

Questionnaire

(E)

### About this Questionnaire

1. Couples cohabiting outside marriage may face legal uncertainties when they leave the State where the registered partnership or unmarried cohabitation was formed and become subject to a foreign legal system that does not necessarily recognise their status in relation to one another, or in relation to their (adopted) children, or third parties. Even if they do not leave the State wherein their relationship originated, issues may arise abroad concerning the validity or effects of their relationship or aspects thereof.

2. The Hague Conference on Private International Law (“Hague Conference”) has been monitoring the legal situation of cohabiting couples and registered partners, focusing on the private international law implications, since 1987. In March 2015, the Permanent Bureau presented an “[u]pdate on the developments in internal law and private international law concerning cohabitation outside marriage, including registered partnerships” (“2015 Update on cohabitation outside marriage”)<sup>1</sup> at the Council on General Affairs and Policy of the Hague Conference (“the Council”). The Council subsequently asked the Permanent Bureau to prepare a Questionnaire to seek further information on private international law issues relating to cohabitation outside marriage, including registered partnerships. It requested that a report on the results from this survey be presented to the Council in 2017.<sup>2</sup>

3. In line with the mandate provided by the Council, the **objective** of this Questionnaire is to gather information from various national legal systems about aspects of internal and private international law relating to cohabitation outside marriage (e.g., information about the recognition of partnerships registered abroad or the applicable law in cross-border situations). The information gathered will facilitate a better understanding of the issues that registered partners and unmarried cohabitantes may face in a cross-border situation.

4. Terms used to describe cohabitation outside marriage differ widely.<sup>3</sup> For this reason, and in order to facilitate the survey, it is suggested that the **terminology** as described in the “2015 Update on cohabitation outside marriage” be applied in this Questionnaire:<sup>4</sup>

- The term **“cohabitation outside marriage”** encompasses “unmarried cohabitation” and “registered partnerships”.
- The term **“registered partnerships”** refers to a form of cohabitation outside marriage which, under the domestic law of the State where it originates, requires the fulfilment of certain formalities, specifically registration in a central registry. The term as used here has a wide meaning and thus also covers, *inter alia*, “domestic partnerships”, “civil partnerships”, “civil unions”, “permanent couple unions”, “statutory cohabitation”, registered “de facto relationships” and “civil

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<sup>1</sup> Prel. Doc. No. 5 of March 2015 for the attention of the Council on General Affairs and Policy of March 2015, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Projects” then “Legislative Projects” and “Cohabitation outside marriage”. This document was completed pursuant to the mandate given by the Council in April 2013, which invited the Permanent Bureau to continue to follow developments in this area and, resources permitting, to update its “Note on developments in internal law and private international law concerning cohabitation outside marriage, including registered partnerships”, Prel. Doc. No. 11 of March 2008 for the attention of the Council on General Affairs and Policy of April 2008.

<sup>2</sup> See the Conclusions and Recommendations adopted by the Council of 2015 (24-26 March 2015), para. 10, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Governance” then “Council on General Affairs and Policy”.

<sup>3</sup> For an explanation of the terminology, see, e.g., Prel. Doc. No. 11 of 2008 (*op. cit.* note 1), paras 10 *et seq.*, paras 18 *et seq.* and paras 72 *et seq.*

<sup>4</sup> See Prel. Doc. No. 5 of March 2015 (*op. cit.* note 1), paras 7-10.

pacts of solidarity". Individuals in a registered partnership are referred to as "registered partners".

- The term "**unmarried cohabitation**" refers to *concubinage* or *de facto* union without this union having been registered with an authority, formed by the parties' actual cohabitation.<sup>5</sup> Individuals living in unmarried cohabitation are referred to as "unmarried cohabitants".

5. The **structure** of the Questionnaire reflects the situation that most legal systems which allow for the registration of a partnership draw a distinction between unmarried cohabitation and registered partnerships. For this reason, the questions for each of these (legal) institutions are addressed in different sections of the Questionnaire accordingly (Part A: Registered Partnerships, Part B: Unmarried Cohabitation).

6. The Questionnaire further distinguishes between aspects that are **purely domestic** – aspects of internal law – and those that have an **international connection** – issues of private international law.

7. Moreover, while certain questions are **for all States to complete**, others are **relevant only to specific States**, *e.g.*, those whose internal domestic law provides for the possibility to register a partnership or have a special regime for cohabitation (or attach certain legal effects to cohabitation). Whether a question is to be answered by all or only specific States is indicated at the beginning of each question.

8. Furthermore, if the answer to any of the questions depends on the relevant **type of registered partnership or unmarried cohabitation** (*e.g.*, same-sex or opposite-sex), Members and non-Member States are kindly requested to answer the questions for each of the different types.

