

## NATIONAL REPORT: ITALY

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### A. General

- 1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.**

The only kind of formal relationship currently regulated by Italian legislation is marriage between a man and a woman. All other kinds of relations are therefore informal.

Marriage is regulated by Art. 29 of the Italian Constitution and Art. 79 to 230 *bis* of the Italian Civil Code.

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

The Italian legal system does not provide for a comprehensive and consistent regulation of couples' relationships outside marriage. However, many specific legislative provisions refer expressly to informal relations, in most cases applying the same rules to partners in such relationships, as are applied to spouses. The principal provisions among these, with reference to the ones enacted most recently, may be listed as follows:<sup>1</sup>

- protection orders against family abuse (Art. 330, 333, 342 *bis* and 342 *ter* Italian Civil Code as modified or introduced by the law of 28 March 2001, n. 149 and the law of 5 April 2001, n. 154);
- measures for the protection of partially or entirely dependent persons (*amministrazione di sostegno*) (Art. 408, 410, 411 and 426 Italian Civil Code, as amended by the law of 9 January 2004, n. 6);
- access to medically assisted procreation (Art. 5 of the law of 19 February 2004, n. 40);
- rules on child custody in the case of the separation of their parents (Art. 4 of the law of 8 February 2006, n. 54);
- adoption. Adoption is only available to spouses who have been married for at least three years, but it is also possible for spouses who have been cohabiting for

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<sup>1</sup> See G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 26 et seq.; R. BASSETTI, *Contratti di convivenza e di unione civile*, Giappichelli, Turin, 2014, at p. 4 et seq.

- three years before marriage (text of Art. 6 of the law of 4 May 1983, n. 184 as substituted by the law of 29 March 2001, n. 149). In this case the relevance of the cohabitation is subject to the two partners ultimately marrying. In addition, the legal institution of 'adoption in particular cases' (Art. 44 of the same law) also explicitly allows persons who are not married to adopt. Cases which are considered to be 'particular' include: that of a child who is orphaned and the adopter is a relative within the sixth degree or is connected to the minor by a stable and lasting relationship which pre-existed the parent's death; that of an adoptee who is a disabled child and an orphan; that of a child for whom pre-adoptive foster care has proved to be impossible;
- parental leave (law of 8 March 2000, n. 53; Italian Legislative Decree 26 March 2001, n. 151);
  - organ donation (law of 1 April 1999, n. 91);
  - under Art. 1 of the law of 29 July 1975, n. 405 family counselling is available for those who require it, including '*de facto* couples';
  - abortion (Art. 5 of the law of 22 May 1978, n. 194);
  - civil responsibility for motorized vehicles (RCA) (Italian Legislative Decree 7 September 2005, n. 209);
  - public housing schemes (*edilizia residenziale pubblica*) (law of 17 February 1992, n. 179);
  - civil registry (*anagrafe*): regarding registration at the registry, a family is defined as 'a group of persons who are bound by marriage, kinship, affinity, adoption, guardianship, or affective bonds, who usually cohabit or dwell in the same municipality' (Art. 4, para. 1, Decree of the President of the Italian Republic 30 May 1989, n. 223);
  - measures in favour of the victims of terrorism and organized crime (law of 20 October 1990, n. 302);
  - criminal law rules dealing with family abuse (Art. 572 of the Italian Penal Code), the more general rules dealing with cases where the crime is aggravated by being committed within the family (Art. 61 n. 11 a) of the Italian Penal Code);
  - criminal law concerning sexual violence (law of 15 February 1996, n. 66);
  - rules in penal procedural law, especially Art. 199, para. 3 (a) of the Italian Code of Penal Procedure allowing the informal partner to avoid testifying as a witness);
  - prison regulations (*ordinamento penitenziario*) (Art. 3, law of 26 July 1975, n. 354) allowing an inmate to be entitled to prison leave (*permesso di uscita*) in order to visit a relative or a cohabitant who is seriously ill;
  - rules in tax law (Art. 37 para. 3 Decree of the President of the Italian Republic 29 September 1973 n. 600).

Several municipalities have introduced Registers of civil unions for *de facto* couples, both heterosexual than homosexual.<sup>2</sup> Such registers are aimed at proving the existence of cohabitation and at allowing the partners to have access to the benefits and assistance offered by the same municipality to married couples.

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<sup>2</sup> For instance, the municipality of Empoli (Florence) was the first to pass rules on this Register in 1993; Milan introduced this Register on 26 July 2012.

The existence of a marriage, the situation of being separated<sup>3</sup> or the minority status of a partner do not disqualify the couple.

- 3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases**

Given the absence of a comprehensive regulation of informal relationships provided for by the law, informal relationships are sometimes given legal effect by the courts through an effective, though patchy, set of rules.

In the case of the death of a partner in an informal relationship and when this death has been caused by an unlawful act by a third party, the courts have determined that the surviving partner has the right to compensation against the wrongdoer (Art. 2043 Italian Civil Code). This rule has been acknowledged in more recent case law, while older decisions used to hold the view that no right to compensation accrued in the case of cohabitation, as the cohabitant had no 'right' to maintenance from the deceased partner.<sup>4</sup> The current case law, on the contrary, has also extended compensation to interested parties, such as, indeed, cohabitants who only have expectations vis-à-vis the victim but no rights.<sup>5</sup>

- 4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?**

Legislation and case law do not provide any general definition of informal relationships. The definition thereof, whenever this is provided, then varies according to the context.<sup>6</sup> For instance, in the law on medically assisted reproduction cohabitation is not qualified at all, while in the rules on adoption it is specified that it must have lasted for at least three years. A significant indication, however, is contained in an old decision of the Court of Cassation which defined the task of the judge in ascertaining the real substance of a cohabitation as that of ensuring that the

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<sup>3</sup> L. BALESTRA, 'La famiglia di fatto', in: G. FERRANDO (ed.), *Il nuovo diritto di famiglia*, Zanichelli, Bologna, 2008, at p. 1039.

<sup>4</sup> Cass. 21 September 1981 n. 8209, in *Dir. Prat. Assic.* 716; compare G. FERRANDO, *Diritto di famiglia*, Zanichelli, Bologna, 2013, at p. 152.

<sup>5</sup> See extensively L. BARDARO, 'Il convivente della vittima', in: P. CENDON (ed.), *Trattato dei nuovi danni*, Cedam, Padua, 2011, at p. 215 et seq.; Cass. 10 March 1994, n. 2322, in *Giur. It.*, 1995, I, 1, 1370; Cass. 24 March 1994 n. 2988, in *Giust. Civ.*, 1994, p. 1849. Compare also G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 204 et seq.; R. TOMMASINI, 'La famiglia di fatto', in: M. BESSONE (ed.), *Trattato di diritto privato*, Giappichelli, Turin, 1999, at p. 412.

<sup>6</sup> L. LENTINI and J. LONG, *Diritto di famiglia e dei servizi sociali*, Laterza, Bari/Rome, Laterza, 2011, at p. 202.

cohabitants had formed a 'reliable and stable' *de facto* family, going beyond 'the mere presence of sexual intercourse' between them.<sup>7</sup>

The existence, or not as the case may be, of an informal relationship is a matter of fact left to the discretionary evaluation of the court. Its existence may be proved through any means provided by the law and often by witnesses. The burden of proof lies on the person who asserts the existence of the relationship.<sup>8</sup>

It should also be mentioned here that the Italian language has several words and expressions to indicate the idea of two partners sharing a household and their everyday life: *coabitazione* (the mere fact of living in the same home), which has its etymology in the Latin *cum habitatio* (inhabit together); *convivenza* (*cum vivere*, living together) having a meaning of sharing a common life; *convivenza more uxorio* (from the Latin 'similar to the matrimonial way of living'); *famiglia* or *unione* or *coppia di fatto*; *unioni libere*; and *convivenze senza matrimonio*.<sup>9</sup> Although these terms have different meanings and implications (sometimes significantly so), in everyday language and even in the legal doctrine and case law, however, they are frequently treated as synonyms and are interchangeable.

In any case, same-sex partnerships are included in these definitions just as different-sex unions are.<sup>10</sup>

## **5. Where informal relationships between a couple have legal effect:**

- a. **When does the relevant relationship begin?**
- b. **When does the relevant relationship end?**

As the relationship is a matter of fact, it is up to the judge, taking into account the specifics of the case, to identify the precise moment when it began or when it ended.

This principle is expressly laid down regarding adoption. Here, where the law requires, on the part of the would-be parents a 'continuity and stability of their living together' for a minimum duration of three years prior to the adoption is required<sup>11</sup> and the Tribunal for minors will in fact have to 'consider all the circumstances of the actual case' (*del caso concreto*) to check whether this prerequisite has been satisfied.

