European Journal of Law and Public Administration
ISSN: 2360-6754 | e-ISSN: 2559-7671
Covered in: Erih Plus; HeinOnline; CEEOL; RePEc; CrossRef; Google Scholar; KVK; WorldCat; ICI Journals Master List - Index Copernicus; EBSCO.

2025, Volume 12, Issue 2, pages: 36-62 | https://doi.org/10.18662/eljpa/12.2/265

The Interdependence of Civil Status Recognition and the Free Movement of Persons within the European Union

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Abstract: *This paper examines the structural interdependence between civil status recognition and the effective exercise and enjoyment of European Union (EU) citizens' right to free movement. It argues that divergent Member State regimes governing marriage and partnership, specifically as regards same-sex couples, generate legal discrepancies that function as obstacles to Union citizenship rights under Articles 20 and 21 of the Treaty on the Functioning of the European Union (TFEU). Through an analysis of EU primary law and Directive 2004/38, this article traces the evolution of the Court of Justice of the European Union's (CJEU) jurisprudence from Coman and Others v General Inspectorate for Immigration and Ministry of the Interior (CJEU, 2018), which confirmed the sex-neutral meaning of "spouse" for derived residence rights under Directive 2004/38, to the Cupriak-Trojan and Trojan v Wojewoda Mazowiecki (CJEU, 2025) ruling in late 2025. It contends that Trojan successfully consolidates a functional mutual recognition requirement for civil status in cross-border situations by treating the denial of recognition of a same-sex marriage lawfully concluded in another Member State as an obstacle to free movement, and where recognition procedures are available for opposite-sex couples only, as discrimination prohibited by Article 21(1) of the Charter of Fundamental Rights of the European Union A comparative assessment subsequently evaluates the implications for Romania, Bulgaria, Poland and Slovakia as the remaining "ban" jurisdictions for same-sex marriage, demonstrating how Trojan constrains non-recognition regimes absent equivalent civil union frameworks. The paper concludes that EU integration is advancing through "harmonization by results" in civil status recognition for EU law purposes, while preserving Member States' national competence over family law matters in accordance with the principle of conferral.*

Keywords: *same-sex marriage; civil partnership; free movement of persons; EU citizenship; mutual recognition; national competence; family life.*

How to cite: Lunca, D. (2025). The interdependence of civil status recognition and the free movement of persons within the European Union. *European Journal of Law and Public Administration, 12*(2), 36-62. https://doi.org/10.18662/eljpa/12.2/265

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List of Abbreviations

Charter of Fundamental Rights of the European Union – Charter
Court of Justice of the European Union – CJEU
European Community – EC
European Convention for the Protection of on Human Rights and Fundamental Freedoms – ECHR
European Court of Human Rights – ECtHR
European Court of Justice – ECJ
European Union – EU
Treaty on European Union – TEU
Treaty on the Functioning of the European Union – TFEU

Introduction

The free movement of persons is a fundamental pillar of EU law (Article 26(1) TFEU (EU, 2012)), enabling EU citizens to reside and work across Member States without unjustified barriers. Nonetheless, this freedom collides with the diversity of national laws on civil status – the legal recognition of personal relationships and identity such as marriage, partnership, or parenthood. This article posits that this tension is particularly apparent in the context of same-sex relationships, given that several EU Member States provide no recognition of same-sex marriages or partnerships and even constitutionally define marriage strictly between a man and a woman. As of late 2025, sixteen EU Member States allow same-sex marriage in their national law, seven States permit same-sex civil partnerships but not marriage, and four States ban both same-sex marriage and civil partnerships. EU citizens who have lawfully married a same-sex partner in a Member State and seek to have that marriage recognized in another for the purpose of exercising their right to free movement, which they derive from EU citizenship, may have no avenues if the latter State does not permit the recognition of such unions. This divergence raises the question: to what extent must a Member State recognize a person's civil status acquired in another Member State, in order to give full effect to the EU free movement rights? This paper provides an analysis of civil status recognition under the EU's legal framework in light of recent judicial developments, in particular the 2025 *Trojan* ruling of the European Court of Justice (ECJ). Additionally, a comparative assessment will point out how the evolving supranational EU jurisprudence impacts the legal approaches among Member States, with a specific focus on four Member States – Romania, Bulgaria, Poland and Slovakia – which ban same-sex marriage and its recognition.

The EU legal framework regulating free movement, mutual recognition, and civil status

Free movement of persons and family life

EU citizenship confers a fundamental right to move and reside freely across Member States (Article 21(1) TFEU), which, despite being a general right, does not have general applicability. Because it can be invoked only where certain conditions are satisfied, the effectiveness of the right to free movement arguably depends on the adequate legal protection of the family life of migrating citizens, because EU citizens ought not to have to choose between mobility and family life. Unlike employed and self-employed persons, whose freedom of movement is secured by primary law through Articles 45 and 49 TFEU, economically inactive EU citizens hold solely residual rights, which are given effect mainly by secondary legislation, in particular Directive 2004/38 (EU, 2004), which ensures that family members can accompany or join the moving EU citizen under conditions of entry and residence. Article 2(2) of the Directive defines "family member" to include the spouse and, if the host Member State treats registered partnerships as equivalent to marriage, the registered partner, as well as children and certain dependent relatives. Notably, the Directive's text is gender-neutral and does not itself distinguish between opposite-sex and same-sex spouses for the purpose of free movement rights, as decided by the ECJ in *Coman* (CJEU, 2018), which concerned a Romanian-American same-sex couple who married in Belgium and sought residency rights in Romania. Thereby, an EU citizen's same-sex partner must be recognized as a spouse with a rightful derived right of residence when the citizen moves or returns to a Member State, and a Member State cannot invoke its own domestic marriage laws to refuse to recognize, for the sole purpose of granting EU residence rights, a marriage between an EU citizen and a same-sex partner lawfully concluded in another Member State. While Member States retain freedom to define marriage nationally, they must comply with EU law and not impose unjustified restrictions when dealing with free movement situations. Otherwise, denying a lawfully same-sex married couple the rights associated with EU citizenship solely due to sexual orientation would undermine the effectiveness of the rights conferred on EU citizens by Article 21(2) TFEU by refusing the continuation of the EU citizen's family life in another Member State. Therefore, *Coman* reinforces that free movement essentially entails the right to lead a normal family life abroad, meaning that EU law compels host Member States to recognize the status of family members as conferred by another Member State insofar as it is necessary to enable the EU citizen's free movement and residence.