9. Finally, while the focus of the Questionnaire lies on the **legal aspects** of cohabitation outside marriage, the final section of the Questionnaire (Part C) asks for **statistical data** which Members and non-Member States are kindly requested to provide to the extent available.

### **Instructions for completion**

10. In this Questionnaire the term "State" is used to cover any jurisdictional unit having competence to regulate the subject matter. Members and non-Member States are invited to complete the Questionnaire for each jurisdictional unit, if applicable.

11. Members and non-Member States are kindly invited to complete the Questionnaire (in either English or French) at their earliest convenience, but in any event by no later than **Friday 16 September 2016**.

12. In order to allow the Permanent Bureau to extract parts of the Questionnaire for a compilation and analysis of the responses, please **use this Word version** of the document, and please **do not return a PDF version** of the completed Questionnaire.

13. The Permanent Bureau would also appreciate it if a copy of, or a link to, any **legislation** mentioned in the response (preferably in English or French) could be provided, as well as relevant **case law** on private international law issues in relation to cohabitation outside marriage, including registered partnerships, if available.

14. The completed Questionnaire, as well as additional information on legislation and case law, should be sent by e-mail to < **secretariat@hcch.net** > to the attention of Ms Kerstin Bartsch, Senior Legal Officer, with the subject line: "Questionnaire – Cohabitation outside marriage".

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<sup>5</sup> Since in most legal systems this term is not defined, this is simply a working definition. For an explanation of the terminology, see Prel. Doc. No 11 of 2008 (*op. cit.* note 1), paras 10 *et seq.*

## Publication of responses

15. The Permanent Bureau will place all responses to this Questionnaire on the Hague Conference website < [www.hcch.net](http://www.hcch.net) > unless expressly asked not to do so. A report summarising the results of this consultation will also be made available on the Hague Conference website.

## Identification

Your contact information:

Name of Member or non-Member  
State (or territorial unit, where [The Netherlands](#)  
applicable):

For follow-up purposes:

Name of contact person: [A. Blokland](#)  
Name of Authority / Office: [Ministry of Security and Justice](#)  
Telephone number:  
E-mail address: [a.blokland@minvenj.nl](mailto:a.blokland@minvenj.nl)

## **PART A: REGISTERED PARTNERSHIPS**

The term “**registered partnership**” refers to a form of cohabitation outside marriage which, under the domestic law of the State where it originates, requires the fulfilment of certain formalities (*i.e.*, registration). The term as used here has a wide meaning (see *supra* para. 4).

### **A.1. INTERNAL LAW**

#### **Formation:**

#### *1. For all States:*

- a. Does the law of your State provide for the possibility of registering partnerships?  
 Yes  
 No
- b. If the answer is “No”, is the introduction of registered partnerships being envisaged or studied by your State?  
[Please insert text here](#)

#### *2. For States that provide for the possibility to register a partnership:*

- a. Who can register a partnership in your State?
- (1) Only opposite-sex couples  
 Yes  
 No
- (2) Only same-sex couples  
 Yes  
 No
- (3) Both opposite-sex and same-sex couples  
 Yes  
 No

- b. If the answer is "Yes" to questions (1) or (2), does your State envisage or study a change in the existing partnership regime? (If yes, please explain.)

No

3. *For States that provide for the possibility to register a partnership:*

- a. What are the requirements regarding the formation of a registered partnership? (If the answer depends on the relevant type of registered partnership (e.g., same-sex or opposite-sex), please answer the question for each of the different types.)

In particular, does the law of your State include the following requirements?

- (1) Neither of the partners must be married or united in a partnership with a third person.

Yes, art. 80a of the first book of the Civil Code:

- 1. A person may, at the same time, only be united in a registered partnership with one other person, either of the same or of another gender.
- 2. Persons who enter into a registered partnership may at the same time not already be married to someone.

Art. 1:42 Civil Code:

Persons who enter into a marriage with each other, may at this moment not be united already in a registered partnership.

- (2) The partners must not be related by marriage, adoption or blood. (In the latter case, what is the accepted degree of blood relationship?)

Art. 1:80a par.5 Civil Code: art. 41, 41a (...) apply accordingly to the registration of a registered partnership

Art. 1:41 Civil Code:

- 1. A marriage cannot be entered into between persons who, either by birth or otherwise, have a legal familial relationship with each other in the ascending or descending line or as brothers, sisters or brother and sister.
- 2. For compelling reasons the Minister of Justice may grant dispensation from this prohibition to those persons who only by means of an adoption are related to each other as brothers, sisters or brother and sister.

Art. 1:41a Civil Code:

A marriage cannot be entered into between persons who, either by birth or otherwise, are each others cousins, unless both have declared under oath that they give their free consent to the marriage or registered partnership.

- (3) Both partners must attain a minimum age in order to form a partnership. (If yes, what is the minimum age?)

