1 Is there a statutory matrimonial property regime in this Member State? What does it provide?

1.1 Legal regime: Common civil law and the particular law of certain Autonomous Communities

It would be incorrect to speak of a single law or matrimonial property regime in Spain. Certain Autonomous Communities, alongside the State, have jurisdiction over civil law (although not all include matrimonial property regimes among the matters they can regulate). This means that all Spanish citizens have a specific regional citizenship (vecindad civil) in addition to their Spanish nationality. This determines whether they are subject to the common civil law or to a specific or regional civil law (Article 14 of the Civil Code).

The regions with their own civil law include Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia and Valencia (although the latter does not regulate matrimonial property regimes since the law it passed was declared unconstitutional by the Constitutional Court (Tribunal Constitucional)). Thus, citizens of the remaining Autonomous Communities have 'common' regional citizenship (vecindad civil común) (Article 14 of the Civil Code regulates how regional citizenship is acquired).

- In the case of marriage between Spanish citizens (with no international connection), to identify the law applicable to the matrimonial property regime and whether to apply common law or the law of a particular Autonomous Community, it is necessary to turn to the rules of interregional law contained in the Preliminary Title of the Civil Code (Título Preliminar del Código Civil) ((Articles 9(2) and 16 of the Civil Code).

The regime under the Civil Code applies to spouses with common regional citizenship.

If the spouses do not have such common regional citizenship, the applicable law is that relating to the regional citizenship or habitual residence of one of the spouses, jointly chosen in an authentic document issued prior to the celebration of the marriage. Failing this, the applicable law is that of the place of common habitual residence immediately following the celebration of the marriage. Finally, in the absence of such a residence, the applicable law is that of the place where the marriage is celebrated.

In exceptional cases, where the spouses have different regional citizenship, if both regions have as their matrimonial property regime separation of property (and the regime applicable according to the abovementioned rules was different from that), the separation of property regime found in the Civil Code applies.

- When one of the spouses is not Spanish or the married couple has a connection to another country, the applicable law is determined according to the provisions of Article 33 of Regulation (EU) 2016/1103, which is understood in such a way that, in relation to Spanish citizens, where the Regulation refers to nationality as a criterion of connection, this is regarded as a reference to regional citizenship.

However, regional citizenship is a concept that only applies to Spanish citizens (Article 15 of the Civil Code); therefore, since it does not apply to foreigners, Article 33(2) comes into play, replacing the law of nationality with the law of closest connections, i.e. the law of the territorial unit with which the spouses have the closest connections.

1.2 Matrimonial property regimes applicable in the absence of an agreement between the spouses under the Civil Code and the particular laws of the Autonomous Communities

With regard to specifying the matrimonial property regime in cases where there is no agreement between the spouses, supplementary law applies, which varies depending on the applicable internal civil law:

Civil Code (applied unless the applicable law is that of Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia): community of property (sociedad de gananciales) (Article 1344 et seq. of the Civil Code). Under this regime, the acquisitions and benefits obtained by either of the spouses become the joint property of both. Each spouse's personal property essentially includes property brought to the marriage and property acquired during the marriage free of charge or as replacement for personal property. The main residence acquired prior to marriage is covered by a special regime under which, in contrast to the other property acquired prior to marriage (which is always personal), payments made afterwards with joint funds convert the main residence proportionally into joint property. In case of doubt, property is presumed to be jointly owned. The liability regime of community property is regulated in the same way, and it includes property resulting from the regular exercise of a profession, artistic activity or trade. If there are debts incurred by only one spouse, initially only that person is liable with his or her own property; if this is insufficient, creditors may seize community property. However, in this case the other spouse can request the dissolution of the community of property, replacing the seizure of joint property by the share held by the debtor spouse; from that point on, the marriage falls under the separation of property regime. Community property is managed jointly (although on a day-to-day basis – domestic authority (potestad doméstica) – either of the spouses may manage it). Management of personal property is the responsibility of the spouse who owns the property (although there are special provisions where the family home is concerned, since although it may belong to just one spouse, the other spouse's consent is necessary or, failing that, judicial authorisation). Disposals of or encumbrances on community property require the consent of both spouses.

