

Reasons for Regulating Informal Relationships: A comparison of nine European jurisdictions

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1. Introduction

In Europe the continuing increase of the number of informal relationships in the form of cohabitation is a significant development in family law. Where marriage used to be the standard in all European countries, an increasing trend in informal relationships is now visible. The statistics of twenty-eight European countries show an increase in the number of cohabitants.¹ In some countries the number had even doubled in 20 years.² The increasing popularity of cohabitation has raised the question as to whether and how informal relationships can be given legal form. In the recent publication by the Commission on European Family Law (CEFL), national reports on 28 European jurisdictions have been integrated to allow a comparison of the current legal status of informal relationships. A study of these 28 national reports showed that the levels of regulation of informal relationships varied greatly. Six jurisdictions do not recognize or grant statutory rights to informal relationships.³ The largest group of fourteen countries have not regulated informal relationships as a *lex specialis* in family law, but do confer some rights and duties in various areas of law specifically tailored to informal relationships.⁴ For example, the Netherlands does not have a *lex specialis* for informal relationships in family law, but does confer rights and duties in other areas of law, e.g. inheritance law and social security law.⁵ Nine jurisdictions, Sweden, Hungary, Slovenia, Croatia, Catalonia,⁶ Portugal, Scotland, the Republic of Ireland and Finland have explicitly chosen to reform their family law to regulate informal relationships through legislation. In doing so, these jurisdictions have created a *lex specialis* for informal relationships, in the sense of an established legal framework, defining and delineating the recognised informal relationship and attaching legal consequences to the relationship in their legislation regarding family law. These nine

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1 See K. Boele-Woelki, C. Mol & E. van Gelder (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), at Q 11, pp. 331-350.

2 See for example Austria, and England and Wales.

3 These are: Estonia, Greece, Luxembourg, Russia, Slovakia and the federal law of Spain.

4 These are: Austria, Belgium, Bulgaria, the Czech Republic, Denmark, England and Wales, France, Germany, Italy, Latvia, Lithuania, the Netherlands, Norway and Switzerland. While Norway could be said to also have an established framework for cohabitants, informal relationships in fact remain largely unregulated by statute, a legal framework specifically for informal couples only exists in the field of inheritance law.

5 W. Schrama, 'Dutch Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), pp. 75-78.

6 Catalonia is included instead of Spain, as certain Autonomous Communities have the jurisdiction to legislate in matters of civil law and Catalonia was the first Autonomous Community to regulate informal relationships while the Spanish Civil Code does not regulate informal relationships. Although the Autonomous Communities of Aragon and Navarra in Spain have now also regulated informal relationships, Catalonia will be taken as the example. See C. González Beilfuss & M. Navarro-Michel, 'Spanish Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), pp. 38-39.

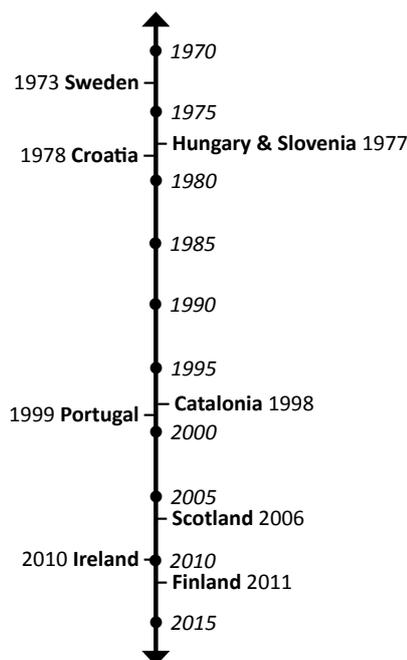
jurisdictions each have different manners of regulating informal relationships, different definitions in their regulations and different legal effects granted to partners in an informal relationship. It is interesting to note that while Croatia, Hungary, Slovenia and Sweden have had regulated informal relationships since the 1970s, the regulation of informal relationships is a more current development in the other countries.

This article examines what the reasons behind legal regulation in all nine jurisdictions were and whether and how this is reflected in the various laws. The aim of this article is to describe and explain why informal relationships have been specifically regulated in the chosen nine jurisdictions. What were the incentives and reasons for the regulation of informal relationships in the family laws of nine European jurisdictions and are these reasons reflected in the legal definitions and effects? If so, how?

This article takes the CEFL national reports as the main sources. For the analysis of reasons other primary and secondary sources will be consulted, such as Law Commission Reports, parliamentary history and academic literature. To avoid any confusion, a concrete definition of ‘informal relationship’ must be established. As this article draws upon the CEFL country reports, the working definition of the questionnaire is used: ‘a relationship between a couple, that is not formalised as a marriage or as a registered partnership/civil union,’⁷ regardless of their gender.

In order to successfully answer the non-normative research question a comparative legal methodology has been opted for. The objects to be compared (*tertium comparationis*) are the reasons, as derived from the consulted sources, for regulating informal relationships. These reasons can be legal, social, political, economic and/or cultural. As a very close connection exists between family law and the moral, religious, social and political beliefs of the society in which it operates, it is sometimes doubted whether a sound comparison can be made in this field of law.⁸ However, the difficulties of family life are common to every human relationship irrespective of nationality or place of residence.⁹ The reasons examined in this article are for the most part the explanations given by the legislators for their decision to regulate. In light of the scope of this study and the sources and means available, this article does not discern underlying – political, religious and/or cultural – motives or causes. Instead the focus lies on the public and intentional reasons given to regulate. By comparing how and for which reasons different legal systems have regulated informal relationships a deeper understanding may benefit the future regulation of informal relationships in other European jurisdictions.

Figure 1 Timeline of regulation in the nine jurisdictions



7 Boele-Woelki et al., supra note 1, p. v.

8 E.E. Sutherland, *The Future of Child and Family Law* (2012), p. 1.

9 Ibid., p. 2.

To answer the research question, a clear overview of the regulation of informal relationships in the chosen jurisdictions is necessary to determine the link between the reasons for regulation and the definition and legal consequences of the regulation. Therefore, the article starts with a successive comparison in chronological order of the legal status of ‘*sambor*’ in Sweden, ‘*élettársi*’ in Hungary, ‘*zunajzakonska skupnost*’ in Slovenia, ‘*neformalno partnerstvo*’ and ‘*životno partnerstvo*’ in Croatia, ‘*unió estable*’ in Catalonia, ‘*união de facto*’ in Portugal, ‘cohabitation’ in Scotland, ‘cohabitation’ in the Republic of Ireland and ‘*avoliitto*’ in Finland. For each jurisdiction a short history is presented, the definition of the *lex specialis* of informal relationships is given including the requirements couples must fulfil, and the scope of legal effects is mentioned. The article then continues with a comparison of the reasons for the regulation of informal relationships in all nine jurisdictions. By using the simultaneous comparison in this section the five reasons for regulating are clearly presented: legal, social, political, economic and/or cultural. A clear overview with the comparisons (definition, scope of legal effects and reasons) is then given with a discussion on the relation between these three aspects in each jurisdiction, before presenting the conclusion.

