

Conceptual Paper

# The interplay between private autonomy and social solidarity as the legal dilemma of senior cohousing

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**Abstract:** The paper seeks to explore senior cohousing as an emerging legal phenomenon standing at the crossroads between private autonomy and social solidarity. Demographic ageing and the erosion of traditional family structures have raised new issues for European legal systems to cope with, challenging conventional frameworks governing housing, care, and interpersonal relationships. Drawing on comparative analysis, the study explores how Spain, France, Germany, and Italy articulate legal solutions to solidarity-based cohabitations among older people, revealing divergent models that variously rely on contractual autonomy, statutory protection, or hybrid regulatory schemes. Foreign experiences – from Catalonia’s mutual-aid cohabitations and Valencian collaborative housing to France’s Housing, Development, and Digital Law and Germany’s ‘community of responsibility’ – highlight the growing tendency to connect occupancy rights not merely to property titles but to the social function and status of cohabitants. The paper argues that senior cohousing requires recognition as a distinct legal formation grounded in voluntary, non-familial solidarity, demanding regulatory solutions capable of stabilizing housing arrangements while preserving individual autonomy. Ultimately, the research aims to show that contemporary legal systems are gradually shifting from family-centred notions of solidarity toward more flexible, community-based models, offering a framework for rethinking the governance of ageing, housing, and care in contemporary societies.

**Keywords:** quality of life, older people, aging, multidimensional index, objective well-being, Italy, regional differences, gender disparities, transport mobility system

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## 1. Introduction

The rapid demographic shift towards an aging population, combined with the ongoing transformation of traditional family structures, challenge existing laws to safeguard autonomy and dignity of older adults within European legal traditions (Cascione, 2024). Senior cohousing has emerged as one of the most significant phenomena in this context, calling for urgent attention from legal scholars and policymakers alike. This solidarity-based senior cohousing model, currently spreading over most Western Countries, intersects with changing social dynamics and legal frameworks, highlighting the need for conceptual development in housing law. The recent emergence and growing diffusion of senior cohousing can be traced to a set of interconnected demographic and social transformations. Among the most significant drivers are, as first central shift, the progressive ageing of the population and the increase in life expectancy, which have substantially altered the living conditions and needs of older individuals. At the same time, a second central shift occurred. The traditional system of informal family care has gradually weakened, as changing family structures and labour market participation have reduced the availability of intergenerational support within households (Wallbank & Hering, 2013).

In this environment, as affective unions become more flexible (Irti, 2024), and the nuclear family model erodes, new forms of ‘long-term life communities’ have emerged, becoming increasingly relevant from both a social and legal perspective (Bundesministerium der Justiz, 2024). At the same time, caregiving for the elderly is being redefined in response to evolving notions of vulnerability in modern societies. Traditionally, concerns surrounding aging focused on clinical aspects such as frailty, cognitive decline, and dependency. However, the increasing life expectancy of seniors introduces new challenges related to their quality of

life (Papke, 2021). Economic studies on social isolation among older adults emphasize how loneliness – regardless of physical health – presents not only emotional and relational burdens but also financial costs to society (Pacolet et al., 2023). This underscores the need for rethinking care structures within the broader framework of solidarity (Alpa, 2022), where well-being in old age is increasingly linked to social connections and the continuity of personal identity (Jennings, 2018).

Thus, a third critical shift has been taking place in the same European traditions, involving the concept of housing for the elderly from an institutionalized dimension toward a contractual perspective (Long, 2011). The longstanding interplay between health and housing has long been a topic of international attention (WHO, 2015); yet the shift from 'age-in-place' models to 'age-in-community' legal frameworks represents a more recent trend (WHO, 2020). While the benefits of staying in one's own home are well recognized, the adequacy of this model in addressing the challenges of aging remains uncertain. In fact, living in the original family home may exacerbate issues related to social isolation, unless accompanied by support systems fostering mutual assistance among neighbours. Without such structures, the formation of social networks can be hindered, and the caregiving burden on family members can increase (López Gómez et al., 2020). Additionally, the inefficiencies associated with oversized, often inaccessible homes (Leo, 2024) make it increasingly clear that the concept of 'house' has expanded beyond mere physical space to encompass the notion of 'home' – a complex construct shaped by emotional, symbolic, and relational factors.

In response to these challenges, senior cohousing contracts have proliferated, offering a model where self-sufficient seniors live independently within a shared building, maintaining individual residences while engaging in communal living. This model emphasizes collaborative living, where residents share common spaces and services, creating a community designed to improve quality of life through mutual aid and social interaction. As articulated by Leo (2024), senior cohousing is not only a living arrangement but also a 'solidarity coexistence agreement', which fosters sociality and resilience in the face of life's challenges. This model represents a promising response to the pressing legal and social issues surrounding aging, requiring careful conceptualization to determine how it can be effectively integrated within existing legal systems. The paper argues that, although senior cohousing may constitute a powerful instrument for the promotion of active ageing and social inclusion, its long-term viability depends on the existence of a clear legal framework, capable of ensuring stability to cohabitation projects. The core legal claim is, indeed, that such stability depends on how much solidaristic factors can justify a differentiated regulation for occupancy rights in senior cohousing. More specifically, the research question that the paper aims to tackle is how contemporary housing law should evolve to accommodate solidarity-based senior living arrangements in ways that ensure stability and sustainability while safeguarding dignity, autonomy, and vulnerability. Building on this premise, senior cohousing can be interpreted as an institutional expression of solidarity-based resilience (Durkheim, 1991): a residential model through which older adults collectively organize living arrangements that mitigate the risks of isolation, dependency and housing insecurity.

To explore this issue systematically, the comparative inquiry is structured around one interrelated sub-question, concerning the research for the type of tenure or occupancy regime that is most capable of ensuring stability in senior cohousing projects. This involves assessing whether traditional housing titles – such as ownership, leasehold, cooperative membership or hybrid contractual arrangements – can support long-term community living among older persons, or whether differentiated legal solutions are required to reflect the solidaristic purpose of such arrangements.

