NATIONAL REPORT: BELGIUM

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A. General

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

Two kinds of formal relationships between a couple are regulated in Belgian law.

A marriage can be entered into by two unmarried persons of the opposite or same-sex (Art. 143 Belgian Civil Code) who are not too closely related (Art. 161-164 Belgian Civil Code) and have reached the age of majority. A court dispensation as to the marriageable age is possible (Art. 144, 145 and 148 Belgian Civil Code). During a marriage, general personal and property rights and obligations apply irrespective of the single matrimonial property regime (Art. 212 et seq. Belgian Civil Code). The default regime is a community of accrued gains, but spouses can opt for any other (mixed) regime (Art. 1387 et seq. Belgian Civil Code). A divorce can only be obtained through court proceedings, either on the basis of mutual consent or upon a separate or joint request on the basis of the irretrievable breakdown of the marriage (Art. 229-230 Belgian Civil Code). In the latter case, post-divorce support is due to the ex-spouse in need, for a maximum period of the duration of the marriage (Art. 301 Belgian Civil Code). In the case of the dissolution of the marriage by death, the surviving spouse is entitled to at least the usufruct or lease of the main residence and the household goods or to half of the deceased's estate under forced heirship rules (Arts. 745*bis* and 915*bis* Belgian Civil Code). In case of an annulment of the marriage, the aforementioned consequences of marriage apply in favour of the *bona fides* spouse(s) and the children of the marriage (Art. 201-202 Belgian Civil Code).

Legal cohabitation *(wettelijke samenwoning/cohabitation légale)* can be entered into by two unmarried and not legally cohabiting persons of the opposite or the same-sex who have reached the age of majority (Art. 1475 Belgian Civil Code). The impediments to marriage based on kinship do not apply. A dispensation as to the age of majority is not possible. The Belgian Supreme Court found that legal cohabitation did not concern the status of persons at the time of its introduction.[1] Due to subsequent legal amendments, legal cohabitation *anno* 2015 has however become a formal relationship. During cohabitation, a primary regime of only property rights and obligations exists (Art. 1477 Belgian Civil Code). The default property regime between the cohabitants is separation of property, but they can opt for a joint ownership regime (Art. 1478 Belgian Civil Code). The cohabitation can be dissolved by a joint or unilateral declaration before the civil registrar. There is no

[1] Cass. 17 January 2013, *RW* 2013-2014, 903, with note SWENNEN.

maintenance obligation. Legal cohabitation is automatically dissolved by death or by marriage. The surviving cohabitant is a default heir of the usufruct or lease of the main residence and the household goods, but can be disinherited (Art. 745*octies* Belgian Civil Code). Specific rules apply when the surviving cohabitant is an heir on the basis of kinship (Art. 745*octies* and 1478 Belgian Civil Code). In either case of the dissolution of the cohabitation, the Family Court can issue an interim order (e.g. on household expenses) that will apply for a maximum of one year (Art. 1479 Belgian Civil Code). In the case of an annulment of the cohabitation, the benefit of putative cohabitation applies in favour of the *bona fides* cohabitant(s) (Art. 1476*quinquies*, § 2 Belgian Civil Code).

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?

Belgian family law does not contain a default legal definition of informal relationships and does not, as such, regulate their formation, content and dissolution.

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.

In the absence of specific legal provisions and of (implicit) agreements (part F. hereinafter), the general law of obligations and property law regulate the internal and external dimensions of informal relationships, both during the relationship and upon its termination. We think that it is important to stress that legal recognition is and should not be limited to a couple, but may also concern households beyond the couple.[2]

For the internal dimension, both the law of obligations and property law are relevant to redress the situation between informal partners (1) during their relationship and (2) upon separation. (1) The possible contractual basis of transfers of money (or other resources) during the informal relationship is often disputed, particularly whether such transfers are loans or donations. *Actori incumbit probatio*: the existence of a particular contract must be proven according to the common law on evidence[3], which requires written proof (Art. 1341 Belgian Civil Code). The moral impossibility to provide oneself with written proof (Art. 1348 Belgian Civil Code) during an

[2] F. SWENNEN, *Het personen- en familierecht. Identiteit en verwantschap vanuit juridisch perspectief*, Intersentia, Antwerp, 2015, at n° 50.

[3] Cass. 26 October 2006, *RW* 2009-2010, 615.

informal relationship is only rarely accepted.[4] In the absence of a proven contractual basis, informal partners may try to rely on quasi-contracts and on property law. Firstly, the theory on natural obligations applies. A natural obligation exists when (a) a person subjectively considers he has a moral duty to perform, (b) in circumstances that are also considered to give rise to a moral duty by society at large and (c) performance cannot be enforced under civil law prior to the voluntary commencement of performance or promise to perform. Under Belgian law a moral duty exists to contribute to household expenses during an informal relationship.[5] Secondly, informal partners may seek compensation on the basis of *negotio gestorum*, but all conditions of this theory would rarely be fulfilled between informal partners.[6] Thirdly, investments by one partner in movable or immovable property can be balanced on the basis of property law. Firstly, joint owners must equally share in the rights and the charges of the joint property (Art. 577-2, § 3, 5 and 7 Belgian Civil Code). The sole owner is furthermore under an obligation both to compensate the accessories he wants to maintain on the basis of accession (Art. 555 and 566 Belgian Civil Code) and to reimburse the necessary and useful costs which the other partner has incurred.[7] Only insofar as, or to the extent that, transfers between informal partners cannot be based on the aforementioned bases, can the parties rely on undue payment and unjust enrichment.[8] This is particularly useful when a partner has excessively contributed to the household expenses.[9] (2) Upon the dissolution of the informal relationship, the ex- or surviving partner may firstly rely on a natural obligation to claim a contribution to the former household's expenses during a 'term of notice' and, to a lesser extent, to provide maintenance.[10] In the case of separation, tort law applies. Whereas the termination of an informal relationship is not a fault as such, the circumstances in which the relationship is terminated may give rise to tortious liability.[11] Damages then constitute a functional equivalent of the contribution to the household expenses or maintenance.

For the external dimension, vis-à-vis third parties, both the concept of legitimate expectation – e.g. that informal partners were actually married or legally cohabiting[12] – and the theory on apparent agency[13] are relevant.

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4 For example, in Antwerp 14 March 2000, *AJT* 2000-2001, 835, with note WILMS but for example not in the District Court of Nivelles 25 October 2012, *Le Pli Juridique* 2013, N° 25, at p. 7, with note JASSOGNE.

5 K. WILLEMS, *De natuurlijke verbintenis*, die Keure, Bruges, 2011, at p. 255-258.

6 Ghent 20 November 2008, *TBBR* 2011, 44, with note BOULY and S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, Antwerp, 2015, at n° 388.

7 For example, District Court of Oudenaarde 19 September 2005, *RABG* 2006, 774. Also see C. DECLERCK and V. ALLAERTS, 'Grondslag en waardering van vergoedingsrechten en schuldvorderingen tussen partners. Ontwikkelingen 2011-2013', in: P. SENAEVE (ed.), *Personen- en familierecht*, die Keure, Bruges, 2014, at p. 65-79.

8 District Court of Ghent 28 June 2005, *T.Not.* 2005, 464.

9 V. DEHALLEUX, 'La répétition de la contribution excessive aux charges du ménage: proposition d'une nouvelle issue aux conflits entre cohabitants de fait', *TBBR* 2009, at p. 144.

10 K. WILLEMS, *De natuurlijke verbintenis*, die Keure, Bruges, 2011, at p. 290-301.

11 K. WILLEMS, *De natuurlijke verbintenis*, die Keure, Bruges, 2011, at p. 301-303.

12 G. COPS and K. SABBE, 'Niet getrouwd, wel gescheiden. Juridische aspecten van de beëindiging van de samenwoning', *NFM* 2002, at p. 10.

13 B. TILLEMAN, *Lastgeving*, Story-Scientia, Deurne, 1997, at n° 164.

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

There are a plethora of legal provisions in which informal relationships, mostly based on cohabitation, are taken into account for the regulation of a variety of subjects. The difficulty in finding a broadly applicable definition is one of the reasons why informal cohabitation is not yet institutionalised in law.[14]

Only some provisions concern the law of persons and family law, and more broadly private law:
- the Family Court may terminate post-divorce support when the debtor cohabits with another person as if they were married (Art. 301, § 10 Belgian Civil Code);
- joint and second parent adoption is possible in case the (two) adopter(s) have continuously and effectively cohabited since at least three years, and no impediment to marriage based on kinship exists (Art. 343, § 1, b) Belgian Civil Code);
- besides the spouse and the legal cohabitant, the person with whom one constitutes a *de facto* family unit is preferably appointed as a guardian (Art. 496/3, para. 2 Belgian Civil Code and also see Art. 14 Patient Rights Act and Art. 909 Belgian Civil Code on a conflict of interests vis-à-vis gifts);
- other provisions assimilate the person with whom one cohabits *de facto* with a spouse or legal cohabitant (e.g. with regard to a conflict of interests as a guardian, Art. 398 Belgian Civil Code);
- mediation is allowed with regard to disputes arising from a *de facto* cohabitation (Art. 1724, par. 1, 4° Belgian Code of Civil Proceedings).

