

## Legalizing same-sex unions in Europe: innovations and paradoxes

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Twelve European countries have introduced same-sex partnership or marriage. Where does France's PACS (1) stand? Compared with its counterparts in other countries, the French registered partnership gives few new rights to same-sex couples and excludes parenting rights. But Patrick Festy highlights a paradox: in the Nordic countries, which are far more liberal on the issue, registration of same-sex partnerships is much less frequent than in Belgium and maybe in France.

As efforts to combat discrimination on the grounds of sexual orientation gain ground, family composition is diversifying in Europe. Heterosexual marriage is no longer the only type of union recognized in law. Since Denmark opened the way in 1989, twelve European countries now legalize unions via a procedure other than marriage. In the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), as well as in Germany and the United Kingdom, the alternative procedure is for same-sex couples only. France and Luxembourg have created a partnership that is available to all non-married couples, both same-sex and different-sex. The Netherlands and Belgium have done the same, but have also opened up marriage to same-sex couples. Lastly, Spain recently legalized marriage for same-sex partners, without an alternative or intermediate form of partnership. However, the Spanish reform, like the British and Luxembourg partnerships, is too recent to yield useful statistical data. That nevertheless leaves nine countries, for which comparisons of different types of unions are already possible, both from a legal and a statistical point of view [1, 2].

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(1) Pacte Civil de Solidarité ("civil solidarity pact").

### ◆ France's PACS and Germany's *Lebenspartnerschaft*: fewer rights than in the Nordic system

A couple's status may have numerous legal consequences, such as the right to jointly adopt children, the extension of social security entitlements to the spouse, or the right for a foreign partner to obtain residency under a family reunion scheme. In the countries under review, do registered same-sex partners enjoy the same benefits as married different-sex spouses? Or is their situation similar to that of unmarried cohabiting partners? To answer those questions, Dutch researcher Kees Waaldijk devised an index of 33 legal consequences of the status of couples: 7 parenting consequences (such as the right to jointly adopt children), 17 material or financial consequences (such as spousal social security benefits) and 9 non-financial consequences (such as eligibility for a foreign partner to immigrate under family reunion) [3]. With the rights and benefits granted to married same-sex couples as a benchmark, the position of the other categories of couple can be measured. The comparison is established for all the rights (Figure a) and for parenting rights only (Figure b).

France and Germany stand out from the other countries in the sample in terms of the rights and

benefits attached to registered same-sex partnerships (the PACS in France and the *Lebenspartnerschaft*, or “life partnership”, in Germany): they offer only 55% and 68% of the privileges associated with heterosexual marriage, whereas the proportion exceeds 80% in other countries, and even 90% in Sweden and the Netherlands. French and German lawmakers wanted to keep the status of a same-sex partnership at a respectable distance from marriage, by reducing it, to quote Kees Waaldijk, to a “semi-marriage”. The Nordic strategy is quite the reverse: registered partnerships there are seen as “quasi-marriages”, differing only slightly from marriage. Dutch and Belgian law has gone even further by opening up marriage to same-sex partners.