Commensurately, measures which dissuade or deter a person from exercising mobility ought to be deemed restrictive, as denying a migrant worker's spouse or partner comparable benefits or entry could discourage the worker's movement, thus breaching the effectiveness of Article 45 TFEU. The same standard ought to be applied to EU citizens' same-sex spouses and partners – if moving to another Member State or returning home after exercising free movement would result in one's marriage or long-term partnership being dismissed, leading to loss of rights or practical hardships, it would incontestably amount not only to a serious impediment to free movement, but also to a violation of the rights conferred by the Charter (EU, 2012).

It bears mention that the Directive itself distinguishes between spouses and registered partners: a host Member State must admit a spouse regardless of nationality, whereas a registered partner is only admitted if the host State already treats such partnerships as equivalent to marriage in its own domestic law. Otherwise, unregistered partners with whom the EU citizen has a durable relationship are merely entitled to facilitation of entry under Article 3(2). One may argue that this practically creates a recognition gap wherein an EU citizen's same-sex partner could be denied full family reunification rights in Member States that neither allow same-sex marriage nor any registered partnership. *Coman* managed to close part of that gap by elevating married same-sex couples to the same status as heterosexual spouses across all Member States for the specific purpose of entry and residence rights; nonetheless the question remained what other legal effects must be accorded to guarantee equivalent access to the exercise of free movement rights to EU citizens in same-sex relationships. When EU citizens migrate, their familial ties, as established in another Member State, travel with them, and host States are obliged, within certain bounds, to give effect to those ties so that the citizen is not effectively less married in the new host State.

Fundamental rights

The obligation to recognize civil status across borders is reinforced by EU fundamental rights – Article 20 TFEU establishes EU citizenship for all nationals of Member States, making it a fundamental status that guarantees equal treatment within the scope of the Treaties, and Article 21 TFEU concretely secures the right to free movement "subject to the limitations and conditions laid down in the Treaties and by measures adopted to give them effect". Among those limitations, Member States may invoke grounds like public policy or national identity (Article 45(3) TFEU, Article 27 of the Directive), which nonetheless ought to be interpreted restrictively and are subject to the requirement of proportionality – Member States cannot

unilaterally establish that the derogation falls within the scope of a public policy measure without EU institutional oversight. In *Coman*, the Court established that a general refusal to recognize a lawful same-sex marriage does not meet the threshold of a genuine and serious threat to public policy and does not undermine a Member State's national identity in any permissible sense, which was subsequently upheld in *Trojan*.

Crucially, the Charter adds a fundamental rights-based dimension – Article 7 guarantees the right to respect for private and family life, and Article 21(1) prohibits discrimination based on sexual orientation. While the Charter does not create a standalone right to same-sex marriage, since Article 9 leaves the right to marry in accordance with Member States' domestic law, the ECJ in *Coman* has noted that same-sex relationships fall within "family life" just as opposite-sex relationships do, and it cautioned that an obstacle to free movement which causes an EU citizen to lose the legal protection of his family life upon returning home would violate Article 7 of the Charter. In *Trojan*, the Court went further, explicitly invoking Article 21(1)'s non-discrimination mandate. It held that a Member State's refusal to recognize a same-sex marriage from another Member State due solely to the couple's sexual orientation is contrary to the fundamental right conferred by Article 7 upon same-sex couples, and that Member States must establish procedures to recognize such marriages in compliance with the Article 21(1) prohibition on sexual orientation discrimination. This direct reliance on the Charter's equality guarantee is arguably a potentially transformative development in EU law, embedding principles of equal treatment more firmly into free movement case law.

Civil Status vis-à-vis domestic member state competence and the mutual recognition principle

The Union is conferred merely an ancillary competence (Article 6 TFEU) to regulate family law matters in Member States, meaning that regulating civil status, including marriage, divorce and filiation, has traditionally been the preserve of national law, such that States seek to guard their sovereign authority over issues such as the definition of marriage. However, Member States' full competence is limited by the requirement to comply with EU law, and where the respective family matter involves a cross-border dimension. In such cases, the Union reserves the power to legislate (Article 81(3) TFEU), proof of which is provided in particular by Directive 2004/38 and Regulation 492/2011 (EU, 2011). Unlike the Directive, which relies merely on one's EU citizenship status under Article 21 TFEU to guarantee one's right to move and reside freely, along with their family members, within the territory of a Member State, the Regulation grounds its

safeguards for workers and their families on one's status as a worker under Article 45 TFEU; Recital 6 obliges Member States to remove barriers to the mobility of workers and the integration of their families. Therefore, constraints still exist on the exercise of national competence in civil status, particularly where it affects the free movement rights of EU citizens and their families, prospectively giving rise to the principle of mutual recognition of civil status for EU mobility purposes (Šalamon, 2018).

