1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

Yes.

There is no civil-law regulation of non-marital partnerships (parejas de hecho) at state level and as a result most Autonomous Communities have adopted their own – either civil-law or purely administrative – rules governing the establishment of a non-marital partnership, its legal framework, its effects, and the ways and the consequences of ending it. This situation is coupled with the coexistence of different regional civil law systems (derechos forales) in Spain alongside general civil law.

Alongside marriage and unregulated partnerships, each Autonomous Community accords different legal recognition to non-marital partnerships. In this regard, these regional differences range from legal recognition based simply on a minimum period of cohabitation or cohabitation with common offspring, to a requirement to register the non-marital partnership or to register it for administrative purposes. There are even four Autonomous Communities (Balearic Islands, Extremadura, Basque Country and Galicia) that have a register used to constitute the partnership or in which registration is mandatory.

It should be pointed out that administrative matters are excluded from the scope of regulation, since this factsheet includes a number of references to purely administrative rules regarding non-marital partnerships and the registering of those partnerships made by certain Autonomous Communities, which otherwise do not have constitutional competence in the field of civil law.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

The various sets of rules that exist do not contain specific provisions regarding finances or assets with respect to property purchased while the partners are in the non-marital partnership. The rules that apply to marital property do not apply to non-marital partnerships not even by analogy, meaning that, unless the couple in a non-marital partnership has made specific arrangements in an agreement (convenio), the relevant provisions will be those set out in the Civil Code (Código civil) (or in the regional codes (códigos forales)) for situations of common or joint ownership (condominios or comunidades de bienes) (392 et seq. of the Civil Code as regards general civil law) in the event the property belongs jointly (en común) to both members of the couple.

3 How can partners arrange their property regime? What are the formal requirements in this case?

The parties can make their own arrangements regarding their finances and property. To that end, the majority of regional rules have a specific provision regarding the agreements that the parties may enter into. Most laws require such agreements to be in writing, although in some regions verbal agreements are allowed (Balearic Islands and Canary Islands).

For written agreements, the general rule is that public or private documents drawn up for that purpose are acceptable, and the different regional rules also allow the parties to make provision for financial compensation in the event that the relationship ends and there is a financial imbalance between the parties. In some regions, the agreement must be formalised by a notary. This is the case in Aragon, Cantabria, Catalonia, Extremadura, Galicia and Madrid.

4 Are there restrictions on the freedom to arrange a property regime?

Yes, there are restrictions on the freedom of contract. The scope of this restriction varies under the different regional rules. Generally speaking, any agreements that are contrary to mandatory laws or which fail to give each partner equal rights are considered null and void, as are those that are seriously detrimental to one of the partners. Some laws also specifically provide that agreements which have a purely personal subject-matter or which affect the privacy of the cohabitees are invalid. In addition, agreements must not harm third parties.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

The consequences of dissolving a non-marital partnership will depend primarily on any relevant agreements that the parties may have entered into. In some regions, the couple may have been able to make provision for financial compensation in the event of a future break-up where there was a financial imbalance between the partners. In any event, as regards joint property, the general civil and procedural rules will apply to its dissolution and liquidation. Regions such as Catalonia and Aragon require a court to approve financial compensation for one partner's work in the household or work in the financial and professional interests of the other member of the couple.

6 What are the effects of death on the property consequences of the registered partnership?

Some Autonomous Communities allow the surviving partner to inherit from the deceased partner in the same way as a married couple. Furthermore, some Autonomous Communities recognise the right to inherit the shared household effects, to continue to use the shared residence for one year or to take over the rental contract for the residence.

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

Judicial authorities have the power to determine the consequences of the separation with regard to property. In any event, no specific power exists by virtue of the existence of the non-marital partnership, as there does in the case of matrimonial property regimes (Articles 769 and 807 of the Code of Civil Procedure). Consequently, since it is a judicial power, distribution is governed by the general rules (Articles 50 et seq. of the Civil Code).

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

Generally speaking, the various regions have specific provisions in place regarding effects on third parties, in addition to the fact that some regions stipulate that non-marital partnerships must not undermine the rights of third parties. It is only in a few Autonomous Communities that both members of a couple are jointly and severally liable vis-à-vis third parties with respect to certain costs (as is the case in Andalusia).

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

No specific procedural rules are in place at national level or in the Autonomous Communities regarding the dissolution and liquidation of property belonging to couples in a non-marital partnership. In general, there will be a matrimonial joint property regime (undivided ownership by both partners) governed by Article 392 et seq. of the Civil Code, without prejudice to the provisions of the various civil law systems existing in Spain, and therefore liquidation will be in accordance with the general rules governing any undivided joint property (Article 400 of the Civil Code).

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

Registration of immovable property requires execution of a public instrument before a notary.

The registration procedure will depend on the provisions laid down in civil law and must be carried out in accordance with those provisions. If a partnership is registered and recognised in the administrative sphere only, without there being any consequences in civil law, the couple will be considered to be in a situation of ordinary co-ownership for registration purposes. In any event, the registration principles that apply to public or authentic documents will need to be observed.

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