Most provisions concern 'public family law' in that they attach consequences to informal relationships in branches of public law, particularly criminal law, immigration law, social (security) law and tax law. We will provide one example for each branch of the law:
- Article 410 Belgian Criminal Code includes in its definition of domestic violence as an aggravating circumstance, besides the spouse, any person with whom the offender lives or has lived together and has or has had a durable affective and sexual relationship;
- Article 47/1, 1° Belgian Aliens Act considers as family members of the Union citizen: the persons with whom he has a durable relationship, duly attested with all means, and taking into account its intensity, duration and stability (Art. 47/3, para. 1 Belgian Aliens Act);
- a dependant in social security law can be the person with whom the person entitled cohabits, except in case he also has a dependent spouse or cohabits with a non-dependent spouse (Art. 123 Royal Decree of 3 July 1996);
- Article 1.1.0.0.2, par. 5, 4°, c) Flemish Taxation Code defines a partner *inter alia* as the persons (plural!) who continuously cohabited for at least one year in a joint

[14] F. SWENNEN, *Het personen- en familierecht. Identiteit en verwantschap vanuit juridisch perspectief*, Intersentia, Antwerp, 2015, at. n° 681.

household, with a view to applying the same tax rates as between spouses in the context of donations and successions. The registration in the population register constitutes a rebuttable presumption of partnership.

Interestingly, most of those provisions do not disqualify an informal couple on the basis of the co-existence of a formal relationship or of minority. The current piecemeal approach, however, is fairly inconsistent and unstructured.

5. Where informal relationships between a couple have legal effect:
a. When does the relevant relationship begin?

There is no uniform 'point of departure' for an informal relationship to have legal effect in the different legal provisions that regulate the consequences of such relationships. Some legal provisions use a formal 'connecting factor', such as registration in the population register (Art. 1.1.0.0.2, par. 5, 4°, c) Flemish Taxation Code). Other provisions furthermore require a certain continuous duration of the relationship, e.g. one year (Art. 1.1.0.0.2, par. 5, 4°, c) Flemish Taxation Code) or three years (Art. 343, § 1, b Belgian Civil Code). Various legal provisions finally use qualitative conditions for the informal relationship to be recognised, such as its affective and sexual nature (Art. 410 Belgian Criminal Code) or more generally cohabitation as if the couple were married (Art. 301, § 10 Belgian Civil Code). Interestingly, no legal provisions make the legal recognition of informal relationships dependent on a (*post-hoc*) registration as informal partners. Some local authorities allow informal partners to register their notarial cohabitation agreement (Art. 1, 10° Royal Decree of 16 July 1992 on the population registers). Such registration, however, has no legal consequences in terms of the recognition of their informal relationship.

b. When does the relevant relationship end?

Just as there is no uniform 'point of departure', there is no uniform criterion regarding the end of an informal relationship. It will have to be determined whether, at the relevant time, the ad hoc conditions for the existence of an informal relationship are fulfilled or not. If not, the relationship will be considered to have ended.

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 Belgian Constitution does not explicitly protect formal relationships, particularly marriage, as legal institutions. In other words, there is no *Institutionsgarantie* that would exclude the (equal) statutory protection of informal relationships. Informal relationships are not protected in the Belgian Constitution. It does however warrant equality before the law and forbids discrimination (Art. 10 and 11 Belgian Constitution). It also encompasses the right to respect for private life and family life (Art. 22 Belgian Constitution). The courts have relied on the aforementioned provisions with regard to the (non-)protection of informal relationships. On the one hand, the Constitutional Court has exclusive power to assess legislative acts against

the Constitution. It has inconsistently delineated the protection of informal relationships vis-à-vis marriage and legal cohabitation in numerous judgments.[15] On the other hand, all civil courts are competent to assess acts of the executive branch against the Constitution. This competence is less important for the development of the legal recognition of informal relationships.

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 European Convention on Human Rights, particularly Art. 8 and 14, have been most relevant for the development of the legal recognition of informal relationships. Belgium is a 'monist state' and until the reform in 2009 all civil courts were competent to directly apply the ECHR over national legislation. This had led some courts to apply the primary matrimonial regime to cohabitants on the basis of Art. 8 ECHR.[16] But since 2009, civil courts in principle are obliged to refer a prejudicial question to the Constitutional Court on the compatibility of national legislation with international fundamental rights that are also guaranteed in the Belgian Constitution (Art. 26, § 4 Constitutional Court Act). Moreover, already in 2003 the Supreme Court determined that Art. 8 and 14 ECHR do not imply that all remaining differences between informal relationships and marriage should be eliminated.[17]

Other international instruments were relevant to a lesser extent. For example, Art. 3.2 b) of the Free Movement of Persons Directive (2004/38/EC) has been reproduced in Art. 47/3, par. 1 Belgian Aliens Act for the purposes of family reunification.

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.

Even though informal relationships are still not regulated in Belgian family law as such, 1989/1990 was an important turning point for their recognition.[18]

Before 1989, informal relationships were not recognised in Belgian law; reference was often made to a formula attributed to Napoleon Bonaparte during the preparatory works of the *Code civil*: '*Les concubins se passent de la loi, la loi se désintéresse d'eux*'.[19]

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[15] For an exhaustive and critical review: S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015.

[16] Divisional Court of Tongeren 1 April 1992, *Limb.Rechtsl.* 1993, 59; Justice of the Peace Aalst 11 June 1991, *RW* 1993-94, 1307; Justice of the Peace Aalst 1 September 1992, *T.Vred.* 1992, 326.

[17] Cass. 17 November 2003, S.03.0018.N, www.cass.be.

[18] A. HEYVAERT, *Het personen- en gezinsrecht ont(k)leed*, Kluwer, Mechelen, 2002, at n°s 434 et seq.; F. SWENNEN, *Het personen- en familierecht. Identiteit en verwantschap vanuit juridisch perspectief*, Intersentia, Antwerp, 2015, at n° 679.

[19] Ph. MALAURIE, 'Mariage et concubinage en droit français contemporain', *Arch. phil. dr.* 1975, at p. 19.

But rather than being ignored as 'neutral', informal relationships were approached negatively. In 1958, the Supreme Court considered that the legislature had necessarily refused to consider the benefits from a *de facto* cohabitation as legitimate interests, as it had made marriage the essential foundation of the family.[20] In 1967 the Supreme Court considered that benefits from a non-adulterous *de facto* cohabitation were not necessarily illegitimate, even though informal relationships were not recognised by law.[21] Any benefit from an adulterous *de facto* cohabitation, however, was necessarily incompatible with public policy.[22] The surviving partner of a still married deceased partner consequently could not claim damages from the person liable for the car accident in which the partner had died.

In 1989, the Supreme Court concluded that the illegitimacy of an adulterous *de facto* cohabitation only existed vis-à-vis the spouse, and not vis-à-vis a third party who is liable in tort for a car accident in which a cohabitant died. The surviving cohabitant consequently had a legitimate interest in claiming damages.[23] The legitimacy of interests from an adulterous, and *a fortiori* non-adulterous, cohabitation was confirmed in 1990.[24] The legal recognition of *de facto* cohabitation is a logical pendant of a 1987 reform since which marital and extramarital parentage are treated equally, following the Marckx judment of the ECtHR.[25]

Since 1989, informal relationships are increasingly taken into account in public and private family law regulations. This evolution started in public family law, particularly in social security law and in tax law. By cohabiting instead of marrying, partners could avoid certain burdens and the legislature consequently equated cohabitation with marriage. Afterwards, equal treatment was introduced with regard to benefits too, and also in private family law.

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

Paragraph 6.3.1. of the Coalition Agreement of 9 October 2014 explicitly states that the coalition will introduce a clear framework with regard to the patrimonial rights and obligations of *de facto* cohabitants. The Minister of Justice intends to regulate both the internal and the external dimensions of informal relationships. The emphasis will also lie on explaining the differences between marriage, legal cohabitation and *de facto* cohabitation to citizens.[26] It remains to be seen which

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20 Cass. 21 April 1958, *Pas.* 1958, I, 921.

21 Cass. 26 June 1967, *RW* 1967-68, 786.

22 Cass. 19 December 1978, *RW* 1978-79, 1709.

23 Cass. 1 February 1989, *Pas.* 1989, I, 582.

24 Cass. 15 February 1990, *JT* 1990, 216. Justice of the Peace Bilzen 30 September 1991, *T.vred.* 1992, 16 (an adulterous cohabitation was contrary to public policy and the cohabitants' joint tenancy was null and void).

25 ECtHR, *Marckx v. Belgium*, No. 6833/74, 13.6.1979.

26 Policy Statement in the Chamber of Representatives, *Parl.St.* Kamer 2014-15, n° 54-20/018, available at: www.lachambre.be.

priority will be given to this reform. Some individual parliamentary initiatives have also been taken, but they are subsidiary to the execution of the coalition agreement.

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.

Over the years, there has been a slight decrease in the number of marriages in Belgium. Nevertheless, the total number of marriages remains quite high, compared to other European countries.

Table 1: Number of marriages in Belgium per year (ADSEI)

Year	Number of marriages
2003	41,777
2004	43,296
2005	43,141
2006	44,813
2007	45,561
2008	45,613
2009	43,303
2010	42,159
2011	41,001
2012	42,198
2013	37,854

Informal relationships are not officially registered, but the National Statistics Office does provide statistics on legal cohabitations. Both statistics on different-sex and same-sex cohabitations are available, but do not distinguish between intra-family and other forms of cohabitation. From 2013 onwards, the number of legal cohabitations outweighs the number of marriages.