Mutual recognition, as classically understood in EU law since *Cassis de Dijon* (CJEU, 1979), applies in the framework of the freedom of movement of goods, and has successfully managed to strengthen this fundamental EU freedom absent legislative harmonization (Pascual & Pérez, 2017). By reformulating this principle to fit the freedom of movement of persons, it follows that if an EU citizen lawfully acquires a civil status in one Member State, other Member States may not simply dismiss that status when its recognition is necessary for the person to effectively exercise rights under EU law. The CJEU most recently reinforced this balance in *Trojan*, by holding that "as EU law currently stands, the rules on marriage come within the competence of the Member States, and EU law cannot detract from that competence… Nevertheless, in exercising that competence, each Member State must comply with EU law, in particular the provisions of the TFEU on the freedom conferred on all Union citizens to move and reside within the territory of the Member States, by recognising, for that purpose, the civil status of persons that has been established in another Member State in accordance with the law of that other Member State". The phrase "for that purpose" is crucial – the obligation is to recognize the foreign civil status insofar as needed to give effect to EU free movement rights, not to assimilate it fully into domestic law for all purposes. This limited – functional – recognition approach entails that the host State must accord the "ties" resulting from a marriage or parenthood established abroad the same legal value as its own records, albeit only to the extent required to enable the individuals to exercise EU rights, as understood from the Court's cautiousness in *Trojan* in stating that such recognition need not produce effects in terms of civil status beyond the EU law context. Thereby, a Member State may maintain domestically that it does not permit same-sex marriage, but if a same-sex married couple is validly married under another Member State's law, the State of destination cannot deny them the benefits attached to marriage under EU free movement rules, including residency and non-discrimination in spousal benefits, even if it stops short of fully equating them to married couples in all areas of national law. The recognition required is not full incorporation into domestic family law for all purposes, but it must merely be

sufficient to allow the couple to continue living with the same privileges afforded to them due to their marital status, thus simultaneously preserving national definitions and effectively superseding them in cross-border contexts to enable the exercise of EU law rights.

This principle was formulated before in supranational jurisprudence on cross-border names and identity documents, where the Court recognized that a person's civil status record, which includes one's name, birth details and gender, is part of one's legal identity, and that failure to recognize changes made in one Member State can seriously burden free movement. In *Garcia Avello v Belgium* (CJEU, 2023) and *Grunkin and Paul* (CJEU, 2008), the Court held that an EU citizen child's surname validly registered in one Member State must be recognized by another Member State of nationality, because having different names across different Member States may cause administrative and personal inconveniences capable of hampering the child's EU citizenship rights. While one must take note of the concrete distinction between matters of personal status identity and family relationship status – identity markers such as names must generally be recognized outright in civil registries, unlike mere legal ties – one's marital status still must be recognized at least to the extent needed to enable the exercise of EU rights. In all cases, the priority lies in ensuring that exercising free movement does not result in the loss or negation of legal status that was validly acquired under another Member State's law.

In the absence of harmonization, the EU thus relies on mutual recognition mechanisms to manage cross-border legal differences. In the field of family law, the EU has implemented mutual recognition for judicial decisions, for instance through the *Brussels IIb Regulation* (EU, 2019) which requires Member States to recognize each other's judgments on divorce and child custody. However, the existence of a private international law instrument regulating the mutual recognition of civil status itself does not appear to be currently feasible given that Member States, citing national identity or constitutional values, resist intervention in defining family institutions not only from the Union but also from fellow Member States. The closest the Union has come to implementing such a tool is the *Public Documents Regulation*, which simplifies the cross-border acceptance of official documents, including marriage and registered partnership certificates, across Member States. It removes apostille and translation requirements for the purpose of facilitating the free movement of persons across the EU but does not impose any substantive obligation on Member States to recognize or issue documents that do not exist under their domestic law. Thus, a marriage certificate from Member State A will be accepted as authentic in Member State B without legalization, but whether

B accepts the marriage as valid is a separate question, left to be answered by its own domestic law and now importantly by the *Trojan* ruling.

Member States remain the determinants of civil status recognition on their territory, in conformity with the principle of conferral, however once EU citizens and their families move across borders, EU law demands a certain degree of portability of civil status, grounded on both practical and principled rationale: practically, an EU citizen cannot effectively move if their family relationships are dismissed at the border; and principled, as EU citizenship confers a uniform guarantee of non-discrimination and freedom of movement that ought not to be undermined by parochial differences in family law regimes. By requiring States to recognize civil statuses issued by fellow Member States, the EU is embracing mutual recognition as a tool to reconcile free movement with divergent national laws, most accurately reflecting the EU's broader goal of an "ever closer Union" (Preambles of the Treaty on European Union (TEU) (EU, 2012), and TFEU), where citizens can seamlessly exercise their rights across borders. Mutual recognition of same-sex marriages can thus be seen as analogous to the mutual recognition of professional qualifications or products: just as a product lawfully marketed in one country can be sold in another absent overriding public interest concerns, a marriage lawfully concluded in one Member State ought to be given effect in another absent a legitimate justification for derogation. In *Trojan*, Poland attempted to invoke public policy as a ground to deny recognition of a German marriage between two Polish men, however, the ECJ held that such a justification must be interpreted strictly in the free movement context and is subject to EU fundamental rights scrutiny. Therefore, a Member State's reserved competence to regulate family matters on its territory cannot be exercised by unilaterally defining public policy to circumvent free movement obligations; only a genuine and sufficiently serious threat to a fundamental interest of society ought to constitute a ground for justifiable derogation. Pertinently, the Court found that accepting a same-sex marriage certificate from abroad "does not undermine the institution of marriage in the Member State of origin" and implicitly does not "pose a threat to the public policy of the Member State". Thus, neither national constitutional identity, nor abstract public policy concerns such as upholding a traditional concept of family, were sufficient to override the EU law duty of recognition in the context of returning migrants exercising their EU citizenship right to free movement. Effectively, mutual recognition can now be regarded to extend into family status: an EU citizen's civil status, once established under the laws of one Member State pursuant to free movement, must be mutually respected by other Member States.

