

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”)¹ 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 2017.²

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 cohabitants may face in a cross-border situation.

4. Terms used to describe cohabitation outside marriage differ widely.³ 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:⁴

- 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 pacts of

¹ 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 > 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.

² 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 > under “Governance” then “Council on General Affairs and Policy”.

³ 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.*

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

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.⁵ Individuals living in unmarried cohabitation are referred to as "unmarried cohabitantes".

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".

⁵ 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 > 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 applicable): [Portugal](#)

For follow-up purposes:

Name of contact person: [Marta Carvalho](#)
 Name of Authority / Office: [Ministry of Justice](#)
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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?
[This introduction is not foreseen at the moment.](#)

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.)

Please insert text here

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.

Please insert text here

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

Please insert text here

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

Please insert text here

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

Please insert text here

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

Please insert text here

- (6) Please state any other requirements:

Please insert text here

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

Please insert text here

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):

Please insert text here

- (b) maintenance obligations:

Please insert text here

- (c) property
Please insert text here
- (d) inheritance:
Please insert text here
- (e) other(s):
Please insert text here
- (2) children, *e.g.*,
 - (a) parental status:
Please insert text here
 - (b) parental responsibility:
Please insert text here
 - (c) child support:
Please insert text here
 - (d) adoption:
Please insert text here
 - (e) inheritance:
Please insert text here
 - (f) assisted reproduction:
Please insert text here
 - (g) surrogacy:
Please insert text here
 - (h) other(s):
Please insert text here
- (3) other financial matters, *e.g.*,
 - (a) pensions, including social security benefits:
Please insert text here
 - (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.)

Please insert text here

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.)

Please insert text here

- 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.)

[Please insert text here](#)

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)?

[Please insert text here](#)

No

- (2) Neither of the partners are nationals of your State?

Yes

If yes, are there further requirements (e.g., regarding habitual residence)?

[Please insert text here](#)

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)?

[Please insert text here](#)

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)?

[Please insert text here](#)

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)?

[Please insert text here](#)

- (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)?

[Please insert text here](#)

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.

[Please insert text here](#)

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):

[No](#)

(b) maintenance obligations:

[No](#)

(c) property:

[It should be noted that Portugal participates in the enhanced cooperation set by Council Regulation \(EU\) 2016/1104 of 24 June 2016 in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, that aims to facilitate the recognition and enforcement in one Member State of the EU of a judgment on property matters given in another Member State of the EU, which will enter into application on 29 January 2019.](#)

(d) inheritance:

[According to Regulation \(EU\) No 650/2012 of the European Parliament and of the Council, on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, decision in a matter of succession given by a court of an EU Member State shall be recognized in Portugal](#)

(e) other(s):

[Please insert text here](#)

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

(a) parental status:

[The legal status of a child born in or outside wedlock is the same. \(See answer to 15 b1\)](#)

(b) parental responsibility:

[Parents share the same parental rights and responsibilities being married or not. \(See answer to 15 b 2\)](#)

(c) child support:

[Parents share the same parental responsibilities regarding child maintenance as married couples. \(See answer to 15 b 3\)](#)

(d) adoption:

[Under the current adoption legal system, the right to adoption is exercised in conditions similar to those provided for in Article 1979.º of the Civil Code for married people. \(See answer to 15 b 5\).](#)

(e) inheritance:
Children born in or outside wedlock have the same rights regarding inheritance. (See answer to 15 b 4)

(f) assisted reproduction:
Law No 32/2006, 26 July that altered by Law 59/2007, 4 September, Law 17/2016, 20 June and Law 25/2016, 22 August, provides that the medically assisted procreation techniques can be used by heterosexual couples or lesbian couples, married or living in a de facto union, as well as all women regardless of marital status and the sexual orientation, since they have at least 18 years of age and are not interdicted or incapacitated by mental illness.(Article 2/1 and article 6).

(g) surrogacy:
Law No 32/2006, 26 July, recently amended by Law 25/2016, 22 August, establishes access to surrogacy in case of absence, injury or disease of the uterus which prevents absolutely and definitively the pregnancy, but it has yet to be regulated. Surrogacy may be used by heterosexual couples or lesbian couples, married or living in a de facto union, as well as all women regardless of marital status and sexual orientation, since they have at least 18 years of age and are not interdicted or incapacitated by mental illness (Article 2/2; 6 and 8)

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

(3) other financial matters, *e.g.*,
(a) pensions, including social security benefits:
Please insert text here

(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?

Please insert text here

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

[Please insert text here](#)

(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

[Please insert text here](#)

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)?

Please insert text here

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

Please insert text here

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

Please insert text here

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.

Please insert text here

(2) a partnership registered in a foreign State.

Please insert text here

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.

Please insert text here

(2) a partnership registered in a foreign State.

