

Migration and legal family formats in Belgium

by Geoffrey Willems ¹

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

Edited by Kees Waaldijk,² Marie Digoix,³ Natalie Nikolina,² Giuseppe Zago,² Daniel Damonzé,² Arianna Caporali,³ Kamel Nait Abdellah ³
Published by INED, Paris, 2017, www.LawsAndFamilies.eu

Based on the LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples (Section 4 – Migration)

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of the answers in this section of the database.

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Recommended citation:

G. Willems, 'Migration and legal family formats in Belgium', 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 (question 4.x).

Acknowledgment

The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement no. 320116 for the research project FamiliesAndSocieties, www.familiesandsocieties.eu.



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The six sections of the questionnaire

The <u>interactive LawsAndFamilies Database</u> is based on the <u>LawsAndFamilies</u> 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. 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 <u>full text of the questionnaire</u> 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.

The <u>Guidance document</u> 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 <u>Guidance document</u>.

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	No information was available. Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex
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).

The six papers about Belgium

The answers concerning Belgium can be found in the <u>interactive database</u> 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):

Formalisation of legal family formats in Belgium by Paul Borghs (Section 1)

Income, troubles and legal family formats in Belgium by Geoffrey Willems (Section 2)

Parenting and legal family formats in Belgium by Paul Borghs (Section 3)

Migration and legal family formats in Belgium by Geoffrey Willems (Section 4)

Splitting up and legal family formats in Belgium by Paul Borghs (Section 5)

Death and legal family formats in Belgium by Geoffrey Willems (Section 6)

So this paper is based on **Section 4 (Migration)** of the <u>LawsAndFamilies</u> <u>questionnaire</u>, which contains questions about the following topics:

- 4.1 Partner of national citizen
- 4.2 Partner of national citizen (foreign status)
- 4.3 Partner of (non-EU) foreigner
- 4.4 Partner of EU citizen (foreign status)
- 4.5 Foreign status as impediment to marry
- 4.6 Foreign status and inheritance
- 4.7 Citizenship
- 4.8 Recognition of joint adoption
- 4.9 Recognition of second-parent adoption
- 4.10 General background regarding migration

In the following pages of this paper, first the answer to question 4.10 is presented, followed by the answers to questions 4.1 to 4.9.

4.10 - General background regarding migration (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, etc.) that may be relevant for the understanding your answers above regarding migration, then please do so here.

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Source: G. Willems, "Migration and legal family formats in Belgium". 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, <u>LawsAndFamilies-BE-Section4.pdf</u> (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.01 - Partner of national citizen

When one partner is a residing national citizen, while the other is a foreigner from another continent, will the foreign partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside. As to the meaning of 'residing', see section c of the <u>Guidance for experts answering questions in the questionnaire</u>.)

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 1980	2015 Yes 2003	2015 Yes, but 2007	2015 Yes, but 2007	2015 No 2009	2015 No 2009
Yes, but 0000	N/A 0000	Yes, but 2000	Yes, but 2000	Yes, but 1997	Yes, but 1997
		N/A 0000	N/A 0000	No 0000	No 0000

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex same-sex		diffsex	same-sex
References to legal sources Art. 40ter juncto art. 40 bis \$2 December 1980 on entry in t amended by law of 25 April 2 2007, p. 25752 and by law of reunification, Moniteur belge 58915).	2(2) of the Law of 15 he country and residence (as 2007, Moniteur belge, 10 May 8 July 2011 on family	References to legal sources: Art. 40ter juncto art. 40 bis \$2(2) of the Law of 15 December 1980 on entry in the country and residence (as amended by law of 25 April 2007, Moniteur belge, 10 May 2007, p. 25752 and by law of 8 July 2011 on family reunification, Moniteur belge, 12 September 2011, p. 58915).			2(2) of the Law of 15 he country and residence (as 2007, Moniteur belge, 10 May 8 July 2011 on family

See also: Law of 2 June 2013 on the fight against sham marriage and sham legal cohabitation (Moniteur belge, 23 September 2013, p. 67119).

