

RETHINKING FAMILY LEGITIMACY IN EUROPEAN LAW: LEGAL RECOGNITION AND PROTECTION OF UNMARRIED COHABITANTS

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Abstract: The recognition of unmarried cohabitants in European law demonstrates an ongoing transformation of the concept of family within modern legal systems. The comparative analysis shows that France, Sweden, Italy, and England and Wales adopt different regulatory approaches, resulting in varying levels of protection concerning property rights, inheritance, social welfare, and relationship dissolution. These differences indicate that legal protection for cohabitants in Europe remains fragmented and inconsistent. The study also confirms the important role of the European Court of Human Rights in expanding the interpretation of “family life” under Article 8 of the European Convention on Human Rights. Nevertheless, significant gaps remain between symbolic recognition and effective legal protection, particularly regarding financial rights and cross-border legal certainty. The absence of harmonized rules governing transnational cohabitation further increases legal uncertainty within the European legal framework. This article argues that the current fragmented legal structure creates vulnerability for unmarried cohabitants, especially economically dependent partners. Therefore, European legal systems should develop minimum protective standards, strengthen the recognition of cohabitation agreements, and improve supranational coordination to ensure equitable and predictable legal protection for contemporary family relationships.

Keywords: new families, european law, protection of family rights, European Convention, rights of unmarried cohabitants.

Abstrak: Meningkatnya praktik kohabitasi non-perkawinan di Eropa telah menantang kerangka hukum keluarga yang berpusat pada institusi perkawinan dan mendorong transformasi hukum yang signifikan di berbagai yurisdiksi Eropa. Penelitian ini mengkaji pengakuan hukum terhadap pasangan kohabitasi tidak menikah di Prancis, Swedia, Italia, serta Inggris dan Wales, khususnya terkait hak kepemilikan, waris, perlindungan sosial, dan ketidakpastian hukum lintas negara. Dengan menggunakan pendekatan normatif-doktrinal dan hukum perbandingan, penelitian ini menganalisis regulasi perundang-undangan, putusan pengadilan, dan yurisprudensi European Court of Human Rights (ECtHR). Hasil penelitian menunjukkan bahwa negara-negara Eropa menerapkan model regulasi yang berbeda sehingga menghasilkan tingkat perlindungan hukum yang tidak setara bagi pasangan kohabitasi. Meskipun ECtHR telah memperluas interpretasi mengenai “family life” berdasarkan Article 8 European Convention on Human Rights, masih terdapat kesenjangan yang signifikan dalam hak finansial, waris, dan perlindungan kesejahteraan sosial. Penelitian ini berpendapat bahwa fragmentasi pengakuan hukum menciptakan kerentanan dan ketidakpastian bagi pasangan kohabitasi, terutama dalam hubungan lintas negara. Oleh karena itu, diperlukan standar perlindungan minimum yang lebih kuat serta koordinasi supranasional yang lebih baik untuk menjamin perlindungan hukum yang adil terhadap bentuk keluarga kontemporer di Eropa..

Kata kunci: ohabitasi tidak menikah; hukum keluarga Eropa; ECtHR; hak pasangan kohabitasi; hukum perbandingan.



INTRODUCTION

The socio-legal definition of the family unit across Europe has experienced a profound shift over the last half-century, evolving from the singular, monolithic model of traditional, heterosexual marriage toward a diverse constellation of recognized and unregistered partnerships. This evolution is often situated within the framework of the Second Demographic Transition (SDT), characterized by increased individualism, deferred marital decisions, and the normalization of cohabitation.¹

The rise of cohabitation is statistically undeniable, confirming its status as a permanent fixture in the demographic landscape rather than merely a transient pre-marital stage. Eurostat data indicates a significant increase in the number of couples without children living together (up by 5.2% between 2015 and 2024).² Furthermore, in countries associated with high levels of legal acceptance, such as Norway and France, cohabitation is the dominant union form for younger partnered populations, exceeding 90% prevalence in the 15 to 24 age bracket.³ Critically, cohabitation is frequently becoming a context for child-rearing; in states like Sweden, France, and Estonia, over half of all cohabiting couples live with children, whether joint or from previous relationships.⁴

Despite this widespread social acceptance, European Union (EU) law lacks a singular, comprehensive definition of 'family.' While concepts like 'family life' and 'family member' are integral to directives governing free movement (Directive 2004/38) and family reunification (Directive 2003/86), the interpretation of these terms is still subtly informed by the traditional paradigm of heterosexual marriage and genetic parenthood.⁵ However, the jurisprudence of the European Court of Human Rights (ECtHR) and evolving national policies acknowledge that genuine, stable *de facto* relationships must be protected as constituting 'family life,' precluding national provisions from introducing discriminatory measures against non-formalized unions.⁶

The proliferation of long-term cohabiting unions, particularly those involving children, has generated an urgent societal and legal need for clear regulatory frameworks regarding property, spousal maintenance, and succession upon the cessation of the relationship.⁴ When legal structures lag behind social change, the ensuing regulatory vacuum exacerbates social vulnerability. Since comprehensive legal coverage for cohabitation is often absent, couples are

¹ Non-married Cohabiting Couples and Their Constitutional Right to Family Life - Juridica International, diakses Oktober 19, 2025, https://www.juridicainternational.eu/public/pdf/ji_2013_1_104.pdf

² Household composition statistics - Statistics Explained - Eurostat - European Commission, diakses Oktober 19, 2025, https://ec.europa.eu/eurostat/statistics-explained/index.php/Household_composition_statistics

³ Living Together Without Getting Married | Population Europe, diakses Oktober 19, 2025, <https://population-europe.eu/research/popdigests/living-together-without-getting-married>

⁴ The increase in cohabitation and the role of marital status in family policies: a comparison of 12 European countries - ESRC Centre for Population Change, diakses Oktober 19, 2025, http://www.cpc.ac.uk/docs/BP24_The_increase_in_cohabitation_and_the_role_of_marital_status_in_family_policies.pdf

⁵ The Family in EU Law: Concept and Context (Part I), diakses Oktober 19, 2025, <https://www.cambridge.org/core/books/family-in-eu-law/family-in-eu-law-concept-and-context/79B5E06D26FD3AD87D7B35123156687D>

relegated to complex general contract or property law mechanisms, which are costly and inadequately designed for relational disputes.⁶⁷ The high prevalence of cohabitation among younger demographics, who may lack the economic resources or legal literacy to secure private contracts, exposes this demographic to significant risks upon separation.³ The systemic failure of the legal institution to adapt creates a protective deficit that disproportionately affects the financially dependent partner often the caregiver who foregoes market income thereby contributing to socio-economic inequality upon union dissolution.⁴ Addressing this institutional lag through statutory or contractual recognition has become a central challenge for contemporary European family law.⁸

The empirical basis for the study of legal uncertainty for citizens, especially in economic and social aspects for unmarried couples after divorce or death of a partner, is formed on the basis of factual data that reflect the real consequences of the absence or insufficiency of legal regulation of such relationships. It includes statistical indicators, judicial practice, sociological research and analysis of legislation.⁹

First, an important element of the empirical basis is demographic and social statistics, which confirm the spread of de facto family relationships (cohabitation without marriage registration). According to Eurostat and national statistical services of European countries, the share of children born outside of registered marriage in many EU countries exceeds 40–50%. In Ukraine, there is also a tendency to increase the number of de facto family unions. This indicates that a significant number of citizens are in legal relationships that do not always have proper legal registration, which subsequently creates legal conflicts.