Please insert text here

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.
Please insert text here
- 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.*)
Please insert text here

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.)
Please insert text here

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.
We have no knowledge of such practical problems.
- 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.
We have no knowledge of such cases.

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

The legal regime applicable to certain aspects of unmarried cohabitation - *de facto* union - in Portugal is established by Law 7/2001, of 11 May, as amended by Law No. 23/2010 of 30 August and Law No 2/2016, of 29 February. The law defines union *de facto* as "the legal situation of two people, regardless of gender, live in conditions similar to those of marriage for more than two years."

It is a cohabitation in a full communion of life which translates into a communion of table, bed and housing, durable and not merely fortuitous. The period of two years is a necessary condition so that union can benefit from that legal regime. The law also requires that no impediments - set out in article 2 and that correspond almost entirely to impediments for marriage set out in articles 1601.º and 1602.º of the Civil Code (CC) - arise, such as minority, notorious dementia, disability or incapacity for mental illness or marriage undissolved etc.

The union de facto begins as soon as the couple begin to live in cohabitation (table, bed and housing). No formality, such as registration, is required and, besides the city council (junta de freguesia) declaration, it can be proof by any means legally admissible.

Therefore, the union is indeed relevant for certain purposes, including for tax purposes, acquisition of nationality and protection of family residence, but has no effect on the acquisition of property regime or constitution of debt.

No

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

Yes

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 cohabittees 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 cohabittees, *e.g.*,

- (1) personal obligations and duties of unmarried cohabittees (*e.g.*, duty of care of unmarried cohabittees):

Unmarried cohabittees are not legally bound by the duties of respect, loyalty, cohabitation, cooperation and assistance that are applicable to the spouses.

- (2) maintenance obligations:

Unmarried cohabittees are not legally bound by a maintenance obligation during the cohabitation period such as spouses are during marriage. However, according to Article 2020 of the Portuguese Civil Code (CC), in case of death the surviving member has the right to demand alimony from the heritage. This right shall lapse if not exercised within two years from the date of death of the author of the succession.

- (3) property relations:

In de facto unions, the rules governing the property consequences of the marriage don't apply. They aren't subject to an assets legal regime as provided for marriage.

The cohabittees can, however, celebrate agreements - cohabitation contracts - in order to supplant the omissions of the Law and build a legal discipline designed to regulate their de facto union, avoiding thus the occurrence of disputes that may arise during the cohabitation or at its dissolution.

In the absence of cohabitation contracts or prior arrangement, both are owners of property in the proportion that each has contributed and the general rules of law (common law for contractual obligations) apply.

- (4) inheritance:

In the event of death, the surviving member of the de facto union has no right to inherit unless it is determined in a will. However, according to Article 2020 of the

Civil Code, in case of death, the surviving member has the right to demand alimony from the heritage. This right shall lapse if not exercised within two years from the date of death of the author of the succession.

(5) other(s):

Couples living in a de facto union are entitled to the same legal regime applied to married people with regard to vacation, leave, absences and holidays. For example if the couple is working together they have the right to enjoy holidays in the same period. With regard to the tax return, they are also entitled to enjoy the same legal regime applied to married couples and they may choose to declare it jointly or separately. (Article 3, 1 b),c) d of Law 7/2001)

b. children, *e.g.*,

(1) parental status:

Couples in de facto unions share the same parental status as married people. Children whose parents live in a de facto union have the same rights as others.

However, in what concerns filiation, there are differences. In the case of married couples, there is a legal presumption that the husband is the father of the child. In de facto unions, the paternity has to be voluntary recognised by the father (Article 1796 CC)

(2) parental responsibility:

Couples in de facto unions share the same parental responsibilities as married people. The exercise of parental responsibility belongs to both parents and it is exercised by mutual agreement. On issues of particular importance, if this agreement can't be achieved, both parents can apply to court which will try to get an agreement. When the agreement is not possible, the court will hear the child before deciding (Article 1901 CC).

In case of separation, the procedure is exactly the same than in case of divorce.

It is necessary to determine who gets custody of the children, but any issue regarding parental responsibilities, shall be decided by both parents in the same terms applied during the cohabitation, except in cases of manifest urgency where either parent can act alone. In these cases, the parent must provide information to the other as soon as possible. All the other issues are up to the parent with whom the child habitually resides, or up to the parent with whom the child is staying. The other parent has always the right to be informed (Article 1906/1 and 3 CC)

In some cases the court may decide that the joint exercise of parental responsibilities on issues of particular importance of the child's life is deemed contrary to his interests and, by reasoned decision, determine that these responsibilities are discharged by a parent (Article 1906/2 CC)

(3) child support:

As said, couples in de facto unions share the same parental responsibilities as married people. They have a duty to educate the child, to ensure their safety and health, as well as child support, at least until the age of majority (Article 1885.º et seq. of the Civil Code).