Starting from the Italian context, where national guidelines are currently in the process of being enacted, the analysis investigates the historical development and contemporary diffusion of senior cohousing in different jurisdictions to assess how legal systems have addressed the problem of providing stable and legally coherent forms of tenure for collective living arrangements in later life. In this perspective, the contribution aims not only to clarify the legal architecture capable of sustaining solidarity-based senior cohousing arrangements, but also to provide analytical tools that may assist both scholars and policymakers in addressing the regulatory challenges posed by ageing societies.

For legal scholarship, the paper offers a conceptual framework through which housing law can be reinterpreted considering emerging forms of collective living and relational vulnerability. For policymakers, the comparative findings may help identify regulatory solutions

capable of ensuring the stability of cohousing projects while preserving the balance between contractual autonomy, solidarity, and the protection of older persons' dignity and social participation.

## 2. Literature overview.

### 2.1. Foreign scholarship

The most prominent medical, sociological, and economic literature on senior cohousing emphasizes the unique benefits associated with its development (Puplampu et al., 2019; Jolanki, 2021; Malik & Mikołajczak, 2019). From an individual perspective, the decision to maintain an independent living unit while sharing communal spaces and services represents a balanced solution between the isolation inherent in age-in-place arrangements and the social marginalization often associated with moving into care facilities (Leo, 2024). Economically, solidaristic cohabitations help curb housing management costs, optimize property use, and promote a more sustainable, environmentally conscious allocation of urban land, while simultaneously mitigating the inefficiencies created by social isolation (Marasciulo, 2025).

However, it is within legal scholarship that the critical practical issues for the viability of solidarity-based housing arrangements have emerged (Bossuyt, 2022). The core of this issue revolves around the stability of the relationship between co-residents and the property in which the co-residential project is situated. In particular, Common-law scholars have evaluated the success of the 'age-in-community' model through the lens of tenure security – specifically, how well the nature of occupancy rights ensures stable housing arrangements for older adults (O'Brien Webb & Somes, 2024). In English law, the rise of neoliberal policies and the corresponding proliferation of precarious proprietary estates have raised concerns regarding the protection of older tenants seeking rental housing. When housing instability intersects with age-related vulnerabilities, it exacerbates the unequal distribution of housing insecurity (Harvey & Perkins, 2023). This creates a broader pattern of precarity that disproportionately affects vulnerable social groups (Butler, 2015), reflecting the broader critique that "Anglo-American property doctrine was designed by and for the benefit of young and middle-aged white men" (Pollack & Strahilevitz, 2021, p.564).

At first glance, this perspective appears to rest on the conventional assumption that the proprietary nature of occupancy automatically guarantees a stable level of residential and economic security (Moons, 2018). However, senior cohousing challenges this assumption, as the stability of non-owner cohabitants depends not on ownership per se but on the agreement's opposability against the owner and their heirs. The economic security linked to ownership is not absolute; for instance, the property used in a senior cohousing project may be encumbered by a mortgage, particularly as financial tools like reverse mortgages have become more common, allowing older property owners to extract liquidity from real estate (Cascione, 2016).

The insecurity of housing is further exacerbated when the cohousing dwelling is owned by someone external to the community, with access granted via lease or loan for use. In such scenarios, residential instability arises from ordinary contractual dynamics, regardless of exceptional cases such as the owner's death (Leo, 2024). When a lease is signed with the deceased owner, the tenancy passes to the heirs; similarly, a fixed-term loan for use is typically honoured by the lender's heirs, even in cases of death before the agreed term (Cass. Civ., Sez. III, 11.03.2008, n. 8548). The fundamental issue, however, lies in the fact that residential security does not rest solely on the formal quality of the occupancy rights granting use or enjoyment of the property. Instead, it depends on the causal relationship between such proprietary rights and the personal dimension of cohabitation. Legal solutions must reflect this link between the occupancy regime (ownership, lease, cooperative shares or use rights, etc.) and the communal life project (shared mission and norms, mutual support expectations, governance structures, participation duties, and conflict resolution mechanisms) (O'Brien Webb & Somes, 2024).

In the senior cohousing domain, this suggests a need for a special housing statute that governs collaborative living for older adults. The public interest underlying a differentiated legal treatment of senior cohousing lies in the prevention of vulnerability in later life. However, the

relevant form of vulnerability must be understood considering the contemporary paradigms of active ageing: rather than being limited to conditions of physical frailty or dependency, it increasingly concerns the risks of loneliness and social isolation, which may undermine the well-being, autonomy, and social participation of older persons.

Such legal systems, particularly within Europe, often seek a “regulatory balance” between the interests of the owner and the holder (Schmid, 2018). More broadly, family property law already provides a precedent for recognizing the special nature of familial relationships that justify departures from the ordinary property regime (Briggs & Hayward, 2024). One notable example is post-marital solidarity, as seen in the judicial assignment of the family home, which grants the assignee an occupancy right based on a solidaristic bond, even beyond the period of cohabitation (Merello, 2017). Similarly, in modern family law, protections exist for cohabitants to remain in the home after the termination of an affective relationship, as seen in Italian Law no. 76 of 2016, which ensures a period of housing continuity for the former partner (Sesta, 2025).

Comparable legal solutions are found in other jurisdictions. In Germany, ‘Wohnraumförderungsgesetz’ (the Federal Housing Promotion Act) grants tenants with disabilities the right to modify their homes as necessary, even without the landlord’s consent (Kock, 2004). Likewise, French law, under Article 7 of statute no. 462 of 1989, allows tenants to make necessary alterations to their dwellings to accommodate a loss of autonomy, without the obligation to restore the property to its original condition (Guerin, 2019). These examples point to a growing recognition that solidarity-based living arrangements, such as senior cohousing, may require novel legal frameworks that go beyond traditional housing laws to ensure stability and sustainability.

