BELGIUM

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A. New Developments in the field of Divorce (since September 2002)

Introduction

The Divorce Reform Act of 27 April 2007 has fundamentally revisited divorce law in Belgium. During Parliamentary debate, the Principles of the CEFL were explicitly referred to.[1] Further minor reforms of divorce law have been implemented in 2013, 2014 and 2018. The main sources of current divorce law remain the old[2] Belgian Civil Code (art. 229-233) and Judicial Code (art. 1254-1304).

General principles

As to the general principles, the legislature's objective in 2007 was to introduce a right to divorce,[3] with no requirement as to the duration of the marriage.

Divorce can only be granted by a judicial authority – even if this is done according to a written procedure in case of divorce by mutual consent. In 2013, a specific section of the court of first instance was created: the family and juvenile court; the family court is competent for divorce procedures.[4] The initiation of divorce proceedings on the basis of a petition signed by an attorney (or notary public in case of divorce by mutual consent) has been mainstreamed to the detriment of initiation by summons (art. 1254 and 1288*bis* Judiciary Code). Spouses are softly incentivized towards mediation after the divorce application: they receive a brochure, and the court will try to direct the case towards a chamber for amicable settlement (art. 1253*ter* Judiciary Code).

There are two types of divorce: by mutual consent on the one hand and without consent of one of the spouses on the other.

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1 https://www.lachambre.be/FLWB/pdf/51/2341/51K2341007.pdf (French)

2 A reform of the Civil Code has been launched, and two of its new Books have already been introduced. Unfortunately, the legislature did not use the wording "new Civil Code" for the new Books but renamed the current provisions as "old Civil Code" until they will be replaced by the new Books. This is not foreseen for the near future for Book 2. Persons, Family and Relationship Property Law.

3 Hereto F. Swennen, 'Doelstellingen van de hervorming: de echtscheiding op grond van onherstelbare ontwrichting van het huwelijk', in P. Senaeve, F. Swennen and G. Verschelden (eds.), *De hervorming van het echtscheidingsrecht*, Antwerpen, Intersentia, 2008, 1-40.

4 Act of 30 July 2013 on the establishment of a family and juvenile court.

Divorce by mutual consent

Divorce by consent remains an autonomous ground for divorce on joint application, called 'divorce by mutual consent', on the condition that the spouses reach an exhaustive preliminary agreement on the divorce itself and on all consequences of the divorce both between themselves and regarding their joint children (art. 233 old Civil Code; art. 1287 et seq. Judiciary Code). The scope of the 2007 reform is rather limited regarding divorce by mutual consent; both substantive and formal divorce law have only been slightly modified.

Under substantive law, the conditions for divorce by mutual consent have been relaxed altogether. The marriage should no longer have lasted for at least two years and a minimum age of the spouses no longer applies. A reflection period is no longer required in any case – in a first movement it was only abolished in case of a *de facto* separation of six months.

The divorce procedure, too, has been fundamentally relaxed. Except in case the family court decides otherwise (e.g. with a view of hearing the children), the divorce procedure is conducted entirely in writing (art. 1289 Judiciary Code). As a consequence, scrutiny of the agreements in the light of the best interests of the children or the interests of the economically weaker spouse has become theoretical.

The procedure cannot be converted to another ground for divorce; but the agreement regarding the spouses and their joint children will be binding until the court has decided otherwise (art. 1294*bis* Judiciary Code).

Divorce by consent is also possible on the ground of irretrievable breakdown of the marriage, which was introduced in 2007. In this scenario hypothesis, the spouses either jointly apply for divorce, or the application by one spouse is accepted by the other.

Additional conditions apply, and suffice, for the divorce to be granted by the family court: either a *de facto* separation of six months or a reflection period of three months need to be fulfilled (art. 229 para. 2 old Civil Code; art. 1255 Judiciary Code). The courts do not yet accept granting divorce upon the mere confession in court by both spouses that the marriage has irretrievably broken down.

The spouses should not have reached any agreement for the divorce to be granted, in case the aforementioned conditions are met; the court can however always approve partial agreements regarding the consequences of the divorce for the spouses or their joint children. The latter agreements are scrutinized in the light of the best interests of the children (art. 1256 Judiciary Code).

Divorce without the consent of one of the spouses

Since 2007, divorce on the ground of the irretrievable breakdown of the marriage can be granted on three sub-grounds. The fault grounds for divorce have been abolished.