Secondly, judicial practice constitutes an important empirical basis for the study. In cases of property division, inheritance or receipt of social benefits, courts are often faced with the need to establish the fact of living in one family without registering a marriage. In Ukraine, such disputes are considered, in particular, on the basis of the provisions of Article 74 of the Family Code of Ukraine, which provides for the possibility of recognizing joint joint property of persons who lived in one family without marriage. However, judicial practice demonstrates the complexity of proving such relationships (joint management of the household, budget, raising children), which creates legal uncertainty for the parties.

Thirdly, the empirical basis includes an analysis of the economic consequences for partners after the termination of de facto relationships. In the event of the death of one of the partners, the other may be deprived of the right to inheritance, a pension due to the loss of the breadwinner or social benefits, if the marriage was not legally registered. Similarly, after the termination of de facto relationships, problems arise with the division of property

⁶ suryaningsih, “Impact of Gadget Addicts on Family Harmony Perspective of Islamic Law,” *Nusantara: Journal of Law Studies* 1, no. 1 (2022): 50–64, <https://doi.org/10.5281/zenodo.17391319>.

⁸ Hjh Norhartijah binti Haji Puteh and Cecep Soleh Kurniawan, “Reforming Islamic Family Law in Southeast Asia: A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam,” *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 1 (2025): 1–25, <https://doi.org/10.62976/ajisc.v2i1.1367>.

⁹ “Exploring the Monogamy Principle in the Samin Community’s Customary Marriages in Kudus: Harmonisation of Tradition and State Law | Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan,” accessed May 20, 2026, <https://ejournal.uinsalatiga.ac.id/index.php/ijtihad/article/view/913>.

acquired during cohabitation.

Fourthly, sociological research and surveys also form an empirical basis. They demonstrate that a significant part of citizens is not aware of the legal risks of *de facto* cohabitation or believes that long-term cohabitation automatically provides a legal status similar to marriage. This causes conflicts in the event of a breakup or the death of one of the partners.

Thus, the empirical basis for the study of legal uncertainty in the field of *de facto* family relations covers statistical data, judicial practice, economic consequences and the results of sociological research. Its analysis confirms the existence of significant gaps in legal regulation, which creates risks of violation of property and social rights of citizens, especially in cases of termination of such relations or the death of one of the partners. This necessitates the further improvement of legislation and the development of clearer mechanisms for the legal protection of persons in *de facto* family relations.

The central problems addressed by this research stem from the heterogeneous and fragmented legal response to cohabitation across the European continent. This study seeks to investigate:

In what manner do distinct European regulatory models ranging from formal registration to purely *de facto* recognition acknowledge and legislate the rights of cohabiting couples?

What are the critical substantive legal implications of these diverse regimes, specifically regarding the distribution of property upon dissolution, the recognition of succession rights, and access to crucial social security provisions (e.g., survivor pensions)?

How does the selective recognition of cohabitation challenge traditional family law principles, leading to complexities and fragmentation in cross-border situations, and what role do supranational legal bodies (ECtHR/EU) play in mitigating this transnational uncertainty?

The ECtHR, applying the provisions of Article 8 of the European Convention on Human Rights (right to respect for private and family life), has gradually developed a broader understanding of the concept of “family life”, which is not limited to registered marriage. The Court recognises that stable *de facto* relationships may constitute family life even if they are not legally formalised. In particular, in its case-law, the ECtHR emphasises the need to take into account the real nature of the relationship between partners. For example: in *Keegan v. Ireland* (1994) the Court recognised the existence of family life between a father and a child, even in the absence of marriage; in *Schalk and Kopf v. Austria* (2010) the ECtHR extended the interpretation of family life to include partnerships; in *Oliari and Others v. Italy* (2015) the Court established that the State must ensure the legal recognition and protection of stable partnerships.

Thus, the ECtHR establishes minimum standards for the protection of family life, which States must take into account in their legislation. Although the Court leaves the States a “margin of appreciation” in defining specific models of family law, its decisions stimulate harmonisation of approaches and reduce legal uncertainty. The EU legal system plays an important role in coordinating national legal systems in cross-border situations, primarily

through regulations determining jurisdiction, applicable law and the procedure for the recognition of judgments. Key regulatory acts include: Brussels II bis Regulation (Council Regulation (EC) No 2201/2003), as well as its new version Brussels II ter (Regulation (EU) 2019/1111), which regulate the issues of jurisdiction and recognition of judgments in matters of divorce and responsibility for children; Regulation (EU) No 1259/2010 (Rome III), which establishes rules for determining the law applicable to divorce and legal separation; Regulations (EU) No 2016/1103 and No 2016/1104 governing the property regimes of spouses and registered partnerships in cross-border situations. These acts create uniform procedural and conflict-of-law rules, which avoids situations where different states apply contradictory legal approaches to the same family dispute.

Thanks to the activities of the ECtHR and EU legal instruments, a certain supranational legal space is being formed in the field of family law, which: establishes minimum standards for the protection of family life; ensures harmonised rules of jurisdiction and applicable law; promotes the recognition of judgments between states; increases legal certainty for persons in cross-border family relationships. At the same time, full harmonisation of family law in Europe remains limited, as this area traditionally falls within the competence of states. Therefore, the role of supranational institutions is not to create a single model of the family, but to ensure a balance between national autonomy and the protection of fundamental human rights. The ECHR and the legal system of the European Union play a key role in reducing transnational legal uncertainty in the field of family law.

By forming European standards for the protection of family life, unifying conflict-of-law rules and developing mechanisms for mutual recognition of decisions, they contribute to greater legal predictability in cross-border family relations. At the same time, fragmentation persists due to the diversity of national legal systems, which necessitates the further development of European legal cooperation in this area.

