



# REGISTERED PARTNERSHIPS Regulation (EU) 2016/1104



EUROPEAN COMMISSION

- \* There are millions of international couples living in the European Union, married or in a Registered Partnership with assets in a member state other than their own. And the number of cross-border couples is constantly raising.





- \* According to article 21 of the Treaty on the functioning of the European Union, «*Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States*».



- \* It can be very difficult for those couples to know which laws apply to their situation and property; which courts have jurisdiction in that matter.
- \* These difficulties often result from the large disparities between the applicable rules governing the property effects of marriage or Registered Partnerships, both in substantive law and in private international law.

- \* Thus, the importance of **Regulation 2016/1104** adopted by the EU Council on 24th of June implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.





## \* Regarding Registered Partnerships



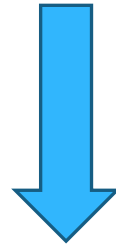
It provides the regime governing the shared life of two persons which is provided for in law, the registration of which is mandatory under that law and which fulfills the legal formalities required by that law.



- \* As regards property consequences of a Registered Partnership, it provides rules concerning property relationships of these 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 break-up.



## The Aim of The Regulation



to overcome the hurdles faced by international couples , due to the fragmentation among the national systems in the field of property consequences of Registered Partnerships.





- \* In the last years we have seen a remarkable change in Europe in the area of legal recognition of relationships.
- \* In many jurisdictions, couples , regardless their gender, have the option to register as partners. So regarding informal relationships we assist in the last decades an increasing number of jurisdictions that have designated *lex specialis rules*.



- \* **RESPONSES TO THE QUESTIONNAIRE**

- \* We had **18 Contributions:**

- \* Belgium, Bulgaria, Croatia, Cyprus, Estonia, Greece, Finland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Spain, Sweden, Romania and Portugal

## QUESTION 1 - Does your national regulation provide for the possibility of registering a partnership?

- \* - **YES**  Belgium, Croatia, Estonia, Finland, Italy, Ireland, Luxembourg, Netherlands, Spain and Sweden.



- **BELGIUM** – It is possible but only if this partnership will result in a legal cohabitation contract being concluded before a notary, and provided that this deed also includes a deed constituting, translating or declaring rights in rem in immovable property.
- **ESTONIA:** As from 1 January 2016, two adults of whom at least one has residence in Estonia may enter into a registered partnership contract.
- \* **SPAIN** : Partnerships can be registered but only in **Administrative Registries** (no substantial juridic effects are produced by this registration).



- \* - **NO**  Bulgaria, Cyprus, Greece, Latvia, Lithuania, Slovak Republic, Romania and Portugal
- **PORTUGAL:** National regulation does not provide for the possibility of registering a partnership. The civil registration code lists the facts subject to mandatory registration, and does not include partnership.


- \* **QUESTION 1.1- – Members that answered yes in the first question also said yes for the acceptance of registered partnerships no matter if the partners or couples are of the same sex gender**
  
- **ITALY:** Italian national regulation provides a specific Law n. 76/2016 about non marital partnership:
  - \* a) civil partnership (between couples of the same sex gender)
  
  - \* b) living together (between couples of the same or different sex gender)



- \* **QUESTION 1.2 – However most of the members that answered no to the same question do think it would be useful to develop efforts in order to organize such registration**
  
- **PORTUGAL:** Both marriage and the *union de facto* are guided by the same principle - the construction and maintenance of a home and life in common, sharing the same duties and obligations. Both institutions might have patrimonial effects.

- \* Non marital partnership is not constituted by an act of public authority or by any other formality. It does not generate any civil status subject to registration (it does not even generate affinity relationships or has an impact on the legal capacity of individuals), so it cannot be subject to civil registration.
- **SLOVAK REPUBLIC** -: it will be useful to register partnership, at least between man and woman, namely because some questions regarding inheritance may arise.



- \* **QUESTION 2 - Is there a statutory property regime for partnerships whether registered or not ?**
  
- \* **Yes**  Estonia, Finland, Ireland, Italy, Luxembourg, Netherlands and Sweden
  
- **ITALY:** Only if the civil partnership or the living together is registered by the Registry Office.




- **ESTONIA:** Upon entry into a registered partnership contract, the parties must choose the type of their proprietary relationship which are the same types available when a marriage is registered.



- **LUXEMBOURG:** Despite the fact that the parties can provide the patrimonial effects of their partnership in a convention (which has to be mentioned in the partnership declaration), the law provides a statutory property regime in the same way as a married couple.



- \* **No**  Belgium, Bulgaria, Croatia, Cyprus, Greece, Latvia, Slovak Republic, Spain, Romania and Portugal
- **SPAIN:** The Supreme Court has stated that the matrimonial property regimes are not applicable by law to partnerships.



- **BELGIUM:** Belgian legislation provides that if the partners have not organized the regime of their real estate in the contract, the applicable regime will be that of a pure and simple separation of property .


