

NATIONAL REPORT: LUXEMBOURG

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A. General

- 1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.**

There are three forms of formal relationships in Luxembourg law:

- different-sex marriage, Art. 144 et seq. of the Luxembourg Civil Code;
- same-sex marriage introduced by the recent law of July 4th, 2014;
- same/different-sex registered partnership introduced by the law of July 9th, 2004.

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

Informal relationships between a couple are not regulated by any specific legislative provisions in Luxembourg; the specific nature of the informal relationship is not regulated. The existence of a marriage or a registered partnership with another person may have a consequence for the stability of the relationship; indeed, the term 'stability' may be important for judges when informal relationships have legal consequences.

- 3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases**

Case law gives legal effects to *concubinage* (= an informal relationship) if it is durable and stable.

- 4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?**

No, this definition does not vary according to the context. Either it is an informal relationship or it is not, depending on whether the situation corresponds to the definition.

The case law in Luxembourg defines the informal relationship as: 'Le concubinage peut être défini comme étant une union de fait tenant à l'existence d'une vie commune stable et continue entre deux personnes formant un couple et un ménage'.

Translated, this means that Luxembourg case law defines an informal relationship as a union between two persons who live together and form a couple in a stable and durable way.

5. Where informal relationships between a couple have legal effect:

a. When does the relevant relationship begin?

An informal relationship begins when there is a situation of stability and this is of a certain duration between a couple.

b. When does the relevant relationship end?

When there is no longer any duration or stability, the informal relationship ends; the separation of the couple or the death of one of the partners also ends the informal relationship.

6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?

The national constitutional position has not been relevant; an informal relationship does not have a legal position. An informal relationship may, in certain circumstances, produce some legal effects.

7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?

An informal relationship may, in certain circumstances, produce legal effects; it does not have a legal position.

8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.

Before the 1970s, no consideration was given to informal relationships and they could not produce legal effects.

Since the French decisions of the Cour de cassation of 1970 and 1975, an informal relationship, even if it is adulterous, may have legal consequences. It is taken into consideration as a fact.

It is also important to note that adultery was decriminalized by the law during the mid-1970s. And the fact that adultery was no longer a peremptory cause of divorce was also significant to the recognition of the effects of an informal relationship.

When the registered partnership was introduced by law in 2004, legislation provided an option for couples: to conclude a partnership was easier in some ways than the conclusion of a marriage. But even though this option now exists, there are more and more couples who want to constitute an informal relationship, without any formalities at all.

Legislation cannot prevent couples from constituting informal relationships, nor does it tend to dissuade them.

9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?

No, there are no recent proposals at this time.

B. Statistics and estimations

Note:

Sources of the figures and tables:

- STATEC, administration under the authority of the Ministry of Economy;
- CEPS/INSTEAD, a Luxembourg public research centre under the jurisdiction of the Ministry of Higher Education and Research.

10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.

Marriage or Cohabitation between couples with child(ren), according to the age of the father in 2001

	Less than 30 years old	30-44 years old	45-59 years old	60 years and older	Total
Marriage	82.9%	94.4%	97.0%	96.1%	94.8%
Cohabitation	17.1%	5.6%	3.0%	3.9%	5.2%
Total	100%	100%	100%	100%	100%

Source: Recensement de la population (STATEC). Calculated by: CEPS/INSTEAD.

Interpretation: 82.9% of fathers under the age of 30 who are living in a couple are married.

Evolution from 1960 to present day in the number of first marriages

	1960	1970	1980	1990	2000	2006
Marriages	2,236	2,156	2,149	2,312	2,148	1,948
First marriages (two unmarried spouses)	2,040	1,881	1,737	1,652	1,410	1,244

Source: Le Luxembourg en chiffres 2007 STATEC, et Statistiques historiques 1839-1989 STATEC.

11. How many couples are living in an informal relationship in your jurisdiction? Where possible, indicate trends.

The percentage of couples who cohabitate of all the individuals stating to live as a couple in 2006, by generation and nationality

Age	Luxembourgers	Portugese	French, Belgians, Germans	Others	Total
< 30 years	50%	29%	61%	28%	41%
30-44 years	11%	15%	22%	15%	14%
45-59 years	7%	3%	12%	6%	7%
60 ≥ years	2%	*	4%	1%	2%
Total	9%	14%	21%	10%	11%

* : the amount in this category is too small (28) for the percentages discussed.

Source: PSELL-3/EU-SILC

Interpretation: Of the Luxembourgers under the age of 30 who were in a union in 2006, 50% stated that they were cohabitating.

