

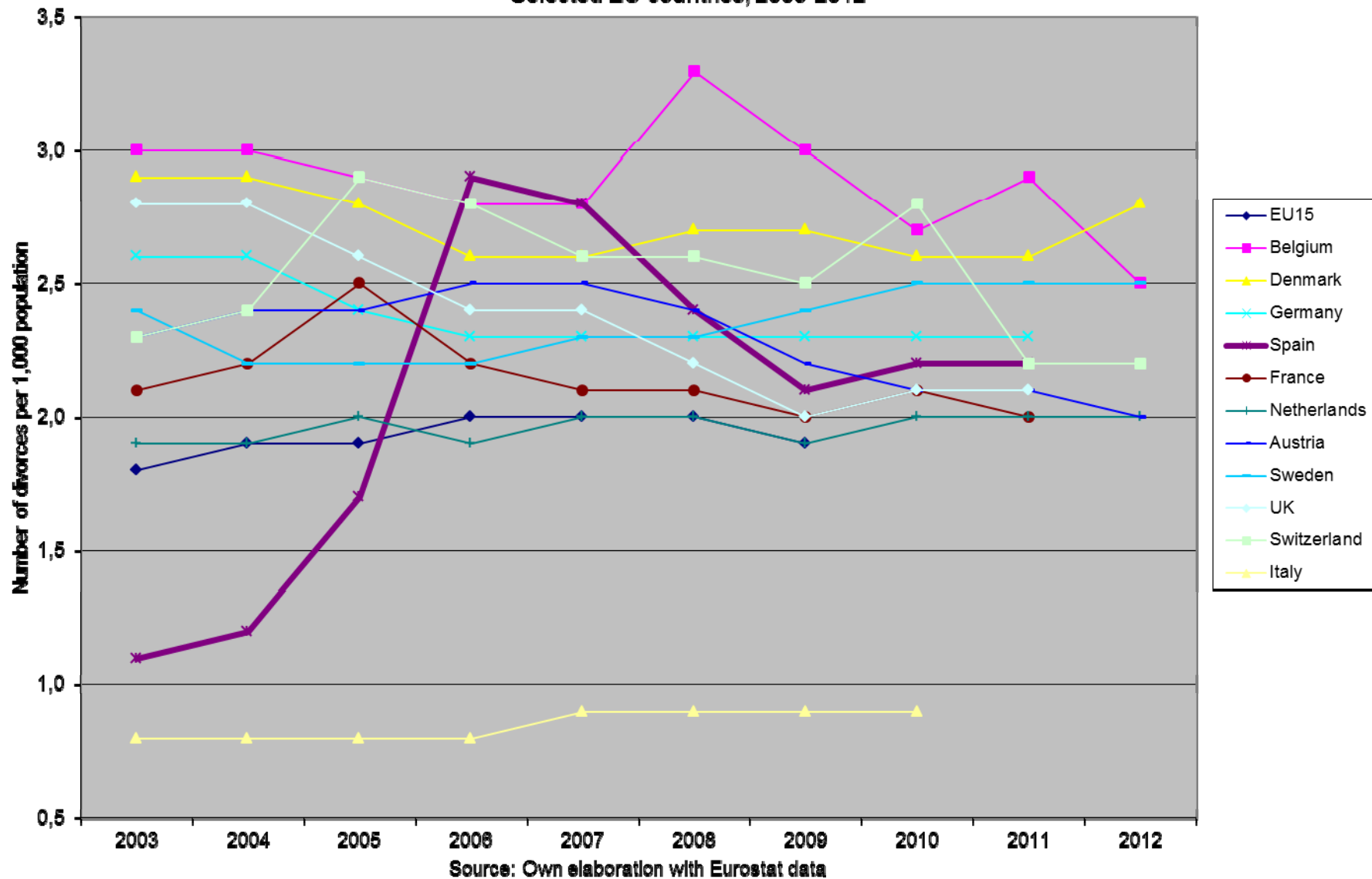
**Shared Parenting in Spain**  
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**International Platform on Shared Parenting**  
**Kick-off Workshop**  
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# The 2005 Divorce Act in Spain

