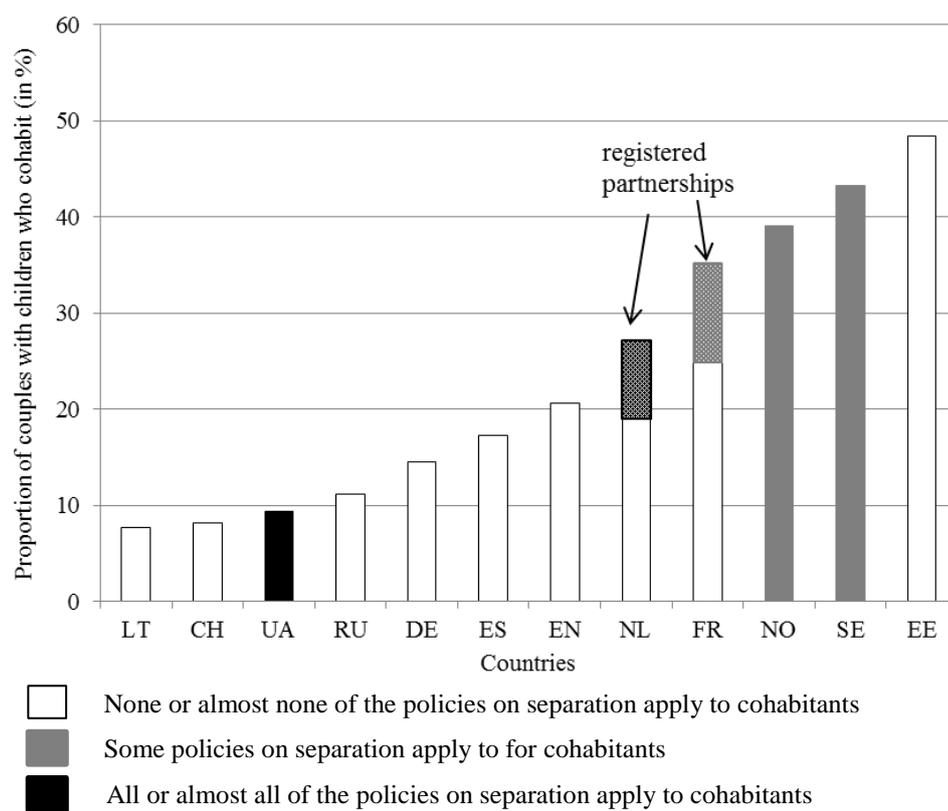
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<sup>7</sup> The Lithuanian Civil Code contains an entire chapter on the property relations of cohabiting couples. These provisions, however, only apply if cohabitants have registered their partnership "in the procedure laid down by the law". To date, no law on the registration of cohabitation has been passed in Lithuania, and this section of the Civil Code therefore does not apply to cohabitants in practice.

<sup>8</sup> Tenancy law in Estonia and Switzerland allows "other family members" and "the heirs" to remain in the apartment under certain conditions, but does not explicitly refer to cohabitants.

