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Family policies and diversity in Europe: The state-of-the-art regarding fertility, work, care, leave, laws and self-sufficiency

Edited by Olivier Thévenon and Gerda Neyer

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This state-of-the-art report is structured along the different areas covered in WP9. While preparing their texts, the authors greatly benefited from each other as well as from other participants in the Work Package. The authors also thank Fred Deven for comments on a previous version of this report. The authors of the chapters in their final version are as follows:

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Abstract

This document provides an overview over existing knowledge of key policy issues related to families and societies in Europe. It focuses primarily on aspects which lie at the core of policy related research in the project *FamiliesAndSocieties*. The report addresses the following family and policy relevant dimensions: (1) Family policy patterns and influence of policies on fertility and women's employment in Europe, (2) the relationship between policies and youth and their self-sufficiency, (3) leave policies for parents with young children, (4) the legal formats for (same-sex) couples in Europe, (5) issues of migration and care in different welfare-state contexts. The review depicts the current research findings and shows the diversity of policies and policy related issues in these fields.

Keywords: family policies, fertility, youth policies, European Union, same-sex partnerships, migration

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Introduction

The objective of this document is to survey the literature regarding family policy patterns, the influence of policies on family formation and (early) adult life-course transitions, the legal status of same-sex families, and the linkages between migration and care. These topics cover a broad range of issues. The literature on some of these topics is vast, while others have been rarely explored so far. We concentrate our review of existing research findings on aspects which will be further investigated in the sub-areas of the work package on policies within the FamiliesAndSocieties project. We also build on the literature review covered by the FamilyPlatform (Uhlendorf et al. 2011; Rupp et al. 2011)⁷ In relation to the specific topics covered by the work package, we therefore survey most specifically the evidence regarding the influence of policies on the entry into adulthood and parenthood, as well as on labour market and poverty outcomes. Parental leave policies and their influence on fertility and labour market outcomes are discussed in a separate section, first, because these policies are crucial to understand diversity of families, gender relationships, employment and fertility patterns across Europe, and second, because the impact of parental leave on fertility, employment, and gender equality will be of specific interest in the project. We furthermore present policy, family-solidarity, and research relevant issues concerning the achievement of “self-sufficiency” by young adults. Policies at the transition to adulthood constitute another core area of FamiliesAndSocieties research to identify factors which may lead to differences in life-course patterns across European societies. The report also depicts trends of legal frameworks regarding same-sex couples and their family at the national and at the European Union level in order to map differences in family patterns created or maintained by legal factors. In the last section, the document addresses research concerning migration and care from a multi-dimensional perspective. As with the other policy topics covered in the work package, migration and care constitute a yet marginalized area of policy-relevant research about family and societies in Europe.

⁷ Uhlendorf, U., Rupp, M. and Euteneur, M. (2011). Wellbeing of Families in Future Europe. Challenges for Research and Policy. FAMILYPLATFORM 2011:

<https://eldorado.tu-dortmund.de/bitstream/2003/28914/1/WellbeingOfFamiliesInEurope.pdf>

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Chapter 1: Family policies and their influence in fertility and labour market outcomes

By Olivier Thévenon and Gerda Neyer⁸

I.1 Family policy patterns

Family policies cover a broad spectrum of state interventions related to many aspects of the life of women and men, of couples, parents, and children. Family policies comprise, for example, family laws regulating partnership formation and dissolution, legal aspects of parenthood, inheritance issue, the coverage of (married/cohabiting) partners and children in health and social security systems, and so forth. The increase in family diversity and the decline of fertility in Europe during the past three decades have shifted the public and political interest in family policies to policies addressing family formation, the support for diverse family forms, and childbearing issues. In this section, we depict primarily research on family policies which are related to childbearing.⁹ These policies also cover a variety of different policies ranging from explicitly pro-natalist measures to ‘softer’ regulations that are to help people to achieve the number of children they desire or to balance their work and family life. Even if they (explicitly) target childbearing behavior, the policies usually affect other dimensions of the life course, in particular, employment behavior, care arrangements, and the division of work and care among women and men (Neyer, 2005; Gornick et al., 1997; OECD, 2011; Saraceno et al., 2012). Family policy interventions can also play a role in combating child poverty and ensuring equal opportunities for children from different backgrounds (Bradshaw and Mayhew, 2006, Ferrarini, 2006).

The “pluralisation” of families’ lifestyles call for a “modernization” of family-support policies, which means that policies should become more effective in reconciling different objectives. They should adapt to the new forms of doing family as well as meet the needs of “non-standard” families (Kaufmann et al., 2002; Hantrais, 2004; Kuronen, 2010). “Modernization” is nevertheless a multifaceted concept, since family policies involve a range of broad objectives: reconciling work and family responsibilities, mobilizing female labour supply and promoting gender equality as well as ensuring the financial sustainability of social protection systems, combating child and family poverty, promoting child development and

⁸ In line with the planned research in this area, part I.1. and part I.2. of this section were written by Olivier Thévenon, part I.3. by Gerda Neyer

⁹ The review of policy research related to same-sex partnerships is presented in chapter IV.

generally enhancing child well-being throughout the early life course (OECD, 2011; Thévenon, 2011, Adema, 2012).

The balance among these policy objectives differs among countries, in turn shaping the policy measures employed. The resulting policies differ not only in their design of specific instruments but also in the degree of consistency they achieve in supporting people's decisions about work and family. This variation is reflected in the diverse mix of cash benefits, in-kind support, and flexible working time arrangements made available and in the extent to which different kinds of family support are combined over the course of the childrearing years. Different mixes of these three policy instruments are rooted in welfare state histories; they are related to prevailing attitudes towards families, the government's role, and current family patterns (Neyer, 2003; Hantrais, 2004). There is no convincing evidence of cross-national convergence in family policies in spite of a shift in spending towards families with children under age school (Gauthier, 2002; OECD 2013).

A key differentiating characteristic is the extent to which policies targeting families offer a mix between financial assistance, entitlements to leave work after a birth, and the provision of childcare services¹⁰. Cross-national variations are also large regarding the extent to which policies encourage or discourage labour market participation of sole or partnered women with children under school age (Thévenon, 2011; OECD, 2011). Variations also concern the extent to which the support benefits different types of families equally. Mishke (2011), for example, distinguishes between European countries providing either a general family support, or supporting dual-earner families or a wide range of family types (see also Leitner, 2003).

Thévenon (2011) provides an in-depth description of cross-country differences and similarities in the policy mix created to support families in OECD countries:

- The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) provide comprehensive support for working parents with very young children (under age three) through a combination of generous leave arrangements after the birth of a child and widely available childcare services (Björklund, 2006).

- While English-speaking countries (Ireland and United Kingdom, as well as Australia, New Zealand and, to some extent, Canada and the United States) provide much less support in time and in-kind for working parents with very young children, financial support is more

¹⁰ These differences have been documented by a large number of studies (including: Gornick et al., 1997; Esping-Andersen, 1999; Korpi, 2000; Gauthier, 2002; Neyer, 2003; Neyer, 2005; Ferrarini, 2006; Meulders and O'Dorchai 2007, De Henau et al., 2010), but we focus here on the most recent ones.

generous – if primarily targeted at low-income families and preschool children (McDonald and Moyle, 2010). Not all of these countries offer the same level of support, with Canada and the United States lagging behind the others.

- Western continental and Eastern European countries form a more heterogeneous group that occupies an intermediate position between the Anglophone and Nordic countries. They generally focus on financial benefits, while their in-kind support to (dual-earner) families with children under three is more limited. France stands out from the other continental countries because of its relatively high public spending on families with children and a stronger support for working women to combine work and family. Countries in Southern Europe are characterised by limited supports for working families and low public spending on family cash benefits as well as on childcare services.

Recent research also looked at whether specific patterns of institutionally regulated intergenerational obligations with regard to care and financial support can be detected in Europe (Saraceno and Keck, 2011; Wall 2009). First, with regard to small children, there seems to be a convergence towards a shared responsibility through a mixture of supported familialism (leaves and child benefits) and partial de-familization. Distinctions concern the length of parental leaves, as well as incentives to fathers to take part of them, that is, the duration and gender specificity of supported familialism in the area of child care and, symmetrically, the degree of (partial) de-familization for very young children (Leitner, 2003). Yet, despite the introduction of a gender-equal parental-leave entitlement in EU member states, fathers' uptake of parental leave is low in the vast majority of European countries. Although specific entitlements for one parent (i.e., the father) have been introduced in many countries, the number of weeks reserved for fathers exclusively remains far below the number of weeks required for a gender-equal sharing of parental leave (exception: Iceland). De jure and de facto, the policy regulations encourage a feminization of child care responsibilities.

Second, care needs of the old seem to be overall less acknowledged as a public responsibility than those of children. At the same time, financial autonomy is less universally granted to the old than one might expect. Furthermore, also family care is less clearly supported for the elderly than for children. In particular, the leave instrument, which is the cornerstone of supported familialism in the case of children, is not developed equivalently for elderly. Only a few countries grant leaves to take care of old relatives – Austria, Belgium, Germany, and Italy. The leave is often shorter than in the case of children, and it is mostly unpaid. The relatively higher individualization of the old and of their social entitlements may paradoxically result in a lower acknowledgement not only of their care needs, as it is

indicated by the high number of countries with very little care provision, but also of the care performed by family members (Saraceno and Keck, 2011).

I.2 Influence of policies on fertility, family outcome, and female employment

Not all policies succeed in promoting the conditions necessary for individuals to start or enlarge their family. The evidence of the effect of family policies on fertility is often inconclusive (Neyer, 2003; Sleenbos, 2003; Gauthier, 2007; Hoem, 2008). At the macro level, the increase in fertility rates prior to the onset of the recent economic recession has been steeper in countries where female labour force participation has also risen markedly and where women have more opportunities to combine work and childbearing. Hence fertility rates are now higher in countries with high rates of female employment, while the opposite situation prevailed thirty years ago (Engelhardt et al., 2004; Billari and Kohler, 2004; OECD, 2011). Recent research has emphasized the contribution of family policies to this reversal (D'Addio and Mira d'Ercole, 2005; Hobson and Oláh, 2006; Hilgeman and Butts, 2009; Luci-Greulich and Thévenon, 2013). In particular, policies that help parents to balance work and family life (leave entitlements, but especially the availability of childcare services for children below age 3 and part-time work) are found to encourage fertility (Thévenon and Gauthier, 2011 for a literature review). At the micro level, the relationship between women's employment and childbearing is less clear cut. In their meta-analysis, Matysiak and Vignoli (2008) find a great variation in the relationship between women's employment and childbearing across European countries, with a relatively clear north-south and an east-west gradient. In the Nordic countries and in the post-socialist countries, women seem to be better able than in most other European countries to combine employment and childbearing. It seems that the institutional context in these countries reduces or eliminates the generally negative relationship between women's employment and childbearing. While the institutional context seems to matter, it is yet not clear which policy affects which aspect of fertility. Kalwij (2010) finds that childcare subsidies have no effect on the timing of births, but do have a positive effect on second and higher-order births and completed family size. Hilgeman and Butts (2009) find a significant effect of childcare enrolment on the total number of children ever born for women aged 18-45 in the early 2000s. A recent analysis by Luci-Greulich and Thévenon (2013) finds significant effects of cash transfers and of the coverage of childcare services for children under age 3, while the number of paid weeks of leave at birth have a

much smaller influence on fertility trends. The relative importance of policy measures is also found to vary with the welfare state context. For example, spending on cash benefits have a larger influence in the Nordic countries, where it might be explained by relatively high living costs. The effect of the coverage of childcare services for children under age three is also estimated to be weaker in English-speaking countries. Similar findings hold for Neels and Woods (2012) who suggest that family allowances and childcare availability show significant positive effects on first births in older age groups, suggesting that family policies affect the amount of fertility recuperation taking place at older ages (see also, Andersson et al., 2009). No variation of specific policy effects in terms of educational level is identified, but there seem to be significant effects of institutional contexts on fertility outcomes (Neyer and Hoem 2008; Neyer 2013; Neyer et al., 2013; Andersson et al., 2009). Childcare enrolment is also found to have a larger impact on fertility differences than between-country variation in terms of per-child spending on family allowances (Luci-Greulich and Thévenon, 2013).

The literature also provides evidence of the role of family policies on poverty reduction and income maintenance. This aim is typically addressed by allocating special benefits to low-income families with children (Maître et al., 2005; Ritakallio and Bradshaw, 2006). It is a key facet of social policy in Anglo-Saxon countries and also in Southern European countries, although family-support policies remain fragmented in the latter (Ferrara, 2005). Policies may vary both in the coverage of such benefits (universal or targeted at low-income families) and in the degree to which transfers are retrogressive with income and progressive with family size. Housing benefits that increase with family size are a key instrument for reducing poverty (Bradshaw and Mayhew, 2006; Fagnani and Math, 2008). Another issue is to look at how cash benefits and/or fiscal transfers to families aim to narrow the gap in living standards between families with children and the childless. Because they are not necessarily limited to low-income families, they may not reduce overall income inequality. Indeed, they can be remarkably generous for large families regardless of household income. They may extend throughout the childhood period, potentially with an increasing impact on the household budget as the children grow (Thévenon, 2009a). All the comparative analyses on financial transfers received by families are quite old, however, and could be updated with the family support calculator developed by the OECD, as a means to compare how large financial transfers are for a first child and how they develop with increasing family size. By covering those transfers occurring with tax advantages for families with children, this tool complements the data on family allowances collected, for instance, in the Comparative

Family Database by Anne Gauthier (<http://www.demogr.mpg.de/cgi-bin/databases/FamPolDB/index.plx>).

The influence of family policies on female labour market outcomes has also been widely explored. Cross-national differences in household composition and fertility behaviour are key factors in explaining variations in female employment patterns (Anxo et al., 2007; De Henau et al., 2007; Michaud and Tatsiramos, 2011; and, Thévenon, 2009b). Another factor driving female employment in recent decades has been institutional support to help working parents cope with family responsibilities (Jaumotte, 2003; Misra et al., 2011; Blau and Kahn, 2013). The types of support that working women receive from the state or in the workplace vary greatly across countries, however (Gornick et al., 2003; OECD, 2011; Thévenon, 2011). Variations in policy and production regimes also create contexts that determine how the labour market integrates women. They have differing effects on gender inequalities in market outcomes (Estevez-Abe et al., 2001; Mandel and Semyonov, 2005; Soskice, 2005) and on fertility (Neyer, 2013). Key in this respect is the fact that different policies have different effects on female employment and on the opportunity to balance work with family responsibilities gender equally. A recent paper by Thévenon (2013) suggests that female employment rates react to changes in tax rates, in leave policies, but the rising provision of formal childcare services to working parents with children not yet three years old is a main policy driver of female labour force participation (see also, Castles, 2003). Moreover, different policy instruments interact with each other and may thus improve or lower overall effectiveness. In particular, the coverage of childcare services is found to have a greater effect on women's participation in the labour market in countries with relatively high degrees of employment protection. The effect of childcare services on female full-time employment is particularly strong in Anglophone and Nordic countries. All in all, the findings suggest that the effect of childcare services on female employment is stronger in the presence of other measures supporting working mothers (as, for instance, paid parental leave), while the presence of such supports seems to reduce the effectiveness of financial incentives to work for second earners. The effect of cash benefits for families and the duration of paid leave on female labour force participation also vary across welfare regimes.

