

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 cohabitants 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 [Germany](#)  
applicable):

For follow-up purposes:

Name of contact person: [Anton Geier](#)  
Name of Authority / Office: [Federal Ministry of Justice and Consumer  
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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?  
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##### 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.)

Since the entry into force of the Act on Registered Life Partnerships (Lebenspartnerschaftsgesetz) in 2001, several legislative reforms have aimed at further equalizing - to a certain extent - the effects of same sex partnerships and marriage. These reforms were the result of both, policy decisions of the legislator as well as decisions of the German Constitutional Court (Bundesverfassungsgericht). Today, the legal effects of life partnerships almost entirely equal those of marriages. Currently there are three pending legislative projects, aiming at opening marriages to same sex couples. However, there is no political consensus on this matter yet. It is reasonable to assume that there will not be any further legislative reforms to this effect before 2018.

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, § 1 (3) no. 1 LPartG (Act on Registered Life Partnerships).

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

Yes, § 1 (3) no. 1, 2, 3 LPartG: no partnership between relatives in direct line as well as full and half-blood siblings.

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

Yes, minimum age 18, § 1 (3) no. 1 LPartG and § 2 BGB (German Civil Code).

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

Yes, § 1 (1) LPartG and §§ 104, 105 BGB

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

Yes, § 1 (1), (2) LPartG; however a lack of free will does not render the partnership void but merely allows for the dissolution of the partnership by judicial process, § 15 (2) LPartG, § 1314 (2) no. 1 to 4 BGB..

- (6) Please state any other requirements:

The future life partners, being present before a registrar at the same time, have to declare in person that they wish to maintain a partnership for life. These declarations may not be subject to any condition or stipulation of term.

- 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):

Yes, the life partners have a "duty to care for and support one another and to shape their lives together; they shall be responsible for one another", § 2 LPartG.

(b) maintenance obligations:

Yes, the life partners have the mutual duty to maintain appropriately through their work and with their assets the community established upon conclusion of the life partnership. If the life partners are living apart, one life partner may demand from the other the maintenance that is appropriate in accordance with the life partners' standard of living and circumstances in terms of earnings and assets. There is also a post-partnership maintenance after dissolution of the life partnership in cases where one of the partners cannot provide for herself or himself. The respective provisions of the BGB apply *mutatis mutandis*, §§ 5, 12, 16 LPartG and §§ 1360 second sentence, 1360a, 1360b and 1609 BGB.

(c) property

The life partners live under the property regime of the community of accrued gain unless they agree otherwise in a life-partnership contract. The respective provisions of the BGB apply *mutatis mutandis*. As a consequence, the properties of the life partners remain distinct from one another, § 6 LPartG. Each life partner administers his property individually. However, a life partner may only contractually agree to dispose of his property as a whole with the consent of the other partner, § 6 LPartG and §§ 1364-1365 BGB. In case of dissolution of the life partnership, the equalisation of the accrued gains is effected by virtue of an equalisation claim: If the accrued gains of one spouse exceed the accrued gains of the other spouse, the half of the surplus is due to the other spouse, § 6 LPartG and §§ 1373-1390 BGB.

(d) inheritance:

Yes, § 10 LPartG contains a detailed provision on the right of the life partners to inherit, which basically corresponds with the right of spouses to inherit: The surviving life partner of the deceased is considered a statutory heir to one quarter of the estate together with relatives of the first degree (descendants), and to one half of the estate together with relatives of the second degree or together with grandparents. If grandparents and descendants of grandparents are alive, the life partner also receives from the other half the share that under section § 1926 BGB would pass to the descendants. In addition, the life partner shall have the right to the objects belonging to the life partners' household. In the absence of relatives of the first and second degree, the surviving life partner inherits everything. In case the life partners lived under the property regime of the community of accrued gain, the share of the inheritance on intestacy of the surviving spouse is increased by one quarter of the inheritance.

(e) other(s):

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

(a) parental status:

The life partner of the parent cannot become a legal parent, unless she or he adopts the child.

(b) parental responsibility:

The life partner is treated similarly to a stepparent, § 9 LPartG: If a parent in a life partnership has sole custody over a child, his life partner - upon agreement with the parent exercising custody - has the power of codecision in matters relating to the everyday life of the child.

- (c) child support:

No.