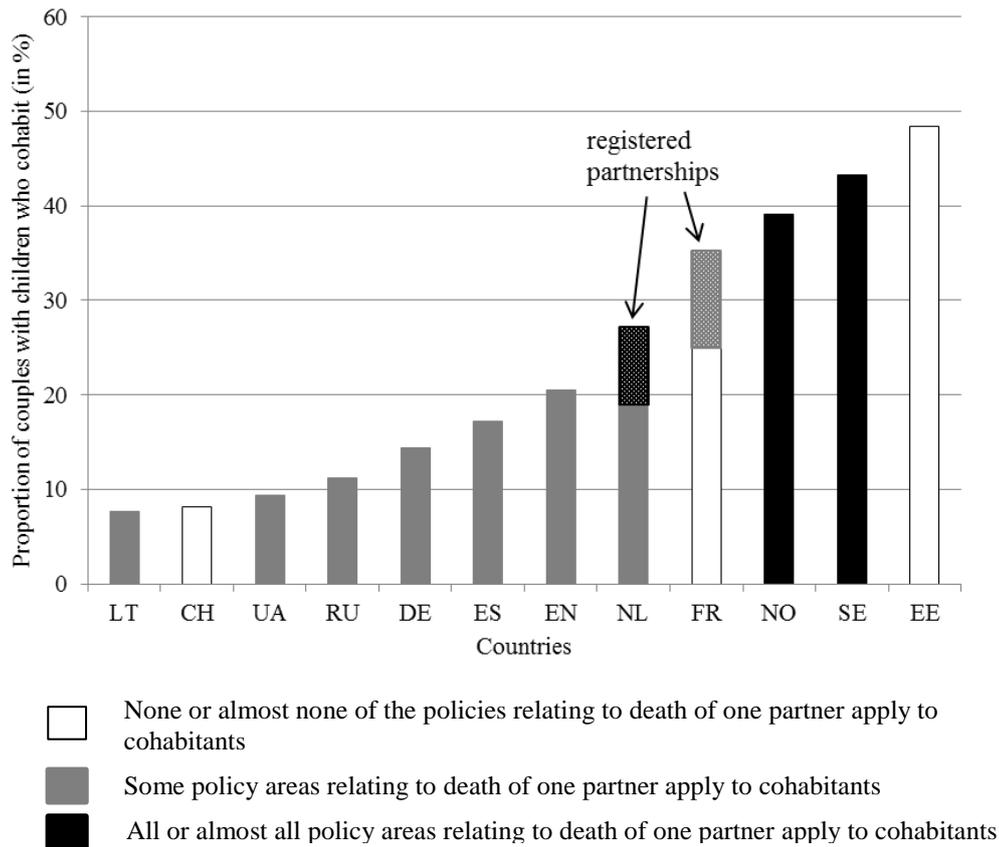
all countries, with 41% of all partnered individuals aged 15 to 44 living in cohabitation with children, and a further 11% living in a childless cohabiting relationship. Nonetheless, cohabitation is not recognized in most policy areas. Conversely, many laws cover cohabitation in Ukraine, yet cohabitation levels are the lowest of all countries. Also, with the option of registered partnerships and some regulation of unregistered cohabitation, France and the Netherlands have provided a legal alternative to marriage; however, relatively few have used this option (10% and 8%, respectively) and levels of unregistered cohabitation are moderate compared to the Scandinavian countries. These results thus only partly confirm our expectation that cohabitation is more strongly regulated in countries with high cohabitation levels.

Table 1 also shows that legal rights and responsibilities of cohabitants with children and those of childless cohabitants differ in countries such as Norway or Germany, with the latter group enjoying fewer rights than the former. In these countries, cohabiting unions with children are seen as more ‘marriage-like’ or childrearing partners are seen as deserving special protection from the state. Nonetheless, not all countries provide specific legal regulation to cohabitants with children. The degree of regulation corresponds to some extent, but not entirely, with the proportion of children who are being raised by cohabitants across countries. This is visualized in Figures 3 and 4.



**Country abbreviations:** CH = Switzerland DE = Germany EE = Estonia  
 EN = England ES = Spain FR = France  
 LT = Lithuania NL = Netherlands NO = Norway  
 RU = Russia SE = Sweden UA = Ukraine

**Figure 3:** Proportions of partnered respondents with children who live in cohabitation (ages 15-44) by country and degree of legal regulation in case of separation



**Figure 4:** Proportions of partnered respondents with children who live in cohabitation (ages 15-44) by country and degree of legal regulation in case of death

Both figures show the proportion of cohabitants among all partnered respondents who raise children. For the Netherlands and France, we distinguish again between respondents who live in registered or Pacs partnerships (upper areas of bars) and unregistered cohabitants. Note that both figures do not include lone parents. We have ordered countries by the proportion of respondents with children who live in cohabitation, with countries where few children are raised by cohabitants on the left. The colours of the bars indicate the level of legislation in each country. We distinguish between countries where cohabitation is legally regulated to a similar extent as marriage in no or almost no policy area (white), in some policy areas (grey) or in all or almost all policy areas (black).