The situation of sole parents has also been the focus of many investigations. Among them, OECD (2011) provides an in-depth presentation of the policies targeting sole parent families. It shows, first, that sole parents receive specific financial assistance in most countries, with large variation, however, in the amount as well as in the type of programs which provide specific help or supplement to sole parent families (Table 1).

Table 1: Financial support to sole-parent families

Family allowances supplements	Belgium, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Korea, Norway, Poland, Portugal, and Slovenia.
Tax breaks	Austria, Belgium, Canada, Estonia, France, Germany, Ireland, Israel, Italy, Luxembourg, the Netherlands, Poland, Portugal, and the United Kingdom (working tax credit).
Parental leave	Austria, Poland, the Slovak Republic, and Spain (birth grant in 2008 – now abolished).
Childcare benefits	Belgium, Canada, Iceland, Japan, Korea, and Norway.
Social assistance or housing supplements	Belgium, the Czech Republic, France, Germany, Israel, Japan, Korea, the Netherlands, the Slovak Republic, Slovenia, and the United Kingdom.
Sole parent income supports	Australia (Parenting Payment), France (API), Iceland (mother father allowance), Ireland (one parent family benefit), Japan (sole parent benefit), New Zealand (Domestic Purposes benefit), and Norway (Transitional Benefit).
Advances of maintenance payments	Denmark, Estonia, Finland, Germany, Norway, Poland, the Slovak Republic, Slovenia, Sweden, and Switzerland.
No specific policies	Chile, Mexico, Turkey and the United States.

Source: OECD 2011

Two other dimensions are also reviewed, namely, how sole parents are treated in activation policies, and how countries differ in their child support (or child maintenance) systems which cover monetary payment made by the non-resident parent to the resident parent. Child-support systems can have a number of different aims, including: i) increasing the income of children living in sole-parent families, with direct positive consequences for child poverty and indirect positive consequences for other child outcomes; ii) reducing the fiscal burden on taxpayers from having to support resident parents and their children; iii) ensuring that non-resident parents take financial responsibility for their children; iv) promoting gender equality in family income (given that women are more likely to be resident parents); and v) promoting shared parental care of children.

The role of public policies when the non-resident parent does not pay varies also across countries. OECD countries are evenly divided between those where the government makes advance payments when the non-resident parent does not meet his/her obligations and those that do not. In countries where advance payments are made, the government takes on the cost of pursuing NRPs to re-claim the advanced funds, as for example, in Denmark. The generosity of advance maintenance schemes, however, varies widely across countries, with programmes in the Nordic countries being at the top end and programmes in France and Germany at the other end of the scale (OECD, 2011).

I.3 Fertility and family policy issues at the European Union level

The variety and distinct patterns of national family policies in Europe arise primarily from the differences in the ideological foundations and the historical developments of social policies across European countries (see above; Neyer, 2003). Although fact-finding missions to other countries, adoption of international conventions (e.g., ILO Maternity Protection Convention) and policy transfers have influenced national policy formation, their impact has been constrained by institutional, ideological, and political differences in policy making. During the past decades, however, the diffusion of policies, policy transfers, and policy learning across European countries have increased (Dolowitz and Marsh, 2000). This is partly attributed to the process of European integration. The European Union (EU) has stimulated intergovernmental exchange through its supranational governance, its institutional structure, its policies, and its normative guidance (Falkner et al., 2005; Neyer J., 2012; Graziano et al., 2011; Radaelli, 2000). The impact of the EU on national family policies is affected by the EU competence in family matters. The EU does not have the authority to pass policies in all family-policy areas. It has, however, the competence to legislate on employment and on gender equality, two areas which are fundamentally shaped by family policies (see above and Neyer, 2005; Courtioux and Thévenon, 2007). This “asymmetry” (Scharpf, 2002) in EU-competences has led to an ambivalent judgment of the EU’s influence on family policies: On the one hand, and against the background of the diversity of national family policies, the influence of the EU on national family policies is considered to be limited. The EU-policy initiatives have not led to a harmonization of family policies in European member states (Hantrais, 2007; Falkner et al., 2005). On the other hand, - and depending on which policy fields are considered in the investigation - it is argued that the EU has extended its activities in areas addressing families and fertility issues (Neyer et al., 2013). In addition, it has left a variety of imprints on national family policies and family- and fertility discourses: It has set basic standards in employment- and gender-related family policies (e.g., through its parental-leave directive); it has set guidelines which have influenced national policy formation (e.g., the Barcelona targets regarding childcare); it has become a normative authority with regard to family- and fertility-relevant policies; and it has stimulated cross-country policy comparisons and influence (Haas, 2003; Hantrais, 2007; Falkner et al., 2005; Jacquot et al., 2010; Graziano et al., 2011; Neyer J., 2012). On the whole, while family policies still constitute a policy matter which is largely left to the member states, there is an increasing acknowledgement of EU-initiatives in family- and fertility-related policies.

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Chapter 2: Young adults and “self-sufficiency”

By Olivier Thévenon

II.1 A delayed achievement of “self-sufficiency”

Young people face multiple challenges when they wish to complete their education, to move from education to employment, to become economically independent and to start a family at the same time (Pailhé et al., 2013). For this reason, patterns of “transition to adulthood” vary greatly as a result of differences in educational attainment, choice of profession, availability of jobs and housing, life-style, aspiration, family background and institutions. Differences in policy settings are also key for understanding cross-country differences in the prevalence of the various pathways to economic independence and self-sufficiency and how socio-economic factors influence these pathways (Vogel, 2002; Van de Velde, 2008).

Financial independence is fundamental to being considered an adult. In most cases, financial independence is associated with — but not identical to — full-time employment. However, trends in the labor market require individuals to undertake more education and training now than decades ago to become economically secure enough to establish a family (Berlin, Furstenberg, and Waters, 2010). Increases in earnings inequality and employment instability and shortening of job tenure as a result of higher turnover, as well as increases in housing prices and in the cost of living have also strengthened difficulties that youths are facing in their attempt to establish an independent and “self-sufficient” household.

As a consequence, economic independence (or “self-sufficiency”) as well as the other events leading to adulthood (end of education, transition from education to work, family formation) are now achieved much later than was the case for previous cohorts. Various factors are argued to have been responsible for this trend including reduced economic opportunities, technological changes in the production process, the spread of globalization, or the decline of unionization (Danziger and Ratner, 2010; Duncan, Boisjoly, and Smeeding, 1996; Blossfeld et al., 2005). Moreover, failure to obtain a college degree or dropping out of high school decreases the probability of earning a middleclass wage sharply. For many less-educated individuals, unemployment has become a substantial problem, especially among disadvantaged minorities.

Furthermore, jobs overall have also become less stable over time. This has created greater uncertainties about young people’s ability and willingness to assume adult responsibilities and

about their long-term socioeconomic prospects (Duncan, Boisjoly, and Smeeding, 1996; Hill and Holzer, 2006; Oppenheimer, 1988). Consequently, a significant proportion of young people remain unable to support themselves, much less a family, before their mid to late 20s, unless they are highly supported by parents and/or by the welfare state (Smeeding and Phillips, 2002).

How to measure “self-sufficiency” is, however, not straightforward.

II.2 Measuring “self-sufficiency”

The concept of economic self-sufficiency can be defined in several ways (Sironi and Furstenberg, 2012), such as being able to live in a separate household without any family members and without financial support from the family of origin. It can also be defined as the ability to establish a partnership and raise a child. In addition, the source of economic independence is also relevant. It can be earnings from work, welfare, and social transfers, in addition to family income, or even loans.

Whether a rapid transition to “self-sufficiency” is desirable or not can also be questioned. Thus, in most countries young adults who decide to attend college or graduate school may achieve financial self-sufficiency at an older age than those who do not go to college. However, investing in higher education can lead to a more secure job and a higher standard of living in the long run. Consequently, it is unclear whether prolonged economic dependence will be overall damaging, and whether economic independence should be evaluated using current income, if any, or the discounted flow of future earnings. Moreover, current earnings together with expectations about career prospects can influence decisions about the standard of living (e.g., investment in housing) or shape the chances to form a family (e.g., affordability of marriage or childbearing). Individuals with low incomes in early adulthood may decide not to marry or have children or they may face difficulties in finding a partner and found a family due to their lack of (family-supporting) income. Others who have higher earnings or who can expect a substantial wage growth may feel more secure in deciding to have a larger number of children or they may be more attractive as potential partners for family formation. This shows that it is difficult to classify individuals as economically independent and to establish which conditions imply greater economic self-sufficiency.

II.3 The role of policies and family solidarities

Cross-national differences in ‘transition to adulthood’ patterns mirror the policy characteristics regarding youth and the transition to adulthood in European countries (Vogel, 2002; Van de Velde, 2007). Various policy approaches to youth’s “de-familialisation” make it more or less possible for young adults to leave their parental home and/or to start a family together with completing their education and/or moving from school to work.

The role of private transfers and cross-national variations thereof have also been examined. The available evidence suggests that financial transfers from parents to their adult children in the family are less likely to take place but are more intense — i.e., involve larger amounts — in the Southern European countries than in the Nordic ones, with the Continental European countries falling in-between the two (Albertini and Kohli, 2012). Financial transfers have, so to speak, different aims and meanings across the regimes. In Southern Europe, parents support their children mainly through co-residence, and little economic support passes the walls of the house. In the Nordic countries, in contrast, parent–child co-residence is non-normative. Children leave their parents’ home early and then receive direct and explicit help from them. The Continental countries fall in-between.

A basic opposition lies between countries such as Denmark which provide a high support of the standard of living of young people with grants for students that are universally accessible and of comparatively high amounts. Age conditions and rules to receive social assistance are also comparatively unrestrictive, as in most Nordic countries, which make young people less worried about poverty (Aassve et al., 2007). The economic independence of young students is also highly supported by widely accessible loans in the United Kingdom. This makes it possible for many students to leave the parental home while completing their education. The UK also offers early access to social assistance. By contrast, in France, support to families with young adults which is beneficial to young adults is only provided via intra-family redistribution. Youths under age 25 are not eligible for social assistance or only under restrictive conditions, but they can claim housing benefits. The support received by the state is also much weaker in Southern European countries due to comparatively low amounts of student loans or grants; in these countries intra-family solidarities play a key role.

At the same time, family solidarities have evolved and are increasingly demanded in a context of ageing populations, even in countries where the support provided by the state is comparatively high (Herlofson et al., 2011). Hence, the evidence supporting Wolfe’s theory about “the moral risk of the welfare state” (i.e., that family members’ moral obligation to provide mutual support will be corrupted if alternative support sources outside the family are

made available) (Wolfe, 1989) is pretty weak. By contrast, a number of studies have demonstrated that families are highly involved in care provision even in so-called generous welfare states (e.g., Daatland and Herlofson, 2003; Ogg and Renault, 2006; Sundström, Malmberg, and Johansson, 2006; Albertini and Kohli, 2007; Attias-Donffut, Ogg, and Wolff, 2008). Moreover, family events such as marriage or the birth of a child are found to raise the propensity of households to receive financial gifts from their parents (Attias-Donffut, Ogg and Wolff, 2008). Yet, recent work provides substantial evidence on the extent to which transfers in cash and/or in time benefit parents or the elderly. By contrast, very little is known on the actual support received by youths from their family, and on how this support is related to that provided by the state in order to foster or not economic independence.

Interactions between individual/family characteristics and macro-institutional factors are important to understand cross-national differences in transition patterns (Billari, 2004). For example, Aassve et al. (2002) argue that income differentials can partially explain the postponement of leaving home in several European societies, but what is most important is that the effect of income is different according to the welfare regime. The effect of small differences in individual resources is amplified by the lack of comprehensive support to help young people move to “self-sufficiency”, as for example, in Southern Europe (Billari, 2004). The weakness of measures facilitating the transitions from education to work, job search, apprenticeship or vocational training, or skill certification programs are also factors pointed out to explain the difficulties emerging at the entry into the labour market (OECD, 2011; Eurofound, 2012a). Moreover, restricted access to unemployment benefits and/or social assistance make young people particularly vulnerable to poverty and social exclusion. In many cases, moving to a stable employment position requires some kind of social support which makes finding and staying in a job affordable. Housing benefits, for example, may be of high importance for unemployed young individuals who find a job in an area which is far away from their parental home. Similarly, benefits or tax credit programs may play a significant role in complementing the earnings that low qualified youths may get from their first job. In addition, the needs of young people with disabilities, with health problems or with other special needs have to be addressed by social inclusion programs, but also at the employer level (Eurofound, 2012b; OECD, 2012).

In many European countries, contexts have changed dramatically since the start of the economic crisis, which has proved to be particularly detrimental to young adults (and especially to low qualified youth) (Pailhé et al., 2013). Many countries have reacted to the crisis with cuts in social spending which may more or less directly impact youths. Conversely,

various countries have implemented (or experimented with) programs to help youths finding a job, to upgrade their skills, or to support their labour market opportunities in others ways (Anderson, 2012; Scarpetta et al., 2012).

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Chapter 3: Leave policies for parents with young children

By Olivier Thévenon and Ann-Zofie Duvander

Parental leave entitlements give employment protection, and sometimes income support, to workers who take time off from work to care for their children. Parental leave policies have developed differently across countries due to differences in emphasis in underlying policy objectives and dimensions. Dimensions may be:

- economic, as parental leave affects labour force participation and labour market outcomes;
- social, as parental leave may affect the health of working mothers as well as the physical, intellectual and emotional development of children;
- demographic, since parents' decisions about whether or not to have children may be affected by leave, because parental leave is an integral part of the policies which shape work-life balance.
- gender-related ethics, as men and women are not affected equally by leave legislation

Governments may, however, view weeks of leave as a less expensive family support solution than providing formal childcare services, although such an attitude overlooks the adverse effects that lengthy leave can have on labour market outcomes. In any case, different policy objectives have to be balanced in the design of leave entitlements. In particular, it may be argued that concerns about children's well-being may need to be weighed against the potentially positive effects of leave entitlements on parental labour market outcomes, especially with respect to mothers' return to work when her leave is over (OECD, 2011; Huerta et al., 2011). Gender equity might also be a concern of policy reforms since labour market responses are not the same for men and women (Galtry and Callister, 2005; Ray *et al.*, 2010; OECD, 2011). Yet, reforms adopted by governments are often not the result of a rational balance weighing their different effects. Party orientation and interests, parliamentary constellations, power and influence of interest groups, etc, make negotiations moving away from a balanced outcome.

Other considerations may also affect the design of leave entitlements. Societal norms relative to the roles of mothers and fathers in the care and education of children influence the behaviour of working mothers and fathers. Norms vary across countries, but also change within them over time (Cameron and Moss, 2007). Employers' attitudes towards leave

policies are also important. They may balk at having to bear short-term costs of replacing employees on leave and contributing to leave payments. However, they may well reap long-term benefits – *i.e.* greater rates of return on their investment in human capital – as mandated paid leave makes their employees more likely to resume work. Last but not least, another government motive for extending the length of parental leave is that subsidising parents to take time off work and care for their children is often much less costly than expanding childcare capacity. Long leave can also be a means of deterring parents (particularly mothers) of young children from supplying labour in periods of high unemployment (Kamerman and Moss, 2009; Martin, 2010).

Overall outcomes, however, also depend on the length of parental leave and thus of absence from work. If the leave is too short, the mother's and child's well-being may be at risk¹¹, while the provision of few weeks of leave has a small but positive influence on female labour force participation. By contrast, long periods of paid leave are found to have a detrimental influence on female participation rates and earnings relative to men (see e.g. Thévenon and Solaz, 2013).

