

NATIONAL REPORT: PORTUGAL

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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.**

The traditional different-sex Catholic marriage was the only kind of formal relationship between a couple regulated by Portuguese law up to 1910, with exceptions where a civil marriage seemed to be allowed. Following Portuguese Decree Law No. 1 of 25 December, a different-sex civil marriage was the only one permitted up to 1940. Since the signing of the Treaty between Portugal and the Holy See (1940) and the Portuguese Decree Law No. 30615, of 25 July, both different-sex Catholic marriages and different-sex civil marriages were allowed, although they were ruled by different laws and were subjected to different types of courts. Law No. 16/2001, of June 22 (religious freedom), introduced the right to celebrate marriage according to any religion provided it is 'rooted' in Portugal, thereby having civil effects. Law No. 9/2010, of 31 May, recognised a same-sex civil marriage.

There is no registered partnership according to Portuguese law.

- 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?**

Law No. 7/2001, of 11 May, as amended by Law No. 23/2010, of 30 August, brings together the main protective effects afforded to *de facto* unions. It deals with the requisites for recognition, evidence, equivalence to marriage in labour, tax and pensions law, permanence in the household in the event of death or a breakdown, adoption and the requisites of a formal dissolution whenever any of the members intend to receive any benefits derived from the union.

Article 496 of the Portuguese Civil Code, as amended by Law No. 23/2010, gives the surviving member the right to be compensated for the moral damages derived from the death of the partner against anyone who caused that death.

Article 2010 of the Portuguese Civil Code, as amended by Law No. 23/2010, gives the surviving member a right to maintenance over the patrimony received by the deceased member's successors.

Some circumstances inhibit the legal protection of *de facto* unions, according to Art. 2 of Law No. 7/2001: a) aged below 18, b) both legal or *de facto* incompetence, c) an already existing ongoing marriage of any of the members, unless a formal separation has been declared, d) a blood relationship or affinity in the direct line, or a collateral blood relationship in the second degree, e) a criminal conviction by one of the members for homicide or attempted homicide against the other member's spouse.

Additionally, there are several legal provisions that may be found in different Acts that refer directly to the *de facto* union. For example, Art. 3(3) of the Portuguese Nationality Act (Act 37/81, October 3rd, as amended by Act 43/2013, July 3rd); Art. 6(1) of the Assisted Reproduction Act (Act 32/2006, July 26th).

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.

The most widespread opinion in Family Law strongly suggests that cohabitants may regulate some aspects of their common life through an ordinary contract, under the general principle of autonomy in private matters – a 'cohabitation contract'. The same opinion also suggests that cohabitants are liable in solidarity for ordinary debts which may arise in meeting the normal costs of common life, in the same way as married couples are. None of the suggestions have been subject to court decisions, however.

It seems obvious that rules on the indivision of the joint ownership regime are applicable to property in a *de facto* union.

The case law has also followed the general regime of unjust enrichment in order to solve problems related to the distribution of the property of cohabitants upon the termination of the relationship (e.g. Decisions of the Supreme Court of 29.03.2004, 31.03.2009, 29.09.2009, 31.05.2011).

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

The sole and persistent definition in recent laws is: 'The *de facto* union is the legal situation of two people, regardless of gender, living in conditions similar to those of marriage for over two years' (Law No. 7/2001, of 11 May, Art. 1, n. 2).

Since both *de facto* unions and marriages between same-sex couples are allowed, there is no problem in saying 'living in conditions similar to that of marriage'.

Nevertheless, there are circumstances in which cohabitation is taken into account even if that specific lapse of time has not occurred (e.g. parental responsibilities regarding parents who cohabit – Art. 1911 of the Portuguese Civil Code), or in which a longer period of cohabitation is required (e.g. acquisition of nationality – Art. 3(3) of the Portuguese Nationality Act).

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

a. When does the relevant relationship begin?