The central issue for investigation is whether similar legal reasoning can be applied to senior cohousing contracts. Specifically, this research aims to determine if the solidaristic community created by senior cohousing arrangements identifies an interest that is legally significant, and whether housing law solutions can be aligned with this new social form.

## **2.2 Italian legal framework on senior cohousing**

The issue of senior cohousing is increasingly relevant in Italy, particularly following the establishment of the Interministerial Committee for Policies in Favour of Older Persons under Legislative Decree No. 29 of 2024, which aims to define the key requirements for solidarity-based initiatives aimed at the elderly population. This legislative development represents a potentially strategic shift within the Italian legal system, as it seeks to balance the regulatory framework governing senior cohousing with the principle of private autonomy. The new framework underscores that, in principle, solidarity-based arrangements should remain open to private contract freedom, yet this freedom must be carefully regulated to ensure that the agreements maintain their solidarity essence throughout their life cycle.

The Italian legislature, however, strives to avoid overly paternalistic approaches, instead emphasizing the protection of older persons’ dignity and autonomy, alongside social inclusion, active aging, and frailty prevention, including with respect to disability (Art. 3, n. 1, l.d. n. 33/2023). This framework encompasses a variety of housing types, including houses, family homes, family groups, apartment groups, and solidarity condominiums, potentially involving relatives, volunteers, external health and social service providers, and third-sector entities (Art. 3, comma 2, lett. a, l.d. n. 33/2023). However, the reliance on private autonomy in structuring these agreements introduces a crucial legal challenge: ensuring that the solidarity aspect is preserved not only during the formation of these relationships but also in their ongoing operational dynamics. This concern intensifies the role of notaries and judges in defining and monitoring the legal elements of solidarity – particularly the spontaneity of the bond, the stability of the cohabitation arrangement, and the legal consequences of any withdrawal or termination by the co-residents.

Recent administrative case law highlights that the spontaneity and tendency towards stability are considered essential conditions for a senior cohousing agreement to be legally recognized (Consiglio di Stato, Sez. III, 24.03.2025, n. 2407). Subjectively, this reflects the cohabitants’ interest in mutual support as a means of combating loneliness and isolation, while objectively, it ensures that the solidarity-based community is distinguishable from both affective relationships and socio-assistance facilities. In the latter context, sharing a home is merely a precondition for accessing external care services provided by authorized entities.

Italian case law has played a significant role in defining the criteria for spontaneity in establishing cohabitation, thereby distinguishing senior cohousing as a distinct legal contract.

Crucially, the Italian legal system has emphasized the practical organization of the cohabitation rather than the formal contractual nature of the agreement. One recent court decision explicitly states that cohousing cannot be recognized if the housing arrangement is primarily intended to facilitate the provision of care and support by third-party entities, which would categorize the arrangement as a socio-assistance facility, thus requiring administrative authorization (Tar Lazio, 03.02.2022, n. 1286). This ruling highlights the importance of autonomy in structuring daily life within senior cohousing: the more the cohabitation is prearranged to accommodate external care services, the less it aligns with the principles of solidarity inherent in cohousing, leading it to fall under the regulatory framework for care facilities.

The degree of self-sufficiency of the cohabitants is another relevant but not decisive factor. Dependency, whether partial or total, may hinder an individual's capacity to actively contribute to the community. However, dependency alone does not necessarily indicate a lack of autonomy; it must be supported by evidence that external parties are organizing the living arrangement rather than the community itself. In this regard, the contractual framework for senior cohousing must prioritize autonomy and self-organization within the cohabiting group while allowing for external support mechanisms.

An illustrative example comes from a recent Regional Administrative Court decision (Tar Lazio, 03.02.2022, n. 1286), where a community of five elderly individuals was initially considered a care facility, despite a formal cohousing agreement. The court, however, allowed for continued residence under the condition of appropriate contractual titles, effectively broadening the legal recognition of senior cohousing models. This decision affirms that the criteria for legal recognition of senior cohousing should not solely focus on the presence of formal contracts but also consider the spontaneity and organizational autonomy of the community, recognizing it as a self-sustained legal entity within the national legal framework.

Nevertheless, unresolved issues remain. First, there is a need to clarify the causal structure that should govern both the cohabitation agreement and the title granting the use of the property. Second, it is essential to address how these two elements – contractual agreement and housing rights – interact to produce a cohesive legal framework. While spontaneity and autonomy are essential during the formation phase, the functional stability of the community must be ensured in the execution phase, where solidarity must translate into tangible and sustained mutual support within the community. This broader approach will help integrate senior cohousing into the legal fabric of modern family property law, offering a flexible yet robust framework for collaborative living among older adults. For these reasons, Italy will be taken as the contextual point of reference. Unlike some of the other European legal systems – in which cohousing has already been object of explicit legislative intervention – an Italian comprehensive regulatory framework on senior cohousing has not been provided yet. Thus, Italian courts' occasional efforts to address the main balances associated with senior cohousing offer a meaningful starting point for a comparative inquiry, illustrating how a legal system in transition can improve with a suitable future legislation.

### 3. Methodology

This research examines the origins and evolution of senior cohousing across selected European legal systems, with the aim of analysing how different jurisdictions balance contractual autonomy and social solidarity within shared housing arrangements. The comparative design is structured around a distinction between a historical reference model and core analytical case studies, allowing for a coherent and integrated assessment of legal developments.

At the outset, it is important to clarify the scope and nature of this inquiry. The analysis is situated within a specifically European legal and welfare context, where the interaction between public housing policies, private law instruments, and solidarity-based practices follows trajectories that may not be directly transposable to non-European systems. Accordingly, the claims advanced in this study are intended to contribute to a European comparative debate, rather than to propose universally applicable models.

Moreover, the research adopts a predominantly conceptual and doctrinal approach, grounded in the comparative reconstruction of legal frameworks, legislative developments, and interpretative trends. Its primary objective is to identify structural patterns and emerging legal logic, rather than to empirically test how senior cohousing operates in practice. As such, the study does not directly investigate how these legal arrangements are implemented at the institutional level, how they are interpreted by courts and administrative bodies in concrete cases, or how they affect residents in lived experience. While these dimensions remain crucial, they fall beyond the present analytical scope and point instead toward a necessary agenda for future empirical and socio-legal research.