## **6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?**

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<sup>7</sup> Cass. 4 April 1998, n. 3503 in *Foro It.*, 1998, I, 2154. Compare L. BALESTRA, 'La famiglia di fatto', in: G. FERRANDO (ed.), *Il nuovo diritto di famiglia*, Zanichelli, Bologna, 2008, at p. 1039, n. 23.

<sup>8</sup> Cass. 28 March 1994, n. 2988: compare L. BARDARO, 'Il convivente della vittima', in: P. CENDON (ed.), *Trattato dei nuovi danni*, Cedam, Padua, 2011, at p. 220 et seq.; G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 208 et seq.

<sup>9</sup> The old term *concubinato* - with its negative implication - is no longer used.

<sup>10</sup> For instance Trib. Firenze 11 August 1986, in *Dir. eccl.*, 1989, II, p. 367 and Trib. Milano 1 July 1993, in *Gius.*, 1994, p. 103. Compare L. BALESTRA, 'La famiglia di fatto', in: G. FERRANDO (ed.), *Il nuovo diritto di famiglia*, Zanichelli, Bologna, 2008, at p. 1044. Also C. Cost. 15 April 2010, n. 138, in *Fam.dir.* 2010, p. 653 (see *infra* the answer to Question 6).

<sup>11</sup> Art. 6 para. 4, law of 4 May 1983, n. 184, as modified by Art. 6 of the law of 28 March 2001, n. 149.

As the Italian Constitution states in Art. 29 that 'The Republic recognises the rights of the family as a natural group founded on marriage', the legal recognition of cohabitation has been grounded in another article of the Italian Constitution, Art. 2: 'The Republic recognises and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed.'

Cohabitation has indeed been held to be one of the groups where personality is expressed. This interpretation has been introduced by the Constitutional Court through many decisions, the oldest of which dates from 1977.<sup>12</sup>

More recently, the Constitutional Court has also included same-sex couples among the social groups deserving legal protection according to Art. 2 of the Italian Constitution.<sup>13</sup> This protection, however, has not resulted in dispensing with the discrepancy between the legitimate family and cohabitants in terms of their legal treatment, but simply in applying the general rules on contract and obligations to informal relations.<sup>14</sup>

**7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?**

International instruments and European legislation can hardly be said to be relevant in the Italian jurisdiction with regard to the legal position of informal partners. Taking into account the framework formed by Art. 29 of the Italian Constitution and the traditional, privileged recognition accorded to marriage – in its most narrow conception as a legal bond between a man and a woman – as opposed to all other kinds of unions, supranational sources provide at present merely general principles corroborating the legitimacy of cohabitation.<sup>15</sup>

Recommendations such as those contained in the Resolution of 16 March 2000 of the European Parliament calling on 'those States which have not yet granted legal recognition to amend their legislation to grant legal recognition of extramarital cohabitation, irrespective of gender', and the rules concerning the right to marry and to found a family contained in Art. 9 of the Charter of Fundamental Rights of the European Union are still awaiting implementation.

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<sup>12</sup> C. Cost. 8 February 1977, n. 556 in *Giur. It.*, 1980, I, 1, 346. In the same sense C. Cost. 7 April 1988, n. 404 in *Foro It.*, 1988, I, 2515; C. Cost. 13 May 1998, n. 166 in *Giust. Civ.*, I, p. 1759 and many decisions by the Court of Cassation.

<sup>13</sup> C. Cost. 15 April 2010, n. 138, in *Foro It.*, 2010, I, c. 1701.

<sup>14</sup> Compare G. FERRANDO, *Diritto di famiglia*, Zanichelli, Bologna, 2013, at p. 151.

<sup>15</sup> Compare G. FERRANDO, *Diritto di famiglia*, Zanichelli, Bologna, 2013, at p. 140. A full and up to date discussion of this and related issues can be found in G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 13 et seq. and p. 211 et seq.

**8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.**

Many bills on informal partnerships have been proposed, but not passed, in recent legislatures. The Italian Parliament has up to now never shown a genuinely positive attitude toward passing a law on this matter.

During the XIVth legislature (30 May 2001-27 April 2006) two bills among all those presented must be recalled here. The first was proposal n. 3308 of the Acts of the *Camera dei deputati* (proposal by De Simone and others, 23 October 2002) which set forth the introduction of registered unions, civil unions, and *de facto* cohabitations (*convivenze di fatto*). The second bill (n. 3296, proposal by Grillini and others) envisaged 'civil solidarity agreements' (*patti civili di solidarietà*).

Subsequently, during the XVth legislature (18 April 2006-28 April 2008) ten draft bills were put before the *Camera dei deputati* and nine before the *Senato*, in addition to another proposal by the government of the time (signed by Bindi-Pollastrini, 7/8 February 2007).

The most convincing attempt to pass a law on informal partnerships was the latter of the above. Entitled 'The rights and duties of cohabiting couples' (*Diritti e doveri delle coppie stabilmente conviventi*, hence the proposed acronym Di.Co.), it was also intended to apply to same-sex couples and outlined a thorough regulation of cohabitation, foreseeing the rights and duties arising automatically therefrom. Under the proposal cohabitation was to be proved through the Civil Status Registry and rules were suggested on matters of succession, maintenance, lease contracts, and support in the event of illness. The project was eventually abandoned, however, after criticism from various sides had been aroused: there was substantial criticism of the very notion of regulating cohabitation by those who were against introducing any legal institution other than marriage. Moreover, many points regarding the machinery and technicalities of the bill – for instance, the requisites defining and the evidence proving cohabitation – appeared to be unclear and controversial.<sup>16</sup> Towards the end of the legislature, the president of the *Commissione giustizia* of the Senate, Cesare Salvi, elaborated a text unifying all the proposals presented in previous years. The resulting amalgamation referred to a 'contract of supportive union' (*contratto di unione solidale*) to be signed by the couple in the presence of a notary or a justice of the peace and then registered. This proposal was, however, never discussed in the Senate due to the prior dissolution of Parliament.

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<sup>16</sup> B. DE FILIPPIS, 'La famiglia non matrimoniale nella storia del diritto', in: AA. VV., *La separazione nella famiglia di fatto*, Cedam, Padua, 2014, at p. 64 et seq.; for a more general overview see R. TOMMASINI, 'La famiglia di fatto', in: M. BESSONE (ed.), *Trattato di diritto privato*, Giappichelli, Turin, 1999, at p. 404 et seq.

During the following legislature, the XVIth (29 April 2008- 14 March 2013), no fewer than seven other proposals were presented, all having a similar content to one previous bill or another.

**9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?**

The XVIIth legislature began on 15 March 2013. Since then several bills<sup>17</sup> have been presented and many of them have been unified in the *disegno di legge* n. 1211 (the first to sign was on. Marucci) entitled 'Modifications to the civil code in the matter of the regulation of civil unions and cohabitation agreements'.

This bill introduces two kinds of registers to be kept in each of the country's municipalities. The first of them, called the Register of Civil Unions, will only be available to adults of the same sex 'united by a reciprocal affective bond'. From the moment of registration the two partners - bound by a reciprocal duty of moral and material support and to contribute to their communal life - will have to choose the patrimonial regime of the union (if they do not choose, the regime of community of property will apply) and in case of death the rights provided for the civil partner are the same as those provided by the code for spouses. When a child is born to a partner - even through medically assisted reproduction - the other partner is considered to be his or her parent from the moment of conception. The union may be dissolved by both a common or unilateral decision.

The other register is the Register of Cohabitation Agreements (*patto di convivenza*) where adult persons of the same or different sex may ask to be registered in order 'to organize their life together'. They are bound by a reciprocal duty of moral and material support and to contribute to their communal life, but no legal regime regarding their property applies, nor any of the rules provided by the code in the matter of the law of succession. In contrast, the rights and duties stipulated for spouses in matters of healthcare and imprisonment do apply to registered partners.

The head of the current Italian government, Matteo Renzi, has declared his intention to intervene in the matter of informal partnerships, so this bill does appear to have the chance of becoming law.

**B. Statistics and estimations**

**10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile?**

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<sup>17</sup> Disegno di legge N. 14 (Manconi and Corsini) Discipline of civil unions; 197 (Alberti Casellati and others) Modifications to the civil code in the matter of the regulation of the cohabitation agreement; 239 (Giovanardi and others) Introduction into the civil code of the contract of cohabitation and subsidiarity; 314 (Barani and Mussolini) Discipline of the reciprocal rights and duties of the cohabitants; 909 (Petraglia and others) Rules on civil unions and unions of reciprocal aid.

**Where relevant and available, please provide information on the gender of the couple.**

Since 1972 the number of marriages in Italy has been in decline, but this decline has been steeper in recent years. In fact, while from 1991 to 2013 the overall average annual drop was -1.2% per year, from 2008 to 2013 the decrease amounted to -5%. In the year 2013<sup>18</sup> the total number of marriages was 194,057, a fall of 13,081 on the previous year.