The *de facto* union begins when its members start living as if they were a married couple. It is difficult for anyone to know the exact moment when this occurs besides the members themselves. This is why evidence is such an important issue, and Law No. 7/2001 clarifies some previously debated aspects. The main provisions are: any kind of evidence is permitted; the most common kind of evidence is a certificate from the local authority in the neighbourhood; false declarations to the local authority are punishable under the Portuguese Criminal Code.

b. When does the relevant relationship end?

Law No. 7/2001 (Art. 8, n. 1) determines that a *de facto* union ends by death (a)) or by intention (b)) or by marriage (c)) of any of the members. Termination due to the first or the third reason is easily verifiable and produces its effects without any further specific formality. On the other hand, termination by intention ought to be judicially certified whenever any of the members wish to obtain some of the legal benefits.

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 Portuguese Constitution neither mentions nor directly regulates a *de facto* union.

However, some see the recognition of a *de facto* union as being implicit in ‘the right to constitute a family’, as foreseen in the Portuguese Constitution, while others understand that this norm is not intended to refer to a *de facto* union, but rather relates exclusively to questions of filiation: the ‘right to constitute a family’ is, firstly, a right to procreate, and, secondly, a right to establish corresponding relations of motherhood and fatherhood.

A *de facto* union is, however, included in the ‘right to the development of personality’ (Art. 26, n. 1). Legislation which would prohibit a *de facto* union, which would penalize it by imposing sanctions on members within the relationship and restrict, in an intolerable way, the right to live in a *de facto* union would therefore clearly be unconstitutional.

The principle of the protection of a *de facto* union arising from the ‘right to the development of personality’ does not demand, however, that the legislator grants the

de facto union rights which are identical to those granted to marriage, thereby equalizing the rights of both.

We even believe that legislation which would entirely equalize a *de facto* union with a marriage would be unconstitutional, irrespective of how it was drawn up. Legislation which ceased to impose obligations upon spouses and allowed any spouse to marry without any formalities, etc., thus equalizing marriage with a *de facto* union, would violate Art. 36. n. 1 (part 2), which, by granting everyone the 'right to marry', guarantees the 'institution of matrimony', which, for that reason, the legislator cannot suppress, disfigure or essentially change its character. On the other hand, legislation which would equalize a *de facto* union with marriage, imposing the same duties upon people who live together in a marital fashion and affording them the same rights as those granted to married couples, would also be unconstitutional, insofar as it would violate the right not to marry, 'a negative side or dimension' of 'the right to contract marriage', which is recognised in Art. 36, n. 1 (part 2).

In conclusion, we believe that the Portuguese Constitution allows neither the penalization of a *de facto* union nor equalization with marriage: within these parameters, what should be applied is the democratic principle, which allows the ordinary legislator to freely adapt to the *de facto* union regime, in accordance with the most 'progressive' or 'conservative' option of the family policy adopted.

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?

The legal regime of a *de facto* union does not refer to international case law as an explicit influence. Nevertheless, the options of the Portuguese legislature express the concern to conform to human rights.

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.

In Portugal a *de facto* union was to a certain extent 'institutionalized' in Law No. 135/99, of 28 August, abrogated by Law No. 7/2001, of 11 May, which substitutes it and 'adopts measures for the protection of *de facto* unions'. This law, in turn, was amended by Law No. 23/2010, of 30 August. The legislation of 1999, however, did not signal a break with previous legislation; Law No. 135/99, like Law No. 7/2001 which followed soon afterwards, was to a large extent a mere summary of the protective measures enshrined in previous legislation: in various places in Art. 3 the legislation simply recognises rights conferred 'under the law' to people who live in a *de facto* union, 'legislation' which in many cases already existed.

There was, however, some innovation in the legislation of 1999, the most significant of which permitted the joint adoption of minors by people of different sex who lived in a *de facto* union, under the terms established for spouses in Art. 1979, No. 1, of the Portuguese Civil Code (Art. 7). In addition, in the event of the death of the *de facto* union member who is the owner of the home where the couple lived, the law granted the surviving member the real right to remain in the house for a period of five years and a right of preference in the sale of the home for the same period (Art. 4, Nos. 1 and 2). Lastly, in relation to fiscal questions, Law No. 7/2001 subjected *de facto* unions to the same legal rules relating to the taxation of personal income which were applicable to married couples living together (Art. 3.^o, al. d)).

