



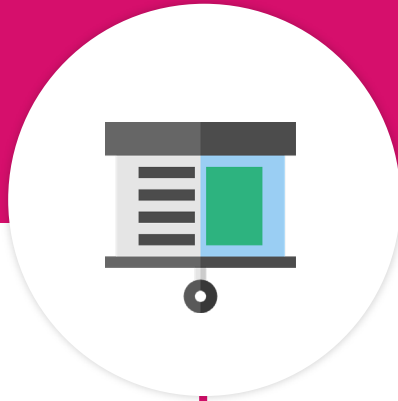
TOOLKIT

FOR ADVISING EUROPEAN FAMILIES

Informal Couple Relationships

Final document June 2018

Approved by the ELI Council on 28 February 2019
and by the ELI General Assembly on 8 May 2019



01

INTRODUCTION

TOOLKIT FOR ADVISING EUROPEAN FAMILIES

INFORMAL COUPLE RELATIONSHIPS

This template on the economic consequences of an informal couple relationship within the EU is intended to be a toolkit for **use by legal professionals only**. It needs to be checked with the relevant legal frameworks at the time an agreement is made, and tailored to the individual situation. Parties may discuss the options between them but they should never attempt to conclude an agreement without professional legal assistance.

As particular choices may favour the interests of one partner while being less advantageous to the other partner, parties should, well ahead of the day when they conclude an agreement, **seek independent legal advice**.

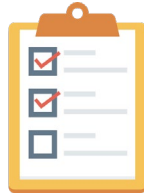
Parts of such an agreement may, under the law of some Member States, be subject to particular **formal requirements** such as authentication by a civil law notary or registration in a public register. As it may be difficult to foresee where an agreement will ultimately be invoked parties may wish to comply, where there are more options, with the stricter formal requirements.

Note that in the European Union the laws of Croatia and Slovenia foresee that cohabiting couples are subject to the same or very similar rules as married couples if they have been cohabiting for a particular period of time. Under the laws of Finland, Hungary, Ireland, Malta, Sweden, Scotland as well as of Catalonia and Aragon in Spain there is a **particular statutory set of rules** for cohabiting couples (information correct as of 2018).

The purpose of this toolkit is to inspire legal professionals who advise cohabiting partners. Nothing in this document can relieve legal professionals from any of their obligations to fully scrutinise the facts of the case, the legal situation, and the options available to their clients, and the members of the Project Team on Empowering European Families (EEF), who have developed this toolkit on a non-profit basis, cannot assume any liability whatsoever for any damage that may result from the use of this toolkit or by reliance on the information contained herein. This toolkit is based on the law as it stands in 2018, unless otherwise indicated.

For more information, including on national law, visit

www.empoweringeuropeanfamilies.eu



02

OPTIONAL CHECKLIST FOR THE LEGAL ADVISERS

A. OPTIONAL CHECKLIST FOR THE LEGAL ADVISERS (FOR 1ST NOTARY/ LAWYER)

As legal adviser to:

[insert name(s)]

I have in particular, but not exhaustively, and as far as relevant in the individual case,

- (1)** explained to my client(s) that the laws of Member States vary widely as far as informal relationships are concerned and that the legal situation is not always clear. Few States would apply very similar rules as for married couples or registered partners. Some States' laws provide a special statutory regime for informal relationships, and many States' laws would refer informal relationships to the general rules of unjust enrichment, contract and property law, company and trust law, and similar general regimes;
- (2)** explained to my client(s) the laws that currently apply to their situation, and their legal consequences for each of the parties, including in the event of dissolution of the relationship (by separation, death etc.), as well as tax implications (e.g. inheritance tax). I have also discussed likely changes in their situation (e.g. children, acquisition of immovable property) and their impact in legal terms;
- (3)** explained to my client(s) the choices they have in terms of applicable law, of substantive law, and of the competent court, and the legal consequences for each of the parties. My explanations have included potential implications in the event of dissolution of the relationship (by separation, death etc.), as well as tax implications (e.g. inheritance tax);
- (4)** made my client(s) aware that the court seised with a dispute may disregard their choices, e.g. if, under the conflict-of-laws rules of that jurisdiction, the court applies a law that is different from the law designated by the parties and/or the law applied does not allow the parties to deviate from particular rules or considers cohabitation agreements in general or any particular clause to violate public policy; and that the court may apply overriding mandatory provisions of a different law;
- (5)** made my client(s) aware that it is advisable to each make a will, or to make similar arrangements that may be available under the applicable laws, if they wish to benefit their partner. This is to avoid a situation where the court and/or the applicable law does not recognise their relationship with regard to intestate succession and/or with regard to the distribution of property upon death;
- (6)** made my client(s) aware that it is advisable to give separate and specific mandates concerning healthcare decisions, end-of-life decisions, and other decisions in cases of incapacity and/or emergency;