Jurisprudential developments in same-sex marriage and partnership recognition in the European Union

For much of the Union's history, matters of same-sex marriage and equality fell outside the scope of EU law. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), while not EU law but whose minimum standards of protection are mirrored by the Charter (Article 52(3) Charter; Lenaerts, 2012), arguably paved the way by recognizing that same-sex relationships fall under "private" and "family life" protection (Article 8), as first acknowledged in *Schalk and Kopf v Austria* (European Court of Human Rights (ECtHR), 2010). By 2015, in *Oliari and Others v Italy* (ECtHR, 2015), the ECtHR found that Italy's failure to provide any legal recognition for same-sex couples violated Article 8, and established a positive obligation on State parties to implement some form of legal recognition for stable same-sex unions (D'Amico & Nardocci, 2018), to which Italy responded by legislating civil unions in 2016 (Parliament of Italy, 2016). The Strasbourg Court clarified that while Article 8 does not force States to allow same-sex marriage, they must at least provide a specific legal framework protecting same-sex couples' rights. This stance was corroborated in *Orlandi and Others v Italy* (ECtHR, 2017), where six same-sex couples married abroad were refused registration of their status in Italy and alleged violation of their rights under Articles 8 (right to respect for private and family life), 12 (right to marry) and 14 (prohibition of discrimination). Additionally, the Court held that the couples' ECHR rights would still be fulfilled if the Italian authorities were to register their marriages as civil unions domestically, even though they would be downgrading their civil statuses. Therefore, the ECtHR reiterated its arguably discriminatory stance (Poppelwell-Scevak, 2018) from *Hämäläinen v Finland* (ECtHR, 2014) that the protection afforded to same-sex couples whose marital status is demoted to that of a mere civil partnership falls within a State party's margin of appreciation and is thus sufficient and acceptable (Fenwick, 2016).

While neither the ECHR, nor EU law impose an obligation on States to allow or recognize same-sex marriages as marriages, EU law has prohibited discrimination based on sexual orientation even prior to the Treaty of Lisbon. The *Treaty of Amsterdam* introduced Article 13 of the Treaty Establishing the European Community (EC) (EC, 2002) – now Article 19 TFEU – empowering the Union to combat discrimination and shortly leading to the *Employment Equality Directive*, which prohibits workplace discrimination based on sexual orientation. Prior to the Treaty of Amsterdam, which explicitly listed sexual orientation among the criteria upon which discrimination is prohibited, the ECJ was compelled to conflate "sex" and "sexual orientation" in *Grant v*

South-West Trains (CJEU, 1998), leading to an arguably discriminatory ruling (Kochenov & Belavusau, 2020). Grant, a citizen of the United Kingdom, which was then part of the EC, was employed under a contract which granted free travel concessions to both her and her spouse or partner of more than two years. Grant's employer refused to grant her same-sex partner the concessions on the ground that, for unmarried persons, they could only be granted to a partner of the opposite sex. Grant argued that the refusal amounted to discrimination based on sex, prohibited by Article 119 of the *Treaty of Rome* (EC, 1957). Following the referral of the case to the CJEU, the Court determined that the discrimination faced by Grant's partner was not based on sex and thus not prohibited – the male partner of a male employee would have also been denied the travel concessions. The ground of discrimination was sexual orientation, which was not then prohibited by EC law. Jurisprudential developments have since been made by the CJEU and ECtHR in acknowledging the instances of discrimination faced by same-sex couples throughout their enjoyment of family life (Sánchez et al., 2017); however, family law remains off-limits for CJEU judicial intervention – Article 9 of the Charter expressly defers to national laws on the right to marry, emphasizing Member States' primacy in this field.

Coman: The "Spouse" in article 2(2) of the citizens' rights directive includes same-sex spouses

Decided by the Court on 5 June 2018, *Coman* involved a Romanian citizen (Mr. Coman) who had married his partner (Mr. Hamilton), a United States citizen, in Belgium. When the couple sought to reside in Romania, the Romanian authorities refused to grant a residence permit to Mr. Hamilton as Coman's spouse, on the ground that Romanian law prohibited recognition of same-sex marriages. Romania's Constitutional Court referred the matter to the CJEU, essentially positing the question of whether the term "spouse" in Directive 2004/38 (EU, 2004) covers a same-sex spouse, notwithstanding a Member State's ban on same-sex marriage. The ECJ held that for the purposes of EU free movement, "spouse" is a gender-neutral term, and consequently, a Member State cannot rely on its domestic law, namely the Romanian Civil Code, to deny recognition of a same-sex marriage strictly for the purposes of granting an EU citizen's family member a right of residence. Notably, the Court was cautious to reiterate that regulating marriage is within Member States' competence and that the judgment does not force the legalization of same-sex marriage in Romania; however, Romania must acknowledge the existence of the Coman-Hamilton marriage to the extent of granting Mr. Hamilton a residence permit as the EU citizen's spouse. Any other outcome,

the Court reasoned, would "have the effect that the freedom of movement of Union citizens… would vary from one Member State to another" depending on domestic marriage laws, which is unacceptable. Moreover, denying recognition solely due to sexual orientation would violate Article 21(1) TFEU and the associated rights: it would discourage or even prevent an EU citizen from returning to his or her home country with his or her family, thus impeding free movement.

The Court also held that any restriction on free movement must respect fundamental rights – here, the right to family life and the prohibition of sexual orientation-based discrimination – and in *Coman*, no convincing public policy justification was demonstrated. Indeed, the Court noted that the mere fact that a Member State does not permit same-sex marriage is not sufficient to invoke public policy to exclude a lawfully married couple, absent a genuine threat to a fundamental interest of society. Therefore, the *Coman* judgment established that Member States ought to recognize same-sex spouses only for the limited purpose of conferring EU residency rights under Directive 2004/38 and Article 21 TFEU. Following this decision, Romania's Constitutional Court applied this ruling, holding that Article 277(2) of the Civil Code, which barred recognition of foreign same-sex marriages, could not be an obstacle to issuing a residence permit, thus showing EU law's power to compel recognition for a particular purpose without interfering with the Member State's competence to ban same-sex marriage and its recognition on its territory (*Romanian Constitutional Court, 2018*). Therefore, the *Coman* ruling only plays a role where a cross-border element is triggered, meaning that same-sex couples who reside in Romania or other ban States find themselves in purely internal situations, which do not warrant *Coman*'s protection of the exercise of EU law rights (Wintemute, 2021).