Aragon: community of property (consorcio conyugal) regulated in Articles 210 et seq. of the Aragon Regional Legal Code (Código de Derecho Foral de Aragón). Under this regime the acquisitions or benefits obtained by either of the spouses as a result of their work, activity or returns on their assets, become joint property. Each spouse's personal property essentially includes property brought to the marriage and property acquired during the marriage free of charge or as replacement for personal property. In case of doubt, property is presumed to be jointly owned. Under Aragon civil law, property acquired before marriage, including the main residence, is always personal, unless the cost has been wholly deferred and will be paid in full out of joint funds once the marriage begins. The system of liability for this property regime is regulated. Where debts are incurred by only one spouse, that person alone is liable with his or her own property; if this is insufficient and in the case of enforcement against joint property for debts that are not under joint responsibility, the debtor's spouse may exercise the right to safeguard the value of his or her share of the joint property, requesting the liquidation of the community of property solely for the purpose of determining the value that must be safeguarded, without dissolving it.

It should be mentioned that in Aragon the surviving spouse has a right to usufruct (usufructo viudal aragonés) which, while an inheritance right, is also a prospective right during life (derecho expectante de viudedad).

Catalonia: separation of property (Article 232(1) of the Catalonia Civil Code (Código Civil de Cataluña)). In this regime, each spouse is entitled to the ownership, enjoyment, management and free use of all his or her property. In case of doubt as to which of the spouses owns an asset or right, it is understood to belong to both in equal, indivisible parts. However, it is presumed that personal-use moveable property that is not extraordinarily valuable belonging to one of the spouses, and property directly intended for the exercise of his or her activity, are his or her exclusive property.

Balearic Islands: separation of property (Article 3 of the Balearic Islands Civil Law Code (Compilación de Derecho Civil de las Islas Baleares), as regards Mallorca; Article 65 as regards Menorca; and Article 67 for Ibiza and Formentera). Under this regime, property belonging to each spouse at the time of marriage is considered his or her personal property, as well as any property acquired by any means in the course of the marriage
Navarre: community of property (conquistas) (Law 87 et seq. of the Navarre New Legal Code (Fuero Nuevo de Navarra)). This is a regime in which the acquired property includes (among others) property acquired during the marriage through work or other activity by either of the spouses, as well as the proceeds of and returns on both joint and personal property. Personal property includes property that a spouse obtains by payment prior to the marriage, even if acquisition takes place during the marriage, or the cost or consideration is paid in full or in part with funds from the other spouse or from the community of property, or acquisitions by way of profit prior to or during the marriage. All property not documented as personal is considered community property. Housing and furnishings are subject to a specific regime when acquired or totally or partially paid during the marriage, even when they result from prior ownership. In this case, if the payment was made with the sole, exclusive contribution of one of the spouses, it will be his or her personal property. If the payment was made with assets owned by both spouses, the property will belong indivisibly to them both in proportion to their respective contributions. If payment was made with the assets of one or both spouses in addition to assets from the community of property, indivisibility applies in proportion to each spouse's contribution and those of the community of property. The system of administration and liability for community property and personal property is also regulated. Where personal debts are incurred, if the debtor spouse's personal assets are insufficient, the creditor may request seizure of community property, which is notified to the other spouse. If he or she fails to respond and the community property is seized, enforcement takes place, and the debtor spouse is considered to have received the value of his or her share, when he or she makes payment with his or her own funds or when the community of property is liquidated. However, the other spouse may, within nine days of notification of the seizure, request that the seizure of community property be replaced by the remainder assigned to the debtor spouse on liquidation of the community of property. In this case, the seizure results in the dissolution and liquidation of the community of property, as well as the application of the separation of property regime from that point on.
Basque Country: when both spouses are residents of the lowlands of Bizkaia, Aramaio or Llodio, the marriage is regulated by the regional universal community of property regime (comunicación foral de bienes). When only one of the spouses has regional citizenship in the lowlands of Bizkaia, Armaio or Llodio, this regime applies if it corresponds to the spouses' first common habitual residence; failing that, the regime of the place where the marriage was celebrated is applied. In other parts of the Basque Country, if there is no agreement, the matrimonial property regime is the community of property regime (sociedad de gananciales) found in the Civil Code (Article 127 et seq. of the Basque Country Regional Civil Law Act (Ley de Derecho Civil Foral del País Vasco). Under the regional universal community of property regime, all assets, rights and shares – regardless of their origin – belonging to either of the spouses and acquired by whatever means are shared equally between the spouses. This applies both to property brought to the marriage and property acquired during the marriage, regardless of where the property is located. Despite this theoretically universal character, the scope of the community of property varies depending on the cause of dissolution. Thus, if the marriage is dissolved by the death of one of the spouses and there are children from the marriage, the community of property is universal in nature. However, if it is dissolved by the death of one of the spouses, but there are no children from the marriage, or if it is dissolved for another reason (such as divorce), the community of property is limited to acquisitions or property acquired for payment, excluding both property brought into the marriage and property received free of charge.
Galicia: community of property (gananciales) (Article 171 of the Galicia Civil Law Act (Ley de Derecho Civil de Galicia)).