In 2010, Law No. 23, of 30 August, introduced amendments to Law No. 7/2001.

In the knowledge that various countries had recognized equalization between a *de facto* union and a marriage, the moderate option arrived at by Portuguese legislation represents a true choice. The legislator must have taken into consideration the fact that the interested parties might not have wanted extensive regulation of their lives, given that they had opted not to marry; and that since they had chosen a *de facto* union, they should organize their private life as they wished, rather than having to conform to laws in areas which they themselves could regulate. *De facto* unions should continue to be non-judicial. On the other hand, in spite of this, and despite the fact that it is the matrimonial model which continues to be preferred by society and its laws, the State, today, cannot ignore and scorn those citizens who, by virtue of choices which they have made, create situations of need; or those who, simply being unable to make choices, find themselves in situations of acute want. Having said this, the general aim of the amendments was to provide increased support following a death or a breakdown in the relationship, above all when agreed decisions are no longer possible and when the objective is the social protection of a surviving member who is left in a vulnerable position, above all with respect to housing needs, minimum sustenance, or during moments of acute suffering, such as in cases of life-threatening injury or illness.

It can be concluded that Portuguese law, in comparison with other juridical systems, is very modest in its recognition of *de facto* union rights, and when compared to those of married couples the relative difference is enormous, since the *de facto* union regime continues to lack norms relating to registration, constitutional invalidity, property regimes, the management of assets, the illegitimacy of certain provisions, debt liability, contract prohibitions, the regulation of participation in companies, extinction (besides Art. 8 of Law No. 7/2001), and rights of inheritance.

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

None following the approval of Law No. 23/2010, of 30 August, amending Law No. 7/2001, of 11 May.

B. Statistics and estimations

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.

Year	Number of Marriages	Overall population
2007	46,329	-
2008	43,228	-
2009	40,391	-
2010	39,993	10,356,117
2011	36,035	10,562,178
2012	34,423	-

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

2012: 729,832.

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

- a. Under 25 years of age?

8.8%

- b. Between 26-40 years of age?

52%

- c. Between 41-50 years of age?

19.9%

- d. Between 51-65 years of age?

14.7%

- e. Older?

4.7%

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?

There are no statistics available for this question.

14. How many informal relationships are terminated:

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

There are no statistics available for this question.

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

There are no statistics available for this question.

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.

Year	Born outside of marriage	Born in an informal relationship
2005	30.7%	24.8%
2010	41.3%	32.0%
2013	47.6%	33.0%

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

There are no statistics available for this question.

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?

There are no statistics available for this question.

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

There are no statistics available for this question.

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?

There is no duty to support each other in any case.

b. Where there are common children in the household?

There is no duty to support each other in any case, although each parent must contribute to the child's maintenance.

c. Where there are other children in the household?

There is no duty to support each other in any case, although each parent must contribute to the child's maintenance.

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

There is no such general legal duty.

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?

The partner who wants to remain in the home against the will of the partner who is the owner may file a petition at the courts, on the grounds of Art. 4, of Law No. 7/2001 and Art. 1793 of the Portuguese Civil Code. The court will consider the necessity of both partners and their children. The rules are also applicable if the house is jointly owned. The petitioner may remain as a tenant.

The partner who wants to remain in the home against the will of the partner who is the tenant may file a petition at the courts, on the grounds of Art. 4, of Law No. 7/2001 and Art. 1105 of the Portuguese Civil Code. The court will consider the necessities of both partners and their children besides 'other relevant factors'. The rules are also applicable if both are equally tenants. The petitioner may remain as the tenant or the sole tenant.

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

a. In cases of domestic violence?