V.M.A. v Stolichna obshtina, rayon "Pancharevo" (CJEU, 2021): The balance between domestic competence and fundamental rights guarantees

A similar balanced approach to mutual recognition was taken by the Court in *V.M.A. v Stolichna obshtina, rayon "Pancharevo"* concerning parenthood rather than marriage. The case concerned a child born in Spain to a Bulgarian mother (V.M.A.) and her same-sex spouse, a British woman. The Spanish authorities issued a birth certificate listing both women as the child's mothers; nonetheless when V.M.A. sought a Bulgarian birth certificate for her child, which was a prerequisite for obtaining a Bulgarian passport for her child, Bulgarian officials refused to issue the document, arguing that, under Bulgarian law, a child cannot have two mothers and that a birth certificate requires the identification of a father. The matter was referred to the CJEU,

and the ECJ held that a Member State must not deny an identity document to a child who is an EU citizen by refusing to recognize the familial relationship documented by another Member State. Thus, the Court ruled that where a child – an EU citizen – has a birth certificate from one Member State designating two same-sex parents, the Member State of nationality – here, Bulgaria – is obliged under Articles 20 and 21 TFEU and Article 7 of the Charter to accept the parenthood as established in the other Member State for the purposes of the child's exercise of EU citizenship and inherent free movement rights (Loxa, 2025). If the Member State of nationality were to refuse to recognize the birth certificate, at least to the extent of issuing travel documents, the child would be unable to effectively exercise free movement due to not holding the necessary identity papers.

Moreover, not recognizing the parent-child relationship because both parents are of the same sex would interfere with the child's right to travel with both parents with whom the child has a real family life, undermining the guaranteed right to respect for family life under Article 7 of the Charter. This does not mean that Bulgaria or any other Member State must generally allow same-sex parenthood under its domestic law; rather, a targeted mutual recognition was mandated to prevent hampering the rights entailed by holding EU citizenship. In this sense, Member States retain full competence over family law, including rules on parentage and marriage, but in exercising this competence, they must comply with EU law to give effect to the right to freely move and reside in Member States (Groussot et al., 2024).

Trojan: toward union-wide same-sex marriage recognition

The most recent and arguably far-reaching decision was delivered by the CJEU on 25 November 2025, in *Trojan*, where Poland refused to transcribe or recognize a same-sex marriage of its own nationals contracted in Germany. Mr. Jakub Cupriak-Trojan – a dual Polish-German national – and Mr. Mateusz Trojan – a Polish national – married in Germany in 2018 while being residents of the State. Upon relocating to Poland, they sought to have their German-issued marriage certificate transcribed into the Polish civil status registry and were refused by Polish authorities, citing Article 18 of the Polish Constitution, which defines marriage as a union of a man and a woman, and asserting that recognizing a same-sex marriage would violate the public order of Poland. The couple challenged the refusal, reaching the Polish Supreme Administrative Court and, subsequent to referral, the ECJ, who had to answer whether, in light of Articles 20 and 21 TFEU, and Articles 7 and 21 of the Charter, a Member State must recognize and register a same-sex marriage from another Member State when an EU citizen returns to his or her home

State with his or her spouse. The Court's answer was affirmative: EU law does indeed preclude the refusal to recognize and transcribe the marriage in such circumstances. It held that "the failure to recognize the marriage concluded by two Union citizens of the same sex in accordance with the law of the Member State in which those Union citizens have exercised their freedom to move and reside… is contrary to the fundamental rights which Article 7 of the Charter guarantees to same-sex couples… [and] constitutes an obstacle to the exercise of the right of those citizens, enshrined in Article 21(1) TFEU". It follows that such a refusal would deprive the couple of the possibility of being treated as married upon return, thereby discouraging them from exercising free movement.

One can observe the way the Court's *Trojan* ruling builds on *Coman*: The Court essentially generalized the *Coman* decision, emphasizing the interdependence between the continuity of one's family life and the right to free movement. If a couple is married in one Member State, that marital status cannot simply evaporate when they move to or return to another – being forcefully estranged from one's marital status constitutes in itself an obstacle to free movement, and in this sense, *Trojan* managed to effectively ensure that same-sex spouses can live as a married couple in any Member State without forfeiting the legal benefits of marriage just by crossing a Union border (Tryfonidou, 2025). Furthermore, *Trojan* unprecedentedly assessed Poland's refusal to recognize the marriage in light of not only a restriction on free movement, but also discrimination (Lamprinoudis, 2025). Under Polish law, heterosexual spouses married abroad are entitled to transcription of their marriage certificates, whereas same-sex spouses are categorically denied access to the same procedure, amounting to a clear instance of less favorable treatment based solely on the couple's sexual orientation. Accordingly, the Court held that if a Member State provides a single procedure for recognizing foreign marriages, such as Poland's transcription process, it must apply that procedure without distinction to same-sex and opposite-sex marriages; otherwise, the lack of an equivalent recognition route for same-sex couples would constitute discrimination in violation of Article 21(1) of the Charter. Therefore, the Court readily dismissed Poland's justification that recognizing a foreign same-sex marriage threatened Poland's constitutional identity and public policy, holding that recognizing a marriage performed in another Member State does not hamper the Polish-defined institution of marriage, nor does it oblige Poland to alter its domestic definition of marriage to accommodate the couple. The obligation imposed on the ban State is confined to what is necessary to enable the couple to exercise their EU rights and resume their family life at home and thereby does not interfere with Poland's

national identity under Article 4(2) TEU, nor does it constitute a legitimate public policy exception. Moreover, any restrictive measure must comply with EU fundamental rights, whereas a blanket refusal in contravention of Articles 7 (family life) and 21 (non-discrimination) of the Charter fails the proportionality test.