Mothers are, by and large, the main users of parental leave, but fathers are frequently entitled to leave days for their exclusive use. Yet, a balanced use of leave entitlements by both parents after childbirth is positive for gender equality and female labour market outcomes. There is also some evidence that fathers who take leave, especially those taking two weeks or more, are more likely to carry out childcare related activities when children are young; and that children with highly involved fathers tend to perform slightly better in terms of cognitive test scores (Huerta et al., 2013). However, the upshot is that, in many countries, parental leave policies effectively perpetuate existing gender differences in the provision of care and unpaid household chores.

III.1 Cross-national differences in leave entitlements for parents with a young child

The legally enshrined entitlement to take leave from work to care for a newborn child has a long history in the OECD area. It reaches back to the 19th century. The basic right to stop work for a few weeks prior to and after the birth of a baby was first granted to working mothers to protect their health and their child's. This leave has been commonly called

¹¹ The evidence suggests that a return to paid work by mothers within six months after childbirth may have negative effects on child outcomes, particularly on cognitive development, but the effects are small and not universally observed (Huerta *et al.*, 2011). Other factors such as family income, parental education and quality of interaction with children have greater influences on child development than early maternal employment per se.

“maternity” leave. Since then, the additional entitlement to leave from work to care for a (newborn) child – “parental” leave – has been progressively introduced. Parental leave often refers to a leave granted after maternity leave. It may either be shared by both parents or granted to each one separately. Its development has been especially rapid since the late 1980s, driven by some of the considerations mentioned above and in some countries supplemented by additional forms of leave (e.g., childcare leave). In an attempt to promote greater gender equality in paid and unpaid work, some countries have also introduced entitlements specifically for fathers (e.g., paternity leave, i.e., leave at the time of the birth of the child; “father’s leave”, i.e., some part of the parental leave exclusively reserved for one parent).

The complexity of government motives results in significant variations in the design of leave entitlements across the OECD. A first main difference lies in the way entitlements to maternity (or pregnancy), paternity, parental leave and/or childcare leave are combined. This addition of entitlements leads to substantial differences in policies, with variations in durations of leave, related payment and options available to make it adjusted to parents’ needs.

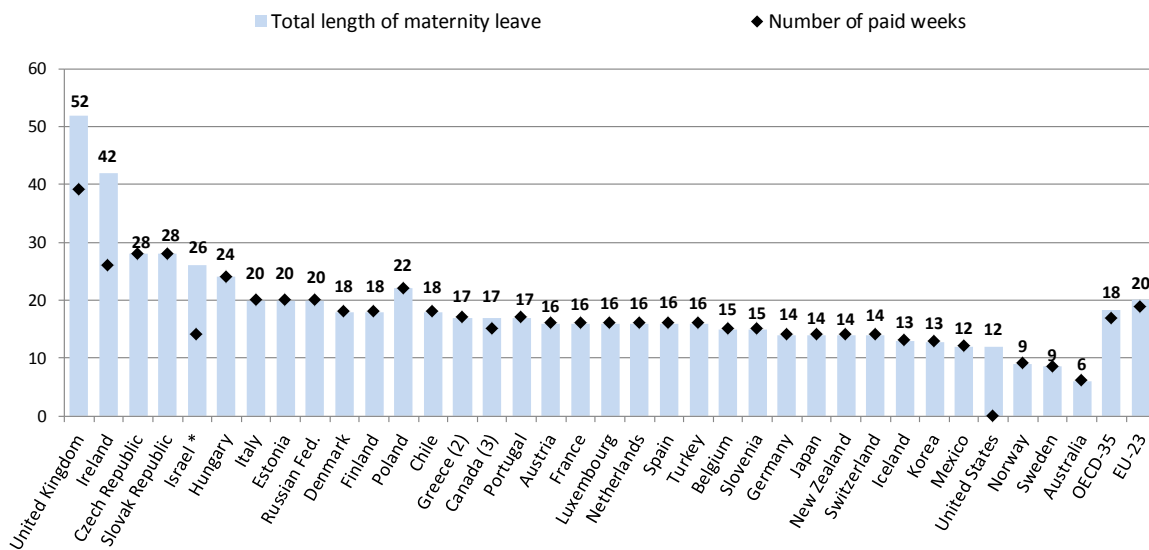
III.1.1 Maternity leave entitlements

Because maternity (or pregnancy) leave entitlements were first introduced to protect the health of working mothers and their newborn children, they are often incorporated into social security systems, alongside health insurance and paid sick leave. They ensure women a period of rest from work before and after childbirth and a return to their previous job within a limited number of weeks after childbirth. Maternity or pregnancy leave is generally available to mothers only, but in some countries (Belgium, Finland, Germany, Israel, Italy, Portugal, Poland, Slovenia and Spain) part of the leave can be transferred to fathers under certain circumstances. Maternity leave that begins and ends either side of childbirth is mandatory, although when it starts and how long it lasts vary across countries and can, in any event, be adjusted for medical reasons or by employer-employee agreement.

Across the OECD, the average duration of maternity leave was around 19 weeks in 2011 (Figure 1). It is longest in the United Kingdom (52 weeks), although the country has no separate parental leave scheme. There are also no separate maternity and parental leave entitlements in Australia, but mothers may take only six weeks out of 52 weeks of parental leave prior to the birth of their child. In the United States – the only OECD country that has no nationwide legislation on paid maternity leave – some states provide income support

through either sick-leave insurance or maternity-leave programmes (Kamerman and Waldfogel, 2010).

Figure 1: Weeks of maternity leave in OECD countries - 2011



Notes: (1) Total length of maternity leave refers to the aggregate length of paid and unpaid entitled weeks. The figures in the chart refer to the total length of job-protected maternity and parental leave in 2011. Australia, Norway and Sweden have no separate maternity leave entitlements. The figures shown for these countries refer to the weeks of parental leave reserved strictly for mothers.

(2) Greece has a basic maternity leave of 17 weeks. It also grants an additional six-month leave period that begins after basic maternity leave and before employees begin to use flexible working time.

(3) Canada's 17 weeks are for maternity leave in most provinces and territories, even though the provinces of Quebec and Saskatchewan, for example, grant 18 weeks of maternity leave.

* Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

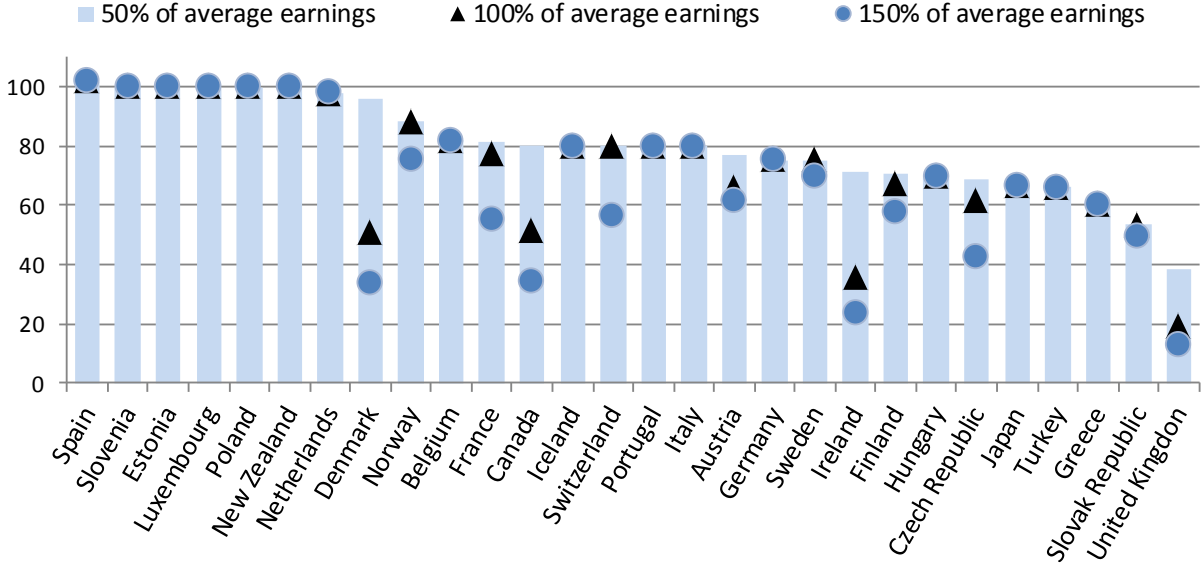
Source: OECD Family Database.

These differences are the results of gradual extensions of rights to leave for women during pregnancy and at delivery that occurred in many countries. In 1970, 24 countries granted an average of 11,3 weeks of leave; this average increased to 17,6 weeks in 2011, with all OECD countries now granting maternity rights. The dispersion in the number of weeks granted rights rose from 7,1 weeks in 1970 to 9,8 in 2011. Within the European Union the Council Directive 92/85/EEC mandates the basic right to 14 weeks of maternity leave.

Often maternity pay is a set proportion of previous earnings (e.g. 80%) up to a specified upper threshold. These parameters vary across countries leading to different replacement rates. In many countries, replacement rates actually decrease as previous earnings levels rise, as these are increasingly likely to exceed upper maternity payment thresholds. Effective

replacement of earnings due to maternity leave schemes are also subject to the effect of tax payment. For this reason, the OECD calculates the net (after-tax) replacement rates granted to parents on leave in specific family and income situations, as shown in Figure 2. Full replacement of previous earnings for mothers with low, middle and high earnings before maternity leave exists in Estonia, Luxembourg, New Zealand, Poland, Slovenia and Spain (Figure 2). By contrast, replacement rates for maternity leave are especially low in the United Kingdom where mothers with low earnings have less than 50% of their earnings replaced, and mothers with middle or high earnings have less than 20% of their earnings replaced: the upper level of Statutory Maternity Pay is relatively low compared to average earnings.

Figure 2: Maternity effective replacement rates
Percentage of the net earnings before birth¹ replaced by maternity payment
(after payment of taxes), by earnings level, 2008



In Austria, Belgium and Greece, maternity pay decreases over time and/or with partnership status and number of children. However, these variations are very small and are, therefore, not illustrated here. This chart illustrates the situation for a family with two children and two earners, each of them earning the referred percentage of average earnings, e.g. it is assumed that a mother with an initial earnings level of 50% has a partner with the same earnings level. Australia, Korea and the United States are not included because there was no public maternity pay in 2008.
¹ Earnings before payment of income tax and social contributions.

Source: OECD Tax/Benefit models, 2010; Family Database.

Entitlements for maternity leave in the Nordic countries are mainly at the same level for maternity, paternity and parental leave. These three kinds of leave are thus seen as of similar importance.

III.1.2 Parental leave entitlements

Parental leave entitlements offer parents additional opportunities to care for a newborn child. While parental leave is usually taken just after maternity leave, some OECD-countries (outside the European Union) and the European Union (Council Directive 96/43/EC and Council Directive 2010/18/EU) allow parents to take it later – usually before the child reaches eight years (see details in indicator PF2.5, OECD Family database). A few countries have no legal framework for maternity/paternity or parental leave, though they may set aside a certain period of leave for the specific use of each parent.

The legal basis of parental leave entitlements varies widely across countries. Initially introduced as supplementary rights for mothers only, most countries have now extended them to fathers. Parental leave can be granted as:

- **A family right** that parents can divide between themselves as they choose.
- **An individual right** which can be transferred to the other parent.
- **A non-transferable individual right** whereby both parents have an entitlement to a specified amount of leave. Often called “mommy and daddy quotas”, this kind of leave has to be taken by fathers and mothers on a “use it or lose it” basis.

Additionally, in some countries (Finland, Norway, Portugal, Sweden), parental leave is supplemented by a further period of leave (homecare leave/childcare leave) that parents can take to care for a very young child, often up to the age of three (or more).

Duration of parental leave

Figure 3 shows cross-country variations in the number of weeks granted by way of parental leave over the four decades from 1970 to 2010. It includes all the post-natal weeks available through parental leave, homecare or childcare leave on top of those taken for maternity leave. Since 1980, most countries have increased the period for which parents are entitled to temporarily leave work and care for a young child. As a result, one can estimate that 49 weeks of leave were granted to parents in 1990 on average (of which less than 30 were associated with payment), while the average is now at 61 weeks (about 37 paid weeks). Total weeks of paid leave granted over the four decades varied across and within countries; the duration of paid leave was gradually augmented in most countries; in a few others (Austria, the Czech Republic, Denmark, Germany, and Hungary), however, the duration of paid leave was shifted up and down alternatively over the past decades.

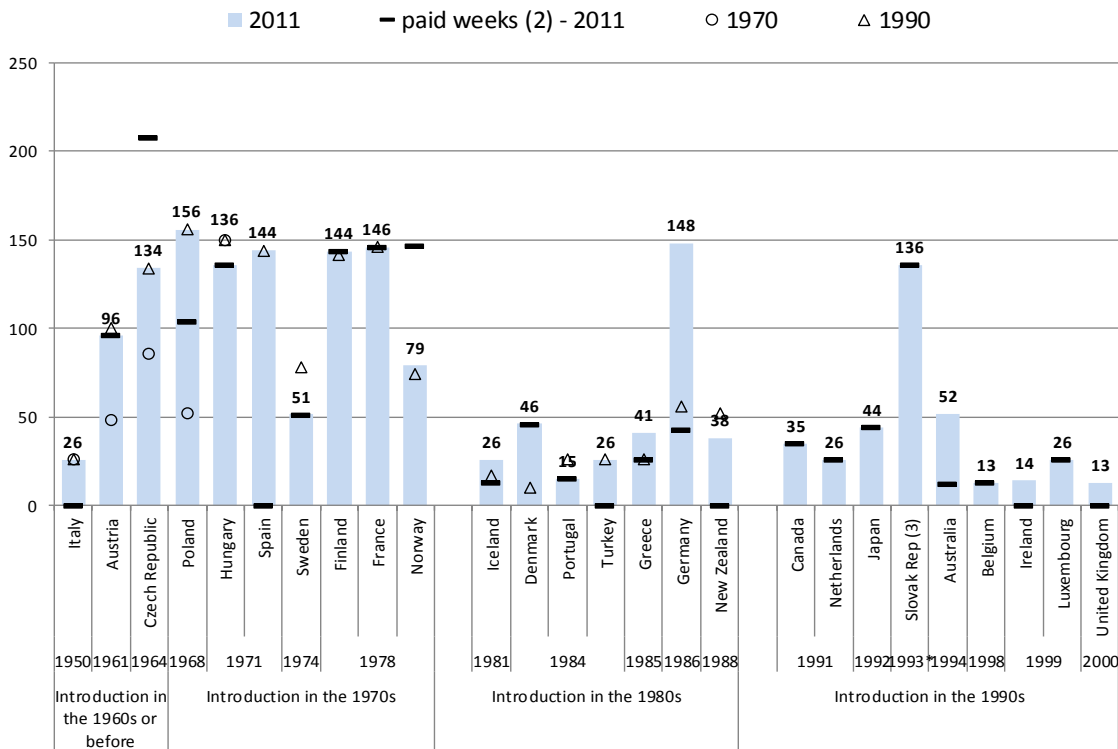
As a consequence, in almost half of the OECD countries, subsequent to maternity leave, parents can nowadays take parental leave for at least a year, often two years and sometimes

three. But strikingly the figure shows a divide between most of the forerunner countries – which first introduced parental leave entitlements in the late 1960s and early 1970s – and those which granted them from the 1980s onwards. Most of the forerunners still in 2011 entitle parents to periods lasting more than one year and often between two and three years (except Italy), while those that came to parental leave later make it much shorter – one year at the most. Sweden is an exception in the first group of countries because entitlements to leave were gradually increased until the early 1990s. Later changes included transforming leave from a family right to an individual right and adding on non-transferable rights to each parent. A municipal homecare allowance (*vårdnadsbidrag*) makes it possible for a parent to receive a payment for up to the third birthday of the child¹². Norwegian parents can claim parental leave benefits for a similar length as the Swedish ones, and homecare allowance can complement this benefit for a parent taking care of a child until he/she reaches his or her second birthday.