Ministerial circular of 20 September 1997 on granting of residency permit on the basis of cohabitation in the context of an enduring relationship (Moniteur belge, 14

Royal Decree of 7 May 2008 implementing some of the provisions of the law on entry in the country and residence (Moniteur belge, 13 May 2008, p. 25090).

November 1997, p. 30333).

See also: Law of 2 June 2013 on the fight against sham marriage and sham legal cohabitation (Moniteur belge, 23 September 2013, p. 67119).

Ministerial circular of 20 September 1997 on granting of residency permit on the basis of cohabitation in the context of an enduring relationship (Moniteur belge, 14 November 1997, p. 30333).

Ministerial circular of 17 June 2009 containing provisions concerning family reunification (Moniteur belge, 2 July 2009, p. 45382).

Marriage	Registered	Registered partnership		ation
diffsex same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: The foreign spouse is entitled to family reunification in Belgium but the Belgian national must prove that he has stable, sufficient and regular income and that he can provide for a decent housing (art. 40ter of the Law on entry in the country and residence). Before 1980, family reunification for spouses was allowed on the basis of bilateral conventions.	nevertheless obtain such red Ministerial circular of 20 Sep prove that they were in a "st Schutter and K. Waaldijk, "M marriage, cohabitation and different-sex and same-sex por less together, Paris, INED, In 2007, the law of 25 April 2 Directive 2004/38/CE of 29 A law on entry in the country a since 2007, registered partnereunification in Belgium. Nevertheless, the Law on en residence makes a difference considered equivalent to ma considered not equivalent to ma entitled to family reunification they were married. However, according to the R the Belgian registered partnered has a consequence, legal cohor partners whose foreign pequivalent to marriage) to destable and duly established of This difference has been considered as a consequence has been considered and duly established of This difference has been considered as a consequence has been considered and duly established of This difference has been considered as a consequence has been considered and duly established the stable and duly established the considered and du	gistered partners had no cation, but they could unification on the basis of the tember 1997 if they could able relationship" (see O. de ajor legal consequences of registered partnership for partners in Belgium", in More 2005, pp. 58-59). 007 transposed the EU spril 2004 and amended the and residence. Accordingly, ers are entitled to family try in the country and e between partnerships arriage and partnerships or marriage. In a registered partnership arriage with a national is on in the same conditions as if oyal Decree of 7 May 2008, ership (known as "legal ared equivalent to marriage. abitants have (unlike spouses artnership is considered emonstrate that they are in a relationship.	Explanations and nuances: In 1997, a ministerial circular at to be joined in Belgium by a pe a de facto relationship (See: O. Waaldijk, "Major legal conseque cohabitation and registered pa and same-sex partners in Belgi together, Paris, INED, 2005, pp. In 2007, the law of 25 April 200 Directive 2004/38/CE of 29 April aw on entry in the country and legislation, family reunification partners (but is allowed for reg The 1997 circular was formally dated 17 June 2009.	rson with whom they had de Schutter and K. ences of marriage, rtnership for different-sex um", in More or less 58-59). 7 transposed the EU I 2004 and amended the I residence. Under the new is not allowed for de facto istered partners).

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Jurisdiction: **Belgium**

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Section: 4 - Migration

Question: 4.02 - Partner of national citizen (foreign status)

When one partner is a residing national citizen, while the other partner is a foreigner from another continent, and this couple married/registered in the country of the foreigner, will the foreign partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 1980	2015 Yes 2003	2015 Yes, but 2007	2015 Yes, but 2007	X	x
Yes, but 0000	Yes, but 2001	Yes, but 1998	Yes, but 1997	X	х
	N/A 0000	N/A 0000	No 1989	X	х
			N/A 0000	Х	X