2. Regulation of informal relationships

2.1. Sweden

Following the ‘stance of neutrality’ towards informal families adopted at the end of the 1960s it was deemed necessary to modify Swedish family law, specifically in the field of marriage law.¹⁰ The Act of Unmarried Cohabitants’ Joint Dwelling 1973 was the first Swedish law particularly designed for cohabitantes and concerned the regulation of the occupation of the joint dwelling if the relationship was terminated.¹¹ In 1987 the legal effects of the Act were radically extended and same-sex cohabitantes were included.¹² The current Cohabitation Act of 2003 is very similar to the 1987 Act, but now same-sex and opposite-sex couples are jointly covered by the same conditions.

In the Swedish Cohabitation Act 2003 cohabitantes are defined in §1(2) as ‘two people who live together as a couple on a habitual basis and who share a household’.¹³ The requirement of living together on a ‘habitual basis’ aims to exclude short-term relationships from the definition without including a strict specific duration requirement. This grants courts some freedom in accepting short-term relationships as cohabitation depending on the circumstances.¹⁴ Discretion has also been used by the courts in regard to the requirement of sharing a household.¹⁵ Cohabitation is open to opposite-sex as well as same-sex couples, although the cohabitantes may not be in a legally existing formal relationship with any other person.¹⁶

The core of the legal effects granted is the regulation of ‘cohabitation property’, by which is meant the joint home and household goods of the couple. The Swedish Cohabitation Act determines which goods can be qualified as ‘cohabitation property’ and how they should be distributed upon termination. The Act also includes protective provisions for the cohabitantes, for example the so-called ‘take-over right’.¹⁷ Legal effects are also granted in the field of social insurance, but only following additional requirements.¹⁸

2.2. Hungary

Hungary was one of the first European countries to regulate cohabitation when modernizing their 1959 Civil Code in 1977. At that time the Hungarian Supreme Court’s case law inspired two provisions on cohabitation.¹⁹

10 M. Jänterä-Jareborg et al., ‘Swedish Report’, as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), p. 269.

11 *Ibid.*, p. 270.

12 *Ibid.*, p. 271.

13 *Ibid.*, p. 163.

14 *Ibid.*, pp. 163-164 and p. 188.

15 *Ibid.*, p. 163.

16 *Ibid.*, p. 87.

17 *Ibid.*, pp. 86-88.

18 *Ibid.*, p. 163.

19 O. Szeibert, ‘Hungarian Report’, as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), p. 249.

The provisions defined cohabitation and regulated the cohabitants' community of property. The Hungarian Supreme Court further influenced the regulation of cohabitation in 1996 when cohabitation was extended to include same-sex couples.²⁰ The recodification of the Civil Code began in the late 1990s and has led to the new Civil Code which came into effect in 2014. The new Civil Code has extended the scope of legal effects for cohabitants. However, while cohabitation was originally meant to be entirely included in the Family Law Book, the debates in Parliament questioning the regulation of cohabitation in addition to the institution of marriage led to the division of cohabitation between the Family Law Book and the Book on the Law of Obligations.²¹

In the Family Law Book and the Book on the Law of Obligations, the Hungarian Civil Code regulates the informal relationship of cohabitation.²² Article 6:514 of the Hungarian Civil Code defines cohabitation as 'two persons who live together without entering into a marriage, in a common household, in an emotional fellowship and in an economic partnership (a community of life)'.²³ Due to the ambiguity of the three requirements, the Hungarian judiciary has interpreted the elements strictly since the inclusion of the definition of cohabitation in the 1959 Civil Code.²⁴ Especially the Hungarian Curia (the former Supreme Court) has further developed the conditions of the definition. Such conditions are, for example, the public knowledge of the relationship, that third persons, e.g. neighbours, are aware of the relationship and the common household,²⁵ and the economic community, in which partners have a common interest in the accumulation of wealth and the spending of it. Both opposite-sex and same-sex cohabitating partners fall under the definition. In general married persons or persons already in a registered partnership cannot enter into cohabitation while still in a community of life with the spouse/registered partner.²⁶

The legal effects of cohabitation are split between the law of obligations and family law. In the law of obligations, cohabitation is considered a special contract for which cohabitants can enter into a property agreement, but as it is a *de facto* relationship there is also a default property regime.²⁷ Within family law maintenance is granted to the former cohabitant following the termination of cohabitation when the requirements of Article 4:86 Hungarian Civil Code are applicable.²⁸ The use of the common dwelling is also protected when certain requirements are met following the termination of cohabitation.²⁹

2.3. Slovenia

Extramarital unions have been regulated in Slovenia since the introduction of the Marriage Act in 1977. At that time Slovenia was still a part of former Yugoslavia. The Marriage Act of 1977 is still in place today due to the negative referendum regarding the Slovenian Family Code of 2011.³⁰ No further reforms have taken place since the attempt in 2011.

In Slovenian family law, an extramarital union is a durable living community of a man and a woman who have not concluded marriage according to Article 12 Slovenian Marriage Act. The partners must be living together for an extended period of time and no reasons for invalidity of a marriage may exist.³¹ While requiring an extended period of cohabitation, the extramarital union has *ex tunc* legal effects commencing from the moment the partners started living together.³² The extramarital union is reserved for heterosexual couples, although through the interpretation of the constitutional prohibition of discrimination same-sex partners in an actual life union also enjoy certain legal rights.