2 How can spouses arrange their matrimonial property regime? What are the formal requirements in this case?

Spouses can stipulate their matrimonial property regime such that the supplementary provisions mentioned in the previous section do not apply.
For this purpose they must sign a public pre-marital agreement before a notary (Articles 1280 and 1315 of the Civil Code), which must be recorded in the civil registry, and the notary must, on the same day as the agreement is signed, send an authorised electronic copy of the public document to the corresponding registrar as evidence in the registration of the marriage (Article 60 of the Civil Registry Act (Ley del Registro Civil)).
The spouses may also modify the matrimonial property regime during the marriage by meeting the same formal requirements (Article 1331 of the Civil Code) and without this infringing thirdparty rights (Article 1317 of the Civil Code).
This same possibility is provided for in the Autonomous Communities that have their own civil law for marriages governed by that law: Articles 231(10) et seq. of the Catalonia Civil Code; Article 3 of the Balearic Islands Civil Law Code as regards Mallorca and Menorca (capítulos) and Article 66 of the Balearic Islands Civil Law Code as regards Ibiza and Formentera (espolits); Articles 125 et seq. of the Basque Civil Law Act; Articles 171 et seq. of the Galicia Civil Law Act; Article 185 of the Aragon Regional Legal Code; Act 78 et seq. of the Navarre Regional Civil Law Code.

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

Spouses are free to decide their matrimonial property regime and may choose to apply any regime, including those that are regulated by any of the Spanish civil laws (in which are detailed both the matrimonial property regime to be applied in the absence of an agreement and others that the parties may agree to) and those provided for in the regulations of other states. However, provisions contrary to the law or decency, or which limit the equality of rights belonging to each spouse, must never be incorporated (Article 1328 of the Civil Code and Article 14 of the Spanish Constitution).

4 What are the legal effects of divorce, separation or annulment on the matrimonial property?

Annulment, separation and divorce end the matrimonial property regime. This is provided for in the various regulations of the different matrimonial property regimes (including, for example, Article 1392 of the Civil Code with respect to community of property or Article 1415 of the Civil Code regulating participatory regimes in the Civil Code).
In community of property regimes, the procedure set out in the Code of Civil Procedure (Ley de Enjuiciamiento Civil) must be followed for liquidation. While this is carried out, a form of jointly owned property arises between the spouses, distinct from the other community of property regimes, with a specific legal regime, which remains in place for the duration of the community until, through the appropriate liquidation-division transactions, a specific, individualised share of the property is produced for each of the co-owners.
A community of property (sociedad de gananciales) may be liquidated pursuant to the rules found in Articles 1392 to 1410 of the Civil Code, by mutual agreement in the presence of a notary or, in the absence of such an agreement, before the court, which will be subject to the procedure found in the Code of Civil Procedure.
Under the separation of property regime, it is not necessary to liquidate the matrimonial property regime, since each spouse is owner of his or her property. Property which belongs to both spouses from the beginning is subject to a co-ownership regime, which continues as before following annulment, separation or divorce, without prejudice to either of the co-owners being able to seek its division (as is the case in all situations of co-ownership).