- (7)** made my client(s) aware that it may be advisable to conclude a separate and more detailed contract whenever they make important economic decisions affecting both of them, e.g. one of the partners buys immovable property and the other contributes to its improvement, or pays for the daily expenses;
- (8)** explained to my client(s), where applicable, any particular limits concerning cases where one of them, or both, is/are still married to or in a registered partnership with a third party;
- (9)** made my client(s) aware that, when dealing with third parties (e.g. when selling or buying property) internal agreements relating to property will usually not take effect vis-à-vis third parties where these third parties were unaware of these agreements;
- (10)** made my client(s) aware of the fact that they should always, before going to court, consider options of out-of-court dispute resolution, in particular, where available, family mediation, and that they might wish to conclude a separate mediation agreement;
- (11)** explained to my client(s) any applicable formal requirements in relation to this agreement and made sure they understand how to comply.

B. OPTIONAL CHECKLIST FOR THE LEGAL ADVISERS (FOR 2ND NOTARY/LAWYER)

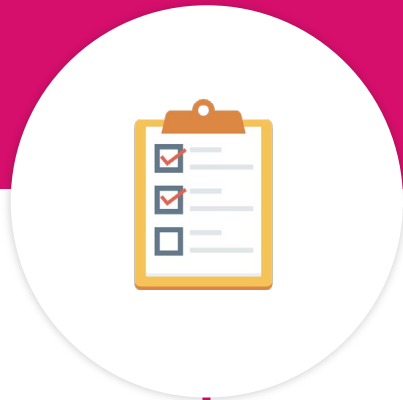
As legal adviser to:

[insert name(s)]

I have in particular, but not exhaustively, and as far as relevant in the individual case,

- (1)** explained to my client(s) that the laws of Member States vary widely as far as informal relationships are concerned and that the legal situation is not always clear. Few States would apply very similar rules as for married couples or registered partners. Some States' laws provide a special statutory regime for informal relationships, and many States' laws would refer informal relationships to the general rules of unjust enrichment, contract and property law, company and trust law, and similar general regimes;
- (2)** explained to my client(s) the laws that currently apply to their situation, and their legal consequences for each of the parties, including in the event of dissolution of the relationship (by separation, death etc.), as well as tax implications (e.g. inheritance tax). I have also discussed likely changes in their situation (e.g. children, acquisition of immovable property) and their impact in legal terms;
- (3)** explained to my client(s) the choices they have in terms of applicable law, of substantive law, and of the competent court, and the legal consequences for each of the parties. My explanations have included potential implications in the event of dissolution of the relationship (by separation, death etc.), as well as tax implications (e.g. inheritance tax);
- (4)** made my client(s) aware that the court seised with a dispute may disregard their choices, e.g. if, under the conflict-of-laws rules of that jurisdiction, the court applies a law that is different from the law designated by the parties and/or the law applied does not allow the parties to deviate from particular rules or considers cohabitation agreements in general or any particular clause to violate public policy; and that the court may apply overriding mandatory provisions of a different law;
- (5)** made my client(s) aware that it is advisable to each make a will, or to make similar arrangements that may be available under the applicable laws, if they wish to benefit their partner. This is to avoid a situation where the court and/or the applicable law does not recognise their relationship with regard to intestate succession and/or with regard to the distribution of property upon death;
- (6)** made my client(s) aware that it is advisable to give separate and specific mandates concerning healthcare decisions, end-of-life decisions, and other decisions in cases of incapacity and/or emergency;

- (7)** made my client(s) aware that it may be advisable to conclude a separate and more detailed contract whenever they make important economic decisions affecting both of them, e.g. one of the partners buys immovable property and the other contributes to its improvement, or pays for the daily expenses;
- (8)** explained to my client(s), where applicable, any particular limits concerning cases where one of them, or both, is/are still married to or in a registered partnership with a third party;
- (9)** made my client(s) aware that, when dealing with third parties (e.g. when selling or buying property) internal agreements relating to property will usually not take effect vis-à-vis third parties where these third parties were unaware of these agreements;
- (10)** made my client(s) aware of the fact that they should always, before going to court, consider options of out-of-court dispute resolution, in particular, where available, family mediation, and that they might wish to conclude a separate mediation agreement;
- (11)** explained to my client(s) any applicable formal requirements in relation to this agreement and made sure they understand how to comply.