20 Ibid., p. 249.

21 Ibid., p. 250.

22 Ibid., p. 27.

23 Ibid., pp. 149-150.

24 Ibid., pp. 150-151.

25 Ibid., pp. 150-151.

26 Ibid., p. 150.

27 Ibid., pp. 68-69.

28 Ibid., pp. 705-706.

29 Ibid., p. 69.

30 B. Novak, 'Slovenian Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), pp. 265-266.

31 Ibid., p. 83.

32 Ibid., p. 187.

The Slovenian Constitution in Article 53(2) stipulates that the legal effects of an extramarital union shall be regulated by law. The extramarital union gains its core legal effects from the Slovenian Marriage Act.³³ The Act grants maintenance rights during an extramarital union, but also following the separation of the couple.³⁴ The property relations of the partners are also dealt with in the Slovenian Marriage Act, which includes the compulsory rule of common property for assets obtained through work during the extramarital union and rules on the division of this common property upon separation.³⁵ In regard to inheritance rights both the extramarital union and unregistered same-sex partners are considered equal to marriage and registered same-sex partners.³⁶ Various legal consequences of an extramarital union are also contained in housing and pension legislation.³⁷

2.4. Croatia

Croatia was one of the first jurisdictions to legally recognize informal relationships in the late 1970s when still part of former Yugoslavia. The 1978 Marriage and Family Relations Act provided equal property and maintenance rights, as provided to spouses, to couples in a life union for a longer period of time.³⁸ Since independence, Croatia has continually expanded the legal rights and protection of informal relationships, enlarging the scope to cover same-sex couples in 2003.³⁹

In Croatia two forms of informal relationships are regulated by legislation, different-sex cohabitation and same-sex informal partnerships. The first, cohabitation, is limited to heterosexual couples. Cohabitation is 'a life union between an unmarried man and an unmarried woman' according to Article 11(1) Croatian Family Act. In the scope of family law the requirement is that the cohabitation lasts for at least three years, unless the partners have a common child or the relationship has been succeeded by marriage in which case the time period can be shorter.⁴⁰ In the legislation no further specific requirements are listed, but legal practice shows that the personal requirements for the conclusion of a valid marriage must be met.⁴¹ Within the scope of family law, cohabitation has legal effects in regard to property rights, personal rights and maintenance rights equal to marriage. Cohabitation also implies legal effects in other areas of law, such as inheritance law, social security law and the law on pensions. However, the requirements for cohabitation under these laws vary, either requiring a longer duration of the relationship or a notarized declaration.⁴²

For same-sex couples the Croatian institution of cohabitation is not an option, the informal relationships of same-sex couples are regulated as informal partnerships. An informal partnership is 'a union of family life between two persons of the same sex who, despite the fact that they meet the criteria for the conclusion of a valid same-sex registered partnership, have not entered into one', according to Article 3(1) Croatian Partnership Act. The union must have lasted for at least three years and must meet the criteria of a valid registered partnership from the beginning. The criteria for a valid registered partnership are the same as the personal requirements for the conclusion of a valid marriage.⁴³ The legal effects of an informal partnership are almost equal to that of a registered partnership and of cohabitation. In the scope of family law it has legal effects in regard to property rights, personal rights and maintenance rights. The main difference is that adoption rights are not included. In other areas of law legal effects are also granted, e.g. pension rights and inheritance laws.⁴⁴

33 Ibid., p. 84.

34 Ibid., pp. 482-483 and p. 708.

35 Ibid., pp. 606-607 and pp. 772-773.

36 Ibid., p. 862.

37 Ibid., pp. 84-85.

38 B. Rešetar & N. Lucić, 'Croatian Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), p. 239.

39 Ibid., pp. 240-241.

40 Ibid., p. 141.

41 Ibid., p. 48.

42 Ibid., pp. 141-142.

43 Ibid., p. 48.

44 Ibid., p. 142.

2.5. Catalonia

Catalonia was the first Autonomous Community in Spain to create legislation for informal relationships in 1998 for 'stable couples'.⁴⁵ The law contained legal effects for both opposite-sex as well as same-sex couples, having further-reaching effects for the latter as those couples did not have the possibility to marry.⁴⁶ The law of 1998 was amended in 2010, placing the relevant provisions within the Catalan Civil Code but restricting their scope to the effects after break-up.

The 'stable couple' regulated in Catalonia is a 'same-sex or opposite-sex couple who cohabit in a manner analogous to marriage'.⁴⁷ According to Article 234-1 Catalan Civil Code one of two further requirements must be met: either continuous cohabitation for more than two years or having a common child. Both partners must also fulfil the personal requirements as stated in Article 234-2 Catalan Civil Code. While the original legislation disqualified married persons from being a 'stable couple' with a new partner, this requirement has now been removed. It is sufficient that the partner is *de facto* separated from their spouse.⁴⁸

The legal effects for partners in a stable couple are focused on the effects after separation. The legislation does not regulate matters during the relationship. Instead, Article 234-3 Catalan Civil Code establishes that the parties' agreements are given legal effect.⁴⁹ The Catalan Civil Code Article 234-10 allows the partners to claim maintenance following the break-up of the relationship. The status of stable couple also provides inheritance rights in favour of the surviving partner.⁵⁰

2.6. Portugal

In 1999 the various legal rights afforded to *de facto* unions in Portugal were bundled into Law No. 135/99. This institutionalized *de facto* unions without actually adding to the protection previously afforded to the couples in other regulations.⁵¹ In Law No. 7/2001, which substituted the Law of 1999, *de facto* unions were given additional legal effects. The Law of 2010 amended this law, but did not radically extend any legal effects.⁵²

The core law, Law No. 7/2001 as amended by Law No. 23/2010, regulates *de facto* unions in Portuguese family law.⁵³ Article 1 of this Law defines a *de facto* union as 'the legal situation of two people, regardless of gender, living in conditions similar to those of marriage for over two years'.⁵⁴ Requiring 'conditions similar to marriage' is also possible for same-sex cohabitants in Portugal due to the possibility for same-sex marriage. What these conditions precisely entail is not stipulated in the law. Instead, the rules of evidence which determine that all forms of evidence are allowed are extremely important.⁵⁵ For some provisions the requirements differ, e.g. with parental responsibilities the duration of cohabitation required is shorter while for the acquisition of nationality a longer period is required.⁵⁶

The legal effects for partners in a *de facto* union are diverse. For labour, tax and pensions law the effects are equivalent to those of marriage. Provisions exist to allow a partner to remain in the home following the end of a *de facto* union whether through death or a break-up.⁵⁷ Furthermore financial provisions exist for the right of compensation for moral damages caused by the death of a partner and for maintenance regarding the patrimony following the death of a partner.⁵⁸ There is, however, no maintenance obligation during the relationship or upon separation.⁵⁹

45 González Beilfuss & Navarro-Michel, *supra* note 6, p. 267.

46 *Ibid.*, p. 267.

47 *Ibid.*, p. 162.

48 *Ibid.*, p. 86.

49 *Ibid.*, p. 483.

50 *Ibid.*, p. 863.

51 G. de Oliveira et al., 'Portuguese Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), p. 261.

52 *Ibid.*, pp. 261-262.

53 *Ibid.*, p. 79.

54 *Ibid.*, p. 157.

55 *Ibid.*, p. 184.

56 *Ibid.*, pp. 157-158.

57 *Ibid.*, pp. 80 and 797-798.

58 *Ibid.*, pp. 79-80.

59 *Ibid.*, p. 707.