- Divorce can be granted immediately if the court accepts the irretrievable breakdown on basis of evidence. The marriage has broken down 'in case the continuation of the cohabitation of the spouses and its resumption has become reasonably impossible due to this breakdown'. Evidence may be adduced by any legal means (art. 229 para 1 old Civil Code). It may, but must not necessarily be, based on the fault of one of the spouses – including the applicant him- or herself. Divorce is never granted on the base of fault, but on the ground of the irretrievable breakdown. The intention of this sub-ground was to allow the court to grant divorce in case of exceptional hardship for the applicant, whom could not reasonably be expected to fulfil a *de facto* separation or reflection period. However, this sub-ground has been applied increasingly benevolently over the years.
- The marriage has irretrievably broken down after a *de facto* separation of one year (reduced to six months in case of divorce by consent – see above; art. 229 para 3 old Civil Code and art. 1255 Judiciary Code). The family court cannot refuse to grant divorce in this case, not even because of exceptional hardship for the respondent.
- The marriage has irretrievably broken down after a reflection period of one year succeeding the application (reduced to three months in case of divorce by consent – see above; art. 229 para 3 old Civil Code and art. 1255 Judiciary Code). The family court cannot refuse to grant divorce in this case, not even because of exceptional hardship for the respondent.

The court can always approve partial agreements regarding the consequences of the divorce for the spouses or their joint children; the latter agreements are scrutinized in the light of the best interests of the children (art. 1256 Judiciary Code).

B. New Developments in the field of Maintenance between former spouses (since September 2002)

Introduction

The Divorce Reform Act of 27 April 2007 has also revisited the law on maintenance between former spouses. The no-fault principle, the principle of self-sufficiency and contractual freedom have been reinforced. There is still no connection with the other post-marital financial consequences, such as the distribution of property and of (semi-

)public pension rights – except that income from property and pension rights is a relevant parameter when determining the entitlement to and amount of maintenance.

General principles

The main sources remain the old Belgian Civil Code (art. 301 – divorce on the ground of the irretrievable breakdown of the marriage) and Judicial Code (art. 1288 – divorce by mutual consent). Hence, maintenance between former spouses is not always subject to the same rules but depends on the type of divorce.

In case of divorce by mutual consent, maintenance remains entirely dependent on the agreement between the spouses on whether, to which extent, and under which conditions maintenance is due – see hereinafter under maintenance agreements.

Conditions for the attribution of maintenance after divorce on the ground of the irretrievable breakdown of the marriage

Theoretical entitlement to maintenance is granted to the spouse in need – that is the economically weakest spouse, in terms of compared (ability to receive) income (art. 301 para. 2 old Civil Code).

The theoretical entitlement however does not encompass effective entitlement,[5] which is dependent on the creditor having insufficient own resources to meet his/her own needs. The needs are determined on both alimentary (minimum) and compensatory (maximum) grounds (art. 301 para 3 old Civil Code).

Under the alimentary function, the maintenance should allow the creditor to cover his/her needs, determined in function of the normal living conditions of his/her (pre-marital) social situation.[6]

The compensatory function allows to family court to grant (partial) compensation of the significant regression in the economic situation of the creditor. In order to value this regression, the family court takes into account in particular (i.e. among other parameters) the duration of the marriage, the age of the former spouses, the division of duties during the marriage and the care of children during the cohabitation or afterwards. *On the one hand*, the family court considers the significant degression in the economic situation due to the marriage. The court will compare the situation of the creditor after the divorce with the hypothesis in which there had been no marriage. Based on that – admittedly: theoretical – comparison, it is then possible to compensate

5 Court of Cassation 6 February 2014, *T.Fam.* 2014, 97.

6 Court of Cassation 12 October 2009, *T.Fam.* 2010, 71; Court of Cassation 8 June 2012, *T.Fam.* 2013, 104.

the creditor for the loss of income suffered because of the choices made by the spouses during their life together or resulting from events that occurred during the marriage. The loss must therefore have arisen *during* – and not necessarily *because of* – the marriage. For example, for a former spouse with nurse's training who took care of the household and did not work on the labour market (full time), it is considered what a full-time nurse with the same seniority would earn. Of course, this is a theoretical comparison since the family court cannot possibly know what the creditor's income position would have been without marriage. On the other hand, the court can exceptionally consider the significant economic decline *due to the divorce*. That is, it compares the situation of the creditor after the divorce with the hypothesis in which there would have been no divorce. This allows the court to compensate the regression in relation to the standard of living during the marital cohabitation.[7] By taking into account the significant regression due to the divorce, the nurse in our example can be granted a higher maintenance than the income of a nurse. However, there must be exceptional reasons to compensate this regression. That is, maintenance after divorce is no longer mainly, but only incidentally, determined in function of the standard of living during the marital cohabitation.[8] Nor does it aim to guarantee the same standard of living.[9] Exceptional reasons are, for example, the very long duration of the marriage or the advanced age of the creditor.[10] In case law, the health situation of the parties has also been taken into account.[11]