03

DRAFT COHABITATION AGREEMENT

DRAFT COHABITATION AGREEMENT WITHIN THE EU

Between:

Name:	<input type="text"/>	<i>[name of partner]</i>
Born:	<input type="text"/>	<i>[date]</i>
In:	<input type="text"/>	<i>[place]</i>
Sex:	<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Not disclosed	
Nationality: ¹	<input type="text"/>	
Current habitual residence: ²	<input type="text"/>	
Refugee status: ³	<input type="checkbox"/> No <input type="checkbox"/> Yes, status as follows:	
Identity number and type (optional): ⁴	<input type="text"/>	
Family status:	<input type="checkbox"/> not bound by any formalised relationship <input type="checkbox"/> bound by the following formalised relationship (marriage, registered partnership, formalised cohabitation) with a third party: <input type="checkbox"/> common children with the other party: <input type="checkbox"/> children with third party:	


And:

Name:	<input type="text"/>	<i>[name of partner]</i>
Born:	<input type="text"/>	<i>[date]</i>
In:	<input type="text"/>	<i>[place]</i>
Sex:	<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Not disclosed	
Nationality:	<input type="text"/>	
Current habitual residence:	<input type="text"/>	
Refugee status:	<input type="checkbox"/> No <input type="checkbox"/> Yes, status as follows:	
Identity number and type (optional):	<input type="text"/>	
Family status:	<input type="checkbox"/> not bound by any formalised relationship <input type="checkbox"/> bound by the following formalised relationship (marriage, registered partnership, formalised cohabitation) with a third party: <input type="checkbox"/> common children with the other party: <input type="checkbox"/> children with third party:	

Who have been or will be cohabiting since/from

[date/year, if only approximation]

The parties hereby declare that

 Please tick, specify, and attach as applicable and relevant.

at the time this Agreement is concluded, they each have the property, assets and debts in countries as specified in Annex

the following agreements regarding their relationship or property and other issues addressed in this document exist and have been attached in copy:⁵

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.....

[details such as no. of annex, type of agreement, date of agreement, registration number]

PREAMBLE

The parties have not entered into a formalised family relationship with each other but have drawn up the present Agreement regarding the economic consequences⁶ of their relationship and the dissolution thereof, and more specifically:

- substantive law issues with regard to ownership in household objects, allocation of the family home and household objects, as well as financial adjustment at the end of the relationship (I. and II.);
- the applicable law, dispute resolution and competent courts (III); and
- final provisions (IV.).

All issues that have not been addressed in this Agreement, including issues of interpretation and implementation of the choices made, shall be governed by the rules of the otherwise applicable law, failing that by considerations of equity and fairness, respecting to the utmost extent possible the preferences which the parties have expressed in this Agreement.

The parties are aware that their choices and preferences expressed under I. to IV. may, in full or in part, fail to be recognised by the courts⁷ of a number of EU Member States, and that they may not be effective vis-à-vis third parties. In this situation, the parties wish the Agreement to remain in place as far as possible and to be interpreted in a more flexible manner in order to give maximum effect to their joint preferences.

The parties are also aware that their choices may have implications for the way property is dealt with upon the death of one of them, but only insofar as this agreement gives rise to rights and obligations that are passed on to the deceased party's estate and heirs. In contrast, this Agreement does not affect the law of succession. **In order to produce effects under succession law the parties have to make separate dispositions of property upon death⁸ which they are recommended to do if they wish to benefit their partner.**

The parties are equally aware that, in order to give the provisions in this agreement the maximum effect possible and to achieve further effects the parties may deem desirable, it is advisable to give each other separate mandates concerning the acquisition of household objects and selected other issues. Simple mandates are included in the same toolkit as this agreement, but the parties may wish to give each other special mandates, including for situations of enduring lack of capacity, under the applicable national laws.⁹

I. HOUSEHOLD OBJECTS AND FAMILY HOME

1. PROPERTY ISSUES REGARDING HOUSEHOLD OBJECTS

? *If parties do not tick one of the boxes under point 1 the functionally equivalent statutory rules will apply by default. If parties do not tick a box but nevertheless wish to opt out of particular statutory rules they have to do so under point 3 regarding Special agreements.*

The parties hereby agree on the following general property arrangement for any movable property that actually serves, or is by its initial owner dedicated to serve, their shared household in the widest sense ('household objects'):

Parties must tick only one of the following boxes.