Further, the Court noted that the ECtHR has found Poland in breach of Article 8 ECHR for not providing any legal framework allowing same-sex couples to be granted adequate recognition and ensuing protection, referring to *Przybyszweska and Others v Poland (*ECtHR, 2023*)* and *Formela and Others v. Poland (*ECtHR, 2024*)*. In the latter judgment, the Strasbourg court held that "by refusing to register the applicants' marriages under any form… Polish authorities have left them in a legal vacuum and have not provided for the core needs of recognition and protection of same-sex couples in a stable and committed relationship". The ECtHR found no sufficient public interest justification that could outweigh the applicants' interest in having their union recognized, and the ECJ in *Trojan* effectively took a similar human-rights-centered approach. While State parties to the ECHR possess a rather wide margin of appreciation in appraising matters of family life on their territory, the ECtHR limits prospective justifications to measures necessary to protect safety, health and the freedoms of others (Article 8(2) ECHR; Dunne, 2017). Finally, *Trojan* clarified that Member States retain discretion in choosing the procedures or form of recognition for marriages abroad, as part of their competence over marital status. Transcription in a civil registry is not the only conceivable method; however, whatever procedure is chosen must not render the exercise of EU rights impossible or excessively difficult. In Poland's case, transcription was the sole avenue to formal recognition, and denial of transcription meant the couple's marital status had no legal effect domestically, which the Court found impermissible. By contrast, if a Member State were to provide an alternative equivalent mechanism to acknowledge the citizens' civil status, the obligation may be satisfied insofar as it allows the couple to continue their family life and exercise their rights derived from EU law.

Therefore, it is the rights and status attached to marriage which must be preserved, not the word "marriage" itself: recognizing the effects of the marriage could suffice even if the relationship is not formally designated as such. One can argue that *Trojan* thus still leaves some ambiguity: could a Member State opt to treat a foreign same-sex marriage as a registered partnership or a comparable legal union instead? The Court's emphasis on non-discrimination may raise doubts about the acceptability of downgrading a marriage to a civil union only for same-sex couples – doing so might itself be seen as discrimination and as imposing burdens such as forcing same-sex

couples to re-register, contrary to the requirement of facilitating free movement by removing all potential obstacles (Vaigé, 2025). Despite this debatable gap, for Member States such as Poland, Romania, Bulgaria, and Slovakia, all of which have either constitutional or civil prohibitions on same-sex marriage, *Trojan* effectively mandates recognition as marriages, since no alternative status exists in their law. The ruling's operative part makes it clear that if transcription is the only path to recognition provided for heterosexual foreign marriages, it must be made available to same-sex marriages equally. Once again, this does not mean that the ban States must start officiating same-sex marriages on their territory, but they can no longer treat such marriages as nullities if one of their nationals or a couple domiciled there returns or moves to their territory.

The practical effect of the *Trojan* judgment in ban States deserves additional assessment. In **Romania**, while Article 48 of the *Constitution* is gender-neutral on marriage, referring merely to "spouses", the *Civil Code* explicitly bans same-sex marriage and its recognition. The ban is established in Articles 259(1), which defines marriage as the freely consented union between one man and one woman, and 277(1), which explicitly states that marriage shall be prohibited between persons of the same sex. Accordingly, paragraphs (2) and (3) of Article 277 prohibit the recognition of foreign same-sex marriages and, respectively, of civil partnerships. After the 2018 *Coman* ruling, the Romanian Constitutional Court followed up by acknowledging that Article 277(2) could not be applied to deny an EU citizen's spouse a residence permit. However, the judgment did not spur legislation for partnerships, and Romanian authorities, by and large, still do not register or recognize same-sex unions domestically. In fact, four months after the Court's ruling, there was an attempt in Romania to constitutionally define marriage as a man-woman union through a referendum, which failed due to insufficient turnout. By 2023, another legal development put pressure on Romania: in *Buhuceanu and Others v Romania* (ECtHR, 2023), the ECtHR ruled that Romania's failure to provide any legal framework that allows the recognition and adequate protection of same-sex couples violated Article 8 ECHR, which guarantees the right to private and family life. The Strasbourg Court thereby imposed a positive obligation on Romania to implement some form of recognition, which Romania unsuccessfully appealed. Romania is thus still expected to comply with the obligation and implement an adequate framework for recognizing same-sex unions, facing the risk of financial sanctions from the Council of Europe for failure.

However, all attempts to domestically recognize civil partnerships have so far failed domestically. *Trojan* adds yet another incentive for Romania

to implement a registered partnership framework – in the absence of one, Romania must recognize foreign same-sex marriage as marriage domestically for the purposes of EU law; whereas, if Romania adopts an alternative equivalent to marriage, such as civil partnership, it can essentially downgrade foreign same-sex marriage to a mere civil union domestically, although the legal effects and benefits of the foreign marital status are retained. This pathway has already been taken by Italy in response to the *Oliari* ruling. Subsequent to *Trojan*, citizens can circumvent domestic ban law by entering a same-sex marriage in another Member State and then returning, as Romanian authorities will be in violation of EU law if they refuse to respect that marriage. Until Romania implements a registered partnership regime, any EU same-sex couple must rely on the direct effect (*Van Gend & Loos* (CJEU, 1963)) and primacy of EU law (*Costa v. ENEL* (CJEU, 1964)) over the Romanian Civil Code ban in regard to their free movement rights: the Court's preliminary ruling in *Trojan* binds not only the referring Polish court but also all other Member States for the purpose of uniformly and consistently applying EU law. Although non-compliance with the ruling would be in breach of EU law, continued resistance or inconsistency on behalf of Romania remains possible, given its reluctance even post-*Coman* to act accordingly so as to recognize and protect same-sex couples.