The percentage of marriages and cohabitations according to the time of formation of the marriage and/or cohabitation

	Before 1967	1968-1972	1973-1977	1978-1982	1983-1987	1988-1992	1993-1997	1998-2002	After 2003
Marriage	99%	98%	89%	81%	67%	61%	57%	53%	64%
Cohabitation	1%	2%	11%	19%	33%	39%	44%	47%	36%

Source: PSELL-3/EU-SILC

Interpretation: Between 1973 and 1977, cohabitation was 11% of the first unions formed. Between 1988 and 2002, most of the first unions were cohabitation (53%) at the expense of marriage (47%).

Number of people living as a couple by nationality and type of union on the 1st of February 2011

Type of union	Luxembourgers	Foreigners	Total
Married persons	112,808	91,136	203,944
PACS partners	3,922	2,438	6,360
Cohabiting persons	9,844	11,324	21,168
Total	126,574	104,898	231,472
Married persons	89.1%	86.9%	88.1%
PACS partners	3.1%	2.3%	2.7%
Cohabiting persons	7.8%	10.8%	9.1%
Total	100%	100%	100%

Source: STATEC - RP2011

12. What percentage of the persons living in an informal relationship are:

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

Persons living as couples by age, gender, type of union and nationality on the 1st of February 2011

Age and gender	Luxembourgers			Foreigners		
	Married persons	PACS partners	Cohabiting persons	Married persons	PACS partners	Cohabiting persons
Men						
20-24	25.5%	24.1%	50.4%	47.3%	6.9%	45.8%
25-29	43.2%	20.1%	36.7%	61.6%	7.1%	31.2%
30-39	73.6%	8.1%	18.2%	80.2%	3.5%	16.3%
40-49	88.9%	2.8%	8.4%	89.2%	2.0%	8.8%
50-64	95.0%	1.2%	3.8%	94.2%	0.9%	4.8%
65+	96.0%	0.5%	1.5%	97.4%	0.7%	1.9%
Total	89.2%	3.1%	7.6%	86.5%	2.4%	11.1%
Women						
20-24	34.2%	20.2%	45.6%	57.4%	6.7%	35.9%
25-29	52.6%	15.7%	31.7%	69.0%	6.1%	24.9%
30-39	78.6%	6.1%	15.3%	83.6%	3.0%	13.4%
40-49	91.0%	2.0%	7.0%	91.4%	1.3%	7.3%
50-64	95.7%	1.1%	3.2%	95.4%	0.7%	3.8%
65+	97.8%	0.4%	1.8%	98.2%	0.5%	1.3%
Total	89.0%	3.1%	77.9%	87.3%	2.3%	10.5%

Source: STATEC - RP2011

13. How many couples living in an informal relationship enter into a formal relationship with each other:

- a. Where there is a common child?

b. Where there is no common child?

No figures found at this time.

14. How many informal relationships are terminated:

- a. Through separation of the partners?
- b. Through the death of one of the partners?

No figures found at this time.

15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?

Here are some figures on the duration of marriages:

Amount of marriages and the dissolution of marriages, 1994 to 2008

	Marriages	Dissolution by divorce	Dissolution by the death of the husband	Dissolution by the death of the wife
1994	2,352	700	1,058	391
1995	2,074	727	1,186	427
1996	2,105	817	1,117	453
1997	2,007	1,001	1,118	504
1998	2,040	1,017	1,117	456
1999	2,090	1,043	1,079	433
2000	2,148	1,030	1,073	444
2001	1,983	1,029	1,009	429
2002	2,022	1,092	1,067	413
2003	2,001	1,026	1,149	468
2004	1,999	1,055	1,057	373
2005	2,032	1,046	991	450
2006	1,948	1,182	1,069	445
2007	1,969	1,106	1,130	461
2008	1,917	977	1,046	446

Source: STATEC

The following is an extract from a study analysing the duration of informal relationships between 1970 and 2000:

'La typologie des unions libres établie par Villeneuve-Gokalp en 1990 distingue quatre types d'unions libres:

- Si la durée de cohabitation est inférieure à trois ans (cohabitation suivie par une rupture), on parle d'unions éphémères; leur part est restée stable dans le temps (cf. tableau).
- Si la durée de cohabitation est inférieure à trois ans mais qu'un mariage suit cette période, on parle alors de test ou prélude au mariage. Au Luxembourg, ce type de cohabitation a fortement diminué depuis 1970. En analysant les premières unions libres des individus, on constate ainsi que près de la moitié (49%) des unions

libres constituées entre 1970 et 1979 formaient un test ou prélude au mariage, alors qu'elles ne sont plus que 27% de celles établies dans les années 2000.