Rebuttable presumption of co-ownership
 Household objects will be owned by the party who acquired them. However, where exclusive ownership of only one party cannot be established it is presumed that household objects are owned by both parties equally.

Co-ownership
 The parties agree that objects serving the shared household will be owned by both parties, regardless of who acquired them in the first place, and that they will take all steps that may be required under the law applicable to their property rights in order to achieve this result. Where necessary steps have failed to be taken the parties will, upon the end of the relationship, put each other, as far as possible, into the same economic position as they would each have had if co-ownership had been established.

However, they wish to exclude the following:

? *The list below is exhaustive, i.e. where a box has not been ticked this shall mean the parties want the relevant property to be included even where this property would be excluded by default rules under the designated law. The designated law still decides about issues of, e.g., how to interpret a particular item or any other details not explicitly dealt with by the parties.*

- objects a partner already owned before the establishment of a shared household**
- inherited objects
- clothes and similar personal belongings
- money (including bank accounts)
- objects received as a gift from a third party
- motor vehicles and boats
- pets and other animals
-
-

2. TEMPORARY ALLOCATION OF FAMILY HOME AND HOUSEHOLD OBJECTS

? *If parties do not tick this box the functionally equivalent statutory rules will still apply by default. If parties do not tick this box but nevertheless wish to opt out of particular statutory rules under the applicable law they have to do so under point 3 regarding Special agreements.*

The parties hereby agree that, at the end of the relationship, the family home and household objects shall be reallocated to one of the parties on a temporary basis where this is justified by urgent needs of that party and/or the best interests of children and taking into account any legitimate interest of the other party or that party's estate/heirs. The parties also agree that this reallocation shall occur irrespective of ownership and must not be undermined by any transactions concerning the property on the part of the owner. The party benefitting from the reallocation shall bear all running costs during the time of reallocation and shall provide compensation if and insofar as this is fair.

? *By ticking this box parties strive to ensure a partner urgently in need of the family home does not have to leave the home just because it is owned by the other partner.*

3. SPECIAL AGREEMENTS (E.G. CONCERNING EXCLUSION, CONDITIONS, DURATION)

II. FINANCIAL ADJUSTMENT AT THE END OF THE RELATIONSHIP

1. DIRECT INVESTMENT OF FUNDS IN THE OTHER PARTY'S PROPERTY

? *If parties do not tick this box the functionally equivalent statutory rules will still apply by default. If parties do not tick this box but nevertheless wish to opt out of particular statutory rules under the applicable law they have to do so under point 5 regarding Special agreements.*

The parties hereby agree that a party shall be entitled to reimbursement by the other party if she/he has directly invested funds in property owned by the other party, or paid the other party's debts, and insofar as this results in a significant¹⁰ economic advantage on the part of the other party or his/her estate/heirs.

This reimbursement shall be for

- the indexed amount invested
 the amount invested plus¹¹

No right to such reimbursement exists to the extent that the investment was agreed to be made as a gift or as part of the first party's regular contribution to the shared household.

2. LABOUR AND OTHER INVESTMENT IN THE SHARED HOUSEHOLD OR JOINT LIFE

? *If parties do not tick this box the functionally equivalent statutory rules will still apply by default. If parties do not tick this box but nevertheless wish to opt out of particular statutory rules under the applicable law they have to do so under point 5 regarding Special agreements.*

The parties hereby agree that a party shall be entitled to fair compensation by the other party if, he/she has assisted, through contributions for the benefit of the other party or of the shared household or joint life, the other party in accumulating or retaining his/her property so that a division of assets solely on the basis of ownership would result in a lasting¹² and significant economic advantage on the part of the other party or his/her estate/heirs.

Relevant contributions may, in particular, be:

- household work and care for children living in the same household;
- use of one party's funds for the shared household;
- care provided for the other party's family members;
- care provided for family members where there was a legal or strong moral duty on both parties to provide such care;
- labour invested in the improvement or maintenances of property owned by the other party; or
- any other similar contribution.