The Civil Code does not indicate what can be considered a significant regression. Moreover, the creditor does not have an unconditional right to full compensation. The court may assess whether and, if so, to what extent it compensates the regression.

Three exceptions apply to theoretical or effective entitlement to maintenance. These exceptions clearly contain an aftertaste of fault-based divorce and their scope is broader than an exceptional hardship clause.

First, the family court *must* refuse to grant maintenance to the perpetrator of physical domestic violence (art. 301 para. 2 old Civil Code). It is not relevant when the violence took place; this may be posterior to the irretrievable breakdown of the marriage and maybe even after the divorce.

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7 Court of Cassation 12 October 2009, *Act.dr.fam.* 2009, 199; Court of Cassation 8 June 2012, *T.Fam.* 2013, 104.

8 Court of Cassation 5 October 2015, *Arr.Cass.* 2015, 2260.

9 Court of Cassation 3 November 2016, *T.Fam.* 2017, 272; Court of Cassation 6 October 2017, *RTDF* 2018, 310.

10 Court of Cassation 6 March 2014, *Act.dr.fam.* 2014, 246.

11 Court of Cassation 12 October 2009, *Act.dr.fam.* 2009, 199.

Second, the family court *may* refuse to grant maintenance to a spouse who has committed a grave fault. The grave fault must have made the continuation (or resumption) of the cohabitation impossible (art. 301 para. 2 old Civil Code). The legislature intended to punish the creditor who caused the irreparable breakdown of the marriage. Unlike in the case of domestic violence, a grave fault posterior to the irretrievable breakdown of the marriage does not qualify. According to the applicable provision, only a full exclusion of maintenance is possible in case of a grave fault.

Third, the family court *may* refuse to grant maintenance, or reduce the amount of it, in case the former spouse's need is the result of a unilateral decision which was not motivated by the needs of the family ('laziness'; art. 301 para. 5 old Civil Code).

Specific issues

Prior to the 2007 reform, maintenance was a lifelong entitlement for the creditor, subject to grounds for termination. It has now been limited in time to an entitlement equal to the duration of the marriage – excluding prior *de facto* cohabitation and including *de facto* separation during marriage. Upon expiration, the entitlement can be extended on exceptional grounds, but limited to its alimentary function (see above; art. 301 para. 4 old Civil Code).

The grounds for termination are:

- remarriage or civil union of the creditor, leading to permanent termination. Termination in case of a civil union is odd, since no maintenance obligations arise from a (former) civil union;
- cohabitation of the creditor with another person as if they were married, in which case the family court *can* end maintenance. The entitlement will revive in case the cohabitation ceases;
- death of the creditor or debtor – in the latter case maintenance can be claimed against his/her estate (art. 310 para. 10 old Civil Code).

A different regulatory framework according to the type of divorce applies to maintenance agreements.

In case of divorce on the ground of the *irretrievable breakdown of the marriage*, the spouses may at any time agree on whether maintenance is due, on its amount and on the arrangements for revising the agreed amount (art. 301 para. 1 old Civil Code). It is disputed whether prenuptial agreements are allowed,[12] as an agreement can only be concluded between 'spouses' (i.e. after concluding marriage). Spouses can agree 'at

[12] Hereto F. Swennen, 'Over alimentatieovereenkomsten en echtscheiding (en ook een beetje over Odysseus)', *TPR* 2008, 1287-1347.

any time', i.e. not only with the prospect of a divorce. However, rights to maintenance (entitlement, cap, etc.) cannot be waived before the dissolution of the marriage. The spouses can oust the court's jurisdiction to review or terminate the maintenance in case of new circumstances (art. 301 para. 7 old Civil Code). Specific provisions regulate the replacement of maintenance by, or its conversion into, a lump sum (art. 301 para. 8 old Civil Code). The court can only scrutinize the validity of maintenance agreements. A settlement should be distinguished from a maintenance agreement: the former is fully binding on the parties and excludes further court intervention, whilst the latter connects modalities to court intervention regarding the maintenance obligation.