2.7. Scotland

Legal rights for cohabitants were introduced in Scotland in 2006 with the Family Law (Scotland) Act. While the draft legislation had only been introduced in 2005, the provisions of the Act were grounded on the Scottish Law Commission's Report of 1992.⁶⁰ Currently, Scottish law regulates the informal relationship of 'cohabitation' in two main statutes within family law; the Matrimonial Homes (Family Protection) (Scotland) Act and the Family Law (Scotland) Act. Cohabitants are defined in both acts as 'two persons living together as if they were married'. The Matrimonial Homes Act Section 18 names certain circumstances which should be taken into account when determining whether this is the case: the duration of living together and whether there is a common child or child for whom both partners care. Case law has shown that the partners need not still be living together at the time of application to fulfil the criteria.⁶¹ The Family Law Act is more vague, with Section 25 stating that the court should have regard to the duration of living together, the nature of their relationship at that time and the nature of any financial arrangements. However, these factors are not exclusive.⁶² Case law has even shown that the term 'living together' need not be strictly applied as that would ignore the 'realities of life'.⁶³ Both Acts do not mention legal capacity, such as required for marriage, thus including those who normally cannot enter into a formalized relationship.⁶⁴

While having a *lex specialis* for cohabitation this has few legal effects. There is no obligation of aliment, no maintenance at separation and no automatic rights in inheritance law. At divorce or dissolution, cohabitants can request a financial provision which consists of a capital payment to compensate contributions made or disadvantages suffered during the cohabitation.⁶⁵ If one of the partners dies intestate, the cohabitant may apply to the court for a discretionary award at death.⁶⁶

In 2009 a new report was published by the Law Commission in the area of inheritance law and the Scottish government has indicated to continue reform in the area, but until this date no further reforms have taken place.⁶⁷

2.8. The Republic of Ireland

With the establishment of the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, cohabitants were legally recognized for the first time in Ireland.⁶⁸ Although cohabitants were acknowledged as a form of family already in 1966 by Walsh J in *The State (Nicolaou) v. An Bord Uchtála*, cohabitation has never been granted the same protection or guarantees as marriage under Article 41 of the Irish Constitution.⁶⁹ The 2010 Act has regulated cohabitation as a *lex specialis* in legislation, as case law remained stuck in the view that *de facto* families were not an 'institution'.⁷⁰

The 2010 Act defines a cohabitant in Section 172 as: 'one of two adults (whether of the same or opposite sex) who live together as a couple in an intimate and committed relationship and are not related to each other within the prohibited degrees of a relationship or married to each other or civil partners of each other'.⁷¹ To judge whether such a relationship exists a court can take into account any and all circumstance, with Section 172(2) stating certain circumstances to be taken into account particularly.⁷² The Irish Cohabitants Act differentiates between 'cohabitants' and 'qualified cohabitants'. Qualified cohabitants receive additional protection when the relationship ends through termination or death. To be a qualified cohabitant an extra

60 J. Mair, 'Scottish Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), p. 264.

61 *Ibid.*, p. 159.

62 *Garrad v. Inglis* as mentioned in Mair, *supra* note 60, p. 160.

63 *B v. B* as mentioned in Mair, *supra* note 60, p. 161.

64 Mair, *supra* note 60, pp. 81-82.

65 *Ibid.*, pp. 841-844.

66 *Ibid.*, pp. 873-874.

67 *Ibid.*, p. 288.

68 G. Shannon, 'Irish Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), p. 70.

69 *Ibid.*, pp. 207-208.

70 See the Supreme Court in *McD v. L.* [2009] IESC 81. Shannon, *supra* note 68, p. 208.

71 *Ibid.*, p. 151.

72 *Ibid.*, p. 151.

duration requirement, as stated in Section 172(5), must be fulfilled: when the cohabitant is a parent of a dependent child the cohabitation must have lasted for at least two years, if the cohabitant is not a parent, for at least five years.⁷³ Qualified cohabitants enjoy the broadest legal effects of their relationship by which one cohabitant can apply to the court for 'redress' when the relationship ends through termination or death.⁷⁴ Cohabitants who are not 'qualified' cannot claim compensatory maintenance or other redress actions, but special legal effects are granted to their cohabitation agreements in Section 202 of the Irish Act.⁷⁵

2.9. Finland

In Finland, the discussion on the status of cohabitants already started back in the mid-1970s due to the fact that the number of cohabiting couples began to increase rapidly.⁷⁶ Legal effects were firstly granted on a piecemeal basis in the areas of tax law and social law. The scope of legal effects was widened in 1984, when legal effects were also given in housing legislation. However, it is only very recent that cohabitation has been recognized as a relationship with rights and obligations in private law.⁷⁷ While a reform of the Finnish Code of Inheritance to offer support to the surviving cohabitee was proposed back in 1983, it was not until 2011 that the Finnish Act on the Dissolution of the Household of Cohabiting Partners was enacted.⁷⁸

While previously over 70 administrative law statutes made references to cohabiting couples, the Finnish Cohabitation Act has made cohabitation a family law institution.⁷⁹ The Finnish Cohabitation Act Section 3 defines cohabitation to be when the partners have a relationship while living in a shared household for at least five years or who have, or have had, a common child.⁸⁰ The Act recognizes both opposite-sex and same-sex cohabiting partners. The requirements for cohabitants in the administrative law statutes differ depending on the context of the statute in question.⁸¹ The legal effects granted by the Cohabitation Act concern the separation of property following the separation of the cohabitants, including a presumption of the co-ownership of movable assets and the right to apply for compensation for contributions to the shared household.⁸² There are no maintenance rights for the partners during the relationship or upon separation.⁸³ In the administrative law sphere, cohabitation has legal effects in the fields of social benefits, social insurance and in pension law.⁸⁴

3. Reasons for regulation

While all nine jurisdictions regulate informal relationships with a *lex specialis* in family law, none of the statutes are completely the same. When analysing the reasons or incentives for regulation in the chosen nine jurisdictions similarities and differences appeared, but five aspects stood out as motivating – either in a similar or different manner – the regulation of informal relationships. The five aspects are: (1) the steady increase of informal relationships as a new social reality, (2) the financial protection of a vulnerable party, (3) the influence of the national Constitution, (4) the recognition of same-sex couples and (5) the protection of the common child. To offer a comprehensive comparison of reasons the manner in which these five aspects have played a role in the relevant jurisdictions will be discussed.

73 Ibid., p. 152.

74 Ibid., p. 70.

75 Ibid., p. 152.

76 S. Silvola, 'Finnish Report', as incorporated in K. Boele-Woelki et al. (eds.), *European Family Law in Action Volume V: Informal Relationships* (2015), p. 246.