By contrast, only few countries have changed their scheme in such a way that parents can now take leave for shorter periods at higher payment rates than before. For example, in Germany the maximum rate of income support during leave applies to those who take one year of leave only (Figure 3 shows the shortest period of leave at maximum payment rates), but parents still can choose to be on leave for two years and to receive a flat-rated benefit. Few other countries (Austria, the Czech Republic, France for a third child) have also introduced the possibility for parents to choose between different length and payment options to add flexibility in how entitlements can be used by parents, but payment is not always earnings related.

¹² Starting in 2008, municipalities could decide whether or not to provide a benefit of up to SEK3,000 per month for parents with a child up to three years who do not use publicly-funded childcare services and for parents who have already used 250 days of parental leave. The allowance cannot be used simultaneously with parental leave or social transfers, in practice making it conditional on the other adult in the household working.

Figure 3: Changes in parental leave entitlements, 1970-2011⁽¹⁾



Notes: (1) Both paid and unpaid weeks of leave are shown. These totals refer to parental leave and subsequent prolonged periods of paid and unpaid leave (sometimes called “childcare” or “homecare” leave) that women/parents can take after maternity leave to care for young children. Countries are ranked by the year they introduced entitlements, distributed by calendar year. (2) In some countries there are different payment options determined by the periods of time over which allowances received. The option considered here is the one where benefit is paid for longest. In Australia, after the first 12-month period of leave, a parent can request another 12 months (of their own or their partner’s unused leave). (3) Slovakia was governed by the leave legislation that applied in the Czech Republic until it passed its own legislation in 1993.

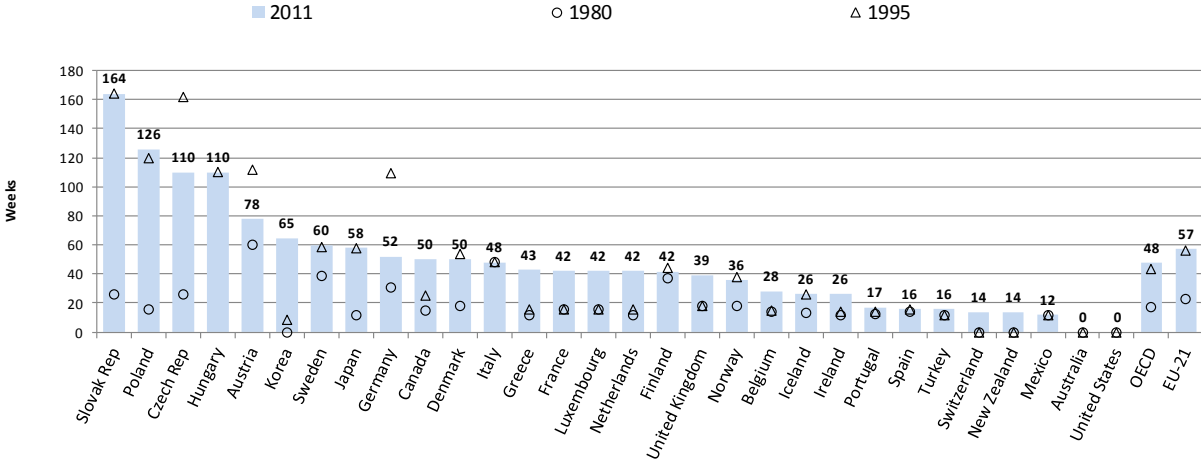
Source: Moss, P. (ed.) (2010), “International Review of Leave Policies and Related Research 2010”, Employment Relations Research Series, No. 115, Department for Business Enterprise and Regulatory Reform, Institute of Education, University of London; European Commission, Mutual Information System on Social Protection/Social Security (MISSOC), and information provided by the authorities of non-EU countries; OECD Family database.

Mothers are the main users of parental leave. The total period that women are likely to spend out of work when adding parental leave to the weeks of maternity leave is illustrated in Figure 4. As payment is a key determinant of uptake, the figure shows the total number of paid weeks of maternity and/or parental leave granted to mothers. All OECD countries provide paid leave, except for the United States, which has no statutory compensation payment. Parents can take leave and/or receive benefits payments for up to three or more years in six countries – Austria¹³, the Czech Republic, Finland, France (on the birth of a

¹³ In Austria, the job-protected leave ends with the second birthday of the child, but (childrearing) benefits may be drawn up to the child’s third birthday, provided the benefit is shared and one parent (the father) takes at least six months of the total of 36 months (for details and development, see Marten, Neyer, and Ostner 2012).

second child), Hungary, and the Slovak Republic. In the other countries, total periods of paid leave are much shorter; one year or less.

Figure 4: Total weeks of paid leave granted to mothers⁽¹⁾ in 1980, 1995 and 2011
 Countries ranked by number of paid weeks available in 2011



Notes: (1) Weeks of maternity and parental leave that women can take after maternity leave are included. Weeks of childcare or homecare leave have also been added where relevant. When there are several payment options, the shortest period with highest payment is taken into account.

Source: OECD Family database – indicator PF2.5 (www.oecd.org/social/family/database).

There is an increasingly large part of the parental leave being shared between parents in the Nordic countries. This is partly caused by reserved parts to each parent within the parental leave. Iceland is the forerunner with fathers using one third of the parental leave, while Denmark and Finland are lagging behind (Duvander and Lammi-Taskula, 2012).

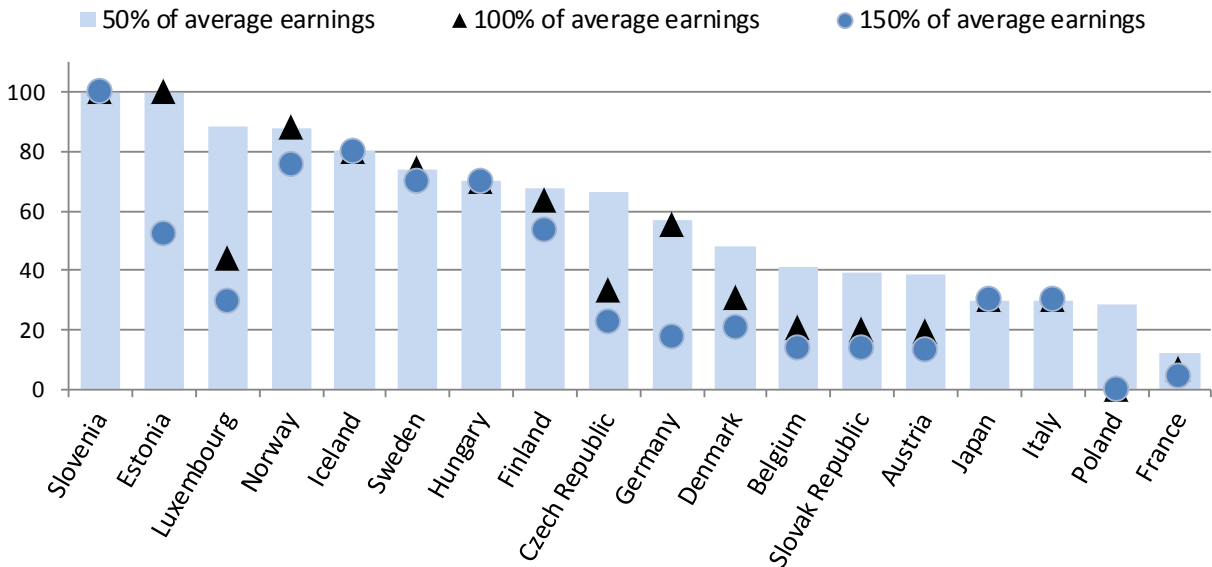
Earnings replaced by parental leave benefits

Payment conditions are key determinants for parents to make full use of their entitlements, but they also vary greatly across countries. Thus, parental leave is unpaid in Ireland, the Netherlands, Spain, Turkey, and the United Kingdom. In all other countries it is paid or a benefit is granted – at least for part of the leave period. Twelve countries supply benefits that cover the full period of leave, while 14 provide financial support for only part of the job-protected leave time. In the Czech Republic, Austria, and Norway, payment spanned a longer period in 2011 than job protection, which could make it difficult for recipients of benefit for the full parental leave period to re-enter the labour market. France is the only country where the length of time for which allowances are received varies with the number of children. Many countries also provide payment that decreases or stops after a certain period on leave, including Australia, Estonia, Finland, Hungary, Italy, Lithuania, Norway, Portugal, Sweden.

The benefits received while on leave are of two categories. Long leave periods are generally associated with relatively low flat-rate family-based payments, so that only one parent can claim income support while on leave. Shorter periods of parental leave are often associated with higher rates of earnings-related payments, often capped at a specified maximum (see OECD 2011b, indicator PF2.4). Moreover, as stated before, some countries offer to choose between different options of length and payment that make it difficult to compare across countries how generous the different schemes are overall. Yet, Figure 5 compares payment levels for parents that are on leave six months after a childbirth when the parent chooses the option with higher payment (Figure 5). In 2008, parental leave payment rates are highest six months after childbirth in Estonia and Slovenia where all parents have 100% of their earnings replaced with parental leave payments. However, payment ceiling is fixed at a relatively low level in Estonia, which induces a sharp decrease in the percentage of earnings replaced by leave benefits for a parent with 1.5 time the average earnings.

Figure 5: Parental leave payment, six months after birth

Percentage of the monthly earnings before birth¹ replaced by parental leave payment, by earnings level, 2008



Source: OECD Family database.

Not only payment, but also the provision of flexibility to parents using leave entitlements is important to raise take-up and to encourage parents to share parental leave. Flexibility takes a number of forms, including:

- the possibility of taking leave in one continuous block or several shorter blocks;
- the possibility for parents to use leave simultaneously or alternating;

- the possibility to take leave on a full-time or part-time basis (i.e. so parents can combine part-time employment with part-time leave);
- the option to take longer periods of leave with lower benefits or shorter periods with higher benefits;
- the possibility to use all or part of the leave until the child reaches school age;
- the possibility to transfer leave entitlements to carers who are not parents.

Table 1 provides an overview of countries' practices regarding the flexibility offered to parents for the use of parental leave. Fifteen countries make it possible for parents to combine separated periods of leave instead of using their entitlement in one block; most of these countries also allow both parents to be on leave at the same time.

Many countries also make it possible for parents to leave work on a part-time basis, and to receive a certain percentage of the benefit. Moreover, the diversity of needs and constraints faced by parents, as well as the willingness to overcome the negative effects of long periods of leave on labour market outcomes have encouraged a few countries to complement the possibility to take leave for a rather long period with an option offering a higher payment rate for a shorter period.

Table 1: Flexibility permitted in the use of parental leave entitlements, 2012

	Possible use in separated blocks	Simultaneous use by parents	Part-time option	Short / long option	Age	Transferred to a non-parent
Australia
Austria	✓	..	✓	✓	✓	..
Belgium	✓	..	✓
Canada (Quebec)	..	✓	✓	..
Czech Republic	..	✓	..	✓
Germany	..	✓	✓	✓	✓	..
Denmark	✓	✓	✓	✓	✓	..
Spain	✓	✓	✓	..
Estonia	✓	✓
Finland	✓	..	✓
France	..	✓	✓
Greece	✓	✓	..
Hungary	✓
Iceland	✓	✓	✓	..	✓	..
Ireland	✓	✓	✓	..
Italy	✓	✓	✓	..
Japan	..	✓
Korea	✓
Luxembourg	✓	..	✓	..
Netherlands	✓	✓	✓
Norway	..	✓	✓	✓	✓	..
New Zealand
Poland	✓	✓	✓	..	✓	..
Portugal	..	✓	✓	✓	✓	..
Slovenia	✓	✓	✓	..	✓	..
Slovak Republic	..	✓
Sweden	✓	✓	✓	✓	✓	..
United Kingdom	✓	✓	..

Source: Moss P. (ed.) (2012), International Report on Leave Policies and Research.

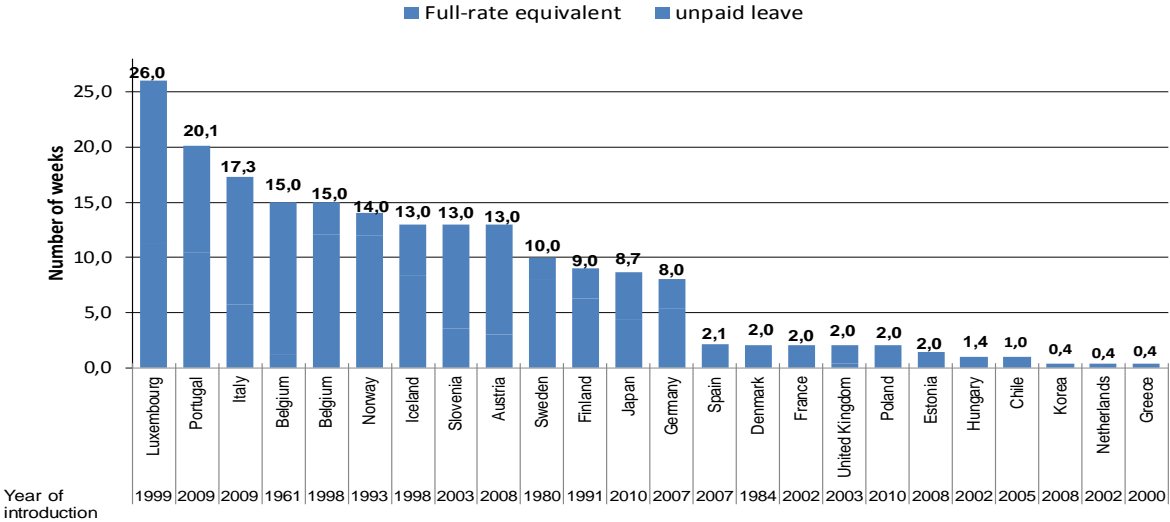
III.1.3 Father-specific leave entitlements

Payment rate and flexibility are both key parameters for fathers to make use of their leave entitlements. Since men are often the main earners in families, women are likely to take most of the available leave in order to keep the loss of household income to a minimum; and this happens especially when the benefit received by parents on leave does not fully replace the income earned before the birth. In such a context, some countries have attempted to achieve a more gender-balanced use of leave entitlements by granting father-specific rights that cannot be transferred to the other parent.

About half of the OECD countries have separate paternity leave entitlements which allow fathers to take leave for the first 5-15 days that immediately follow childbirth (Figure 6). In addition, some countries earmark a particular period of parental leave for the exclusive use of each parent, with no possibility of transferring it to the other parent. Reforms introducing such “quotas” have proved to be efficient in encouraging fathers to take some period of leave. Nordic countries (with the exception of Denmark), Slovenia and Austria grant the longest father-specific leave, with Iceland and Slovenia allotting up to 13 weeks to each parent and replacing up to 80% of earnings in Iceland for parents with less than the average earnings, and around 50% of previous earnings in Slovenia. (Figure 7). Austria reserves between two and six months of its childrearing benefit (and accompanying “leave”¹⁴) to one parent (= father), depending on which childrearing benefit model parents choose.