Denmark is introduced as a foundational reference point, due to its pioneering role in the emergence of cohousing in Europe. The Danish experience, which developed from the 1980s onwards, represents the earliest institutionalization of solidarity-based housing within a welfare-state framework. In its original form, cohousing was closely linked to cooperative ownership structures, particularly the 'andelsforeninger' (cooperative housing), through which residents acquired occupancy rights via a share-based system. This model combined individual autonomy with collective governance, while legal mechanisms—such as price regulation—limited speculative dynamics and enhanced housing accessibility (Petersen et al., 2012; Ahedo et al., 2021). Early regulatory frameworks thus provided a structured legal environment governing both interpersonal relations among residents and the management of shared housing assets.

Over time, however, the Danish model underwent significant transformation. The gradual reduction and eventual termination of public support for cooperatives in 2004 contributed to a shift towards more individualized property arrangements and privately negotiated forms of cohousing (Gutzon Larsen, 2019). As a result, while Denmark remains analytically important, its role in this study is primarily contextual and genealogical: it serves to illustrate the historical roots of solidarity-based housing and the transition from strongly institutionalized cooperative frameworks to more flexible, contract-based arrangements. In this sense, Denmark provides the conceptual backdrop against which subsequent legal developments in other jurisdictions can be more clearly understood.

The core comparative analysis, by contrast, focuses on Spain, France, and Germany. These jurisdictions are selected because they represent different legal and welfare traditions within continental Europe yet share a more recent and ongoing process of legal recognition or institutionalization of senior cohousing. Unlike Denmark, where the model originated within a mature welfare-state structure, these countries have developed cohousing through incremental legal adaptation, often by reinterpreting existing private law instruments rather than creating fully autonomous legal regimes.

In each of these systems, the emergence of senior cohousing has prompted legislative, doctrinal, or practice-based responses aimed at reconciling individual housing rights with the collective and solidaristic dimensions of shared living. The comparative approach therefore investigates how civil-law tenancy regimes, cooperative housing structures, and contractual arrangements have been progressively adapted to accommodate new forms of communal living in later life. This structured comparison allows for the identification of different legal techniques through which key objectives – such as housing stability, affordability, and social integration – are pursued. It also highlights the ways in which solidarity, traditionally embedded within family structures, is being reconfigured as a broader legal principle capable of supporting non-familial forms of cohabitation.

From a methodological perspective, the study adopts a functional comparative approach, focusing not only on formal legal categories but also on the roles that legal tools are designed to perform within different institutional contexts. While this perspective engages with the practical orientation of legal mechanisms, it does so at an analytical level, without claiming to provide an empirical assessment of their effectiveness in concrete settings.

Ultimately, this comparative inquiry is oriented toward the Italian legal system, where a comprehensive statutory framework for cohousing is still emerging. By drawing on these selected jurisdictions, the research aims to contribute to the development of legal solutions capable of fostering stable and solidaristic senior cohousing models, while ensuring adaptability within diverse socio-legal contexts across Europe.

## 4. Results and discussion

### **4.1. The interplay between the tenure and the status in the Spanish legal framework**

In Spain, the development of cohousing has taken place primarily through the cooperative tradition and, more recently, through the legal recognition of 'vivienda colaborativa' (collaborative housing) and 'cesión de uso' (assignment of use) models. Its trajectory is strongly shaped by the decentralized structure of Spanish housing law: while the state-level housing framework has increasingly acknowledged cohousing as a policy objective, much of the operative regulation has been produced at the autonomous-community level. A significant example is the Valencian Law 3/2023 on collaborative housing, which defines collaborative houses as residential buildings under single ownership held by a non-profit cooperative or association participated in by users and managed collectively.

The Spanish legal system offers a compelling case for the development of solidarity-based housing models, which has emerged as a response to evolving social needs and demographic shifts, such as the aging population. Central to this exploration is the decentralized nature of Spanish law, which allocates housing legislative powers to the Autonomous Communities (Constitución Española, art. 148). This system has led to the development of divergent legal approaches across the country, particularly through the introduction of mutual assistance-based cohabitation arrangements.

A key intervention in this area is Catalan Law No. 19 of 1998, which amended the Catalan Civil Code to introduce reciprocal support cohabitation relationships. This law established a specific legal framework for cohabitation among individuals who wish to live in solidarity, focusing on mutual aid and the preservation of autonomy. The legal debate surrounding this law centres on whether these relationships should be recognized as new legal institutions or whether they should be governed by existing family law frameworks (Cal, 2025). This tension highlights a fundamental issue in the Spanish legal context: the balance between legislative intervention and legal autonomy for the parties involved. While the law defines the core principles of solidarity cohabitation, it allows flexibility for cohabitants to negotiate terms, ensuring that the agreement respects both autonomy and the solidarity underlying the arrangement.

The Catalan approach allows up to four individuals to form a solidarity-based cohabitation, distinguishing this arrangement from traditional partnerships. For instance, it prohibits individuals already in marital or registered partnerships from joining the community, thus avoiding potential legal conflicts (Orlandi et al., 2024). In terms of property rights, the law ensures that cohabitants are granted a period of up to six months after the death of the property holder, allowing the co-residential arrangement to be opposable to heirs, providing added stability to the living situation (Del Pozo Carrascosa et al., 2016).

In the end, the above-described legal framework marks a shift in how housing solidarity is viewed, reflecting a broader trend of adapting legal systems to modern social needs. In contrast to the Catalan model, the Valencian Law of 2023 introduces innovative legal provisions that revitalize the concept of cooperative senior cohousing.