77 Ibid., p. 246.

78 Ibid., p. 62.

79 Ibid., p. 62.

80 Ibid., p. 63.

81 Ibid., p. 145.

82 Ibid., p. 780.

83 Ibid., p. 703.

84 Ibid., pp. 145-147.

3.1. The steady increase of informal relationships

The steady increase of informal relationships has triggered the regulation of these relationships in all nine countries. Yet the decision to actually regulate these relationships is based on other factors, as all 28 countries included in CEFL's comparative research have increased rates of informal relationships, but in only nine jurisdictions the legislator has acted on it.

In Catalonia, the Minister of Justice stated that the 1998 Acts were necessary to have the law reflect reality and the developments of increased cohabitation.⁸⁵ In Finland the discussion on regulating cohabitation commenced in the mid-1970s following the rapid increase of informal relationships.⁸⁶ In Hungary the frequency of unmarried companionship was given as an important reason to specifically regulate the cohabitation⁸⁷ and in Portugal the trend has also led to further regulation by the legislature.⁸⁸ The rapid increase of extra-marital cohabitation in Ireland resulted in calls to improve the lack of regulation on informal relationships⁸⁹ and the awareness of this trend increased support for legislative reform.⁹⁰ While not expressly referring to the increased popularity of cohabitation as a reason for regulating, the reports by the Scottish Law Commission in the 1990s as well as the policy memorandum for the Family Law Act of 2006 refers to data on cohabitation.⁹¹ The policy memorandum also brings up the changing forms of family as a general reason for amending Scottish family law.⁹² The Swedish legislation on cohabitants was also a response to the increasing number of informal relationships.⁹³

For Croatia and Slovenia the increased number of informal relationships was not a primary reason, instead the societal reality of the time was. When first regulating informal relationships both countries were republics of the former Republic of Yugoslavia. The former Republic of Yugoslavia extended certain rights and duties from matrimonial property and maintenance law to durable marriage-like relationships following the Second World War to reflect the societal reality at that time.⁹⁴ The post-war conditions called for the granting of rights to cohabitating unmarried partners that were equal to those granted to married couples, for example state relief for prisoner-of-war-widowers, since the war conditions had hindered the normal functioning of family law.⁹⁵

3.2. Financial protection of a vulnerable party

While the jurisdictions were triggered by the new social reality of increased numbers of informal relationships and different forms of family, other factors led to the decision to actually regulate these relationships. The most frequently occurring factor is the perceived necessity to financially protect the vulnerable party following separation or death of the other party. While the initial regulation of stable couples in Catalonia in 1998 was induced by Constitutional reasons and the extension of possibilities to same-sex couples (see below), the amendment of 2010 appears to have been motivated by protective reasons. Previously, matters during the relationship of stable couples were regulated, but the new provisions in Book II of the Catalan Civil Code focus on the effects following a break-up, such as maintenance.⁹⁶ The Preamble justifies the decision to limit legal effects by reference to sociological data, without stating which data this concerns. It appears that cohabitation is viewed by the legislature as a 'trial marriage', thus not requiring protection during the relationship, but simply financial protection upon termination.⁹⁷ The Finnish Acts relating to

85 Generalitat de Catalunya, 'Stable pair relationships & Cohabitation situations for mutual assistance', *Quaderns de legislació* (2000), available at: <justicia.gencat.cat/web/.content/documents/arxiu/doc_10614500_1.pdf> (last visited 27 May 2016), pp. 5-6.

86 Silvola, *supra* note 76, p. 246.

87 Szeibert, *supra* note 19, p. 249.

88 R. Martins, 'Same-sex partnerships in Portugal: From *de facto* to *de jure*?', (2008) 4 *Utrecht Law Review*, no. 2, <http://doi.org/10.18352/ulr.74>, pp. 194-195.

89 The Law Reform Commission, 'Consultation Paper on the Rights and Duties of Cohabitees', LRC CP 32-2004, p. 1.

90 J. Mee, 'Cohabitation law reform in Ireland', (2011) 23 *Child and Family Law Quarterly*, no. 3, p. 326.

91 Scot Law Com No 86, p. 1-5 and SP Bill 36-PM Family Law (Scotland) Bill [policy memorandum] Session 2 2005, pp. 11-13.

92 SP Bill 36-PM Family Law (Scotland) Bill [policy memorandum] Session 2 2005, p. 1.

93 Jänterä-Jareborg et al., *supra* note 10, p. 269.

94 D. Nelken & E. Orücü (eds.), *Comparative Law: A Handbook* (2007).

95 P. Šarčević, 'Cohabitation Without Marriage: The Yugoslavian Experience', (1981) 29 *The American Journal of Comparative Law*, no. 2, p. 319.

96 González Beilfuss & Navarro-Michel, *supra* note 6, p. 269.

97 *Ibid.*, p. 269.

cohabiting partners focus on financial protection of the partner left in a vulnerable position following the dissolution of the shared household or following the death of the other partner. The policy goal of protecting the financially vulnerable partner thus appears to have been a crucial reason for regulating informal relationships in Finland. In Hungary the purpose of regulation for financial protection was evident during the recodification of the new Civil Code since two financial rights were stressed; the maintenance of a former cohabitant and the use of the common dwelling following separation.⁹⁸ The Irish provisions for cohabitants, and more specifically qualified cohabitants, also focus on financial redress mechanisms after the termination of the relationship. It is therefore no surprise that the Law Reform Commission mentioned the protection of vulnerable family members as an objective of reform.⁹⁹ The continuing support for a former cohabitant in a vulnerable position following death or separation was also a primary reason for the regulation of *de facto* unions in Portugal.¹⁰⁰ In the 1990s the Scottish Law Commission wrote a discussion paper, a report and finally a draft Bill on cohabitation, which formed the origin for the 2006 Family Act. While noting the wide range of opinions held regarding the regulation of cohabitants, the Law Commission concluded that limited legal intervention ought to occur to protect vulnerable parties and remedy unfair situations.¹⁰¹ This conclusion is reaffirmed in the policy memorandum to the Family Law (Scotland) Bill 2006. The memorandum states that the Bill aims to ensure ‘certainty, fairness and clarity’ in the law for when cohabitation is terminated.¹⁰² While not wanting to excessively encroach on citizens’ private lives, the Scottish Ministers consider the regulation of the breakdown of cohabitation necessary to financially protect cohabitants who have been in a ‘longstanding and enduring relationship’.¹⁰³ The affording of a ‘minimum protection for the weaker partner when a cohabitee relationship ends’ is a core reason for the Swedish regulation on cohabitants.¹⁰⁴ This is accurately reflected in the provisions on the division of cohabitation property. By regulating informal relationships with the purpose of protecting parties when the relationship ends, the legislatures of these jurisdictions utilize legislation in keeping with one of the general purposes of the law: the protection of weaker parties.