The primary objective of this report is to conduct a rigorous comparative legal analysis of cohabitation laws within key European jurisdictions. This analysis aims to systematically identify patterns of convergence and divergence in legal protection and map the precise legal gaps between cohabitation and formal marital status. By detailing the operational mechanisms of various national models (e.g., France's registration model versus Sweden's *de facto* model), the research provides comprehensive policy insights into how European legal systems are adapting to contemporary social realities. Ultimately, this study furnishes a necessary foundation for informing national legislative reform and promoting greater coherence at the supranational level, particularly concerning the effective exercise of rights in multi-jurisdictional contexts.¹⁰

METHOD

This study employs a Normative/Doctrinal Legal Research methodology. The focus is

¹⁰ Layyin Mahfiana et al., "Influence of Religion and Culture on Women's Rights in Joint Property Settlements in Java, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 1 (2025): 117–38, <https://doi.org/10.18326/ijtihad.v25i1.117-138>.

exclusively on the analysis of established legal rules, binding statutes, judicial precedents, and authoritative academic commentary, rather than empirical social data. The core method applied is Comparative Law, which facilitates a structured analysis of how different legal traditions specifically, those rooted in civil law (e.g., France, Italy, Sweden) and common law (e.g., England & Wales) have formulated and implemented distinct regulatory responses to non-marital cohabitation.

The data comprises both primary and secondary legal materials essential for a comprehensive comparative assessment: Primary Legislative Data: This includes the text of national statutes governing various forms of partnership, such as the French *Pacte civil de solidarité* (PACS), the Swedish Cohabitees Act (*Sambolagen*), Italy's Law 76/2016 (*Legge Cirinnà*), and the UK Civil Partnership Act 2004.¹¹ Judicial Precedents: Key decisions from high national courts regarding property division and social rights are examined, alongside critical jurisprudence from the ECtHR concerning Article 8 of the European Convention on Human Rights (ECHR).¹² Supranational Instruments: Relevant EU Regulations, particularly those concerning Private International Law on property regimes, and Recommendations issued by the Council of Europe (e.g., Recommendation R(88)3) are analyzed.¹³

Four illustrative jurisdictions were selected to represent the spectrum of European legal responses, providing rich contrasts for comparison: Formal Registration (France/PACS): A model requiring an active, formal step to grant a structured, quasi-marital status.¹⁴ Statutory Default (Sweden/Sambolagen): A Nordic model providing automatic recognition and narrow, specific protection triggered purely by factual cohabitation.¹⁵ Hybrid/Contractual (Italy/Cirinnà Law): A structure that grants limited statutory rights while prioritizing the use of a formal agreement to regulate property. (England & Wales): A common law approach that explicitly rejects *de facto* marriage and relies predominantly on general property and trust principles.¹⁶

The choice of France, Sweden, Italy and England and Wales to study the problem of recognition of “new families” and the rights of unmarried cohabitants is due to both scientific and practical considerations. These jurisdictions represent different legal systems, models of legal regulation of actual family relations and different degrees of their institutionalization, which allows for a full-fledged comparative legal analysis.

¹¹ THE DIVISION OF PROPERTY BETWEEN UNMARRIED COHABITEES - ELSA Sweden, diakses Oktober 19, 2025, https://elsasweden.org/wp-content/uploads/2020/06/Nordic_LRG.pdf

¹² Non-married Cohabiting Couples and Their Constitutional Right to Family Life - Juridica International, diakses Oktober 19, 2025, https://www.juridicainternational.eu/public/pdf/ji_2013_1_104.pdf

¹³ COUNCIL REGULATION (EU) 2016/ 1104 - of 24 June 2016 - implementing enhanced cooperation in the area of jurisd - EUR-Lex, diakses Oktober 19, 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1104>

¹⁴ French/UK Inheritance Tax: Marriage, PACS and Civil Partnership, diakses Oktober 19, 2025, <https://www.frenchentree.com/french-property/law/french-uk-inheritance-tax-marriage-pacs-and-civil-partnership/>

¹⁵ The Sambo Law - Juristbyrå Din Juridik, diakses Oktober 19, 2025, <https://d-jur.se/samboavtal/the-sambo-law/>

¹⁶ INTERNATIONAL FAMILY LAW REPORT: - Penningtons Manches Cooper, diakses Oktober 19, 2025, <https://www.penningtonslaw.com/media/sonbynld/international-family-law-report-the-cohabitation-conundrum.pdf>

First, France is one of the most illustrative examples of legislative recognition of partnerships outside of marriage. In 1999, the French legislator introduced the institution of *Pacte civil de solidarité (PACS)* - civil partnership, which became an alternative form of legal registration of relations between partners. The peculiarity of the French model is that it provides cohabitants with a certain amount of property, tax and social rights, without fully equating them to spouses. In addition, statistical data indicate the high prevalence of this form of union: more than 200 thousand civil partnerships are concluded in France every year, which is almost equal to the number of marriages. Thus, France demonstrates an example of institutional legal recognition of new family forms.

Secondly, Sweden represents the Scandinavian model of legal regulation of cohabitation, which is characterized by a high level of social recognition of *de facto* family relations. The *Sambolagen Act (2003)* regulates the legal status of persons living together without marriage, in particular with regard to joint property and the right to use housing. In Scandinavian countries, cohabitation is considered a normal form of family life, which is also confirmed by social statistics: more than half of children in Sweden are born out of wedlock. The experience of Sweden is important for the study, as it demonstrates a socially oriented approach to the legal protection of cohabitants.

Thirdly, Italy is an example of a state where the legal recognition of new forms of family relations occurred gradually and to a large extent under the influence of case law and decisions of the European Court of Human Rights. For a long time, Italian legislation did not provide for a clear legal status for partners living together without marriage. Only in 2016 was the law on civil unions and *de facto* cohabitations (*Legge Cirinnà*) adopted, which granted certain rights to such couples. The experience of Italy is indicative for the analysis of how international legal standards and decisions of the ECtHR can influence the transformation of national family law.

Fourth, England and Wales represent a common law legal system, which differs significantly from continental legal models. In this jurisdiction, *de facto* cohabitation does not create automatic rights similar to those arising from marriage. Despite the widespread use of the term “common law marriage”, it does not exist in the legal sense. The rights of cohabitants in this system are mainly regulated by civil law rules, in particular regarding property, trusts and contracts. This creates a situation where many partners are left without adequate legal protection after the termination of the relationship or the death of a partner. The inclusion of England and Wales in the study allows us to analyze the limited model of legal regulation of cohabitation and its socio-legal consequences.

Thus, the selected jurisdictions represent different approaches to the legal recognition of new forms of family life: an institutionalized partnership model (France), a socially integrated model of regulation of cohabitation (Sweden), a gradual transformation of legislation under the influence of international standards (Italy), and a more limited contractual model of regulation (England and Wales). Such a selection allows for a comprehensive comparative analysis and to identify the most effective mechanisms of legal protection of unmarried cohabitants in modern European law.