By way of comparative findings, unlike the earlier Danish mutualistic framework, which incorporated senior cohousing directly into formal cooperative structures, the Valencian regulation adapts existing national housing cooperative laws to address the specific needs of elderly individuals (Preámbulo ley 3/2024, part. IV). This approach maintains the core values of autonomy and freedom for cohabitants while integrating solidarity into the housing model. In fact, the law highlights the importance of communal living by requiring that at least 20% of the total area be designated for communal spaces that provide social services, such as meal preparation or recreation, reinforcing the solidarity aspect of the arrangement (Art. 3, aline 3, ley 3/2023)

As for the formation phase of the community, one of the defining features of the Valencian approach is its emphasis on diversity and inclusivity in eligibility criteria. The law ensures that prospective cohabitants are chosen based on criteria that prioritize socioeconomic background and diversity, thus preventing the development of exclusive communities. Contributions from cohabitants are capped at 30% of the residential complex's purchase price, ensuring that financial barriers do not undermine the solidarity-based model

(Art. 10, alinea 8, ley 3/2023). This approach reflects a commitment to external solidarity, ensuring that the community is rooted in mutual aid while safeguarding against speculative use of the housing.

Furthermore, the Valencian law introduces measures applying in the operational phase, to ensure the continuity of the community even in the event of withdrawal or death of a member. If a member leaves, the cooperative or association is entitled to recover the vacated property and offer it to new members, with priority given to family members of the withdrawing member, provided they meet the membership criteria. In the event of a member's death, heirs are given priority to purchase the membership, ensuring that the solidarity-based community remains intact (Art. 10, alinea 10, ley 3/2023).

Through these provisions, the Valencian legal framework enhances the stability and continuity of senior cohousing, addressing the paradox of 'houses without people and people without houses' (Gastaldi, 2024). This model presents a sustainable and inclusive framework for senior cohousing, ensuring that older adults have access to secure, mutually supportive living environments without relying on arbitrary factors like the discretion of property owners or the lifespan of individual members. A practical example may help clarify the functioning of this model. Consider a group of twenty older adults who create a cooperative to develop a residential building under the Valencian collaborative housing regime. Each member contributes a limited financial share to the cooperative and receives a stable right of use over an individual dwelling rather than full ownership. In accordance with the statutory requirement, a portion of the building – at least twenty percent of the total area – is reserved for communal spaces, such as a shared kitchen, dining area and activity rooms where residents organize collective meals or social initiatives. If one resident decides to leave the community, the cooperative reacquires the use right and reallocates it to another eligible member, thereby preventing speculative resale and preserving the continuity of the communal project. In this way, the Valencian framework simultaneously safeguards individual autonomy in housing choice and embeds mechanisms of solidarity that stabilize the collective living arrangement.

Drawing from the insights gained from the Spanish legal frameworks, a conceptual framework for understanding the interplay between contractual autonomy and social solidarity in senior cohousing can be proposed. This model identifies three primary legal responses to senior cohousing. The first one can be defined as a sort of 'autonomy-dominant framework': characterized by the prioritization of individual rights and autonomy, this model offers the maximum flexibility for co-residents to structure their living arrangements. While it allows for the creation of solidarity-based communities, it relies primarily on private contracts, leaving little room for state intervention. However, this model may fail to address the needs of vulnerable populations, such as the elderly, who require additional legal protections to ensure long-term housing stability. A second conceptualization may concern a 'solidarity-dominant framework'. It is a paradigm that emphasizes the role of the State in ensuring that senior cohousing arrangements are underpinned by solidarity. Legal frameworks in this model offer strong protections for co-residents, such as extended tenure rights, community-driven governance, and state-regulated support services. While it guarantees the stability of the living arrangement, it may constrain individual autonomy in decision-making processes. Across these two opposite approaches, it is possible to identify a 'balanced framework': at such sake, the Valencian approach exemplifies a balanced model, where the core principles of autonomy and solidarity are harmonized. This model allows for the flexibility of private contracts while ensuring that solidarity is embedded in the legal structure through social services and financial safeguards. By striking a balance between individual freedom and community responsibility, it provides a more equitable and sustainable solution for senior cohousing. This conceptual model can guide further legal reforms across Europe, helping to develop frameworks that adapt to the changing needs of an aging population while ensuring that senior cohousing remains both legally secure and socially inclusive.

#### **4.2. French legal solutions towards solidarity valorisation within the habitation context**

In France, the evolution of senior housing has followed a more explicitly status-protective and legislatively structured path. Rather than building a single autonomous legal category for senior cohousing, French law has progressively adapted existing institutions of tenancy law and residential services to respond to age-related vulnerability.



France has long been at the forefront of developing protective legal frameworks for older individuals within the rental and real estate markets (Guerin, 2019). Historically, the French regulatory system has incorporated provisions that allow for exceptions to the ordinary regime governing enjoyment rights, particularly in the context of leases and condominium law. These interventions were first introduced through statute n° 48-1360 of 1948, which provided housing security for families of war victims, allowing them to remain in their homes under economically accessible conditions. Since this foundational legislation, age-related vulnerability has become a core consideration in the French housing legal framework, particularly regarding 'housing continuity' for older tenants.

In more contemporary France, legal provisions have been crafted to tailor protections for older tenants, recognizing their inherent vulnerability due to both age and tenant status. For instance, Article 22 bis of the 1948 law granted individuals over the age of 70, whose economic resources did not exceed a specified threshold, the right to oppose eviction by the landlord unless alternative housing was offered. These protections are rooted in a deep understanding of the vulnerability that comes with old age, ensuring that older tenants are not displaced without adequate alternatives.

One of the most significant legislative interventions in recent years is the 2018 Housing, Development, and Digital Law, which reflects France's commitment to the protection of older tenants, particularly by addressing the intersection between tenant status and advanced age. The law introduces two key mechanisms aimed at safeguarding the rights of elderly tenants: the first one consists into the structuring of a sort of mandatory lease renewal for elder tenants, with the only limitation being the potential age of the landlord. This provision embodies an example of vertical solidarity, addressing the power imbalance between the vulnerable elderly tenant and the landlord, who typically holds greater control over the lease.