According to the report entitled 'Indicatori demografici',<sup>19</sup> in 2013 about 200,000 marriages were celebrated, with a marriage rate of 3.3 per 1,000 persons, one of the lowest in Europe.

In 2012 statistics showed a slight increase in the number of marriages which was explained by the increase in the number of marriages between spouses of which one was a foreign citizen. But this tendency was not confirmed in 2013.

However, it is marriages between Italian citizens which have been declining more steeply and steadily. This is true for both first and second marriages.

The reduction in the number of first marriages must of course be related to a fall in the birth rate which has been a demographic feature in Italy since the mid-1970s and which has resulted in a reduction in the number of 16 to 34-year-olds in the population, among whom first marriages are more frequent.

Those who have achieved lower levels of education show a more distinct tendency to avoid marriage: from 2003 to 2013 marriages involving men in this category fell from 612 per 1,000 inhabitants to 427 (which amounts to a decrease of 25%); marriages involving women with lower levels of education dropped from 740 to 499 per 1,000 inhabitants (a decrease of 33%). Over the same period, the decline in the number of marriages involving those with medium to high levels of education was 22% for men and 19% for women.

It is probable that this decrease in the marriage rate is, in part, due also to the economic crisis, which has made it harder to find work.

As the Italian legal system recognises not only civil marriages but also concordat marriages,<sup>20</sup> it may be of some interest to note that the numbers of concordat marriages have reduced in number too: in 2013, 42.5% of the total number of marriages across Italy were civil, peaking in the North (55%) and slightly lower at 51% in the Centre. In comparison, in 2008 civil marriages represented 36.8%. The

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<sup>18</sup> Data released by the Istat (National Institute for Statistics), 'Il matrimonio in Italia (anno 2013)', published on 12 November 2014.

<sup>19</sup> Published by the Istat on 26 June 2014.

<sup>20</sup> As is probably known, a concordat marriage is a marriage with legal effects under both the Italian legal system and the jurisdiction of the Holy See.

decrease in religious marriages may be explained, in part, by the increase in the number of second marriages and of marriages where one of the spouses is a foreign citizen.

An interesting point - though one which is difficult to explain - is that the propensity to enter into a civil marriage, which in the past was more widespread among more educated spouses, has recently seen a proportionately more pronounced growth among spouses with lower levels of education. In 2012 28.5% of husbands with a lower level of education chose a civil marriage (compared to 11.9% in 1995) while it was 20% of men with a university degree (compared to 12.7% in 1995). Similar values are reflected for wives: 29.8% of brides with a lower educational level (12.5% in 1995) and 21.1% with a university qualification (12.8% in 1995) opted for a civil marriage.<sup>21</sup>

Second marriages - which were on the increase up to 2008 - subsequently decreased by 10% in the years up to 2013, but remain more frequent in the North. Currently 15.8% of the total number of marriages are second marriages. Men remarry, on average, at the age of about 50 if they are divorced and 63 if they are widowed, while women are aged 44 if divorced and 51 if widowed.

In 2013 two marriages in three opted for the separation of property regime with no meaningful difference among the different areas of the country (69.5% of the total number of marriages in Italy in 2013). When both the spouses have a high level of education, this figure reaches 72%.

**11. How many couples are living in an informal relationship in your jurisdiction?  
Where possible, indicate trends.**

According to the last census (2011) cohabiting couples comprised 8.9% of the total number of couples (they were 3.6% pursuant to the previous census in 2001).<sup>22</sup> Currently, there are more cohabitations in the North of Italy (10.0% of the couples) and in the Centre (9.4%) than in the South (5.2%) and the Islands (6.3%).<sup>23</sup> However, the rate of increase in the South and on the Islands has been considerably higher than the average, showing a tendency towards conformity across the regions.<sup>24</sup>

Historical data show a tendency towards an increase in the number of cohabitations, as shown by the following table, published by the Italian Institute for Statistics (ISTAT).

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<sup>21</sup> Istat, 'Il matrimonio in Italia (2013)', at p. 9.

<sup>22</sup> Their total number was 510,251 in 2001, compared with 1,242,434 according to the 2011 census.

<sup>23</sup> 'Islands' refers to Sardinia and Sicily.

<sup>24</sup> The authors will only quote the data referring to the South: cohabitants comprised 1.6% of the total number of couples in the 2001 census, but amounted to 5.2% in that of 2011.

**Data referring to the whole of Italy<sup>25</sup>**

<b>Years</b>	<b>Unmarried Couples<sup>26</sup></b>
1994-1995	1.8%
1998-1999	2.4%
2002-2003	3.9%
2006-2007	4.6%
2008-2009	5.5%

The 2011 census also considered same-sex couples for the first time. Although many people preferred not to openly declare their cohabitation, same-sex partnerships amounted to 7,513, the greater proportion thereof (41.7%) living in the North-west of the country.

On the whole, according to the survey entitled *Come cambiano le forme familiari* (How family forms change) published by Istat,<sup>27</sup> 5,910,000 Italians have cohabited at some time in their lives (amounting to 11.5% of people aged over 15), including those who are still cohabiting (30.3%), those who have subsequently married (53.2%) and those who in the end separated from their partner (25.2%). Moreover, 24% of the total number of current informal partners are separated and 41.7% are divorced.

Cohabiting women show a higher level of education than married women (16.1% of them have a university degree compared with 12.3% of wives). Moreover, it is more frequent among cohabitants that the female partner is academically better qualified than the male (29.5 % of cases, against 25.0 % of married women).

As for the work situation of partners, both work in 58.0% of cases against 31.3% of married couples.

**12. What percentage of the persons living in an informal relationship are:**

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

The data for a precise answer are not available. According to the Istat 2009 survey quoted above,<sup>28</sup> however, among those Italians who have lived in a partnership at some time in their lives, 21.1% of them are between 35 and 44 years, and 20.2% between 25 and 34.

<sup>25</sup> Istat, 'La misurazione delle tipologie familiari nelle indagini di popolazione', 2010, at p. 18; Istat, 'La vita quotidiana nel 2009', 2010, at p. 16.

<sup>26</sup> Percentage of the total number of couples. Each figure on the right indicates the average for the years indicated on the left.

<sup>27</sup> The survey was published on 15 September 2011 but it referred to 2009.

<sup>28</sup> Istat, 'Come cambiano le forme familiari', 2011, *Tavole*.

We know more about women: among those who cohabit 39.8% of them are up to 34 years of age, 49.9% are between 35 and 54 and 10.2% are 55 and over.

One issue related to the question of the age of the partners is that by 2009 the number of partners who were in an informal partnership, having never been married before (53.9%),<sup>29</sup> had exceeded the number of those legally separated or divorced before starting their current partnership (41.8%). This represents a significant shift compared with previous years; unmarried persons comprised only 45% in 2003 and 47.9% in 1998. The pattern of informal partnerships therefore seems to be changing, and now involves more young people than in the past.

The reasons for the forming of informal partnerships, however, may vary significantly according to the age and the different legal and personal situations of the partners. Some reasons are indeed peculiar to the Italian legal system and society.

Young people may simply desire to experience living together before deciding to marry; those who have already been married may opt to cohabit during the long period of time and the two legal procedures required in order to divorce;<sup>30</sup> others may choose a partnership for ideological reasons; in some cases the very ceremony of marriage, which involves families, social duties and considerable preparation, may appear too burdensome, especially in the current climate of economic crisis.<sup>31</sup> Some older couples, with sons and daughters from previous unions, do not want to incur the unavoidable consequences of remarriage especially those pertaining to succession law.<sup>32</sup>

**13. How many couples living in an informal relationship enter into a formal relationship with each other:**

- a. Where there is a common child?**
- b. Where there is no common child?**

According to data published in 2011,<sup>33</sup> 7.9% of the total number of marriages celebrated in Italy up to that year had been preceded by cohabitations. Informal partnerships had preceded more or less half of the second marriages and 7% of the first.

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<sup>29</sup> *Celibi or nubili.*

<sup>30</sup> It is well known that the Italian jurisdiction requires three years of legal separation and two legal proceedings in order to obtain a divorce. However, the Italian Parliament seems to be about to approve a law to curtail the time and to simplify the procedure for couples having no issue under 26.

<sup>31</sup> According to the Istat report 'La vita di coppia', while before 1964 only 76.5% of Italian spouses had a wedding reception, after 1993 receptions were offered by 94.2% of marrying couples. Parties with more than 100 guests, moreover, were 13% in 1964, but 55.5% in 1993. Similar trends apply to honeymoons. Marriage has indeed become a very expensive matter.

<sup>32</sup> That Italian succession law imposes very severe limits on testamentary succession is a significant consideration. Sons and daughters of a first marriage, for instance, in the event of their parent remarrying, will have to divide their inheritance share with the new spouse, with no possibility for the testator to circumvent this outcome, however unfair it may appear in some circumstances.