After the 2007 reform, maintenance agreements in case of *divorce by mutual consent* have remained fully contractual in nature. Such agreements can be concluded without any legal assistance; only their validity can be scrutinized by court. The legislature confines himself to determining the scope of such agreements: whether maintenance is due, its amount, the formula for the possible adjustment to the cost of living, the circumstances under which it may be revised, or a waiver of maintenance. Except if expressly agreed otherwise, the family court may subsequently increase, reduce or terminate maintenance in the light of new circumstances (art. 1288 Judiciary Code). The other way round, the court can only modify the entitlement to, or duration of, maintenance if expressly agreed by the spouses. A standard formula in many divorce agreements is to altogether oust the court's competence to intervene in case of new circumstances. Only general civil law remedies apply in that case, taking into account the special nature of the maintenance agreement as a family law contract.[13] The agreement must be executed in good faith and without abuse of rights. The Court of Cassation even accepts that the court may abolish the agreed maintenance instead of moderating it below the limit of abuse of rights.[14] The court may however not change the content of the agreement on grounds of equity.[15]

C. New Developments in the field of Parental Responsibilities (since December 2004)

Introduction

Partial reforms concerning parental responsibilities have been carried out by the

- Act of 18 July 2006 privileging an equally divided alternating residence of the child whose parents are separated and regulating the enforcement of the residence of the child;
- Act of 30 July 2013 on the establishment of a family and juvenile court, regarding the right of the child to be heard; and

13 Court of Cassation 9 November 2012, *NFM* 2013, 121.
14 Court of Cassation 14 October 2010, *NFM* 2014, 250.
15 Court of Cassation 20 April 2006, *EJ* 2006, 100.

- Act of 19 March 2017 introducing a status for foster carers, which has been partially annulled by the Constitutional Court.

To prevent child abduction after separation, an Act of 30 July 2018 has introduced a possible travel ban and the possible invalidation, revocation and prohibition to deliver travel or identity documents for minors. This act has not yet entered into force.

Rights of the child

Every child has the right to be heard in matters concerning him/her regarding the exercise of parental responsibilities, residence and the maintenance of personal relationships. Likewise, the child has the right to refuse to be heard (art. 1004/1, para. 1 Judiciary Code).

Children older than twelve years are invited to be heard by the court with an information form in child-friendly language and a reply form. All interested parties can request a child younger than twelve to be heard; the court cannot refuse to hear the child in case the request is made by the child or the public prosecutor (art. 1004/1 paras 2 and 3 and 1004/2 Judiciary Code).

The child speaks to the judge *in private* in court or at another venue the judge deems more appropriate (e.g. the school). It is disputed whether the court registrar can be present. The judge can exceptionally allow the minor to be accompanied by a confidant. The child does not have the right to be assisted by an attorney.[16]

The hearing of the child does not make him a party in the procedure (art. 1004/1 para. 6 Judiciary Code). Under general law of procedure, the child has no possibility to become a party either, because he or she is not intitled to parental responsibility and lacks capacity.[17] As the child is not entitled to parental responsibilities and is not a party in the procedure, his/her interests in theory cannot be considered to be in conflict of those of the holders of parental responsibilities. His/her interests are protected by the court and the public prosecutor.

The judge will draw a report – not minutes – of the interview and this will be added to the case file, so that the parties can consult it (art. 1004/1 para. 5 Judiciary Code). This should guarantee the art. 6 ECHR-rights of the parents, even though it might deter the child from speaking out.

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16 Court of Cassation 10 February 2020, ECLI:BE:CASS:2020:CONC.20200210.3N.9, https://juportal.be/home/accueil.

17 Court of Cassation 10 February 2020, ECLI:BE:CASS:2020:CONC.20200210.3N.9, https://juportal.be/home/accueil; Court of Cassation 25 January 2021, https://juportal.be/home/accueil.

The court shall give due weight to the opinion of the child in accordance with his/her age and maturity. The report may indicate that, according to the judge, the child did not have the necessary discernment to give his/her opinion (art. 1004/1 paras 5 and 6 Judiciary Code).

Parental responsibilities of third persons

Since a reform of 2017, parental responsibilities may in whole or in part be attributed to the foster carer(s).

During the period of placement, the foster carer(s) exercise(s) the right to take decisions in daily matters and to take urgent decisions in important matters. Where applicable, the general rules on the joint exercise of parental responsibilities apply accordingly.