- Si la durée de cohabitation est supérieure à trois ans mais s'il n'y a ni mariage ni naissance dans ces trois ans, il s'agit d'unions libres stables sans engagement. Au Luxembourg, c'est à ces unions-là surtout qu'a profité la baisse des préludes au mariage. Ainsi, ce type d'union, qui ne représentait que 16% des unions libres dans les années 70, a doublé dans les années 2000 (33%). Elles représentent d'ailleurs aujourd'hui le type d'union libre le plus fréquent.
- Enfin, si la durée de cohabitation est supérieure à trois ans, et s'il y a un naissance au cours de ces trois premières années, alors il s'agit d'unions libres stables avec engagement. Le comportement des individus optant pour ce statut s'apparente fortement à celui des individus qui se marient. Au Luxembourg l'évolution de ce statut est discontinue: après un recul dans les années 80 et 90, il constitue environ 20% des unions libres dans les années 2000.'

Table: Typology of first cohabitations by the date of commencement

	Date of commencement of the first cohabitation			
	1970-1979	1980-1989	1990-1999	After 2000*
Prelude or test for marriage	49%	43%	38%	27%
Ephemeral cohabitation	14%	10%	13%	18%
Cohabitation without engagement	16%	33%	36%	33%
Cohabitation with engagement	21%	14%	13%	22%

* The cohabitations considered here all started at the latest in 2003, showing the developments of the relationship only until 2006.

Source : PSELL-3/EU-SILC

Interpretation: Among the first cohabitations formed in the 1970's, 49% were a test for marriage, 14% failed within 3 years from the start of the cohabitation, while 21% and 16% became stable relationships with or without children.

16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.

Persons living as a couple with or without child(ren) on the 1st of February 2011

Type of union	Amount	Percentage	Mean age	Median age
Total married persons	203,944	100.0%	50.8	49.0
Married persons without children	76,466	38.5%	59.7	62.0
Married persons with children	125,478	61.5%	45.2	45.0
Total PACS partners	6,360	100.0%	36.9	34.0
PACS partners without children	3,910	61.5%	36.8	32.0
PACS partners with children	2,450	38.5%	37.1	36.0
Total cohabitating persons	21,168	100%	37.7	35.0
Cohabitating persons without children	9,910	46.8%	37.6	33.0
Cohabitating persons with children	11,258	53.2%	37.8	37.0

Source: STATEC - RP2011

Amount of live births by the couple's legal situation and age of the mother

	1950	1960	1970	1980	1990	2000	2010	2011	2012	2013
Live births within a marriage	4,252	4,860	4,234	3,920	4,300	4,470	3,878	3,716	3,775	3,841
< 20 years	130	191	292	182	90	61	21	18	18	14
20-24 years	1,065	1,417	1,432	1,144	777	569	275	293	276	247
25-29 years	1,517	1,624	1,322	1,546	1,815	1,452	1,031	944	914	973
30-34 years	873	1,080	706	796	1,224	1,611	1,587	1,503	1,536	1,531
35-39 years	514	431	367	206	346	684	768	778	840	871
40-44 years	144	106	109	43	47	90	186	168	179	195
≥ 45 years	9	11	5	3	-	3	8	11	10	8
Unknown	-	-	1	-	1	-	2	1	2	2
Live births outside of a marriage	149	159	177	249	636	1,253	1,996	1,923	2,251	2,274
< 20 years	34	38	40	46	59	85	90	91	83	70
20-24 years	58	69	59	87	183	270	347	339	378	308
25-29 years	30	22	33	44	194	376	553	525	595	629
30-34 years	11	18	24	35	130	325	565	561	730	714
35-39 years	11	7	13	13	57	159	339	320	358	440
40-44 years	5	5	7	3	8	31	93	73	91	102
≥ 45 years	-	-	1	-	-	3	6	9	6	7
Unknown	-	-	-	21	5	4	3	5	10	4

17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?

5% of children lived in reconstituted families in 2008.

This results from a study by CEPSINSTEAD carried out in 2008: 'Il y aurait aujourd'hui au Luxembourg environ 5% d'enfants vivant dans un ménage recomposé, c'est-à-dire dans un ménage dans lequel vit au moins un enfant issu d'une union précédente de l'un des conjoints. Mais nous ne disposons pas pour le moment d'information quant à sa progression dans le temps.'

Hereunder are some figures concerning children living in different family structures.

Children in family structures in 1991 and 2001

	1991	2001
Households with two parents	91.1%	87.7%
Married couples	71.0%	70.6%
Cohabiting couples	2.1%	3.3%
Married couples and other people	16.9%	12.8%
Cohabiting couples and other people	1.1%	1.0%
Single parents households	8.9%	12.3%
Mothers	5.2%	7.9%
Fathers	0.8%	1.0%
Mothers and other people	2.1%	2.1%
Fathers and other people	0.8%	1.3%

Sources: Recensements de la population (STATEC). Calculated by: CEPS/INSTEAD.

18. How many children are adopted within an informal relationship:

- a. By one partner only?
- b. Jointly by the couple?
- c. Where one partner adopted the child of the other?

The law distinguishes between simple adoption (*adoption simple*) and full adoption (*adoption plénière*).