Table 2: Number of persons who entered into a legal cohabitation in Belgium per year (ADSEI)

Year	Total	Different-sex	Same-sex
2002	544	4,397	747
2003	21,427	20,380	1047
2004	8,958	8,239	719
2005	11,263	10,470	793
2006	18,729	17,802	927
2007	30,961	29,811	1150
2008	34,605	33,366	1239
2009	49,515	47,790	1725
2010	64,021	61,900	2121
2011	67,561	65,406	2155
2012	72,191	69,946	2245
2013	78,392	75,954	2438

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

Informal relationships are not officially registered in Belgium. Therefore, we need survey data to get an idea of the prevalence of informal relationships.

The European Social Survey allows us to see the spread of informal relationships across time. Unfortunately, the question on civil status has changed twice. This leads to instability with regard to the time series.

In 2002 and 2004, only the official civil status was asked. With the help of the presence of a partner in the household, non-married persons with partners in the household could be identified as cohabiting.

In 2006 and 2008, respondents were asked whether they lived in a 'civil partnership'. No possibility existed to determine whether this was legally recognized or not.

Only from 2010 onwards could respondents indicate whether they cohabited in a legally recognized partnership or not. To enhance comparability with 2006 and 2008, we give both the aggregated numbers of cohabiting respondents and the more detailed division into legally recognized or not.

Table 3 Formal and informal relationships in Belgium (ESS 2002-2012)

	2002	2004	2006	2008	2010	2011
Single	39.8%	35.4%	40.8%	42.7%	38.9%	40.8%
Married	51.5%	50.8%	52.7%	49.4%	48.8%	48.7%
Cohabiting	8.8%	13.8%	-	-	-	-
Civil partnership	-	-	6.5%	7.9%	12.3%	10.5%
Civil partnership (registered)	-	-	-	-	6.6%	3.6%
Civil partnership (unregistered)	-	-	-	-	5.7%	6.8%

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?

The numbers from the European Social Survey are too low to generate reliable tables according to age. Therefore, we refer to the Belgian Census data of 2011 to give an age distribution of the household position. Unfortunately, it is not possible to provide any trends here since the census was only compiled for 2011. The age classes are not exactly what is asked in Question 12 but these are the only available age classes.

Table 4 Household positions in Belgium (Census 2011)

Household position	Less than 15 years old	15-29 years old	30-49 years old	50-64 years old	65-84 years old	85 years and older	Total
Married (different-sex)	-	193,798 (9.5%)	1,575,446 (51.1%)	1,392,522 (65.2%)	972,345 (59.5%)	54,833 (22.1%)	4,188,944 (38.1%)
Married (same-sex)	-	1,557 (0.1%)	8,523 (0.3%)	3,001 (0.1%)	522 (0.0%)	11 (0.0%)	13,614 (0.1%)
Registered partnership (different-sex)	-	72,797 (3.6%)	149,730 (4.9%)	29,182 (1.4%)	8,202 (0.5%)	443 (0.2%)	260,354 (2.4%)
Registered partnership (same-sex)	-	1,333 (0.1%)	4,562 (0.1%)	1,546 (0.1%)	562 (0.0%)	51 (0.0%)	8,054 (0.1%)
Cohabiting	1 (0.0%)	218,253 (10.7%)	380,947 (12.4%)	100,439 (4.7%)	27,990 (1.7%)	2,180 (0.9%)	729,810 (6.6%)
Single parent	8 (0.00%)	41,124 (2.0%)	267,931 (8.7%)	118,103 (5.5%)	55,577 (3.4%)	14,511 (5.8%)	497,254 (4.5%)
Child of non-single parents	1,478,885 (79.2%)	904,603 (44.5%)	88,221 (2.9%)	8,871 (0.4%)	87 (0.0%)	-	2,480,667 (22.6%)
Child of single parents	362,818 (19.4%)	308,054 (15.1%)	62,063 (2.0%)	31,176 (1.5%)	2.275 (0.1%)	2 (0.0%)	766,388 (7.0%)
Single	-	205,797 (10.1%)	453,986 (14.7%)	382,267 (17.9%)	456,442 (27.9%)	109,249 (44.0%)	1,607,741 (14.6%)
Person in household with family members	12,651 (0.7%)	33,844 (1.7%)	27,421 (0.9%)	31,441 (1.5%)	43,131 (2.6%)	12,784 (5.2%)	161,272 (1.5%)
Person in household without family members	8,108 (0.4%)	43,03 (2.1%)	50,411 (1.6%)	23,416 (1.1%)	20,027 (1.2%)	2,082 (0.8%)	147,647 (1.3%)
Unknown household	2,559 (0.1%)	-	-	-	-	-	2,559 (0.0%)
Institution-alized person	2,267 (0.1%)	8,721 (0.4%)	12,961 (0.4%)	12,511 (0.6%)	47,795 (2.9%)	52,079 (21.0)	136,334 (1.2%)
Total	**1,867,297**	**2,033,484**	**3,082,202**	**2,134,475**	**1,634,955**	**248,225**	**11,000,638**

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?

This is a question that can only be answered with longitudinal data. Unfortunately, Belgium has never invested in a nationally representative panel. Only the Research Department of the Flemish Government or the National Register might be able to answer this question appropriately.

14. How many informal relationships are terminated:
a. Through separation of the partners?
b. Through the death of one of the partners?

The National Statistics Office of Belgium only provides statistics on the numbers of divorces and the 'discontinuance' of legal cohabitations per year. It is unclear which causes of 'discontinuance' are included in the latter. No statistics are available on the number of terminations of informal relationships.

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

This requires longitudinal data, which are not available for informal relationships.

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.

Eurostat statistics only reflect the number of births outside marriage, not further specified.

Table 5 Live births by mother's age and legal marital status (EUROSTAT)

	Live births total	Live births outside marriage	Percentage of births outside marriage
2003	114,005	39,594	34.73%
2004	117,295	43,269	36.89%
2005	119,622	47,100	39.37%
2006	122,529	50,066	40.86%
2007	124,095	53,634	43.22%
2008	127,205	56,779	44.64%
2009	127,198	57,921	45.54%
2010	130,100	59,509	45.74%

We also found this table in Lodewijckx (2008) for Flanders only.[27] No comparable table is available for Belgium as a whole.

Table 6 Private households (Flanders, 2007) (Numbers rounded to hundreds)

	1990	2007	Difference 1990-2007	Increase 1990-2007
Singles	551,600	758,400	551,600	38%
Married without children	554,800	611,300	554,800	12%
Married with children	881,800	709,300	881,800	-20%
Youngest 0-19	684,400	511,400	684,400	-25%
Youngest 20-24	115,700	94,000	115,700	-19%
Youngest 25 and older	81,800	104,000	81,800	27%
Cohabiting without children	35,500	127,800	35,500	260%
Cohabiting with children	22,900	108,900	22,900	376%
Youngest 0-19	20,100	100,200	20,100	399%
Youngest 20-24	1,700	5,100	1,700	204%
Youngest 25 and older	1,100	3,600	1,100	220%
Single parent household	146,800	205,100	146,800	40%
Youngest 0-19	76,600	120,300	76,600	57%
Youngest 20-24	21,300	25,600	21,300	20%
Youngest 25 and older	48,900	59,200	48,900	21%
Other type of household	29,200	36,200	29,200	24%
Total	2212,600	2557,000	2212,600	16%

Source: Research Department of the Flemish Government in datafile of the National Register

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?

[27] E. LODEWYCKX, (2008), Veranderende leefvormen in het Vlaamse Gewest 1990-2007 (en 2021). Een analyse van gegevens uit het Rijksregister. *SVR-Rapport 2008/3* at p. 8.

The National Office of Statistics provides general adoption statistics. We have indications of the number of adoptions by one parent and by two parents (same- and different-sex). We do not know whether the single parent adoptions are in fact second parent adoptions. Nevertheless, the figures where one parent adopts a child strongly relate to this question.

Table 7 Number of adoptions in 2013 (ADSEI)

	Total	Man	Woman	Same-sex male couple	Same-sex female couple	Heterosexual couple
Total number of adoptions	819	236	314	7	5	257
Adoptions from abroad	237	27	16	0	2	192
Internal adoptions	582	209	298	7	3	65

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

We present the repartnering chances of formerly married people. We do not have statistics on the repartnering chances of formerly cohabiting people. This table only applies to Flanders.

Table 8 Repartnering chances on specific durations after divorce since the actual divorce, separate for men and women, according to divorce cohort[28]
A new relationship

	Men				Women			
	1981-2005	1981-1990	1991-2000	2001-2005	1981-2005	1981-1990	1991-2000	2001-2005
0 years	20%	23%	20%	19%	20%	16%	19%	22%
1 year	45%	39%	48%	43%	46%	32%	43%	51%
2 years	62%	61%	64%	59%	58%	53%	56%	64%
5 years	78%	79%	79%	77%	78%	74%	77%	80%
10 years	86%	89%	87%	83%	86%	84%	86%	86%
Median duration in months	15	18	13	13	15	23	19	12

[28] I. PASTEELS and D. MORTELMANS, 'What after divorce? Repartnering in Flanders in 2010', *Relaties en Nieuwe gezinnen*, 2013, at p. 66.

Cohabiting after divorce

	Men				Women			
	1981-2005	**1981-1990**	**1991-2000**	**2001-2005**	**1981-2005**	**1981-1990**	**1991-2000**	**2001-2005**
0 years	24%	22%	24%	25%	24%	19%	22%	27%
1 year	37%	38%	38%	36%	38%	32%	37%	40%
2 years	61%	65%	63%	57%	63%	65%	61%	64%
5 years	74%	80%	75%	72%	75%	82%	74%	73%
10 years	39%	38%	37%	43%	36%	36%	38%	34%

Median duration in months

	Men				Women			
	1981-2005	**1981-1990**	**1991-2000**	**2001-2005**	**1981-2005**	**1981-1990**	**1991-2000**	**2001-2005**
2 years	5	4	4	4	4	1	5	3
5 years	20	24	20	19	19	23	19	17
10 years	35	48	34	31	35	46	34	31

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?