- The 2005 Divorce Act departs from the old model based on fault and sanction and has come to accept divorce as an act of free will which should not be restrained by legal barriers. It provides for a vast simplification and liberalization of proceedings involving direct access to divorce just three months after marriage without going through any prior formal separation. The grounds for divorce of the former law have also been abolished.
- In keeping with the liberal nature of the law the possibility of separation as a permanent status was not abolished, but it was left open for those who for whatever reasons did not wish to resort to divorce as a first option.
- As a result of the implementation of the act fresh concepts and measures were introduced: family mediation, shared custody and advanced child maintenance payments.

### Evolution of crude divorce rates Selected EU countries, 2003-2012



# Shared custody in the Spanish law

- In the Spanish legislation (2005 Divorce Act) shared custody (*custodia compartida*) is rather exceptional. Parents may agree (or the judge may decide on behalf of children) that parental authority will be exercised totally or partially by one of partners. Most often shared custody is granted by the judge if it is requested by both parents. If it is only requested by one of them it may also be granted but only if it is in the best interest of children. Shared custody is never to be granted if there is evidence or suspicion of gender-based violence.
- The law does not specify whether shared custody must be interpreted only legally or both legally and physically. No guidelines are given concerning neither who is liable to pay for child maintenance nor what kind of residential arrangements and parental plans are to be agreed.

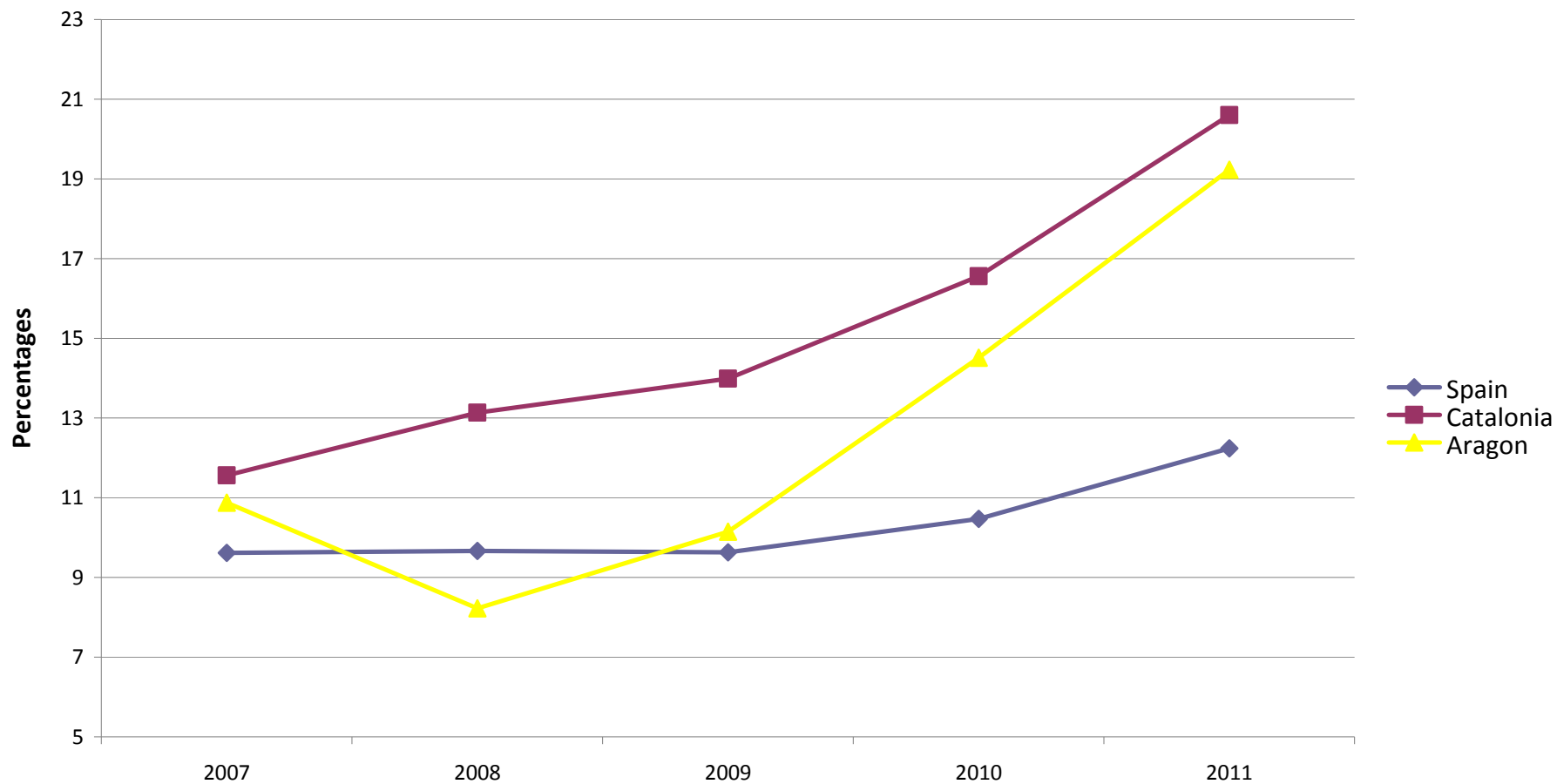
# Liberalization without public protection + overprotective familiarism