3. MAINTENANCE

? *If parties do not tick this box the statutory rules will still apply by default. If parties do not tick this box but nevertheless wish to opt out of particular statutory rules under the applicable law they have to do so under point 5 regarding Special agreements.*

The parties hereby agree that a party shall be entitled to fair economic support by the other party if, due to his or her contributions for the benefit of the other party or of the shared household or joint life, as defined in points 1 and 2, she/he has become dependent on the other party and, despite best efforts, does not have sufficient means or earning capacity to maintain him- or herself.

This support shall be provided for a maximum period of after separation.

No right to economic support exists to the extent that

- the other party would, by providing support, be deprived of the means necessary for at least the same standard of living as is enjoyed by the party entitled to support; or
- the party entitled to support has entered into a new relationship with a third party and could, in the circumstances, be expected to be maintained by that third party; or
- the contributions made by the party requesting support were made despite the express disagreement of the other party and without the other party gaining any substantial advantage from the contributions.

4. TIME LIMIT FOR CLAIMS

Any claims arising from points 1- 3 above must be raised within

(e.g. three) years from the end of the relationship. Maintenance cannot be claimed retroactively.

5. SPECIAL AGREEMENTS (E.G. CONCERNING CALCULATION)

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III. APPLICABLE LAW, DISPUTE RESOLUTION, AND COMPETENT COURT

1. APPLICABLE LAW

As far as the law applicable is subject to their choice the parties hereby designate as the law applicable to this contract and the issues addressed therein the law of

[chosen country/territorial jurisdiction]

? *Legal effects of this choice-of-law clause are very limited, and courts in many Member States might disregard it.¹³ Parties are, in any case, well advised to choose the law of a country with which they have a close connection.*

2. ALTERNATIVE DISPUTE RESOLUTION

The parties agree that going to court is only a means of last resort and that all disputes arising from their relationship or its dissolution shall, if possible and appropriate, be settled amicably by way of alternative dispute resolution, e.g. mediation.

? *Legal effects of this clause are very limited, and courts in many Member States might disregard it, but parties should still tick this box if they believe family mediation should definitely be tried before going to court.*

3. CHOICE OF COURT

As far as the competent court is subject to their choice the parties hereby designate as the courts that have exclusive jurisdiction to hear any case arising from matters addressed in this Agreement

the courts of

[chosen country/territorial jurisdiction]

? *Legal effects of this choice-of-court clause are very limited.¹⁴ Parties are, in any case, well advised to choose the courts of a country with which they have a close connection.*

IV. FINAL PROVISIONS

1. The parties hereby agree that they will deal with each other in **good faith** and in particular that they will **fully disclose** their assets and debts to the other cohabiting partner whenever the other cohabiting partner has a legitimate interest in obtaining the information.
2. The parties agree that in cases of **exceptional hardship**, including situations such as where the relationship was of short duration or in the event of serious unilateral misconduct, each of them can apply to the competent court for the adjustment of the effects of this Agreement.
3. Any clause in this Agreement shall be interpreted in accordance with **good faith**. In the event any clause in this Agreement, in full or in part, fails to be **valid and/or enforceable** the remaining clauses shall remain unaffected but may need to be interpreted in a more flexible manner in order to give maximum effect to the parties' preferences expressed in this document.
4. This Agreement may only **be amended** by mutual consent. Any amendments shall be made in writing, dated and signed by both parties and in accordance with such additional formal requirements as may apply.
5. The parties should **review this Agreement** at regular intervals, and definitely when their situation changes, e.g. when the habitual residence or nationality of both or one of them changes, or the parties have children, or one of them takes on, or leaves, employment or self-employed work. The parties are also aware that laws may change, and will therefore keep it under review.
6. The parties wish this Agreement to enter into force on

[insert date]

The parties want their choices made in this document to take precedence over any conflicting choices they may have made in earlier agreements.

I herewith confirm that I have had the content of this document and what the choices made, or their absence, would mean for my situation explained to me by an independent legal adviser, and I have fully understood the implications. I have had sufficient time to pose questions and to reflect. In particular I have had sufficient financial disclosure; and no further disclosure would have affected my decision to enter this Agreement.