18 years

- (4) Both partners must have the mental capacity to consent to the partnership.

Art. 80a par. 5 Civil Code: art. 32 applies accordingly to the registration of a registered partnership.

Article 1:32 Civil Code:

A marriage or registered partnership may not be entered into when the mental capacity of one of the parties is disturbed in such a way that he is not able to determine his will or to understand the significance of his declaration.

- (5) Both partners must consent freely to the partnership.

Yes, see art. 1:32 and art. 80a par. 4 and 5

- (6) Please state any other requirements:

A person may only be united in marriage or registered partnership with one other person at the same time (art. 31 in relation to art. 80a par. 5 Civil Code). Persons placed under guardianship on account of his or her physical or mental condition, drug- or alcohol abuse etc. needs permission of the guardian of a judge (art. 1:37-38 in relation to art. 80a par. 5 Civil Code)

The registration of a registered partnership takes place by means of a certificate of registration of partnership drawn up by a civil registrar (see art.1: 80 par. 3 Civil Code)

- b. Does your State envisage or study any changes regarding the present requirements? (If yes, please explain.)

No

#### Effects:

#### 4. For States that provide for the possibility to register a partnership:

- a. What **rights** and **obligations** do registered partners have under the internal law of your State?

Please answer this question by taking into account the following subject matters and provide the legal basis (*i.e.*, legal rules or case law). (If your answer depends on the relevant type of registered partnership (*e.g.*, same-sex or opposite-sex), please answer for each of the different types.)

- (1) relationship between partners, *e.g.*,

- (a) personal obligations and duties of partners (*e.g.*, duty of care of partners):

Registered partners have the same duties as spouses, see Title 7 and Title 8 of Book 1 of the Civil Code

- (b) maintenance obligations:

yes

- (c) property

spouses may choose for community of property or nuptial agreements

- (d) inheritance:

yes, same as marriage, see Boek 4 of the Civil Code

- (e) other(s):

Please insert text here

- (2) children, *e.g.*,

- (a) parental status:

also same as marriage, art. 1:198 and 199 Civil Code:

Article 1:198 and 199 say that the spouse or registered partner of the birthmother is de legal mother or father of the child. In case the spouse or registered partner is a woman a declaration is required that the birth of the child is the result of a procedure in which sperm was donated by a donor whoes identity is unknown to the birthmother.

- (b) parental responsibility:

Article 1:253aa Civil Code

- 1. Where a child is born during a registered partnership, its parents

shall jointly exercise authority over it (...).

Article 1:253sa Joint authority of a parent together with another person by operation of law

- 1. Where a child is born during a marriage or registered partnership, its parent and this parent's spouse or registered partner, who himself is not the parent of the child, shall jointly exercise authority over it, unless the child also stands in a legal familial relationship to its other parent.

(c) child support:

yes, child support is to be payed by legal parents, or a person who has authority over the child and by stepparents. A person becomes a stepparent by marriage of registered partnership.

(d) adoption:

yes, but for intercountry adoption marriage is required. Without marriage it is possible to get permission for adoption by one person and the other one may co-adopt the child after it arrived in the Netherlands.

(e) inheritance:

same as in case of marriage, see Boek 4 of the Civil Code

(f) assisted reproduction:

no legal requirements of marriage or registered partnership for assisted reproduction

(g) surrogacy:

no legal requirements of marriage or registered partnership for surrogacy

(h) other(s):

Please insert text here

(3) other financial matters, *e.g.*,

(a) pensions, including social security benefits:

same as marriage

(b) other(s):

Please insert text here

b. Does your State envisage or study any changes in respect of these effects? (If yes, please explain.)

No

### **Annulment or Dissolution:**

5. *For States that provide for the possibility to register a partnership:*

a. Consider the situation where a couple has registered their partnership in your State.

Does your State have a special procedure for **annulment** and / or **dissolution** of the partnership? Please describe the judicial or administrative process. (If your answer depends on the relevant type of registered partnership (*e.g.*, same-sex or opposite-sex), please answer for each of the different types.)

Yes,

Article 1:80c Civil Code

- 1. A registered partnership ends:

- a. when one of the registered partners dies;
  - b. in the event that a missing person, who in accordance with the provisions of Section 2 and 3 of Title 18 of this Book has been declared presumably death or death, nevertheless appears to be alive on the day on which the left behind registered partner has entered into a new registered partnership or marriage: by registration of this new registered partnership or, respectively, by the contracting of this marriage;
  - c. with mutual consent: by registration through the Registrar of Civil Status of a dated declaration, signed by both registered partners and one or more solicitors or notaries, that expresses that and at which moment the registered partners have made an agreement with regard to the termination of their registered partnership;
  - d. by dissolution at the request of the registered partners or of one of them;
  - e. by conversion of a registered partnership into a marriage.
- 2. If the registered partnership has been entered into in the Netherlands, the Registrar of Civil Status is always entitled to make a registration of a declaration as meant in paragraph 1, under point (c). If the registered partnership has been entered into outside the Netherlands, the Registrar of Civil Status is only entitled to make a registration of a declaration as meant in paragraph 1, under point (c), if the requirements of Article 4 paragraph 4 of the Code of Civil Procedure are met with regard to the jurisdiction of the court in the event of the dissolution of the registered partnership.
- 3. It is not possible to terminate a registered partnership with mutual consent as meant in paragraph 1, under point (c), if the partners:
- a. exercise, whether or not jointly, authority over one or more of the children which they have together;
  - b. jointly exercise authority over one or more children pursuant to Article 1:253sa or 1:253t.

#### Article 1:80d

- 1. The agreement on the termination of a registered partnership as referred to in Article 1:80c, under point (c), must include at least the declaration of the registered partners that their registered partnership has irretrievably broken down and that they want to terminate it. Furthermore, this agreement must include, although not under penalty of nullity:
- a. the maintenance payment on behalf of the registered partner who does not have sufficient means to provide for his own maintenance and who is reasonably not able to acquire such means himself;
  - b. which of the registered partners will be the lessee (tenant) of the residential space that was their main residence or which of the registered partners has the right, during a period to be determined in the agreement, to use the house and the household effects that belong to one or both of them or which belong to a third person but which they are entitled to use;
  - c. the division of any community of property entered into by the registered partners by means of the registration of their registered partnership or an equalisation as agreed upon pursuant to the conditions as meant in Title 8 of this Book;
  - d. the settlement or equalisation of entitlements to pension benefits.
- 2. Articles 1:155, 1:157 paragraph 4 and 6, 1:158, 1:159, paragraph 1 and 3, 1:159a, 1:160 and 1:164 apply accordingly to a termination of a registered partnership with mutual consent.
- 3. The declaration, meant in Article 1:80c, under point (c), will be registered only in the Registers of Civil Status if it has reached the Registrar of Civil Status at the latest three months after the agreement was contracted.

Annulment: same as marriage (art. 1:80a par 6: articles 1:69 -73, 1:74, 1:75-77 par. 1 and 2 apply accordingly to an annulment of a registered partnership

- b. Does your State envisage or study any changes regarding the conditions or procedures for annulment or dissolution of a registered partnership? (If yes, please explain.)

No

## A.2. PRIVATE INTERNATIONAL LAW

### Formation (in situations with an international element):

#### 6. For States that provide for the possibility to register a partnership:

- a. Does the law of your State provide for the possibility of registering a partnership if:
- (1) One partner is a national of your State and the other partner is not?
    - Yes
    - If yes, are there further requirements (e.g., regarding habitual residence)?
    - no
    - No
  - (2) Neither of the partners are nationals of your State?
    - Yes
    - If yes, are there further requirements (e.g., regarding habitual residence)?
    - at least one of the spouses must be a Dutch national or have domicile in the Netherlands (art. 1:44 in relation to art. 1:80a par.5 Civil Code)
    - No
  - (3) One partner is habitually resident in your State and the other partner is not
    - Yes
    - If yes, are there further requirements (e.g., regarding nationality)?
    - no
    - No
  - (4) Both partners have their habitual residence in a State other than your State?
    - Yes
    - If yes, are there further requirements (e.g., regarding nationality)?
    - see under (2): at least one of the spouses must be a Dutch national or have domicile in the Netherlands (art. 1:44 in relation to art. 1:80a par. 5 Civil Code)
    - No
- b. If the response to any of these questions is "Yes":
- (1) Does the internal law of your State govern the **formal requirements for registration** in your State, or does, under the conflict of law rules of your State, the internal law of another State apply and, if so, what law(s)?
    - Article 10:60 Civil Code
    - Law applicable to the constitution of a registered partnership
    - 1. The entry into a registered partnership in the Netherlands is subject to the provisions of Article 1:80a.
    - 2. The capacity of each of the partners to enter into a registered partnership with each other in the Netherlands, is governed by Dutch law.
    - 3. In terms of formal requirements, a registered partnership can only be entered into validly in the Netherlands in front of a Registrar of Civil Status with due observance of Dutch law, on the understanding, however, that foreign diplomatic and consular civil servants may participate in the entry into a registered partnership in accordance with the requirements of the law of the State they represent, provided that none of the involved partners is or is also of Dutch nationality.
  - (2) Does the internal law of your State govern the **substantive requirements for registration** in your State, or does, under the conflict of law rules of your State, the internal law of other State(s) apply and, if so, what law(s)?
    - see under (1) art. 10:60 Civil Code

### Recognition of the validity and effects of a partnership registered abroad:

7. *For all States:*

- a. Would the **validity** of a partnership registered abroad be **recognised** in your State?
- Yes
- Yes, except for situations where there is a substantial link to my State.