At this point in time (there are proposals for change) only spouses can adopt by *adoption plénière* (this form of adoption erases the former filiation of the child and the child becomes a full member of his or her new family; the *adoption simple*, on the other hand, does not erase the former filiation of the child, but adds the new filiation to the original one).

A simple adoption is also possible for one person wishing to adopt or for two partners.

As the number of reconstituted families is increasing, one partner often wants to adopt the child of his or her partner. This is only possible by a simple adoption.

A judge will determine if an adoption is in the interest of the child as he or she does with every request for adoption (Art. 343 of Luxembourg Civil Code).

Hereunder are some figures, even if they do not exactly correspond to the mentioned question.

Adoptions 1997 - 2012

	'97	'00	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12
District Court of and in Luxembourg												
Number of applications	-	-	122	127	103	99	95	88	87	67	-	-
Applications received	123	110	85	125	98	98	93	82	80	61	-	-
<i>Adoptions simples</i>	24	33	18	51	31	33	32	23	11	22	-	-
<i>Adoptions plénières</i>	79	57	59	47	35	54	33	37	53	15	-	-
<i>Adoptions rectificatives</i>	-	5	4	4	2	0	3	2	1	2	-	-
Interlocutory decision	-	14	19	20	20	11	11	4	20	18	-	-
Rejection decision	-	6	1	1	3	1	2	6	8	6	-	-
Adoptions on the basis of Art. 5 of the Hague Convention 1993	-	-	8	27	32	22	14	16	7	4	-	-
District Court of and in Diekirch												
Number of applications	26	29	20	14	20	21	13	13	19	13	12	13
Applications received	25	29	20	17	9	23	13	12	19	9	12	11
<i>Adoptions simples</i>	11	5	5	1	2	4	2	5	5	1	2	4
<i>Adoptions plénières</i>	17	19	12	16	7	10	7	9	4	2	5	7
<i>Adoptions rectificatives</i>	0	1	0	1	0	3	1	1	2	0	0	1
Interlocutory decision	1	4	2	0	0	2	0	1	1	3	2	0
Rejection decision	1	1	1	0	1	5	0	0	0	0	0	1
Adoptions on the basis of Art. 5 of the Hague Convention 1993	-	-	-	4	0	2	0	0	3	1	1	2

19. How many partners in an informal relationship have been in a formal or an informal relationship previously?

Distribution of type of union no later than six years after the divorce, by the date of the divorce

After the divorce:	Date of divorce	
	Prior to 1985	1985-1999
Marriage not preceded by a period of cohabitation	48%	34%
Cohabitation for more than 3 years	31%	51%
Cohabitation and remarriage within 3 years	16%	10%
Cohabitation and dissolution within 3 years	6%	5%

Source: PSELL-3/EU-SILC

Interpretation: Almost half of the new unions following divorce before 1985 were marriages. This percentage is only 34% if the divorce took place between 1985 and 1999.

The amount of individuals who cohabit, amongst those who are already a couple, by age group in 2006

Amount of individuals who cohabit	
Less than 30 years old	67%
30-44 years old	49%
45-59 years old	25%
60 years and older	6%

Source: PSELL-3/EU-SILC

Interpretation: Among individuals under the age of 30 who have already lived together as a couple, 67% say that they cohabit.

C. During the relationship

20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:

- a. **Where there are no children in the household?**
- b. **Where there are common children in the household?**
- c. **Where there are other children in the household?**

Partners in an informal relationship do not have any duty to support each other, whether there are children in the household or not.

Of course, if the couple have common children, each of them has a duty to support the children.

21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?

As a principle, they are under no duty. However, If they have contributed to the costs of the household, they are not allowed to claim any reimbursement, because this contribution is the counterparty of the relationship. Only when one of the partners has met, during the informal relationship, some extraordinary expenses, which are of a substantial amount, may he or she claim a reimbursement. (for more details see the answers to Part D. Separation)

22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?

No, the partner does not have a right to remain in the home as a principle (for exceptions see the answer to Question 23).

23. Are there specific rules on a partner's rights of occupancy of the home:

- a. **In cases of domestic violence**

The law against domestic violence is gender-neutral and provides that an abuser will be removed from his or her residence even if he or she is the owner of the residence. Thus also a partner in an informal relationship may be removed from the partner's residence even though he or she is the sole owner of the residence.

b. In cases where the partner owning or renting the home is absent?

The absence of the partner (a legal absence or an absence of long duration) does not confer any rights of occupancy on the other partner in cases where the partner owning the home is absent (unless there is an agreement to the contrary between the two of them).

Where the absent partner is renting the house, the other partner is protected by Art. 13 of the law of September 21st, 2006. This law states that the other partner may remain in the house when the tenant has abandoned the residence or when the tenant has died.