5 What are the effects of death of one of the spouses on the matrimonial property regime?

Death also ends the matrimonial property regime, as provided for in the various regulations of the different matrimonial property regimes (including e.g. Article 1392 of the Civil Code in conjunction with Article 85 thereof with respect to community of property or Article 1415 of the Civil Code regulating participatory regimes in the Civil Code).
Without prejudice to anything the deceased spouse may have arranged in a last will or testament, certain rights are laid down for the widowed spouse depending on the law applicable to succession. Likewise, if the spouse dies intestate, he or she has certain rights in the succession of his or her spouse.

To determine the applicable civil law:

- In cases where the couple has connections to more than one state, the applicable civil law is determined in line with the provisions of Regulation 650 /2012. The provision contained in Article 36 comes into play where Spanish law is applicable, such that when that is the case, the existing Civil Code or autonomous civil regulations apply, depending on the specific connection the testator may or may not have had with an Autonomous Community that has its own civil law regulating the matter.
- Where successions with no foreign component are concerned, while succession is governed by the civil regulations relating to the regional citizenship the testator had at the time of death, the rights which by operation of law are attributed to the surviving spouse are governed by the same law regulating the effects of marriage, the descendants' legitimate shares always being safeguarded (Articles 16 and 9(8) of the Civil Code).

Below the rights of the surviving spouse are analysed in light of the various civil laws existing in Spain, depending on whether the testator voluntarily arranged his or her succession (most commonly by a will) or died intestate.

- If the deceased left a will:

Civil Code (applies unless the applicable law is that of Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia), which establishes that the minimum to which the surviving spouse is entitled is the same as when the spouse dies without a will, i.e. usufruct of one third of the estate if there are children or descendants. If there are only ascendants, he or she is entitled to the usufruct of one half of the estate. Finally, the right to usufruct is two-thirds if there are neither ascendants nor descendants (Article 834 et seq. of the Civil Code).

Aragon: the celebration of marriage endows each spouse with survivor's usufruct (usufructo de viudedad) of all the property of the first spouse to die (Article 271 of the Aragon Regional Civil Law Code). This right (which is of the nature of family law and not inheritance law) is held by spouses under the Aragon community of property regime, even if their regional citizenship subsequently changes, excluding in this case the legitimate share established under inheritance law. The surviving spouse is also entitled to survivor's usufruct when the predeceased had regional citizenship of Aragon at the time of death.

Balearic Islands: in Mallorca and Menorca, the surviving spouse's universal right to usufruct is recognized if the testator has no living parents. The usufruct is two-thirds if the testator's parents are alive and one half if there are descendants (Article 45 of the Balearic Islands Regional Civil Law Code). In Ibiza and Formentera, the surviving spouse is not considered a forced heir (legitimario).

Catalonia: a widowed spouse who lacks financial resources is assigned a quarter of the estate (Article 452(1) of the Catalonia Civil Code). Likewise, he or she is assigned other rights as regards the assets belonging to the surviving spouse without being included in the estate (Article 231(30) of the Catalonia Civil Code) and the home. Specifically in this regard the concept of one year's survivor's pension (año de viudedad) comes into play, consisting in the right to continue using the marital home and to be maintained at the expense of the deceased's estate for one year following the testator's death (Article 231(31) of the Catalonia Civil Code).

Galicia: the surviving spouse is entitled to usufruct of half the estate (Article 228 et seq. of the Galicia Civil Law Regulations Act, Ley normas reguladoras del Derecho Civil de Galicia).

