

Council on General Affairs and Policy of the Conference – March 2017

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Title	Private international law issues relating to cohabitation outside marriage (including registered partnerships) - Summary and brief analysis of the responses to the Questionnaire	
Author	Permanent Bureau	
Agenda item	Item III-3	
Mandate(s)	C&R No 10 of the 2015 Council on General Affairs and Policy; C&R No 22 of the 2016 Council on General Affairs and Policy.	
Objective	To provide Council with an analysis of the responses received by the Permanent Bureau to the Questionnaire. To invite Council to consider possible next steps in relation to registered partnerships and / or unmarried cohabitation.	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
Annexes		
Related documents	To be confirmed	

A. Introduction

1. In March 2015, the Council on General Affairs and Policy (the Council) invited the Permanent Bureau to prepare a Questionnaire to seek further information on private international law issues relating to cohabitation outside marriage, including registered partnerships and to report to the Council in 2017.¹ This document provides a brief summary of the responses received to the Questionnaire.²

PART A – Registered partnerships

1. Findings from the Questionnaire

2. This Section briefly elaborates on the findings obtained from the responses received to Part A of the Questionnaire (Questions No 1 to 13).

3. 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). Individuals living in a registered partnership are referred to as “registered partners”.

4. Of the 40 jurisdictions that responded to the Questionnaire, 16 provide for the possibility to register partnerships in their internal law,³ and 24 either do not provide or no longer provide⁴ for that possibility.⁵ Of those that do provide for the possibility to register a partnership, one provides this possibility only for opposite-sex couples,⁶ five only for same-sex couples⁷ and 11 for both opposite and same-sex couples.⁸

5. In those jurisdictions allowing for the possibility to register a partnership, the substantial requirements are similar overall. For instance, in most jurisdictions it is required that the registered partners have attained 18 years of age⁹ and that neither of the partners is married or united in a partnership with a third person.¹⁰ Scarce differences between the jurisdictions could nonetheless be observed, with respect to the accepted degree of blood-relationship between the partners.

6. In relation to the effects of the registered partnership on the relationship between the registered partners, the responses indicate a certain trend towards a harmonisation with the effects governing the relationship between spouses. Many of those jurisdictions allowing for the possibility to register a partnership indicated that registered partners are granted rights akin to those of spouses (whether such rights and obligations arise from provisions specific to registered partnerships or from the application by analogy of the rules applicable to marriage).¹¹

¹ See “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (24-26 March 2015)”, C&R No 10. At the 2016 Council meeting, the Permanent Bureau provided an oral update, see “Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (15-17 March 2016)”, C&R 22. Both these documents are available on the Hague Conference website at < www.hcch.net > under “Governance” then “Council on General Affairs and Policy”.

² The Questionnaire as well as other documents relevant to this project are available on the Hague Conference website at < www.hcch.net > under “Projects”, “Legislative Projects” then “Cohabitation”.

³ See the responses from Austria, Belgium, Brazil, Canada (Manitoba, Nova Scotia and Québec), Cyprus, Czech Republic, Finland, Germany, Mexico, Netherlands, New Zealand, Paraguay, Switzerland and Uruguay.

⁴ From those States that do not provide for the possibility to register partnerships, three States (Denmark, Ireland, Norway) had provided the possibility to register a partnerships (between same-sex partners only) but this option was repealed when the internal law was changed to provide for the possibility of same-sex partners to enter into marriage in the same way as applies for opposite-sex couples.

⁵ See the responses from Bulgaria, Burkina Faso, Canada (Alberta, British Columbia, New Brunswick, Nunavut, Prince Edward Island and Saskatchewan), China (Hong Kong SAR, Macao SAR, Mainland), Denmark, Ireland, Japan, Republic of Korea, Latvia, Lithuania, Norway, Philippines, Romania, Russian Federation, Slovakia, Turkey, Vietnam.

⁶ See the response from Paraguay.

⁷ See the responses from Austria, Czech Republic, Germany, Ireland, Switzerland.

⁸ See the responses from Belgium, Cyprus, Mexico, the Netherlands, and New Zealand.

⁹ See, *e.g.*, the responses from Austria, Belgium, Brazil, Canada (Manitoba), the Czech Republic and Germany to Question 3.a.(3).

¹⁰ See, *e.g.*, the responses from Austria, Brazil, Cyprus, Ireland, New Zealand and Switzerland to Question 3.a.(1).

