



REGISTERED PARTNERSHIPS Regulation (EU) 2016/1104



EUROPEAN COMMISSION



- * 16 million international couples living in the EU, married or in a registered partnership, with assets in a member state other than their own
- * Many couples share life in *union de facto* , which in some jurisdictions also have effects on property rights
- * On 24 June, the EU Council adopted the Regulation 2016/1104 implementing decisions in matter of the property effects of registered partnerships.

Main goal



- * Clarify the applicable rules to property regimes for registered partnerships in order to understand different procedures in different EU member states
- * Property consequences of registered partnerships with cross-border implications



- * This Regulation does not deal with substantive rules on the definition of a registered partnership, the requirements to conclude a registered partnership, or the rights and obligations derived from a registered partnership. It does not concern the recognition of civil status of the partners as suchs.
- ❖ These issues will continue to be governed by the **national law** of each member state

- * **Registered partnership** means the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation (Article 3 of the Regulation)





- * **The property consequences of a registered partnership** are defined as the set of relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution

- * **The law applicable to the property effects of registered partnerships shall govern:**
 - The classification of property of either or both parties into different categories during and after the registered partnership;
 - The transfer of property from one category to the other one;
 - The responsibility of one partner for liabilities and debts of the other partner;
 - The powers, rights and obligations of either or both partners with regard to property;
 - The partition, distribution or liquidation of either or both partners with regard to property;
 - The effects of the property consequences of registered partnership or a legal relationship between a partner and third parties;
 - The material validity of a partnership property agreement.



Article 29



Right in rem



Adaptation Principle

* **PORTUGAL**



- * Portuguese law does not provide for the possibility of registering a partnership;
- * Non-marital partnership consists in two persons, regardless their gender, that lives in analogous conditions of the spouses, for more than two years



- * The main difference between non-marital partnership and marriage is the lack of formality for the first one; there isn't any will for formalization. And contrary to marriage, non-marital partnership doesn't have the publicity of registry
- * In common both institutes have the intentionality of sharing a life together



Non-marital partnership



Means of proof

- * Any mean legally admissible, being the most relevant the testimonial evidence
- * For registry purposes:
 - ❖ a declaration issued by the parish council of the place of residence of the partners;
 - ❖ A declaration of honor signed by both referring that they are living in non-marital partnership fore more than two years;
 - ❖ Civil register certificate of their civil status

- * **Consequences driven from non-marital partnership or *union de facto* in case of the decease of one of the partners:**
 - ❖ the right to demand for maintenance from the decease heritage;
 - ❖ the right to receive “widow`s” pension;
 - ❖ the right to live in the family house

- * In case of death, Portuguese law 7/2001 of 11th May granted the surviving partner the right to remain in the family residence for the period of five years as holder of a right to family use





- * This new right is considered a new *right in rem* , different from usufruct or right of use and inhabitation, and once proved by the means above refered, it can lead to an entry in the **land registry**, and its effects have been considered by the doctrine as a ***legacy ex lege***



* Documents for the registry of the right of family use:

- Declaration of interest by honourable commitment, of the period of time the union lasted before the decease and thar the house was a family home;
- Document proving that the interested partner doesn't have another house in the area of the same municipality



* In conclusion:

- * Knowledge of foreign law on property relationships between registered partners, especially after the adoption of regulation 2016/1104 remains of particular interest to legal practitioners as they may often be called to handle partners property cases that have cross-border effects
- * Many international couples who move around, study and conduct business in more than one country, even private citizens with registered partnerships or union de facto have the need to know the law of other countries regarding their property relationships and succession matters



- * **Marriage** is known worldwide. However the concept of a **registered partnership** is much less known. Some countries do not recognize registered partnerships and, in others it is recognized but the rights and obligations that go with it may differ a lot.
- * In order to finalize, the next questionnaire shows the importance of knowing what is going on at a national level regarding this presentation

QUESTIONNAIRE

- * 1) Does your national regulation provide for the possibility of registering a partnership?
 - * Yes
 - * No

- * 1.1 If you answered yes, please confirm if registered partnerships are accepted no matter if the partners or couples are of the same sex or gender?

- * 1.2 If you answered no, do you think it would be useful to develop efforts in order to organize such registration?



- * 2) Is there a statutory property regime for partnerships whether registered or not?
 - * Yes
 - * No

- * 2.1 And are there any restrictions on the freedom to establish a property regime?
 - * Yes
 - * No

- * 3) Can a partnership registered in another member state or a third state have patrimonial effects in your national regulation?
 - * Yes
 - * No

- * 4) Does the dissolution of a non-marital partnership have succession effects?
 - * Yes
 - * No



- * 5) Is it possible to register the right to family home in case of decease or breakout of non-marital partnership?
 - * Yes
 - * No



Thank you very much for your attention!

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