In cases of a conviction for domestic violence, the court may forbid any contact between the perpetrator and the victim; in the event of doing so, this additional penalty mandatorily includes a prohibition on entering the victim's residence, regardless of the title of occupation (Portuguese Penal Code, Art. 152(4) and (5)). This article expressly applies to domestic violence against spouses and cohabitants.

When proceedings are ongoing, the court may impose upon the defendant the duty not to approach the victim or his/her relatives (Portuguese Penal Procedure Code, Art. 200, n. 1,a)). This is, however, a general rule which is applicable to any persons, regardless of their social or family relationships

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

Whenever one of the members of the *de facto* union is absent without any notice (e.g. a missing person) and without a guardian or an agent under a power of attorney, a special manager may be nominated in order to manage the assets of the absent party (Art. 89 et seq. of the Portuguese Civil Code). This includes the home owned by the absent cohabitant or the right of lease entitled by him/her. In this way the other member of the *de facto* union may occupy the home when this is in accordance with this management.

In other cases of a long absence by one of the partners, there is no special provision. If that partner is capable of expressing his or her will (e.g. he or she has been imprisoned), it is expected that he or she does so; if not, (e.g. he or she is lying unconscious in a hospital) Portuguese law lacks any rule, unless a legal guardian is nominated.

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, unlike marriage in which any transaction regarding the family home must be subjected to the consent of the other spouse, even if he/she does not own it or has rented it (Art. 1682-A and 1682-B of the Portuguese Civil Code).

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

The general rules of joint ownership apply (Art. 1403 et seq. of the Portuguese Civil Code).

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

The general rules of ownership apply (Art. 1305 et seq. of the Portuguese Civil Code).

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

The general rules of leasing apply (Art. 1060 et seq. of the Portuguese Civil Code).

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

The general rules of leasing apply (Art. 1060 et seq. of the Portuguese Civil Code).

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

There are no specific rules regarding the cohabitant as the agent of the partner. One partner can act as an agent for the other whenever a power of attorney has been granted (Art. 262 et seq. of the Portuguese Civil Code), which may or not be associated with a mandate (Art. 1157 et seq. of the Portuguese Civil Code).

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

They become joint owners of an asset any time they validly acquire the asset, in the same way as any other two persons would become joint owners. They share the asset in the proportion defined by the act of acquisition, or in equal parts if nothing has been settled, on the grounds of the generally applicable regime of co-ownership/joint ownership.

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.

Household goods are those assets that can be found in all common homes and that are almost used daily for the various purposes shared by people living in common.

There are no specific rules governing acquisitions and/or transactions 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, there are no such circumstances.

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

There are no specific rules which are applicable to partners in an informal relationship. They may use all means acceptable in law, just as any citizen can.

When it is a case of co-ownership/joint ownership, a rebuttable presumption of an equal share is applicable whenever the title omits any difference between co-owners. Taking into account the difficulties raised by proof of the ownership of assets Parliamentary Bill n. 349/X, which preceded Act 23/2010, foresaw the possibility of stipulating clauses concerning the ownership of the assets acquired during cohabitation (Art. 5-A, n. 1). Moreover, it established a rebuttable presumption: movable assets would be presumed to be jointly owned by both partners (Art. 5-A, n. 2). These solutions, however, did not become law, due to the veto by the President of the Republic.

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

There are no specific rules which are applicable to partners in an informal relationship. They may use all means acceptable in law, just as any citizen can.

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

Besides the application of general and unspecific principles, there is no specific law imposing joint liability for debts on partners in an informal relationship. However, some authors strongly suggest that both cohabitants should be liable in solidarity for ordinary debts which may arise in meeting the normal costs of common life, just as married couples are. Parliamentary Bill n. 349/X, which preceded Act 23/2010, foresaw the same solution. However, this did not become law, due to the veto by the President of the Republic.

32. On which assets can creditors recover joint debts?

According to general rules, creditors can recover joint debts against all the assets belonging to each of the partners, regardless of the share which each of them may have in the debt.

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.

There are no specific rules governing the administration of assets jointly owned by the partners in an informal relationship.