In addition, the law formally recognizes of intergenerational solidarity contracts, which allow individuals under thirty years of age to live with elderly tenants. In exchange, the younger tenant provides services such as 'présence bienveillante' (companionship and social interaction), while both parties benefit from reduced housing costs (Gavin-Millan Oosterlynck, 2024). These mechanisms illustrate two distinct forms of solidarity: vertical solidarity, where protections are offered to vulnerable elderly tenants, and horizontal solidarity, where mutual support across generations is encouraged. In fact, the aim of intergenerational contracts is to foster a shared community experience, where both generations benefit from mutual aid, thereby tackling the social isolation that can accompany old age (Moisdon-Chataigner, 2024).

The introduction of these new solidarity frameworks marks a significant shift in French housing law, incorporating social solidarity into the legal framework for housing in a way that is mutually beneficial for both young and elderly individuals. This new model of 'solidarity housing' addresses not only housing affordability but also the emotional and social needs of both groups. By integrating social care into the housing structure, these contracts promote community cohesion and the provision of informal support.

Another important legal development in France is represented by the 'résidences-services', a hybrid housing model that combines residential living with integrated services for elderly residents. These facilities have become a valuable expression of the legal evolution regarding senior cohousing in France. The origins of 'résidences-services' can be traced back to the 1970s, when legislative consideration of the unique housing needs of the aging population began to emerge, particularly through statute n° 65-557 of 10<sup>th</sup> July 1965 on condominium law. Initially, the résidences-services housing model extended the traditional condominium regime to include shared services, such as communal kitchens, recreational spaces, and housekeeping. While innovative, this model faced legal distortions as it was not designed to accommodate healthcare and personal assistance services typically found in care facilities. The ENL Law of 2006 (Law on Access to Housing and Urban Renewal) intervened to clarify that personal assistance services in these facilities should not be governed by standard condominium law, distinguishing them from other communal living arrangements that offer basic services.

Further reforms came with the 2015 Law on Adapting French Society to Aging, which introduced a more flexible and generalized version of the résidence-service model. The law amended the Housing and Building Code, establishing that résidences-services must consist of independent housing units that provide specific services for the elderly (Art. L.631-13). These services are divided into non-individualizable services, such as utilities, and personalized services tailored to the needs of each resident. The distinction ensures that the

costs are distributed equitably, addressing the growing demand for collaborative housing while maintaining the fundamental principles of condominium ownership (Atias, 2013).

Consider, for instance, an elderly tenant aged seventy-five who has lived for many years in a rented apartment in Paris with limited financial resources. When the lease reaches its term, the landlord cannot simply refuse renewal unless suitable alternative accommodation is offered, due to the statutory protection afforded to elderly tenants under French housing law. At the same time, the tenant may decide to enter an intergenerational solidarity contract with a university student under thirty, allowing the student to occupy a spare room in exchange for a modest rent and regular presence in the home. In this arrangement, the legal protection against eviction reflects a form of vertical solidarity, safeguarding the stability of the elderly tenant's housing situation, while the intergenerational contract fosters horizontal solidarity, promoting companionship and informal support that mitigate the risks of loneliness and social isolation in later life.

The comparative findings indicate that the *résidences-services* model exemplifies a hybrid legal approach, where housing rights and social care are integrated into a cohesive legal structure. By incorporating personalized services and distinguishing between communal and individual needs, French law has adapted to the unique challenges posed by an aging population while ensuring that the fundamental principles of condominium law remain intact. This evolution highlights the adaptability of French housing law in responding to sociodemographic changes, providing a sustainable and inclusive framework for senior cohousing. Also relying on the French legal approach, a conceptual framework for senior cohousing that aligns contractual autonomy with social solidarity is conceivable, identifying three main legal responses.

In such context, an 'autonomy-dominant model' seeks to emphasize individual contractual autonomy, where the parties are free to negotiate terms without extensive state intervention. While this allows for flexibility, it may fail to sufficiently protect vulnerable groups, such as the elderly, and may lack the solidarity mechanisms required to foster long-term stability in senior cohousing. In contrast, a 'solidarity-dominant model' would prioritize State intervention and mandatory solidarity protections for the elderly, of which leases 'renewal and intergenerational living arrangements embody two glaring examples. Of course, while it ensures the stability of housing, it may limit individual autonomy in decision-making.

A balanced model, in line with the Valencian model, seeks to harmonize autonomy and solidarity. In this framework, senior cohousing arrangements are regulated enough to ensure housing stability and social inclusion, while also allowing for flexibility and freedom of contract. This framework can guide future legal reforms by offering flexible, adaptable solutions that ensure stable and inclusive living arrangements for older adults, while integrating the principles of social solidarity and individual autonomy.

In conclusion, from a comparative perspective, the French experience highlights a distinctive regulatory strategy. Rather than creating a fully autonomous legal regime for senior cohousing, French law has progressively adapted existing housing law institutions – particularly tenancy law and condominium structures – to incorporate solidarity-based mechanisms capable of addressing age-related vulnerability. Through this incremental process, traditional private law instruments have been reinterpreted to ensure housing continuity for older individuals while simultaneously promoting forms of community-based living. This evolution reflects a broader understanding of vulnerability in later life, which extends beyond economic fragility or physical dependency to include the risks of loneliness and social isolation that increasingly characterize ageing societies. In this sense, French housing law demonstrates how private law can operate as a preventive tool of social policy, embedding solidaristic considerations within contractual and property relationships.

### **4.3. Germany: The Contractual Link Between Habitation and Status**

The German legal system presents a distinctively contract-centred model for structuring solidarity-based cohabitation, particularly in the absence of dedicated legislation on senior cohousing. Compared to Spain and France – where statutory frameworks explicitly recognize solidaristic residential forms – Germany relies primarily on private autonomy, complemented by selective statutory interventions. This reliance makes the German case especially valuable for conceptual development: it clarifies how solidarity can emerge from

contractual structures, and how status-like protections may arise even without formal family or cooperative categories (Zervogianni, 2011).