However, the leave taken by fathers is less than the maximum authorised by legislation: despite the various schemes designed to encourage fathers to claim their father-specific rights, their overall take-up falls between 20% and 30% short of their entitlements (Moss, 2010). While non-negligible, success here is limited in that gender differences in the use of parental leave remain wide in practice.

Figure 6: Weeks of leave entitlement for fathers⁽¹⁾ in 2011



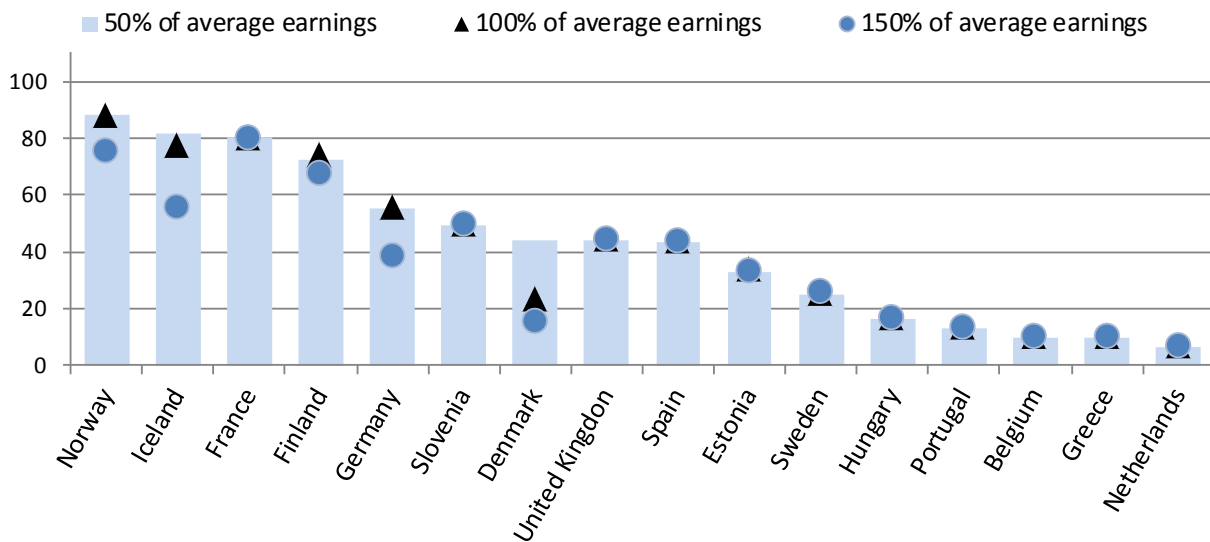
Note: (1) Estimates of the weeks of entitlement include paternity leave and father-specific “quotas” in parental leave entitlements.

Source: OECD Family database; Thévenon (2014).

¹⁴ More precisely, the law does not require that one takes leave. It only does not allow to earn above a certain threshold – which in essence means that one has to take a leave. However, parental leave is regulated in a separate law than childrearing benefit – but parental leave is not paid, but one can apply for childrearing benefit.

Figure 7: Paternity payment rates

Percentage of the monthly earnings before birth¹ replaced by paternity payment, by earnings level, 2008



This chart illustrates the situation for a family with two children and two earners, each of them earning the referred percentage of average earnings.

¹ Earnings before payment of income tax and social contributions.

Source: OECD Tax and Benefit model, 2010 – OECD Family Database

III.2 Effects of leave policies on labour market outcomes

Empirical evidence corroborates the ambivalent influence of leave mandates on labour market outcomes. Several studies have established the leave mandates' positive effects on mothers' return to work in the United States, where leave entitlements are short: 12 weeks of unpaid leave after birth, supplemented in some states only by payment. Berger and Waldfogel (2004) find that mothers employed in jobs covered by leave entitlements return to work more quickly after the 12 weeks of mandated leave than those who are not. The introduction of leave mandates for family or health reasons in some states has also been associated with a significant 4.7 point increase in the probability of working within nine months of childbirth (Han *et al.*, 2009)¹⁵. The proportion of Canadian women quitting their jobs has fallen and the share of those returning to their pre-birth employers has increased since the introduction of 17-18 weeks of mandated leave (Baker and Milligan, 2008). A further extension of job-protected leave, up to 70 weeks in some provinces, has been found to significantly increase the probability of women returning to their pre-birth employer.

¹⁵ Espinola-Arredondo and Mondal (2009) add that the impact of the Family and Medical Leave Act (FMLA) on female employment rates has been positive and significant in states that complement the benefits and eligibility criteria of FMLA.

But leave might be longer in some countries (e.g. Austria, France, Germany, and Norway). A short-term effect of 2-3 years of leave has been to increase the time women spend off work. The long-term effects of these long periods of paid leave on labour market outcomes show mixed results, however. Norway, for example, introduced a “cash-for-care” allowance in 1998 for women who leave the labour market to care for a newborn child for up to three years, with a part-time option. A few months after the allowance was introduced, the main effect was that women with children aged up to two years old shifted from full-time to part-time work (Ronsen, 2009). Some years later, they were more likely to leave work completely and receive the full rate of benefit. In all, Schone (2004) found that “cash-for-care” payment prompted an average 4% fall in the labour force participation of women with children below the age of three – with high-earning households and those with high levels of educational attainment being relatively less likely to take up the benefits (Aassve and Lappegard, 2009). In 1985, France also introduced a three-year cash-for-care allowance for women with three children, before extending it to households with two in 1994. As in Norway, this extension of parental care allowance led to an 11% reduction in the employment rate of mothers with a second child under three years of age (Piketty, 2005). Evidence for Germany and Austria also suggests that long leave entitlements significantly increase the time women spend out of work, but not that they have a significant impact on the female labour supply. Germany had lengthened the duration of paid leave a number of times over the decades before shortening it in its most recent reform (in 2007). The earlier increases in the length of paid leave have been found to affect employment rates more than recent ones. Schönberg and Ludsteck (2007) show that the extension in job-protected paid leave in Germany from two to six months in 1979 prompted the most delays in returns to work, while the 18-to-36 month extension in 1992 led to the least. Austria has also made several changes to its leave legislation over recent decades, enacting two major reforms in 1990 and 1996. In 1990, it lengthened the maximum duration of parental leave by one year - from a child’s first to second birthday – before cutting it from 24 to 18 months.¹⁶ Neyer (1998) and Lalive and Zweimüller (2005) concluded that the 1990 increase led to a significantly longer time effectively spent out of work. Some of this expansion was due to a subsequent birth, because the expansion of parental leave made it easier for women to acquire entitlements to parental leave benefits without employment in case of a second or subsequent birth (Neyer, 1998). The depressing effect on employment rates seems to have lingered on, even after the mandated

¹⁶ The reform of 1996 allocated 6 months of the parental leave benefits to fathers, which in essence resulted in a cut of parental leave benefit (and duration) for women from 24 to 18 months.

period of leave came to an end, with a reduction of 11 percentage points in the probability of being back at work within 36 months of a child being born. The same authors also point out that parents resuming work after the job-protected period expires experience unwelcomed labour market outcomes contrary to those who re-enter before (Lalive and Zweimüller, 2009). Lalive *et al.* (2011) disentangle the effects of the job-protection guarantee from those of income support in Austria by considering variations in paid parental leave durations for a constant period of job protection. Even correlated, the duration of payment is identified as the main determinant. Pronzato (2009) interprets differences in the times that women resume work after having their baby in cross-national perspective within Europe between 1994 and 2001 as a consequence of variations in leave entitlements. She suggests that although job guarantees have no significant effect during the child's first year, they do during the second and third years. By contrast, leave payments do appear to postpone returns to work within the first year of a child's life, though not thereafter.

A number of studies have also looked at the effect of leave mandates on earnings in the short and long run. Most observe a negative impact: women who make full use of their maternity or parental leave entitlements receive, on average, lower wages in the years following their resumption of work than those who return before leave expires. Evidence on how long this effect lasts is mixed, however. Several studies identify the persistence of wage penalties even as earnings grow. In Germany, for example, each year of leave is estimated to lower the wage received upon resuming work by 6% to 20% (Ondrich *et al.*, 2002; Kunze and Ejrnaes, 2011; Beblo *et al.*, 2006). Schönberg and Ludsteck (2007) find that wage penalties can be observed as long as eight years after a mother returns to work. Lequien (2012) observes that in France – where the three-year paid leave period was extended to families with two children in 1994 – wage growth over the six years following the birth of a second child is lower among women who gave birth after the reform than among those who did so before. Each year of absence from work – up to 10 years after the reform – is estimated to lower wages by 7% to 17%. These results, however, are challenged by studies that find no adverse effect on mothers' labour market outcomes in the medium or long term. For example, Lalive *et al.* (2011) did not discover any wage penalty in Austria, suggesting that the assurance of returning to the same or a comparable job is a good arrangement for protecting earnings. Zhang (2010) advances the same argument, estimating that Canadian mothers who return to work apparently recover their lost earnings in about seven years. Mothers who return to their original employers recover their wage levels fastest, even though they incur substantial income losses in the first two years after resuming work. Estimating the effect of different

work-family policies on women's employment and wages across several countries, Misra et al. (2011) find that there is no uniform effect. Some policies, such as paid maternity leave and childcare, may have supportive effects for mothers' amount of work and their wages, while parental leave, in particular long leaves, incur child penalties on women's hourly work and wages.

The relationship between extensions of leave entitlements, labour market outcomes, and gender differences has seldom been examined at the macro level (except Jaumotte, 2003) since the most prominent study of Ruhm (1998), which looks at the impact of paid leave durations on employment trends in nine European countries¹⁷ from 1969 to 1993. More recently, Thévenon and Solaz (2013) looked at the long-run consequences of extended paid leave on female, male, and gender differences in prime-age (25-54) employment rates, average working hours, and earnings in 30 OECD countries from 1970 to 2010. They find that extensions of paid leave lengths have a positive, albeit small, influence on female employment rates and on the gender ratio of employment, as long as the total period of paid leave is no longer than approximately two years. Additional weeks of leave, however, exert a negative effect on female employment and the gender employment gap. This paper also finds that weeks of paid leave positively affect the average number of hours worked by women relative to men, though on condition – once again – that the total duration of leave does not exceed certain limits. By contrast, the provision of paid leave widens the earnings gender gap among full-time employees.

Perhaps the Nordic parental leave programs with generous earnings-related benefits are forerunners in encouraging parents' fast and universal return to labour market work. However, the patterns of use of the individual parent seem to matter. Albrecht et al. (1999) find that men's long leave decreases income development upon return to work. The same is not found for women, probably caused by a gender-segregated labour market and flat wage development in typical female occupations. These results may, however, change over time, and Evertsson and Duvander (2010) find that especially in the 1990s a long leave among mothers decreases chances of career mobility.

III.3 Effect of parental leave entitlements on fertility

Few cross-national studies provide an assessment of the influence of leave entitlements on fertility rates. The duration of leave entitlements is often estimated to be negative or not

¹⁷ These nine countries are: Denmark, Finland, France, Germany, Greece, Ireland, Italy, Norway and Sweden.

statistically significant. By contrast, payment conditions for leave seem to be a more decisive parameter on Total Fertility Rates (D'Addio and Mira d'Ercole, 2005; Luci and Thévenon, 2011), which may primarily reflect an impact on the timing of births (Kalwij, 2010). Analyses of national data confirm this result, especially in the Scandinavian countries where maternity/parental leave is relatively generous (Hoem, 1993; Oláh, 2003; Ronsen, 2004; Ronsen and Skrede, 2008). In particular, the premium on paid parental leave when a second child is born soon after the first, introduced in the mid-1980s in Sweden, seems to have reduced the spacing of births, a phenomenon that has persisted regardless of economic cycles (Neyer and Andersson, 2008). The policy on leave therefore seems to have accelerated the tempo of births. This holds for parents of all educational groups (Andersson et al., 2006). The impact on completed fertility is nevertheless uncertain, even though Swedish policies to facilitate the work-family balance have certainly been a factor in minimising differences in fertility behaviour by education level (Neyer and Andersson, 2008; Andersson et al., 2009).

Other countries have focused on a longer period of leave but compensated on a flat-rate basis. Positive effects on fertility are observed, but they are strongly differentiated by income level and social category. Aassve and Lappegard (2009) working on Norway estimate that the child home care allowance for parents who mind their children at home is more frequently taken up by traditional households where the woman has a low level of education and a low income, and that it encourages such households to have a second child sooner. The allowance also speeds up the birth of a third child (Lappegard, 2009). Vikat (2004) observes that the probability of having a third child was highest among women receiving the child home care allowance in Finland in the mid-1990s. Similarly in France, Piketty (2005) estimates that the extension of the Allocation Parentale d'Education (an allowance for parents who give up work to raise children) to parents of two children accounted for at most 20%-30% of the increase in births observed between 1994 and 2001 (at most 10% of births of third children, and between 10% and 20% of births of second children). Women with a lower education level, relatively poor employment conditions or few opportunities to return to the workforce have a greater propensity to take up this benefit.

In some countries, parental leave entitlements are designed to encourage fathers to care for their children. There is currently no clear evaluation of the impact of such specific entitlements on fertility behaviour, but they may have an impact on fertility decision since some research pointed out that the involvement of fathers in caring for the first child is a favourable factor in the timing of the second child (Oláh, 2003; Duvander and Andersson, 2006; Duvander et al., 2010; Lappegard, 2009; Skrede, 2005). In other words, policies

fostering a more equal sharing of domestic tasks between spouses may provide an additional incentive for households to realize their fertility intentions (see, e.g., McDonald, 2000; Neyer et al., 2013).

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Chapter 4: Legal family formats for (same-sex) couples

By Kees Waaldijk

IV.1 National legislation extending the range of available formats

For a long time, across Europe, the only available legal family format for a couple was marriage, different-sex marriage. By marrying each other, the partners triggered a range of legal rights and responsibilities, between themselves and in relation to any children and others. However, over the last 40 years, in response to what the European Court of Human Rights now calls the need of same-sex and different-sex couples ‘for legal recognition and protection of their relationship’,¹⁸ new legal family formats have been created and have been made available to same-sex and/or different-sex couples. Examples are registered partnership, civil partnership, legal cohabitation, de facto union, etc. This has been happening in a growing number of countries, and recently some of these countries have also opened up marriage to same-sex couples. In most member states of the European Union, and in a handful of other European countries, now at least one legal family format is available to same-sex couples (see *Table 1*).¹⁹

In spite of the lack of uniformity between the legislation of different European countries, it seems that the picture of Europe’s map is becoming less diverse than a few years ago. With the opening up of marriage in France and soon in Great Britain and Luxembourg, the situation will be as follows (see also *Tables 1 and 2*): All countries in the North-Western part of Europe (from Spain to Finland), plus some countries in central Europe (Austria, Hungary, Slovenia) are allowing same-sex couples to enter into a legal format that is either called marriage or that entails almost all of the legal consequences of marriage. In the countries in the South-Eastern part of Europe (from Italy to Russia) this is not yet the case, although some of the rights of marriage are available in Croatia and the Czech Republic, while it seems that at least one of those many rights has been extended to same-sex partners in Poland, Italy and Serbia.²⁰

¹⁸ ECtHR 24 June 2010, *Schalk & Kopf v Austria*, App. 30141/04, par. 99 (for case law of the ECtHR, see chr.coe.int/hudoc).