The administration of assets jointly owned by the partners follows the generally applicable rules of co-ownership/joint ownership. According to these rules, any one of the partners has the right to act in administration (Art. 1407 and 985 of the Portuguese Civil Code) provided his or her share is half of the total. One partner who wants to act in administration but does not have at least half of the property ought to ask the court for a fair decision.

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 following answer to Question 34.

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

Not applicable following to Question 34.

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

Not applicable following answer to Question 34.

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

Not applicable following answer to Question 34.

- 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 following answer to Question 34.

- 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 following answer to Question 34.

- 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?**

There are no specific rules applicable to partners in an informal relationship to determine the ownership of the partners' assets. Each of them owns whatever has been validly acquired.

When it is a case of a co-ownership/joint ownership between partners, a rebuttable presumption of an equal share is applicable whenever the title omits any difference between co-owners/joint owners, according to a general rule.

Parliamentary Bill n. 349/X, which preceded Act 23/2010, established a rebuttable presumption: movable assets would be presumed to be jointly owned by both partners (Art. 5-A, n. 2). This solution, however, did not become law, due to the veto by the President of the Republic.

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?

No, there are none.

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)?

The partner who wants to remain in the home against the will of the partner who is the owner may file a petition at the courts, on the grounds of Art. 4 of Law No. 7/2001 and Art. 1793 of the Portuguese Civil Code. The court will consider the necessities of both partners and their children. The rules are also applicable if the house is owned by both of them. The petitioner may remain as a tenant; and the court may control the terms of the contract and may terminate the contract if circumstances change.

The partner who wants to remain in the home against the will of the partner who is the tenant may file a petition at the courts, on the grounds of Art. 4 of Law No. 7/2001 and Art. 1105.^o of the Portuguese Civil Code. The court will consider the necessities of both partners and their children besides 'other relevant factors'. The rules are also applicable if both are equally tenants. The petitioner may remain as the tenant or the sole tenant.

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

As a rule, each partner is liable for the debts which he/she has incurred. However, some legal scholars suggest that partners should be jointly liable for any debts incurred in order to meet normal family expenses, in the same way as married couples are (Art. 1691 (1) b) of the Portuguese Civil Code). Parliamentary Bill n. 349/X, which preceded Act 23/2010, foresaw the same solution. However, this did not become law, due to the veto by the President of the Republic.

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

a. The assets?

The value of assets is that which can be provided to the creditor after the civil enforcement procedure, as a consequence of attachment.

b. The debts?

The debt includes both capital and interest. The value of the capital is determined at the moment of the fact that originates it. Interest continues to mount until the moment when the debt is paid (voluntarily or by means of civil enforcement).

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?

Jurisprudence already applies the laws of enrichment without cause in cases in which one member of a *de facto* union contributes financially in the acquisition of a property, or for the realisation of benefits resulting from it, and the other member remains with the exclusive property of the acquired good. In the same way, cases are known in which the courts have recognised advantages acquired through a business at the cost of non-remunerated professional contributions by one member of a *de facto* union.

In other circumstances, one member of a *de facto* union could enjoy the benefits of some future advantage which is perhaps related to the way in which their life in common had unfolded, but which clearly could not be considered as having been caused by the contributions of the other. This is the typical case of one member having completed higher education, perhaps with the help of the other, but without it being possible to determine the proportion of this help or knowing if the same result could have been achieved without such help. In further cases, it is possible to identify disadvantages for the future which resulted for the member who renounced developing his or her own life, who made excessive sacrifices in favour of a life in common, in the expectation that this would be long-lasting – for example, one who abandoned employment to look after children, to care for an ascendant or descendant of the other, or to accompany the other on work-related travel. In such cases, clear reasons of equity would lead to establishing a compensation credit, as a way of protecting the more vulnerable *de facto* union member, similar to that which is established for marriage, in Art. 1675 n. 2, of the Portuguese Civil Code, introduced by the Reform of 1977, in the version updated by the new law of divorce (Law No. 61/2088) of October 31. The Assembly of the Republic actually approved such a regime, but the veto by the President of the Republic meant that this did not form part of Law no. 23/2010.