Since 2009, Germany has regulated contracts that combine housing provision with care or assistance services through the Act Regulating Contracts for Accommodation Combined with Care or Assistance Services. The law applies broadly to contracts between professionals and adult consumers (Art. 1), reflecting the recognition that aging, disability and care requirements create vulnerabilities that require regulatory oversight. Its conceptual significance lies in establishing a dual-contractual structure: on the one hand, a housing contract (sale, lease, or loan), providing the physical dwelling and, on the other hand, a services contract, regulating the provision of care or assistance within the community. Together, these agreements form an integrated legal bundle, where the validity and enforcement of the housing relationship cannot be entirely separated from the care arrangement (Dehmer, 2024). This structure offers a model of functional solidarity: private agreements generate interdependence that resembles a status relationship, even though it remains grounded in contract (Garrison, 2011).

In a sociolegal background as the above-mentioned one, the contemporary German debate on the *Verantwortungsgemeinschaft* (community of responsibility) marks a further evolution toward recognizing solidaristic relationships outside of marriage, kinship or partnership. Initially intended to protect couples with children regardless of civil status, the proposal has shifted, in the 2024 version, towards a model that recognizes self-chosen adult communities who assume responsibilities for each other. It immediately stands out to the legal scholar that this idea could have practical and direct relevance for the implementation of senior cohousing. The proposal introduces objective and subjective requirements (La Manna, 2025): the former include a multilateral and notarized contract (§125, Abs 1, BGB) formed entirely through private autonomy, while the latter refer to the provision of a maximum of six members, along with rules governing kinship and marital ties.

Compared to Catalonia's restrictive model, Germany adopts a more flexible approach: marital or affective ties may exist within the community, provided at least one non-related person participates and that marital duties remain respected (Lueg, 2024). This approach conceptualizes solidarity as just inclusionary, rather than requiring a strict separation from traditional family structures. Nevertheless, the proposal excludes enforceable obligations beyond those expressly contracted. In such perspective, solidarity becomes meta-normative: it is valued but it is not mandated. While this may be perceived as a weakness of the German model, yet this very feature offers an important theoretical insight: German law presents an authentic legal concept of solidarity as a voluntary, self-imposed commitment, not as a legal duty arising from status. This reflects a normative choice to preserve private autonomy, while allowing solidarity to take institutional form where desired.

The proposal's graded modules further illustrate how contractual autonomy can construct various intensities of solidarity. The most basic level awards participation in decisions regarding guardianship or organ donation. An intermediate level provides representation and information rights concerning health matters and more advanced levels confer the typically German 'power of the keys', a prerogative derived from family law permitting one spouse to bind the household for essential needs (Heiderhoff, 2024). For example, consider a small group of older adults who move into a residential complex managed by a private provider under the framework of the German Act on Contracts for Housing and Care Services. Each resident signs two legally distinct but interconnected agreements: a lease contract granting the right to occupy a private apartment and a service contract regulating assistance such as daily support, emergency response systems or communal activities. Although the two agreements remain formally separate, their functional interdependence ensures that the residential arrangement is embedded within a broader framework of mutual support and care. If a resident decides to discontinue certain assistance services, this does not automatically terminate the housing relationship, thereby safeguarding residential stability while preserving contractual autonomy. In this way, the German model demonstrates how solidarity within senior living arrangements can emerge through the coordinated design of contractual commitments rather than through a predefined legal status.

With regard to comparative findings, through this stratification, solidarity becomes a scalable legal structure, grounded in autonomy but capable of producing status-like effects. As briefly outlined, a distinctive feature of the German regulatory landscape is the causal link between the housing agreement and the community-related service contract. Solidarity-based

cohousing requires not merely the provision of support services, but the joint establishment of a contractual basis for shared habitation. If parties agree only on support services without linking them to a dwelling made available for community life, the arrangement falls outside the normative concept of solidarity-based cohabitation. This functional test elevates the relational dimension of living together: solidarity exists not because services are exchanged, but as long as the residential project forms the locus of mutual support.

The potential of this interpretive framework is illustrated in a 2006 decision, which held that a landlord seeking to terminate a lease for a senior cohousing project could not do so merely because residents no longer wished to use the care services offered (BGH, 23.02.2006). The Court reasoned that the causal link did not entail rigid mutual obligations capable of undermining residential stability. This approach recognizes that solidarity must coexist with personal autonomy and prevents the contractual architecture from becoming a source of precarity for older residents. The German case enriches the overarching conceptual framework by illustrating a hybrid model where solidarity is not imposed, autonomy is not absolute, and it is the status emerging from contract, rather than contract deriving from status.

Drawing from Spain (balanced statutory autonomy) and France (strong status-protective solidarity), the German model occupies a distinct position, demonstrating that a legal concept of solidarity can be constructed without abandoning private autonomy, through layered contractual commitments, associated with causal interdependence of dwelling and services. Definitely, a conceptual proposition emerging from the German model would rise from the recognition of the causal interdependence of habitation and relational commitments, as well as the correspondent transformation of voluntary agreements into status-like relationships. This proposition advances the theoretical claim that solidarity in senior cohousing does not require legislative codification; rather, it can emerge through carefully designed contractual ecosystems supported by targeted judicial interpretation.

In conclusion, the German approach is particularly relevant for the purposes of a legal comparative inquiry on senior cohousing as it suggests that the legal stabilization of senior cohousing projects does not necessarily depend on the creation of a dedicated legislative regime. Instead, stability may emerge from contractual ecosystems capable of generating relational interdependence between residents, services and housing arrangements, while preserving a high degree of private autonomy. At the same time, the German case confirms that judicial interpretation plays a crucial role in safeguarding residential continuity, preventing the contractual structure from becoming a source of insecurity for older residents.