- There is a sheer contradiction between a most liberal system of divorce, currently producing very high divorce rates, on the one hand, and a rudimentary family policy, especially underdeveloped in the area of child allowances and the enforcement of maintenance payments, on the other.
- The 2005 legal reform has been a missed opportunity to make progress towards a more equitable gender balance as well an enhanced equal opportunity for all children. The lack of economic support to different measures as well as the rhetoric and ambiguous character of many provisions has reduced their potential impact.
- The radicalisation of the debate between ex spouses has basically to do with the imbalance sustained by current legislation that, while it overprotects separated mothers, it imposes a heavy and long-standing financial burden on separated fathers.
- This legislation is not very equitable in terms of class either as, while the state imposes familiaristic responsibilities on middle class separated fathers, it fails to endorse a more active protection and a major concern for the outcomes of all children by taking on similar public burdens for poverty-stricken families.

# Shared custody as the legal standard arrangement?

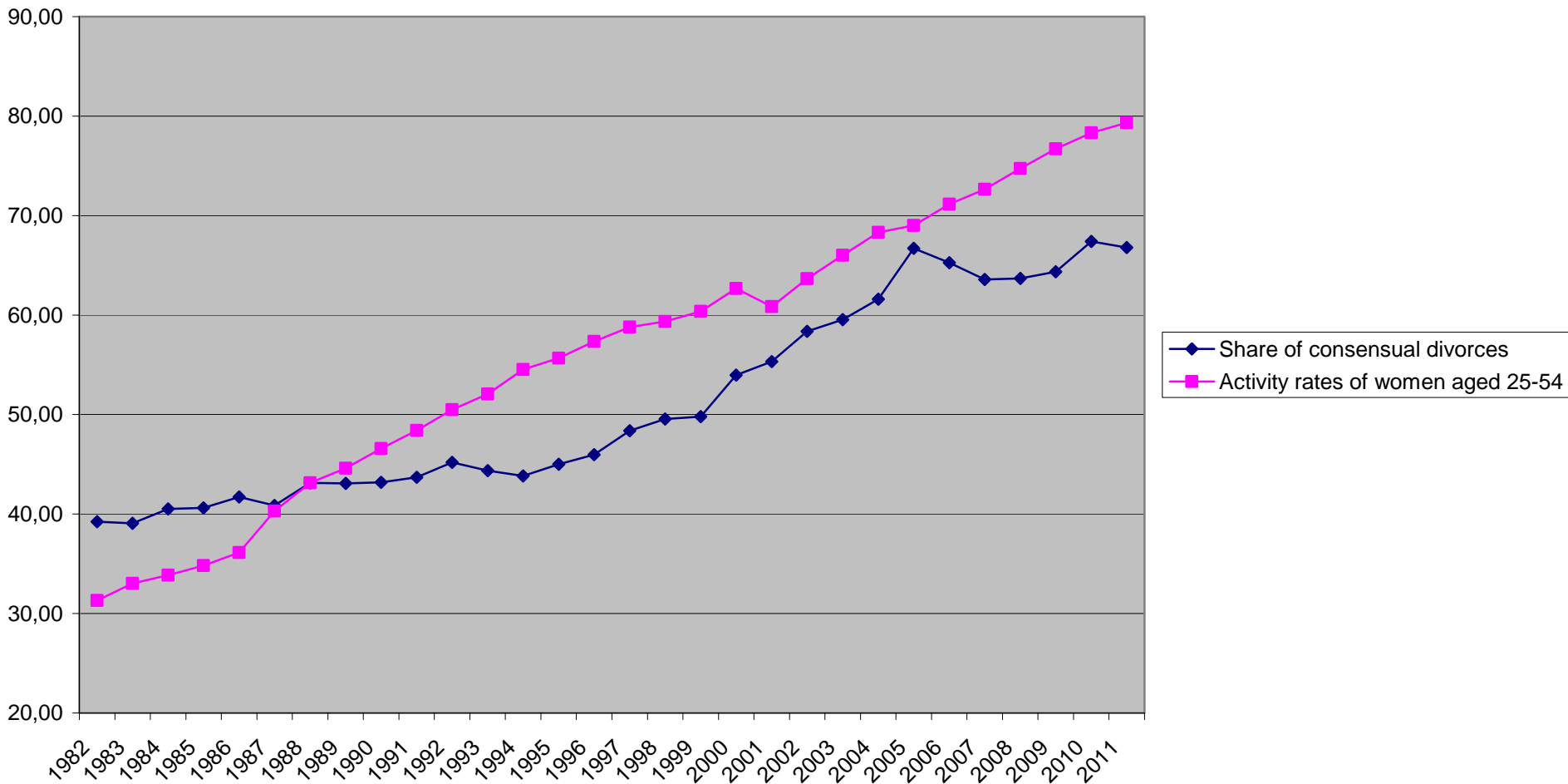
- In the state civil law no legal presumption exists over granting custody by the judge so that shared custody is only to be decreed if it is agreed and requested by both partners. Only under certain circumstances can shared custody be exceptionally decreed if there is no agreement between partners.
- Seven autonomous communities (making up the 44% of the Spanish population) have legislative powers on civil law. In the last few years most of these regions have established shared custody as the preferential arrangement even in case of disagreement between parents. Thus, the parliament of Aragon has passed a Law of Equality in Family Relations that establishes shared custody as the preferential custody arrangement. Likewise, the new Catalan Civil Code has also established joint custody as the standard although non mandatory arrangement. Other Northern regions have followed suit and with a different emphasis have legislated shared custody as a preferential arrangement.

**Percentages of divorces with shared custody to the total  
number of divorces with children  
Spain and Catalonia, 2007-2011**