[date]

[place]

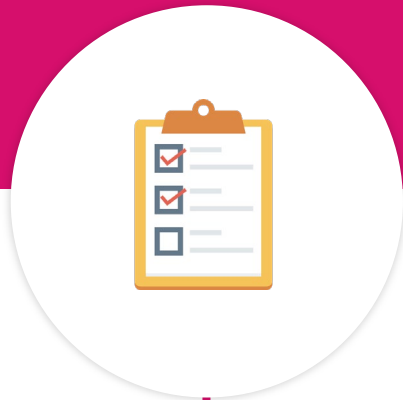
[signature partner]

I herewith confirm that I have had the content of this document and what the choices made, or their absence, would mean for my situation explained to me by an independent legal adviser, and I have fully understood the implications. I have had sufficient time to pose questions and to reflect. In particular I have had sufficient financial disclosure; and no further disclosure would have affected my decision to enter this Agreement.

[date]

[place]

[signature partner]



04

DRAFT MANDATES

Given by		
Name:	<input type="text"/>	<i>[name of partner]</i>
Born:	<input type="text"/>	<i>[date]</i>
In:	<input type="text"/>	<i>[place]</i>
Identity number and type:	<input type="text"/>	

To		
Name:	<input type="text"/>	<i>[name of partner]</i>
Born:	<input type="text"/>	<i>[date]</i>
In:	<input type="text"/>	<i>[place]</i>
Identity number and type:	<input type="text"/>	

DRAFT MANDATE (1ST PARTNER)

Given on the basis of the parties' cohabitation in a non-formalised couple relationship and shared household.

1. MANDATE FOR EVERYDAY MATTERS TO FACILITATE THE JOINT LIFE

The undersigned party herewith gives the other party a mandate and full power of representation to contract or take any other kind of legally relevant action as concerns the specified everyday matters relevant to their shared household and joint life.

This shall, as far as possible under the applicable law, include the following issues:

- acquisition of household objects and commission of household related services with a value not exceeding
- routine dealings with landlords, service providers, public authorities, and similar third parties with regard to the shared household;
- routine dealings with schools, providers of other education or childcare services, doctors and similar third parties with regard to children living in the shared household;
- namely:

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Exercise of this mandate shall normally lead to equally shared rights and obligations between the parties, unless a matter is clearly within the exclusive sphere of competence of one party.

Special provisions (e.g. conditions, restrictions):

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.....

2. MANDATE FOR A SITUATION OF LACK OF CAPACITY

In the event that the undersigned party is, due to a lack of capacity, unable to take decisions, and where that lack of capacity is permanent or a decision cannot be postponed without detriment, the undersigned party herewith gives the other party a mandate and full power of representation to take necessary decisions on the relevant party's behalf. This shall include any relevant information rights, or rights to be consulted.

This mandate shall, as far as possible under the applicable law, include the following issues:

- healthcare, excluding end-of-life decisions
- end-of-life decisions
- residential matters, including decisions about the place of residence
- property administration
- dealings with landlords, insurance providers, public authorities, and similar third parties
- namely:

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.....

? *Note that this mandate/power might not be recognised, or not in its entirety, in a number of Member States.*

Note that it is in any case still advisable to make a lasting power of attorney or living will in accordance with specific national legislation.

In the event of a loss or limitation of legal capacity the undersigned party wishes the other party to be appointed as their legal guardian.

Special provisions (e.g. conditions, restrictions):

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The fact that a mandate/power has or has not been given under points 1 and/or 2 shall not preclude the other party from relying on a more far reaching mandate/power that party may have or be granted under the applicable law.¹⁵

The mandates/powers under points 1 and 2 are revocable at any time, even after a loss of full capacity, and no reason needs to be given nor any formalities observed. The mandates/powers are revoked when the couple relationship comes to an end.

Revocation is without prejudice to any protection third parties who rely, in good faith, on the mandates' continued existence may enjoy under the applicable law.

I herewith confirm that I have had the content of this document and what the choices made, or their absence, would mean for my situation explained to me by an independent legal adviser, and I have fully understood the implications. I have had sufficient time to pose questions and to reflect, and no further reflection would have affected my decision to give this mandate.

[date]

[place]

[signature partner]

Given by		
Name:	<input type="text"/>	<i>[name of partner]</i>
Born:	<input type="text"/>	<i>[date]</i>
In:	<input type="text"/>	<i>[place]</i>
Identity number and type:	<input type="text"/>	

To		
Name:	<input type="text"/>	<i>[name of partner]</i>
Born:	<input type="text"/>	<i>[date]</i>
In:	<input type="text"/>	<i>[place]</i>
Identity number and type:	<input type="text"/>	

DRAFT MANDATE (2ND PARTNER)

Given on the basis of the parties' cohabitation in a non-formalised couple relationship and shared household.