3.3. Influence of national Constitutions

A very different reason behind the regulation of informal relationships in some of the jurisdictions is the role of the national Constitution. In Catalonia and Ireland the lack of constitutional protection sparked regulation, while in Croatia and Slovenia newly introduced constitutional provisions induced regulation. The Catalan legislature became active after the new Spanish Constitution of 1978. The Spanish Constitution was repeatedly held by the Spanish Constitutional Court in the 1980s to grant equal protection to families not based on marriage. However, the Constitutional Court found that marriage and cohabitation were not equal and thus deserve different treatment.¹⁰⁵ In response the Catalan legislature regulated legal effects for both same-sex and opposite-sex informal relationships. Likewise, in Ireland the lack of Constitutional recognition and protection for non-marital family units was an impetus for the Irish legislature to regulate informal relationships instead of relying on the development of case law.¹⁰⁶

While the Catalan and Irish legislature were motivated by the lack of protection, in Croatia and Slovenia positively phrased Constitutional provisions have led to – further – regulation. In the former Republic of

98 Szeibert, *supra* note 19, pp. 250-251.

99 The Law Reform Commission, ‘Report: Rights and Duties of Cohabitants’, LRC 82-2006, p. 1. The Minister for Justice, Equality and Law Reform, Dermot Ahern also stated in the debates regarding the Act that the purpose was to ‘protect a financially dependent person’. See B. Tobin, ‘The regulation of cohabitation in Ireland: achieving equilibrium between protection and paternalism?’, (2013) 35 *Journal of Social Welfare & Family Law*, no. 3, p. 284.

100 De Oliveira et al., *supra* note 51, p. 262.

101 Scot Law Com No 135, p. 115.

102 SP Bill 36-PM Family Law (Scotland) Bill [policy memorandum] Session 2 2005, p. 13.

103 *Ibid.*, p. 13-14.

104 M. Savolainen, ‘The Finnish and the Swedish Partnership Acts – Similarities and Divergencies’, in K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-sex Couples in Europe* (2003), p. 25. See also the Swedish Ministry of Justice: Regeringskanslet, ‘Cohabitees and their joint homes – a brief presentation of the Cohabitees Act’, available at: <www.government.se/contentassets/e95d660fd9354c139439e051fd8ed4db/cohabitees-and-their-joint-homes---a-brief-presentation-of-the-cohabitees-act> (last visited 27 May 2016), p. 1.

105 González Beifuss & Navarro-Michel, *supra* note 6, pp. 266-267.

106 Shannon, *supra* note 68, pp. 207-209.

Yugoslavia the 1971 Federal Constitution placed family law under the exclusive jurisdiction of the socialist republics and autonomous provinces.¹⁰⁷ With these new competences in hand, the former Socialist Republic of Croatia and the Socialist Republic of Slovenia enacted a special regulation for cohabitants. In Croatia the constitutional protection awarded to the 'extramarital union' in 1990 obliged the Croatian Parliament to further regulate cohabitation.¹⁰⁸

3.4. Recognition of same-sex couples

In eight of the nine countries the regulation of informal relationships includes both opposite-sex and same-sex couples, only the extramarital unions in Slovenia are limited to heterosexual couples. For some of these eight countries a reason for the regulation of informal relationships was the inclusion of same-sex couples. When Catalonia first regulated stable couples in 1998 same-sex marriage was contrary to Article 32 of the Spanish Constitution yet the Catalan Law 10/1998 on stable couples included both same-sex and opposite-sex couples. The Preamble motivates the regulation of stable same-sex couples by stating that the time had come to recognize the increasing social reality of same-sex couples and the acceptance of these couples by society. The circumvention of the constitutional ban on same-sex marriage is thereby given as a key reason for the regulation of stable couples.¹⁰⁹ With the Same-sex Partnership Act of 2003, Croatian same-sex couples were recognized for the first time. The regulation of same-sex couples did not form a reason for the regulation of cohabitants in Croatia as the institutions remain separated, but it was a first step for the legalisation of same-sex unions in Croatia.¹¹⁰ Law No. 7/2001 on *de facto* unions was also the first legal recognition of same-sex couples in Portugal. It could be argued that further regulation of *de facto* unions allows the legislature to intervene in relationships that would otherwise be completely private.¹¹¹

3.5. Protection of the common child

Finally, the protection of a common child in an informal relationship has been a factor taken into account by various legislators. Although it is not the primary reason for the regulation of informal relationships in any of the nine studied jurisdictions, a separate requirement regarding the duration of the relationship in the case of a common child has been included in certain jurisdictions. In Croatia, Catalonia and Finland no specific duration of the relationship is necessary when a common child is involved.¹¹² In Scotland and Ireland the existence of a common dependent child is a circumstance which must be taken into account.¹¹³ In Ireland the most recent regulation, the new Children and Family Relationships Bill, will also grant informal relationships extensive rights and duties in regard to guardianship and adoption. The aim of this regulation and recognition of informal relationships is to protect all children no matter the form of family in which they live.¹¹⁴ While the countries studied did take into consideration the common child when regulating informal relationships, common children did not form a reason to regulate.

4. Connecting the reasons to the regulations

The nine jurisdictions discussed in this article have each regulated informal relationships, albeit in many different forms with different functions. In the first section the regulated institution was portrayed per jurisdiction. The definitions of the regulated informal relationships differ greatly. Table 1 below gives an overview of the criteria applied. While a specific comparison of the definitions is not the aim of this article, it is important for the analysis of reasons for regulation to bear in mind the diversity of regulations. The same

107 Šarčević, supra note 95, p. 320.

108 A. Korać, 'Pros and cons: family policy and legislative dilemmas in regulating *de facto* unions', available at: <www.law2.byu.edu/page/categories/marriage_family/past_conferences/oct2006/pb_chapters/16%20-%20Korac.pdf> (last visited 27 May 2016), p. 238.

109 Llei 10/1998, de 15 de juliol, d'unions estables de parella, (BOE núm. 198, 19 de agosto de 1998).

110 Korać, supra note 108, p. 238.

111 Martins, supra note 88, p. 195.

112 Rešetar & Lucić, supra note 38, p. 141; González Beilfuss & Navarro-Michel, supra note 6, p. 162; Silvola, supra note 76, pp. 146-147.

113 Mair, supra note 60, pp. 158-161; Shannon, supra note 68, p. 152.

114 Shannon, supra note 68, p. 251 and pp. 281-282.

can be said for the legal effects granted in the different jurisdictions. To properly compare the legal effects is far beyond the scope of this study due to the many major, but also nuanced, differences between the jurisdictions. Instead a general overview of the areas in which regulation (in the area of private law) applies to the partners in each of the jurisdictions is given in Table 2 below. Finally, this article explored the different reasons for the regulation of informal relationships. Five relevant reasons and incentives were distilled, with Table 3 below showing how the combination of reasons differs per jurisdiction.

