

## Formalisation of legal family formats in Austria

by Helmut Graupner<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 1 – Formalisation)

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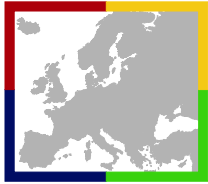


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# FamiliesAndSocieties

## 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 Austria

The answers concerning Austria 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 Austria by Helmut Graupner (Section 1)

### Income, troubles and legal family formats in Austria by Helmut Graupner (Section 2)

### Parenting and legal family formats in Austria by Helmut Graupner (Section 3)

### Migration and legal family formats in Austria by Helmut Graupner (Section 4)

### Splitting up and legal family formats in Austria by Helmut Graupner (Section 5)

### Death and legal family formats in Austria by Helmut Graupner (Section 6)

So this paper is based on **Section 1 (Formalisation)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 1.1 Legal family formats
- 1.2 Two siblings
- 1.3 With resident foreigner
- 1.4 With non-resident foreigner
- 1.5 Two foreigners
- 1.6 Two resident foreigners
- 1.7 Two non-resident foreigners
- 1.8 Start at registry
- 1.9 Start at public authority
- 1.10 Start at religious building
- 1.11 Contract
- 1.12 Statutory contract
- 1.13 Surname
- 1.14 Living together
- 1.15 Sex
- 1.16 General background regarding formalisation
- 1.17 Literature

In the following pages of this paper, first the answers to questions 1.16 and 1.17 are presented, followed by the answers to questions 1.1 to 1.15.

**1.16 - General background regarding formalisation (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, constitutional, legal-cultural, religious, etc.) that may be relevant for the understanding of your answers above regarding formalisation, then please do so here.

**1.17 - Literature (Open question)**

Please list some relevant literature about the family formats concerned, especially in English and/or online (with web links).

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Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.01 - Legal family formats**

Which of the three legal family formats mentioned here are available to different-sex and/or same-sex couples?

(For the distinction between registered partnership and cohabitation, see section e of the [Guidance for experts answering questions in the questionnaire](#). If there are two or more formats available for informally cohabiting couples, then please mention these formats separately in the explanation to this question.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 No 0000	2016 No 0000	2016 Yes 2010	2016 Yes 0000	2016 Yes 2003
			No 0000		Yes, but 1997
					No 0000
<b>References to legal sources:</b> Art. 44 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).		<b>References to legal sources:</b> Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. 1 135, in force from 1 January 2010).		<b>References to legal sources:</b> Graupner, H. (2001). The First Will Be The Last: Legal Recognition of Same-Sex Partnerships in Austria. In Robert Wintemute & Mads Andenaes, Legal Recognition of Same-Sex Partnerships - A Study of National, European and International Law (p. 549-561). Oxford: Hart Publishing.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      Starting from the 1920s the legislator attached to partnerships "similar to marriage" ("eheähnlich") some of the marriage-connected rights and obligations (tenancy succession, health benefits in public social insurance, rights to refuse testimony etc.). "Eheähnlich" was (and is) nowhere defined in legislation. The Courts traditionally restricted it to different-sex couples. Beginning in 1997 the legislature gradually extended the concept to same-sex couples. And since the ECtHR-judgment of 24 July 2003 in Karner v Austria the Courts generally have been applying the concept of "eheähnlich" also to same-sex couples (see for instance Oberster Gerichtshof [Supreme Court], decision 16 May 2006, 5 Ob 70/06i).</p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.02 - Two siblings**

