A  
Contractual arrangements

1. Does your system of law allow (i) heterosexual couples and (ii) same sex couples who are living together to enter into a contract governing their cohabitation, particularly as respects obligation of support or maintenance, ownership of property during cohabitation, financial claims on the cessation of cohabitation?

The German law system allows contracts between couples living together without being married, may they be heterosexual or same sex couples. Such contracts may settle obligations of maintenance/support as well as for example ownership of property and any claims for the time after ending a relationship. Such contracts are valid as long as they do not appear improper. This might be the case if they intend to hinder claims of maintenance of children or former partners of a marriage. There are not many other situations that might also appear improper.

2. If such contractual arrangements are permitted, is it common for cohabitating couples to conclude a cohabitation contract?

It is mostly not usual for cohabitating couples to conclude a contract or at least some minor agreement concerning their legal situation. They seem to believe it unnecessary.

3. Are there any formal requirements (e.g., signature before witnesses, involvement of a notary) which require to be satisfied before a cohabitation contract is valid?

There are no special requirements for cohabitation contracts other than for any other contract.
B.
Heterosexual couples: non contractual rules

1. Where a couple are co-habitating does your legal system recognise any mutual duty of aliment or maintenance during the period of cohabitation?

In German Law the governing principle is that there are no duties of maintenance between the partners of cohabitation. An important exception is made with respect to public welfare. A couple living together have to maintain each other. As long as the partner can afford the maintenance of the not married partner his/her claims to payments from public welfare are reduced or even lost altogether. There are also duties of support and maintenance if the couple have children together but these do not only apply during cohabitation but also without it or afterwards.

2. Are there any particular rules regarding ownership of movable property such as, for example, household furniture acquired during the time in which the couples are cohabitating?

There are special rules regarding movable property. The couple is regarded in the same way as unrelated people. Each partner is entitled to the property he has had before cohabitating as well as to those objects he/she acquires during the cohabitation period.

3. If the relationship breaks down and the parties separate, does your legal system enable one of the co-habitants to claim from the other (a) payment of maintenance or (b) payment of a capital sum? If so, are such claims determined on the same principles as would apply were the couple married or do different rules apply?

There are no claims to payment of maintenance or a capital sum between partners of cohabitation after breaking up the partnership. There may be claims if the couple have children together and these need still care from one of the former partners. He/she may then have an own claim of maintenance. These claims are not treated in the same way as claims of married/once married couples. The constitutional law in Germany contains a rule of special protection for marriage and family which prevent to treat not married couples in the same way.

4. Where the house in which the parties live together is either owned or tenanted by one of the parties, does your legal system give the other party any right to continue to occupy the house when the relationship breaks down?

There are no special rights of the partner of an ended cohabitation to stay on in the house or flat owned or tenanted by the other. While the cohabitation lasts the partner is treated like a tenant in case of tenancy. When the cohabitation ends he/she has no right to stay on. Nevertheless
he/she cannot be forced to leave the house or flat at once. There has to be some time to find a new place to live.

5. Where the cohabitation comes to an end by reason of the death of one of the co-habitants, what rights, if any, is the estate of the deceased cohabitant does your legal system give to the surviving co-habitant?

There are no legal rights in the estate of the deceased partner of the cohabitation for the surviving partner if he/she is not named as heir in a will.

6. Does a co-habitant have any title to sue for damages in the event that his or her partner is killed through the fault or negligence of a third party?

In German law a co-habitant has no claim if his/her partner is killed by a third party.

7. In so far as your legal system does give rights to a co-habitant, does it also define what is necessary for the relationship to be treated as co-habitation? Are different definitions of “cohabitation” used, depending on the right which is claimed? What factors are taken into account in the definition(s)?

Mostly the German legal system does not give any special rights or claims to the partner of cohabitation. If they are not a heterosexual couple they can get registered which formalizes the partnership a bit and may constitute some rights. Heterosexual couples cannot do that and they are only treated like a legal entity when they must not benefit from public welfare or tax regulation.

C Homosexual couples: non contractual rules

1. In your country are couples of the same sex able to enter a relationship which, following registration or some other public ceremony, will be legally recognised by the State?

It is possible for couples of the same sex to let their partnership be registered. This gives the partners some legal status. It is not equal to that of married couples in all respects but in most.

2. If so, what are the principal ways in which the rules governing the patrimonial aspects of that relationship differ from those applying in (heterosexual) marriage?

There is a special law concerning couples of the same sex, the “Lebenspartnerschaftsgesetz” which was issued 2001. It opened the possibility to couples of the same sex to let their partnership - with or
without cohabitation – be registered. The Bundesländer decide which authority is responsible for the registration. Mostly it is the same office which is responsible for marriages.

If the cohabitation is registered officially the partners owe each other support and maintenance, they are entitled to maintenance and even some capital sum in case of the breaking of the partnership. The goods of the household are split in case of the breaking of the partnership like it would be split between married couples. In case of the death of one of the partners they do inherit a substantial part of the estate of the deceased partner, even if it is less than what a widow or widower from a married couple would get.

3. In the event that a same sex couple either cannot enter into a legally recognized relationship or have chosen not to do so, does their cohabitation give rise to the same rights and obligations which would result from cohabitation of a man and a woman? If not, what are the principle differences?

A not registered cohabitation between a same sex couple is legally treated like a cohabitation between a heterosexual couple. There are few special rights or position coming from a not registered partnership, like outlined under B.

D Miscellaneous

1. Are there any proposals for reform of the law relating to cohabitating couples (homosexual and heterosexual)?

No.

2. What points do you wish to discuss in greater detail?

What are the chances to induce more people to regulate their relationship by contract?

3. What subject do you suggest for the next meeting?

Problems of hereditary right in international cases.