<sup>33</sup> Istat, 'Come cambiano le forme familiari', 2011, at p. 6.

Among the cohorts between 2004 and 2009, about 33% of the first marriages were preceded by cohabitation and more than 70% of the second ones. With reference to the distinction between civil and concordat marriages, 50.0% of first civil marriages were preceded by cohabitation (the highest value in the Centre, 60.9%), and 26.8% of religious ones.

If we look at this data the other way round, among those who have lived in an informal partnership, 53.2% have subsequently married. The remaining 30.3% have continued to cohabit.

More accurate data - especially data linking the birth of a child with a partnership leading to a marriage - are not available. Still, some conclusions may be drawn from the Istat report entitled 'La vita di coppia' (published in 2006 but referring to data pertaining to 2003). A question was posed to cohabiting respondents who subsequently married, but had not decided to do so at the outset of their relationship. They were asked what had made them change their minds and convinced them to marry: the more frequent answers were that 'life in common showed us that we could marry' (60.5% of the total number of cases) and that 'we were expecting, or we wanted a baby' (14.6%). It may be of some interest to add that the former motive has become more prevalent in recent years (it was indicated by 54% of those who married before 1974, but by 64.9% of those who married in the years up to 2003), while the second motive is cited less: from 17.3% (for marriages up to 1974) to 9.1% (of the more recent marriages).<sup>34</sup>

Finally, 8.4% of informal relationships led to marriages in order 'to meet the parents' expectations', and 6.3% 'because of the social difficulties encountered as unmarried cohabitants'.

**14. How many informal relationships are terminated:**

- a. Through separation of the partners?
- b. Through the death of one of the partners?

Among those 5,910,000 Italians alive in the year 2009 who had cohabited at some time in their lives (amounting to nearly 15% of people aged over 15),<sup>35</sup> in 25.2% of the cases the relationship had come to an end without being formalized. No more accurate data are available to ascertain whether the termination came through separation or a partner's death.

**15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?**

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<sup>34</sup> Istat, 'La vita di coppia', 2006, at p. 3.

<sup>35</sup> Istat, 'Come cambiano le forme familiari', 2011, at p. 4.

Data are only available for informal relationships leading to marriage. Among the cohorts for 2004-2009 the average duration was 2.6 years but tending to increase,<sup>36</sup> and 64% of the couples had lived together for at least 2 years before marriage. As for second marriages, they were generally preceded by cohabitations lasting about 5 years.

The average duration of a marriage, on the contrary,<sup>37</sup> is 16 years at the moment of the initiation of the judicial proceeding for separation and 19 for divorce (the data referred to 2012). But the more recent marriages are shorter: while in 1985 marriages interrupted after only 7 years comprised 4.5% of the total, in 2005 this figure had increased to 9.3%.

Concordat marriages are more stable than lay ones: of every 1,000 religious marriages celebrated in 2005, 933 of them still endured in 2012, while for every 1,000 civil marriages celebrated in 2005, the figure, by 2012, was only 880.

**16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.**

In general, children may be born outside a formal relationship under several circumstances: for instance, to a single mother who recognizes the baby as her own, to a mother who chooses not to be nominated according to the Decree of the President of the Italian Republic 3 November 2000, n. 356 and the law of 15 May 1997, n. 127, or to an unmarried couple. In the latter case, the baby may be recognized by both or just one of his or her parents.

Unfortunately, available data only refer to children born to unmarried parents, and no other statistical data are available for children born in other situations.

In 2012 children born to unmarried parents comprised 24.8% of the total number of births (about 132,000 newborn babies).<sup>38</sup> One baby out of four is therefore born within an informal relationship. But their distribution throughout the country is not uniform: in the North and the Centre they amount to almost 30% (with peak values of 44% in the province of Bolzano, and 36.2% in Valle d'Aosta). In these parts of Italy, considered together, the corresponding values in 1995 amounted to 9.7%. The trend is rising steeply.

The South and Sicily show lower numbers of births outside marriage, but here too the trend is rising: from 5.2% in 1995 to 16.4% in 2012 in the South, and from 8.7% to 19.5% in Sicily. Sardinia has percentages similar to the North (28.2% in 2012).

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<sup>36</sup> Istat, 'Come cambiano le forme familiari', 2011, at p. 6.

<sup>37</sup> Istat, 'Separazioni e divorzi in Italia', 2012, 2014, at p. 5.

<sup>38</sup> Istat, 'Natalità e fecondità della popolazione residente (2012)', 2013, at p. 7; Istat, 'Indicatori demografici. Stime per l'anno 2013', 2014, at p. 5.

It may be of interest to note that the proportion of children born outside marriage does not change if we refer only to parents who are both Italian (25.4% of the total number of births), while it is lower if we consider parents who are both foreigners (16.8%). Among mixed couples, on the contrary, the value is higher (about 35%) because most of these couples are reconstituted families where marriage is in general rarer.

**17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?**

In 2009, 49.7% of the cohabiting couples had at least one child<sup>39</sup> - they were 40.1% in 1998. Among those couples, 36.4% had children common to both partners; while 6.5% had children of only one partner; and 6.9% had both children of one partner and children together.

In the same year married couples with children comprised 36.4% of the total number of families (compared with 46.2% in 1998).

**18. How many children are adopted within an informal relationship:**

Adoption is only possible for married couples (Art. 6, Law of 4 May 1983, n. 184<sup>40</sup> as modified by several statutory instruments, the most important of which is the Law of 28 March, n. 149). This clearly excludes same-sex couples and cohabitants.

**a. By one partner only?**

While it is impossible for a *de facto* couple to adopt, a single person, irrespective of being in an informal partnership or not, can adopt a child under very specific circumstances (Art. 44 Italian Law on Adoption quoted supra).<sup>41</sup> This may occur when the child - who must necessarily be an orphan - is a relative of the adopter within the sixth degree; when the adopter and the adoptee were linked by a stable lasting bond prior to the parent's death (same article, sub a); when the child is an orphan and has a physical handicap (sub c); and when it has proved impossible to place that child in pre-adoptive fostering (sub d).

This kind of adoption, called 'adoption in particular cases', has several peculiarities: it does not interrupt the relationship between the adoptee and his or her original family; its effects do not extend to the adopter's family so that the child does not become a niece or nephew;<sup>42</sup> it does not require that the child has been abandoned;

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<sup>39</sup> Istat, 'Come cambiano le forme familiari', 2011, at p. 5.

<sup>40</sup> The law, now entitled 'Right of the minor to a family', is a comprehensive discipline of adoption and foster care, applying also, with a few exceptions, to international adoptions.

<sup>41</sup> This rule has been extended also to international adoption: C. Cost. 2005, n. 347.

<sup>42</sup> It is not yet clear if the new text of Art. 74 of the Italian Civil Code, modified by the Law of 10 December 2012, n. 219, applies also to 'adoption in particular cases', but if it does, then the adoptee will also establish bonds with the adopter's relatives.

and the child has succession rights with respect to both the original and the new family.

**b. Jointly by the couple?**

Not applicable.

**c. Where one partner adopted the child of the other?**

Not applicable to unmarried couples.

On the contrary, stepfamilies where the new couple are married may have recourse to another form of 'adoption in particular cases' regulated by Art. 44(b) of the Law of 4 May 1983, n. 184 . A child, even if adopted, can be adopted by the spouse of his or her parent. Lacking a comprehensive legal rule for stepfamilies under the Italian jurisdiction, this rule helps to establish a legal bond between the step-parent and the child. The consent of the biological parent is however essential.

**19. How many partners in an informal relationship have been in a formal or an informal relationship previously?**

No data exists for those cohabitants who have been in a previous informal relationship terminated in the past.

On the contrary, we only know that reconstituted families formed by persons who are divorced and have remarried constituted 3.3% of the total number of families in 2009, compared with 2.0% in 1998.<sup>43</sup> Married and unmarried reconstituted families together formed 7.0% of the total number of families in 2009.

**C. During the relationship**

**20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:**

- a. Where there are no children in the household?**
- b. Where there are common children in the household?**
- c. Where there are other children in the household?**

Strictly speaking, partners in informal relationships are under no financial or moral obligation to support each other.<sup>44</sup> Nevertheless, support, assistance and

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<sup>43</sup> Istat, 'Come cambiano le forme familiari', 2011, at p. 1 and p. 3.