The question remains whether and how these reasons are reflected in the definitions and legal effects of informal relationships in the nine jurisdictions. Firstly, it must be mentioned that the incentive of the increased number of informal relationships cannot be identified in the definitions or in the legal effects of any of the jurisdictions. While it has some impact on the fact that and the manner in which jurisdictions have regulated informal relationships, it cannot be said to determine specifically *how* the different jurisdictions have opted to do so. Although recognizing a changed social reality is a crucial factor in motivating legislatures to act on this social reality, it does not form a determinative reason to regulate a *lex specialis* for informal relationships. As mentioned previously, it would otherwise mean that all European legislatures should be regulating a *lex specialis* for informal relationships, while that is clearly not the case. Nor does the increase of informal relationships lead to a similar result in the decision how and what to regulate.

The core reason in Sweden was the financial protection of the vulnerable party, which is ensured regarding the property of the cohabitants and the use of their common dwelling. The criteria for cohabitants are lenient: there are no minimum duration requirements, the court has discretion and even minors fall under the protection of the Cohabitation Act. The regulation can therefore act as a safety net for many, if not most, cohabitating couples.

In Hungary the reason of financially protecting the vulnerable party is clearly reflected in the definition and legal effects. The definition has the criterion of being 'in an economic partnership': when partners have a common interest in their finances, then regulation for the financial protection of the vulnerable party is also necessary if the relationship ends. The regulation of a property regime offers part of this protection and, more specifically, following the amendments in 2014, maintenance rights and the use of the common dwelling following separation also offer extra protection.

The Slovenian extramarital unions are reserved for opposite-sex couples which reflects the lack of the recognition of same-sex couples as being a reason to regulate. Instead, the definition and legal effects show that Slovenia aimed to make partners whose relationship resembles a marriage, who have not taken the formal step to enter into marriage, equal to marriage. This extended equal protection was logical at the time of enactment, as war conditions had hindered the possibility of formalizing relationships.

Croatia is an interesting jurisdiction as it has regulated two separate forms of informal relationship. With the aim of recognizing same-sex couples, Croatia created the *lex specialis* of the informal partnership, instead of neutralizing the gender requirements of cohabitation. In any case, both grant similar legal effects in all areas from property to maintenance to the use of the home and inheritance. The core difference concerns the parent-child relationship, as informal partners cannot adopt and the duration requirement for cohabitation is shortened when there is a common child.

The definition and legal effects for Catalonia's cohabitants clearly reflect the reasons for regulation. The definition explicitly mentions 'same-sex or opposite-sex' couples, reflecting the aim of recognizing same-sex couples. The financial protection of the vulnerable party, especially following separation, as a reason for amendment is reflected in the legal effects which are focused on maintenance and the use of the common dwelling after separation.

The reasons for regulating the *de facto* Portuguese unions are reflected in the definition and legal effects. By using a gender-neutral definition of *de facto* unions, Portugal legally recognized same-sex couples for the first time. For all partners a reason was to ensure financial protection, although this did not occur through the general family-law type of provisions, such as maintenance or property. Instead there are provisions to allow for the use of the common dwelling following separation or death and provisions for inheritance. There are also some other financial provisions, such as compensation following a wrongful death and in the area of public law.

The Scottish definition is straightforward by including various conditions and does not specifically reflect any of the reasons for regulation, other than that it includes a common child as a special consideration. The legal effects do reflect the aim of financially protecting the vulnerable party especially following separation. A partner can claim compensation for property contributions and disadvantages suffered after a break-up or for a discretionary award following death. The Scottish legislature has, however, limited the protection to those possibilities, not creating any maintenance rights or right of inheritance.

In Ireland the distinction between cohabitants and qualified cohabitants is especially clear with regard to the legal effects in family law. The financial protection of the vulnerable party is mostly accorded to the qualified cohabitants, who must fulfil certain duration requirements. The qualified cohabitants can apply to the courts for redress in all four areas of regulation, while normal cohabitants cannot. The regulation for normal cohabitants is limited to recognizing their cohabitation agreements.

Finally, in Finland the legal effects granted in the area of property law, concerning the separation of property and contributions to the household, reflect the aim of the legislature to provide financial protection of the vulnerable party. The definition is linked to this focus on the household goods and contributions as it simply requires a relationship in a shared household. The shorter duration requirement when there is/was a common child reflects the added protection for when a common child is involved.

Table 1 Definition and requirements of the regulated informal relationship in nine jurisdictions

	<i>What kind of relationship?</i>	<i>Shared household</i>	<i>Duration requirement</i>	<i>Same-sex & opposite-sex</i>	<i>Impediments</i>
Sweden	Two people who live together as a couple on a habitual basis	Yes, but court has discretion	No	Yes	– Existing formal relationship
Hungary	Two persons who live together without entering into a marriage, in a common household, in an emotional fellowship and in an economic partnership	Yes	No	Yes	– Existing marriage or partnership – Relatives in the direct line
Slovenia	Durable living community of a man and a woman who have not concluded a marriage	Yes	Extended period of time	No, only opposite-sex	– Existing marriage or partnership – Relatives in the prohibited degree – Permanent unsound mind due to serious mental illness
Croatia	Cohabitation: life union between an unmarried man and an unmarried woman	Yes	Minimum of 3 years or shorter when there is a common child or succeeded by marriage	No, only opposite-sex	– Existing marriage or partnership – Being a minor – Not possessing reasoning ability – Relatives in the direct line and lateral line to the 4th degree
	Informal partnership: union of family life between two persons of the same sex who have not entered into a valid same-sex registered partnership	Yes	Minimum of 3 years	No, only same-sex	– Existing marriage or partnership – Being a minor – Not possessing reasoning ability – Relatives in the direct line and lateral line to the 4th degree
Catalonia	Same-sex or opposite-sex couple who cohabit in a manner analogous to marriage	Yes	Minimum of 2 years or shorter when there is a common child	Yes	– Non-emancipated minor – Relatives in the direct line or collateral line to the 2nd degree – Existing marriage not <i>de facto</i> separated – Polygamous cohabitation