The core analytical approach involves a dual comparison. Structural Recognition:

Determining whether the legal system opts for *formal/opt-in* mechanisms (requiring official registration, as in France) or *factual/opt-out* mechanisms (automatic legal consequences based on established duration or the presence of a child, as in Sweden or Norway).²⁰ Functional Consequence: Evaluating the practical effectiveness and equity of the regime concerning fundamental material rights: property division upon relationship breakdown, rights to succession, and access to social security benefits. This analysis explicitly assesses whether the protections provided mitigate the financial vulnerability inherent in informal unions.⁴

The recognition of so-called “new families”, in particular unions of persons living together without registering a marriage, has become a noticeable trend in the development of modern European family law. Social changes, the transformation of the institution of marriage and the increase in the number of de facto partnerships have necessitated the provision of certain legal status and guarantees to such couples. In most European countries, legislation is gradually adapting to these changes, ensuring partial or full recognition of the rights of unmarried cohabitants in property, social, housing and other legal relations.

Statistical data confirm the spread of new forms of family life in Europe. According to Eurostat for 2023–2024, about 42–43% of children in the countries of the European Union are born outside a registered marriage. In some countries, this figure is even higher: in France it exceeds 60%, in Bulgaria it is about 59%, in Estonia – about 56%, and in Sweden – over 54%. In addition, sociological research shows that a significant proportion of couples in Europe choose de facto cohabitation as an alternative to traditional marriage. According to various estimates, approximately one fifth of European households consist of partners living together without officially registering their marriage.

In response to these social trends, many European countries have created special legal mechanisms to regulate relations between cohabitants. One of the most famous examples is France, where the institution of civil partnership – Pacte civil de solidarité (PACS) – was introduced in 1999. Such a union can be concluded between two adults and provides for a number of legal consequences, including tax benefits, social guarantees, and certain property rights. Statistical data indicate the popularity of this form of union: in France, more than 200,000 civil partnerships are concluded every year, which is almost equal to the number of registered marriages.

In the Scandinavian countries, in particular in Sweden, the legal regulation of cohabitation is quite developed. The Sambolagen Act (2003) recognises the legal status of persons living together as a couple and sets out rules for property acquired for joint use. In the event of the termination of the relationship or the death of one of the partners, such property may be divided, and one of the partners has the right to remain in the joint home. This provides a certain level of economic protection for cohabitants.

In the Netherlands, it is common practice to conclude so-called cohabitation contracts (*samenlevingscontract*). These are civil law agreements that partners conclude in notarial form to regulate matters of property, household expenses, inheritance and other aspects of living together. Such contracts are recognised by public authorities in social, tax and housing matters.

In Spain, the institution of de facto partnerships is known as *parejas de hecho*. Its legal regulation is mainly carried out at the level of the autonomous communities. In many regions, partners who have officially registered such a relationship can receive social benefits, have the right to extend the lease agreement after the death of the partner, and also enjoy certain inheritance and tax benefits.

In Germany, de facto cohabitation is also recognized by law as a social reality. Although the law does not equate such relationships with marriage, they can be taken into account in the field of social security, housing relations and contractual regulation of property issues. Partners can conclude civil law agreements between themselves on the division of property or financial support.

An important role in shaping approaches to the recognition of new forms of family life is played by the European Court of Human Rights, which has repeatedly emphasized in its case law that the concept of “family life” enshrined in Article 8 of the European Convention on Human Rights is not limited to registered marriage. The Court recognizes that long-term and stable de facto relationships can also constitute family life, which requires appropriate legal protection from states.

Thus, modern European legislation is gradually recognizing the diversity of forms of family life, including de facto cohabitation. Granting unmarried partners certain rights in the property, social and housing spheres contributes to increasing the level of legal certainty and protecting their interests. At the same time, the level of legal regulation of such relationships differs significantly between states, which may create additional difficulties in cross-border legal relations.

RESULTS

The legal regulation of non-marital cohabitation across Europe demonstrates wide variation, primarily bifurcating into models based on formal registration and those based on factual recognition.

The PACS model, instituted in France, requires partners (of either opposite or same-sex) to formally register their relationship with public authorities.¹⁷ The fundamental strength of the PACS lies in providing immediate fiscal, tenancy, and certain social rights equivalent to marriage.

Crucially, the statutory property regime for partners in a PACS is the separation of assets (*séparation de biens*). This default position contrasts sharply with the community property regimes often associated with traditional marriage in civil law jurisdictions. However, partners retain the option to explicitly choose a system of joint ownership (*indivision*) within their agreement.¹⁸ Upon dissolution, the PACS is deliberately simplified, allowing termination via a

¹⁷ French/UK Inheritance Tax: Marriage, PACS and Civil Partnership, diakses Oktober 19, 2025, <https://www.frenchentree.com/french-property/law/french-uk-inheritance-tax-marriage-pacs-and-civil-partnership/>

¹⁸ Property consequences of registered partnerships | European e-Justice Portal, diakses Oktober 19, 2025, https://e-justice.europa.eu/topics/family-matters-inheritance/property-marriage-civil-partnerships/property-consequences-registered-partnerships/fr_en

joint declaration or unilateral notification, avoiding the judicial intensity of divorce. Furthermore, a PACS partner does not automatically succeed the deceased partner without a specific will, unlike a spouse.

A significant challenge arises in international mobility. Due to the UK Civil Partnership Act 2004, a PACS is recognized as a full civil partnership upon relocation to England and Wales.¹⁹ This automatic recognition triggers comprehensive financial rights equivalent to divorce, including claims for property transfer, ongoing maintenance (periodical payments), and pension sharing, rights that far exceed the statutory entitlements of the same couple under French law.²⁰ This "jurisdictional trap" illustrates the friction generated when different nations attempt to categorize and equate non-marital unions in cross-border contexts. The essence of the concept of "jurisdictional trap" in the context of cross-border civil partnerships is the legal conflict or unpredictability that arises from different approaches of states to the recognition and regulation of family relationships in different jurisdictions. In other words, it is a situation where the same form of family union receives different legal status and consequences depending on the country in which it is recognized or registered. In the example given: The UK Civil Partnership Act 2004 provides that a civil partnership entered into by marriage abroad is automatically recognized as a full civil partnership upon moving to England and Wales. This automatic recognition gives the partners full financial rights, similar to those arising from divorce, including: claims for division of property, periodic maintenance, distribution of pensions. At the same time, if similar extramarital unions are under French jurisdiction, the rights of the partners may be significantly limited, as French law provides fewer rights in such civil unions compared to British law.

Thus, the "jurisdictional trap" arises due to: Unpredictability of the legal regime: the same form of cohabitation may have full status in one country and limited status in another. Tertiary conflicts: States try to classify and compare foreign family unions with their national categories, which often leads to "friction" in legal regulation. Cross-border risks for partners: individuals who change their place of residence may unexpectedly gain or lose significant rights related to property, financial benefits and pensions.