<sup>44</sup> Only a few decisions have affirmed that informal partners have a duty to contribute to the common life: Trib. Savona, 29 June 2002, applying Art. 143 of the Italian Civil Code (which refers to married couples); Pret. Genova 21 May 1981, in *Foro it.*, 1982, I, c. 1459, extending to cohabiting couples the application of Art. 145 Italian Civil Code on the possibility to request judicial intervention when spouses disagree; Trib. Roma 13 December 1993, in *Dir. Fam. Pers.*, 1994, p. 1059; Trib. Messina 10 May 1991, in *Giust. Civ.*, 1992, I, p. 2899. See R. BASSETTI, *Contratti di convivenza e di unione civile*, Giappichelli, Turin, 2014, at p. 55 and L. BALESTRA, 'La famiglia di fatto', in: G. FERRANDO (ed.), *Il nuovo diritto di famiglia*, Zanichelli, Bologna, 2008, at p. 1046.

contributions to the common needs of the partners and of the household are not without relevance as – in the absence of a legal regulation of informal relationships – they may be said to form the actual basis of the relationship, and constitute the evidence of its existence.<sup>45</sup>

The position of one partner vis-à-vis the other does not change if there are no children, or common children or when there are other children in the household. In the case of children common to both, of course, the responsibility toward them lies with the parents according to the general rules regarding maintenance, support and education which constitute the parents' responsibility toward their children (Art. 315 and 315 *bis* Italian Civil Code as amended by the law of 10 December 2012, n. 219). Therefore each partner is under an obligation to maintain and support his or her children with no effect on his or her duties toward the partner.

**21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?**

No. No general duty to contribute is laid down by the law or can be inferred from the case law.

**22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?**

At the end of the relationship, the partner who is not the owner of the home may be asked to leave by the other partner. The latter, however, in case the non-owner refuses to leave, cannot make use of the actions to recover possession provided by Art. 1168 Italian Civil Code,<sup>46</sup> because the cohabitant is considered to be a qualified holder (*detentore qualificato*) and not just a licensee.<sup>47</sup>

Possessory action being precluded, the owner can therefore make use of an ordinary action to contest the partner's occupation on the grounds of being without title. However, if the cohabitation has become unsustainable, the owner can start urgent proceedings (Art. 700 of the Italian Code of Civil Procedure).<sup>48</sup>

These rules also apply when a partner is the sole tenant of the home. It would then be advisable, in order to protect the informal partner's right to housing, that the lease contract be signed by both partners.

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<sup>45</sup> See, among others, G. FERRANDO, *Diritto di famiglia*, Zanichelli, Bologna, 2013, at p. 146.

<sup>46</sup> Only a rather old decision, given the specific circumstances of the case, allowed the owner to make use of a possessory action (Pret. Firenze 26 October 1990, in *Giur. Merito*, 1992, p. 861).

<sup>47</sup> This interpretative trend is now prevailing, although some decisions still deny the cohabitant the designation of qualified possessor. The debate and the current solutions are discussed by G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 189.

<sup>48</sup> Pret. Milano 31 March 1990, in *Foro Pad.* 1990, I, c. 363; Trib. Messina 10 September 1997, in *Fam. Dir.* 1998, p. 255; Pret. Pisa 30 March 1990, in *Foro. It.* 1991, I, c. 329.

This is completely different, however, if the couple have children. See *infra* the answer to Question 43.

**23. Are there specific rules on a partner's rights of occupancy of the home:**

**a. In cases of domestic violence?**

Yes, such rules do exist. Some of them apply to adult cohabitants and others to the child or children living with the couple.

In cases of abuse against a partner the judge may employ specific remedies, provided by Art. 342 *bis* and 342 *ter* of the Italian Civil Code (introduced by the Law of 4 April 2001, n. 154), called 'protection orders' (*ordini di protezione*). These measures may include orders varying from an injunction to stop the offending behaviour, to the removal of the wrongdoer from the family home and measures prohibiting him/her from approaching the place where the other family members live. The duration of the order cannot exceed one year, but it can be extended, subject to a petition by the other party, for 'no longer than is strictly necessary' and 'only when there are serious grounds'. These rules apply to spouses and expressly to cohabitants.

In the case of abuse against the child or the children, 'when the conduct of one or both of the parents [...] is [...] harmful to the child, then the judge, according to the circumstances of the case, may take appropriate measures. The judge may also arrange for the child's removal from the home or for the removal of the parent or the cohabitant who mistreats or abuses the child' (Art. 333 Italian Civil Code: the words 'or the removal of the parent or the cohabitant who mistreats or abuses the child' were added by the law of 28 March 2001, n. 149).

**b. In cases where the partner owning or renting the home is absent?**

There are no specific rules. As the cohabiting partner can now be defined as a qualified holder,<sup>49</sup> his or her connection with the home exists autonomously even in the absence of the holder of the title to the home, resulting in a *de facto* occupation protected by the law against any intrusion or nuisance.

**24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:**

**a. Where the home is jointly owned by the partners?**

No specific rules apply to the home which is jointly owned by the two partners in an informal relationship. Ordinary rules on common ownership apply (*comunione ordinaria* or *comproprietà*) only when the home has been jointly purchased by the two partners and registered in both their names. In no case, in fact, can common ownership automatically result from the mere fact of cohabiting.

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<sup>49</sup> But see the answer to Question 22.

Pursuant to Art. 1100 et seq. Italian Civil Code, then, transactions exceeding ordinary administration like the disposal and mortgaging of a property must therefore be agreed upon by both partners and each co-owner can freely sell his or her share of the asset.

**b. Where the home is owned by one of the partners?**

When the home is owned by one of the partners, the fact that he or she are partners in an informal relationship has no relevance. Every transaction of ordinary or extraordinary administration will be decided by the homeowner alone.

**c. Where the home is jointly rented by the partners?**

As under Italian law a lease is a contract which gives rise only to personal rights of enjoyment, if the home is rented - regardless of whether by one or both of the partners - disposal and mortgage are not allowed. Subletting - although subject to restrictions (Art. 2 Law of 27 July 1978, n. 392) - is possible under the general law of contract, but there is no specific rule regarding a home which is jointly rented by the two partners in an informal relationship. Both lessors will therefore have to agree on the sublease.

**d. Where the home is rented by one of the partners?**

No specific rule is provided when the home is rented by one of the informal partners. Disposal and mortgages are excluded by the general law, and the lessor will be the sole person entitled to sublet the premises.

**25. Under what circumstances and to what extent can one partner act as an agent for the other?**

No special provision to this effect is available to partners. In general, the simple fact of cohabiting does not in itself give any power of attorney to the partner.

According to the general rules, however, one partner may nominate the other as his or her agent through a specific legal act called *procura*. In this case, when the agent negotiates with a third party, the effects of the transaction rest on the principal, provided the agent identifies him or herself as acting in the name of the other partner.<sup>50</sup>

**26. Under what circumstances can partners in an informal relationship become joint owners of assets?**

For partners in an informal relationship no special rule on the joint purchasing of assets exists. No regime, similar to that of community of property (*comunione dei beni*,

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<sup>50</sup> G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 159.

Art. 177 et seq. Italian Civil Code) provided for in marriage, exists and therefore each partner is the exclusive owner of assets they have personally purchased. The arrangement resembles the separation of property regime provided for spouses.

Thus, the only way for partners to become joint owners is to acquire the asset together. In the case of immovables, both partners must then be the registered owners of the land; in the case of movable property, proof must be provided that the transaction is ascribed to both partners. Assets will then be regulated by the general rules of common ownership (art 1100 et seq. Italian Civil Code).

The possibility to automatically apply rules on community of property to civil unions, on the basis of the very fact of cohabitation, has been discussed and excluded by legal doctrine on the grounds that one of the main reasons for cohabitation is to avoid the patrimonial consequences of marriage.<sup>51</sup>

It must also be considered that even married Italian couples often do not choose the community of property regime and prefer separation. According to the most recent Istat report 'Il matrimonio in Italia',<sup>52</sup> in fact, a good 69.5% of the couples who married in 2013 chose the separation of property regime (72.6% of the couples in the South of Italy, only 66.1% in the North East). It would then be very unpopular to subject unmarried couples to the community of property regime without them expressly opting for it.

**27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.**

There are no specific rules on household goods within the context of informal partnerships. They are covered by the rules on movable property.

Household goods, according to an old decision by the Constitutional Court, include items of furniture, fittings, furnishings, electrical appliances, but also parking spaces and services.<sup>53</sup>

**28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?**

If a partner has purchased an asset (movable or immovable) after the beginning of the partnership and is the sole legal holder of the right of ownership, in no case can the other partner become a joint owner.

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<sup>51</sup> L. BALESTRA, 'La famiglia di fatto', in: G. FERRANDO (ed.), *Il nuovo diritto di famiglia*, Zanichelli, Bologna, 2008, at p. 1055.; R. BASSETTI, *Contratti di convivenza e di unione civile*, Giappichelli, Turin, 2014, at p. 62.

<sup>52</sup> R. BASSETTI, *Contratti di convivenza e di unione civile*, Giappichelli, Turin, 2014, at p. 10.