Informal partners are not under a duty to support each other in the absence of an (implicit) agreement to that end.[29] A natural obligation of support has not yet been recognised.[30]

b. Where there are common children in the household?

See the answer to sub a – there is no difference: no duty exists.

c. Where there are other children in the household?

See the answer to sub a – there is no difference: no duty exists.

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

Informal partners are not obliged, on a civil basis, to contribute to household expenses in the absence of an (implicit) agreement to that end. A (limited)[31] natural

[29] Bergen 6 October 1994, *JT* 1995, 300. Implicitly: Cass. 11 April 1975, *AC* 1975, 881. Also see F. SWENNEN, 'Alimentatie tussen partners', in A. VERBEKE and C. FORDER, *Gehuwd of niet: maakt het iets uit?*, Intersentia, Antwerp, 2005, at p. 285.

[30] K. WILLEMS, *De natuurlijke verbintenis*, die Keure, Bruges, 2011, at p. 255-258.

[31] Justice of the Peace Wavre (2) 23 January 2007, *T.Vred.* 2009, 364.

obligation to contribute has been recognised,[32] but its enforcement presupposes voluntary execution by the debtor or the promise to execute.[33] In the absence thereof, the partner who has solely or excessively contributed to the household expenses can subsequently reclaim the overpayment from the other partner on the basis of unjust enrichment.[34]

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?

A partner is not entitled to remain in the other partner's home against the latter's will in the absence of specific legal provisions or of a (lease) agreement. Some of the case law does however consider the partner to be a tenant at will and would grant him some respite during which he is entitled to remain in the home (against payment).[35]

23. Are there specific rules on a partner's rights of occupancy of the home:
a. In cases of domestic violence?

The Public Prosecutor is competent to issue a temporary domestic exclusion order in case of a serious and imminent danger of domestic violence against another person who 'occupies the same residence' ('*occupe la meme residence*' Art. 3, § 1 Act of 15 May 2012). The order applies for 10 days and can be extended once with a maximum of three months by the Family Court (Art. 5, § 2 Act of 15 May 2012).

The Act does not regulate the occupant's right to remain in the residence, though. It refers to the applicable procedures to obtain an interim order between spouses and between legal cohabitants. Such a procedure does not exist between informal cohabitants and the general rules apply.

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

Legal absence. The court may establish a presumption of absence when a person has not appeared at his/her domicile or residence for more than three months and no news has been received from him/her, so that uncertainty arises as to whether that person is alive or dead (Art. 112 Belgian Civil Code). If the presumably absent person did not appoint an agent, the court may appoint an administrator (Art. 113 Belgian Civil Code). Contrary to guardianship over incapacitated adults (Art. 496/3 Belgian Civil Code), the informal partner is not preferably appointed as the administrator.

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[32] For example Liège 20 June 1990, *JLMB* 1991, 157; District Court of Brussels 31 October 1996, *JLMB* 1997, 1044 and K. WILLEMS, *De natuurlijke verbintenis*, die Keure, Bruges, 2011, at p. 255-258.

[33] Justice of the Peace Charleroi (4) 26 October 2001, *JLMB* 2002, 655.

[34] Liège 28 April 2009, *RTDF* 2010, 43 ; District Court of Nivelles 25 October 2012, *Le Pli Juridique* 2013, N° 25, p. 7, with note JASSOGNE. Furthermore V. DEHALLEUX, 'La répétition de la contribution excessive aux charges du ménage: proposition d'une nouvelle issue aux conflits entre cohabitants de fait', *TBBR* 2009, at p. 144.

[35] Justice of the Peace Bruges (1) 2 June 2005, *TGR-TWVR* 2005, 170; Justice of the Peace Wavre (2) 23 January 2007, *T.Vred.* 2009, 364; Justice of the Peace Halle 23 July 2008, *NJW* 2009, 136, with note VERSCHELDEN. Cf. on the basis of a right of habitation: Justice of the Peace Waremme 16 April 1987, *JL* 1987, 1987, 1577.

There are no specific rules on the occupancy of the home. The administrator is nevertheless obliged to further execute the absent person's rights and obligations, also those arising from any natural obligation.[36]

De facto absence. No specific rules apply in case of a '*de facto* absence', for example hospitalisation or imprisonment. The hospitalised or imprisoned partner retains his/her legal capacity and, if necessary, protection as an incapacitated adult will have to be applied. The other partner will at least be considered as a tenant at will, in the absence of other applicable categories such as a right to habitation.[37]

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

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

No specific rules apply. In case the home is jointly owned, either the default rules on coincidental joint ownership or the rules on conventional joint property apply. In the case of coincidental joint property, each owner may dispose of his undivided part in the property (Art. 577-2, § 4 Belgian Civil Code).[38] The disposal is not opposable by the other undivided owners, which is particularly relevant in case an indivision agreement was concluded that was registered in the Mortgage Office. All undivided owners have to consent to the disposal regarding the home as a whole (Art. 577-2, § 6 Belgian civil Code).

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

No specific rules apply in the absence of an agreement that would only be valid between the parties.[39] The sole owner is entitled to dispose of his property and to administer it. According to a minority position in the case law[40] and doctrine[41], the same protection as between spouses and legal cohabitants should be accepted on the basis of Art. 8 and 14 ECHR, but that protection, even then, would not be relevant upon separation.[42]

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

No specific rules apply. If the home is jointly rented, then the tenancy must be terminated by both partners jointly or by one of them also acting for the other on the

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36 Cf. with regard to guardianship Justice of the Peace Kortrijk (2) 16 August 1999, *RW* 2000-01, 667.

37 Justice of the Peace Waremme 16 April 1987, *JL* 1987, 1987, 1577; Justice of the Peace Bruges (1) 2 June 2005, *TGR-TWVR* 2005, 170; Justice of the Peace Halle 23 July 2008, *NJW* 2009, 136, with note VERSCHELDEN.

38 Cass. 22 December 2006, *RW* 2006-07, 711, with note MOSSELMANS.

39 W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1015.

40 Divisional Court Tongeren 1 April 1992, *Limb.Rechtsl.* 1993, 59; Justice of the Peace Aalst 1 September 1992, *T.Vred.* 1992, 326.

41 A. HEYVAERT, *Het personen- en gezinsrecht ont(k)leed*, Kluwer, Mechelen, 2002, at n° 698.

42 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 169.

basis of (implicit) agency.[43] In case neither partner wants to leave the rented home upon separation, the court is only competent to temporarily organise occupancy in an (interim) order until the rental agreement is duly terminated. This includes the power to temporarily evict one of the partners.[44]

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

No specific rules apply. The tenant is entitled to terminate the rental agreement. According to a minority position in the case law[45] and doctrine[46], the same protection as between spouses and legal cohabitants should be accepted on the basis of Art. 8 and 14 ECHR, but that protection, even then, would not be relevant upon separation.[47]

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

No specific rules apply. According to the general rules on agency, one partner can appoint the other as an agent under a general or specific agency, either for a definite or an indefinite period. An agency agreement can be implicit and such implicit agreements between informal cohabitants have been accepted in the case law.[48] Contrary to spouses, custom is not accepted as the sole basis for implicit agency.[49] Besides, third parties may invoke the existence of an apparent agency, which is an application of the theory on legitimate expectation.

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

No specific rules apply. Informal partners usually become joint owners through joint acquisition.[50]

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43 Justice of the Peace Herzele 19 December 2012, *RW* 2013-14, 273.

44 President of the District Court of Arlon 16 October 1985, *RTDF* 1985 185 (domestic violence); Justice of the Peace Hamme 21 November 1989, *RW* 1990-91, 514, with note PAUWELS; Justice of the Peace Bruges (1) 2 June 2005, *TGR-TWVR* 2005, 170 (domestic violence); Justice of the Peace Oudenaarde 2 February 2006, *NJW* 2006, 138, with note VERSCHELDEN. *Contra*: Justice of the Peace Kortrijk (2) 9 February 1988, *T.Vred.* 1989, 50 (eviction contrary to art. 8 ECHR); Justice of the Peace Bilzen 30 September 1991, *T.vred.* 1992, 16 (adulterous cohabitation contrary to public policy).

45 District Court Liège 26 June 1980, *JL* 1981, 86, with note LIÉNARD; Divisional Court of Tongeren 1 April 1992, *Limb.Rechtsl.* 1993, 59; Justice of the Peace Aalst 1 September 1992, *T.Vred.* 1992, 326.

46 A. HEYVAERT, *Het personen- en gezinsrecht ont(k)leed*, Kluwer, Mechelen, 2002, at n° 698.

47 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 169.

48 Internal dimension: District Court of Brussels 27 January 2000, *JLMB* 2000, 1088, with note SACE (withdrawal of money). External dimension: Justice of the Peace Herzele 19 December 2012, *RW* 2013-14, 273 (termination of tenancy).

49 B. TILLEMAN, *Lastgeving*, Story Scientia, Brussel, 1997, at n° 164.

50 B. TILLEMAN, *Lastgeving*, Story Scientia, Brussel, 1997, at n° 164.

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.

Art. 534 Belgian Civil Code defines household goods as all movables that serve to use and decorate the rooms in the home, excluding art collections that are not part of the everyday living surroundings.[51] This definition is also used in the context of marriage and legal cohabitation.