In the example given, the British system creates a situation where a partner moving from a country with less legal protection suddenly acquires significantly greater rights, which can unexpectedly affect both parties to the union. The "jurisdictional trap" therefore illustrates the legal risks and complexities of harmonizing family law in a cross-border context, especially for unmarried couples and civil partners.

In contrast to the opt-in model of the PACS, the Swedish Cohabitees Act (*Sambolagen*) operates automatically once two unmarried people live together steadily in a shared household as a couple. The legal protection here is based purely on the establishment of a

¹⁹ French PACS: what couples living in England and Wales need to know - Stone King, diakses Oktober 19, 2025, <https://www.stoneking.co.uk/literature/e-bulletins/french-pacs-what-couples-living-england-and-wales-need-know>

²⁰ The unintended consequences of the French PACS - mind the trap | Family Law Blog, diakses Oktober 19, 2025, <https://www.kingsleynapley.co.uk/insights/blogs/family-law-blog/the-unintended-consequences-of-the-french-pacs-mind-the-trap>

factual relationship, making it a prominent example of the *de facto* recognition model prevalent in the Nordics.²¹

The defining feature of *Sambolagen* is its deliberately narrow scope. Protection is restricted solely to what is defined as sambo property (*samboegendom*), which includes only the joint dwelling and household goods acquired for the couple's joint use.²¹ All other forms of wealth, including vehicles, savings, bank deposits, vacation homes, and property acquired before cohabitation, are excluded from division.²²

Upon separation, the rule of equal division (50/50) applies to *samboegendom*, regardless of which partner provided the funds or holds the legal title.²⁸ This rule's primary functional objective is social welfare: ensuring that the financially weaker partner, particularly one who may have specialized in homemaking or childcare, is not rendered homeless upon the relationship's end.²³ Nevertheless, like most cohabitation regimes, *sambos* are not granted automatic intestate inheritance rights.²⁴

Italy's Law 76/2016 recognizes *de facto* cohabitation based on stable affective bonds, mutual moral, and material assistance, and shared residence. While recognition is fact-based, the resulting statutory rights are limited (e.g., reciprocal rights to visits and assistance in case of illness, and rights related to the prison system).²⁵

The key mechanism for property protection is the Cohabitation Agreement (*contratto di convivenza*). This agreement allows couples to privately regulate their financial and property relationships, effectively mimicking some of the protective functions of a marital property regime.

However, the practical application of this law reveals critical fissures, especially regarding international mobility. The distinction often drawn in Italian law between "static" citizens (those who have always resided in Italy) and "mobile" citizens (those who have exercised free movement rights) creates disparities in residence rights for non-EU partners.²⁶ Local administrative obstacles, where municipalities impose residency requirements contrary to court interpretations that focus on enduring emotional bonds, create a bureaucratic "Catch-22" for non-EU partners seeking status recognition necessary for residence.²⁷

²¹ The Sambo Law - Juristbyrå Din Juridik, diakses Oktober 19, 2025, <https://d-jur.se/samboavtal/the-sambo-law/>

²² Hani Sholihah et al., "Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender," *Al-Adalah* 21, no. 1 (2024): 101–24, <https://doi.org/10.24042/adalah.v21i1.21256>.

²³ Swedish legal question : r/TillSverige - Reddit, diakses Oktober 19, 2025, https://www.reddit.com/r/TillSverige/comments/1angozp/swedish_legal_question/

²⁴ Miftahul Huda and Tri Wahyu Hidayati, "The Concept of Muḥammad Shaḥrūr on Gender Parity in Inheritance Legislation," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 262–80, <https://doi.org/10.22373/ujhk.v6i2.18121>.

²⁵ De facto relationships - Consolato d'Italia a Perth, diakses Oktober 19, 2025, <https://consperth.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-italiano/stato-civile/de-facto-relationships/>

²⁶ De-facto couples rights in Italy visa and residence permit - YOURWAYTOITALY, diakses Oktober 19, 2025, <https://yourwaytoitaly.it/en/articles/italy-and-de-facto-couples>

²⁷ "UNMARRIED COHABITING COUPLES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: PARITY WITH MARRIAGE?," accessed May 20, 2026,

Moreover, there is currently no harmonized, EU-wide recognition of such national cohabitation contracts, meaning an Italian agreement may not be automatically enforceable if the couple moves to another European country.²⁸

England and Wales adhere to a strict separatist model, maintaining that there is no legal status equivalent to 'common law marriage'.⁸ This jurisdiction provides the starkest contrast, offering virtually no automatic legal or financial consequences arising solely from cohabitation.²⁹

Upon separation, the financially vulnerable party cannot claim maintenance or automatic division of property based on the relationship itself.⁸ Recourse is limited to complex, expensive claims based on general private law principles, such as resulting or constructive trusts, or financial applications made strictly for the benefit of a child (Schedule 1 Children Act), which are narrow in scope and duration.⁸ This lack of a financial safety net is particularly detrimental to the dependent partner, intensifying the effects of the "parental penalty" for women with children upon relationship breakdown.³⁰

Social changes taking place in European societies over the past decades have led to the gradual recognition of the so-called "new families", in particular partnerships without official marriage registration. The growth in the number of such unions has become an important social fact that has influenced the transformation of family legislation in many European countries. Legislators are increasingly taking into account the real social practice of cohabitation and are seeking to provide legal protection for persons in such relationships.

One of the key social indicators confirming the spread of new forms of family life is the increase in the proportion of children born out of wedlock. According to Eurostat, in the countries of the European Union this figure exceeds 40% of all births on average. In some countries it is even higher: in France, over 60% of children are born to parents who are not in a registered marriage, in Sweden – over 54%, in Estonia – about 56%, in Bulgaria – almost 59%. Such statistical data indicate that de facto cohabitation has become a common social practice, and the traditional family model based exclusively on registered marriage no longer fully reflects the modern structure of family relations.

Another important social fact is the growth in the number of households formed by partners without marriage. According to the results of European sociological research, approximately 20–30% of couples in Europe live together without officially registering their relationship. Such cohabitation is especially common in the countries of Northern and Western Europe, where it is often viewed as an alternative to marriage or as a preliminary

<https://cjel.law.columbia.edu/print/2004/unmarried-cohabiting-couples-before-the-european-court-of-human-rights-parity-with-marriage/>.

²⁸ Durotun Nafisah, "Positivisasi Hukum Keluarga Islam Di Indonesia Dalam Perspektif Gender," *Al-Manahij: Jurnal Kajian Hukum Islam* 7, no. 1 (2013): 39–52, <https://doi.org/10.24090/mnh.v7i1.575>.