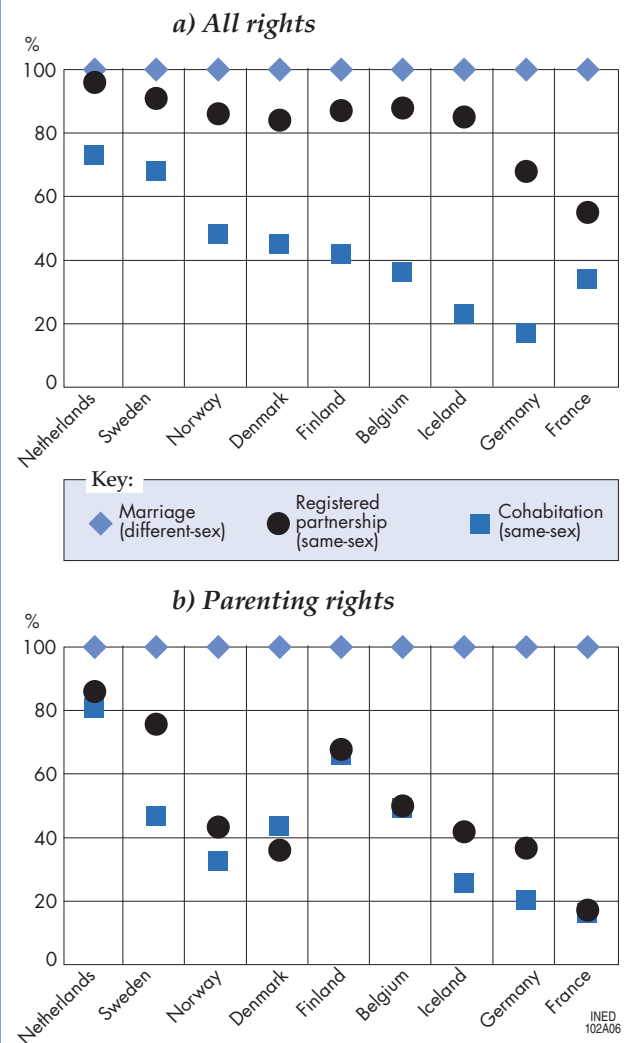
However, another way of looking at registered same-sex partnerships is to compare them with the rights granted to partners cohabiting informally. Compared with informal cohabitation, do the partners stand to gain from registering their union? The answer is affirmative in all countries, but with sharp differences between countries. In the Netherlands and Sweden, the gain is small because de facto same-sex couples already enjoy many rights (around three-quarters of the rights granted to married couples). In France, the gain is equally small, but for the opposite reason: same-sex cohabitation offers few rights (half as many as in the Netherlands) and the PACS does not add many more. Both statuses stop far short of marriage. Dutch and Swedish legislators applied an altogether different reasoning and sought to grant the maximum rights to all couples, whether married or not, whether different-sex and same-sex. The other Nordic countries, followed by Belgium, have opted for a third philosophy, which is to offer more equal rights to different-sex and same-sex couples, with a bonus for partners who register their unions, be they heterosexual or homosexual, leaving de facto couples with only limited rights.

### ◆ A range of practices that does not tally with differences in legislation

The frequency of registrations of same-sex partnerships (or marriages) varies considerably from country to country, even when cruising speed has been reached. In 2004, for example, there were proportionally six to eight times more same-sex marriages in Belgium than same-sex partnerships registered in Sweden (Table). These disparities are on another scale altogether from differences between countries with respect to heterosexual nuptiality.

Is the frequency of registrations of same-sex partnerships (or marriages) a direct function of the legal advantages they offer? The answer is no. The countries where the rights of registered same-sex couples are the

Figure – Rights and benefits granted to same-sex couples in Europe, by country



The chart shows the rights and benefits granted to registered same-sex couples and cohabiting same-sex couples in Europe relative to those associated with different-sex marriage. Compared with the total rights and benefits conferred by heterosexual marriage (i.e. a set of 33 legal consequences in various areas, indicated by a possible total of 100) (Figure a), French legislation recognizes only 55% for registered same-sex partners (PACS) and 35% for cohabiting same-sex partners. In the Netherlands the figures are 96% and 73% respectively. With respect to parenting rights (i.e. a series of 7 legal consequences, denoted by a possible total of 100) (Figure b), French legislation recognizes only 17% for registered same-sex partners (PACS) and 17% for cohabiting same-sex partners. The corresponding percentages in the Netherlands are 86% and 81%.

N.B. In Belgium and the Netherlands, same-sex registered partnership is marriage.

Source: Kees Waaldijk [3], p. 9.

most restricted, namely France and Germany, are not the last by frequency of registered same-sex partnerships. That frequency is highest in Belgium and lowest in Sweden, whereas Belgian and Swedish laws, albeit different, are not at the extremes.