	What kind of relationship?	Shared household	Duration requirement	Same-sex & opposite-sex	Impediments
Portugal	Legal situation of two people, regardless of gender, living in conditions similar to marriage	Yes	Minimum of 2 years	Yes	<ul style="list-style-type: none"> – Being under 18 on the date of recognition – Legal or <i>de facto</i> incompetence – Existing marriage, unless a formal separation has been declared – Relatives in the direct line or collateral line to the 2nd degree – Criminal conviction for (attempted) homicide against the other partner's spouse
Scotland	Two persons living together as if they were married	Yes, but court has discretion	Court should take duration into account	Yes	No mention of impediments
Ireland	Two adults who live together as a couple in an intimate and committed relationship	Yes	Qualified cohabitants: minimum of 2 years when there is a common child or minimum of 5 years	Yes	<ul style="list-style-type: none"> – Existing marriage or civil partnership – Within the prohibited degrees of relationship – Being a minor
Finland	Partners who have a relationship while living in a shared household	Yes	Minimum of 5 years or shorter when there is/ was a common child	Yes	<ul style="list-style-type: none"> – Existing marriage

Table 2 General overview of areas in which legal effects of informal relationships are regulated in nine European jurisdictions

		Property	Maintenance	Shared household	Inheritance
Sweden		X	–	X	–
Hungary		X	X (A 2014)	X (A 2014)	–
Slovenia		X	X	–	X
Croatia	Cohabitation	X	X	X	X
	Informal partnerships	X	X	X	X
Catalonia		–	X	X	X
Portugal		–	–	X	X
Scotland		X	–	X	–
Ireland	Cohabitant	–	–	–	–
	Qualified cohabitant	X	X	X	X
Finland		X	–	–	–

A year: following amendment in the mentioned year

Table 3 Reasons for regulation of informal relationships in nine European jurisdictions

		<i>Increase of informal relationships</i>	<i>Financial protection vulnerable party</i>	<i>Influence of the national Constitution</i>	<i>Recognition of same-sex couples</i>	<i>Protection of common child</i>
1973	<i>Sweden</i>	X	X			
1977	<i>Hungary</i>	X	A (2014)			
1977	<i>Slovenia</i>	X		+		
1978	<i>Croatia</i>	X		+	X	S.D.
1998	<i>Catalonia</i>	X	A (2010)	-	X	S.D.
1999	<i>Portugal</i>	X	X		X	
2006	<i>Scotland</i>	X	X			S.C.
2010	<i>Ireland</i>	X	X	-		S.C.
2011	<i>Finland</i>	X	X			S.D.
A: reason for an amendment (year of amendment)		+ : special protection in Constitution - : lack of protection in Constitution		S.D. : shorter duration required S.C. : special circumstance		

5. Conclusion

While informal relationships are gaining popularity in all European countries, the regulation of informal relationships as a separate institution remains a recent and relatively limited phenomenon. In this article the *lex specialis* regulations of nine European jurisdictions have been examined, looking at three questions: When do informal partners fall under the scope of the regulations? What types of legal effects are granted to these couples? And most importantly, what were the reasons or incentives for these jurisdictions to adopt a *lex specialis* for informal relationships? The diversity in the definition, requirements and legal effects of the regulated informal relationships reflects the varied reasons for regulating, the different circumstances in which the legislatures have acted and the needs of different societies.

As the core aim, this article explored the different reasons for the regulation of informal relationships and whether and how this relates to the definition and legal effects of the regulation. Thanks to the work of the CEFL, this article was able to compare so many jurisdictions. The detailed questionnaire on informal relationships has allowed the collection of substantial and valuable information which is the basis of this comparative study.

In the previous sections, the five reasons and incentives for the legislatures have been discussed and in general terms linked to the definitions and the legal effects. While the discussion of regulation always starts following an increasing level of informal relationships, this as such is not given as the reason to regulate. In the studied jurisdictions the actual reasons were the financial protection of a vulnerable party, especially following separation, the influence of the national Constitution and the recognition of same-sex couples in some combination or other. The protection of the common child was not a reason as such, because the vertical parent-child relationship is not at the core of the regulations of horizontal partner relationships. This factor simply occurs in the criteria for qualification in certain jurisdictions.

These specific reasons, but also the definitions and legal effects, reflect the general functions of family law for regulating partner relationships, the four general functions being: (1) the regulation of private relationships, (2) dispute resolution, (3) protection of weaker parties, and (4) the expression of values and standards.¹¹⁵ No matter what the reason was for regulating informal relationships, all jurisdictions have in common that their legislatures have created a *lex specialis* in the field of family law to fulfil the first function, regulating private relationships. More specifically, the financial protection of a vulnerable party obviously reflects the third function of protection, but the legal effects granted in light of this reason also reflect

¹¹⁵ W.M. Schrama, 'Marriage and alternative status relationships in the Netherlands', in J. Eekelaar & R. George (eds.), *Routledge Handbook of Family Law and Policy* (2014), pp. 14-25, at p. 20-21.

the second function. Especially when it concerns the issue of property law when partners separate, the regulations aim to resolve any possible disputes concerning the ownership of shared property. The influence of the national Constitutions reflects the fourth function. While in Croatia and Slovenia the Constitution supported the values and standards of protecting the family, including informal partners, the lack of support in Ireland and Catalonia led the legislature to express certain values and standards. Lastly, the recognition of same-sex couples reflects the first function in the jurisdictions where it was the first time that private relationships between same-sex couples were regulated. In this sense it also reflects the fourth function, as it ensured the value of equality for same-sex couples. All in all, the reasons which contributed to the regulation of informal relationships in the jurisdictions studied are closely linked to the general functions of family law in regulating partner relationships.

In addition to the abovementioned reasons, another common aim of legislatures has been observed. While separately regulating an institution of informal relationships some of the legislatures do not wish to weaken the institution of marriage, for example the Hungarian legislator¹¹⁶ and the Scottish legislator who considered granting rights for aliment and maintenance too abundant as the aim was not to create a marriage-equivalent institution.¹¹⁷

Finally, the reader might wonder whether culture is of any relevance in the decisions of the legislatures to regulate informal relationships. This is a good question. It is difficult to determine whether, and more specifically how, the culture of the nine jurisdictions has played a role, although it probably has. In the present study it has proven too complex to distil whether there were or are any cultural reasons for regulating informal relationships. It would be extremely interesting for future research to determine the role of culture in regulating informal relationships.

The balancing act that states make between the regulation of informal relationships and non-intervention in the private lives of its citizens characterizes whether or not to create a *lex specialis* for informal relationships. While the nine jurisdictions compared in this article have chosen to regulate informal relationships as a *lex specialis* in family law, many other jurisdictions have decided not to, or at least not yet. It will be interesting to see whether the five shared incentives and reasons discerned in this study will also play a role in the regulation of informal relationships in other European jurisdictions and whether and how other jurisdictions will decide to define and attach legal consequences to informal relationships. ■

116 Szeibert, *supra* note 19, p. 250.

117 SP Bill 36-PM Family Law (Scotland) Bill [policy memorandum] Session 2 2005, p. 13.