A legal absence or an absence of long duration coincides with the abandonment of the residence; in the first case, it is not necessarily voluntary, in the second it is voluntary. Here is an extract from the original text: 'En cas d'abandon du domicile par le locataire ou en cas de décès du locataire, le contrat de bail continue à durée indéterminée au profit du concubin, qui vivait avec lui en communauté domestique depuis au moins six mois à la date de l'abandon du domicile ou du décès et qui avait déclaré son domicile à la commune dans le logement pendant cette période.'

24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:

No, there are no specific rules; the partners are submitted to the general principles of contract law.

a. Where the home is jointly owned by the partners?

Where the home is jointly owned by the partners, one of them cannot dispose of or raise a mortgage without the consent of the other owning partner.

b. Where the home is owned by one of the partners?

Where the home is owned by one of the partners, the owner can dispose of or take out a mortgage.

c. Where the home is jointly rented by the partners?

Where the home is jointly rented by the partners, one of them may only sublet it with the consent of the other (and, of course, the consent of the lessor).

d. Where the home is rented by one of the partners?

Where the home is rented by one of the partners, this partner is the tenant and may sublet if his contract allows for subletting.

25. Under what circumstances and to what extent can one partner act as an agent for the other?

The rules of joint ownership (*les règles de l'indivision*) allow one partner to represent the other when administering joint assets but only if he or she has procuration (*mandat d'administration général*, compare the answer to Question 33).

The rules of quasi-contracts, especially of the management of the affairs of another (*gestion d'affaire*), may often be applied to partners in informal relationships.

26. Under what circumstances can partners in an informal relationship become joint owners of assets?

Partners in an informal relationship may become joint owners just as two other persons, even strangers, can become such joint owners. There are no additional possibilities for partners in an informal relationship.

27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.

There are no specific rules governing acquisitions in respect of household goods.

28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?

No.

29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?

Each partner needs to prove ownership according to the principles of the law (the evidentiary measures determined by the rules of the Luxembourg Civil Code).

However, Art. 1348 of the Luxembourg Civil Code dispenses with such evidence in certain circumstances, due to the close position of the partners to each other. This article facilitates proof-taking for the partners.

The partner who claims to be the only owner of an asset bears the burden of proof.

If evidence of sole ownership cannot be produced, there is a rebuttable presumption of joint ownership.

30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?

The ownership of assets is proved according to the principles of the law (the evidentiary measures of proof-taking determined by the rules of the Luxembourg Civil Code).

If evidence of sole ownership cannot be produced, there is a rebuttable presumption of joint ownership.

31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?

Partners in an informal relationship become jointly liable for debts if they contract the debt jointly. One partner cannot oblige the other partner to become solely liable.

32. On which assets can creditors recover joint debts?

Joint debts are recoverable both against the joint assets of the partners as well as the sole assets of each of them.

33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.

No, there are no specific rules. The generally applicable rules are those of joint ownership (Art. 815-2 et seq. of the Luxembourg Civil Code).

The administration of assets jointly owned by the partners requires the consent of both of them. Nevertheless, one of the partners may give a *mandat général d'administration* to the other.

If one of the joint owners refuses to consent to a legal act and if this refusal is considered prejudicial to the jointly owned assets, the court may authorize the other partner to conclude the act and to ignore the refusal.

D. Separation

34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?

No, the law does not grant maintenance to a former partner after separation.

35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:

a. The creditor's needs and the debtor's ability to pay maintenance?

- b. The creditor's contributions during the relationship (such as the raising of children)?**
- c. The standard of living during the relationship?**
- d. Other factors/circumstances (such as giving up his/her career)?**

Not applicable.

- 36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?**

Not applicable.

- 37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?**

Not applicable.

- 38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?**

Not applicable.

- 39. Is the maintenance claim extinguished upon the claimant entering:**
- a. Into a formal relationship with another person?**
 - b. Into an informal relationship with another person?**

Not applicable.

- 40. How does the creditor's maintenance claim rank in relation to:**
- a. The debtor's current spouse, registered partner, or partner in an informal relationship?**
 - b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**
 - c. The debtor's children?**
 - d. The debtor's other relatives?**

Not applicable.

- 41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?**

The determination of ownership is made according to the general rules of evidence (compare the answers to Question 29 and 30).

If the exclusive property of one partner cannot be proved, the asset is presumed to be jointly owned by the two of them (e.g. Court of Appeal, 11th of July 1997).

42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?

If the exclusive property of one partner cannot be proved, the asset is presumed to be jointly owned by the two of them.

Of course, proof of ownership of immovable property results from the official act of acquisition (*acte notarié de vente*).

When the Question arises as to who has financed the acquisition of this immovable property, the partner who is not the official owner needs to prove his or her financial contributions in order to obtain a reimbursement (the provision of evidence to this effect is important in this respect).

43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?

Partners do not have any preferential rights. The ownership of the property is the relevant factor.