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 does not have rights of inheritance in the case of intestate succession.

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?

Yes. The surviving partner has a right to maintenance over the deceased's patrimony, inherited by his or her heirs (Art. 2020 of the Portuguese Civil Code), regardless of their title of succession acquisition.

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

Yes, there are.

Law No. 7/2001 grants the surviving partner the real right of habitation in the family home and the right to use household goods used by both in family life for a period of five years (Art. 3.º, al. a), e 5.º, n.º 1).

When the *de facto* union lasted for more than five years, the rights of habitation in the property and the right to use household goods are granted for however long the *de facto* union had lasted – six, ten or twenty years, etc. (Art. 5, n. 2).

An exceptional extension of the rights of habitation and use is, however, possible, based on equity reasons, to meet any severe needs of the interested party, and taking into special consideration personal care provided to the deceased partner or relatives (Art. 5, n. 4).

In the event of the *de facto* union members being co-owners of the property, the law recognises the right of exclusive use of common goods, during the periods established in Art. 5, in order to prevent other co-owners from reclaiming the possibility of concurrent use (Art. 5, n. 3).

The fact that the surviving member does not use the home for one year – thus showing that it is not needed – determines the expiration of the foreseen rights in these circumstances (Art. 5, n. 5).

After the expiration of the period during which the surviving member has the right of habitation, the law adds the attribution of the right to rent, under general market terms.

The court can intervene in defining the conditions of the contract, namely in fixing the rent, when there is disagreement over the market value (Art. 5, nos. 7 and 8).

The law also grants the surviving partner the right of preference in the sale of the home for the period in which the surviving partner has the right to permanently reside in the home, in whatever title – as the holder of the right of habitation, as a tenant, or while waiting for the signing of the rental contract (Art. 5, n. 9).

50. Can a partner dispose of property by will in favour of the surviving partner:

a. In general?

Yes, he or she can do this.

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

Yes, he or she can do this, but is limited to his or her disposable part of the estate.

This answer is valid in the case of a married testator; there is no registered partnership in Portuguese law.

c. If the testator has children?

Yes, he or she can do this, but is limited to his or her disposable part of the estate.

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?

A joint will is not valid in Portuguese law in any case (Art. 2181 of the Portuguese Civil Code).

But partners, just like any other persons, are allowed to make cross-wills, in separate acts and documents.

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?

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

c. If either partner has children?

No. As a rule, inheritance agreements are forbidden by law (Art. 1699(1), point a) and 2028(2) of the Portuguese Civil Code). However, inheritance agreements are allowed exceptionally – donations *mortis causa*, between betrothed and from third parties to betrothed, concerning determined assets. These agreements may refer to the whole or to part of the estate, as well as instituting an heir or appointing a legatee in favour of a third party, made by any of the betrothed in the pre-nuptial agreement (Art. 1700(1), para. b)). Thus, members of the *de facto* union cannot be included.

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?

The surviving partner has none, other than a right to maintenance over the deceased's patrimony, inherited by his or her heirs (Art. 2010 of the Portuguese Civil Code) regardless of their title of succession acquisition.

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

There are no statistics available for this question.

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?

There are no statistics available for this question.

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?

There are no statistics available for this question.

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 concerning agreements.

Some relevant scholars support the validity of such 'cohabitation contracts' concerning mainly patrimonial issues; but there are no court decisions on this subject.

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

a. The division of tasks as between the partners?

According to some relevant scholars, these kinds of personal issues belong to the area of fundamental freedom where partners cannot bind each other; the 'cohabitation contracts' are suitable for determining patrimonial matters.

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.

b. The contributions to the costs and expenses of the household?

According to some relevant scholars, these kinds of patrimonial issues may be regulated by a 'cohabitation contract' between the partners.

c. Their property relationship?

According to some relevant scholars, these kinds of patrimonial issues may be regulated by a 'cohabitation contract' between the partners. They can agree, for instance, on the ownership of assets acquired during the common life and the partition of assets.

d. Maintenance?