1. MANDATE FOR EVERYDAY MATTERS TO FACILITATE THE JOINT LIFE

The undersigned party herewith gives the other party a mandate and full power of representation to contract or take any other kind of legally relevant action as concerns the specified everyday matters relevant to their shared household and joint life.

This shall, as far as possible under the applicable law, include the following issues:

- acquisition of household objects and commission of household related services with a value not exceeding
- routine dealings with landlords, service providers, public authorities, and similar third parties with regard to the shared household;
- routine dealings with schools, providers of other education or childcare services, doctors and similar third parties with regard to children living in the shared household;
- namely:

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Exercise of this mandate shall normally lead to equally shared rights and obligations between the parties, unless a matter is clearly within the exclusive sphere of competence of one party.

Special provisions (e.g. conditions, restrictions):

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2. MANDATE FOR A SITUATION OF LACK OF CAPACITY

In the event that the undersigned party is, due to a lack of capacity, unable to take decisions, and where that lack of capacity is permanent or a decision cannot be postponed without detriment, the undersigned party herewith gives the other party a mandate and full power of representation to take necessary decisions on the relevant party's behalf. This shall include any relevant information rights, or rights to be consulted.

This mandate shall, as far as possible under the applicable law, include the following issues:

- healthcare, excluding end-of-life decisions
- end-of-life decisions
- residential matters, including decisions about the place of residence
- property administration
- dealings with landlords, insurance providers, public authorities, and similar third parties
- namely:

.....

.....

.....

.....

? *Note that this mandate/power might not be recognised, or not in its entirety, in a number of Member States.*

Note that it is in any case still advisable to make a lasting power of attorney or living will in accordance with specific national legislation.

In the event of a loss or limitation of legal capacity the undersigned party wishes the other party to be appointed as their legal guardian.

Special provisions (e.g. conditions, restrictions):

.....

.....

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.....

The fact that a mandate/power has or has not been given under points 1 and/or 2 shall not preclude the other party from relying on a more far reaching mandate/power that party may have or be granted under the applicable law.¹⁶

The mandates/powers under points 1 and 2 are revocable at any time, even after a loss of full capacity, and no reason needs to be given nor any formalities observed. The mandates/powers are revoked when the couple relationship comes to an end.

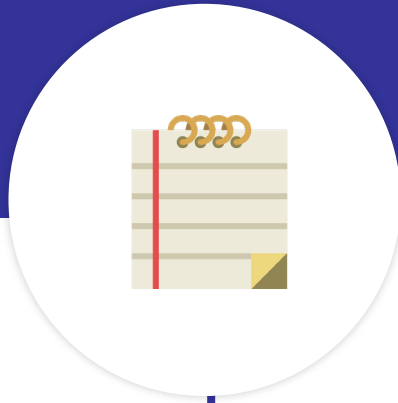
Revocation is without prejudice to any protection third parties who rely, in good faith, on the mandates' continued existence may enjoy under the applicable law.

I herewith confirm that I have had the content of this document and what the choices made, or their absence, would mean for my situation explained to me by an independent legal adviser, and I have fully understood the implications. I have had sufficient time to pose questions and to reflect, and no further reflection would have affected my decision to give this mandate.

[date]

[place]

[signature partner]



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NOTES

NOTES

1 In the event a partner has more than one nationality please list all nationalities. In the event a partner is stateless please replace, for the purpose of the whole document, the country of nationality by the country of that partner's habitual residence, cf. Article 12 of the Convention of 28 September 1954 on the Status of Stateless Persons. Because Cyprus, Estonia, Malta and Poland are not parties to that Convention it remains uncertain whether they would apply habitual residence in these cases.

2 There is no official definition of 'habitual residence'. What is meant is the place that, considering all circumstances of the case, is the centre of an individual's life. It is the place where the individual usually resides and routinely returns to after visiting other places, where the centre of interests of the individual's family and social life is located ('home'). Relevant factual elements to be taken into account are, *inter alia*, the duration and regularity of the individual's presence in the State concerned and the conditions and reasons for that presence. An individual usually has only one State of habitual residence, but the habitual residence may change when the individual moves to another State in order to establish a new centre of life in that State; it is not necessary that the individual plans to stay there forever.