Source: Own elaboration with INE data

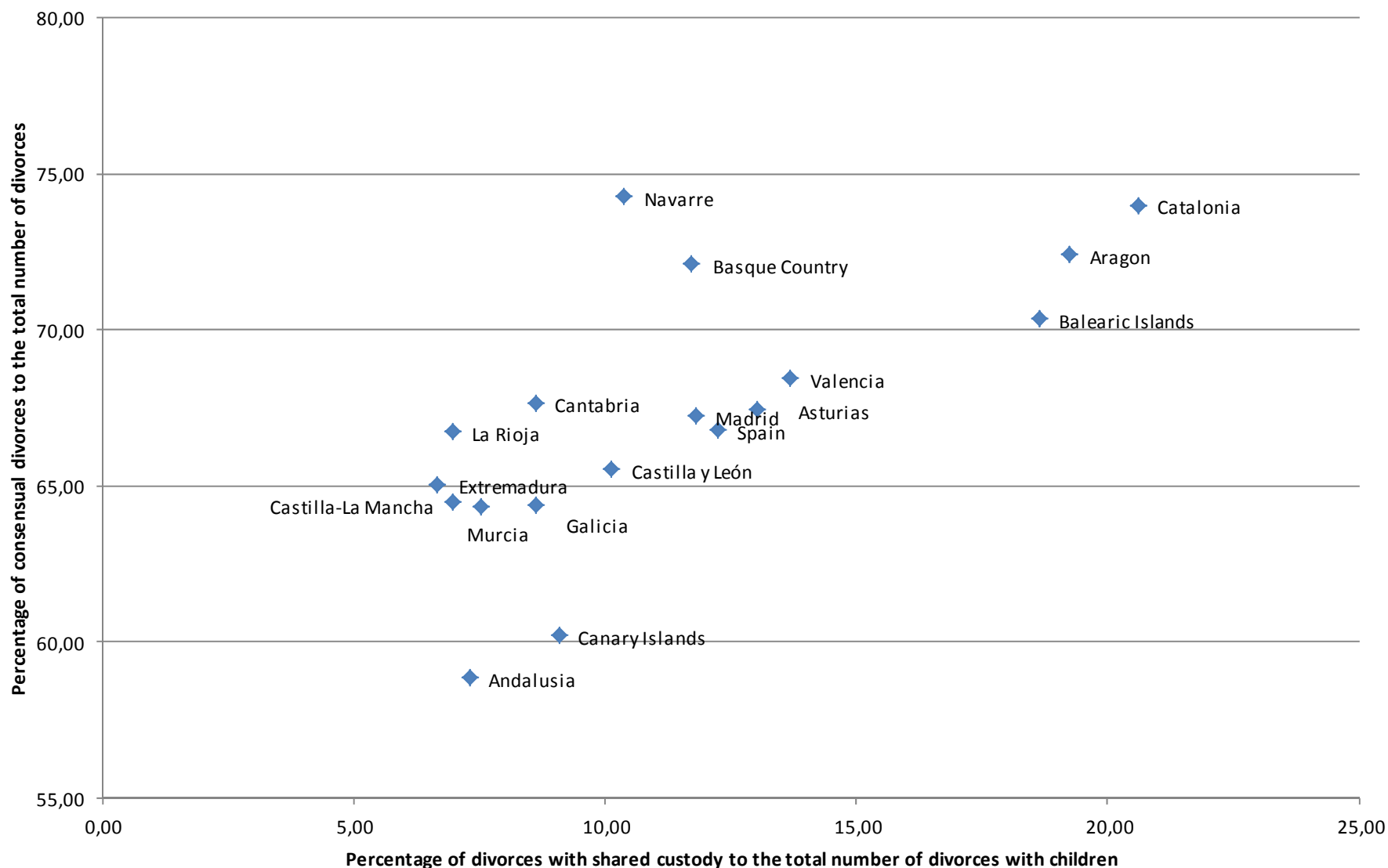
# Evolution of the share of consensual divorces in relation to activity rates of women aged 25-54 Spain, 1982-2011