¹¹ See, *e.g.*, the responses from Austria, Canada (Nova Scotia and Quebec), Cyprus, Finland, Germany, Ireland, Netherlands, Norway, Paraguay, Switzerland and Uruguay. In contrast, some jurisdictions have decided to limit the scope of personal rights of the registered partners to almost only property rights; see, *e.g.*, the

7. As regards in particular the effects of the registered partnership on the relationship between the registered partners and the children of (one of) the registered partners, it is evident from a vast majority of the responses that these effects are overall not dependent on the civil status of the parents. Whether the parents would be registered partners or, *e.g.*, married should not in essence impact these effects. It can be noted however that assisted reproduction and joint adoption may not be opened to registered partners, in particular in jurisdictions allowing only for same-sex registered partnerships.¹²

8. It can also be seen from the responses to the Questionnaire that registered partners cannot assume that the partnership they have registered in one jurisdiction would be automatically recognised in another jurisdiction. From the 40 jurisdictions that responded to this Questionnaire, 23 would recognise a partnership that was registered abroad.¹³ Of those jurisdictions, 18 provide or used to provide for the possibility to register a partnership under their internal law.

9. The vast majority of these jurisdictions do, however, impose certain conditions on the recognition of a partnership registered abroad. In order to be recognised in most of those jurisdictions, a partnership must be valid according to the law of the State where the registration took place (*lex loci registrationis*)¹⁴ and should not be manifestly contrary to public policy.¹⁵

10. Similarly, jurisdictions the law of which does not provide for the possibility to register a partnership may nonetheless give effect to some of the effects arising from a partnership registered in a foreign jurisdiction. The question of whether the effects of a registered partnership are “recognised” in a jurisdiction other than the one where the partnership was registered is closely linked to the question of which law governs these effects in the jurisdiction where recognition of the registered partnership is sought.

11. From the responses, it does not seem possible to identify any trend with respect to the conflict of law rules that determine the law applicable to the effects. While some jurisdictions would apply the law of the State where the partnership was registered (*lex loci registrationis*) to determine, *e.g.*, the personal obligations and duties of the registered partners,¹⁶ in other jurisdictions such effects would primarily be governed by the law of the State where the partners are habitually resident.¹⁷ Alternatively, some jurisdictions, while recognising the validity of a partnership registered abroad, will apply their domestic law to the effects (*lex fori* approach).¹⁸ A few jurisdictions have also allowed some deference to party autonomy by granting registered partners the possibility to choose the law applicable to some of the effects of their partnership, in particular with respect to their property regime.¹⁹

12. It stands out from the responses that those jurisdictions that provide for specific conflict of law rules mostly only do so as regards the formation and dissolution of the registered

responses from Canada (Manitoba) and Denmark to Question 4.a.(1)(a) where the law does not impose any personal duties and obligations on the partners.

¹² In relation to assisted reproduction, see, *e.g.*, the responses from Finland and Switzerland to Question 4.a.(1)(f). In relation to joint adoption, see, *e.g.*, the responses from the Czech Republic, Germany, Ireland and Switzerland to Question 4.a.(1)(d). In Germany however, the adoption of the child of a registered partner by the other, as well as the successive adoption of the child by each of the registered partners are allowed. It is also noteworthy to mention that Ireland and Switzerland consider changes in their legislation with a view to provide the possibility for same-sex registered partners to jointly adopt.

¹³ See the responses from Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada (Manitoba, New Brunswick and Quebec), China (Macao SAR), Cyprus, Czech Republic, Denmark, Finland, Germany, Ireland, Lithuania, Mexico, Netherlands, New Zealand, Norway, Paraguay, Switzerland and Uruguay to Question 7.a.

¹⁴ See the responses from Austria, Brazil, Burkina Faso, China (Macao SAR), Cyprus, Czech Republic, Germany, Finland, Ireland, Netherlands, New Zealand, Norway, Switzerland and Uruguay to Question 7.c.(1).

¹⁵ See the responses from Austria, Brazil, Canada (Manitoba and Québec), China (Macao SAR), Czech Republic, Finland, Germany, Ireland, Mexico, Netherlands, Norway, Paraguay and Switzerland to Question 7.c.(10). Very few responses elaborated on the circumstances under which the recognition of a registered partnership would be manifestly contrary to public policy; interestingly, one response mentioned that the recognition of an opposite-sex registered partnership could be regarded as “manifestly contrary to public policy” whereby domestic law allows only for the possibility to register a same-sex partnership (see the response of Austria to Question 7.a.).