- (d) adoption:

The right to adopt is regulated in § 9 LPartG. This provision allows for an individual adoption by one of the life partners, the adoption of the child of one life partner by the other life partner as well as the successive adoption of a child by each life partner, which results in parenthood of both life partners.

- (e) inheritance:

Notwithstanding testamentary dispositions, statutory rights to inherit depend on a family relationship, which in turn can only be established by bloodline or by adoption in this context.

- (f) assisted reproduction:

Legally, access to reproductive technologies is not limited to married or heterosexual couples. However, the guidelines of the Medical Chambers of most States do not grant same sex couples access to reproductive technologies.

- (g) surrogacy:

Surrogacy is illegal, if practiced or advertised in Germany, even though only doctors and not the involved surrogate mother and the client are prosecuted.

- (h) other(s):

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

- (a) pensions, including social security benefits:

If a life partnership is dissolved, an equalisation shall take place of pension rights existing in Germany or elsewhere in mutatis mutandis application of the Act on the Equalisation of Pension Rights to the extent that these were founded or maintained in the period during which the life partnership existed, § 20 LPartG.

- (b) other(s):

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- 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.)

The life partnership may be dissolved by judicial decision upon the petition of one or both of the life partners. Reasons for dissolution are:

1. the life partners have lived apart for a year and
  - a) both life partners petition for the dissolution or the respondent consents to the dissolution or
  - b) it cannot be expected that the community of the life partners can be restored,
2. one of the life partners petitions for the dissolution and the life partners have lived apart for three years,
3. the continuation of the life partnership would be an unreasonable hardship for

the petitioner for reasons that lie in the person of the other life partner.

If the requirements for dissolution of the life partnerships are fulfilled, the court may nevertheless refrain from declaring the dissolution even if the couple has lived separately for three years, if one life partner disagrees and the dissolution would unreasonably burden him.

Furthermore, the court shall dissolve the life partnership if one of the life partners lacked free will within the meaning of § 1314 (2) no. 1 to 4 BGB.

(§ 15 LPartG)

The procedure for judicial dissolution is governed by §§ 121-150 FamFG (Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction).

- 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)?

Irrespective of the nationality of the life partners, Art. 17b EGBGB calls for the application of the law at the place of where the registry for registration of life partnerships is administered. Therefore, the formation of a life partnership in Germany is governed by German law, in particular the Act on Civil Status (Personenstandsgesetz, PStG). There are no further requirements, especially none to submit a certificate of nubility.

No

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

Yes

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

No further requirements. Pursuant to Art. 17b EGBGB the formation of the life partnership is governed by German law.

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)?

Even if none of the partners have a domestic habitual residence, a life partnership may be formed in Germany. The registrar before which the partnership is to be formed is competent, §§ 11, 12, 17 PStG.

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)?

Yes, the law in the country of registration applies to both, the formal and substantive requirements of registration, Art. 17b (1) EGBGB (Introductory Act to the Civil Code).

- (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)?

Yes, the law in the country of registration applies to both, the formal and substantive requirements of registration, Art. 17b (1) EGBGB.

### 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).

The formal and substantive requirements of the law in the country of registration must be complied with.

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.

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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):

Yes. However, generally, the effects of a life partnership registered abroad must not exceed those arising under the provisions of the German Civil Code (BGB) and the Registered Partnership Act (LPartG), Art. 17b (4) EGBGB.

(b) maintenance obligations:

Yes but see above (a).

(c) property:

Yes but see above (a).

(d) inheritance:

Yes but see above (a).

(e) other(s):

Yes but see above (a).

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



(a) parental status:

The parental status following directly from the registered partnership is fully recognisable. In particular, according to a recent ruling of the German Federal Supreme Court Art. 17b (4) EGBGB does not prevent such recognition. The parental status of the partner is not an "effect of a life partnership" within terms of that provision and does not violate German public policy.

(b) parental responsibility:

This question is subject to the law at the place of habitual residence of the child pursuant to Art. 21 EGBGB or the law designated in international instruments (Brussels IIbis regulation, the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and (with respect to Turkey and China/Macau) the Hague Convention of 1961 Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors). If that law sets forth that the life partner of the parent has parental responsibility, this is not in conflict with German public policy.