44. How are the joint debts of the partners settled?

Case law has decided that a joint debt contracted by the two partners is divided between them. Each of them is only responsible for his or her part; it is presumed that this part is 50% of the debt. This presumption is rebuttable. So, one partner may prove that the debt exclusively or mostly served the interests of the other partner in order that this partner has to satisfy most or part of it or even has to satisfy it in its entirety.

So we can read the following in some judgments: 'L'obligation solidairement contractée envers le créancier se divise de plein droit entre les débiteurs solidaires qui ne sont tenus chacun que pour leur part et portion. La division se fait en principe par parts viriles, chaque codébiteur solidaire étant présumé avoir une part égale dans l'affaire commune'. (e.g. Court of Appeal, 22nd of March 2006).

45. What date is decisive for the determination and the valuation of:

a. The assets?

When the partners separate, they may decide themselves which date will apply. Logically, the date of the separation is important.

b. The debts?

The date of the separation is not relevant here; the creditor may claim the debt before or after separation, so the relevant date is when the creditor claims his or her debt.

46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?

Case law applies the following principle: no legal provision determines the contribution of each partner to the current daily expenses. There are no special accounts drawn at the end of an informal relationship; each partner has to contribute to the expenses.

However, the case law differentiates between normal expenses and extraordinary expenses. Only normal expenses have to be met by each partner; a partner cannot claim a reimbursement of these normal expenses. But extraordinary expenses can be reclaimed, as it is considered that they exceed the contribution of a partner to the expenses of the household.

We can read the following in the pertinent judgments: 'Les dépenses ordinaires relevant de la participation à la vie commune qui se fait sans établissement de compte précis et ne donnent, en tant que telles, pas lieu à indemnisation, n'étant que la contrepartie des liens d'affection entre concubins. Les dépenses plus importantes, par contre, peuvent donner lieu à indemnisation en ce qu'elles excèdent manifestement la contribution d'un concubin aux charges du ménage'. (e.g. Court of Appeal, 22nd of March 2006).

E. Death

47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?

No, the surviving partner is looked upon as a stranger according to inheritance law.

48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?

See the answer to Question 47.

49. Are there specific rules dealing with the home and/or household goods?

No, there are no specific rules dealing with the home/household goods.

**50. Can a partner dispose of property by will in favour of the surviving partner:
a. In general?**

In general, the surviving partner can dispose of property.

b. If the testator is married to or is the registered partner of another person?

If the testator is married to or is the registered partner of another person, he or she may dispose of his or her property by will.

c. If the testator has children?

If the partner has children, he or she has the right to dispose of his or her property by will in favour of the surviving partner without disposing of the reserved share. The children are heirs with a reserved share (*héritiers réservataires*).

51. Can partners make a joint will disposing of property in favour of the surviving partner:

a. In general?

b. If either testator is married to or is the registered partner of another person?

c. If either testator has children?

In this hypothesis, disposing of the reserved share is also forbidden by law.

52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:

a. In general?

In general the surviving partner can dispose of property.

b. If either partner is married to or is the registered partner of another person?

If the testator is married to or is the registered partner of another person, he or she may dispose of his or her property by will.

c. If either partner has children?

If the partner has children, he or she has the right to dispose of his or her property by will in favour of the surviving partner without disposing of the reserved share. The children are heirs with a reserved share (*héritiers réservataires*).

53. Is the surviving partner entitled to a reserved share¹ or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?

¹ See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

No, the surviving partner is not entitled to a reserved share.

54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?

Unfortunately, there were no statistics or estimations found.

55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?

Unfortunately, there were no statistics or estimations found.

56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?

No official estimations found. But as the number of informal relationships is increasing, more and more partners will be the beneficiary of the other partner's life insurance as they are raising a mortgage (when the bank obliges them to contract an *assurance solde restant dû*).

F. Agreements

57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?

There are no specific rules. The general rules of contract law apply (Art. 1101 et seq. of the Luxembourg Civil Code).

58. Are partners in an informal relationship permitted to agree on the following issues:

- a. The division of tasks as between the partners?
- b. The contributions to the costs and expenses of the household?
- c. Their property relationship?
- d. Maintenance?
- e. The duration of the agreement?

Partners may contract with one another, just as third persons may do, within the framework determined by contract law.

59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?

They may agree on the consequences of their separation as long as they are not beyond the rules of contract law.

60. Are the agreements binding:

a. Between the partners?

The agreements are binding under Art. 1134 of the Luxembourg Civil Code ('Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites'). The parties to a contract need to respect the terms of their engagement.

b. In relation to third parties?

According to Art. 1165 of the Luxembourg Civil Code, contracts only produce effects between the parties thereto (*l'effet relatif des contrats, res inter alios acta, aliis nec prodesse, nec nocere potest*).

The agreement between the partners is opposable by third parties as a fact; the agreement and the legal situation following therefrom are opposable by third parties as facts.