\* **QUESTION 3 - Are there any restrictions on the freedom to establish a property regime?**

\* **Yes**  **Belgium, Bulgaria, Ireland, Italy, Latvia and Romania**



- **BELGIUM:** The partners can regulate their life together as they wish, and in the way that suits them, as long as the clauses of their contract are not contrary to the law and public order and do not regulate certain provisions for example as regards family home and the rules determining the order of succession



- \* **No:**  Croatia, Cyprus, Estonia, Finland, Luxembourg, Netherlands, Slovak Republic, Sweden and Spain.
- **LUXENBOURG** : In some points, the partners can conclude a convention between them.
- **SPAIN:** There are no restrictions but it will not be of the kind of a family or matrimonial property regime. It would be as an ordinary community regime established by two persons and thus, without special rules of publicity.




- \* **QUESTION 4-Can a partnership registered in another member state or in a third state have patrimonial effects in your national regulation?**
- \* **Yes**  Croatia, Estonia, Finland, Ireland, Italy, Luxembourg, Netherlands, Spain, Sweden and Portugal
- **PORTUGAL:** Regulation 2016/1104 is applicable, but our courts may decline jurisdiction, once our national regulation does not provide for the possibility of registering a partnership.



- **SPAIN:** In case the State applicable law requires a registration, it will be needed to prove it and it will also be needed to prove the content of the property regime if it has not been established by law.
- **LUXEMBOURG:** The law provides that the partners who come from another member state or from a third state and have registered their partnership abroad, have the possibility to ask for their partnership to be registered
- **NETHERLANDS:** A registered partnership that has entered into abroad will be recognised in the country, provided it is governed by the same rules as those that apply to a registered partnership entered into in the Netherlands.

**No**  Bulgaria, Cyprus, Greece, Latvia, Lithuania and Slovak Republic.

**QUESTION 5- Does the dissolution of a non marital partnership produce succession effects?**


\* **Yes**  Belgium, Ireland, Italy, Luxembourg, Netherlands and Spain

- **BELGIUM:** The dissolution of a non-marital partnership results in the partners losing the inheritance tax rate applicable between spouses, and the rate between foreigners will apply. Exception dissolution due to the death of one of the partners. In this case the surviving partner retains the rate between spouses and will inherit the usufruct of the family home and the furniture therein.
- **ITALY:** : Only in case of civil partnership




- **SPAIN:** Only in some territories where special civil law applies the dissolution of a non-marital partnership by cause of death of a partner produce succession effects, since some rights are recognized by law to the surviving partner.



- \* **No**  Bulgaria, Cyprus, Estonia, Finland, Greece, Latvia, Slovak Republic, Romania, Sweden and Portugal
  
- **SWEDEN:** There are no succession effects but it does provide certain similar rights to the joint dwelling and household goods, and a division of property agreement can be drawn after the relationship was dissolved.


- **ESTONIA:** In the case that the parties wish to bequeath their property to their partner, a reciprocal will or succession contract must be concluded. Wills and succession contracts become invalid on the same basis as in the case of a reciprocal will or succession contract concluded upon entering into a marriage.
- **PORTUGAL:** There is no succession effects arising from the death of one of the partners; however the survival partner has the right to remain in the family residence.

- \* **QUESTION 5.1 -Is it possible to register the right to family home in case of decease or breakout of non marital partnership?**
- \* **Yes**  Belgium, Cyprus, Ireland, Italy, Spain, Sweden and Portugal
- **PORTUGAL:** In case of death of one of the members, the surviving one has the right to remain in the family residence for the period of five years as a holder of a right to family home use. In case the non-marital partnership has lasted for more than five years before the decease, that right to family home use is conferred for a period of time equal to its term. This new right is considered a new *right in rem*.



- **SPAIN:** The Supreme Court has declared the regulation of the right to family home in case of death or dissolution of marriage established by article 96 of Civil Code also applicable to non-marital partnerships (Case 190/2015). Furthermore, some territories with special civil regulation have specifically established this same rule by law.
- **BELGIUM** - The Civil Code has been amended and now provides in Article 3.30, § 1, 7° that deeds of inheritance establishing that a person has acquired a right in rem in immovable property on account of death must be registered.



- **IRELAND:** Either party can register a Lis Pendens which puts people on notice that there are court proceedings pending in relation to the property
- \* **No**  Bulgaria, Croatia, Estonia, Finland, Greece, Latvia, Luxembourg, Netherlands, Slovak Republic and Romania
- **BULGARIA:** Every aspect of non-marital partnership can be arranged by contract between partners



- **LUXEMBOURG:** The law provides that one of the partners can introduce a request to the court within the 3 months of the breakout (or by death) of the partnership, which fixes the urgent and temporary measures needed, including the occupation/benefit of the common residence, within the maximum of one year.
- We can see that MS are divided in this issue; it's an on going institute due to it's increase and personal interconnection with consequences at property and succession levels.



Thank you very much for your attention!

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