When considered alongside the Spanish and French experiences, the German model therefore completes the comparative framework by illustrating a third regulatory trajectory: one in which solidarity is neither imposed through status nor entirely left to informal arrangements but is progressively institutionalized through layered contractual commitments. This perspective is particularly instructive for legal systems such as Italy, where a comprehensive legislative framework for senior cohousing is still absent. It indicates that the core legal challenge lies not simply in recognizing new residential models, but in designing legal mechanisms capable of ensuring housing stability while supporting the relational dimension of living together that active ageing policies increasingly seek to promote.

## Conclusion

The comparative analysis of Spain, France and Germany leads to a clear and overarching analytical conclusion: senior cohousing cannot be effectively regulated through the mere extension of existing legal categories, whether derived from family law or from traditional contract and property law. Instead, what emerges across these jurisdictions is a convergent movement toward functional legal adaptation, whereby solidarity-based cohabitation is progressively recognized and governed through hybrid and flexible legal techniques.

Despite their doctrinal and institutional differences, the three systems examined reveal a common structural trajectory. Each jurisdiction, in its own way, moves beyond rigid status-based frameworks and develops legal responses that privilege function over form, allowing solidarity to arise from the actual practices and purposes of cohabitation rather than from predefined legal classifications. This shared tendency constitutes the central comparative

takeaway of the study: the regulation of senior cohousing is increasingly organized around the social function it performs, rather than the legal category to which it is formally assigned.

Building on this insight, the analysis supports the formulation of a generalizable conceptual framework – here defined as a solidarity-based cohabitation operative model – which may serve both as an interpretative tool for scholars and as a reference point for future legislative developments. This model rests on three interrelated pillars.

The first pillar is definitional and concerns the recognition of senior cohousing as a distinct social formation. Across all jurisdictions examined, senior cohousing does not operate merely as a contractual arrangement or as a derivative of family structures, but as an autonomous form of collective living with its own legal relevance. This requires policymakers to acknowledge and protect solidarity-based cohabitation without assimilating it to family law, while at the same time avoiding excessive regulation of intimate and interpersonal dynamics. The Catalan approach – placing mutual-assistance cohabitations within the Civil Code's family section without fully equating them to family – together with the German and Valencian choices to maintain a clear distinction from kinship obligations, exemplifies this nuanced recognition.

The second pillar is grounded in the concept of functional solidarity, which reflects a bottom-up, effects-based legal approach. In all examined systems, solidarity is no longer imposed *ex ante* through status but emerges *ex post* from the concrete role that cohabitation plays in the lives of its members. This shift – from status-imposed to function-generated solidarity – reorients legal analysis toward the actual practices of mutual support, prevention of social isolation, and promotion of active ageing. Rather than regulating personal relationships as such, the law increasingly focuses on the social outcomes produced by cohabitation. This tendency is visible in Spanish and German frameworks that separate solidarity obligations from family law, in French provisions linking vulnerability to enhanced housing protection, and in Italian jurisprudence that emphasizes spontaneity and organizational autonomy as identifying criteria.

The third pillar concerns the habitation–status nexus, which emerges as a key legal mechanism for balancing stability and autonomy. A central insight from the comparative analysis is that the solidarity function of cohabitation increasingly influences the legal conditions governing the right to occupy a dwelling. This interplay is structured around three core elements: the relative independence of housing stability from ownership; the preservation of contractual autonomy in organizing cohabitation; and the need to balance the protection of property rights with the continuity and integrity of the co-living community. In this sense, housing is no longer conceived solely as an individual asset, but also as a relational and functional space supporting solidaristic practices.

Taken together, these three pillars articulate a coherent model that captures the ongoing transformation of solidarity in later life. The decline of traditional family-based support systems, combined with demographic ageing and evolving social expectations, requires the law to move beyond inherited legal categories and to engage with new forms of collective living. The comparative analysis demonstrates that this transformation is already underway across different European jurisdictions, albeit through diverse legal pathways.

The proposed solidarity-based cohabitation operative model thus offers a synthetic analytical lesson: the future regulation of senior cohousing lies in the ability of legal systems to translate social function into legal protection without rigidly predetermining its form. By focusing on what cohabitation does – rather than what it formally is – this approach enables a flexible yet structured response to the challenges of ageing societies.

From the perspective of legal and policy implications, the comparative findings suggest that future reforms should prioritize functional recognition over categorical assimilation. Rather than extending family law obligations or relying exclusively on contractual freedom, legislators may consider hybrid regulatory frameworks capable of ensuring housing stability, protecting vulnerable cohabitants, and preserving the autonomy of collectively organized living arrangements. In this regard, the Italian legal system – where a comprehensive statutory framework is still developing – may particularly benefit from adopting a function-oriented approach that accommodates solidarity-based cohabitation without constraining its diversity.

At the same time, the limits of the present analysis must be acknowledged. This study is situated within a European legal and welfare context and is based primarily on doctrinal and comparative reconstruction. It does not empirically assess how these legal arrangements operate in practice, how they are interpreted by courts and administrative bodies, or how they affect residents in concrete settings. Consequently, while the proposed model captures

structural legal tendencies, it does not yet provide evidence of their practical effectiveness or social impact.

These limitations point directly toward avenues for future research. Further work is needed to complement the present conceptual framework with empirical and socio-legal investigation, including case studies on the implementation of cohousing arrangements, judicial interpretation of emerging legal categories, and the lived experiences of residents within different regulatory contexts. In addition, expanding the comparative scope beyond Europe could test the transferability of the functional approach in diverse legal and cultural settings, thereby refining its analytical and normative reach.

In this perspective, senior cohousing emerges not simply as a housing solution, but as a laboratory for broader legal innovation. It invites scholars and policymakers to design regulatory frameworks capable of ensuring dignity, stability, and social inclusion in later life, while preserving the plurality and spontaneity of human relationships. The central challenge – and opportunity – lies in developing legal systems in which autonomy and solidarity are not opposing principles, but complementary dimensions of a renewed legal paradigm.

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