Source: Own elaboration with INE data

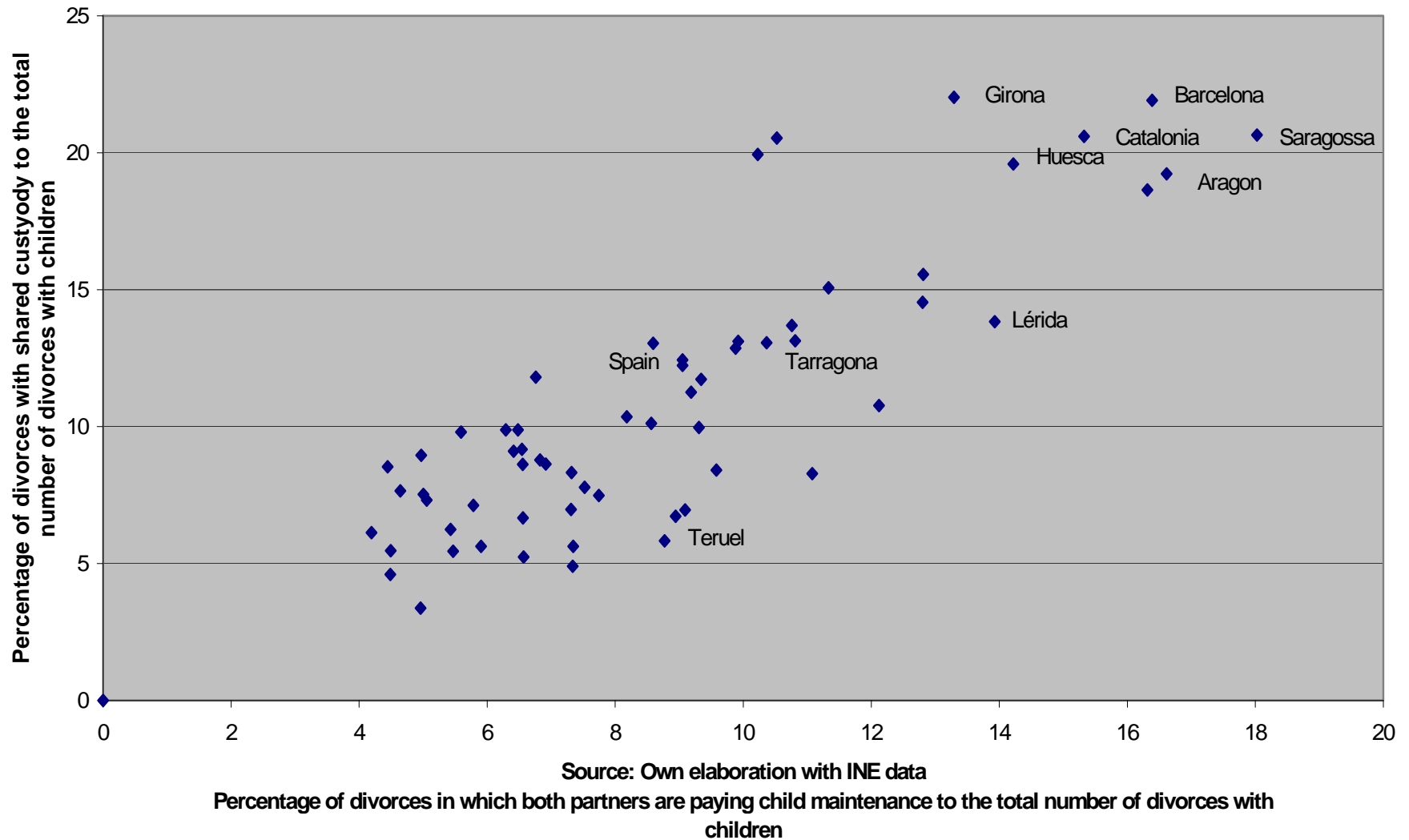


# Relationship between consensual divorce and shared custody Spanish autonomous communities, 2011



Source: Own elaboration with INE data

# Relationship between the shared payment of child maintenance and shared custody Spanish autonomous communities and provinces, 2011



# The exercise of parental responsibilities in Catalonia

- The nullity of marriage, judicial separation or divorce do not alter parental responsibilities. As a result they are to be shared and, as far as possible, they are to be jointly exercised.
- In order to determine how to exercise parental responsibilities, partners must submit a proposal of parental plan.
- When deciding about parental responsibilities, the judge must take into account the best interest of the child.
- Custody must be exercised according to the provisions of the parental plan, unless they are detrimental to children.
- In case of disagreement concerning the provisions of the parental plan, it is up to the judge to determine how custody is to be exercised considering the joint character of parental responsibilities. However, the judge may decide that custody is to be exercised by a single parent if this fits better the interest of the child.