First, we focus on policies that apply in case of union dissolution (Figure 3). These policies are of particular relevance for cohabitants since a substantial proportion of unions, including those with children, dissolve (Heuveline et al. 2003). Figure 3 shows that the separation of cohabiting couples with children tends to be more strongly

regulated in countries where a larger proportion of couples with children cohabit: In Norway and Sweden around 40% of couples who raise children are cohabiting, and these countries have adopted rules on separation in at least some policy areas. France and the Netherlands provide legal regulation for cohabitants who have registered their unions, even though only a small proportion of couples with children do so. The separation of unmarried cohabitation remains less regulated in these countries. At the other end of the spectrum, the separation of cohabitants with children is less regulated in countries such as Lithuania and Switzerland, where less than 10% of all couples with children live in a cohabiting union. These examples confirm our expectation that cohabitation is more regulated in countries with higher proportions of childrearing within cohabitation. Nonetheless, again Estonia and Ukraine are outliers: In Estonia, almost half of all couples with children live in cohabitation rather than marriage, yet most policies on separation only apply to married spouses. In Ukraine, by contrast, less than 10% of couples with children cohabit, but laws on separation provide provisions for cohabiting couples with children.

As we have shown above, cohabitation is much more common among young people than at older ages. Since mortality rates at young ages are low across Europe, cohabiting unions are less likely to end in death than in separation. Nonetheless, Figure 4 reveals that countries have been more willing to provide legal rights and responsibilities to cohabitants with children in case of death. In 2010, almost all countries provide rights and responsibilities to cohabiting couples with children in at least some policy areas. The degree of legal regulation is higher, again, in Sweden and Norway than in countries with low levels of childrearing within cohabitation such as Lithuania and Switzerland. Estonia remains an exceptional case, since it does not regulate cohabitations that end with the death of one partner. Nearly half of all couples who raise children therefore fall outside the scope of laws on inheritance, tenancies and survivor's pension.

## **5. DISCUSSION AND CONCLUSION**

In recent years, cohabitation has increased and marriage rates have decreased across Europe (Sobotka and Toulemon 2008; Kiernan 2004) and many European countries have started to regulate cohabitation (Perelli-Harris and Sánchez Gassen 2012; Waaldijk

2005). In some countries, these two trends seem to develop in parallel. In Sweden and Norway, for instance, a comparatively large proportion of couples cohabit and laws regulate this type of union at least to some extent. Similarly, in countries such as Switzerland and Lithuania, marriage remains the predominant type of union, and most laws in these countries remain focused on marriage. Nonetheless, our findings also show that policies and behaviour do not always occur in tandem. A mismatch between laws and behaviour exists in particular in Estonia and Ukraine. These cases suggest that other factors may instigate legal reforms even at low cohabitation levels or, conversely, may hinder reforms of policies. Further research needs to analyse which factors – economic, cultural, political or others – account for why policy makers in Estonia have so far been less willing to legislate on cohabitation than in other countries, even though cohabitation levels have reached high levels. When considering our results, it needs to be stressed that we analyse countries in a state of transition. Cohabitation levels are still rising in Europe. At the same time, many changes in laws have been implemented in the recent past and new changes are currently being debated in some countries. Our analyses are therefore a snapshot in time and highlight current matches or mismatches between policies and behaviour. If changes continue in the future, countries may shift their position on the spectrum and results may look different.