According to some relevant scholars, these kinds of patrimonial issues may be regulated by a 'cohabitation contract' between the partners. They can agree on maintenance, just as any other persons may have a contract on this issue (Art. 2014.^o of the Portuguese Civil Code).

e. The duration of the agreement?

According to some relevant scholars, partners can agree on the duration of the agreements they are allowed to make. Of course, they cannot agree on the duration of the cohabitation itself.

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

The only legally regulated consequence of separation concerns the family home (Art. 4 of Act 7/2001, May 11th and Art. 1793 and 1105 of the Portuguese Civil Code). According to Art. 1793 the cohabitants may agree on the future of the family home. This agreement is subject to confirmation by the courts. According to Art. 1105 the cohabitants may agree on the transmission or the unification of the right to rent the home.

In both cases the needs of the cohabitants and the interests of their children shall be taken into account.

60. Are the agreements binding:

a. Between the partners?

Yes. They are binding as far as any other agreement/contract is binding (Art. 406(1) of the Portuguese Civil Code). Whenever there is confirmation by the courts, this judicial decision must also be respected by the parties.

b. In relation to third parties?

In relation to third parties, the agreement is also binding as far as this is legally foreseen (Art. 406(2) of the Portuguese Civil Code). This is the case concerning the transmission or unification of the right to rent the family home. The landlord has to be notified *ex officio* (Art. 1105(3) of the Portuguese Civil Code).

Whenever there is confirmation by the courts, this judicial decision must also be respected by third parties.

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

These agreements are binding in the aforementioned terms.

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

Regarding the legal benefits that arise from the relationship, they may either be claimed or not. Furthermore, the claimant may or may not be able to prove their legal requirements.

Regarding the legal negative consequences, there is no opt-out in the situations in which they are foreseen by mandatory rules.

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

At any time, as long as consequences defined by a court decision, or by mandatory rules, are respected.

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

a. As between the partners?

As a rule, there are no formal requirements – the principle of formal freedom (Art. 219 of the Portuguese Civil Code). But, for instance, if one member of the *de facto* union grants a power of attorney to the other and this is included in the cohabitation agreement, this has to follow the same formal requirements demanded for the legal acts for which he/she has representative powers (Art. 262(2) of the Portuguese Civil Code).

b. In relation to a third party?

As a rule, there are no formal requirements – the principle of formal freedom (Art. 219 of the Portuguese Civil Code). But, for instance, if one member of the *de facto* union grants a power of attorney to the other and this is included in the cohabitation agreement, this has to follow the same formal requirements demanded for the legal acts for which he/she has representative powers (Art. 262(2) of the Portuguese Civil Code).

65. Is independent legal advice required?

No.

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

There are no statistics available for this question.

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

There are no statistics available for this question.

G. Disputes

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

The competent authority is the ordinary civil court of justice. If the disputes concern the children of the partners, namely regarding parental responsibilities, the competent authority is the family court.

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

The competent authority for spousal disputes is a different one: it is the family and minors court of justice.

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?

Provided the agreement is deemed to be valid, the competent court may scrutinise it in order to clarify a possible dispute between the partners over its content.

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)?

Yes, on common grounds applicable to any agreement (e.g. a change of circumstances, Art. 437 of the Portuguese Civil Code).

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?

Any dispute that is of a patrimonial nature or a personal nature but is subject to transaction, may be subject to ADR (Art. 11 of Act 29/2013, April 19th).

Regarding the regulation of parental responsibilities, family mediation is available (Art. 147-D, Decree-law 324/78, October 27th).

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?

Regarding the agreement on the regulation of parental responsibilities, judicial confirmation is required (Art. 147-D (3), Decree law 324/78, October 27th), and thus it has the effects of a judicial decision.

Regarding other matters, there may or may not be judicial confirmation. Regardless of that fact, the agreement is enforceable, unless the law states otherwise (Art. 9(1) of Act 29/2013, April 19th).

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?

There are no statistics available for this question.