# Parenting plans in Catalonia

According to the Catalan law, a parental plan must be submitted to the judge where partners spell out the ways in which parental responsibilities are to be carried out, including the commitments to be made concerning the custody, care and education of children:

- The residence of children and rules on how to allocate custody at each time.
- The tasks to be performed by each parent in relation to children's everyday lives.
- The ways in which changes in custody are to be made and if necessary how to allocate possible costs.
- Contact and communication with children during periods in which they are under the care of the other parent.
- Stays of children with each parent in vacation periods and on special dates.
- The type of education as well as extracurricular and leisure activities.
- How to discharge the duty of sharing all information about education, health and well-being of children.
- How to make decisions about change of residence and other relevant issues for children.

Parental plans may include provisions on how to use mediation facilities in order to solve conflicts relating to their implementation or modification.

# *How to determine the type of custody in Catalonia?*

In order to determine how to exercise custody, it is important to take into account the provisions of the parental plan and, in particular, the following criteria and circumstances interpreted as a whole:

- The attachment of children to each of parents as well as their relationships with other possible household members.
  - The aptness of parents to guarantee the well-being of children and the possibility to provide them with an adequate environment in accordance with their age.
  - The attitude of parents to cooperate with each other in order to ensure the greatest stability for children, especially in order to adequately guarantee their relationships with both parents.
  - The time that each parent had devoted to childcare before family breakup and the tasks carried out by them in order to provide their well-being.
  - The opinion expressed by children.
  - The arrangements made by parents before divorce in order to face possible breakup.
  - The situation of parents' residence as well as the working times and activities of parents and children.
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- After divorce siblings must be kept together.
  - No custody is to be granted to parents convicted or suspected of gender-based violence.

# The allocation of the family dwelling in Catalonia

- If there is no agreement between partners, it is up to the judge to allocate the use of the common dwelling in accordance with the following rules:
- It is preferably allocated to the parent having the custody of children as long as this situation lasts.
- This provision is balanced by the principle of partners' respective needs. The dwelling is allocated to the partner more in need in case of shared custody or when resident children are not minor.
- At the request of the nonresident partner, the judge can set a number of limits and exclusions to the use of the dwelling.
- The use of the common dwelling is always temporal.
- The use of the dwelling must be computed as a contribution to alimony and child maintenance.

# The allocation of the family dwelling in Spain

- The allocation of dwelling following separation or divorce is most often the crux of the matter in divorce proceedings. Except in case of agreement between the spouses endorsed by the judge, the use of common dwelling is allocated to the family unit in which children live. Again, the children are entitled to stay in it until they are fully independent and leave the parental home. This means that the split of property is very often postponed until then.
- In countries with a rudimentary family policy housing has a special significance. In Spain the most common housing tenure status is home ownership. More than four out of five households live in owner-occupied dwellings. Although the use of rented accommodation is not strictly a factor of social exclusion, in the long term failing to buy property may result in drawbacks and vulnerabilities. Access to housing is rather difficult because of price escalation.
- Buying estate property has been for long a very profitable investment with high returns and owning a dwelling cannot only be considered as a primitive form of insurance against social risks but also an ecological resource to provide care services in case of need.

# Upcoming reforms of the Spanish law

- Ongoing regional reforms setting shared custody as a standard arrangement have anticipated new trends in the Spanish legislation. On the 19th of July the Spanish Minister of Justice announced the preparation of a reform of the Civil Code concerning shared custody, which would be ready in six months.
- Shared custody will no longer be exceptional. In case of disagreement between partners, following the principle of co-responsibility, it will be up to the judge to decide on the kind of custody which better fits the interest of the child. It does not mean, however, that shared custody will become the preferential arrangement.
- The payment of child maintenance will be extended until the end of education and transition to employment.
- The liquidation of matrimonial property is to be carried out before making a decision about the determination of custody.