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex same-sex		diffsex	same-sex
	2(2) of the Law of 15 the country and residence (as 2007, Moniteur belge, 10 May 8 July 2011 on family 12 September 2011, p. tember 1997 on granting of 18 of cohabitation in the	References to legal sources Art. 40ter juncto art. 40 bis(2) 1980 on entry in the country by law of 25 April 2007, Moni 25752 and by law of 8 July 20 Moniteur belge, 12 September Ministerial circular of 20 Septences residency permit on the basis context of an enduring relation November 1997, p. 30333). Royal Decree of 7 May 2008 is provisions of the law on entry residence (Moniteur belge, 1)	of the Law of 15 December and residence (as amended teur belge, 10 May 2007, p. 11 on family reunification, er 2011, p. 58915). Tember 1997 on granting of sof cohabitation in the bonship (Moniteur belge, 14) Implementing some of the y in the country and		

Marriage	Registered	Registered partnership		pitation
diffsex same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: The foreign spouse is entitled to family reunification in Belgium but the Belgian national must prove that he has stable, sufficient and regular income and that he can provide for a decent housing (art. 40ter Law on entry in the country and residence). Between 2001 and 2003, Belgium did not allow same-sex marriage. In any case, during this period same-sex spouses could obtain family reunification on the basis of the Ministerial circular of 20 September 1997 if they could prove that they were in a "stable relationship" (see O. de Schutter and K. Waaldijk, "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Belgium", in: More or less together, Paris, INED, 2005, pp. 58-59). Before 1980, family reunification for spouses was allowed on the basis of bilateral conventions.	if they could prove that they relationship" (see O. de Scholegal consequences of marri registered partnership for d partners in Belgium", in Mor 2005, pp. 58-59). In 2007, the law of 25 April 2 Directive 2004/38/CE of 29 A law on entry in the country a since 2007, registered partner unification in Belgium. The Law on entry in the coundifference between partners marriage and partnerships of marriage. The foreign partner who is in considered equivalent to material they were married. Accordin May 2008, partnerships from Iceland, Norway, United King considered as equivalent to the law. The foreign partner who is in considered non-equivalent to entitled to family reunification the law.	thers in foreign registered right to family reunification, obtain such reunification on ircular of 20 September 1997 were in a "stable atter and K. Waaldijk, "Major age, cohabitation and fferent-sex and same-sex e or less together, Paris, INED, 007 transposed the EU pril 2004 and amended the and residence. Accordingly, ers are entitled to family are are entitled to family are are entitled to family are gistered partnership arriage with a national is on in the same conditions as if g to the Royal Decree of 7 and Danmark, Germany, Finland, and Sweden should be marriage for the purpose of a registered partnership or marriage with a national is on but he must demonstrate duly established relationship		

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Jurisdiction: **Belgium**

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Section: 4 - Migration

Question: 4.03 - Partner of (non-EU) foreigner

When both partners are foreigners from another continent, and one of them is residing in the country, will the other partner then have a residence

entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside.)

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 1980	2015 Yes 2003	2015 Yes, but 2007	2015 Yes, but 2007	2015 No 2009	2015 No 2009
Yes, but 0000	N/A 0000	Yes, but 2000	Yes, but 2000	Yes, but 1997	Yes, but 1997
		N/A 0000	N/A 0000	No 0000	No 0000