¹⁹ For sources of most data in *Table 1*, see Waaldijk, 2009; Paoli Itaborahy & Zhu, 2013.

²⁰ For the applicability to same-sex couples of the legal protection against domestic violence in Serbia, see Cvejić Jančić, 2010, p. 81.

Table 1: Chronology of the 25 European countries that legally recognize same-sex couples

	Is there any legal recognition of <i>informal cohabitation</i> of same-sex couples? If so, since when?	Can same-sex couples enter into a <i>registered partnership</i> ? If so, since when?	Do same-sex couples have access to <i>civil marriage</i> ? If so, since when?
Netherlands	1979	1998	2001
Belgium	1996	2000	2003
Spain	1994	regionally since 1998	2005
Norway	1991	no longer (1993-2009)	2009
Sweden	1988	no longer (1995-2009)	2009
Iceland	1994?	no longer (1996-2010)	2010
Portugal	2001	no	2010
Denmark	1986	no longer (1989-2012)	2012
France	1993	1999	2013
Greenland (DK)	?	1996	in preparation?
Germany	2001	2001	no
Finland	2001?	2002	in preparation?
Luxembourg	?	2004	in preparation
England & Wales (UK)	1999	2005	2014?
Scotland (UK)	2000	2005	in preparation
Northern Ireland (UK)	?	2005	no
Czech Republic	?	2006	no
Slovenia	?	2006	no
Andorra	?	2006	no
Switzerland	2000?	2007	no
Hungary	1996	2009	no
Austria	1998	2010	no
Ireland	1995	2011	in preparation?
Liechtenstein	?	2011	no
Jersey (UK)	?	2011	no
Isle of Man (UK)	?	2012	no
Croatia	2003	no	no
Serbia	2005?	no	no
Italy	2011?	no	no
Poland	2012	no	no
Malta	in preparation	in preparation	no
Estonia	?	in preparation?	no
Greece	?	in preparation?	no

In both halves of the continent further developments are under way. Plans for (more) recognition of same-sex partners are being discussed in Slovenia, Malta, and other countries.²¹ The opening up of marriage is being expected soon in England and Wales, Scotland and Luxembourg, and within a few years in Greenland, Finland and Ireland, while in Portugal, Austria, the Netherlands and Denmark legislation is underway to increase the possibilities for same-sex partners to jointly become legal parents of the children in their family, something that has also been effected by recent case law in Germany.²² It is not quite clear whether the trend of growing legal recognition is equally strong with respect to different-sex couples that do not (want to) marry.

IV.2 Academic literature trying to classify the new formats

Authors of comparative law and other disciplines have been struggling to find suitable classifications for the new legal family formats. Several authors speak about registered partnership as a form of (unmarried, non-marital) ‘cohabitation’.²³ Others see cohabitation and registered partnership as two distinct alternatives to marriage.²⁴ The main problem in the many classifications that have so far been proposed (see *Table 2*), is that different criteria are being used – often simultaneously. These criteria include: the legal name used for a format (‘marriage’), the procedure that is required to use the format (‘registration’), the place in legal doctrine that the format has been given (‘contract’, ‘civil status’), the level of legal consequences that is attached to a format (‘strong’ or ‘weak’ registration, ‘some’ or ‘most’ rights of marriage), and the general similarity to marriage (‘non-marital’, ‘quasi-marriage’, ‘semi-marriage’).

The ‘life partnership’ in Germany is a good example of the difficulties of classification. Introduced in 2001, it was at first mostly classified as ‘registered cohabitation’, ‘semi-marriage’ or ‘weak registration’. However, after more legal consequences had been attached to it, by legislation and by case law,²⁵ it is now mostly seen as a ‘strong’ form of registered partnership entailing most rights of marriage. The same could be said about registered partnership in Slovenia.

²¹ On 7 November 2013 the ECtHR decided that it is not acceptable that registered partnership in Greece is only available to different-sex couples (case of *Valianatos v Greece*, App. 29381/09 and 32684/09, par. 92).

²² *Bundesverfassungsgericht* (Constitutional Court, Germany) 19 February 2013, 1 BvL 1/11, www.bverfg.de/entscheidungen/ls20130219_1bvl000111.html.

²³ Bradley, 2001; Barlow, 2004; Perelli-Harris & Sánchez Gassen, 2012.

²⁴ Wintemute, 2001, p. 764; Waaldijk, 2005.

²⁵ See Scherpe, 2013, p. 92.

Table 2: Classifications of legal family formats for non-marital couples

Authors using or proposing a classification	Countries with one or more new legal family formats for same-sex (and different-sex) couples					
	<i>italics = for same-sex only</i>					
	Netherlands Denmark Norway Spain Iceland Hungary etc.	Sweden parts Spain Portugal Croatia, etc. [Slovenia for different-sex only]	Belgium parts Spain Iceland	France parts Spain [Greece for different-sex only]	<i>Czech Republic</i> [at first <i>Germany and Slovenia</i>]	<i>Netherlands Finland UK Switzerland Hungary Ire-land Austria Germany Slovenia</i>
Barlow, 2004	cohabitation					
Bradley, 2001	unmarried cohabitation					
Perelli-Harris & Sánchez Gassen, 2012	cohabitation (unregistered)			cohabitation (registered)		
Forder, 2000	cohabitation protection by operation of law		optional co-habitation protection	enrolled contract	partnership registration	
Fulchiron, 2000	'unions libres'		'partenariats-cadres'		'partenariats-statuts'	
Kessler, 2004			'partenariats contrats'		'partenariats institutions'	
Coester, 2002	piecemeal regulation	domestic partnership (cohabitants) legislation	registered partnership			
Scherpe, 2005	simple partnership (for specific purpose(s))	simple partnership (for 'bundle' of purposes)	formalized partnership ('formalisierte Lebensgemeinschaft')			
Waaldijk, 2005	informal cohabitation		registered partnership			
Kollman, 2007	unregistered partnership		registered partnership			
Wintemute, 2001	unregistered cohabitation		registered cohabitation			registered partnership
Bell, 2004	cohabitation		legally recognized partnership			registered partnership
Waaldijk, 2004	para-marriage		semi-marriage			quasi-marriage
Curry-Sumner, 2005	unregistered forms of cohabitation		non-marital registered relationships (weak registration)			non-marital registered relationships (strong regist.)
Curry-Sumner, 2012	unregistered relationship forms		registered partnership (weak registration)			registered partnership (strong regist.)
Paoli Itaborahy & Zhu, 2013	some rights of marriage					most or all rights of marriage

The challenge of classification is also highlighted by Scherpe, who points out that in some jurisdictions a mix of ‘simple’ and ‘formalized’ partnership has been created.²⁶ Gonzalez Beilfuss describes a few examples of this ‘double-track model’: In some regions of Spain the legal recognition applies automatically after living together for two or three years or having a child together, but it is also possible for the couple to ‘enter the institution through a private contract recorded in a public deed’.²⁷

It is clear from *Table 2* that no consensus on classification has been reached in (legal) literature. (In fact, some authors may not agree with how I have used their classification to group the countries at the top of *Table 2*.) Nevertheless, it seems that for formats not involving registration the words used most frequently are ‘cohabitation’ and ‘unregistered’. Because the word ‘cohabitation’ is easy to understand, and because ‘unregistered’ is somewhat confusing in its suggestion of a previous registration that has been un-done, I will stick to my preference for the phrase ‘informal cohabitation’,²⁸ as in *Table 1*.

For formats that do involve registration, the phrase ‘registered partnership’ is used most frequently, and I will continue to do so. However, it should be borne in mind that the use of this phrase covers a very wide range of legal formats across Europe. Therefore it will often be useful (for example, when conducting demographic or sociological research) to distinguish between strong and weak forms of registered partnership. Curry-Sumner has proposed to call registration ‘strong’ when there is a ‘near assimilation of the legal effects attributed to registered partners and spouses’.²⁹ In other words, a ‘strong’ registration can be characterized as a ‘quasi-marriage’.³⁰ Typically, such a registration would also be very much like marriage in two other dimensions: the conditions and procedures to enter into it and the procedures to get out of it. A weak form of registered partnership, on the other hand, would entail only a limited selection of the legal consequences attached to marriage.³¹ Typically the conditions and procedures for entering into such a weak registration (a ‘semi-marriage’) would be different from those for marriage, and it would also be easier to get out of it. Occasionally (as the examples of Germany and Slovenia have shown) it may be difficult to decide whether the form of registered partnership enacted by a particular jurisdiction should be classified as

²⁶ Scherpe, 2005, p. 582.

²⁷ González Beilfuss, 2012, p. 47.

²⁸ Waaldijk, 2005. Within this category it will only rarely be necessary to distinguish between piecemeal recognition, and situations where there is one general law on informal cohabitation.

²⁹ Curry-Sumner, 2012, p. 82.

³⁰ Waaldijk, 2004, p. 570.

³¹ Waaldijk, 2004, p. 571.

strong or as weak.³² When the level of legal consequences attached to it is somewhere between ‘a limited selection’ and ‘near assimilation’, then regard can be had to how closely the formalities resemble those of marriage. All this will require a more systematic study (and indeed monitoring) of the rights, responsibilities and formalities attached to the various legal family formats that have been enacted or are being considered in many European countries.

IV.3 European Union legislation hesitantly following some national trends

Just like national lawmakers and legal scholars, the institutions of the European Union have not found it easy to deal with new forms and formats of family life. Family law as such is not a field in which the EU plays an important role. However, in quite a number of its fields of operation (ranging from free movement to accounting standards) family relationships do play a small or bigger part. At EUR-lex.europa.eu, a search for the words ‘marriage’, ‘spouse’ and/or ‘child’ generates a list of more than 500 EU regulations and directives in force today. Only some of these also make reference to non-marital partnerships. *Table 3* gives an overview of the main examples.

The overview makes it very clear that the EU has not yet found one consistent approach to the topic; it uses at least ten different phrases. The overview also shows that – unlike national legislation in some countries – EU legislation does not distinguish between same-sex and different-sex non-marital relationships.³³ This is not surprising, because such a distinction would have been contrary to well-established case law of the European Court of Human Rights (see *Table 4*). Interestingly, none of the examples in *Table 3* is limited to registered partnership; forms of informal cohabitation are normally also covered, provided all substantive and formal conditions are met.

³² See the critical remarks of Curry-Sumner, 2005, p. 308-309.

³³ Whether it is still permissible in EU law to distinguish between same-sex and different-sex marriages that have lawfully been entered into, is a question that has not yet been decided by the Court of Justice of the EU.

Table 3: Main examples of EU legislation on non-marital partners (MS = member state(s))

Area & legislative text	Article	Terms used	Restrictions
Free movement – Directive 2004/38/EC	art. 2(2)	'registered partnership on the basis of the legislation of a MS'	'if ... host MS treats registered partnerships as <i>equivalent</i> to marriage'
	art. 3(2)(a)	'any other family members ... who ... are dependants or members of the household'	MS only have a duty to ' <i>facilitate</i> entry and residence'
	art. 3(2)(b)	' <i>durable</i> relationship, duly attested'	
Family reunification for third country nationals – Directive 2003/86/EC	art. 4(3)	'duly attested <i>stable long-term</i> relationship' or ' <i>registered</i> partnership'	'MS <i>may</i> ... authorize entry and residence'
Asylum seekers – Dir. 2011/95/EU	art. 2(j)	'unmarried partner in a <i>stable</i> relationship'	'where ... MS concerned treats unmarried couples in a way <i>comparable</i> to married couples under its law relating to third country nationals'
Jurisdiction etc. in matters relating to maintenance obligations – Regulation 4/2009	Annex VII, 4	'Certificate of marriage or <i>similar</i> relationship'	
	Annex VII, 9.3.1.7	' <i>Analogous</i> relationship to marriage'	
Staff Regulations of Officials of the EU, as amended by Regulation 723/2004	art. 72(1) & Annex V, art. 6	'unmarried partner'	'legal document ... of a MS, acknowledging their status as non-marital partners'
	art. 1d	'non-marital partnerships'	'legal document ... of a MS, acknowledging their status as non-marital partners' & 'no access to legal marriage in a MS'
	Annex VII, art. 1(2)(c)	'registered as a <i>stable</i> non-marital partner'	
Statute for Members of the European Parliament – Decision 2005/684/EC	art. 17(9)	'partners from relationships recognized in the MS'	
Implementing measures for Statute Members European Parliament – Decision of 19 May & 9 July 2008	art. 3(1)(a) & 58(2)	' <i>stable</i> non-marital partners'	'official document ... of a MS acknowledging their status as non-marital partners'
Equal treatment of men and women in self-employment – Directive 2010/41/EU	art. 2	' <i>life partners</i> '	'when and in so far as recognized by national law'
Accounting standards – Regulation 632/2010	art. 9	' <i>domestic partner</i> ' and 'dependants'	
Victims of crime – Directive 2012/29/EU	art. 2	'the person who is living with the victim in a <i>committed intimate</i> relationship ... and the dependants of the victim'	'in a joint household and on a <i>stable and continuous</i> basis'

Finally it is important to point out that the listed directives and regulations hardly oblige unwilling member states to start to recognize unmarried partners: The obligation typically

only applies when the member state concerned is already recognizing such partners. The only example where all member states are being forced to provide some substantial recognition is the recent Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime. The unease surrounding this novelty becomes apparent in the fact that the relationship not only needs to have a ‘stable and continuous basis’, but that it also must be both ‘committed’ and ‘intimate’.

IV.4 European courts gradually giving more guidance

The European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU, previously CJEC) have been asked several times to rule on (denied) access to certain legal family formats, or to rule on controversial differentiations that have been made between different legal family formats.

As regards access for same-sex couples to civil marriage, the ECtHR has ruled that it is up to the individual countries to decide whether or not to give such access.³⁴ Even when married partners have become ‘same-sex’ through a sex change of one of them, the ECtHR does not (yet) consider it a human rights violation if national law forces them out of their marriage (and into registered partnership).³⁵ However, the court has ruled that transsexuals should not be excluded from the right to enter into a different-gender marriage.³⁶ As regards access to a form of registered partnership or other form of legal recognition of same-sex couples, the ECtHR has ruled that each country enjoys a margin of appreciation ‘in the timing of the introduction of legislative changes’, and that Britain could not be criticized for not doing so until 2005, nor Austria for not doing so until 2010.³⁷

There have been many court challenges claiming that it is discriminatory to distinguish in law between same-sex and different-sex unmarried cohabitants. The only challenge so far at the Court of Justice of the EU (CJEU) was unsuccessful, but that outcome is no longer valid since the Employment Equality Directive (2000/78/EC) came into force in 2003. Also since 2003, the other European court, ECtHR, has consistently held that to distinguish between same-sex and different-sex cohabitants is incompatible with the right to non-discrimination (see *Table 4*).

³⁴ ECtHR 24 June 2010, *Schalk & Kopf v Austria*, App. 30141/04.

³⁵ ECtHR 28 November 2006, *Parry v United Kingdom*, App. 42971/05; ECtHR 13 November 2012, *H v Finland*, App. 37359/09 (now being reconsidered in the Grand Chamber of the ECtHR).

³⁶ ECtHR 11 July 2002, *Goodwin v United Kingdom*, App. 28957/95.

³⁷ ECtHR 4 November 2009, *Courten v United Kingdom*, no. 4479/06; ECtHR 24 June 2010, *Schalk & Kopf v Austria*, App. 30141/04, par. 105-106.