In **Bulgaria**, Article 46(1) of the *Constitution* declares that "Matrimony shall be a free union between a man and a woman. Only a civil marriage shall be legal.". Accordingly, there is no partnership law in Bulgaria. Besides Luxembourg scrutiny in *V.M.A.*, Bulgaria has recently faced Strasbourg scrutiny as well, upon the ECtHR's ruling in *Koliova and Babulkova v Bulgaria* (ECtHR, 2023), which found Bulgaria in violation of Article 8 ECHR for failing to recognize and protect a Bulgarian same-sex couple married in the United Kingdom and thereby denying the couple legitimacy in the eyes of society. Similarly to *Buhuceanu*, the Court reiterated Bulgaria's positive obligation to establish a legal framework that allows same-sex couples to be conferred adequate recognition and protection based on their marital status. In line with *Coman*, the judgment is grounded on the right citizens derive and enjoy from EU citizenship to move and reside freely across Member States, to which it seeks to give effect solely for the purposes falling within the scope of EU law. After *Trojan*, Bulgaria is now bound by EU law to recognize an EU same-sex marriage for returning citizens for EU law purposes, and refusing transcription of a foreign certificate would be in violation of the *Trojan* ruling. As with its fellow ban States, Bulgaria can maintain that it does not perform such marriages itself, but it can no longer deny the reality of the marriage's legal existence for residence and taxation purposes without

breaching EU law (Tryfonidou & Wintemute, 2021). Bulgarian courts will predictably face the conflict between *Trojan* and Article 46 of the Constitution; nonetheless where individuals are refused recognition, they can now invoke *Trojan* directly, and any failure by Bulgarian authorities to comply could lead to sanctions by the Commission.

Poland also constitutionally defines marriage as the "union of a man and a woman" in Article 18. The provision can be argued to mean that Poland need not allow same-sex marriages but does not command non-recognition of marriages or partnerships registered in another Member State either. Similarly to Romania and Bulgaria, Poland has no civil union system. Following *Trojan*, the Polish Minister of Justice has confirmed that the government will implement the Court's ruling in some form, and the Secretary of State claimed that Poland is on the same path as the other Member States who eventually introduced marriage equality rather than civil partnerships (Wysocka-Bar, 2025). Until then, foreign same-sex marriage certificates will be transcribed in the Polish civil registry, granting the couple spousal benefits covered by EU free movement law. Polish courts can comply with *Trojan* by invoking the primacy of EU law – Articles 20 and 21(1) TFEU, and Articles 7 and 21(1) of the Charter are directly effective and must be applied by national courts even if they entail the disapplication of conflicting national law. Notably, Poland has faced its own share of *Buhuceanu* and *Koliova and Babulkova*-adjacent pressure from the ECtHR in 2023, through the *Przybyszewska* ruling, which found Poland in violation of Article 8 ECHR for failing to comply with its positive obligation to afford matrimonial rights – joint property, inheritance, income tax benefits and tax exemptions – and reinforced that Poland must create a legal framework capable of affording the necessary recognition and protection to same-sex couples.

Slovakia*'s* Constitution was amended in 2014 to add that "marriage is a unique bond between a man and a woman" (Article 41(1)), and the latest constitutional amendment, on 26 September 2025, introduced several provisions framed as measures to protect the traditional family, including two clauses to Article 7 stating that Slovakia retains its full sovereignty in matters of national identity, specifically concerning cultural and ethical issues, which include family and gender. Besides the ban on same-sex marriage and its recognition, which has been constitutionalized since 2014, the amendment has also constitutionalized the ban on same-sex couples adopting a child (Article 41(5) implementing the *Family Act* – *(*Slovak Republic, 2005*)*). The purpose of Article 7 is to ensure that domestic cultural and ethical regulations will supersede conflicting supranational, including EU, norms (Garayová, 2025). Following *Trojan*, Slovakia is subject to the same positive obligation as its

fellow ban States. Nonetheless the most recent constitutional amendment may lead to Slovak resistance to complying with the new same-sex marriage recognition requirement, thereby likely prompting unpredictable legal repercussions (Steuer, 2025).

Finally, one can refer to Latvia and Lithuania to formulate a realistic expectation for the four ban States. **Latvia** constitutionally defines marriage as the "union between a man and a woman" in Article 110 and thereby does not recognize same-sex marriage. However, Latvia has successfully implemented a same-sex civil union framework since 2024, giving effect to the same marital entitlements and protection afforded by law to opposite-sex couples for registered same-sex couples. It follows that complying with the *Trojan* ruling entails the recognition (and implicit downgrade) of a foreign same-sex marriage as a civil union that is to be registered with a notary to give effect to the couple's EU law rights. Similarly, Article 38 of the **Lithuanian** Constitution defines marriage exclusively as the freely consented union between a man and a woman, corroborated by Articles 3.12 of the *Civil Code* (Romanian Parliament, 2009). Article 3.229 of the Civil Code similarly permits solely heterosexual civil partnerships, which the Lithuanian Constitutional Court held to be unconstitutional on 17 April 2025 (Lithuanian Constitutional Court, 2025). As a result, Lithuania has since allowed civil same-sex partnerships to register through the courts since 17 April 2025, pending legislation to create a framework for sex-neutral civil partnerships, which is expected to enter into force on 1 July 2026. *Trojan* will have the same implications as in Latvia – foreign same-sex marriages will be downgraded to civil partnerships but afforded marital status benefits. Unless the remaining four ban States do create similar civil partnership frameworks, they will have to recognize foreign same-sex marriages as marriages in their domestic law absent an equivalent union.

Discussions

The jurisprudential evolution demonstrates how the Union is achieving a measure of harmonization through judicially mandated mutual recognition. *De jure*, family law remains a Member State competence, while *de facto*, the space for divergence is arguably narrowing in cross-border contexts implicating EU law rights and freedoms. One can analogize this to harmonization by results: all Member States must now produce the result that a same-sex couple married in the EU will be treated as married or at least afforded equivalent rights whenever needed to allow the couple to continue their normal family life in that State. This requirement certainly erodes the difference between a State that allows such marriages and a ban State, and the

Union has in this sense introduced a portable status of EU-recognized same-sex marriage that coexists with national regimes. A Romanian, Bulgarian, Polish or Slovak couple who marries abroad effectively forces their home State to acknowledge their union under EU law in ways that couples who never leave cannot. Objectively, this privileges those who exercise free movement while leaving domestic couples behind and thus creates inequality among same-sex couples based on their access to mobility. One can foresee, however, that over time, the domestic pressure of seeing similarly situated couples being recognized solely because they registered their status in another Member State may further domestic adaptation. Until then, and absent a harmonized private international law instrument enabling the recognition of marriages and partnerships as they are registered across Member States, CJEU jurisprudence, and most particularly *Trojan*, rescues same-sex couples from the legal vacuum they used to find themselves in.