(c) child support:

This question is subject to the law at the place of habitual residence of the child pursuant to Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and the Hague Protocol on the Law Applicable to Maintenance Obligations. If that law provides for maintenance obligations of the life partner towards the child of the other life partner, this is not in conflict with German public policy.

(d) adoption:

Yes, but only single adoptions of a child by one life partner (successive adoptions by both life partners are admissible); joint adoptions by both life partners only, if they have been validly carried out abroad. Pursuant to Art. 22 (1) s. 3 EGBGB the adoption of a child by one of the life partners is governed by the law of the country in which the partnership is registered; the same technically applies by way of analogous application of this rule for joint adoptions of both life partners. However, since joint adoptions by life partners qualify as "effects of a life partnership" and are not possible under German law, they are not admissible in Germany: Pursuant to Art. 17b (4) EGBGB the effects of a life partnership registered abroad shall not exceed those arising under the provisions of the German Civil Code and the Registered Partnership Act. Art. 17b (4) EGBGB does not apply, however, to cases in which the joint adoption has been fully and validly carried out abroad. In such cases, the joint adoption made abroad is recognized in Germany.

(e) inheritance:

Yes, as long as the right to inherit is governed by international or European instruments or does not exceed the right of the life partner to inherit under German law (Art. 17b (4) EGBGB). Since the right of the life partner to inherit is very broad under German law, it is hardly conceivable that the right to inherit under the law of another state exceeds the right to inherit under German law.

(f) assisted reproduction:

See (2)(a).

(g) surrogacy:

Yes. In a judgment dated 10 December 2014, the Federal Court of Justice held that the recognition of a foreign judgement establishing a legal parent-child relationship between the child and the intended parents does not violate German public policy, if (at least) one of the intended parents is genetically related to the child and the surrogacy mother is not. Whether the intended parents are of the same sex and live in a Registered Life Partnership or whether they are of different sex and are married is not decisive. The crucial factor for recognition according to the Federal Court of Justice is whether or not the child was voluntarily transferred by the surrogate mother into the care of the intended parents.

(h) other(s):

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

(a) pensions, including social security benefits:

Yes. However, the equalization of pension rights can only be carried out under German law, Art. 17b (1) s. 3, 4 EGBGB.

(b) other(s):

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(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?

Registered partnerships established abroad can be registered in the life partnership register pursuant to § 35 PStG (Personenstandsgesetz - Act on the civil status). The law at the place of registration must have been complied with. Alternatively, a second registration pursuant to German law is possible.

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):

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(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

Pursuant to Art. 6 EGBGB a provision of the law of another country shall not be applied where its application would lead to a result which is manifestly incompatible with the fundamental principles of German law. In particular, inapplicability ensues, if its application would be incompatible with civil rights. Since Art. 17b (4) EGBGB sets forth that the effects of a life partnership registered abroad shall not exceed those arising under the provisions of the German Civil Code, there are practically no cases where the public policy exception applies.

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)?

No.

### 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

Yes. The dissolution or annulment must be in conformity with the substantive and formal requirements under the law of the state of registration. If that law does not require a judicial proceeding for annulment or dissolution, it is disputed in German doctrine whether or not non-judicial annulments and dissolutions without the involvement of a court may be recognised in Germany. Recognition of judicial annulments or dissolutions is automatic and does not require a court decision on the recognition, unless one party specifically requests an examination of the case by the court; public policy exceptions apply, § 108 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (FamFG).

No

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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

Only if either the dissolution or annulment was pronounced by a court and the decision is recognisable under § 108 FamFG (see above 8.) or if the partnership is registered again abroad and annulment or dissolution is carried out in conformity with the law at the place of registration.

No

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**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.

The local court (Amtsgericht) in its capacity as family court (Familiengericht) is competent; exclusive local jurisdiction in the following order of priority:

1. the court in the district of which one of the spouses has his place of usual residence with all of the common minor children;

2. the court in the district of which one of the spouses has his place of usual residence with some of the common minor children, to the extent that none of the common minor children have their place of usual residence with the other spouse;

3. the court in the district of which the spouses together most recently had their place of usual residence when one of the spouses had his place of usual residence in the district of this court at the time of the commencement of the legal proceedings;

4. the court in the district of which the respondent has his place of usual residence;

5. the court in the district of which the applicant has his place of usual residence;

6. the Schöneberg Local Court in Berlin.