Table 4: Challenges of differentiations between same-sex and different-sex cohabitants

Court	Case	Area	Did court find discrimination?
CJEU 17.2.1998	<i>Grant v SW Trains</i> C-249/96	partner benefits in employment	no, sexual orientation is not covered by prohibition of sex discrimination
ECtHR 24.7.2003	<i>Karner v Austria</i> 40016/98	succession to tenancy after death partner	yes, with respect to home
ECtHR 2.3.2010	<i>Kozak v Poland</i> 13102/02	succession to tenancy after death partner	yes, with respect to home
ECtHR 22.7.2010	<i>PB & JS v Austria</i> 18984/02	sickness insurance	yes, with respect to family life
ECtHR 28.9.2010	<i>JM v United Kingdom</i> 37060/06	calculation of level of child maintenance	yes, with respect to property
ECtHR 19.2.2013	<i>X v Austria</i> 19010/07	second-parent adoption	yes, with respect to family life

Until now, the European courts have not been willing to declare differentiations between marriage and cohabitation to be discriminatory, except in very specific circumstances (see *Table 5* and *Table 6*). However, the ruling of the ECtHR on phone calls from prison suggests that this court may be willing to entertain further challenges to rules that exclude unmarried partners, provided there are no strong counter arguments of the type acknowledged in the case on giving evidence.

Table 5: Challenges of differentiations between different-sex cohabitation and marriage

Court	Case	Area	Did court find discrimination?
CJEC 17.4.1986	<i>Netherlands v Reed</i> C-59/85	right to residence for partner of EC worker	no, in comparison with spouses; yes, in comparison with unmarried partners of Dutch workers
ECtHR 22.5.2008	<i>Petrov v Bulgaria</i> 15197/02	right to use prison phone to call partner	yes, with respect to family life
ECtHR 3.4.2012	<i>Van der Heijden v Netherlands</i> 42857/05	right not to give evidence in criminal proceedings against partner	no, differentiation is justified for the prevention of crime

The only case where one of the two main European courts has honoured the challenge of an unmarried same-sex couple (*Table 6*) must be read in the context of the fairly generous recognition provided in the EU Staff Rules (see *Table 3*). In this case the EU Civil Service Tribunal has given a wide (non-legalistic) interpretation of the condition that non-marital couples will only be given a household allowance if the couple has ‘no access to legal marriage in a member state’.

In the case law of the ECtHR there is no full recognition yet for the fact that in many countries same-sex couples cannot marry (or even register as partners) and that therefore the

exclusion of unmarried partners from certain rights and benefits has a disparate impact on same-sex partners (i.e. is indirectly discriminatory on grounds of sexual orientation).³⁸ The latter argument has been tried several times. In one older case, the Court responded by saying that the differentiation in question was justified by the legitimate aim of protecting the family based on marriage (see *Table 6*). In more recent cases, the typical response of the Court is that in law cohabitation is not similar to marriage (and that therefore the right to non-discrimination is not affected).

Table 6: Challenges of differentiations between same-sex cohabitation and marriage

Court	Case	Area	Did court find discrimination?
ECtHR 10.5.2001	<i>Estevez v Spain</i> 56501/00	survivor's pension	no, differentiation is justified for protection of family based on marriage
ECtHR 29.4.2008	<i>Burden v United Kingdom</i> 13378/05	inheritance tax	no, situation of cohabiting sisters is not analogous with marriage
ECtHR 4.11.2008	<i>Courten v United Kingdom</i> 4479/06	inheritance tax	no, situation of gay cohabitants is not analogous with marriage
ECtHR 23.6.2009	<i>MW v United Kingdom</i> 11313/02	bereavement payment	no, situation of gay cohabitants is not analogous with marriage
EU Civil Service Tribunal 14.10.2010	<i>W v Commission</i> F-86/09	household allowance for EU official	yes, the fact that W and his Moroccan partner are not married should not be used against them, because the situation regarding homosexuality in Morocco makes it not realistic for them to marry in Belgium
ECtHR 19.2.2013	<i>X v Austria</i> 19010/07	second-parent adoption	no, lesbian couple is not in relevantly similar situation as married couple

Finally, there is a growing number of cases in which registered partners demanded to be treated in the same way as married spouses (see *Table 7*). In the first of these cases the EU Court of Justice still emphasized the incomparability of marriage and registered partnership (even in Sweden, where registered partnership was rather strong and quasi-marital). In more recent cases, however, the CJEU has emphasized that it depends on whether the actual legal situation of registered partners and married spouses is comparable, and it suggested that – in the context of pension law – the situation of German registered life partners should indeed be considered as comparable to that of spouses. It seems that this is also the approach of the ECtHR, but the two cases this Court has had to decide so far both concerned France, and the

³⁸ Johnson, 2013, p. 139; Waaldijk, 2012, par. 10, 22, 31.

conclusion was that – as regards pensions and as regards adoption – the legal situation of people in a PaCS (*pacte civil de solidarité*) is not similar to marriage.³⁹

Table 7: Challenges of differentiations between registered partnership and marriage

Court	Case	Area	Did court find discrimination?
CJEC 31.5.2001	<i>D & Sweden v Council</i> C-122/99 & C-125/99	household allowance for EU official	no, (Swedish) registered partnership is distinct from marriage
CJEU 1.4.2008	<i>Maruko v</i> <i>Versorgungsanstalt der</i> <i>deutschen Bühnen</i> C-267/06	survivor's pension	yes, assuming that in Germany the situation of registered partners is comparable to marriage, their exclusion from a pension amounts to direct sexual orientation discrimination
ECtHR 21.9.2010	<i>Manenc v France</i> 66686/09	survivor's pension	no, PaCS in France is not analogous with marriage
CJEU 10.5.2011	<i>Römer v Hamburg</i> C-147/08	retirement pension	yes, situation of registered partners in Germany is comparable to marriage
ECtHR 15.3.2012	<i>Gas & Dubois v France</i> 25951/07	second-parent adoption	no, legal situation of lesbian couple in PaCS is not comparable to marriage

All in all, the main European courts have only provided little concrete recognition of same-sex and non-marital relationships. And the recognition they have so far offered is mostly depending on whether the national legislation in question already provides some legal recognition. It is a similar phenomenon as what we have seen in EU legislation (see *Table 3*).

This somewhat limited judicial harvest (which echoes the often slow, hesitant or limited developments in national and EU legislation, see *Table 1*, *Table 2* and *Table 3*) seems to contrast with the more general and quite inclusive language that is often used by the ECtHR in the very same judgments. The Court has repeatedly recognized, for example, that the right to respect for private life encompasses the ‘right to establish and develop relationships with other human beings’.⁴⁰ It has ruled that non-marital partnerships are covered also by the right to respect for family life,⁴¹ and that this includes same-sex partnerships.⁴² It has mentioned ‘the fact that there is not just one way or one choice when it comes to leading one’s family or private life’,⁴³ and it is aware of the ‘rapid evolution of social attitudes towards same-sex couples’.⁴⁴ It has acknowledged that ‘the consensus among European States in favour of

³⁹ See Johnson, 2013, p. 138.

⁴⁰ See for example ECtHR 22 January 2008, *EB v France*, App. 43546/02, par. 43 and 49; on this ‘right to relate’ in general, see Waaldijk, 2013.

⁴¹ ECtHR 18 December 1986, *ston v Ireland*, App. 9697/82, par. 55-56.

⁴² ECtHR 24 June 2010, *Schalk & Kopf v. Austria*, App. 30141/04, par. 94.

⁴³ ECtHR 19 February 2013, *X v Austria*, App. 19010/07, par. 139; see also ECtHR 2 Maart 2010, *Kozak v Poland*, App. 13102/02, par. 98; and ECtHR 7 November 2013, *Vallianatos v Greece*, App. 29381/09 and 32684/09, par. 84.

⁴⁴ ECtHR 22 July 2010, *PB & JS v Austria*, App. 18984/02, par 29.

assimilating same-sex relationships to heterosexual relationships has undoubtedly strengthened' (since 2001),⁴⁵ and that a 'growing tendency to include same-sex couples in the notion of "family"' is also reflected in EU legislation.⁴⁶ The Court has stressed the 'importance of granting legal recognition to *de facto* family life',⁴⁷ and it has held that 'same-sex couples are just as capable as different-sex couples of entering into stable committed relationships' and that consequently they are 'in a relevantly similar situation to a different-sex couple as regards their need for legal recognition and protection of their relationship'.⁴⁸ The Court acknowledged that for a same-sex couple 'an officially recognised alternative to marriage (would) have an intrinsic value', irrespective of its legal effects, and that '(s)ame-sex couples sharing their lives have the same needs in terms of mutual support and assistance as different-sex couples'.⁴⁹ Furthermore, it has consistently held that 'differences based on sexual orientation require particularly serious reasons by way of justification',⁵⁰ and that the exclusion must be shown to be 'necessary' in order to achieve the legitimate aim.⁵¹ And it ruled that 'a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy cannot be accepted (...) as necessary for the protection of the family viewed in its traditional sense'.⁵²

All this may be seen as an indication that the European Court of Human Rights is contemplating to take more steps towards full legal recognition of same-sex and non-marital families than it has taken so far. The Court also seems to be encouraging lawmakers to extend greater legal protection and recognition to new forms of family life, and to provide access to legal family formats that meet the needs of the couples and children concerned. This makes it all the more probable that – for researchers and practitioners – this area of law will remain a moving target, both at national and at European level.

⁴⁵ ECtHR 28 September 2010, *JM v United Kingdom*, App. 37060/06, par. 50.

⁴⁶ ECtHR 24 June 2010, *Schalk & Kopf v Austria*, App. 30141/04, par 93.

⁴⁷ ECtHR 19 February 2013, *X v Austria*, App. 19010/07, par. 145.

⁴⁸ ECtHR 24 June 2010, *Schalk & Kopf v Austria*, App. 30141/04, par. 99; see also ECtHR 15 January 2013, *Eweida v United Kingdom*, App. 48420/10, 59842/10, 51671/10 and 36516/10, par 105.; and ECtHR 7 November 2013, *Vallianatos v Greece*, App. 29381/09 and 32684/09, par. 78.

⁴⁹ ECtHR 7 November 2013, *Vallianatos v Greece*, App. 29381/09 and 32684/09, par. 81.

⁵⁰ ECtHR 24 July 2003, *Karner v Austria*, App. 40016/98, par. 37.

⁵¹ ECtHR 24 July 2003, *Karner v Austria*, App. 40016/98, par. 41.

⁵² ECtHR 2 Maart 2010, *Kozak v Poland*, App. 13102/02, par. 99.

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Chapter 5: Migration and care/domestic work in two institutional contexts: Sweden and Spain

By Barbara Hobson and Zenia Hellgren

There has been a growing demand for care/domestic work across European societies filled by a supply of migrant workers, resulting from several inter-related developments. From the supply side, increasing levels of female transnational migrants from less wealthy nations are meeting the growing demand for care/domestic workers from the richer nations (Anderson, 2000; Lutz, 2008; Parreñas, 2001; Ehrenreich and Hochschild, 2003). The demand for migrant care/domestic workers is a response to a care deficit resulting from women's increased labour force participation during a period of welfare state restructuring, including reductions in public provisions in some welfare states as well as the low social investment in care in others (Daly and Lewis, 2000; Mahon, 2010). However one must also take into account the emergence of special policies that have offered specific policy incentives such as vouchers and tax subsidies that encourage private markets care (Morel 2007; Williams, 2012).

The EU has played a role in shaping these policy changes, e.g., within the context of the Barcelona targets for childcare places. The EU has recommended reductions in the statutory charges (taxes and social contributions of employers and employees) and fiscal measures such as tax deductions and/or credits, that would lead to a rapid growth in the use of private child-minders, rather than encouraging expenditures to develop more public childcare services (Morel, 2007). These policy recommendations are in line with broader goals of promoting employment for low-skilled unemployed as well as activating the labor force of high skilled women (Hobson, 2013). In many EU countries, we have seen the emergence of specific policies that offer incentives that have the effect of greater privatization of care/domestic work and services, including tax credits and voucher systems and allowances for hiring care/domestic workers (Van Hooren, 2011; Morel 2007). Nevertheless across welfare states there are historical and institutional contextual differences that define policy choices and processes shaping the demand and supply of migrant care work (Brennan and Mahon, 2011; Isaksen, 2010) and how these are translated into the everyday lives and patterns of exclusion/inclusion of migrant care workers.

In the following sections, we summarize the core studies in the research terrain on care and migration; then we address the policy dimensions that are relevant to our comparative project. Finally we present the knowledge and research gaps.

V.1 Migration and care in contemporary research

Migration and care is an emergent research area. Parreñas (2001) was one of the pioneers: her pathbreaking study of Filipino domestic workers in private households in Rome and Los Angeles conceptualized the “international system” of the division of reproductive labor in which women left their own families to be cared by others (usually other women) in order to take up the care needs of women in richer countries. This process has come to be known as the global care chain, through the seminal work of Ehrenreich and Hochschild (2003) based upon their ethnographic studies of migrant-care work in the US.

Since the pioneer works on trans-national migration care workers from South to North, known as the global care chain (Parreñas, 2001; Ehrenreich and Hochschild, 2003), there has been a flowering of literature on the micro-politics of care and migration. Extending the research terrain, Helma Lutz’s (2008) edited collection *Migration and Domestic Work* focuses on the intersections of gender, care and migration regimes. In addition, the dichotomy between ‘sending’ and ‘receiving’ countries is blurred where some Eastern European countries, such as Poland, are positioned to both send and receive migrant workers (Lutz and Palenga-Möllnbeck, 2010).

There is a rich literature on the role of care markets in shaping the employment conditions of migrant care/domestic workers considering a range of factors: whether employment is in the private or public sector; in private homes or institutions; whether one is employed in the informal or formal economy, though there is often a blurring of boundaries between them (Gavanas 2010; thematic issue of *Journal of Social Policy*; 2012) Simonazzi (2009) has coined the concept of employment regime to capture these variations and gradations in the care market, which cannot be separated from other welfare/care configurations and welfare state change.

Another important thrust in the research field has been on immigration laws and controls and their effect on micro-level relations in care. Most agree that migrant status is a crucial factor in the employment rights, wages and conditions of work. However, Ruhs and Anderson (2010) make an important distinction that not just illegality, but the positioning of migrants in the labor market also sets the terms and conditions of migrant care/domestic workers. Permits and contracts in care/domestic work can bind a migrant to her employer without any possibility to exit harsh conditions (Anderson, 2010).

For the most part the research on migration and care/domestic work has been single case studies. The qualitative ethnographic studies in three European cities of care/domestic workers and their employers by Williams and Gavanas (2008) were groundbreaking in

conceptualizing the intersections of childcare and migration in three welfare regimes. Shutes and Chiatti (2012) have compared long term care in Italy and the UK. In her dissertation, Van Hooren (2011) compares the Netherlands, Italy and the UK and considers how different institutional contexts encourage or allow the employment of migrant care workers, while others discourage it or opt for alternative means to organise care services. Despite a growing literature in migration and care, there is lack of systematic comparative studies, and in particular, those with the multi-dimensional lens that is needed for the kind of research that we apply in this project, covering the macro policy, meso and micro levels.

Fiona Williams has been the pivotal figure in this research field in conceptualizing the intersections in policy domains (regimes) shaping migrant care work — welfare/care regimes, migration regimes, and public/private markets (Williams and Gavanas, 2008. Williams, 2010). She has set the agenda in migration and care, calling for more comparative research encompassing micro-macro-meso aspects for contextualizing migrant care domestic work. Bringing these multiple dimensions and levels of analysis into a comparative research framework will enable us to understand the mechanisms shaping the convergences and divergences in migrant care work in European societies (Williams, 2010; Kilkey et al., 2010).

