

# Income, troubles and legal family formats in Malta

by Clara Galea Borg <sup>1</sup>

*The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 2 – Income and troubles)

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# FamiliesAndSocieties

## Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about Malta

The answers concerning Malta can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)):

#### Formalisation of legal family formats in Malta by Christian Attard (Section 1)

#### Income, troubles and legal family formats in Malta by Clara Galea Borg (Section 2)

#### Parenting and legal family formats in Malta by Christian Attard (Section 3)

#### Migration and legal family formats in Malta by Christian Attard (Section 4)

#### Splitting up and legal family formats in Malta by Clara Galea Borg (Section 5)

#### Death and legal family formats in Malta by Clara Galea Borg (Section 6)

So this paper is based on **Section 2 (Income and troubles)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 2.1 Lower income tax
- 2.2 Social benefits
- 2.3 Health insurance
- 2.4 Care between partners
- 2.5 Care for a parent
- 2.6 Next of kin
- 2.7 Domestic violence
- 2.8 Criminal procedure
- 2.9 General background regarding income and troubles

In the following pages of this paper, first the answer to question 2.9 is presented, followed by the answers to questions 2.1 to 2.8.

**2.09 - General background regarding income and troubles (Open question)**

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, family support, etc.) that may be relevant for the understanding of your answers above regarding income and troubles, then please do so here.

It is important to note that the Civil Unions Act (Chap. 530 of the Laws of Malta) was introduced in 2014 and one can only speculate as to the manner in which certain provisions will be interpreted and applied. However, the guiding principle should be that all rights pertaining to married couples should be extended to apply to partners in a Civil Union. With regard to cohabitation, a bill to regulate cohabiting couples was presented in 2012, however, discussion on the cohabitation bill was superseded by the discussion on the Civil Unions Act. It is understood that the Cohabitation bill is still in the pipeline and a public consultation on the proposed bill was launched in March 2016. With regard to the Question 2.06 'Next of Kin' - we were unable to identify the legal provision/guidelines which regulate this matter. We therefore had to contact the legal office of the main hospital in Malta to understand what happens in practice. The answers provided are based on the feedback received from the said legal office, however, it cannot otherwise be substantiated.

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Income, troubles and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.01 - Lower income tax**

Can a relationship of this type result in lower income tax than for two individuals without a partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 N/A 0000	2015 Yes, but 2014	2015 Yes, but 2014	2015 No 0000	2015 No 0000
		N/A 0000	N/A 0000		
<p><b>References to legal sources:</b>                      Article 56(1)(a) of the Income Tax Act (Chap. 123 of the Laws of Malta) enacted on 1st January 1949.</p>		<p><b>References to legal sources:</b>                      Article 4(1) &amp; 9 of the Civil Unions Act (Chap. 530 of the Laws of Malta) enacted on 14th April 2014.                       More recently, Article 56(1)(a) of the Income Tax Act (Chap. 123 of the Laws of Malta) enacted on 1st January 1949, as amended by Act XIII of 2015 of the 30th April 2015.</p>		<p><b>References to legal sources:</b></p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Spouses can opt for joint or separate computation. The joint computation can result in a lower tax paid in certain instances.</p>		<p><b>Explanations and nuances:</b>                      Partners in a Civil Union whether of the same or opposite sex can opt for joint or separate computation. The joint computation can result in a lower tax paid in certain instances.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Income, troubles and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.02 - Social benefits**

When one partner (long-term unemployed or even never having been employed at all) would be entitled to a basic social benefit, will the income of the other partner then be taken into consideration and will it possibly result in loss or reduction of this entitlement?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2015	2015 N/A 0000	2015 Yes 2015	2015 Yes 2015	2015 No 0000	2015 No 0000
?		No 2014	No 2014		
		N/A 0000	N/A 0000		
<b>References to legal sources:</b> Article 30(6)(vii) of the Social Security Act (Chap. 318 of the Laws of Malta) as amended by Act XIII of 2015 of 30th April 2015 but with retrospective effect from 1st January 2015.		<b>References to legal sources:</b> Article 30(6)(vii) of the Social Security Act (Chap. 318 of the Laws of Malta) as amended by Act XIII of 2015 of 30th April 2015 but with retrospective effect from 1st January 2015.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      This measure was introduced with effect from the 1st January 2015 and provides that a person who is in receipt of Social Assistance for a minimum of three years in the three years preceding the claim and who contracts a marriage or a civil union with a person engaged in a gainful occupation, shall not forfeit the right for Social Assistance but will be entitled to 65% of the rate for the first year, 45% of the rate for the second year and 25% of the rate for the third year.</p>		<p><b>Explanations and nuances:</b>                      This measure was introduced with effect from the 1st January 2015 and provides that a person who is in receipt of Social Assistance for a minimum of three years in the three years preceding the claim and who contracts a marriage or a civil union with a person engaged in a gainful occupation, shall not forfeit the right for Social Assistance but will be entitled to 65% of the rate for the first year, 45% of the rate for the second year and 25% of the rate for the third year.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Income, troubles and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.03 - Health insurance**