3 According to Article 12 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees ('the Geneva Convention'), as supplemented by the New York Protocol of 31 January 1967, the personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. In most countries this means that habitual residence replaces nationality as a connecting factor. Please be particularly careful when advising parties who are in doubt about their concrete status, in particular whose refugee status has not been officially recognised or who qualify only for subsidiary protection.

4 Ideally parties should provide a unique identifier. Depending on the concrete situation of the spouses, this may be, e.g., their passport/identity card number, or national registry number, or national insurance number.

5 This includes any agreement the partners may have made concerning particular property, or any other agreements that affect issues addressed in this document.

6 This model agreement does not cover child-related issues, since there is hardly any choice for partners which does not require reconsideration in the light of the child(ren)'s best interests at the relevant actual time. However, if the parties have children, this is a factor which they should take into account when making choices in this contract.

7 For the purposes of this document, the term 'court' means any judicial authority and all other authorities and legal professionals which exercise judicial functions or act by delegation of power by a judicial authority or under its control, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard, and provided that their decisions under the law of the Member State in which they operate (i) may be made the subject of an appeal to or review by a judicial authority; and (ii) have a similar force and effect as a decision of a judicial authority on the same matter.

8 Matters of succession law are governed, *inter alia*, by Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, which applies in all Member States except the UK, Ireland and Denmark. According to its Article 22, the law of the State where the deceased has their last habitual residence shall apply by default. However, a person may choose as the law to govern their succession as a whole the law of the State whose nationality they possess at the time of making the choice or at the time of death. A person possessing multiple nationalities may choose the law of any of the States whose nationality they possess at the time of making the

choice or at the time of death. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

9 There are no uniform EU conflict rules. The Hague Convention of 13 January 2000 on the International Protection of Adults is in force in Austria, Czech Republic, Estonia, Finland, France, Germany, Latvia, Portugal and Scotland. The Convention entered into force in Cyprus in November 2018. According to Article 15 of the Convention, the existence, extent, modification and extinction of powers of representation granted by an adult, either under an agreement or by a unilateral act, to be exercised when such adult is not in a position to protect his or her interests, are governed by the law of the State of the adult's habitual residence at the time of the agreement or act, unless another law has been designated expressly in writing. The States whose laws may be designated are a State of which the adult is a national; the State of a former habitual residence of the adult; a State in which property of the adult is located, with respect to that property. The manner of exercise of such powers of representation is governed by the law of the State in which they are exercised.

10 Whether or not an economic advantage is significant should be assessed by taking into account all circumstances of the individual case including the economic power of both parties. For instance, where there is a massive discrepancy as to economic power, it may be fair if one party has paid for all expenses of the common household even where that has allowed the other party to make moderate savings provided these savings are to be considered insignificant in the light of the first party's wealth.

11 Parties should think, in particular, about whether interest should be due, and any interest rate, and about whether the party who made the investment should be entitled to receive a share in any rise (or fall) of value of the property for which investment was made.

12 Note that only lasting economic advantages are taken into account. This means, e.g., that if the economically stronger party unilaterally finances a lifestyle which the other party could never have afforded him- or herself no compensation is due.

13 As far as contractual obligations are concerned which the court seised does not qualify as 'obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations' within the meaning of Article 1(2)(b) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) the parties are free to choose any law they like, subject to general limitations, such as under Article 3(3) Rome I. However, if the court seised qualifies the relevant obligations as arising out of a family or comparable relationship that court will normally apply its domestic rules of conflict-of-laws and may disregard the choice made in this document. As far as extra-contractual obligations, such as obligations arising from unjust enrichment, are concerned, the law applicable follows from Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), which indirectly allows for a choice of the applicable law in Article 10(1), but which contains, in Article 1(2)(a), a similar exclusion for family and comparable relationships. Note that even where Rome I or Rome II are applied they do not cover property relations as such, nor do they cover the question whether an agent is able to bind a principal (cf. Article 1(2)(g) Rome I).

14 Under Article 25 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia) parties may choose the courts that are competent to hear their case. However, according to Article 1(2)(a) Brussels Ia does not cover litigation concerning 'rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage'. If the court seised qualifies the issue at hand to fall under this exception it

will normally apply its domestic rules of jurisdiction and may disregard the choice made in this document.

15 See note 9.

16 See note 9.