Regulating cohabitation by laws and policies is an inherently complex matter given the variance of cohabiting relationships that exists even within individual countries, e.g. in terms of age or the presence of children in the household. The results of our study reveal that countries have developed various approaches to deal with this challenge. Some countries require cohabitants to register their unions if they would like to profit from closer legal regulation (in France and the Netherlands). Others provide regulation in some policy areas but less in others (e.g. in England, where some laws apply in case of death, but less in case of separation), or provide more regulations for cohabiting unions that appear most vulnerable, such as those with children (e.g. in Norway). These more selective types of regulation appear to be favoured in practice over a global regulation of cohabitation as such. Our results show that it is difficult to neatly classify countries or know exactly why policies developed as they did. Existing welfare state typologies such as Esping-Andersen's "three worlds of welfare state capitalism" are of little help in understanding a country's approach to cohabitation – differences exist even between countries belonging to the same welfare state type. The conservative

welfare states Germany, France and the Netherlands, for instance, have regulated cohabitation to very different extents. Similarly, cohabitation has a very different status in the family policies of Eastern European countries. Further research is needed to explain why some countries have been faster and more willing to recognise cohabitation in their policies than others.

When evaluating the legal rights of cohabitants in Europe, it is important to keep in mind that the more limited legal regulation of cohabitation is not necessarily to the cohabitants' disadvantage. First, not all legal gaps may matter in practice. For instance, cohabitants are likely to support each other during their union if one partner becomes unemployed. A lack of legal regulation may matter much more if the union ends by separation or death of one partner and when legal frameworks are necessary to solve disputes or regulate the transmission of property. A lack of rights may also not matter to all cohabitants alike. As we argued at the beginning of the study, cohabitants with a higher socio-economic background may be financially and economically independent from each other and able to keep their standard of living if the union dissolves or one partner dies. Other couples may cohabit precisely to avoid any type of legal regulation, for instance because they reject the institution of marriage or because they want to keep their finances and property separate. Finally, many cohabitants may eventually marry for social or emotional reasons and thereby fall under the legal framework provided for married spouses. For these groups of cohabitants, the fact that marriage remains more strongly regulated than cohabitation may be irrelevant. Nonetheless, a lack of legal regulation makes cohabitants vulnerable if their finances and property become intertwined or if one partner becomes financially dependent on the other, for instance while raising joint children. If these types of cohabitation end by separation or the sudden death of one partner, these economically weaker cohabitants (often women) may have no right towards their partner's property in some countries or may not be eligible for welfare benefits and services that are available for widows and widowers. Where cohabitants live with children, these will be affected by such gaps in law as well. While laws across countries oblige non-resident parents to contribute to their children's living costs, even if the parents were not married, children's living standards may nonetheless drop after union dissolution if the overall household income declines. Cohabitants may avoid such situations by taking precautionary measures and by regulating their property

relations. Nonetheless, recent research suggests that many cohabitants are not aware of their legal situation and often do not take such measures (Barlow et al. 2005).

Finally, some limitations must be noted. As stated above, the European Social Survey data did not allow us to identify how many cohabitants raise joint children with their partner or live with step-children. This type of information is important in order to establish couples' legal rights and obligations, since some countries provide rights only for cohabitants with joint children. Nonetheless, such differences generally applied only in few policy areas in a subset of countries. Overall, the results shown in this study are therefore valid even if the exact proportions of cohabitants with children are somewhat over- or underestimated. Due to the limited number of countries in our legal database, it was also not possible to calculate statistical correlations between policies and cohabitation levels. By qualitatively analysing legal documents in detail and comparing them with survey data, however, this study demonstrated the extent to which countries have changed policies to correspond with demographic developments across Europe or, conversely, the extent to which union formation behaviour has been influenced by policy.

Overall, the results of this study attest to our argument that union status needs to be taken into account in order to understand the character of welfare states. In the 1990s, feminist welfare state researchers asserted that gender needs to be considered in order to understand the differentiated role of men and women within welfare regimes (Orloff 1993); for very similar reasons, union status should receive more attention. The type of union strongly influences men's and women's access to welfare rights and services and defines their obligations to provide welfare for each other in case of unemployment, separation and death. Our results suggest that countries across Europe have started to regulate cohabitation, but almost nowhere do cohabitants enjoy the same rights and obligations as married spouses. In the future, these differences are likely to become even more important and affect increasing numbers of couples, since cohabitation rates are rising.

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