²⁹ Mohd Anuar Ramli et al., "The Quest for Third Gender Equality: Challenges and Implications for Islamic Law and Muslim Women's Sustainability in Malaysia," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 295–310, <https://doi.org/10.15408/ajis.v24i2.37746>.

³⁰ International family law report: - Penningtons Manches Cooper, diakses Oktober 19, 2025, <https://www.penningtonslaw.com/media/sonbynld/international-family-law-report-the-cohabitation-conundrum.pdf>

stage before its conclusion.

Social transformations are also associated with changes in the value orientations of the population. The European Values Study and the European Social Survey show that a significant part of European citizens do not consider marriage to be a prerequisite for creating a family. In many countries, over 70% of respondents agree that a couple can have children and live together without registering their marriage. This indicates the gradual formation of more flexible ideas about family relations.

In response to such social realities, European countries have begun to develop legal mechanisms to regulate the status of unmarried cohabitants. In some countries, institutions of registered partnerships or civil unions have been created, which grant partners certain property, social and tax rights. For example, in France, the civil partnership *Pacte civil de solidarité* (PACS) operates, which has become a very common form of legal registration of relations: more than 200 thousand such partnerships are concluded annually, which is almost equal to the number of marriages.

In Scandinavian countries, in particular in Sweden, cohabitation without marriage is recognized at the legislative level through special regulations that regulate the division of property, the right to use housing and other aspects of the partners' life together. In the Netherlands, the practice of concluding cohabitation agreements that allow partners to regulate property and financial issues is widespread. In Spain, the institution of *de facto* partnerships (*parejas de hecho*) has also received legislative recognition in many autonomous regions.

An important socio-legal factor in the development of legislation in this area has also been the case law of the European Court of Human Rights, which recognizes that stable *de facto* relationships can constitute “family life” within the meaning of Article 8 of the European Convention on Human Rights. This approach encourages states to provide a minimum level of legal protection for persons in partnerships without marriage.

Thus, social facts the growth in the number of *de facto* “new families”, the increase in the proportion of births outside marriage, changes in social values and the structure of households have become important factors in the recognition of new forms of family life in European legislation. Responding to these changes, states are gradually expanding the rights of unmarried cohabitants, providing them with legal protection in the property, social and housing spheres. At the same time, the diversity of national models of legal regulation indicates that the process of institutionalization of new family forms in Europe is still ongoing.

The material consequences of union dissolution reveal where the legal status disparity is most damaging. Marriage inherently provides a corpus of rights concerning property division, maintenance, and pension sharing. For cohabitants, the protection is fragmented.

In jurisdictions like the UK, the rejection of automatic rights means couples must rely on contracts or complex general principles of equity. In contrast, even narrow statutory regimes like *Sambolagen* provide automatic wealth sharing (50/50 division of the joint home and household goods).

A central feature distinguishing marital regimes from most cohabitation regimes is the

non-recognition of non-proprietary contributions (e.g., childcare, domestic labor, career support). While divorce courts routinely consider these factors in equitable distribution, courts addressing cohabitation claims often limit recognition to direct proprietary contributions, or, at best, physical labor that increased the value of the other partner's property. The failure to assign economic value to shared domestic life perpetuates financial inequity for the partner whose efforts supported the other's wealth accumulation.⁴

In nearly all European jurisdictions, the surviving cohabitant is excluded from the system of intestate succession.³¹ If a cohabitant dies without a will, the surviving partner, irrespective of the length or stability of the relationship, has no automatic right to inherit the deceased's property.

To mitigate this harsh consequence, the Council of Europe adopted Recommendation No. R(88)3, which urged member states to ensure that contracts and testamentary dispositions between unmarried couples should not be considered invalid solely on grounds of being contrary to public policy or morality.³² While this recommendation strongly supports the principle of private ordering (the ability to secure rights through a contract or will), it does not compel states to grant automatic statutory rights equivalent to those enjoyed by married spouses or civil partners.³³

Access to social security benefits, particularly survivor's pensions, highlights the cost-based legal distinction between formal and “*new families*”.³⁴

Historically, public service schemes did not extend survivor benefits to unmarried partners.¹⁴ Although subsequent reforms modernized these schemes (e.g., in the mid-2000s in the UK), eligibility for cohabiting partners is strictly conditional, typically requiring the survivor to prove financial dependency and the couple to have met a minimum cohabitation period (e.g., five years in Luxembourg).³⁵

A critical legal barrier is non-retrospectivity. In a challenge concerning the UK Local Government Pension Scheme, the High Court upheld the government's refusal to grant a survivor pension to a cohabiting partner whose deceased partner had left service before the reform date (April 2008).³⁶ The court's justification was rooted in financial and actuarial logic: the deceased member had not paid into a scheme that costed for cohabitee benefits. This

³¹ Cohabitee relationships - Government.se, diakses Oktober 19, 2025, <https://www.government.se/government-policy/family-law/cohabitee-relationships/>

³² Council of Europe committee of ministers recommendation no. r (88) 3 of the committee of ministers to member states on the valid, diakses Oktober 19, 2025, <https://rm.coe.int/rec-88-3e-on-the-validity-of-contracts-between-persons-living-together/1680a3b3e8>

³³ Ramli et al., “The Quest for Third Gender Equality.”

³⁴ Lukman Arake et al., “Non-Binary Gender in Siyarah Syar’iyah Perspective: Study at Religious Universities in South Sulawesi,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1708–33, <https://doi.org/10.22373/sjhk.v7i3.20152>.

³⁵ Yevhen Leheza et al., “Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects,” *Revista Justiça Do Direito* 37, no. 3 (2023): 157–72, <https://doi.org/10.5335/rjd.v37i3.15233>.

³⁶ Occupational pensions - survivors' benefits for cohabitants - UK Parliament, diakses Oktober 19, 2025, <http://researchbriefings.files.parliament.uk/documents/SN06348/SN06348.pdf>

reliance on actuarial distinction provides a robust defense for maintaining differential treatment in pension entitlements.³⁷

Similarly, in the context of EU staff, the European Courts have examined the compatibility of rules requiring a minimum marriage duration for survivor pensions with the principle of equal treatment, specifically when the preceding period of cohabitation was not taken into account.³⁸ These challenges confirm the systemic tension between the institutional structure of social benefits, which favors formal status, and the growing social acceptance of long-term cohabitation.³⁹

The comparison of legal rights confirms that European regulatory responses are highly fragmented, leaving significant gaps where cohabitants lack parity with formally recognized partnerships.