Navarre: the surviving spouse is entitled to usufruct (usufructo de fidelidad) of all the property and rights of the predeceased (provided the latter had regional citizenship of Navarre at the time of death) which belonged to him or her at the time of death (Act 253 of the Navarre New Legal Code).

Basque Country: the widowed spouse or surviving member of a non-marital union is entitled to usufruct of half of all the testator's property if there are descendants. In the absence of descendants, he or she has usufruct of two-thirds of the property (Article 52 of the Basque Country Regional Civil Law Act). This does not apply in Ayala valley - municipalities of Ayala, Amurrio and Okondo, and in the towns of Mendieta, Retes de Tudela, Santacoloma and Sojoguti in the Artziniega municipality (Article 89 of the Basque Country Regional Civil Law Act), which are governed by testamentary freedom. Nor does it apply in the lowlands of Vizcaya, Aramaio and Llodio, where special rules on family property (bienes troncales) are in effect (Articles 61 et seq. of the Basque Regional Civil Law Act).

- If the deceased has not made a will (intestate succession):

Civil Code (applied unless the applicable law is that of Aragon, Catalonia, Balearic Islands, Navarre, Basque Country, Galicia): the widowed spouse is entitled to usufruct of one third of the estate if there are children or descendants, half of the estate if there are only ascendants, and he or she is named sole heir if there are neither ascendants nor descendants (Article 834 et seq. and Article 944 of the Civil Code).

Aragon: the widowed spouse inherits non-family property (bienes no troncales) after the ascendants, without prejudice to the survivor's usufruct referred to under testate succession, which is always retained (Article 517 of the Aragon Regional Legal Code). Family property refers to property that has remained in the home or family of the testator for two generations immediately prior to his or her generation, regardless of the property's direct origin and means of acquisition, as well as property which the testator received free of charge from ascendants or collateral relatives to the sixth degree. This property is transferred to certain relatives (parientes troncales) listed in Article 526 of the Aragon Regional Legal Code.

Balearic Islands: the provisions of the Civil Code (mentioned above) apply, while in Mallorca and Menorca, at least, the widowed spouse enjoys universal usufruct if there are no parents, two-thirds usufruct if the testator's parents are alive and half if there are descendants.

Catalonia: if there are no descendants, the widowed spouse inherits all property of the estate before the deceased's ascendants (Articles 441(2) and 442(3) of the Catalonia Civil Code). If the widowed spouse shares the succession with the testator's children or their descendants, he or she is entitled to universal usufruct of the estate (Articles 441(2) and 442(3) of the Catalonia Civil Code).

Galicia: the same regime applies as found in the Civil Code (Article 267 of the Galicia Civil Law Regulations Act).

Navarre: the spouse inherits non-family property after siblings and ascendants. As regards family property, the spouse is entitled to usufruct of all property and rights of the predeceased (provided the latter had Navarre regional citizenship at the time of death) that belonged to him or her at the time of death (Act 304 et seq. of the Navarre New Legal Code).

Basque Country: as regards family property, solely in respect of real estate acquired by the spouses during the marriage, both spouses or members of the non-marital partnership are heirs (Article 66 of the Basque Country Regional Civil Law Act). The surviving spouse inherits nonfamily property in the absence of descendants (Articles 110 et seq. of the Basque Country Regional Civil Law Act).

6 Which authority has the competence to decide in a case relating to a matrimonial property regime?

Jurisdiction is held by the Court of First Instance (Juzgado de Primera Instancia) that is hearing or has heard the annulment, separation or divorce proceedings, or before which actions to dissolve the matrimonial property regime are being or have been brought for any of the reasons provided for in civil legislation (Article 807 of the Code of Civil Procedure).

In those judicial districts with specialized family law courts, the latter hear the proceedings for dissolution and liquidation of the property regime, even if the proceedings do not result from a prior annulment, separation or divorce proceeding.