V.2 Convergence and divergence: a multi-dimensional approach

Two general patterns can be observed in European societies that reflect the intersections of migration and care: an expansion in privatization/marketization of care/domestic work and the use of migrants to perform these tasks. These migrants comprise a low wage sector, many of whom work informally and lack the social benefits and rights and protections of the majority in the receiving country (Anderson, 2000; Lutz, 2008; León, 2010). Within this ostensible convergence in trans-national migration and care/domestic work, there is heterogeneity and diversity reflected in the patterns in formal/informal care markets and in the regulation of the employment and conditions of work of migrants. These differences reveal broader processes of inclusion and exclusion of migrants (Anderson, 2000). Spain and Sweden, the two countries which will be compared in the task on migration and care of the “FamiliesAndSocieties” project, have both experienced an expansion in private markets for care over the last decades. However, they differ in gender and employment, in the level of migration, and in informal labor markets, evidenced in the systems of regulation and governance of care markets and in the variations in social care (the care regime). Most recently they show different trajectories regarding the impact of the financial crisis on

capabilities, well-being and quality of life of families, and in particular, on the effects on migrants who are one of the most vulnerable groups. Differences are not only found on the macro-level, that is, in care/welfare regimes, but also on the meso-level, that is, on the level of civil society actors, and on the micro-level, that is, on the level of the individual.

V.2.1 Care/welfare regimes

The care regime has been a key concept in comparative research and operationalized in terms of how care needs of individuals are met, organized and financed in societies (Anttonen and Sippilä, 1996). Path dependencies can be seen in the public and private mix of care (Daly, 2002), but also preferences in care (what Pfau-Effinger (2005) refers to as care cultures), whether there is preference for care in the home or for childcare centers (Bettio et. al., 2006 and Simonazzi, 2009).

Sweden and Spain represent countries with divergent care regimes that shape the extent and types of migrant carework: The Spanish care regime has been described as a triad of familialism, precariousness (use of cheap foreign labor) and a lack of welfarism (e.g. Recio Cáceres, 2010; Peterson, 2007); Sweden is the exemplar of the institutional dual earner model (Korpi, 2000; Hobson and Oláh, 2006) with high levels of women's employment and extensive public provisioning for childcare and elderly. Along the dimension of care and migration, there are similar patterns in terms of the expansion in the sector and the increasing role of private markets in care/domestic work in which migrants dominate (Hellgren and Hobson, 2011; Kvist, 2013). Both countries have incentive structures, such as tax subsidies and payments for households to purchase childcare and elderly care. However, there are differences in relation to tolerance for formal/informal work, the levels of precarious work (employment regime) and the ways in which public and private care sectors operate.

V.2.2 Employment regimes and markets for care

Research on care/domestic markets highlights a range of factors shaping the working conditions of migrant care/domestic workers: whether employment is in the private or public sector; in private homes or institutions; whether one is employed in the informal or formal economy (Gavanas, 2010). Sweden and Spain represent different ends of the spectrum in terms of precarious employment and tolerance for informal work. Spain has some of the highest levels of undeclared work and precariousness in employment and Sweden some of the

lowest reported figures (Riedmann and Fischer, 2007). Sweden is cast as a highly coordinated market economy in the Varieties of Capitalism paradigm (Hall and Soskice, 2001), reflected in the high levels of union membership and collective bargain coverage; however, migrant care/domestic workers in private households have not been organized or brought into the wage bargaining system. Spain has been characterized as a segmented market economy with protections and rights for insiders and precariousness and few employment rights for outsiders. Yet, in the sector of domestic/care work, Sweden and Spain may be moving closer together in terms of dual labor markets, insiders and outsiders (Banyuls et al., 2009).

Simonazzi (2009) speaks of employment regime to capture these variations and gradations in the care market, which cannot be separated from other welfare/care configurations. Employment and welfare-state policies, including policies regulating immigration, employment, and residence rights of migrants, influence the size and structure of care markets, the formal/informal characteristics of the sector. Both Sweden and Spain have experienced an expansion in the private market for care/domestic work (Gavanas, 2010; León, 2010). In Sweden there has been a dramatic expansion in domestic/care work in private homes for the elderly and young couples with children (Sköld and Heggemann, 2011), as the result of a generous tax subsidy, the RUT (Kvist, 2013; Peterson, 2013). Since the RUT subsidy was implemented in 2007, there has been an exponential increase in the firms offering these services (Gavanas, 2010).

In Spain there is a cash payment for care of children; 100 Euros per month, but this is limited to working mothers and only paid until the child is 3 years old. Regarding the elderly, the much debated “Dependency law” was implemented by the then Socialist government in 2006. It allowed families to apply for subsidies to cover costs for eldercare. These subsidies were, however, far from sufficient (Casado and Fantova, 2007), and are currently undergoing significant cutdowns; for instance, family members can no longer be recognized as carers.

Increasing care needs and insufficient welfare provision have created a demand for private care/domestic work, largely filled by migrant labor (Recio Cáceres, 2010). Within the migration and care literature, it is assumed that the cash payments when regulated create a formal care market and better working conditions (Simonazzi, 2009; Kvist, 2013), and conversely that unconditional cash payments paid directly as a subsidy without any control policy reproduce the precariousness and informality in the market. In Spain, direct cash payments to families facilitate informal care markets and undermine formalization. Yet, the link between policies, subsidies to those in need of care or to those requesting help, and the formalization/informalization of care markets still needs to be investigated empirically.

Studies of migration and care/domestic work suggest that informalization and lack of regulation result in poor conditions of work for migrants (Bettio et. al., 2006). Shutes and Chiatti (2012) furthermore maintain that migrant status affects the exit possibilities to change jobs. However, how systems of governance affect care markets and conditions of employment for migrant domestic care workers needs to be contextualized and addressed in empirical investigations. In Spain, domestic workers were excluded from the general labor law, until a change in the law in 2011, which required employers (households) in the domestic sector to offer a written contract with the same conditions that were applied in other sectors. However, domestic workers still do not have access to unemployment benefits. This law was modified in 2012 and in 2013 so that employers only have to offer a contract if they hire someone for more than 60 hours per month, but do not have to pay social security costs for those they employ for less hours (in those cases, the worker is required to pay these costs). The law was intended to formalize this sector; however, it is uncertain to what extent the law is actually being followed (León, 2013). The same motivation lay behind the RUT tax subsidizing in Sweden, but it is also not clear whether the reform has had the desired effect of transforming informal work into formal one (Gavanas, 2010). Both in Spain and Sweden there may be unintended consequences in the formalization policies; the blurring of boundaries between formal and informal care/domestic employment, but little is known about such consequences so far.

V.3 Challenges

V.3.1 Civil society actors

One of the major gaps in literature on migration and care is the role of stakeholders and civil society actors. Although studies have addressed the role of civil society actors for migrants' access to rights and better working conditions in Spain, little research in Sweden exists on this dimension of the migrant situation. Hellgren's dissertation represents a pioneer work in this area (Hellgren, 2012). There is almost no research that specifically considers the migrant care/domestic work situation in either country, though internationally the ILO has been a crucial actor in setting standards for domestic care work (León, 2013). Peterson's study of an advocacy group for domestic workers in Spain is an exception (Peterson, 2007).

Migrants' opportunities to achieve social inclusion in the society where they live and work depend on a variety of factors, including the migration regime, the welfare regime, the structure of the labor market, and the autochthonous population's attitudes towards

immigration and cultural diversity. Migrant workers in general, and those who are undocumented in particular, represent a group with extremely low bargaining position on the labor market. They may arrive in the country of immigration without any knowledge of laws and rights, where to turn to find housing and to look for a job, or if they encounter problems with their employers, who could defend their interests. Civil society actors also provide networks for employment and protections for undocumented workers (Hellgren, 2012; Gavanas, 2010; Penninx, 2004). Furthermore, social inclusion or social membership may be negotiated through different forms of interaction between stakeholders, acting on behalf of migrants at the policy level for new laws and in their everyday relations with employers and with authorities at the municipal, state, or national level (Hellgren, 2012).

In Sweden, there are no specific organizations addressing the situation of migrant domestic workers. In Spain, PATH (Platform for Associations of Domestic Workers) was formed to promote the interests of domestic workers: to inform political and social actors about the conditions in the sector, to denounce exploitation, to write law proposals for improvements and to offer free legal advice (Peterson, 2007). However, the platform faces barriers and resistance in gaining improved working conditions for the domestic/care workers among both clients and institutional actors. The platform's demands for improved conditions and higher wages for the care/domestic workers would thwart most families from hiring a care/domestic worker, particularly for elderly care, as the cost would be prohibitive. This in turn would create a pressure on the state to cover services, which appear even less tenable in the current period of economic crisis. A low waged migrant labor force undergirds the Spanish care regime (León, 2010). Conversely, the range and the content of the activities of civil society actors are shaped by the larger legal, institutional, and socio-economic contexts. As a consequence, the focus of civil society actors might change if, for example, immigration laws are enforced more strictly or if the economic crisis erodes the informal care market (see below). So far, the relationships between civil society actors, their work and demands to improve the conditions of domestic migrant workers, contextual changes, changes in families' demands for care, and state services have not been explored sufficiently.

V.3.2 The effects of the crisis and recession

Studies of the effects of the financial crises confirm that the recession that has followed has different impacts on European societies. Currently, the severe financial crisis in Spain affects virtually all sectors of the labor market and all spheres of society. Factors

such as soaring unemployment rates, increasing social inequality and decreasing acquisition power of households (Colectivo IOE, 2012) are likely to have effects for the care/domestic sector in terms of supply/demand and labor conditions. There are yet no studies of the effects of the recession on the care/domestic sector or its impact on those who work in this sector.

V.4 Theory building

There is a rich literature on the micropolitics of care (e.g. Lutz, 2008; Shutes and Chiatti, 2012). Williams (2010) presents a comprehensive list of indicators for comparative analysis. There is, however, a need for more theory building and conceptual leverage to bring the multiple dimensions and levels of analysis into a comparative research framework (Williams, 2010; Kilkey et.al., 2010). Such a conceptual framework needs to include theories of social membership and inclusion. Sen's capability approach (Sen, 1992; 1993) enables us to identify which dimensions are more salient in different institutional/societal contexts and what are the mechanisms underlying their impact. They provide a framework for our survey questionnaires and the interpretation of the results.

Concerning the social inclusion of migrant workers, it becomes evident that trans-national migration necessitates a more flexible concept of social membership, traditionally linked to a set of formal rights, including civil, political and social rights (Marshall, 1950). This formality does not capture the complexity and empirical reality of many migrants who may have employment and live in a society without access to any formal rights (Brubaker, 1989; Benhabib, 2004; Hellgren, 2012). The specific vulnerability of the female migrant domestic workers has been highlighted by many scholars. Their situation has been described in terms of "triple discrimination"; as a woman, as a migrant and a worker in a low wage position characterized by a strong dependence on the employer (see, e.g., Parella, 2004). The fact that many of these workers lack a valid work or residence permit puts them in a weak bargaining position with their household employers.

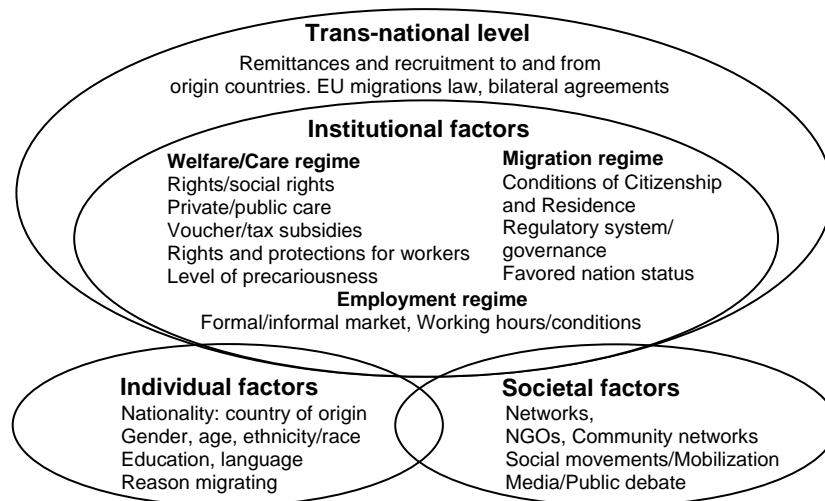
Among migrants across and within societies, there is a spectrum of migrant statuses (Brubaker, 1989) ranging from those with residence permits, that is, the regularized who are allowed to remain while they have employment, to the undocumented who exist in the shadow economy (Baldwin-Edwards, 1999). There are differences in patterns of inclusion and exclusion within these categories, even among the undocumented, and social rights vary with economic and political changes. In Spain, undocumented migrants have been granted access

to health care and education for their children, although health care rights are currently being restricted. In Sweden, the law has recently changed so that children may receive health care and have access to education, while undocumented adults are granted access to urgent health care and maternity care from July 2013 (migrationsinfo.se, July 4th, 2013). Nevertheless, the undocumented migrants live underground without formal identities and under threat of deportation (Khosravi, 2010).

Beyond formal rights, social membership encompasses other aspects of inclusion and social participation: in neighborhoods and local labor markets, and movements to claim rights (Hagan, 2006; Hellgren, 2012). This addresses such aspects as networks, access to social rights, protection in work-place environments, stakeholders, and migrant experiences. Comparing Sweden and Spain, it calls to examine social membership along a continuum, using migrant labor market conditions and migrant access to social welfare protections as key indicators of the right to belong to a particular community. Little research exists that captures the diversity among migrant care domestic workers along these dimensions of inclusion.

As noted above, researchers have focused on the convergences in the general patterns in migration and care/domestic work, (Parreñas, 2001; Ehrenreich and Hochschild, 2003) and the general outcomes: low wages, poor working conditions and exclusion of migrant care/domestic workers (Anderson, 2000). Nevertheless, there is a growing awareness of the heterogeneity and diversity in the forms of migrant labor in this sector, but also in the processes of inclusion and exclusion experienced by trans-national migrants (Lutz, 2008; Williams, 2010). These result from multiple factors: who is migrating; the why, when and from where; and the layers of social/institutional context in receiving societies: welfare/care regime, migration regime and the formal/informal markets for care/domestic work (Simonazzi, 2009; Lutz, 2008). To study these multiple factors, perspectives and analytical tools derived from Amartya Sen's capabilities framework are most suitable (Sen, 1992; 1993). Its dynamic, institutionally embedded framework provides analytical space for linking the macro-, meso-, and micro-level processes and their impact on the inclusion and exclusion of migrant care/domestic workers. Its agency-centered approach allows us to ask different questions, not just what domestic migrant workers are doing/being, but what are the opportunities to be and do, the scope of alternatives for making choices. This is an essential component in a research design which aims to capture multi-dimensional and multi-level aspects of social situations. The figure below illustrates our multi-dimensional design, highlighting the complex relationships and intersections in migration and care. It shows the overlapping and inter-relationships at the global trans-national level, the institutional/

contextual welfare regime level and their effects at the micro-level in experiences and practices of employees and employers in emerging care markets (Williams, 2010). A dimension in our model is the role of key actors — political actors, including unions, NGOs and mobilizations from below of migrants and domestic/care workers — on the debates and subsequent policies on migration rights and care subsidies and vouchers.



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