Table 1: Legal Gaps in Protection for Unregistered Cohabitation

Area of Law	Cohabitation (Unregistered/De Facto)	Marriage/Registered Partnership	Key Legal/Policy Gap
Property Division	Highly restricted, relying on narrow statutes (samboegendom) or complex trust/contract claims.	Automatic statutory regimes ensure fair distribution (community/equal separation) or equitable discretion.	Lack of adequate statutory mechanism to address contributions and achieve wealth parity upon dissolution.
Intestate Succession	Excluded from automatic inheritance rights; full reliance on specific testamentary disposition.	Automatic status as heir or compulsory portion (forced heirship).	Extreme financial vulnerability upon sudden death.
Survivor's Pension	Contingent on strict, often non-retrospective eligibility criteria (dependency, duration, cost justification).	Guaranteed based on spousal/partner status and insurance periods.	Cost-based and temporal restrictions create unequal social security access.
Migration/Free Movement	Partner status must be subjectively proven ("long-term relationship"); facing high administrative hurdles (e.g., Italian static/mobile divide).	Status is instantly recognized via certificate/registration.	Vague criteria and bureaucratic obstacles hinder the effective exercise of EU rights.

DISCUSSIONS

The diversity in national legal responses demonstrates a slow but definite ideological shift in European family law, moving away from defining rights solely by the prerequisite of a

³⁷ V. Beschastnyi et al., "Place of Court Precedent in the System of Law of the European Union and in the System of Law of Ukraine," *Journal of Legal, Ethical and Regulatory Issues* 22, no. 6 (2019).

³⁸ 62018CC0460 - EUR-Lex - European Union, diakses Oktober 19, 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CC0460>

³⁹ S. S. Vitvitskiy et al., "Formation of a New Paradigm of Anti-Money Laundering: The Experience of Ukraine," *Problems and Perspectives in Management* 19, no. 1 (2021), [https://doi.org/10.21511/ppm.19\(1\).2021.30](https://doi.org/10.21511/ppm.19(1).2021.30).

formal legal contract (marriage) toward recognizing the economic and social consequences generated by the duration and substance of a cohabiting relationship.

This transition is driven by the reality that relationship breakdown, regardless of marital status, demands a focus on welfare and social justice. In jurisdictions that offer some statutory recognition, such as Sweden, the mechanism is designed less to reward formal commitment and more to mitigate potential economic destitution for the weaker partner.²⁹ Similarly, the evolution of custody laws, which now prioritize the creation of "post-divorce families" through shared parenting, emphasizes cooperative relationship structures post-separation, demonstrating that the focus of legal intervention is shifting from punishing separation to ensuring stability and financial security for parents and children.⁴⁰

The European Court of Human Rights, interpreting Article 8 ECHR (Right to respect for private and family life), plays a crucial role in establishing a baseline protection for "*new families*" that national states cannot breach. The ECtHR's jurisprudence has significantly broadened the concept of 'family life,' extending protection to stable, cohabiting same-sex couples, thus requiring national legal systems to acknowledge the relationship's substance rather than its form alone.⁴¹

The Court's policy shift from a previous restrictive approach necessitates that states recognize stable, long-term non-marital cohabitation for purposes such as tenancy rights, residence rights, and freedom from discrimination. Although the ECtHR generally affords states a broad margin of appreciation regarding the content of financial rights (such as property division and inheritance), it rigorously ensures that denial of recognition does not constitute an unjustified interference with fundamental rights, particularly where children or residence are concerned.⁴² A critical assessment of the wide "margin of appreciation" in conjunction with the principle of non-discrimination (Article 14 of the ECHR) reveals a certain tension between the freedom of States to regulate family relations and the guarantee of equal rights for all individuals. The ECtHR has traditionally recognised that States have a considerable margin of appreciation in determining the content of financial rights, such as division of property, maintenance or pensions, in particular in cases of civil partnerships or de facto cohabitation without marriage. This "margin of appreciation" is justified by the fact that family law falls within the competence of States, which are best placed to take into account social, economic and cultural specificities.

At the same time, the ECtHR strictly monitors whether restrictions or denials of rights do not violate the fundamental rights of the individual and are proportionate. The principle of non-discrimination, enshrined in Article 14 of the ECHR, prohibits persons in different family statuses from being treated differently in terms of their right to financial

⁴⁰ Fatherhood, family law, and the crisis of boys and men, diakses Oktober 19, 2025, <https://columbialawreview.org/content/fatherhood-family-law-and-the-crisis-of-boys-and-men/>

⁴¹ Guide on Article 8 of the Convention – Right to respect for private and family life - Global Freedom of Expression |, diakses Oktober 19, 2025, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/11/Guide-to-Art.-8-of-the-ECtHR-COE-and-ECtHR.pdf>

⁴² Article 8: Respect for your private and family life | EHRC, diakses Oktober 19, 2025, <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-8-respect-your-private-and-family-life>

guarantees without an objective and justified basis. That is, if civil partners or *de facto* cohabitants are granted significantly fewer rights than spouses, this may be considered discrimination on the basis of family status, even if the State formally exercises a “margin of appreciation”.

This problem is particularly acute in cross-border cases, where a union entered into abroad is granted different legal status in different jurisdictions. For example, a civil partnership entered into in another country is recognised as full-fledged after moving to England and Wales and provides significantly wider financial rights than in the country of origin. Such situations create a jurisdictional trap, where the same person gains or loses rights depending on the jurisdiction, which highlights the risk of discrimination.

Thus, a wide “margin of appreciation” remains legally justified only if the principles of proportionality and non-discrimination are respected. In cases where the refusal to recognise a civil partnership results in a restriction of the rights of children or economically vulnerable partners, the argument of the State’s broad freedom to regulate loses legal force and can be challenged before the ECHR. The legal balance between the freedom of States and the protection of human rights in such situations is a key criterion for assessing the legality of the “margin of appreciation”.

The adaptation of national laws has inevitably introduced significant complexity in cross-border European contexts, where couples frequently move between jurisdictions with opposing regulatory models (e.g., high-protection Sweden to minimalist UK).⁴³

The European Union has made significant strides in unifying the Private International Law (PIL) rules for formalized relationships through regulations governing matrimonial property regimes (Regulation 2016/1103) and property consequences of registered partnerships (Regulation 2016/1104).⁴⁴ These regulations establish clear choice-of-law rules, thereby minimizing legal uncertainty for transnational couples with formal status.⁴⁵

However, the legal status and property consequences of unregistered *de facto* cohabitation were deliberately excluded from these regulations.¹⁶ This omission has critical systemic ramifications. Since the EU lacks competence to regulate the content and forms of family relationships, it cannot impose substantive law for “*new families*”. By harmonizing the PIL rules only for registered unions, the EU inadvertently strengthens the regulatory distinction between registered and unregistered partnerships. This approach incentivizes Member States to create formal registration models (like the PACS) to ensure legal certainty for their citizens exercising free movement rights.⁴⁶ For the vast and growing population of

⁴³ Registered Partnerships in European Union Law - The Future of ..., diakses Oktober 19, 2025, <https://www.cambridge.org/core/books/future-of-registered-partnerships/registered-partnerships-in-european-union-law/DD6BFC6954DF6646BB265DEB2617D0EF>

⁴⁴ COUNCIL REGULATION (EU) 2016/ 1104 - of 24 June 2016 - implementing enhanced cooperation in the area of jurisd - EUR-Lex, diakses Oktober 19, 2025, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1104>

⁴⁵ Yevhen Leheza et al., ‘Interpretation of Regulatory and Legal Acts in Contemporary Contexts: Foreign Experience, Comparative Perspectives, and Pathways for Regulatory Reform’, *NUSANTARA: Journal Of Law Studies* 5, no. 1 (February 2026): 102–22, <https://doi.org/10.5281/zenodo.18727992>.