Is the amount of money that the two partners in this type of relationship would have to pay for (public or private) health insurance, normally smaller than what two individuals without a partner would have to pay?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 1987	2015 N/A 0000	2015 No 2014	2015 No 2014	2015 No 0000	2015 No 0000
?		N/A 0000	N/A 0000		
<b>References to legal sources:</b> Article 5 of the Social Security Act (Chap 318 of the Laws of Malta) enacted on 1st January 1987.		<b>References to legal sources:</b> Article 5 of the Social Security Act (Chap 318 of the Laws of Malta) enacted on 1st January 1987 extended to Civil Unions by virtue of the Civil Unions Act (Chap.530 of the Laws of Malta) Act IX of 2014 of the 14th April 2014.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Every employed person (irrespective of civil status) is required to make contributions towards the National Insurance. The rates of contribution vary according to the salary earned. As for private insurance, this is a matter for insurance companies to establish.</p>		<p><b>Explanations and nuances:</b>                      Every employed person (irrespective of civil status) is required to make contributions towards the National Insurance. The rates of contribution vary according to the salary earned. As for private insurance, this is a matter for insurance companies to establish.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Income, troubles and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.04 - Care between partners**

In case one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 N/A 0000	2015 No 2014	2015 No 2014	2015 No 0000	2015 No 0000
		N/A 0000	N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      There is no such right in terms of Maltese law, a spouse or partner would need to apply for normal leave (paid or unpaid) in order to care for his/her spouse or Civil Union partner. The Urgent Family Leave Regulations (Legal Notice 296 of 2003) gives a right to a minimum of 15 hours time off work per year on grounds of force majeure for urgent family reasons affecting 'immediate family members' defined as 'the husband, wife and married or unmarried children, as well as family relations up to the first degree, and whether living in the same household or not and persons having legal custody of a child'. However, these 15 hours are reduced from the employee's annual statutory leave entitlement and are geared towards ensuring the presence of the employee in the immediate aftermath of an accident or sudden illness of a family member rather than the provision of (long-term) care.</p>		<p><b>Explanations and nuances:</b>                      There is no such right in terms of Maltese law, a Civil Union partner would need to apply for normal leave (paid or unpaid) in order to care for his/her Civil Union partner. The Urgent Family Leave Regulations (Legal Notice 296 of 2003) would also apply to partners in a Civil Union and gives a right to a minimum of 15 hours time off work per year on grounds of force majeure for urgent family reasons affecting 'immediate family members' defined as 'the husband, wife and married or unmarried children, as well as family relations up to the first degree, and whether living in the same household or not and persons having legal custody of a child'. However, these 15 hours are reduced from the employee's annual statutory leave entitlement and are geared towards ensuring the presence of the employee in the immediate aftermath of an accident or sudden illness of a family member rather than the provision of (long-term) care.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Income, troubles and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.05 - Care for a parent**

In case the parent of one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 N/A 0000	2015 No 2014	2015 No 2014	2015 No 0000	2015 No 0000
		N/A 0000	N/A 0000		
<b>References to legal sources:</b>		<b>References to legal sources:</b>		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> There is no such right under Maltese law, any time off would need to be agreed upon with the spouse's employer and taken as paid/unpaid leave. See comment in question 2.04. The definition of 'immediate family' given in the Regulations include family relations up to the first degree. It is unclear whether this includes only relations by consanguinity or also relations by affinity.		<b>Explanations and nuances:</b> There is no such right under Maltese law, any time off would need to be agreed upon with the partner's employer and taken as paid or unpaid leave. See comment in question 2.04. The definition of 'immediate family' given in the Regulations include family relations up to the first degree. It is unclear whether this includes only relations by consanguinity or also relations by affinity.		<b>Explanations and nuances:</b>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Income, troubles and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.06 - Next of kin**