<sup>53</sup> C. Cost. 27 July 1989, n. 454, in *Foro. it.* 1989, I, c. 3336.

However, when it can be proved that the purchase has been made possible through the partner's contribution in the form of housework, then the rule on unjust enrichment applies (Art. 2041):<sup>54</sup> '[a] person who has enriched himself without just cause at the expense of another shall, to the extent of the enrichment, indemnify the other for his correlative loss'.

**29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?**

As for immovables, ownership can only be proved through written instruments, especially the registered deed of sale.

As for movables, proof can be provided through any means, even by witnesses.

If, however, the party is not able to prove exclusive ownership of an asset, then the asset is considered to be the common property of both partners and is divided on an equal basis.<sup>55</sup> This rule has also been applied to current bank accounts opened in both partners' names.<sup>56</sup>

No other presumption is foreseen.

**30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?**

Ownership of assets as regards third parties is proved in the same way as between the two partners. No general presumption is foreseen.

As for current bank accounts, while between the partners the rule that shares are presumed to be equal will apply (Art. 1298 para. 2 Italian Civil Code; see also Question 29), in the view of the bank the two partners are joint and several creditors (Art. 1854 Italian Civil Code). Therefore, either of the holders can withdraw the whole sum at any time.<sup>57</sup>

**31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?**

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<sup>54</sup> Compare R. TOMMASINI, 'La famiglia di fatto', in: M. BESSONE (ed.), *Trattato di diritto privato*, Giappichelli, Turin, 1999, at p. 414; G. FERRANDO, *Il matrimonio*, in *Trattato Cicu-Messineo*, Giuffrè, Milan, 2002, at p. 230.

<sup>55</sup> Trib. Pavia 20 November 1979 in *Giur. It.* 1980, I, 2, p. 431; Pret. Torino 17 March 1988 in *Dir. Fam. Pers.* 1990, 1314. Compare G. FERRANDO, *Diritto di famiglia*, Zanichelli, Bologna, 2013, at p. 149.

<sup>56</sup> In an often cited case, only the man had made bank deposits as he was the sole wage earner, while the woman was a housewife. Her work was nevertheless considered by the court to entitle her to half of the money. See Trib. Bolzano 20 January 2000, in *Giur. Mer.*, 2000, p. 818; AA. VV., *La separazione nella famiglia di fatto*, Cedam, Padua, 2014, at p. 171.

<sup>57</sup> AA. VV., *La separazione nella famiglia di fatto*, Cedam, Padua, 2014, at p. 224.

Each partner is only liable for the obligations he or she has personally assumed, even if related to transactions entered into in the interests of the partnership. No common liability may originate from the mere fact of cohabitation.<sup>58</sup>

Therefore, the only way that partners may become jointly liable for debts is by undertaking an obligation together, for instance by both signing the same contract.

### **32. On which assets can creditors recover joint debts?**

As the joint liability of the partners can only arise when both have assumed the same obligation, creditors can recover joint debts according to the general rules on breach of contract. All types of assets can therefore be the object of an action for recovery.

### **33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.**

No specific rule is provided for the administration of assets which are jointly owned by the partners in an informal relationship. The standard rules on common ownership (*comunione ordinaria*) therefore apply (Art. 1100 et seq. Italian Civil Code).

Parties in the co-ownership are considered to be the owners of a share in the common asset, and their shares are presumed to be equal (Art. 1101 Italian Civil Code), but it is of course possible that the cohabitants, when dividing the asset between themselves, choose other proportions for the division of their respective shares.

Transactions within ordinary administration are decided by the majority holder of the shares while the minority is obliged to follow (Art. 1105 Italian Civil Code). Transactions exceeding ordinary administration like a sale, the creation of a real right, or leases for more than nine years, must be agreed upon by all the parties to the co-ownership (Art. 1108 Italian Civil Code).

Each co-owner can freely sell his or her share of the asset (Art. 1103 Italian Civil Code).

## **D. Separation**

### **34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?**

There is no legal provision regarding maintenance when partners in an informal relationship separate but, as no duty of support exists during the relationship, such a duty cannot be inferred after the separation.<sup>59</sup>

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<sup>58</sup> G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 158-9.

<sup>59</sup> Compare App. Roma 28 Novembre 1994, in *Dir. fam.* 1996, p. 980.

- 35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:**
- a. The creditor's needs and the debtor's ability to pay maintenance?**
  - b. The creditor's contributions during the relationship (such as the raising of children)?**
  - c. The standard of living during the relationship?**
  - d. Other factors/circumstances (such as giving up his/her career)?**

Not applicable.

- 36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?**

Not applicable.

- 37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?**

Not applicable.

- 38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?**

Not applicable.

- 39. Is the maintenance claim extinguished upon the claimant entering:**
- a. Into a formal relationship with another person?**
  - b. Into an informal relationship with another person?**

Not applicable.

However, it may be of interest to note that the cohabitation may be relevant in calculating the amount due to his or her ex-spouse, following the divorce of one of the current partners. The amount of maintenance must in fact be limited in order to allow the divorced person to support the person they are now cohabiting with.<sup>60</sup>

This rule also applies in the case of personal separation.<sup>61</sup>

- 40. How does the creditor's maintenance claim rank in relation to:**
- a. The debtor's current spouse, registered partner, or partner in an informal relationship?**
  - b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**
  - c. The debtor's children?**

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<sup>60</sup> Cass. 30 January 1987, n. 879 in *Dir. Fam.*, 1987, I, p. 590. Compare R. TOMMASINI, 'La famiglia di fatto', in: M. BESSONE (ed.), *Trattato di diritto privato*, Giappichelli, Turin, 1999, at p. 413.

<sup>61</sup> Trib. Napoli, 27 January 1985, in *Dir. Fam.*, 1985, I, p. 606.

**d. The debtor's other relatives?**

Not applicable.

**41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?**

No specific rule is provided for the determination of ownership upon the partners' separation. Therefore, as each partner is the exclusive owner of any assets that he or she may have individually purchased during the relationship, at its end he or she will retain ownership of such assets. The ownership of any single asset will be proved following the general rules described supra in the answer to Question 29.

If, however, an asset formally falls under the common ownership of both partners, that property will be divided according to the general rules on the dissolution of co-ownership under Art. 1111 of the Italian Civil Code. The division will then take into account the proportion of the asset owned by each partner. Each co-owner has the right to request the dissolution of co-ownership at any time.

**42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?**

There are no specific rules, which might have special relevance, for the division of those properties. General rules on ownership apply, and possibly rules on co-ownership.

**43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?**

In general, informal partners at the moment of their separation are not awarded any preferential right by law. Only when they have children from their partnership may special protection be granted as regards the family home.

Art. 337 *sexies* of the Italian Civil Code in fact states that '[t]he enjoyment of the family home is attributed primarily taking into account the children's interest. When regulating the economic relationship between the parents the judge will take into account that attribution, also considering the title of ownership, if there is any. The right to enjoyment of the family home is withdrawn if the assignee does not live or stops living permanently in the home, starts a new cohabitation, or remarries.' This rule, introduced by the law of 8 February 2006, n. 54 on shared custody applies to the separation and divorce of married couples, but also to the dissolution of cohabitation (Art. 337 *bis* Italian Civil Code).

It must be born in mind, however, that while in a personal separation and the dissolution of marriage judicial intervention is mandatory, the dissolution of an informal partnership does not necessarily require judicial intervention, even when the separating couple have children. Only in a dispute between parents regarding the custody of the child(ren) may either of them initiate proceedings which will then be resolved by the courts, applying the rules provided in Art. 337 *bis* et seq. Italian Civil Code.

The allocation of the family home is therefore not determined with reference to the interests of the informal partner, but exclusively with reference to those of the children who, pursuant to a decision originally applied to a married couple but which can be extended to unmarried parents, must be sons and daughters common to both the separating partners (Cass. civ. 2 October 2007, n. 20688). It may be added that, according to the Constitutional Court, the loss of the family home by the assignee, as foreseen by Art. 337 *bis*, does not follow automatically in the event of a new cohabitation or the remarriage of the assignee, but must be subordinated to a judgement on its conformity with the interests of the children (Constitutional Court 30 July 2008, n. 308).

Household goods and commodities are considered to be fixtures of the home and go with it. The same rule applies to the expenses related to the home, for instance the expenses for condominium administration, and these must be paid by the assignee.

#### **44. How are the joint debts of the partners settled?**

No special rule is provided for the settlement of the informal partners' debts. In the case that partners have become jointly liable for debts or have undertaken an obligation together, for instance by both signing the same contract, general rules on the discharge of contracts will apply.

#### **45. What date is decisive for the determination and the valuation of:**

- a. The assets?**
- b. The debts?**

The separation of informal partners being a matter of fact - which does not require judicial intervention - only in the case of a dispute does the date of its taking place have relevance. It will then be the task of the judge to determine, according to the circumstances of the specific case, the date when it occurred with reference to both the assets and the debts.

