

# THE PRINCIPLES OF EUROPEAN FAMILY LAW REGARDING THE PROPERTY, MAINTENANCE AND SUCCESSION RIGHTS OF COUPLES IN *DE FACTO* UNIONS

## PREAMBLE

Recognising that, notwithstanding the existing diversities between national family law systems, there is nevertheless a growing convergence of laws;

Recognising that the free movement of persons within Europe is hindered by the remaining differences;

Having regard to the increasing incidence of living together as a couple without formalising the union;

Noting the general lack of legal certainty;

Desiring to improve the position of those living in *de facto* unions;

Recognising the private autonomy of the partners, in particular their freedom to make agreements;

Recognising the community of interests and the need for protection of the weaker partner, in particular upon the ending of the *de facto* union;

Striking the balance between the private autonomy of those living in *de facto* unions, and their interdependence and community of interests;

Desiring to promote the welfare of the family;

Recognising the equal worth of the contributions of the partners to the welfare of the family;

Making no distinction between different and same-sex unions;

Desiring to contribute to the harmonisation of family law in Europe and to strengthen the rights of its citizens;

The Commission on European Family Law recommends the following Principles:

## CHAPTER I: DEFINITIONS AND SCOPE OF APPLICATION

### Principle 5:1 Definitions

(1) *De facto* unions are those where two persons live together as a couple in an enduring relationship.

(2) A qualified *de facto* union is a union in which partners are in an enduring relationship for at least five years or have a common child.

(3) A partner is a person living in a *de facto* union.

### **Principle 5:2 Scope of application**

(1) The Principles apply to *de facto* unions.

(2) They do not apply to persons who are married to or registered partners of each other.

### **Principle 5:3 Existing formal relationships**

The application of the Principles is not excluded if one or both of the partners are in a marriage or registered partnership with a third person.

## CHAPTER II: GENERAL RIGHTS AND DUTIES

### **Principle 5:4 Equality of the partners**

Both partners have equal rights and duties.

### **Principle 5:5 Contribution to the expenses of the household**

Each partner should contribute to the expenses of the household according to his or her ability.

### **Principle 5:6 Protection of the family home and household goods**

(1) Where the partners to the *de facto* union have been in an enduring relationship for at least five years or have a common child, who is either minor or is dependent upon them:

(a) any act of disposal of rights to the family home or household goods requires the consent of both partners; but

(b) any such act of disposal by one partner without the consent of the other is valid if the latter ratifies it.

(2) If one partner refuses or is unable to give consent, the other may request authorisation by the competent authority.

(3) Any act of disposal in breach of the preceding paragraphs may be annulled by the competent authority upon the application of the non-consenting partner.

### **Principle 5:7 Freedom to enter into agreements**

Subject to Principles 5:4-5:6 and to the limitations in the following Principles partners are free to enter into agreements determining their personal, economic and property relationship.

## CHAPTER III: AGREEMENTS

### **Principle 5:8 Timing of agreements**

Agreements can be made before and during the *de facto* union and after the partners' separation.

### **Principle 5:9 Scrutiny by the competent authority**

- (1) The competent authority has the power to scrutinise the agreement.
- (2) The competent authority may set aside or adjust the agreement on the grounds of
  - (a) general contract law or
  - (b) serious injustice having regard to the contents of the agreement and the circumstances when it was concluded or those subsequently arising.

## CHAPTER IV: PROPERTY AND DEBTS

### **Principle 5:10 Property relationship between partners**

During the *de facto* union each partner continues to own his or her property.

### **Principle 5:11 Acquisition of property**

The partners can acquire property separately or jointly.

### **Principle 5:12 Presumption of joint ownership**

- (1) Property acquired during the *de facto* union for the partners' joint use should be presumed to be jointly owned unless otherwise proved.
- (2) Principle 5:12(1) does not apply to property acquired by gift or inheritance.

### **Principle 5:13 Personal and joint debts**

- (1) Each partner is liable for debts incurred by him or her.
- (2) Partners are jointly liable for debts that are incurred jointly.
- (3) Partners are jointly and severally liable for debts that are incurred jointly and severally.

### **Principle 5:14 Recovery of debts**

- (1) Debts of one partner are recoverable from his or her property.
- (2) Joint debts are recoverable from the partners' joint property and from each partner's separate property but only to the extent of the partner's share in the debt.