§§ 269 (1), 270 (1), 122 FamFG.

(2) a partnership registered in a foreign State.

Same as above (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.

Same as above a. (1).

(2) a partnership registered in a foreign State.

Same as above a. (1).

**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.

Art. 17b EGBGB sets forth:

"(1) The formation of a registered life partnership, its general effects and property regime, as well as its dissolution are governed by the substantive provisions of the country in which the life partnership is registered. The equalization of pension rights is governed by the law applicable under sentence 1; it shall only be carried out if accordingly German law is applicable and if the law of one of the countries, whose nationals the life partners are at the time when the application for termination of the life partnership is filed, recognizes an equalization of pension rights of life partners. Otherwise, it shall be carried out pursuant to German law on application of a life partner, if one of the life partners has acquired during the subsistence of the life partnership a pension right with an inland pension fund, insofar as carrying out the equalization of pension rights would not be inconsistent with equity, in particular in light of the economic circumstances of both sides during the entire time of the life partnership.

(2) Article 10 subarticle 2 and article 17a shall apply accordingly. If the general effects of the life partnership are governed by the law of another country, personal property that is located in this country shall be governed by § 8 subparagraph 1 of the Registered Partnership Act, and legal transactions that have taken place in this country shall be governed by § 8 subparagraph 2 of the Registered Partnership Act in connection with section 1357 of the Civil Code, insofar as these rules are more favorable to third parties acting in good faith as compared to the foreign law. If the property regime of the life partnership is governed by the law of another country, and if one of the partners has his or her habitual residence within the country or carries a trade therein, then § 7 sentence 2 of the Registered Partnership Act in connection with § 1412 of the Civil Code shall apply *mutatis mutandis*; the foreign matrimonial regime is considered as one contracted for.

(3) If a life partnership between the same persons is registered in different countries, the effects specified in subarticle 1 shall, from the time of its registration on, be determined on the basis of the last life partnership entered into.

(4) The effects of a life partnership registered abroad shall not exceed those arising under the provisions of the German Civil Code and the Registered Partnership Act."

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.*)

see previous answer.

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.

Problems may arise in cases where partners of the same sex have married abroad. The marriage is not recognised as such in Germany but is treated as a life partnerships instead. Cf. above question No. 7.

- 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.

Art. 17b (4) EGBGB leads to the loss of any rights acquired that exceed the effects of a domestic registered partnership. This also provision entails a number of uncertainties.

## 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

-

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 cohabitantes 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 cohabitants, *e.g.*,
  - (1) personal obligations and duties of unmarried cohabitants (*e.g.*, duty of care of unmarried cohabitants):
    -
  - (2) maintenance obligations:
    -
  - (3) property relations:
    -
  - (4) inheritance:
    -
  - (5) other(s):
    -
- b. children, *e.g.*,
  - (1) parental status:
    -
  - (2) parental responsibility:
    -
  - (3) child support:
    -
  - (4) inheritance:
    -
  - (5) adoption:
    -
  - (6) assisted reproduction:
    -
  - (7) surrogacy:
    -
  - (8) other(s):
    -
- c. other financial matters, *e.g.*,
  - (1) pensions, including social security benefits:
    -
  - (2) other(s):
    -

## 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?  
If foreign law is applicable to a given aspect (e.g. duty of care, maintenance, etc.) and provides for specific effects of cohabitation, those effects are recognised. The public policy exception pursuant to Art. 6 EGBGB applies, in particular if non-married couples are privileged over married couples.
- 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.

There is not specific jurisdiction rule for unmarried cohabitation.

#### 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 is not specific conflict of law rule for unmarried 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;  
In 2013, 45 % of same sex couples lived in a registered partnership (35 000 couples). Number is rising, since 2006 the numbers almost trippled (2006: 12 000 couples).
- b. the (estimated) number of couples who are cohabiting without being married in your State and any trend in this regard:  
2016: 825000 (10,2 %). Number is rising.
- c. the (estimated) birth / adoption / surrogacy rates for registered partners and unmarried cohabitees in your State and any trends in this regard:  
Families with minor children 8.1 million  
Married couples 69.3%  
Lone parents 20.3%  
Cohabiting couples 10.3%
- d. the (estimated) number of registered partnerships that have been annulled or dissolved in your State:  
-
- 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:  
-