No specific rules apply regarding acquisitions and transactions in respect of household goods in a *de facto* cohabitation. In the internal dimension, between the partners, implicit agency may however be relevant. In the external dimension, third parties may rely on apparent agency[52] or, more generally, on the theory of legitimate expectation.[53] Furthermore, a minority position in the case law considers the primary regime of spouses to be applicable to informal partners on the basis of Art. 8 and 12 ECHR.[54]

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?

There are different ways through which informal partners can be regarded as joint owners, both in the internal and external dimensions of the relationship.

In the internal dimension of the relationship, a partner may prove with all forms of evidence that a title does not correspond with ownership.[55] On the one hand, this evidence may relate to an underlying legal act, such as (implicit) agency or simulation, for example a nominee agreement.[56] On the other hand, it may relate to underlying facts, such as a cash deposit into an account of which the other partner is the holder.[57]

In the external dimension, third parties may try to rely on apparent agency[58] or, more generally, on the theory of legitimate expectation.[59]

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51 Gent 17 September 2008, *TGR-TWVR* 2009, 104.

52 B. TILLEMAN, *Lastgeving*, Story-Scientia, Deurne, 1997, at n° 164.

53 G. COPS and K. SABBE, 'Niet getrouwd, wel gescheiden. Juridische aspecten van de beëindiging van de samenwoning', *NFM* 2002, at p. 10.

54 Divisional Court of Tongeren 1 April 1992, *Limb.Rechtsl.* 1993, 59; Justice of the Peace Aalst 11 June 1991, *RW* 1993-94, 1307; Justice of the Peace Aalst 1 September 1992, *T.Vred.* 1992, 326.

55 Liège 25 March 2009, *RTDF* 2010, 335.

56 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 324; W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 958.

57 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 344; W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010.

58 B. TILLEMAN, *Lastgeving*, Story-Scientia, Deurne, 1997, at n° 164.

59 G. COPS and K. SABBE, 'Niet getrouwd, wel gescheiden. Juridische aspecten van de beëindiging van de samenwoning', *NFM* 2002, at p. 10.

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

With regard to immovable property, the necessary authentic instrument will prove ownership between the partners. Authenticity does not apply to the sincerity of the parties' declarations; evidence in rebuttal is consequently allowed between the parties.[60]

With regard to movable property, all means of providing evidence of ownership are accepted. Particularly relevant is the presumption that possession amounts to title (Art. 2279 Belgian Civil Code). A partner may rely on joint possession to prove joint property.[61] On the contrary, it is debated whether a partner may rely on Art. 2279 Belgian Civil Code to prove sole ownership. According to some of the case law[62] and authors[63], possession in this case is necessarily ambiguous. Other authors are of the opinion that *de facto* cohabitation does not necessarily create ambiguous possession.[64] This depends on the circumstances of the case. Ambiguity of possession, however, is often accepted in the case law.[65] In sum, even though there is no presumption of joint ownership between informal partners[66], the rules on evidence will often persuade the court to reach such a conclusion. Anyhow, Art. 2279 Belgian Civil Code does not apply to bank accounts. The presumption that the holder of the account owns the balance[67] can be rebutted with all forms of evidence.[68]

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

With regard to immovable property, third parties may rely on the title published in the Mortgage Register as proof of ownership. In case of simulation, they may also choose to rely on the underlying legal situation.[69]

With regard to movable property, all forms of evidence are accepted. Particularly important is that third parties may rely on the presumption that possession amounts

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60 Liège 25 March 2009, *RTDF* 2010, 335.

61 Liège 12 February 1988, *Ann.dr.Liège* 1989, 36, with note JOISTEN; Mons 4 October 2004, *RTDF* 2005, 885.

62 Justice of the Peace Oudenaarde 7 June 2007, *T.Vred.* 2009, 163.

63 W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 960.

64 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 328.

65 E.g. Liège 24 December 2003, *JT* 2004, 406; Antwerp 5 December 2006, *NJW* 2007, 414, with note VERSCHELDEN; District Court of Hasselt 10 March 1987, *TBBR* 1988, 131; District Court of Bruges 5 December 1988, *RW* 1989-90, 201; Justice of the Peace Oudenaarde 7 June 2007, *T.Vred.* 2009, 163.

66 Antwerp 5 December 2006, *NJW* 2007, 414, with note VERSCHELDEN.

67 Liège 9 February 2011, *RTDF* 2011, 743; Justice of the Peace Westerlo 11 December 2006, *T.Vred.* 2007, 354. But compare Liège 18 January 2005, *RTDF* 2007, 562, with note TAINMONT.

68 Mons 4 October 2004, *RTDF* 2005, 885.

69 W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n°s 958, 987 and 997.

to title of the sole ownership (Art. 2279 Belgian Civil Code) of all movables, even during the informal relationship. Evidence in rebuttal of joint ownership or sole ownership by the other party is however allowed.[70]

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

Joint liability is not presumed, not even for debts that were jointly contracted (on the basis of (apparent) agency). There is no joint liability of informal partners on the basis of any statutory provision[71] or custom.[72] Consequently, it must have been stipulated (Art. 1202 Belgian Civil Code). The contractual stipulation of joint liability is possible both in the external dimension, with the creditor (*obligatio*) and in the internal dimension, between the partners (*contributio*). In the absence of such a stipulation, third parties may rely on legitimate expectation.[73] According to a minority position, joint liability as between spouses or legal cohabitants applies on the basis of Art. 8 and 14 ECHR.

32. On which assets can creditors recover joint debts?

The creditors can recover joint debts on both partners' own and joint property (Art. 7 Mortgage Act).[74] This may subsequently give rise to a right of recourse between the partners (Art. 1213 Belgian Civil Code).

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 the joint assets of informal partners. In the absence of an (implicit (agency)) agreement, each undivided owner of an asset is entitled to the use of his undivided part insofar as such use does not modify the purpose of the asset and does not interfere with the right of the other undivided owners (Art. 577-2, § 5 Belgian Civil Code). Both partners have to consent to acts of administration other than urgent acts regarding the assets as a whole (Art. 577-2, § 6 Belgian civil Code).[75]

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?

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[70] W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 998.

[71] Ghent 29 January 2013, *NJW* 2014, 357, with note STEENNOT.

[72] Against: Justice of the Peace Merksem 5 March 1981, *RW* 1981-82, 49, with note PAUWELS.

[73] P. SENAEVE, *Compendium van het personen- en familierecht*, Acco, Leuven, 2013, at n° 2049.

[74] Cf. with regard to own debts also Cass. 10 June 1976, *RW* 1976-77, 601.

[75] V. SAGAERT, *Goederenrecht*, Kluwer, Mechelen, 2014, at n°s 329.

There is no statutory maintenance obligation between former informal partners. In the absence of an (implicit) agreement, a claim to 'maintenance' is possible on the grounds of either tort law or a natural obligation.

Claims on the basis of tort law are rarely accepted. Indeed, it is not a fault *per se* to end an informal relationship. Only the circumstances in which the relationship is terminated may give rise to tort liability.[76] Some case law refers to behaviour that would constitute a fault anyhow, such as assault and battery. The untimely termination of an informal relationship, or termination by the economically stronger partner whereas the other has been dependent on him/her for a long period has been accepted as a fault in some of the case law.[77] One judgment concludes that no fault was committed because the partner continued to support the other for one year, and that the subsequent termination of support was not untimely.[78] By contrast, one judgment even seems to accept that it is negligent not to avoid becoming economically dependent on the other partner![79] Legal doctrine rightly points at the confusion that exists in this regard between fault and damages, which are two different conditions of tort liability. The existence of a fault cannot be derived from the existence of damage. There is no damage if a partner would stay behind in an economically weaker position.[80] In our opinion, there could however be damage if a former partner would suddenly have to bear all the household expenses on his/her own.

Whereas there is consensus that a natural obligation to contribute to the household expenses and even support a partner exists during the informal relationship, such consensus does not exist vis-à-vis separated partners. Some of the case law rejects any natural obligation upon separation.[81] Other case law accepts that a natural obligation may exist[82], but rightly requires proof of voluntary performance or a promise to do so.[83] Providing for a partner during a relationship does not as such prove the promise to do so upon separation. The requirement of voluntary performance or a promise to perform also means that the natural obligation only becomes a civil obligation to the extent and for the period determined by the debtor. The traditional criteria to determine maintenance obligations consequently do not apply.

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?

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[76] District Court of Brussels 6 May 2008, *Act.dr.fam.* 2009, 93; District Court of Brussels 31 March 2009, *JLMB* 2010, 337.

[77] Justice of the Peace Antwerp (7) 29 June 2004, *RABG* 2004, 1282, with note BROUWERS.

[78] District Court of Brussels 31 March 2009, *JLMB* 2010, 337.

[79] District Court of Mons 23 May 2001, *JLMB* 648.

[80] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n°s 269 *et seq.*

[81] Justice of the Peace Veurne (Nieuwpoort) 15 December 2009, *T.Vred.* 2012, 31.

[82] Antwerp 1 February 2006, *RW* 2007-08, 1816, with note WERMOES.

[83] District Court of Brussels 6 May 2008, *Act.dr.fam.* 2009, 93; District Court of Brussels 31 March 2009, *JLMB* 2010, 337.

Needs *versus* the ability to pay are only indirectly relevant. Inequality between the former partners may be an element for the courts to accept that a natural obligation exists.[84] A need may also be an element to prove damage in a tort claim.

b. The creditor's contributions during the relationship (such as the raising of children)?