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
References to legal sources: Art. 10 § 1(4) of the Law of 15 D country and residence (as amer Moniteur belge, 10 May 2007, p 2011 on family reunification, May 2011, p. 58915). See also: Law of 2 June 2013 on marriage and sham legal cohab September 2013, p. 67119).	nded by law of 25 April 2007, b. 25752 and by law of 8 July oniteur belge, 12 September the fight against sham	References to legal sources: Art. 10 § 1(4) of the Law of 15 D country and residence (as amer Moniteur belge, 10 May 2007, p 2011 on family reunification, M 2011, p. 58915). Ministerial circular of 20 Septer residency permit on the basis of an enduring relationship (Mo 1997, p. 30333). Royal Decree of 7 May 2008 improvisions of the law on entry in (Moniteur belge, 13 May 2008, p See also: Law of 2 June 2013 on marriage and sham legal cohabseptember 2013, p. 67119).	nded by law of 25 April 2007, p. 25752 and by law of 8 July oniteur belge, 12 September mber 1997 on granting of of cohabitation in the context oniteur belge, 14 November plementing some of the n the country and residence p. 25090).	References to legal sources: Art. 10 § 1(4) of the Law of 15 I country and residence (as ame Moniteur belge, 10 May 2007, 2011 on family reunification, M 2011, p. 58915). Ministerial circular of 20 Septe residency permit on the basis of an enduring relationship (M 1997, p. 30333). Ministerial circular of 17 June 2 concerning family reunification p. 45382).	p. 25752 and by law of 8 July loniteur belge, 12 September mber 1997 on granting of cohabitation in the context oniteur belge, 14 November 2009 containing provisions

Marriage	Registere	d partnership	Cohabita	ation
diffsex same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: The spouse is entitled to family reunification in Belgium but the foreigner residing legally in Belgium must prove that he has stable, sufficient and regular income and that he can provide for a decent housing (art. 10 § 2 of the law on entry in the country and residence). Before 1980, family reunification for spouses was allowed on the basis of bilateral conventions.	right to family reunification, obtain such reunification on circular of 20 September 199 were in a "stable relationship Waaldijk, "Major legal consect cohabitation and registered and same-sex partners in Be Paris, INED, 2005, pp. 58-59). In 2007, the law of 25 April 2 2004/38/CE of 29 April 2004 in the country and residence registered partners are entit Belgium. The Law on entry in the coundifference between partners marriage and partnerships comarriage. The foreign partner who is in considered equivalent to malegally in Belgium is entitled same conditions as if they we column"). However, according to the Re Belgian registered partnersh cohabitation") is not considered as a consequence (law of 8 July (unlike spouses or partners we equivalent to marriage) to destable and duly established in this difference has been considerence.	istered partners had no formal but they could nevertheless the basis of the Ministerial 17 if they could prove that they or (see O. de Schutter and K. quences of marriage, partnership for different-sex Igium", in More or less together, 007 transposed the EU Directive and amended the law on entry and amended the law on entry. Accordingly, since 2007, led to family reunification in they are interested partnership to family reunification in the ere married (see the "marriage" or partnership to family reunification in the ere married (see the "marriage" or partnership law in the ere married (see the "marriage" or partnership is considered equivalent to marriage. The partnership is considered emonstrate that they are in a relationship.	Explanations and nuances: In 1997, a ministerial circular aut be joined in Belgium by a person facto relationship (See: O. de Sch "Major legal consequences of ma registered partnership for differe partners in Belgium", 2005, pp. 5 However, in 2007, the law of 25 A 10 May 2007, p. 25752) transpos 2004/38/CE of 29 April 2004 and in the country and residence. Un family reunification is not allowe is allowed for registered partners. The 1997 circular was formally re 17 June 2009.	with whom they had a de nutter and K. Waaldijk, arriage, cohabitation and ent-sex and same-sex 8-59). April 2007 (Moniteur belge, ed the EU Directive amended the law on entry der the new legislation, d for de facto partners (but s).

Source: G. Willems, "Migration and legal family formats in Belgium". 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, <u>LawsAndFamilies-BE-Section4.pdf</u> (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.04 - Partner of EU citizen (foreign status)