#### **46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?**

The vast majority of the legal doctrine and case law unanimously deny the possibility of the cohabitant obtaining compensation for damages after the break-up of the

relationship. This is so because the informal relationship is based on the free will of the parties, who are not bound by any legalized bond compelling them to continue living together.<sup>62</sup> The break-up of the relationship does not amount to a tort, not even when it occurs without justification.

Contributions freely given to the partner and disadvantages suffered during the relationship are not considered a source of a civil obligation but one of a 'natural obligation' and fall, therefore, within the provision of Art. 2034 Italian Civil Code, according to which, 'what has been spontaneously paid or performed following moral or social duties' cannot be requested to be repaid, and is therefore gratuitous. The only exception to this is in the case of disabled persons.

Thus, upon separation no partner can request compensation for what he or she has done or paid in the absence of any legal obligation to have done so.<sup>63</sup>

According to the Court of Cassation (decision of 13 March 2003, n. 3713), in order for a natural obligation to arise, it is however necessary that what has been given 'is proportionate to the whole of the patrimony and to the social conditions of the giver'. Therefore, no natural obligation arises when a gift given by one partner is disproportionately greater in value than the duties accepted and performed by the other. Only in this case, then, may the former partner ask for compensation.

## **E. Death**

### **47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?**

No right of inheritance accrues in the case of intestate succession.<sup>64</sup> The only way to allow the partner to have rights to the deceased partner's estate is through a will.

Legal doctrine has suggested many remedies under the law of contract to protect one's partner, all of them requiring legal advice and often the intervention of a notary. Their practical application, however, is not at all frequent among informal partners in Italy.

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<sup>62</sup> Compare G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 179.

<sup>63</sup> This principle is well established. The first application was by the Court of Cassation (for instance, Cass. 17 January 1958 n. 84 in *Foro It.*, 1959, I, c. 470) and the principle has been followed in recent times by other courts ( e.g. Trib. Milano, 13 March 2009): see, among several other authors, G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 180; L. BALESTRA, 'La famiglia di fatto', in: G. FERRANDO (ed.), *Il nuovo diritto di famiglia*, Zanichelli, Bologna, 2008, at p. 1059 et seq.

<sup>64</sup> Compare L. BALESTRA, 'La famiglia di fatto', in: G. FERRANDO (ed.), *Il nuovo diritto di famiglia*, Zanichelli, Bologna, 2008, at p. 1094 et seq.; G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 193 et seq.

Moreover, the cohabitant has no right to the 'widow's/widower's pension' (*pensione di reversibilità* or *pensione indiretta*) which accrues only on the part of the deceased's wife or husband.<sup>65</sup>

**48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?**

In the case of intestate succession the informal partner has no right to or any claim against the deceased partner's estate.

**49. Are there specific rules dealing with the home and/or household goods?**

No, there are not. The cohabitant has no legal right which can be compared to that of a surviving spouse who, upon the death of the other, has the right to live in the family home and to use the household goods if their owner was the deceased (Art. 540 para. 2 Italian Civil Code).

In the absence of any testamentary instruction to the contrary, then, the informal partner may be asked (or even forced) to leave the premises by the heir.<sup>66</sup>

A substantially different set of rules applies, however, when the family home is not owned but leased, and the deceased partner was the only tenant. After a 1988 decision by the Constitutional Court,<sup>67</sup> the cohabiting partner automatically becomes the new tenant in place of the deceased, irrespective of any contractual agreement with the lessor.

It is a paradox evidenced by many authors that the legal position of an informal partner living in a rented home is undoubtedly better protected than that of one living in a home owned by the deceased partner.

**50. Can a partner dispose of property by will in favour of the surviving partner:  
a. In general?**

Generally, an informal partner can effectively dispose of his or her property in favour of the other partner through a will according to the general law of succession (Art. 587 et seq. Italian Civil Code).

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<sup>65</sup> C. Cost. 3 November 2000, n. 461; C Cost. 14 November 2000, n. 491. Compare AA. VV., *La separazione nella famiglia di fatto*, Cedam, Padua, 2014, at p. 26 et seq.

<sup>66</sup> This rule has been held to be constitutionally compatible by the Constitutional Court on 26 May 1989, n. 310. Other decisions to the same effect are quoted by G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 194 n. 3.

<sup>67</sup> C. Cost. 7 April 1988, n. 404, in Foro. It., 1988, I. C. 2515. Compare G. PIANEZZE, *Rapporti personali e patrimoniali tra conviventi*, Giuffrè, Milan, 2013, at p. 149 et seq.; R. TOMMASINI, 'La famiglia di fatto', in: M. BESSONE (ed.), *Trattato di diritto privato*, Giappichelli, Turin, 1999, at p. 415.

The strict limitations set out by the law in favour of the legitimate heirs (*legittimari*) must however be respected (Art. 536 et seq. Italian Civil Code).

**b. If the testator is married to or is the registered partner of another person?**

The marriage of either testator does not prevent him or her from disposing of property through a will in favour of the other partner if the provisions regarding the share reserved for and assigned to the spouse are respected. In practice, the married testator can devolve up to half of his or her patrimony to the informal partner, the other half being mandatorily destined for the spouse (Art. 540 Italian Civil Code).

**c. If the testator has children?**

Even if the testator has children, he or she can dispose of property by will in favour of his or her partner, provided that the shares reserved in favour of the children (and, where one exists, of the spouse) are respected.

If the testator only has one child and no spouse, then he or she can freely dispose of half of his or her patrimony, in favour of the partner, if he or she so wishes, the other half being reserved for the child (Art. 537 para. 1 Italian Civil Code).

If the testator has more than one child - it does not matter how many - and no spouse, then he or she can leave to the partner only one third of his or her wealth, the other two thirds being reserved for the children. Their share will be divided in equal parts among them (Art. 537 para. 2 Italian Civil Code).

If the testator has one child and a spouse, then he or she can dispose of one third of the patrimony in favour of the partner, the other two thirds being mandatorily left to the child and the spouse (Art. 542 para. 1 Italian Civil Code).

Finally, if the testator has more than one child as well as a wife or a husband, then the amount he or she can dispose of freely - and therefore leave to the partner - is only one quarter of the patrimony, another quarter being reserved for the spouse and the remaining half of the patrimony being divided, in equal parts, among the children (Art. 542 para. 2 Italian Civil Code).

**51. Can partners make a joint will disposing of property in favour of the surviving partner:**

**a. In general?**

In general, joint wills are not allowed in the Italian legal system, as a will is regarded as a legal instrument which can be implemented by only one person (see Art. 587 et seq. Italian Civil Code).

However, a cohabiting couple wishing to dispose of their own property in favour of each other can do so by implementing two different wills, each with a specular

content. The provisions under the law in favour of the legitimate heirs, the children and husband or wife – there being any, must always be respected.

**b. If either testator is married to or is the registered partner of another person?**

Not applicable.

**c. If either testator has children?**

Not applicable.

**52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:**

**a. In general?**

In general, agreements as to succession are void (*patti successori*, Art. 458 Italian Civil Code), while grants upon death are only possible if they are compatible with the requirements set by the law in favour of the legitimate heirs. Legal doctrine has for a long time suggested other legal institutions to protect the informal partner,<sup>68</sup> but until now it cannot be said that these means have been commonly implemented in practice. The main solutions which have been proposed are gifts to the partner with a reserved right of current use and enjoyment (*usufrutto*) in favour of the donor; contracts for the benefit of a third party; contracts of life insurance; contracts of life maintenance; and finally, trusts. In all these cases, the protection of the partner must however follow a very narrow path, as it must respect both the rights of the legitimate heirs, on the one hand, and the prohibition of agreements on succession, on the other.

It appears to be clear, then, that no general device is applicable to all cases, and that a careful study of each partnership is needed to mould the solution for a specific couple.

**b. If either partner is married to or is the registered partner of another person?**

**c. If either partner has children?**

Marriage or parenthood does not hinder the possibility of having recourse to dispositions of property upon death, provided the shares reserved for the legitimate heirs are respected. Where necessary, the spouse and children have recourse to specific legal action (*azione di riduzione*) in order to recover gifts and assets exceeding the share that the grantor could freely disposed of.

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<sup>68</sup> Compare G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 196 et seq.; R. BASSETTI, *Contratti di convivenza e di unione civile*, Giappichelli, Turin, 2014, at p. 162 et seq.

**53. Is the surviving partner entitled to a reserved share<sup>69</sup> or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?**

No. No reserved share or other right or claim is foreseen for the surviving partner in this case.

**54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?**

No, there are none. See also the answer to Question 14.

**55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?**

No, there are no statistics or estimations on this topic.