This article posits that the development brought about by the *Trojan* ruling is largely positive considering the access to the exercise the rights one derives from his or her EU citizenship. *Trojan* materially strengthens the functional content of Union citizenship by confirming that the exercise of Article 21 TFEU free movement rights entails a right to continuity of civil status acquired in another Member State, where refusal would generate a serious impediment to ordinary life and mobility. In this regard, it arguably advances beyond *Coman* by centering the EU citizens themselves and establishing that non-recognition can autonomously amount to an Article 21 TFEU restriction in the absence of residence refusal. Further, the judgment improves *ex ante* legal certainty for mobile EU citizens by requiring recognition and, where that is the chosen domestic technique, transcription of a same-sex marriage concluded in another Member State. This certainty directly conditions citizens' willingness to accept jobs, relocate, buy property, access services and settle, eliminating the prospective barrier posed by the unpredictability generated by case-by-case bargaining with registries and courts, which oftentimes amount to mobility-restrictive administrative discrimination. Mutual recognition of civil status is ought thereby to be treated as an enabling condition of mobility, contributing to the effectiveness of the free movement of persons as a lived reality rather than a formal legal entitlement.

Nonetheless, one must acknowledge that *Trojan* is limited to cross-border situations: the protection afforded flows exclusively from Articles 20 and 21 TFEU and is triggered only where Union citizens have exercised free movement by marrying in another Member State. As a result, same-sex couples who are unable or unwilling to move abroad remain entirely dependent on domestic law or Strasbourg litigation, thus creating an instance

of "reverse discrimination" (Adam & Van Elsuwege, 2017) where a Member State's national and resident may enjoy a lower level of protection than a national residing in another State. One may argue that this entrenches a dual system of rights where mobile citizens obtain recognition and protection while sedentary citizens in identical relationships do not, thus risking the instrumentalization of free movement as a gateway to fundamental rights absent avenues for recognizing those rights autonomously. Same-sex marriage recognition ought to be treated as a functional necessity for mobility, and its non-recognition is not *per se* incompatible with EU values insofar as EU citizenship rights are extended to the couple for the purposes of EU law, even if by downgrading the couple's marital status domestically. This allows Member States to comply formally by reclassifying foreign same-sex marriages as registered partnerships with reduced rights, leading to the undermining of the principle of continuity of civil status, which may deter free movement. However, indeed, the margin of appreciation afforded to Member States in this regard reaffirms, on the one hand, that family law remains within their competence in accordance with the principle of conferral, and on the other hand, that preserving domestic competence and securing the effective enjoyment of EU law-derived rights simultaneously is possible, which may incentivize further targeted harmonization attempts.

Conclusion

This article posits that the effectiveness of the EU freedom of movement of persons is structurally interdependent with the cross-border continuity of civil status. Where Member States attach materially different legal consequences to the same civil status, ranging from full marriage equality to categorical non-recognition, the exercise of mobility rights risks fragmentation. Family law remains within Member State competence, yet that competence does not constitute an insulation against the demands of Union citizenship and the practical effectiveness of Articles 20 and 21 TFEU. Civil status non-recognition can operate as a restriction on free movement through legal and administrative uncertainty, which the CJEU's late 2025 ruling in *Trojan* significantly reduces by decisively consolidating a functional mutual recognition requirement for civil status within the Union. *Trojan* extends the logic of continuity of family life formulated in *Coman* beyond residence, expressly treating the dismissal of marital status upon return to the EU citizen's home State as an obstacle to free movement. By mandating recognition of same-sex marriages registered in another Member State, the ruling materially impacts the legal landscape for the remaining EU ban States – Romania, Bulgaria, Poland and Slovakia – insofar as they maintain non-

recognition regimes lacking equivalent union frameworks for same-sex couples. The Union is therefore moving toward an operational baseline whereby civil status acquired under one Member State's legal regime cannot be extinguished by another where such extinction would hinder the exercise of the rights one derives from his or her EU citizenship. This form of integration via mutual recognition approximates Union harmonization by results, while avoiding interference with Member States' national competence to regulate family law. The preservation of national identity, as framed by Article 4(2) TEU, cannot therefore be used to deter free movement or to impose differential mobility burdens on a particular group of EU citizens. The Court's reading of Articles 20 and 21 TFEU in conjunction with Articles 7 and 21(1) of the Charter further innovates by framing the effective exercise of EU citizenship within the context of non-discrimination on grounds of sexual orientation. Free movement enjoyment presupposes continuity of family life and equal access to civil status recognition, irrespective of sexual orientation, thereby rendering exclusionary or dismissive domestic treatment of same-sex couples a discriminatory obstacle to mobility. Simultaneously, *Trojan* remains structurally limited: its protection is triggered by a cross-border element and implicitly creates an internal asymmetry between mobile and sedentary citizens. In the ban States, a foreign same-sex couple's marital status will be recognized as a marriage for the purpose of deriving EU law rights, absent an equivalent framework such as a civil union, whereas a domestic same-sex couple with no prospect of cross-border travel lacks avenues to access the same entitlements. Therefore, *Trojan* ought to be understood as a decisive yet incomplete step which enforces the proposition that freedom of movement cannot be meaningfully realized where the legal existence of an EU citizen's family is contingent on unpredictable, divergent national law.

AI tools use statement | No AI-assisted technologies were used in the writing, editing, or data analysis for this manuscript. All work is original and completed solely by the listed authors.

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