¹⁶ See, *e.g.*, the responses from Belgium, Brazil, Canada (Québec) and Uruguay.

¹⁷ See, *e.g.*, the responses from Austria, Cyprus, Finland and Switzerland.

¹⁸ See, *e.g.*, the responses from Cyprus and New Zealand.

¹⁹ See, *e.g.*, the responses from Austria, Belgium, Bulgaria and the Netherlands to Question 7.b.(1)(c).

partnership, the general effects of the relationship between the registered partners and the effects governing their property.²⁰ In contrast, the effects of the registered partnership on the relationship between the registered partners and their children are overall addressed under the relevant conflict of law rules for these effects, notwithstanding the civil status of the parents.²¹

13. As an overall assessment, it can be concluded that the effects arising from a partnership registered abroad are more likely to be granted in a jurisdiction the law of which provides for effects that are, in essence, similar. Adversely, some jurisdictions would not grant effects arising from an abroad registered partnership where these effects would exceed those arising from a partnership registered under their domestic law.²²

14. It can be noted that references were made to various international and regional instruments to determine the law applicable, *i.e.*, 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* (the 1996 Child Protection Convention), the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (the 2007 Child Support Convention) and the *Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (the 2007 Maintenance Obligations Protocol), the 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 Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.²³

15. As regards the termination of registered partnerships, it can be seen that the procedure for annulment or dissolution of the partnership vary among jurisdictions. In some jurisdictions, the partnership will usually be dissolved upon registration with a public authority²⁴ whereas in others the partnership can only be dissolved judicially.²⁵ In contrast, some jurisdictions have opted for a “mixed” approach and alternatively provide for an administrative or a judicial dissolution of the partnership, depending on the circumstances.²⁶ Regarding the issue of recognition, it stands out from the responses that most jurisdictions would recognise the dissolution of a partnership that was registered and dissolved in a foreign jurisdiction, provided that such recognition is not manifestly contrary to public policy.²⁷ In some jurisdictions, such recognition could be refused if neither party was habitually resident in nor citizen of the jurisdiction where the partnership was dissolved (or annulled) at the time of application.²⁸

2. Discussion on next steps

16. From the responses received to the Questionnaire, it can be concluded that a large number of jurisdictions would not recognise a partnership that has been registered abroad, and that those jurisdictions that would recognise such partnership may not recognise certain forms of partnership and impose certain additional conditions for that partnership to be recognised domestically. Of particular note is the fact that if a jurisdiction provides for the possibility to register a partnership in its internal law, it cannot be assumed that it would also automatically recognise partnerships that have been registered abroad. Each jurisdiction imposes certain conditions which are different among them, albeit similar to some extent.

²⁰ See, *e.g.*, the responses from Austria, Belgium and the Czech Republic to Question 11.a.

²¹ See, *e.g.*, the responses from Austria and Canada (Manitoba).

²² See the responses from Brazil, Cyprus, Germany, Netherlands and Switzerland to Question 7.c.(9).

²³ It should be noted that the Questionnaire was circulated on 16 June 2016, prior to the adoption of EU Regulation No 2016/1104 of 24 June 2016. The Regulation will be applicable, except for a few provisions, as of 29 January 2019.

²⁴ See, *e.g.*, the response from Belgium, Canada (Nova Scotia) and Mexico to Question 5.a.

²⁵ See, *e.g.*, the responses from Austria, Czech Republic and Finland to Question 5.a.

²⁶ *E.g.*, in the response from Brazil to Question 5.a., it is noted that the partnership can be dissolved by way of registration with a notary provided that there are no children from the union. Where children are involved in the proceedings, a judicial dissolution will be required.

²⁷ See, *e.g.*, the responses from Canada (New Brunswick and Québec), Finland and the Netherlands to Question 8.

²⁸ See, *e.g.*, the responses from Denmark, Finland and Switzerland to Question 8.

17. With respect to the recognition of the effects, it is clear from the responses that there exist quite diverse approaches among jurisdictions in determining the law applicable to the effects of registered partnerships. The rights and obligations accrued under the law of the State where the partnership was registered may in turn (depending on the law applicable to the rights and obligations at issue) not be recognised in another jurisdiction, thus creating legal uncertainty for registered partners when they move across borders.

18. Against this background, it would be advisable to discuss solutions to facilitate the recognition of the validity and effects of registered partnerships to provide more legal certainty to individuals.