Would it be more accurate to say that the frequency of registrations of same-sex partnerships (or marriages)

*Table – Frequency of registrations of same-sex unions (partnerships or marriages) per 100,000 population, by sex of partners*

Year	Denmark		Finland		Iceland		Norway		Sweden		Netherlands		Germany		Belgium	
	M	W	M	W	M	W	M	W	M	W	M	W	M	W	M	W
2000	12.1	9.7	–	–	4.0	5.0	3.5	3.4	2.5	1.5	–	–	–	–	–	–
2001	12.1	12.5	–	–	4.0	6.0	4.8	3.4	2.2	2.1	16.9	13.3	–	3.2	–	–
2002	9.5	12.0	9.4	7.7	4.0	3.0	4.7	3.4	2.4	2.3	11.7	11.1	6.8	–	–	–
2003	11.1	12.6	3.3	4.0	5.0	4.0	5.1	3.8	2.7	2.8	9.2	9.3	–	–	20.1	13.0
2004	10.0	14.6	3.3	3.8	6.0	6.0	4.7	3.7	3.2	3.1	6.9	7.2	–	–	24.8	17.7

NB. For incomplete years, the figures were rounded to an annual average. For an explanation of the absence of France, see inset.

M: unions between men; W: unions between women.

depends on how close the associated rights are to different-sex marriage? Officializing a union indeed offers same-sex couples the most new rights in Belgium, whereas it hardly adds any in Sweden, where de facto couples already enjoy substantial rights, in accordance with a policy that has long reflected the decline of traditional marriage. In this respect, Denmark is closer to Belgium than Sweden. Less willing to accept the decline of marriage, Danish lawmakers sought to increase the attraction of marriage over de facto unions, by introducing a registered partnership for same-sex couples as early as 1989.

### ◆ Lesbians catch up with gays

Only a small minority at the outset of legalization, registered unions between women are now catching up with those between men, and even exceed them in Denmark and Finland. This trend is not specific to the pioneering countries. It is also observed in countries that recently legalized same-sex unions, such as the Netherlands and Finland. The growing interest of gay women in registering their unions can probably be attributed to changes in public opinion and legislative activity on the key issue of parenting rights. At the beginning of the millennium, four Nordic countries and the Netherlands allowed a partner to adopt his/her spouse's children, regardless of their origin (previous union, insemination, or prior adoption by the partner).

However, legislative progress is not enough to influence couples' behaviour; the change in attitudes to homosexuality and parenting can also play a part. On that point, public opinion varies widely from one

### Inset

#### PACS data: from blackout to shadow

The range of legislation between countries is also reflected in a variety of forms of partnership registration, which has an impact on the quality of statistics. In the Netherlands and Belgium, the registration procedure for same-sex marriage is the same as for different-sex marriage. Registered same-sex unions are thus included in general marriage statistics. This is also the case for registered partnerships in the Nordic countries. By contrast, in France and Germany, PACS and Lebenspartnerschaft are not recorded on the same registers as marriages, and only minimal statistics are published. The Germans issue heterogeneous regional figures, which must be collated at national level, while the French are still unable to provide PACS numbers by sex of the partners. For reasons of data protection, the enabling decrees of the French law that created the PACS in December 1999 prohibited any statistical processing – even anonymous – that would differentiate between PACS by sex of the protagonists. That restriction, unique in Europe, was abolished by a law of 6 August 2004, which has yet to translate into change. France's ministry of justice continues to publish data for PACS registrations and dissolutions that does not provide basic characteristics of the parties.

The clerks of the civil courts, which register PACS, make ad hoc unofficial counts. According to their estimates, approximately 45% to 50% of PACS in 2000 were between same-sex partners, versus only 15% to 20% in 2004. The decline is ascribed to an increase in the total number of registered partnerships, attributable entirely to a rise in different-sex PACS, since the number of same-sex PACS is apparently stable at around 8,000 a year, which is roughly 12 to 13 same-sex PACS per 100,000 population. That is fewer than in Belgium, more than in Denmark and considerably more than in the other Nordic countries and Germany.