Please indicate what connecting factor(s) would prevent recognition (*e.g.*, no recognition if one or both partners are nationals of or habitually resident in your State).

Please insert text here

- Yes, with exceptions (*e.g.*, where there is no substantial connection of partners with my State, or: no connection between the partners and the State of registration).

Please provide details of any such exceptions to recognition by your State.

Article 10:61 Fundamental requirements for a registered partnership entered into outside the Netherlands

- 1. A registered partnership that is entered into outside the Netherlands and that is valid under the law of the State where it is entered into or that has become valid afterwards according to the law of that State, is recognised in the Netherlands as a valid registered partnership.

- 2. A registered partnership that is entered into outside the Netherlands in front of a diplomatic or consular civil servant in accordance with the requirements of the law of the State represented by this civil servant, is recognized in the Netherlands as a valid registered partnership, unless it was not allowed to enter into such registered partnership in the State where this action took place.

- 3. For the purposes of paragraph 1 and 2, the word 'law' includes rules of private international law.

- 4. A registered partnership is presumed to be valid if a certificate of registered partnership has been issued by a competent authority.

- 5. Irrespective of what is provided in paragraph 1 and 2, a registered partnership which is entered into outside the Netherlands can only be recognised as such if it concerns a legally regulated form of cohabitation of two persons maintaining a close personal relationship with each other, that at least:

a. is registered by a public authority competent to make such registrations at the place where this action took place;

b. excludes the existence of a marriage or another legally regulated form of cohabitation with a third person, and;

c. creates duties (obligations) between the partners that in essence correspond with the marital duties of spouses that the law connects to a marriage.

Article 10:62 Conflict with Dutch public order

Despite of Article 10:62, a recognition of a registered partnership entered into outside the Netherlands shall be refused if such recognition is obviously incompatible with public order.

No

- b. Would any of the following **effects** of the partnership registered abroad be **recognised** in your State?

- (1) relationship between partners, *e.g.*,
- (a) personal obligations and duties of partners (*e.g.*, duty of care of partners):

see art. 10:61 par. 5 c, Civil Code:

5. Irrespective of what is provided in paragraph 1 and 2, a registered partnership which is entered into outside the Netherlands can only be recognised as such if it concerns a legally regulated form of cohabitation of two persons maintaining a close personal relationship with each other, that at least:

- a. is registered by a public authority competent to make such registrations at the place where this action took place;
- b. excludes the existence of a marriage or another legally regulated form of cohabitation with a third person, and;
- c. creates duties (obligations) between the partners that in essence correspond with the marital duties of spouses that the law connects to a marriage.  
see articles 10:64-69 of the Civil Code for the law applicable to the personal legal relations or the registered partner

(b) maintenance obligations:

see art. 61 par. 5 c and see article 10:90 Civil Code for the law applicable to maintenance obligations during or after the registered partnership

Article 10:90 Law applicable to maintenance obligations during or after the registered partnership

The law applicable to maintenance obligations which are relevant during the registered partnership or after the ending thereof, shall be designated by:

- a. the Protocol regarding the law applicable to maintenance obligations, concluded at the Hague on 23 November 2007 (PbEU L 331/17), or;
- b. the Convention on the Law Applicable to Maintenance Obligations, concluded at the Hague on 2 October 1973 (Treaty Series 1974, 86).

(c) property:

see art. 61 par. 5 c and articles 10:70-85 for the law applicable to the partnership property regime

(d) inheritance:

no specific rules

(e) other(s):

Please insert text here

(2) children, *e.g.*,

(a) parental status:

Article 10:92 Legal familial relationships arising from birth

- 1. Whether a child by birth has entered into a legal familial relationship with the woman from which it was born and with the person to which she is or was married or with the person she has or had a registered partnership, shall be determined by the law of the State of the common nationality of the woman and this person or, in the absence of such common nationality, by the law of the State where the woman and this person each have their habitual residence or, if even such a common habitual residence is absent, by the law of the State of the habitual residence of the child.

- 2. If the person, mentioned in par 1, and the woman have one common nationality, then for the purpose of paragraph 1 their national law shall be the law of that nationality, irrespective of whether they both or one of them has another nationality also. Where the woman and man have more than one common nationality, they shall be deemed not to have a common nationality for the purpose of paragraph 1.