⁴⁶ Is a Cohabitation Agreement in Italy right for you? Top legal advice for international couples, diakses Oktober 19, 2025, <https://theitalianlawyer.com/cohabitation-agreement-italy/>

unregistered cohabitants, the absence of harmonized PIL rules means that determining the applicable law governing their property upon separation remains dependent on residual, often conflicting, national PIL rules. This substantial uncertainty hinders cross-border justice, complicates disputes, and necessitates expensive *ad hoc* legal solutions, contradicting the EU's overall objective of facilitating transnational civil justice and mobility.

Recognition of «new families, in particular de facto partnerships without marriage registration, has significant practical consequences for socially vulnerable groups of the population. This primarily concerns persons who are economically dependent, have children together, care for a partner or are left without proper legal protection in the event of the termination of the relationship or the death of one of the partners. That is why the issue of legal recognition of cohabitation has not only family and legal, but also social significance.⁴⁷

The first important consequence is the protection of the economically weaker partner. In many cases, during de facto cohabitation, one of the partners may devote a significant part of his time to running the household or caring for children, which limits his economic independence. In the absence of legal regulation after the termination of such relationships, this person risks being left without a share in jointly acquired property or without financial support. In countries where cohabitation is partially regulated by law (such as Sweden or France), rules are established on the division of property or the possibility of receiving certain compensations, which significantly reduces the risks of economic vulnerability.⁴⁸

A second important aspect is the protection of the rights of children born in de facto family unions. The increase in the number of births outside marriage in Europe means that a significant proportion of children are raised in families where the parents are not in a registered marriage. In such cases, legal recognition of partnerships helps to ensure the stability of the family environment, the definition of parental rights and responsibilities, and guarantees access to social benefits and assistance. This is particularly important for single mothers who may need additional social and legal protection after the end of cohabitation.⁴⁹

A third practical consequence is the protection of the housing rights of cohabitants. In the event of the death of one of the partners or the termination of the de facto relationship, the other partner may lose the right to reside in the shared home, if he or she was not the official owner or tenant. In some European countries, legislation provides for the possibility of preserving the right to use the housing for the partner who lived with the deceased or was economically dependent on him. Such mechanisms are aimed at preventing the social marginalization of people who find themselves in a difficult life situation.

The fourth aspect is access to social guarantees and the social security system. In

⁴⁷ Alfian Qodri Azizi et al., "Fulfillment of Civil Rights of Extramarital Children and Its Effect on Social Dimensions," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 2 (2020): 235–52.

⁴⁸ Oleksandr Leshchenko et al., 'Legal Definition of the Cryptocurrency in Ukraine in International Comparison', *Intersections. East European Journal of Society and Politics* 11, no. 2 (2025): 226–42, <https://doi.org/10.17356/ieejsp.v11i2.1311>.

⁴⁹ Yulia Volkova et al., 'Crypto Market Experience: Navigating Regulatory Challenges in Modern Conditions', *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 (December 2024): 178–94, <https://doi.org/10.30631/alrisalah.v24i2.1625>.

many countries, cohabitants can claim certain social benefits, health insurance or other types of assistance if their relationship is recognized by the state. This is especially important for elderly people living together without marriage, as well as for people with disabilities or people in need of constant care. Recognition of partnerships allows such people to receive support from the state or enjoy social rights that were previously granted exclusively to spouses.⁵⁰

In addition, it is important to protect the rights of partners in inheritance relations. In the absence of legal status, cohabitants may be deprived of the right to inherit the partner's property, even if they have lived together for a long time. Some European legal systems provide mechanisms that allow the partner to receive a share of the property or other compensation, which helps to reduce social and economic vulnerability.

However, despite positive trends, the level of legal protection of unmarried cohabitants in Europe remains uneven. In countries where such relationships do not have a clear legal status, vulnerable groups may face difficulties in accessing social guarantees, property rights and legal protection.⁵¹

Therefore, the practical consequences of recognizing “new families” in European legislation are manifested primarily in strengthening the social protection of economically weaker partners, ensuring the rights of children, guaranteeing housing rights and access to social benefits. This approach contributes to the formation of a fairer and more adapted to modern social realities system of family law, which takes into account the diversity of forms of family life and the needs of socially vulnerable groups.

CONCLUSION

The recognition of unmarried cohabitants in European law demonstrates an ongoing transformation of the concept of family within modern legal systems. The comparative analysis shows that France, Sweden, Italy, and England and Wales adopt different regulatory approaches, resulting in varying levels of protection concerning property rights, inheritance, social welfare, and relationship dissolution. These differences indicate that legal protection for cohabitants in Europe remains fragmented and inconsistent.

The study also confirms the important role of the European Court of Human Rights in expanding the interpretation of “family life” under Article 8 of the European Convention on Human Rights. Nevertheless, significant gaps remain between symbolic recognition and effective legal protection, particularly regarding financial rights and cross-border legal certainty. The absence of harmonized rules governing transnational cohabitation further increases legal uncertainty within the European legal framework.

⁵⁰ “Exploring the Monogamy Principle in the Samin Community’s Customary Marriages in Kudus: Harmonisation of Tradition and State Law | *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan*.”

⁵¹ Oleksandr Krupyt'skyi et al., ‘Standards and Safeguards Stemming from the Right to Respect for Private Life and the Right to a Fair Trial: Applicability with Respect to Administrative-Law Matters of Civil Service’, *Revista Eletrônica Direito e Sociedade - REDES* 12, no. 3 (December 2024): e11977–e11977, <https://doi.org/10.18316/redes.v12i3.11977>.

This article argues that the current fragmented legal structure creates vulnerability for unmarried cohabitants, especially economically dependent partners. Therefore, European legal systems should develop minimum protective standards, strengthen the recognition of cohabitation agreements, and improve supranational coordination to ensure equitable and predictable legal protection for contemporary family relationships.

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