The creditor's contributions are only indirectly relevant to prove the existence of a natural obligation or of damages.

c. The standard of living during the relationship?

The standard of living during the relationship is only indirectly relevant to prove the existence of a natural obligation or of damages.

d. Other factors/circumstances (such as giving up his/her career)?

Other circumstances are only indirectly relevant to prove the existence of a natural obligation or of damages. For example, giving up a career or contributions during a relationship may constitute circumstances in which the courts may conclude that a natural obligation to provide for a former partner exists.

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

Since claims based on tort law or on a natural obligation are not maintenance claims, the traditional modes of calculation do not apply, even not by analogy. There are no specific modes of calculation either.

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

Since claims based on tort law or on a natural obligation are not maintenance claims, the traditional time restrictions do not apply, not even by analogy. There are no specific time restrictions either. In cases where a former partner had to provide, the payment would be a lump sum or limited to a very short period.[85]

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[84] Antwerp 1 February 2006, *RW* 2007-08, 1816, with note WERMOES; District Court of Brussels 6 May 2008, *Act.dr.fam.* 2009, 93, reforming the more flexible first degree decision: Justice of the Peace Anderlecht (1) 25 October 2007, *T.Vred.* 2010, 224.

[85] Justice of the Peace Sint-Jans Molenbeek 26 September 2000, *AJT T.Huur* 2000, 29 ('a couple of months' after a cohabitation of 12-15 months); Justice of the Peace Anderlecht (1) 25 October 2007, *T. Vred.* 2010, 224 (16 months after a cohabitation of 17 years), confirmed by the District Court of Brussels 6 May 2008, *Act.dr.fam.* 2009, 93. Compare with agreements: Antwerp 1 February 2006, *RW* 2007-08, 1816, with note WERMOES (one year, quickly substituted with a lump-sum payment); Justice of the Peace Etterbeek 2 June 2008, *T.vred.* 2010, 235 (six years).

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

Since claims based on tort law or on a natural obligation are not maintenance claims, the traditional criterion of changed circumstances does not apply, not even by analogy. We have not found any relevant case law regarding this question.

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?

These circumstances are not relevant. We have not found any relevant case law.

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?

The claim of the creditor is not a statutory maintenance claim and consequently it is not ranked vis-à-vis the debtor's statutory maintenance claims, which all take priority. The Supreme Court has indeed determined that the courts should disregard every voluntary act that allows a maintenance debtor to escape his statutory duty, even if the debtor had no malicious intent.[86] We think that this judgment only applies to voluntary support obligations towards an informal partner. To also disregard the maintenance debtor's contributions to his/her *de facto* household expenses would infringe on his/her right to the protection of private and family life in his/her new informal relationship.[87]

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?

No specific rules apply. With regard to immovable property, the necessary authentic instrument will prove ownership between the partners. Authenticity does not apply to the sincerity of the parties' declarations; evidence in rebuttal is consequently allowed between the parties.[88]

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[86] Cass. 2 January 2014, *RW* 2014-15, 507.

[87] Justice of the Peace Grâce-Hollogne 18 November 2003, *RTDF* 2006, 213. In contrast: Justice of the Peace Tournai (2) 15 April 2003, *RTDF* 2006, 594.

[88] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 324; W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Antwerp: Intersentia, 2010, at n° 958.

With regard to movable property, all forms of providing evidence of ownership are accepted. It is debated whether a former partner may invoke the presumption that possession amounts to title (Art. 2279 Belgian Civil Code) for the movables he/she has in his/her possession after the separation. Some case law[89] and authors are of the opinion that possession is ambiguous in these circumstances.[90] Other case law however applies Art. 2279 Belgian Civil Code without reservation.[91]

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 specific rules apply. The same general rules apply to all property.

As a rule, the former partners' joint property must be divided at the request of one of them. In the case of coincidental joint ownership, they may however have concluded an indivision agreement, which is possible for consecutive periods of a maximum of five years (Art. 815 Belgian Civil Code). However, joint ownership between informal partners is often not coincidental but conventional. The Supreme Court has determined that the maximum period of five years for indivision agreements does not apply to conventional joint property.[92] The joint owners – or their successors in law – consequently cannot claim a division unless this has been agreed otherwise. This is particularly problematic in case the partners have acquired joint property with a tontine or accretion clause. The agreement would be executed even in the case of separation, unless agreed otherwise.[93] The Supreme Court[94] has rightly found that such execution would make no sense in those circumstances. It found that the tontine agreement 'ceases to exist' when the underlying *de facto* or legal relationship between the partners ends. Consequently, the division of the resulting coincidental joint ownership may be claimed. Prior case law had concluded that there was an abuse of rights in the case of a refusal to divide.[95] Even though the outcome of the latter Supreme Court decision is acceptable, the rule of the former Supreme Court decision is not. One must accept that each party must be able to terminate – with notice[96] – an indivision agreement that was concluded for an indefinite period, unless it was concluded with a purpose that has not yet been reached and has not become senseless.[97] It is indeed a general principle that all agreements for an indefinite period may be terminated.[98]

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89 Antwerp 9 February 2005, *NJW* 2006, 508, with note VERSCHELDEN.

90 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, n° 325.

91 District Court of Bruges 22 May 1995, *TBR* 1994, 44.

92 Cass. 20 September 2013, *RW* 2014-15, 618, with note DE KEYSER.

93 As was the case in Antwerp 3 June 2009, *T.Not.* 2011, 517, with note PUELINCKX-COENE.

94 Cass. 6 March 2014, *TBBR* 2014, 261, with note PEERAER.

95 Liège 21 June 2011, *RNB* 2013, 717, with note SAUVEUR.

96 For example, District Court of Ghent 12 April 2011, *RW* 2012-13, 226.

97 District Court of Ghent 3 April 2012, *RABG* 2014, 1046, with note VAN DEN BRANDEN. Comp. Brussels 18 June 2013, *RW* 2014-15, 624.

98 For example Cass. 7 June 2012, *RW* 2013-14, 903.

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)?

There are no preferential rights on any goods.

The Constitutional Court has determined that the preferential rights of spouses to the home and household goods do not even apply when the home is not community but joint property.[99] Whereas proposals have been made to at least extend the protection to all spouses[100], it is unlikely that it would be extended to informal partners.

In case the house was jointly owned, the courts may temporarily organise its use, for example by allowing one partner to live there (against payment).[101] If a partner only had a right of habitation or can be considered a tenant at will, he will be granted a respite during which he is entitled to remain in the home (against payment).[102]

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

No specific rules apply, since there is no joint estate.

45. What date is decisive for the determination and the valuation of:
a. The assets?
b. The debts?

No specific rules apply. Vis-à-vis the determination of assets and debts: there is no joint estate to which they can belong. The date for the valuation is the date of the division.

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?

There are different grounds, both in property law and the law of obligations, on the basis of which compensation can be sought.[103]

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[99] Constitutional Court n° 28/2013 of 7 March 2014, www.const-court.be.

[100] A. TURTELBOOM and H. CASMAN, 'Geïntegreerde tekst van het voorontwerp van wet tot hervorming van diverse bepalingen inzake het huwelijksvermogensrecht', *TEP* 2014, nos. 3-4, p. 246.

[101] Brussels 30 May 2011, *RTDF* 2013, 127, with note LAYON; Justice of the Peace Veurne (Nieuwpoort) 15 December 2009, *T.Vred.* 2012, 31.

[102] Justice of the Peace Bruges (1) 2 June 2005, *TGR-TWVR* 2005, 170; Justice of the Peace Halle 23 July 2008, *NJW* 2009, 136, with note VERSCHELDEN. Compare on the basis of a right to habitation: Justice of the Peace Waremme 16 April 1987, *JL* 1987, 1987, 1577.

[103] For a general overview: S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n°s 386 *et seq*.

In property law, compensation can firstly be sought on the basis that both joint owners should equally share in the rights and the charges of the joint property (Art. 577-2, § 3, 5 and 7 Belgian Civil Code). This may give rise to compensation for both insufficient use and an excessive contribution.[104] Secondly, the other partner/sole owner is obliged to compensate the accessories he/she wants to maintain on the basis of accession (Arts. 555 and 566 Belgian Civil Code) and to reimburse the necessary and useful costs which the other partner has incurred.[105]

In the law of obligations, *negotio gestorum* firstly applies, but the conditions for the application of this technique will often not be fulfilled. The intervention in the other partner's affairs, for example, must have been necessary, must only have benefited him/her and may not have been performed *animo donandi*.[106] Secondly, the partner may try to invoke undue payment (Art. 1235, par. 1 Belgian Civil Code), but two important restrictions are that this theory only applies to payments – and not the provision of services – between partners – and not in their relation with third parties.[107]

The primary ground for former informal partners to claim compensation is unjust enrichment. It is a subsidiary ground in that it only applies if, or to the extent that, the aforementioned grounds do not give rise to compensation. The conditions that there must be both an enrichment, on the one side, and an impoverishment, on the other, usually do not pose problems as to their fulfilment. The condition that the enrichment was unjust, however, is more difficult to prove[108], even though unjust enrichment cannot be rejected *a priori* between informal partners.[109] The subjective cause of or the motive for the performance is important here. The enrichment will only be considered unjust in case the impoverished partner had no economic or even moral motive such as affection.[110] Mere helpfulness does not make the enrichment just.[111]

With regard to all the aforementioned grounds, compensation will not be awarded in case, or to the extent that, the contributions made can be considered as the execution of a natural obligation to contribute to the household expenses or even support for

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104 Cass. 6 May 2010, *AC* 2010, 1328; District Court Gent 12 January 2010, *RW* 2012-13, 866.