- 3. Decisive for the purpose of paragraph 1 is the time of birth of the child or, if the marriage of the child's parents has been dissolved prior to this moment, the time of the dissolution of that marriage

(b) parental responsibility:

no specific rules for registered partnership

(c) child support:

no specific rules for registered partnership (same as spouses and legal parents)

- (d) adoption:  
no specific rule for registered partnership
- (e) inheritance:  
no specific rules for registered partnership
- (f) assisted reproduction:  
no specific rules
- (g) surrogacy:  
no specific rules
- (h) other(s):  
Please insert text here
- (3) other financial matters, *e.g.*,
- (a) pensions, including social security benefits:  
Article 10:85 Right to equalisation of accrued pension entitlements  
Whether a partner is entitled, at the occasion of the ending of the registered partnership with mutual consent, to a part of the pension rights accrued on behalf of the other partner, is governed by the law applicable to the partnership property regime of the partners, except where it concerns Article 1 paragraph 7 of the Act on the Equalisation of Pension Entitlements after Separation.
- (b) other(s):  
Please insert text here
- (4) Would the registered partnership constitute an impediment to the conclusion or formation by one of the partners of a marriage or a new partnership with a third person?  
 Yes  
 No
- (5) Would the surname declared by the partners upon the registration of their partnership be recognised in your State?  
 Yes  
 No
- c. If your response to a. is "Yes" or "Yes, except for situations where there is a substantial link to my State", what are the **requirements for recognition** of the **validity** of the registered partnerships?  
[see the response to 7a.](#)

In particular, does the law of your State require any of the following?

- (1) The registered partnership must be valid in accordance with the internal law or conflict of law rules of the State in which registration took place.  
 Yes  
 No
- (2) There is a civil status document proving the (existence and) validity of the registered partnership.  
 Yes  
 No

- (3) Neither of the partners is married or united in a partnership with a third person.  
 Yes  
 No
- (4) The partners are not related by marriage, adoption or blood. (In the latter case, what is the accepted degree of blood relationship?)  
 Yes  
 No

A registered partnership can not be entered into between persons who, either by birth or otherwise, have a legal familial relationship with each other in the ascending or descending line or as brothers, sisters or brother and sister.

A registered partnership can not be entered into between persons who, either by birth or otherwise, are each others cousins, unless both have declared under oath that they give their free consent to the marriage or registered partnership.

- (5) Both partners had attained a minimum age when they formed the partnership.  
 Yes  
 No
- (6) Both partners had the mental capacity to consent to the partnership.  
 Yes  
 No
- (7) Both partners had consented freely to the partnership.  
 Yes  
 No
- (8) The effects of the partnership under the applicable law must be similar to those of a marriage:  
 Yes  
 No
- (9) The effects of the partnership granted in the State where the partnership was registered should not exceed the effects granted for registered partnerships under your State.  
 Yes  
 No  
 Not applicable (My State does not provide for registration of a partnership.)
- (10) Any other requirements for the recognition of the (existence and) validity of the registered partnership (please explain):  
[Please insert text here](#)
- (11) May or must recognition of the (existence or) validity of a registered partnership or its effects be refused if this recognition would be manifestly contrary to public policy? If yes, under which circumstances?  
 Yes  
[see article 10:62 Civil code](#)

[Article 10:62 Conflict with Dutch public order](#)

Despite of Article 10:62, a recognition of a registered partnership entered into outside the Netherlands shall be refused if such recognition is obviously incompatible with public order

No

- d. Would your reply to the previous questions be different when a question regarding the validity or effects of a registered partnership arises as a **preliminary issue** in the context of another question of private international law before the authorities of your State (*e.g.*, about maintenance or inheritance)?

Article 10:63 Civil Code Application of statutory provisions to principal and preliminary issues

Articles 10:61 and 10:62 shall be applicable, regardless whether a decision has to be made about the recognition of the validity of a registered partnership as a principal issue or as a preliminary question in connection with another principle issue.

### Recognition of the annulment or dissolution of a partnership registered abroad:

#### 8. *For all States:*

Consider the situation where the partners have registered their partnership in State X. Subsequently, their partnership has been dissolved or annulled in that State or in a third State.

Would the **annulment** or **dissolution** of the partnership be **recognised** in your State? If so, under what conditions?

Yes

Article 10:88 Recognition of an ending by mutual consent or through a dissolution proclaimed in another State

- 1. Where a registered partnership has been ended outside the Netherlands by mutual consent of the partners, the ending will be recognised in the Netherlands if the registered partnership has been ended validly according to the law of that other State.

- 2. Where a registered partnership has been ended through a dissolution that has been decreed outside the Netherlands after a proper administration of justice, the ending will be recognized in the Netherlands if it has been decreed by a decision of a court or other authority to which jurisdiction on this matter has been granted.

- 3. The ending of a registered partnership obtained outside the Netherlands through a dissolution, that does not meet one or more of the conditions stated in the previous paragraph, shall nevertheless be recognized in the Netherlands if it is clear that the other party in the foreign legal proceedings explicitly or tacitly during these proceedings has consented to the ending of the registered partnership or if it is clear that the other party after those proceedings has accepted the dissolution of the registered partnership

Article 10:89 Conflict with Dutch public order

Despite of Article 10:88, the recognition of the ending of a registered partnership that is proclaimed outside the Netherlands shall be refused if such recognition is obviously incompatible with public order.