19. However, whether the HCCH should engage into further work on this issue should be first discussed in terms of desirability. When asked on legal / practical problems that might have arisen in the context of registered partnerships where there are international elements involved, very few respondents indicated that they were aware of any such problems.²⁹

20. Subject to the views of the Council and available resources, further work could seek to create greater legal predictability in providing adequate information (e.g., in the form of Country Profiles) about the legal situation applicable in different jurisdictions to all those involved, including Governments, private practitioners and, in particular, individuals. For this purpose, the HCCH would draw mainly on the information collected from the responses to the Questionnaire while encouraging those Members that have not yet provided a response to do so. Members that have already responded to the Questionnaire would be invited to keep the Permanent Bureau informed of new developments.

21. From the limited number of responses received, it does not seem that there is at the moment enough support among the Members to initiate any work on the development of new private international law rules.³⁰ At this stage, the Permanent Bureau would continue monitoring developments in the area of registered partnerships and would invite the Council to revisit the possibility that further work be undertaken once there is adequate support and interest for the topic among the Members. Such work could seek to create an international situation where persons, despite the differences among the legal systems, could enjoy a higher degree of legal security as a result of an internationally-agreed approach to the recognition of registered partnerships. From that perspective, and keeping in mind the regional and international instruments that already exist, the development of private international law rules may help to achieve more legal certainty for registered partners establishing habitual residence in a new jurisdiction, whether in the form of a new international instrument seeking to facilitate the recognition of registered partnerships in cross-border situations and / or in the form of specific conflict of law rules on selected effects of the registered partnerships.

PART B – Unmarried cohabitation

1. Findings from the Questionnaire

22. This Section briefly elaborates on the findings obtained from the responses received to Part B of the Questionnaire (Questions No 14 to 20).

23. 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. Individuals living in unmarried cohabitation are referred to as “unmarried cohabitants”.³¹

²⁹ See the responses to Question 13. E.g., in the response from New Zealand, it is noted that partners living in a State where their civil union would not be recognised may not be able to dissolve it neither in that State nor in New Zealand (it is required that at least one of the partners is domiciled in New Zealand in order to apply for dissolution).

³⁰ Out of the 40 jurisdictions that responded to the Questionnaire, only 16 (i.e., 14 States) provide in their law for the possibility to register partnerships.

³¹ Since in most legal systems this term is not defined, this is simply a working definition. For an explanation of the terminology, see “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 of April 2008 on General Affairs and Policy of the Conference, paras 10 *et seq.*, available on the Hague Conference website at < www.hcch.net > under “Projects” then “Legislative Projects” and “Cohabitation outside marriage”.

24. From a total of 40 jurisdictions that responded to the Questionnaire, 10 jurisdictions reported that they have established a specific legal regime for cohabitation in their internal law,³² although some of those responses did not provide much detail. The majority of 30 jurisdictions do not provide for a specific legal regime for cohabitation.³³ However, among those jurisdictions, 23 jurisdictions attach certain legal effects to (aspects of) cohabitation.³⁴ Seven jurisdictions noted that their internal law would not attribute any legal effects to (aspects of) cohabitation.³⁵

25. From the responses to the Questionnaire, it may first be noted that unmarried cohabitants that benefit from a *specific legal regime* for unmarried cohabitation cannot assume that the validity and the legal effects of that regime would be recognised in another (foreign) jurisdiction where they may plan to establish their habitual residence. Of the total of 40 jurisdictions that responded to the Questionnaire, only 12 stated that the validity of a legal regime for unmarried cohabitation of another (foreign) jurisdiction would be recognised in their jurisdiction;³⁶ 23 noted that they would not recognise the validity of the legal regime.³⁷

26. The situation may be more beneficial in relation to the recognition of *specific legal effects* of the unmarried cohabitation, since many jurisdictions noted that they would recognise specific legal effects of an unmarried cohabitation under certain circumstances.³⁸

27. However, to determine which legal effects would be recognised and which would not, it seems that most jurisdictions would apply their own laws, including general conflict of law rules. Most jurisdictions reported that they have neither stipulated specific conflict of law rules nor specific rules on jurisdiction in relation to unmarried cohabitation.

28. Therefore, the question which legal effects would be recognised and which would not, depends on applicable laws of the “new” jurisdiction (*i.e.*, the jurisdiction where the unmarried cohabitants are now present), including the conflict of law rules, and public policy considerations. An important aspect to consider in relation to the issue of whether certain legal effects would be recognised is whether the “new” jurisdiction attaches certain legal effects to cohabitation outside marriage, and if so, whether these legal effects are similar to those attached under the law of the former jurisdiction.³⁹ It is possible that the legal effects of unmarried cohabitation that arise under the law of one jurisdiction are more likely to be recognised in another (foreign) jurisdiction, if the law of that other (foreign) jurisdiction generate similar legal effects.