The parent(s) or guardian retain(s) the right to take non-urgent important decisions in important matters, i.e. regarding the child's health, education, training, leisure activities and religious or philosophical choices and the civil status of the child, and to maintain a personal relationship with their children. They also retain the right to administer their child's property.

The parents or guardian and the foster carers may agree in writing to partially or fully delegate the right to take non-urgent decisions in important matters and the right to administer the child's property to the foster parent(s). The agreement is drawn under supervision by the competent body for foster care and is subject to approval by the family court. The homologation may only be refused if the agreement is contrary to the best interests of the child.

The legislature had also provided for the forced partial or full delegation of the abovementioned parental responsibilities by the court once the placement exceeds one year, and absent agreement between the parent(s) or guardian and the foster carer(s). The Constitutional Court however found this provision violated the parents' right to protection of their family life and annulled the relevant provision of the old Civil Code.[18]

Content of parental responsibilities: residence

Joint exercise of parental responsibilities is the rule in case the parents live separated. Several fathers' associations however complained that equality was not the reality in terms of the residence of the child and they convinced the legislature to intervene (art. 374 para. 2 old Civil Code).

[18] Constitutional Court decision n° 26/2019 of 28 February 2049, www.const-court.be.

The premise is that parents should reach an agreement on the residence of the child. The court should approve this agreement, unless it is manifestly contrary to the best interests of the child.

Absent agreement, the family court shall decide on the residence of the child. If requested so by at least one of the parents, it shall examine as a matter of priority whether equally divided alternating residence is the most appropriate solution, taking into account the concrete circumstances of the case and the interest of the children and the parents. Hence, the legislature has not introduced a preference for an equally divided alternating residence of the child in the Civil Code, only the duty for the court to examine the equal division as a first possibility at the request of a or the parents. No empirical data are available on the impact in practice of this measure.

Grandparents' rights to maintain a personal relationship with their grandchildren
Grandparents are entitled to maintain a personal relationship with their children; this entitlement has been included in the Civil Code in 1995. Until 2018, the court had to decide on the exercise of this right in the best interests of the child in the absence of an agreement between the grandparents and the parent(s) or guardian. In 2018, the burden of proof has been reversed: the family court may now only refuse the exercise of the right if such exercise would be contrary to the best interests of the child (art. 375*bis* para 2 old Civil Code as modified by Act of 15 June 2018).

Enforcement
The 2006 reform has enhanced the effective enforcement, against non-compliant parents, of judicial decisions concerning the children's residence or the right to maintain a personal relationship (art. 387*ter* old Civil Code).

Cases concerning enforcement of earlier decisions are treated as a fast-track procedure, with priority over all other cases. The family court can then:

- take new decisions regarding parental responsibilities or the child's residence. The court may e.g. clarify the exact hour or place for the exercise of certain rights. It would be odd, however, to try to 'punish' a non-compliant parent with such a new decision, the child best interests being key;
- authorise the victim of the non-compliance to have recourse to specific coercive measures, particularly *manu militari* enforcement by the judicial officer and the police. The court may authorise a confidant of the child to accompany the judicial officer for the enforcement of his decision;
- impose a periodic penalty payment to ensure compliance with the judgment.

Exceptionally, these measures can be ordered on a unilateral petition.

D. New Developments in the field of Property relations between spouses (since August 2008)

Introduction

The matrimonial property regimes have been reformed to a limited extent by Act of 22 July 2018. The act entered into force on 1 September 2018. The community of acquisitions regime has remained the default regime. During Parliamentary debate, the Principles of the CEFL were explicitly referred to.[19]

Rules applicable to all matrimonial property regimes

The rules concerning the allocation of the family home, household goods and professional assets have been made applicable to all matrimonial property regimes; their scope has been slightly refined (art. 1389/1 and 1389/2 old Civil Code).[20]

The rules on misappropriation of community or joint property have also been slightly revised; the possibility of repentance has been explicitly confirmed (art. 1389/3 old Civil Code).