No

Please insert text here

Not applicable (My State would not recognise the validity or certain effects of the partnership.)

9. *For States that provide for the possibility to register a partnership:*

Consider the situation where partners have registered their partnership in your State. Subsequently the partnership has been dissolved or annulled in a *foreign* State. Would that **dissolution** or **annulment** be recognised in your State? If so under what conditions?

Yes

see art. 10:88 and 89 Civil Code

No

Please insert text here

**Jurisdiction:**

10. *For States that provide for the possibility to register a partnership:*

a. Please state any specific rule applying in your State concerning the **jurisdiction** of the authorities of your State regarding the **validity** of

(1) a partnership registered in your State.

art. 4 par 4 Code of Civil Procedure  
same as marriage

Article 4 points out that, even when the Brussels Regulation 2201/2003 is not applicable directly, the jurisdiction of the Dutch court on matters of divorce, legal separation, the dissolution of a marriage after a legal separation and the nullity, annulment or validity of a marriage has to be determined exclusively in accordance with article 3, 4 and 5 of this European Regulation. Furthermore it makes clear that when the Dutch court has jurisdiction over the principal subject-matter it also has jurisdiction, although under certain restrictions, over subsidiary matters that are introduced simultaneously and over rights of actions claiming provisional and protective measures related to the defined family matters.

These rules apply accordingly to registered partnerships. However the court has always jurisdiction in case the registered partnership is entered into in the Netherlands.

(2) a partnership registered in a foreign State.

see above under 10a (1)

b. Please state any specific rule applying in your State concerning the **jurisdiction** of the authorities of your State regarding the **annulment** and **dissolution** of

(1) a partnership registered in your State.

see above under 10a

(2) a partnership registered in a foreign State.

see above under 10a

**Applicable law (conflict of laws):**

11. *For States that provide for the possibility to register a partnership:*

a. Please state any specific conflict of law rule(s) applying in your State concerning the validity or any of the effects, or the dissolution or annulment of a registered partnership.

see above under 7

b. In particular, please explain your State's approach to determine the applicable law, *e.g.*, application of, exclusively, domestic law to the effects of the partnership; application of the law of the common habitual residence of the

partners, application of the law where the partnership was registered (*lex loci registrationis* rule). (See Prel. Doc. No 5 of March 2015, paras. 49 *et seq.*)

12. *For States that provide for the possibility to register a partnership:*

Does your State envisage or study any changes in relation to the conflict of law rules and other private international law aspects of registered partnerships (*e.g.*, in relation to the formation of a partnership, the recognition of the validity and effects of a partnership registered abroad or the recognition of the annulment or dissolution of a partnership)? (If yes, please explain.)

No

**Legal and practical problems:**

13. *For all States:*

- a. Do you know of any legal and / or practical problems that have arisen in your State in the context of registered partnerships where there are international elements involved? If so, please describe briefly.

No

- b. In particular, do you know of any situation where registered partners lost rights they had acquired under the law of the State where they had registered their partnership after moving to another State? If so, please describe briefly.

No

**PART B: UNMARRIED COHABITATION**

The term “**unmarried cohabitation**” refers to *concubinage* or *de facto* union without this union having been registered with an authority, formed by the parties’ actual cohabitation (see *supra*, para. 4).

**B.1. INTERNAL LAW**

**Legal regime and effects:**

14. *For all States:*

- a. Does the national law of your State establish a **specific legal regime** for cohabitation? (If yes, please explain.)

Yes

Please insert text here

No

- b. If not, does the national law of your State attach **certain legal effects** to (aspects of) cohabitation? (If yes, please explain.)

Yes

see for example

art. 1:160 Civil Code

Article 1:160 End of the obligation to pay maintenance

The obligation of a former spouse to pay a maintenance allowance to the other former spouse on account of a divorce, ends when the last mentioned spouse again enters into a marriage or registered partnership or starts to live with another person as if he and this other person were married

see for example

art. 4:28 par 2 Civil Code

- 2. Persons who lived in a joint household with the deceased up until his death, have towards the heirs and the spouse of the deceased corresponding rights with regard to the use of a residential space and its household effects that belong to the deceased's estate or to the dissolved marital community of property to which the deceased was entitled

and art. 7:268 par 2 Civil Code

2. A person who has his main residence in the leased residential space and with whom the deceased lessee had run a joint household, but who has not become a lessee by virtue of paragraph 1, continues the lease agreement for six months after the death of the deceased lessee; the second sentence of paragraph 1 applies to him as well. He continues the lease agreement also afterwards, if the court has ordered so on a legal claim filed within that period for this purpose and at least during the legal proceedings as long as the court has not given a final and binding judgment on his legal claim.