29. Overall, concerning the legal effects that an unmarried cohabitation has under the internal law of a given jurisdiction, in particular in relation to the rights which are granted to and the obligations imposed on the cohabitants, it seems that there is no harmonised approach. In some jurisdictions, under certain circumstances, unmarried cohabitants are entitled to the same, or

³² See the responses from Brazil, Canada (Alberta, Manitoba, Nunavut, Prince Edward Island and Saskatchewan), China (Mainland and Macao SAR), Paraguay and Vietnam to Question 14.a.

³³ See the responses from Austria, Belgium, Bulgaria, Burkina Faso, Canada (British Columbia, New Brunswick, Nova Scotia, Québec and Saskatchewan), China (Hong Kong SAR), Czech Republic, Denmark, Finland, Germany, Ireland, Japan, Republic of Korea, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Norway, Romania, Russian Federation, Slovakia, Switzerland, Turkey and Uruguay. (Canada – Province of Saskatchewan responded “yes” and “no” and is therefore counted twice.)

³⁴ See the responses from Austria, Belgium, Bulgaria, Canada (British Columbia, New Brunswick, Nova Scotia, Québec and Saskatchewan), China (Hong Kong SAR), Czech Republic, Denmark, Finland, Ireland, Japan, Latvia, Lithuania, Netherlands, New Zealand, Norway, Romania, Slovakia, Switzerland and Uruguay.

³⁵ See the responses from Belgium, Burkina Faso, Germany, Republic of Korea, Mexico, the Russian Federation and Turkey.

³⁶ See the responses from Austria, Belgium, Brazil, Burkina Faso, Canada (Manitoba, Nunavut and Québec), China (Macao SAR), the Czech Republic, Romania, Uruguay and Vietnam.

³⁷ See the responses from Belgium, Bulgaria, Canada (Prince Edward Island and Saskatchewan), China (Mainland and Hong Kong SAR), Denmark, Finland, Germany, Ireland, Republic of Korea, Latvia, Lithuania, Mexico, the Netherlands, New Zealand, Norway, Paraguay, Philippines, Russian Federation, Slovakia, Turkey and Switzerland. (Belgium responded “yes” and “no” and is therefore counted twice.)

³⁸ See the responses from Austria, Belgium, Brazil, Burkina Faso, Canada (Manitoba, Nunavut, Québec and Saskatchewan), China (Macao SAR), Czech Republic, Germany, Lithuania, Mexico, the Netherlands, Norway, Romania, Russian Federation, Switzerland, Uruguay and Vietnam to Question 16.b.

³⁹ *E.g.*, in the response from Germany, it is noted that the foreign law designated by a conflict-of-law rule applicable to the effects at issue may be set aside on the grounds of public policy if, as a result of its application, the registered partners would be “privileged over married couples”.

almost the same, legal rights and obligations as married persons.⁴⁰ More often, however, it seems that cohabitantes are treated as spouses in some areas and as single in others, thus, certain laws and procedures contain specific provisions by which legal effects are attached to unmarried cohabitation.⁴¹

30. However, regardless of the approach taken, it seems that many jurisdictions provide for the protection of the financially weaker cohabitee, for example, in terms of the provision of maintenance during or upon termination of the cohabitation.⁴²

31. Furthermore, many jurisdictions seek to protect children of unmarried cohabitantes and to avoid undue discrimination between children from married and unmarried parents. Thus, questions in relation to parental status, parental responsibility, child maintenance and rights of inheritance are usually not determined by the cohabitation status but are rather dependent on the question whether or not both cohabitantes have established parentage of the child.⁴³

32. The situation is more diverse in relation to property rights and inheritance rights among cohabitantes. A cohabitee that, under the law of a certain jurisdiction, has the right to receive a share of the other cohabitee's property after separation or to inherit part of the other cohabitee's property after his / her death, cannot assume that these rights would *per se* be granted under the law of another (foreign) jurisdiction. Similar issues may occur in relation to pension rights or other financial matters.

33. To avoid the legal uncertainty that results from this diversity, cohabitantes would be advised to conclude an agreement that regulates the financial aspects upon separation or to make a will. Such agreement should be legally binding (and if necessary enforceable) in the jurisdiction where it was concluded, but also in the "new" jurisdiction.