According to INSEE's employment survey and the 1999 census, there were an estimated 120,000 cohabiting same-sex couples in France over the period from 1996 to 1998, of which 45,000 were self-declared and 75,000 identified indirectly (e.g. a "friend" of the same sex living in the same dwelling) [5]. The proportion of registered unions is therefore 8,000 out of 120,000, or 7%. This can be compared with the nuptiality rate of cohabiting different-sex partners, which is around 12% if both marriages and PACS are taken into account.

The frequency of registration of same-sex unions is thus around 40% lower than that of different-sex unions. That disparity is wider than in Belgium but smaller than elsewhere. These estimates nevertheless remain approximate: if the percentage of same-sex PACS were 10% in 2004 instead of the courts' estimate of 15% or 20%, France would be in a similar situation to the Nordic countries. France must produce reliable statistics on PACS in order to be included in valid European comparisons.

country to another. In Denmark, Sweden and the Netherlands, some 60% of adults fully agree that gay marriage should be allowed in Europe, and more than 30% think that gays should be allowed to adopt children. Those rates are much higher than in other European countries, especially France, where approval ratings are not even half those figures [4]. However, these differences in attitude do not account for the differences in behaviour, since in liberal Sweden few same-sex unions are registered, whereas in more reserved Belgium gay marriage is more frequent.

In fact, more complex social mechanisms may influence behaviour, such as whether social security systems place emphasis on couples or on individuals. The three countries that have the highest approval ratings of gay marriage also have the least pro-family social benefits, such as tax breaks for a spouse, coverage under a spouse's health insurance and eligibility for a survivor's pension. France, Norway and Germany, which offer maximum spousal benefits, are the least liberal countries on the issue of gay marriage.

In sum, the factors that encourage same-sex couples to register their unions in various countries are those that apply more broadly to all types of union. The countries where registrations of same-sex unions are infrequent also tend to have deserted marriage in general, including different-sex marriage, with Sweden recording the lowest rates. Further south, registrations of same-sex unions tend to be more frequent when nuptiality remains strong, as illustrated by Belgium (in 2000, there were eight times as many married couples as cohabiting couples, compared with twice as many in Sweden, and three or four times as many in the other Nordic countries).

#### ◆ Same-sex unions are registered less often than different-sex unions

In all the countries under review, legalization tends to be preceded by a period of living together, regardless of the composition of the couple, although same-sex couples probably have a greater tendency to "live apart together", i.e. maintain separate dwellings. Previous comparisons examined the proportions of different types of couple in the total population. However, in a more refined comparison using only the population of cohabiting couples, how likely are same-sex couples to register their unions, compared with different-sex couples? The answer, with strong variations between countries, is about 50% less: around 30% in Belgium, perhaps 40% in France (see inset, page 3) and around 70% in the Nordic countries. Furthermore, same-sex unions tend to be registered at a later age on average than different-sex unions, without any notable difference between men and women, but with much

sharper age differences between the spouses. Lastly, divorce within the first few years after registration is more common in same-sex unions, especially between women.

These differences between same-sex and different-sex couples show that they are not sister categories, distinguished solely by sexual orientation. One key difference is the place of children in the respective plans of the two types of couples, mainly due to inequality of parenting rights, depending on the legislation. However, there are signs of equalization, the most visible of which is the increase in registered unions between women, in a context of declining heterosexual nuptiality. More generally, the factors that encourage or discourage nuptiality, such as the welfare state's emphasis on couples or individuals or the will of legislators to bring de facto statuses closer to de jure statuses, are factors that affect all couples, both heterosexual and homosexual.

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#### ABSTRACT

Twelve European countries have introduced partnership or marriage between spouses of the same sex. The rights granted to registered same-sex couples vary between countries: similar to those of married different-sex couples in the Nordic countries, the Netherlands and Belgium, but far short of marriage in France and Germany. Curiously, in the Nordic countries, which offer equivalent rights to all types of couples and where public opinion is very liberal on the issue, fewer same-sex unions are registered than in Belgium (and maybe France). This is probably because registration offers few additional benefits in the Nordic countries, where de facto couples already enjoy substantial rights