Furtermore unmarried cohabitation will be taken into account in taxregulations, social securityregulations and pensions

No

15. *For States that establish a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:*

What **rights** and **obligations** do unmarried cohabitees have under the law of your State? Are there any requirements which have to be fulfilled before such rights or obligations arise?

Please answer both questions by taking into account the following subject matters and provide the legal basis (*i.e.*, legal rules or case law). (If the answer depends on the type of unmarried cohabitation (*e.g.*, whether the couple is of the same-sex or opposite-sex), please answer the question for each type):

- a. relationship between unmarried cohabitees, *e.g.*,
  - (1) personal obligations and duties of unmarried cohabitees (*e.g.*, duty of care of unmarried cohabitees):  
no specific rules for umarried cohabitees, they can make specific agreements in a (cohabitation) agreement
  - (2) maintenance obligations:  
no specific rules, see (1)
  - (3) property relations:  
no specific rules , see (1)
  - (4) inheritance:  
no specific rules
  - (5) other(s):
- b. children, *e.g.*,
  - (1) parental status:  
no specific rules, the general rules are applicable
  - (2) parental responsibility:  
no specific rules
  - (3) child support:  
no specific rules
  - (4) inheritance:

no specific rules

(5) adoption:  
no specific rules

(6) assisted reproduction:  
no specific rules

(7) surrogacy:  
no specific rules

(8) other(s):  
Please insert text here

- c. other financial matters, *e.g.*,
- (1) pensions, including social security benefits:  
see 14b
- (2) other(s):  
Please insert text here

## B.2. PRIVATE INTERNATIONAL LAW

### Recognition of the validity of a special legal regime for, or of certain legal effects of, unmarried cohabitation:

#### 16. *For all States:*

Consider the situation where a couple has acquired certain rights and obligations under a special legal regime for unmarried cohabitation in State X, or the couple has acquired certain rights and obligations because the laws of State X attach certain legal effects to their unmarried cohabitation.

- a. Would the **validity** of the legal regime for unmarried cohabitation of State X be recognised in your State?
- Yes
- No
- b. Would any of the **effects** which the unmarried cohabitation has under the laws of State X be recognised in your State?
- Yes
- No
- c. If the answer to a. or b., is "yes", what are the requirements (*substantive and / or formal* requirements) for the recognition of the legal regime or of its effects?  
see for authority the 1996 Hague Child Protection Convention
- d. Would the reply to the previous questions be different when a question regarding the validity or effects of the unmarried cohabitation arises as a **preliminary issue** in the context of another question of private international law before the authorities of your State (*e.g.*, about maintenance or inheritance)?
- no

#### Jurisdiction:

17. *For States that provide for a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:*

Please state any specific rules applying in your State concerning the **jurisdiction** of the authorities of your State regarding the specific legal regime for cohabitation or its effects.

-

#### Applicable law (conflict of laws):

18. *For States that provide for a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:*

Please state any specific conflict of law rules applying in your State concerning the legal regime for cohabitation or concerning the legal effects attached to (aspects of) cohabitation.

-

#### Legal and practical problems:

19. *For all States:*

a. Do you know of any legal and / or practical problems that have arisen in your State in the context of unmarried cohabitation where there are international elements involved? If so, please describe briefly.

no

b. In particular, do you know of any situation where unmarried cohabitants lost rights they had acquired under the law of the State where they had cohabited after moving to another State? If so, please describe briefly.

no

#### Future developments:

20. *For all States:*

Are any developments foreseen in your national law, *e.g.*, modification or introduction of a legal regime for cohabitation or of certain legal effects of cohabitation? Are any developments foreseen in relation to private international law aspects of cohabitation outside marriage?

No

#### **PART C: Statistics**

21. *For all States:*

Please provide any statistics relating to registered partnerships and unmarried cohabitation where applicable, if available, *e.g.*,

a. the (estimated) number of registered partners in your State and any trend in this regard;

Registration of new partnerships:

In 2013: 9 945

In 2014: 10 363

In 2015: 12 772

b. the (estimated) number of couples who are cohabiting without being married in your State and any trend in this regard:

In 2015 there were 934 000 couples cohabiting, which number is expected to rise.

c. the (estimated) birth / adoption / surrogacy rates for registered partners and unmarried cohabitants in your State and any trends in this regard:

- 
- d. the (estimated) number of registered partnerships that have been annulled or dissolved in your State:  
In 2014 1 800 registered partnerships ended by dissolution.
- e. the (estimated) number of international couples (*i.e.*, at least one partner is not a national of or habitually resident in your State) and any trends in this regard:  
-
- f. any other relevant statistics:  
-