61. If agreements are not binding, what effect, if any, do they have?

See the answer to Question 60.

62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?

There are no specific legislative provisions regulating informal relationships.

63. When can the agreement be made (before, during, or after the relationship)?

The agreement can be made at any time.

64. What formal requirements, if any, govern the validity of agreements:

- a. As between the partners?**
- b. In relation to a third party?**

The validity of these agreements is only submitted to the general rules of contract law.

65. Is independent legal advice required?

No independent legal advice is required.

66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?

Unfortunately, no statistics or estimations were found.

67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?

Unfortunately, no statistics or estimations were found.

G. Disputes

68. Which authority is competent to decide disputes between partners in an informal relationship?

If the disputes are of a financial nature, the *justice de paix* or the *tribunal d'arrondissement* is competent. The *justice de paix* is only competent up to the value of € 10,000.

As far as the children (custody questions) are concerned, the *juge des tutelles* is competent to decide.

The *justice de paix* is competent as far as maintenance (childrens' maintenance) questions are concerned.

69. Is that the same authority as for spousal disputes?

The *tribunal d'arrondissement* is competent in all divorce matters.

Le *tribunal de la jeunesse* is competent to decide custody matters.

The *justice de paix* is competent as far as maintenance questions (during marriage and after divorce) are concerned.

70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?

Normally the court does not have the right to scrutinize. If the agreement is clear, the judge has to apply the terms thereof, unless it is contrary to rules of public policy (*ordre public*).

71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?

The courts have to apply contract law. Contract law provisions regulate cases where a contract may be invalidated.

According to Art. 1134 of the Luxembourg Civil Code, a judge does not have the right to modify the provisions of the agreement. He or she may have the possibility to invalidate the contract if conditions of invalidity are provided (e.g. a lack of or a defect in the consent of one of the partners when concluding the agreement).

A change of circumstances may have an impact concerning child maintenance if there is a change in the financial situation of one of the partners; the *justice de paix* may modify the contribution determined in the agreement.

72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?

Generally, the law of 24 February 2012 introducing mediation allows disputes to be settled in this way also between partners in an informal relationship.

The judge may invite the parties, with their consent, to follow mediation.

It has to be emphasized that the judge always has the opportunity to try to conciliate the parties.

73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?

This question may refer to the possibility of including an arbitration clause (*clause d'arbitrage*) in the agreement. But these clauses seem to be especially used in commercial and financial contracts.

A mediation clause in a partners' agreement would be more likely. If one of the partners does not respect the mediation clause, the other partner can seize the competent judge to settle the dispute.

74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?

See the answer to Question 73.

Annex 1: Summary of the decision of the Court of Appeal, 22nd March 2006

Cour d'appel (civil) – 22 mars 2006

1° Concubinage – Liquidation – Dettes nées pendant la vie commune – Contribution aux charges communes – Distinction – Charges ordinaires – Etablissement d'un compte (non) – Droit à indemnisation (non) – Dépenses importantes – Droit à indemnisation – Conditions – C.civ., Art. 1134.

2° Concubinage – Liquidation – Dettes nées pendant la vie commune – Concubin qui assume une obligation alimentaire à la place de l'autre – Dépense du ménage (non) – Droit à indemnisation – C.civ., Art. 1134.

3° Contrats – Obligation solidaire – Recours entre codébiteurs solidaires – Contribution à la dette – Présomption de l'existence d'intérêts égaux – Conséquence – Division de la dette par parts viriles – Admissibilité de la preuve contraire – Objet – Convention fixant une contribution Inégale – Existence d'intérêts inégaux dans l'affaire – Conséquence – Répartition inégale de la contribution à la dette – C.civ., Art. 1213 et 1214.

4° Concubinage – Liquidation – Société de fait entre concubine – Conditions – Vie commune – Apports en commun – Volonté de participer aux bénéfices et aux pertes – C.civ., Art. 1832.

5° Enrichissement sans cause – Conditions de l'action de in rem verso – Principe de subsidiarité – Action exercée par un concubin contre l'autre à la fin du ménage commun – C.civ., Art. 1371 et 1375.

1° Aucune disposition légale ne réglant la contribution des concubins aux charges de la vie commune, il appartient à chacun d'eux de supporter les dépenses de la vie courante qu'il a exposées, sauf volonté contraire exprimée à cet égard.

Il n'y a, en principe, pas lieu d'établir des comptes précis pour déterminer la contribution aux charges du ménage, étant de la nature d'une communauté de vie que chacun y contribue aux dépenses.

Pour ce qui concerne la notion même de charges du ménage et la répartition des dettes nées de la vie commune entre concubins, il y a lieu de distinguer entre les dépenses ordinaires et les dépenses plus importantes.