In case of separation child maintenance is regulated by parents' agreement, subject to the Court's approval. The approval is refused if the agreement does not match to the child's best interests. (Article 1905/1 CC)

After the majority (18 years) and until 25 years of age, children retain the right to maintenance, unless the respective education or vocational training is completed before that date, if it has been freely interrupted or if, in any case, the obligation to provide maintenance is considered unreasonable. (Articles 1880 and 1905/2 CC)

(4) inheritance:

Children born under a de facto union have the same succession rights as children born from a married couple.

In the Portuguese Legal System the reserved portion corresponds to the part of the inheritance which devolves to certain heirs who cannot be totally disinherited. (Article

2136 CC). According to article 2157.º and 2159.º,2 of the Civil Code descendants are heirs and the reserved portion corresponds to half or two thirds of the inheritance, as there is one child or there are two or more.

(5) adoption:

Under the current adoption legal system people living in de facto unions have the right to adoption in conditions similar to those provided for in Article 1979 of the Civil Code for married people. For this, like married couples, plus other conditions that have to be fulfilled, cohabitantes have to be in a de facto union for more than four years and have more than 25 years old and less than 60 years. (Article 7 of Law 7/2001)

(6) assisted reproduction:

The Law No 32/2006, 26 July that was amended by Law 59/2007, 4 September, Law 17/2016, 20 June, and Law 25/2016, 22 August provides that medically assisted procreation techniques can be used by heterosexual couples or lesbian couples, married or living in a de facto union, as well as all women regardless of marital status and the respective sexual orientation, since they have at least 18 years of age and are not interdicted or incapacitated by mental illness.(Article 2/1 and article 6, Law 32/2006)

(7) surrogacy:

Law No 32/2006, 26 July was recently amended by Law 25/2016, 22 August, establishing the access to surrogacy in case of absence, injury or disease of the uterus which prevents absolutely and definitively the pregnancy, but it has yet to be regulated. Surrogacy may be used by heterosexual couples or lesbian couples, married or living in a de facto union, as well as all women regardless of marital status and sexual orientation, since they have at least 18 years of age and are not interdicted or incapacitated by mental illness.(Articles 2/2; 6 and 8, Law 32/2006)

(8) other(s):

Please insert text here

c. other financial matters, e.g.,

(1) pensions, including social security benefits:

Regardless of the right to alimony, in case of death, the survivor is entitled to social protection - death benefit, survivor's pension - as also death benefits (compensation) due to occupational disease or work accident.

In what concerns the family residence, in case of death of the owner, the survival partner is entitled to live in the house and use the filling for a period of five years. In case of cohabitation for more than five years, he will be entitled for the same period of the cohabitation. The court may extend the deadlines. However, all these rights expire if the survivor doesn't live in the residence for more than one year or if he owns a house in the same area of the family residence. After these periods, the survivor can only remain in the family residence as a tenant, but retains the right of first refusal in case of sale of the property (Articles 3/1 a), 4 and 5 of the Law)

(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?
[Please insert text here](#)
- 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)?
[Please insert text here](#)

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.

[In Portugal there are no specific jurisdiction rules for de facto unions.](#)

[As in the case of marriage, Family Courts are competent in matters concerning parental responsibility.](#)

[In the event of death, the competence in matters of succession depends on whether the succession is contested \(acceptance under benefit of inventory\) or not \(acceptance pure and simple\). According to Article 2020 of the Civil Code, the surviving member has the right to demand alimony from the heritage. Civil-law notaries in municipalities in which successions are opened \(the place of the deceased's last address\) are competent to conduct probate proceedings in this regard. These proceedings are ultimately submitted to the courts for the judge to ratify the decision on the assets division.](#)

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.

[There are no specific conflict of law rules applying to de facto unions.](#)

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.
Please insert text here
- b. In particular, do you know of any situation where unmarried cohabitantes 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.
Please insert text here

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?

Please insert text here

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;

Please insert text here

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

According to the data available (Population and Housing Census), in 2001 about 381 120 persons were cohabiting without being married in Portugal. This number has risen to 729 832 in 2011.

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

According to the last statistical data available, between 2011 to 2015 the total of births for unmarried cohabitantes have been representing about half of total births in each of the years.

	Total births	births for unmarried cohabitantes
2015	85 779	43 511
2014	82 613	40 755
2013	83 121	39 583
2012	90 035	41 034
2011	96 993	41 565

- d. the (estimated) number of registered partnerships that have been annulled or dissolved in your State:

Please insert text here

- 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:

According to the data available (Population and Housing Census), the estimated number of international couples in Portugal in 2001 was 21 160 having risen to 43 492 in the year 2011.

- f. any other relevant statistics:

Please insert text here