Marital property agreements

An extensive Parliamentary debate was held on the question whether the optional regime of pure separation of assets, excluding every compensation, should be upheld. In the end, it was upheld, while however nudging the inclusion of correction mechanisms in the marital property agreement.[21]

On the one hand the notary should explicitly inform the parties of the consequences of including or excluding a correction clause. One of the possible clauses is elaborated in the Civil Code itself and is based on the community of accrued gains regime in the Franco-German agreement of 4 February 2010 on an elective 'community of accrued gains' matrimonial property regime[22] (art. 1469 *et seq* old Civil Code).[23]
On the other hand, the spouses should make an explicit choice on the inclusion or exclusion of a judicial fairness correction in case of divorce on the ground of the irretrievable breakdown of the marriage. The notary should inform the spouses on this obligation and is responsible for the inclusion of the explicit choice in the contract (at. 1474/1 para. 2 old Civil Code). In case the spouses opt in, correction will be possible

19 https://www.dekamer.be/FLWB/PDF/54/2848/54K2848007.pdf
20 R. Barbaix, "Het nieuwe huwelijksvermogensrecht", *RW* 2019-20, (723) 737-738.
21 H. Casman, "Nieuw huwelijksvermogensrecht. Een bondige kennismaking", *NJW* 2018, (762) 772-773.
22 https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_NT%282010%29425658
23 H. Casman, "Nieuw huwelijksvermogensrecht. Een bondige kennismaking", *NJW* 2018, (762) 774.

on the ground of exceptional hardship, i.e. 'that, since the conclusion of the marital property regime of separation of property, or since the date of the divorce proceedings, there has been an unforeseen and unfavourable change in the circumstances such that, taking into account the patrimonial situation of both spouses, the chosen regime would lead to manifestly unreasonable consequences to the detriment of the applicant'. The compensation of the manifestly inequitable consequences 'cannot exceed one third of the net value of the accrued gains of the spouses at the time of the dissolution of their marriage, from which shall then be deducted the net value of the applicant spouse's personal gains' (art. 1474/1 para. 1 old Civil Code). As a result, the combined benefit for the applicant (i.e. including his/her personal gains) is capped on maximum one third of the accrued benefits.[24]

A possibility of anticipatory inclusion of assets in the community property has been introduced for future spouses. The rules on the debts at the time of inclusion in, or transfer to, community property of personal property have also been clarified (art. 1452 old Civil Code).[25]

Community of acquisitions

Community property versus personal property

Since the 2018 reform, the division between legal and economic property ('*titre et finance*') applies to both professional equipment, clients and shares in the company under which the profession is practiced: these assets are personal; but their value is community property to the extent they were acquired during marriage with community property (art. 1401 para. 1, 5°-7° and 1405 para. 1, 5°-7° old Civil Code).

Furthermore, it has been clarified that severance packages and compensation for damages relating to domestic or economic incapacity are community property to the extent they relate to a time frame covered by the marital property regime (art. 1405 para 1, 1° and 1401 para. 2, 1° old Civil Code), and are personal property for the remainder (art. 1405 para. 1, 1° and 4° old Civil Code).

The legislature has also determined the qualification of the payment and the surrender value of individual life insurance contracts for which the premiums were paid from the community property (art. 1401 para. 2, 2° and 1405 para. 1, 8° old Civil Code). The

[24] R. Barbaix, "Het nieuwe huwelijksvermogensrecht", *RW* 2019-20, (723) 741-742; H. Casman, "Nieuw huwelijksvermogensrecht. Een bondige kennismaking", *NJW* 2018, (762) 777-776.

[25] R. Barbaix, "Het nieuwe huwelijksvermogensrecht", *RW* 2019-20, (723) 730 and 732-733; H. Casman, "Nieuw huwelijksvermogensrecht. Een bondige kennismaking", *NJW* 2018, (762) 772.

new regime does not apply to collective insurance contracts, which often are a part of a salary package.[26]

Reinvestment

Movables are henceforth qualified as personal property in case more than half of the price was paid with personal property (art. 1404 old Civil Code) – and of course subject to compensation to the community property for the remainder.

Liquidation

The legislature has introduced a compensation mechanism in case one spouse practices his profession under a company which shares are both legally and economically personal property. In case the spouse has kept the net professional income from this company artificially low, the corresponding accrual of capital in the company will only benefit the personal property of the spouse, to the detriment of the community property and, in the end, the other spouse. Hence, a compensation is due to the community property for the net professional income which the community has not received and reasonably could have received if the profession had not been practised within a company (art. 1432 para. 2 old Civil Code).

E. New Developments in the field of De Facto Partnerships (since February 2015)

There are no important new developments to discuss.

[26] H. Casman, "Nieuw huwelijksvermogensrecht. Een bondige kennismaking", *NJW* 2018, (762) 771-772.