Les dépenses ordinaires relevant de la participation à la vie commune qui se fait sans établissement de compte précis et ne donnent, en tant que telles, pas lieu à indemnisation, n'étant que la contrepartie des liens d'affection entre concubins.

Les dépenses plus importantes, par contre, peuvent donner lieu à indemnisation en ce qu'elles excèdent manifestement la contribution d'un concubin aux charges du ménage.

2° Le concubin qui assume la charge d'une obligation alimentaire à la place de son partenaire effectue un paiement qui ne porte pas sur des 'dépenses du ménage', à savoir sur des dépenses inhérentes à la vie quotidienne d'un couple.

3° L'obligation solidairement contractée envers le créancier se divise de plein droit entre les débiteurs solidaires qui ne sont tenus chacun que pour leur part et portion.

La division se fait en principe par parts viriles, chaque codébiteur solidaire étant présumé avoir une part égale dans l'affaire commune.

Cette présomption est renversée dès lors qu'il est établi que l'intérêt des codébiteurs dans la dette litigieuse n'est pas identique, auquel cas la division se fait proportionnellement aux intérêts de chacun.

Il appartient par conséquent à celui qui soutient que la dette doit se diviser de manière inégale entre les débiteurs solidaires de le prouver et d'établir, soit l'existence d'une convention prévoyant une répartition inégale, soit que les parties avaient dans l'affaire des intérêts inégaux, auquel cas les intérêts respectifs sont à évaluer.

4° Une société de fait entre concubins ne résulte pas uniquement de leur vie commune et d'apports en commun, mais il faut entre autres leur volonté de s'associer et notamment celle de participer aux bénéfices et aux pertes.

5° Le principe de subsidiarité de l'action de in rem verso veut que celle-ci ne puisse être intentée pour suppléer à une autre action qu'un obstacle de droit – tels une prescription, une déchéance, une forclusion ou l'effet de l'autorité de chose jugée – empêcherait d'introduire. Lorsque, à la fin d'un concubinage, les dépenses invoquées par l'un des partenaires forment une contribution normale aux charges ordinaires de la vie commune, cette contribution ne constitue pas un enrichissement dans le chef de l'autre partenaire. De toute façon, tout éventuel enrichissement découlant de ces dépenses trouve sa cause dans les liens affectifs du concubinage.

Annex 2: Summary of the decision of the Court of Appeal, 11th July 1997

Cour d'appel (civil) – 11 juillet 1997

1° Compte en banque – Compte-joint – Solidarité – Solidarité active – Domaine – Rapport entre les cotitulaires et le banquier dépositaire (oui) – Rapport entre les cotitulaires (non) – Effets – Libération valable du banquier entre les mains d'un des cotitulaires – Répartition du bénéfice de la créance entre les cotitulaires en proportion de leurs droits respectifs – Pouvoir des cotitulaires de disposer de l'intégralité des avoirs – Propriété des sommes déposées non affectée – C.civ. Art. 1198.

2° Concubinage - Biens - Meubles - Propriété - Indivision - Présomption de copropriété indivise des biens sur lesquels aucun des concubins ne peut établir un droit de propriété exclusif - Présomption réfragable - Preuve contraire - Preuve du droit de propriété exclusif - Charge de la preuve - Concubin se prétendant propriétaire exclusif - Mode de preuve - Application du droit commun - C.civ. Art. 815.

3° Concubinage - Biens - Meubles - Propriété - Indivision - Droit de propriété exclusif - Détermination - Critère - Volonté du concubin acquéreur - Indifférence de l'origine des fonds - Application - Voiture automobile - Acquisition et immatriculation au nom d'un des concubins - Propriété exclusive de ce concubin - Contribution au financement par l'autre concubin - Indifférence - C.civ. art 815.

1° Le compte-joint établit une solidarité active dans les rapports entre les cotitulaires et le banquier dépositaire mais non dans ceux des cotitulaires. Il s'ensuit que si le banquier se libère valablement entre les mains d'un des cotitulaires, le bénéfice de la créance se répartit entre les cotitulaires en proportion de leurs droits respectifs et que le pouvoir de chacun des cotitulaires de disposer de l'intégralité des avoirs n'affecte pas la propriété des sommes déposées.

2° Les concubins sont réputés copropriétaires indivis des biens sur lesquels aucun d'eux ne peut établir un droit de propriété exclusif. La preuve de son droit de propriété exclusif est à rapporter par celui qui se prétend propriétaire exclusif d'un bien mobilier suivant le droit commun.

3° Pour la détermination du droit de propriété exclusif d'un concubin sur un bien mobilier il y a seulement lieu de tenir compte de la volonté de l'acquéreur, mais non de l'origine des fonds qui ont permis l'acquisition du bien. Il s'ensuit que le concubin qui a acquis et immatriculé en son nom une voiture automobile en est le propriétaire exclusif, même si son concubin a contribué au paiement du prix.