7 What are the effects of the matrimonial property regime on legal relationships between a spouse and a third party?

In general and under our common civil system, Article 1373 of the Civil Code provides that each spouse is liable with regard to third parties for his or her own debts with his or her personal assets; if the personal property is insufficient to discharge the debts, the creditor (third-party) may request seizure of community property. However, the non-debtor spouse may request that joint property be replaced by the share held by the debtor spouse in the community of property, in which case the seizure entails the dissolution of the community of property.
A provision of similar scope is found in the Code of Civil Procedure for the purposes of enforcement when the debt is personal but the community of property must nevertheless assume liability.
Specifically, it is provided (Article 1365 of the Civil Code) that community property is used to pay the creditor (third party) for the debts incurred by a spouse: 1) in the exercise of domestic authority or in the management or disposal of community property which by law or contract belongs to him or her; and 2) in the regular exercise of his or her profession, artistic activity or trade or in the regular management of his or her personal property.
There are likewise provisions in the Commercial Code (Código de Comercio) for cases where one of the spouses is a trader.
As regards encumbrances or disposal of jointly owned property, unless separate provision has been arranged for in a pre-marital agreement, the consent of both spouses is required. If the disposal is free of charge (e.g. donation), disposal carried out by just one spouse is null and void.
Nonetheless, in the interest of security of trade, the Civil Code indicates that acts of property management and disposal of money or securities are valid when conducted by the spouse in whose name they are registered and who has possession of them.
As regards registered immoveable property, in order to register the property in the name of the married person and the acquired right in relation to the current or future rights of the community of property, the name of the spouse and the matrimonial regime must be identified for the benefit of a third party consulting the registry. If nothing is declared in the registry, a third party acting in good faith who acquires by payment property from the person who appears in the registry with authority to carry out the transfer retains ownership of the property thus acquired.

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

This is regulated in Articles 806 et seq. of the Code of Civil Procedure. It has the following steps:

a) Inventory drawn up of the property included in the community of property.

This can occur at the same time as the annulment, separation or divorce proceedings or the dissolution of the matrimonial property regime, even if in practice it begins once the final judgment dissolving the regime has been issued.
The request must include a proposed inventory. An appearance is made before an officer of the court (Letrado de la Administración de Justicia), during which, based on the proposal, a joint inventory is sought. If there is a dispute over an asset, a hearing is held before a judge for a ruling, which can be appealed.

b) Liquidation.

To begin this step the decision dissolving the matrimonial property regime must be final. It begins with a liquidation proposal and appearance before an officer of the court in order for the spouses to reach an agreement on the payment of compensation and reimbursement due to each spouse, and the proportional division of the remainder by establishing lots.
If no agreement is reached, an estate partitioner is named to handle the division transactions. Once the proposal has been made, the spouses can accept or reject it; in the latter case the disagreement is resolved by court ruling, which can be appealed

c) Delivery of assets and registration in the property register.

Once the liquidation transactions are finally approved and the lots established, the officer of the court is responsible for delivering the assets and sending property titles to each spouse.
In addition to this procedure, there is another, simpler procedure under which liquidation takes place by mutual agreement of the spouses or between the surviving spouse and the heirs of the predeceased spouse, pursuant to the rules of the Civil Code and before a notary.
In both cases, if there is immoveable property among the assets subject to liquidation, a copy of the decree approving the division transactions, the judgment establishing the division of assets or the notarised public document on the liquidation of the community of property may be recorded in the property register.

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

Acts and contracts related to ownership and other rights in rem in immoveable property may be recorded in the property register. They must be authorised in a public document, which is brought to the registry in whose territorial jurisdiction the immoveable property is located, and the corresponding taxes and fees paid.
The document must be presented in authentic form and accompanied by certification from the Spanish civil registry (if the marriage was registered there) acknowledging dissolution of the matrimonial property regime for it to be effective with regard to third parties. If the original document was issued outside the country, it must be duly legalised and, should the registrar request it, translated. This regime is not applicable to legal documents and judicial decisions covered by European regulations, which circulate pursuant to the relevant provisions.

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