(3) Joint and several debts are recoverable from either the partners' joint property or each partner's separate property.

## CHAPTER V: SEPARATION

### **Principle 5:15 Property rights upon separation**

(1) Upon separation each partner keeps his or her separately owned property.

(2) Jointly owned property is to be divided, unless the partners agree otherwise.

(3) Each partner has the right to request the competent authority to determine the property rights in accordance with Principle 5:15(1) and (2).

### **Principle 5:16 Compensation for contribution to the property, business or profession of the other partner**

(1) A right of compensation arises where one partner has contributed financially or otherwise to the other partner's property, business or profession.

(2) The calculation of the compensation should take into account any resulting increase or decrease in the value of the property or the extent of the contribution to the business or profession.

(3) The compensation should be paid in money, unless the partners agree otherwise.

### **Principle 5:17 Compensation for contributions to the household**

(1) A partner who has contributed financially or otherwise for the benefit of the household is entitled to compensation if

(a) the contribution was significant in comparison with the other partner's contribution, or

(b) the contribution resulted in a considerable disadvantage to him or her in terms of income, property acquisition or profession.

(2) The compensation should be paid in money, unless the partners agree otherwise.

### **Principle 5:18 Family home and household goods**

(1) The partners may agree on the continued use or the allocation of the family home and household goods by one of them.

(2) If there is no agreement, and if the partners have been in an enduring relationship for at least five years or have a common child, who is either minor or is dependent upon them, the competent authority has the power,

in the interests of the family, to grant one of the partners the continued use of the family home and household goods.

**Principle 5:19 Self sufficiency**

Subject to Principles 5:20 and 5:21, each partner should provide for his or her own support after separation.

**Principle 5:20 Maintenance**

(1) Where the partners have been in an enduring relationship for at least five years or have a common child, the partner who has insufficient resources to meet his or her needs has a claim of maintenance against the other partner provided that he or she is able to satisfy those needs.

(2) In determining a claim for maintenance, account should be taken in particular of factors such as:

- (a) the care of children;
- (b) the division of duties during the *de facto* union;
- (c) the partners' age, health and employment ability;
- (d) the duration of the *de facto* union; and
- (e) any marriage, registered partnership or other *de facto* unions.

**Principle 5:21 Limitation in time and method of payment**

(1) Subject to Principle 5:20, the competent authority should grant maintenance for a limited period. In exceptional cases, it may do so without time limit.

(2) Maintenance should be provided at regular intervals and in advance. However, the competent authority may order a lump sum payment upon request of either or both partners taking into account the circumstances of the case.

## CHAPTER VI: DEATH

**Principle 5:22 Right to occupancy of the family home**

(1) A surviving partner has the right to continued occupancy of the family home owned by the deceased partner and to the continued use of the household goods for six months following the deceased partner's death.

(2) A surviving partner has the right to step into the tenancy of the family home that is in the name of the deceased partner.

**Principle 5:23 Testamentary succession**

Each partner enjoys freedom of testation subject to

- (a) the occupancy rights of the family home and use of household goods under Principle 5:22(1), and
- (b) any mandatory rights of succession or other claims.

**Principle 5:24 Succession upon intestacy**

In cases of intestacy the surviving partner has the same right as a spouse to succeed to the estate of the deceased partner, provided he or she was in an enduring relationship with the deceased at the time of death and had been so for at least five years and with whom he or she has a common child.

**Principle 5:25 Right of claim against the deceased's estate**

- (1) A surviving partner without rights of succession according to Principle 5:24 or under the deceased partner's will may make a lump sum claim against the deceased partner's estate or the heirs where it is appropriate, provided he or she was in an enduring relationship with the deceased at the time of death and had been so for at least two years or with whom he or she has a common child.
- (2) The claim is limited to providing basic short-term economic protection having regard to the surviving partner's means.
- (3) The claim should be brought before the competent authority within one year of the partner's death.
- (4) Any claim is subject to any mandatory rights of succession of other persons.

CHAPTER VII: DISPUTES

**Principle 5:26 Treating disputes as a family matter**

- (1) Disputes between partners of a *de facto* union should be regarded as a family matter by the competent authority.
- (2) The same procedural rules should apply as to disputes between spouses and registered partners.

**Principle 5:27 Alternative dispute resolution**

In disputes regarding *de facto* unions alternative dispute resolution mechanisms should be available.