105 C. DECLERCK and V. ALLAERTS, 'Grondslag en waardering van vergoedingsrechten en schuldvorderingen tussen partners. Ontwikkelingen 2011-2013', in *Personen- en familierecht*, Themis 2013-2014, die Keure, Bruges, 2014, at p. 65-79. For example, District Court of Veurne 27 May 2004, *TGR-TWVR* 2004, 190.

106 Ghent 20 November 2008, *TBBR* 2011, 44, note BOULY and S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 388.

107 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 393.

108 For example, District Court of Veurne 27 May 2004, *TGR-TWVR* 2004, 190.

109 Brussels 3 May 2013, *RTDF* 2013, 1019; Brussels 19 April 2012, *RTDF* 2013, 148; Ghent 27 October 2009, *TGR-TWVR* 2010, 86; Liège 3 September 2008, *RTDF* 2010, 328.

110 Brussels 3 May 2013, *RTDF* 2013, 1019; Brussels 19 April 2012, *RTDF* 2013, 148; Ghent 27 October 2009, *TGR-TWVR* 2010, 86; Liège 3 September 2008, *RTDF* 2010, 328.

111 Cass. 19 January 2009, *RW* 2009-2010, 1084, with note NORDIN.

the other partner.[112] Article 1235, par. 2 Belgian Civil Code indeed bars a former partner from recovering his/her performance of a natural obligation. [113] One judgment, however, has refused to assess whether the partners' contributions were in proportion, as the affective component of contributions cannot be monetarised.[114]

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?

The surviving partner does not have rights of inheritance *ab intestato.*

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?

The surviving partner does not have any claims on the estate as such. He/she may claim compensation on the same bases as in the case of separation, that is: as 'maintenance' or as compensation. The existence of a natural obligation has not yet been accepted, however.[115] If the surviving partner had a right of habitation – or should be considered a tenant at will – he/she will be granted a respite during which he/she is entitled to remain in the home of the deceased partner (against payment).[116]

For the sake of completeness, we should mention that it is accepted in the case law that the surviving partner who voluntarily paid the funeral costs cannot recover them from the estate. The payment of those debts is considered to be the performance of a natural obligation.[117]

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

No.

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

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[112] V. DEHALLEUX, 'La répétition de la contribution excessive aux charges du ménage: proposition d'une nouvelle issue aux conflits entre cohabitants de fait', *TBBR* 2009, at p. 144. For example, Liège 3 September 2008, *RTDF* 2010, 328; Liège 28 April 2009, *RTDF* 2010, 341; District Court of Nivelles 25 October 2012, *Le Pli Juridique* 2013, N° 25, p. 7, with note JASSOGNE; District Court of Veurne 27 May 2004, *TGR-TWVR* 2004, 190.

[113] District Court of Oudenaarde 19 September 2005, *RABG* 2006, 774; Justice of the Peace Westerlo 11 December 2006, *T.Vred.* 2007, 354.

[114] District Court of Brussels 4 May 2012, *JT* 2012, 796.

[115] Justice of the Peace Charleroi (2) 3 March 2003, *JT* 2004, 101.

[116] Justice of the Peace Charleroi (2) 3 March 2003, *JT* 2004, 101; Justice of the Peace Zomergem 27 June 2014, *RW* 2014-15, 751.

[117] Ghent 17 January 2007, *NJW* 2008, 223, with note WILLEMS.

Yes. A rather academic restriction is that the bequest cannot be *pretium stupri*: its purpose cannot be to reward sexual relations. Whereas this exception was invoked fairly often in the past[118], this is no longer the case.[119] Furthermore, ascendants of the testator have a reserved share of one fourth in each line when the testator has no descendants. An exception is only made for gifts to a spouse or a legal cohabitant (Art. 915 Belgian Civil Code). Interestingly, in Flanders the surviving partners (plural) benefit from the same succession tax regime as a spouse or a legal cohabitant when they have continuously cohabited for at least one year in a joint household on the day of the testator's death (Art. 1.1.0.0.2, par. 5, 4°, c) Flemish Taxation Code).

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

Yes. In this case, he/she would have to respect the reserved share of the spouse, which amounts to the usufruct or lease of the main residence and the household goods or to half of the deceased's estate. There are more limited rights in case of separation and a spouse may even disinherit the other spouse under certain conditions (Art. 915bis Belgian Civil Code). The legal cohabitant has no reserved share in Belgian law.

c. If the testator has children?

Yes. In this case, he would have to respect the reserved share of the children, which amounts to half of the estate for one child, two thirds of the estate for two children and three fourths of the estate for three or more children (Art. 913 Belgian Civil Code).

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?

Joint wills do not exist under Belgian law (Art. 968 and 1130, par. 2 Belgian Civil Code).[120]

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?

[118] E.g. Cass. 13 November 1953, 53-54, 1711, note and more recently District Court of Liège 19 February 1991, *JLMB* 1992, 620 (bar girl) with regard to gifts.
[119] E.g. Liège 29 April 2003, *RNB* 2004, 249 (with regard to gifts – exception not accepted).
[120] W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1606.

Agreements as to succession are not allowed as a rule under Belgian law (Art. 1130, par. 2 Belgian Civil Code). The few exceptions to this prohibition are not relevant for informal partners.

Donations under the suspensive condition of the donee surviving the donor are valid, however.[121] The donation cannot be *pretium stupri:* its purpose cannot be to reward sexual relations. Furthermore, the donation may be subject to abatement in case it eats into the donor's ascendants' reserved share of one fourth in each line when the donor has no descendants (Art. 915 Belgian Civil Code). Interestingly, in Flanders the donor's partners (plural) benefit from the same registration tax regime as a spouse or a legal cohabitant when they have continuously cohabited for at least one year in a joint household on the day of the donation (Art. 1.1.0.0.2, par. 5, 4°, c) Flemish Taxation Code).

Instead of a donation, each partner may also make provision for the surviving partner as the execution of a natural obligation.[122] This will not be considered to be a gift to the extent that a natural obligation exists.

The primary disposition that informal partners make is the acquisition of joint property with a tontine agreement or an accretion clause. In the former construction, the partners acquire their rights under a suspensive condition, respectively a condition subsequent from the third party. In the latter construction, the conditions apply *inter partes.* In both cases, the clauses are considered aleatory contracts and not donations to the extent that the chances and risks are comparable on both sides or, if not, the difference in the chances and risks is balanced in the payment of the price, taking into account both partners' contributions to the household expenses. In both cases, the surviving partner will become the sole owner (or usufructor or holder of a right to habitation) of the whole asset.

It depends on the circumstances of the case which is the better option for informal partners. In Flanders, the home is indeed not subject to succession taxes in the case of continuous cohabitation for more than three years, whereas a 10 % registration tax applies in the case of tontine or accretion. In this example, a bequest is recommendable as opposed to a tontine or accretion, yet only when there are no heirs with a reserved share (Art. 2.7.4.1.1. § 2 Flemish Taxation Code).

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

Yes. In case of a donation, they would have to respect the reserved share of the spouse, which amounts to the usufruct or lease of the main residence and the household goods or to half of the deceased's estate. There are more limited rights in

[121] W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1140.

[122] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n°s 178 and 257; W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1021.

case of separation and a spouse may even disinherit the other spouse under certain conditions (Art. 915bis Belgian Civil Code). The legal cohabitant has no reserved share in Belgian law.

c. If either partner has children?

Yes. In the case of a donation, they would have to respect the reserved share of the children, which amounts to half of the estate for one child, two thirds of the estate for two children and three fourths of the estate for three or more children (Art. 913 Belgian Civil Code).

53. Is the surviving partner entitled to a reserved share 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 informal partner does not have a reserved share. Any claim under tort law, a natural obligation, unjust enrichment or other general rules however constitutes a debt of the estate, which takes priority over bequests in favour of another person and even over forced and intestate heirship (Art. 870 et seq. Belgian Civil Code).[123]

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

Mortality statistics are available for some selected years but there is no distinction between being married and being in a legal cohabitation.

Table 9 Death per year and marital status in Belgium (Eurostat)

	2007	Men	Women	2010	Men	Women
Single persons (never in a legal union)	10,554	6,066	4,488	10,818	6,275	4,543
Persons in a legal union (married or in a registered partnership)	40,949	28,452	12,497	41,619	28,892	12,727
Persons whose legal union has ended	49,155	15,286	33,869	52,653	16,860	35,793
Persons with unknown marital status	0	0	0	62	39	23
Total	100,658	49,804	50,854	105,152	52,066	53,086

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?

[123] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 257; W. PINTENS, C. DECLERCK, J. Du MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 2235.

There are no statistics available on this topic.

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 on this topic.

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?

Concluding a cohabitation agreement is often recommended for informal partners. There are, however, no specific rules. Informal partners may for example opt for a civil law partnership agreement (which may be oral).[124] Two aspects of the general rules on contracts are worth mentioning.

On the one hand, cohabitation agreements may not infringe public policy. Firstly, they may not be *pretium stupri*.[125] For this reason, it is recommended that partners include a preamble in which they explain the motives behind the agreement[126], for example that they want to provide for each other.[127] Secondly, the agreement may not restrict the personal freedom of both partners.[128] For this reason, they may not contractually apply the personal rights and obligations between formal partners, such as the duty of cohabitation or of fidelity.[129] It is also not acceptable to include a penalty clause in case the partnership or the cohabitation is terminated.