34. Overall, the assessment of whether certain legal effects of an unmarried cohabitation would be recognised in another (foreign) jurisdiction, would, in the absence of a coherent international legal framework, be made on a case-by-case basis and depend on applicable laws of the jurisdiction where recognition is sought and / or where the cohabitantes have established their habitual residence. This situation certainly causes legal uncertainty for unmarried cohabitantes who may plan to establish habitual residence in another (foreign) jurisdiction.

35. In relation to the recognition of certain rights and obligations with respect to children, mention should also be made of the 1996 Child Protection Convention, the 2007 Child Support Convention, and the 2007 Maintenance Obligations.⁴⁴

2. Discussion on next steps

36. In relation to cohabitation outside marriage, it is important to note that, although some jurisdictions provide a specific legal regime for unmarried cohabitation, the legal effects of unmarried cohabitation and, in particular, the rights and obligations arising out of unmarried cohabitation differ among jurisdictions. Although it seems that many jurisdictions have adopted specific provisions that seek to protect the financially weaker cohabitee (*e.g.*, in case of separation or death of the other cohabitee) and to protect children of unmarried cohabitantes, more research may be necessary to compare the rights and obligations arising out of unmarried cohabitation and the conditions under which they are granted.

37. In relation to the recognition of a special legal regime for, or of certain legal effects of, unmarried cohabitation, it may be concluded that many jurisdictions apply general rules, including the conflict of law rules. An important aspect to consider in relation to the issue of whether certain legal effects would be recognised is whether the "new" jurisdiction attaches certain legal effects to cohabitation outside marriage, and if so, whether these effects are similar

⁴⁰ See the response from Canada (Nunavut) stating that the Nunavut Family Law Act (s. 2) includes in its definition of spouse" the following: "a person who has lived together in a conjugal relationship outside marriage with another person, if (i) they have so lived for a period of at least two years, or (ii) the relationship is one of some permanence and they are together the natural or adoptive parents of a child. These spouses are entitled to the same legal rights as married persons". See also the responses, *e.g.*, from Brazil and Japan.

⁴¹ See, *e.g.*, the responses from Norway and Switzerland.

⁴² See, *e.g.*, the response from Paraguay to Question 15.a.(2).

⁴³ See, *e.g.*, the response from Japan to Question 14.b.

⁴⁴ See the response from the Netherlands.

to those attached under the law of the jurisdiction of origin. It is also important to note that the recognition of certain legal effects of unmarried cohabitation would need to pass the public policy test. The consequence is that, for unmarried cohabitants who seek to establish their habitual residence in another (foreign) jurisdiction, the application of the law of that jurisdiction may lead to a change in the legal effects that are attached to their cohabitation.

38. Against this background, it would be advisable to discuss next steps to facilitate the recognition of legal effects of unmarried cohabitation and increase legal certainty for unmarried cohabitants.

39. However, whether the Hague Conference on Private International Law (HCCH) ought to undertake further work would first need to be discussed in terms of desirability. In this context, it should be noted that, when asked whether any legal and / or practical problems have arisen in the context of unmarried cohabitation where there are international elements involved, most jurisdictions that responded to the Questionnaire answered that they were not aware of any such problems.

40. Provided that the Members of the HCCH consider further work on the matter of cohabitation outside marriage to be desirable, one solution could be to raise awareness of the issues among and / or provide relevant information to unmarried cohabitants who plan to move across borders and seek to establish habitual residence elsewhere. Subject to available resources, the HCCH could provide, for example, jurisdiction-specific information on legal issues (*e.g.*, in the form of Country Profiles). Members that have not yet provided a response would be encouraged to do so. Members that have already responded to the Questionnaire would be invited to keep the Permanent Bureau informed of new developments.

41. The development of a private international law instrument that provides for the recognition of the legal effects of unmarried cohabitation under certain circumstances, may certainly provide for more legal certainty. However, in view of the diversity of legal approaches, the question of feasibility of developing such an instrument would need to be discussed. An interim step to achieve a more harmonised approach among jurisdictions and more legal certainty for unmarried cohabitants might be the development of specific conflict of law rules that apply to unmarried cohabitation. Specific conflict of law rules, in particular with respect to property rights and inheritance rights of the cohabitants, may provide clarity in situation where recognition of legal effects of unmarried cohabitation is sought and, thus, legal certainty for unmarried cohabitants. In light of the responses received, the Permanent Bureau would however recommend that the above suggestions be revisited by the Council once there is adequate support and interest for the topic among the Members.