Is starting this type of relationship legally possible for two siblings?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 N/A 0000	2016 N/A 0000	2016 No 2010	2016 No 0000	2016 No 0000
			N/A 0000		
<p><b>References to legal sources:</b>                      Art. 6 Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p>		<p><b>References to legal sources:</b>                      Art. 5(1)(3) Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p>		<p><b>References to legal sources:</b>                      Graupner, H. (2001). <i>The First Will Be The Last: Legal Recognition of Same-Sex Partnerships in Austria</i>. In R. Wintemute &amp; M. Andenaes, <i>Legal Recognition of Same-Sex Partnerships - A Study of National, European and International Law</i> (p. 549-561). Oxford: Hart Publishing.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Marriage is null and void if there is a genetic relationship or a legal relationship.</p> <p>Sexual contacts between (genetically linked) ascendants and descendents and between (genetically linked) siblings are a criminal offence only if they consist in penile vaginal penetration (Art. 211 Strafgesetzbuch (Criminal Code) (Bundesgesetzblatt 1974, Nr. 60, in force from 1 January 1975)). Thus incest is an offence which can be committed by opposite-sex couples only.</p>		<p><b>Explanations and nuances:</b>            Registered partnership is null and void only if there is a legal relationship, not if the link is just genetic but not reflected in law (for instance between a father and his non-recognized child).</p> <p>Sexual contacts between (genetically linked) ascendants and descendents and between (genetically linked) siblings are a criminal offence only if they consist in penile vaginal penetration (Art. 211 Strafgesetzbuch (Criminal Code) (Bundesgesetzblatt 1974, Nr. 60, in force from 1 January 1975)). Thus incest is an offence which can be committed by opposite-sex couples only.</p>		<p><b>Explanations and nuances:</b>            See explanation to marriage and registered partnership. Legal cohabitation must be "similar" to marriage or registered partnership.</p>	



Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.03 - With resident foreigner**

Is starting this type of relationship legally possible for a national citizen and a foreigner both residing in the country?  
 (As to the meaning of "residing", see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	X	X
			N/A 0000	X	X
<p><b>References to legal sources:</b>                      Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p> <p>Art. 14-20 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>		<p><b>References to legal sources:</b>                      Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p> <p>Art. 21-27 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.04 - With non-resident foreigner**

Is starting this type of relationship legally possible for a national citizen residing in the country and a foreigner residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	X	X
			N/A 0000	X	X
<p><b>References to legal sources:</b>                      Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p> <p>Art. 14-20 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>		<p><b>References to legal sources:</b>                      Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p> <p>Art. 21-27 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>			
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.05 - Two foreigners**

Is starting this type of relationship legally possible for two foreigners, only one of whom is residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	X	X
			N/A 0000	X	X
<p><b>References to legal sources:</b>                      Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p> <p>Art. 14-20 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>		<p><b>References to legal sources:</b>                      Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p> <p>Art. 21-27 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.06 - Two resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	X	X
			N/A 0000	X	X
<p><b>References to legal sources:</b>                      Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p> <p>Art. 14-20 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>		<p><b>References to legal sources:</b>                      Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p> <p>Art. 21-27 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>			
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.07 - Two non-resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	X	X
			N/A 0000	X	X
<p><b>References to legal sources:</b>                      Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p> <p>Art. 14-20 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>		<p><b>References to legal sources:</b>                      Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p> <p>Art. 21-27 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).</p>			
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.08 - Start at registry**

Can you legally start this type of relationship at the registry of births, marriages and deaths (État civil, Standesamt)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 No 2010	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 3(2) Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).		<b>References to legal sources:</b> Art. 3(4) Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.09 - Start at public authority**

Can you legally start this type of relationship at another public authority (e.g. notary public, local population administration, court)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 3(2) Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).		<b>References to legal sources:</b> Art. 3(4) Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> Bezirksverwaltungsbehörde (District Administrative Authorities).			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.10 - Start at religious building**

Can you legally start this type of relationship at a church, synagogue, mosque or other religious building?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 1938	2016 N/A 0000	2016 N/A 0000	2016 No 2010	X	X
Yes 0000			N/A 0000	X	X
<b>References to legal sources:</b> Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938); Art. 14-20 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).		<b>References to legal sources:</b> Art. 3 & Art. 21-27 Personenstandsgesetz (Civil Status Act Bundesgesetzblatt 2013, Nr. I 16, in force from 1 January 2014).			
<b>Explanations and nuances:</b> Obligatory civil marriage since 1 August 1938.		<b>Explanations and nuances:</b>			



Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.11 - Contract**

Can the partners make a contract (with or without third-party effect) to organise their relationship, for example with regard to property or personal obligations? (Think of prenuptial contracts and cohabitation contracts.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 Yes 1925	2016 Yes 1971
			N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Art. 94 &amp; Art. 1217-1266 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).</p>		<p><b>References to legal sources:</b> Art. 12 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).  Art. 1217-1266 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).</p>		<p><b>References to legal sources:</b> Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            Out of the General freedom to enter into contracts ("Vertragsfreiheit").</p> <p>Before 1971 same-sex relations and before 1925 unmarried cohabitation, and sexual relations between unmarried partners of opposite sexes, have been punishable, thus making contracts regulating such relations null and void as being contracts against the law (Art. 879 Allgemeines Bürgerliches Gesetzbuch, General Civil Code, Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).</p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.12 - Statutory contract**

Are there specific statutory rules regarding such a contract?

(See question 1.11 about the possibility for the partners to make a contract to organise their relationship.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 No 0000	2016 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 1217-1266 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812) (marriage contracts).		<b>References to legal sources:</b> Art. 1217-1266 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).		<b>References to legal sources:</b> See under question 1.11.	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> See under question 1.11.	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.13 - Surname**

Can (or must) one partner use or have the surname of the other partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2010	2016 Yes 1988	2016 Yes 1988
			N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Art. 93-93c Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).</p>		<p><b>References to legal sources:</b> Art. 2(1)(7a) Namensänderungsgesetz (Name Change Act) (Bundesgesetzblatt 1988, Nr. 195, in force from 1 July 1988).</p>		<p><b>References to legal sources:</b> Art. 2(1)(11) Namensänderungsgesetz (Name Change Act) (Bundesgesetzblatt 1988, Nr. 195, in force from 1 July 1988) (a person may change its surname, without giving any reasons, for one time each ten years).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      Generally both partners keep their surname (Art. 7 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010). But Art. 2(1)(7a) Namensänderungsgesetz (Name Change Act) (Bundesgesetzblatt 1988, Nr. 195, in force from 1 July 1988) allows them to choose not a joint familyname (like in marriage) but a surname sounding the same as the other partner's surname applying the same rules as there are for joint Family names of married couples (according to Art. 93-93c Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812)). The different terminology ("joint familyname" versus "surname sounding the same") does not lead to differences in legal effects.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.14 - Living together**

Do partners in this type of relationship have a duty to live together in the same house?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 No 0000	2016 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 90(1) Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).		<b>References to legal sources:</b> Art. 8(2) Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).		<b>References to legal sources:</b> See questions 1.01 and 1.15.	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> See question 1.15.	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Formalisation of legal family formats in Austria". 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-AT-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.15 - Sex**

Does the law require relationships of this type to be sexual or intimate?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 1938	2016 N/A 0000	2016 N/A 0000	2016 No 2010	2016 Yes, but 0000	2016 Yes, but 1997
			N/A 0000		No 0000
<p><b>References to legal sources:</b>                      Second Part Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812); Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p>		<p><b>References to legal sources:</b>                      Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010)</p>		<p><b>References to legal sources:</b>                      Linder, F. (2011). Lebensgemeinschaft (cohabitation). In E. Gitschthaler &amp; J. Höllwerth, Ehe- und Partnerschaftsrecht (Marriage and Partnership Law) (p. 1079-1085). Vienna: Springer.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Obligatory civil marriage since 1938 (without consummation requirement).</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      For a non-marital cohabitation the courts require a joint household, an economic community and a sexual relationship. One or two of these elements however may be absent if the remaining criterion/criteria is/are as strong as leaving no doubt on a marriage-like partnership (living-apart-together, no sexual relation due to health problems or age etc.). See also under questions 1.1 and 1.11.</p>	