On the other hand, the principle of consensuality applies to cohabitation agreements, so that the existence of an implicit agreement may be proven. Some authors contend that all informal cohabitants conclude an implicit cohabitation agreement, which is proven by its performance.[130] However, the majority view rejects that notion and requires proof with all forms of evidence that a cohabitation agreement was concluded.[131]

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[124] Commercial Court of Dendermonde 9 February 2012, *T.Not.* 2012, 635 (proof of civil partnership not accepted); Justice of the Peace Charleroi (2) 20 January 2009, *T.Vred.* 2011, 373 (proof of oral civil partnership agreement accepted).

[125] P. SENAEVE, *Compendium van het personen- en familierecht,* Acco, Leuven, 2013, at n° 2044.

[126] W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1003.

[127] Antwerp 2 February 2005, *NJW* 2006, 849, with note Verschelden.

[128] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 534.

[129] District Court of Bruges 9 April 2001, *RW* 2001-02, 1552.

[130] A. HEYVAERT, *Het personen- en gezinsrecht ont(k)leed*, Kluwer, Mechelen, 2002, at n° 698.

[131] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n°s 178, 259-262 and 424.

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

a. The division of tasks as between the partners?

A cohabitation agreement may state which tasks each of the partners performs with a view to agreeing on the consequences of that division, for example by taking into account services in kind as a contribution to the household expenses. In our opinion, the agreement cannot contractually oblige the performance of certain tasks as this would limit the partners' personal freedom and violate public policy.

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

Yes, they can agree on costs and expenses both directly and indirectly. They can firstly determine a formula for the contribution, through a shared account or not, in various cost items.[132] They can do so by referring to the rules which are applicable to spouses or legal cohabitants.[133] Secondly, they can determine that household debts are joint debts[134], which is important both for *obligatio* – vis-à-vis third parties – and *contributio*. Thirdly, they can appoint each other as the agent vis-à-vis household debts.[135]

c. Their property relationship?

Yes. They can agree to create a conventional joint ownership or agree on the applicable means of evidence of ownership, for example with a presumption of the joint ownership of household goods. These agreements are valid between partners but are not opposable by third parties.[136] They can also conclude a tenancy for one partner in the solely owned property of the other partner.[137]

d. Maintenance?

Yes, both for the period during the cohabitation as well as upon separation or death.[138] For some purposes, such as the competence of the Family Court (Art. 572bis, 7° Belgian Code of Civil Proceedings), the partners must qualify payments as

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[132] W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1009.

[133] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 178.

[134] W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1011.

[135] W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1014.

[136] P. SENAEVE, *Compendium van het personen- en familierecht*, Acco, Leuven, 2013, at n°s 2042, 2045 and 2067.

[137] Justice of the Peace Charleroi (2) 20 January 2009, *T. Vred.* 2011, 373.

[138] S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 257.

maintenance. Indeed, payments may also have another legal basis such as a contribution to the expenses of the former household.[139]

e. The duration of the agreement?

Yes, insofar as such an agreement does not restrict personal freedom. The agreement must be for a definite period or the parties must be entitled to terminate it.

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

Yes.

Firstly, they may agree on the circumstances under which a termination of the agreement is possible, for example by determining a notice period or agreeing on liquidated damages. Such clauses may not amount to penalty clauses or may not restrict the partners' personal freedom.[140]

Secondly, they may agree on their own and joint property, for example by granting preferential rights[141] or a compensatory payment[142] – insofar as this does not amount to a penalty clause.

Thirdly, they may agree on maintenance upon separation (or death) – again insofar as this does not amount to a penalty clause.[143]

60. Are the agreements binding:
a. Between the partners?

Yes, the agreements are just as binding as any civil contract and non-performance may give rise to contractual liability.

b. In relation to third parties?

The agreements in principle are not opposable by third parties. If necessary, publication in the Mortgage Register can make the agreement opposable with regard to immovable property. A partner's heirs are not considered to be third parties. Third parties themselves may however rely on a cohabitation agreement, for example to recover a household debt that is qualified as a joint debt.[144]

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139 Justice of the Peace Etterbeek 2 June 2008, *T.Vred.* 2010, 235.

140 District Court of Bruges 9 April 2001, *RW* 2001-02, 1552.

141 P. SENAEVE, *Compendium van het personen- en familierecht*, Acco, Leuven, 2013, at n° 2053.

142 W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1017.

143 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 258.

144 W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n°s 1022-1023.

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

Not applicable, since the agreements are binding.

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

Not applicable, since there are no legislative provisions that regulate family law aspects of informal relationships.

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

The agreement can be made before, during and after the relationship. Agreements during and after the relationship may not infringe on the rights of third parties. Agreements before or during the relationship that regulate the separation may also not amount to penalty clauses[145] or restrict the partners' personal freedom.[146]

64. What formal requirements, if any, govern the validity of agreements:
a. As between the partners?

There are no formal requirements: the principle of consensuality applies. Contracts regarding immovable property, for example joint acquisition or tontine or accretion (of usufruct), however require the intervention of a notary public. A notarial cohabitation agreement is generally recommended, as such agreements have a fixed date and can be enforced.[147] The agreement must furthermore be a notarial one in case the parties want to register it in the population register (Art. 1, 10° Royal Decree of 16 July 1992 on the population registers). (Non-)registration, however, has no legal consequences at all.

b. In relation to a third party?

There are no formal requirements, except publication in the Mortgage Register to render the agreement opposable.

65. Is independent legal advice required?

Independent legal advice is not required. The notary public does have a duty to impartially inform the parties (Art. 9, § 1 Notaries Act) in case they choose to conclude a notarial cohabitation agreement, which they are not obliged to do.

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145 S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n° 258.

146 P. SENAEVE, *Compendium van het personen- en familierecht*, Acco, Leuven, 2013, at n°s 2058-2065.

147 W. PINTENS, C. DECLERCK, J. DU MONGH, K. VANWINCKELEN, *Familiaal vermogensrecht*, Intersentia, Antwerp, 2010, at n° 1006.

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

There are no statistics available on this topic.

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

There are no statistics available on this topic.

G. Disputes

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

There are no specific rules. The general rules on competence apply, which means that informal partners should petition:
- the President of the District Court in order to obtain an interim order in interlocutory proceedings (Art. 584 Belgian Code of Civil Proceedings);[148]
- the Justice of the Peace with regard to tenancy conflicts and claims not exceeding the amount of 2,500 euro (Art. 590 and 591, 1° Belgian Code of Civil Proceedings);
- the Family Court with regard to the domestic exclusion order, maintenance and for all issues regarding the children (Art. 572bis, 4°, 7° and 11° Belgian Code of Civil Proceedings);
- the District Court for all other matters (Art. 568 Belgian Code of Civil Proceedings).

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

No. Since 2014, the Family Court is competent to hear all disputes between spouses and registered partners. Informal partners have been deliberately excluded from the Family Court's competence because no satisfactory definition of informal partnerships for which the Court would be competent could be found in the light of the variety of partnerships.[149] However, the Belgian Code of Civil Proceedings already refers to '*de facto* cohabitation' (*cohabitation de fait, feitelijke samenwoning*) in Art. 1724, par. 1, 4° regarding mediation – even though this was never defined during the parliamentary discussion.

In 2002 the Constitutional Court had already found that excluding informal partners from the specific interlocutory proceedings available for legal cohabitants is not discriminatory and that informal partners' right to access to court is sufficiently guaranteed by the general rules on interlocutory proceedings.[150]

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[148] P. SENAEVE, *Compendium van het personen- en familierecht*, Acco, Leuven, 2013, at n°s 2058-2059.

[149] Report of the Justice Commission in the Chamber of Representatives, *Parl.St.* Kamer 2010-11, at n° 53-682/15, at p. 17-21.

[150] Constitutional Court n° 24/2002 of 23 January 2002, www.const-court.be. S. EGGERMONT, *De juridische bescherming van private relaties*, PhD, University of Antwerp, 2015, at n°s 205-210.

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?

The courts that are competent under general rules are only competent to scrutinise agreements, of which performance is sought, against the general rules on contract, particularly their compatibility with public policy.

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)?

No specific rules apply. The competent courts can only refuse enforcement or declare an agreement null and void on the basis of the general rules on contracts.

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?

Article 1724, par. 1, 4° Belgian Code of Civil Proceedings expressly includes 'disputes arising from a *de facto* cohabitation' in the matters to which the chapter on Mediation applies. Agreements reached through out of court or court-referred mediation by an accredited mediator can be presented to the competent court with a view to homologation. Court-referred mediation is only possible in case of a joint request by the parties. We think that the reference to *de facto* cohabitation is superfluous because all matters on which the parties may settle are subject to mediation anyhow.

The parties involved in a dispute before the Family Court are sent a brochure on the possibilities for ADR. Also, voluntary in-court mediation has been introduced in matters for which the Family Court is competent (Arts. 731 and 1253*ter*/1 Belgian Code of Civil Proceedings). These provisions do not apply to informal partners, though.

Besides, arbitration is possible in all matters on which the parties may settle (Art. 1676 Belgian Code of Civil Proceedings).

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?

In case the parties have agreed on a mediation clause, the court or the arbitrator will refer them to mediation unless they jointly wave this clause. The court, however, remains competent to issue an interim order (Art. 1725 Belgian Code of Civil Proceedings).

If the parties have agreed on an arbitration clause and do not waive it, the court must declare itself incompetent (Art. 1682, § 1 Belgian Code of Civil Proceedings). The

arbitration proceedings can be commenced or continued anyhow (Art. 1683, § 2 Belgian Code of Civil Proceedings).

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 on this topic.