In case of accident or illness of one partner, is the other partner considered as next of kin for medical purposes (even without power of attorney)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 N/A 0000	2015 Yes 2014	2015 Yes 2014	2015 No 0000	2015 No 0000
		N/A 0000	N/A 0000		
<b>References to legal sources:</b> No legal sources available but recognised as a matter of practice.		<b>References to legal sources:</b> No legal source available but recognised as a matter of practice.		<b>References to legal sources:</b> Not regulated, not recognised as a matter of practice.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      When contacting the Legal Office at the main hospital in Malta (Mater Dei Public Hospital) we were informed that as a matter of practice the next of kin is considered to be the other spouse or the other partner in a Civil Union.</p>		<p><b>Explanations and nuances:</b>                      When contacting the Legal office at the main hospital in Malta (Mater Dei Public Hospital) we were informed that as a matter of practice the next of kin is considered to be the other spouse or the other partner in a Civil Union. Civil Unions came into being as from the 14th April 2014 and Civil Union partners started being recognised as from this date.</p>		<p><b>Explanations and nuances:</b>                      When contacting the Legal Office at the main hospital in Malta (Mater Dei Public Hospital) we were informed that as a matter of practice in the absence of a 'registered relationship' the next of kin is considered to be the nearest ascendant or descendant of the patient.</p>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Income, troubles and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.07 - Domestic violence**

When one partner uses violence against the other partner, does specific statutory protection apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2006	2015 N/A 0000	2015 Yes 2014	2015 Yes 2014	2015 Yes 2006	2015 Yes 2006
No 0000		N/A 0000	N/A 0000	No 0000	No 0000
<b>References to legal sources:</b> Article 543(e) of the Criminal Code (Chap. 9 of the Laws of Malta) introduced by virtue of Act XX of 2005 of 28th February 2006.		<b>References to legal sources:</b> Article 543(e) of the Criminal Code (Chap. 9 of the Laws of Malta) introduced by virtue of Act XX of 2005 of 28th February 2006.		<b>References to legal sources:</b> Article 543(e) of the Criminal Code (Chap. 9 of the Laws of Malta) introduced by virtue of Act XX of 2005 of 28th February 2006.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            By virtue of Act XX of 2005, the Domestic Violence Act (Chap. 481 of the Laws of Malta) was introduced into Maltese law. In addition the same Act effected amendments to the Criminal Code providing that in the case of offences of domestic violence the police can bring proceedings ex officio (without the need for a complaint by the injured party). Domestic Violence is defined as 'any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other.'. The term 'household member' is defined very widely and includes spouses, partners in a Civil Union and any persons living together (thus also cohabiting couples).</p>		<p><b>Explanations and nuances:</b>            By virtue of Act XX of 2005, the Domestic Violence Act (Chap. 481 of the Laws of Malta) was introduced into Maltese law. In addition the same Act effected amendments to the Criminal Code providing that in the case of offences of domestic violence the police can bring proceedings ex officio (without the need for a complaint by the injured party). Domestic Violence is defined as 'any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other.'. The term 'household member' is defined very widely and includes spouses, partners in a Civil Union and any persons living together (thus also cohabiting couples).</p>		<p><b>Explanations and nuances:</b>            By virtue of Act XX of 2005, the Domestic Violence Act (Chap. 481 of the Laws of Malta) was introduced into Maltese law. In addition the same Act effected amendments to the Criminal Code providing that in the case of offences of domestic violence the police can bring proceedings ex officio (without the need for a complaint by the injured party). Domestic Violence is defined as 'any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other.'. The term 'household member' is defined very widely and includes spouses, partners in a Civil Union and any persons living together (thus also cohabiting couples).</p>	

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Section: **2 - Income and Troubles**

Question: **2.08 - Criminal procedure**

In case of a criminal prosecution against one partner, can the other partner then refuse to testify against the partner who is being prosecuted?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 N/A 0000	2015 Yes 2014	2015 Yes 2014	2015 No 0000	2015 No 0000
		N/A 0000	N/A 0000		
<b>References to legal sources:</b> Article 635 of the Criminal Code (Chap. 9 of the Laws of Malta) enacted on 12th June 1854.		<b>References to legal sources:</b> Article 635 of the Criminal Code (Chap. 9 of the Laws of Malta) enacted on the 12th June 1854, read in conjunction with Article 9 of the Civil Unions Act (Chap. 530 of the Laws of Malta) enacted on the 14th April 2014.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The wife/husband of the accused cannot be admitted to give evidence either in favour or against the accused except in relation to specific offences.</p>		<p><b>Explanations and nuances:</b>                      Article 635 of the Criminal Code refers specifically to the terms 'husband' and 'wife' and would therefore seem to exclude partners in a Civil Union. However, Article 9 of the Civil Unions Act specifically states that 'In situations where the rights and obligations of civil partners are unclear, every effort shall be made to ensure that the determination of such rights and obligations is such that equates them to those enjoyed by spouses.' Therefore, Article 635 should be interpreted in line with Article 9 and therefore made applicable to partners in a Civil Union.</p>		<p><b>Explanations and nuances:</b></p>	