**56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?**

No, there are no statistics or estimations on this topic.

## **F. Agreements**

**57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?**

For a long time agreements between partners have been held to be void on the grounds of a violation of the rule on public morality (*buoncostume*). For many years, however, the opinion has been widely held that these agreements are not meant to remunerate for sexual services but to protect the fiduciary commitment of one partner towards the other and to acknowledge the value of each partner's contribution to their common patrimony. For instance, the Court of Cassation in 1993, upholding the validity of such a contract, held that 'cohabitation between an unmarried man and woman does not imply that this contract is illicit and therefore null'.<sup>70</sup>

Currently, however, the law provides no specific rules for these agreements, which therefore fall under the general law of contract. This implies that only the patrimonial aspects of the relationship can be regulated by the agreement. The

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<sup>69</sup> See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

<sup>70</sup> Cass. civ. sez. III, 8 June 1993, n. 6381. See G. PIANEZZE, *Rapporti personali e patrimoniali tra conviventi*, Giuffrè, Milan, 2013, at p. 126.

personal aspects of the relationship are excluded from the agreement according to Art. 1174 of the Italian Civil Code ('The performance which is the object of the obligation must be valuable [...]') and Art. 1321 ('The contract is the agreement between two or more parties to establish, regulate, extinguish a legal patrimonial bond'). Parties cannot therefore insert provisions on fidelity, moral assistance, procreation (or non-procreation), the exercise of parental responsibility, or the use of a specific family name.<sup>71</sup>

Informal partners, who are also parents, may enter into specific agreements regarding their children's custody in contemplation of their personal separation. If, then, the partners do in fact separate, and one of the parents brings an action before the courts to obtain a judicial verification and a decision on the children's custody, then the judge 'takes into account the agreements stipulated by the parents if they are not against the interests of the children' (Art. 337 *ter* as modified by the Italian Legislative Decree 28 December 2013, in force from 7 February 2014).<sup>72</sup>

Since 2 December 2013, at the initiative of the Consiglio nazionale del Notariato, it is possible to sign cohabitation agreements (*accordi di convivenza*) at every notary office in the country.<sup>73</sup> Agreements can be signed before starting to live together or afterwards.

**58. Are partners in an informal relationship permitted to agree on the following issues:**

- a. The division of tasks as between the partners?**
- b. The contributions to the costs and expenses of the household?**
- c. Their property relationship?**
- d. Maintenance?**
- e. The duration of the agreement?**

According to Art. 1322 of the Italian Civil Code entitled 'Contract autonomy', '[p]arties can freely determine the content of the contract, within the limits imposed by the law'. Informal partners can therefore:<sup>74</sup>

- plan their contribution to their common life, dividing tasks between themselves;

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<sup>71</sup> G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 111.

<sup>72</sup> It may be of some interest to note that, despite the recent law aimed at fully equalizing the legal positions of children born within and outside wedlock (Italian Legislative Decree 28 December 2013 quoted in the text), a difference between married and unmarried couples still exists in the event of separation: in the latter case, the relationship can be dissolved without judicial intervention - only when they disagree, can parents have their agreement on children's custody scrutinized by the judge. Married partners, on the contrary, must always commence legal proceedings in order to separate and the matter of custody will therefore be settled by the judge. In both cases, following the new law, the competent court is the *Tribunale ordinario*.

<sup>73</sup> Compare A.C. MORO, *Manuale di diritto minorile*, Zanichelli, Bologna, 2014, at p. 227.

<sup>74</sup> On this topic, among many authors, see R. BASSETTI, *Contratti di convivenza e di unione civile*, Giappichelli, Turin, 2014, at *passim*. The jargon-free site [www.contrattidiconvivenza.it](http://www.contrattidiconvivenza.it) is published by the Consiglio Nazionale del Notariato to foster the wider use of agreements among partners.

- quantify the contributions of each partner to the costs and expenses of the household;
- choose criteria to identify the owner or owners of the assets acquired during the relationship. They can even establish community or separation of property regimes for those assets. They can also assign the right of use to one partner of the other's property. Moreover, they can agree on the way in which the family home will be used, irrespective of its being owned by only one partner or by both, or it being leased;
- determine the consequences of the break-up of the partnership as regards properties and maintenance.
- they cannot, however, agree on time limits to their relationship because that, being a non-patrimonial provision, would be in conflict with Art. 1174 Italian Civil Code.<sup>75</sup>

The agreement may also contain provisions regarding reciprocal assistance in case of physical or mental illness or their mutual appointment of the other as a guardian in the event of disability (*amministratore di sostegno*).

The agreement cannot, however, contain post-death provisions, which in the Italian legal system are reserved for wills.

**59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?**

Yes, they are.<sup>76</sup> They can, for instance, agree that maintenance is paid after separation (as a periodical payment or as a lump sum), or they can agree on the gratuitous transfer of property. These payments or transfers are considered to be *remunerative donations* ('made out of gratitude for or in consideration of the merits of the donee', Art. 770 Italian Civil Code) and are therefore irrevocable (Art. 800 Italian Civil Code).

**60. Are the agreements binding:**

**a. Between the partners?**

Agreements are just as binding between the partners as any other contract. Their violation constitutes a cause of action before the courts.

Parties can insert withdrawal clauses in their agreements.

**b. In relation to third parties?**

The agreement as such does not produce effects with regard to third parties, as with any other contract (Art. 1372 Italian Civil Code).

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<sup>75</sup> Compare G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 100.

<sup>76</sup> R. BASSETTI, *Contratti di convivenza e di unione civile*, Giappichelli, Turin, 2014, at p. 204.

**61. If agreements are not binding, what effect, if any, do they have?**

As stated previously, agreements are binding for the partners but not for third parties.

**62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?**

Not applicable.

**63. When can the agreement be made (before, during, or after the relationship)?**

Agreements can be signed before starting to live together, while living together and after living together.

**64. What formal requirements, if any, govern the validity of agreements:**

**a. As between the partners?**

No formal requirement is needed between the partners. In principle, an oral agreement and its content might be proved through witnesses and presumptions.<sup>77</sup> But, of course, a written document is highly advisable, in order to establish and prove one's petition.

However, agreements including transactions over immovable or ones requiring formalities in other public offices require the intervention of a notary.

**b. In relation to a third party?**

Contracts, as such, have no effect regarding third parties. For instance, if the partners have agreed that a special asset, let us say land, is the common property of both, in order that this provision has effect toward third parties it is necessary to register the land under common ownership.

More generally, formal requirements in relation to third parties vary according to the content of the agreement and the kind of property involved.

**65. Is independent legal advice required?**

No independent legal advice is required to validate the agreement.

**66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?**

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<sup>77</sup> G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 109.

As these '*patti di convivenza*' agreements are rather new, and still by no means common, no statistics are yet available.

**67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?**

No statistics are yet available.

**G. Disputes**

**68. Which authority is competent to decide disputes between partners in an informal relationship?**

While marriage cannot be dissolved without court intervention, informal relationships may cease as a result of a mutual decision or even a unilateral one.

In the case of disputes between cohabitants, the competent court is the *Tribunale ordinario*, the first-instance court for general civil matters.

In the case of the separation of partners with children, up to a few months ago disputes over the custody of the children used to be resolved by the *Tribunale per i minorenni* (Minors Court), while in the case of a married couple the competent judge was the *Tribunale Ordinario*. A recent reform,<sup>78</sup> intended to fully equalize the legal position of children born out of wedlock with that of those born within wedlock, has attributed all competencies in the matter of custody to the *Tribunale ordinario*.

**69. Is that the same authority as for spousal disputes?**

Yes, it is the same court.

**70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?**

The agreement may only be scrutinized by the court when one of the partners claim a violation by the other.

The judge will ascertain whether a violation has occurred on the basis of the general rules on breach of contract.

**71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?**

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<sup>78</sup> Law of 10 December 2012, n. 219 followed by Italian Legislative Decree 154/2013.

Only when one partner brings a formal action against the other alleging the violation of the agreement, can the judge override or modify the agreement, applying the general rules of contract.

**72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?**

No special mechanism is offered to solve disputes arising out of informal partnerships. The majority of family matters are dealt with by the *Tribunale Ordinario* and some such matters by the *Tribunale per i Minori*. Mediation is not, as yet, widely used in Italy and is not required in any proceedings regarding family matters, including disputes on cohabitation.

**73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?**

Informal partners can effectively insert a clause in the agreement reserving the resolution of any legal conflict between them to arbitrators.<sup>79</sup> According to the general law, if one of the parties, in breach of the agreement, faces the other before a court, instead of taking the matter to arbitration, the judge will declare the action barred, provided the defendant so requires.

**74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?**

No, there are no statistics.

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<sup>79</sup> G. OBERTO, *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*, Cedam, Padua, 2012, at p. 175.