When one partner is a foreign EU citizen who is residing in the country, while the other is a foreigner from another continent, and this couple married/registered/cohabited in the country of the EU citizen, will the non-EU partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015	2015	2015	2015	2015	2015
Yes	Yes	Yes, but	Yes, but	No	No
1980	2003	2007	2007	2009	2009
Yes, but	Yes, but	Yes, but	Yes, but	Yes, but	Yes, but
0000	2001	1998	1997	1997	1997
	N/A	N/A	No	No	No
	0000	0000	1989	0000	0000
			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2007, Moniteur belge, 10 M	December 1980 on entry in (as amended by law of 25 April lay 2007, p. 25752, and by law nification, Moniteur belge, 12	2007, Moniteur belge, 10 Moniteu	December 1980 on entry in as amended by law of 25 April ay 2007, p. 25752, and by law nification, Moniteur belge, 12 otember 1997 on granting of sis of cohabitation in the tionship (Moniteur belge, 14 simplementing some of the try in the country and	References to legal source: Art. 40bis of the Law of 15 D the country and residence (a April 2007, Moniteur belge, 1 by law of 8 July 2011 on famil belge, 12 September 2011, p Ministerial circular of 20 Sepresidency permit on the basicontext of an enduring relating November 1997, p. 30333). Ministerial circular of 17 June concerning family reunificating 2009, p. 45382).	ecember 1980 on entry in as amended by law of 25 10 May 2007, p. 25752, and ily reunification, Moniteur of 58915). Itember 1997 on granting of is of cohabitation in the ionship (Moniteur belge, 14 e 2009 containing provisions

Marı	Marriage		Registered partnership		tation
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex

Explanations and nuances:

The spouse is entitled to family reunification in Belgium.

EU citizens who want to be joined by their spouse in Belgium benefit from a preferential treatment: the income conditions are more flexible and housing requirements do not apply (art. 40bis of the Law on entry in the country and residence).

See: S. Saroléa, "Le regroupement familial suite à la réforme de 2011", in Droit des étrangers, Bruxelles, Bruylant, 2012, pp. 115.

Between 2001 and 2003, Belgium did not allow same-sex marriage. In any case, during this period same-sex spouses could obtain family reunification on the basis of the Ministerial circular of 20 September 1997 if they could prove that they were in a "stable relationship" (see O. de Schutter and K. Waaldijk, "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Belgium", in: More or less together, Paris, INED, 2005, pp. 58-59).

Before 1980, family reunification for spouses was allowed on the basis of bilateral conventions.

Explanations and nuances:

Between 1997 and 2007, partners in foreign registered partnerships had no formal right to family reunification, but they could nevertheless obtain such reunification on the basis of the Ministerial circular of 20 September 1997 (see the the column about de facto partners and O. de Schutter and K. Waaldijk, "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Belgium", in: More or less together, Paris, INED, 2005, pp. 58-59).

In 2007, the law of 25 April 2007 transposed the EU Directive 2004/38/CE of 29 April 2004 and amended the law on entry in the country and residence. Accordingly, since 2007, registered partners are entitled to family reunification in Belgium.

The Law on entry in the country and residence makes a difference between partnerships considered equivalent to marriage and partnerships considered not equivalent to marriage.

The foreign partner who is in a registered partnership considered equivalent to marriage with a EU citizen is entitled to family reunification in the same conditions as if they were married. According to the Royal Decree of 7 May 2008, partnerships from Danmark, Germany, Finland, Iceland, Norway, United Kingdom and Sweden should be considered as equivalent to marriage for the purpose of the law.

The foreign partner who is in a registered partnership considered non-equivalent to marriage with a EU citizen is entitled to family reunification but he must demonstrate that they are in a stable and duly established relationship (art. 40bis Law on entry in the country and residence).

Explanations and nuances:

In 1997, a ministerial circular authorized foreigners residing legally in Belgium to be joined in Belgium by a person with whom they had a de facto relationship (See: O. de Schutter and K. Waaldijk, "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Belgium", in: More or less together, Paris, INED, 2005, pp. 58-59).

In 2007, the law of 25 April 2007 transposed the EU Directive 2004/38/CE of 29 April 2004 and amended the law on entry in the country and residence. Under the new legislation, family reunification is not allowed for de facto partners (but is allowed for registered partners).

The 1997 circular was formally repealed by a circular dated 17 June 2009.

Source: G. Willems, "Migration and legal family formats in Belgium". 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, LawsAndFamilies-BE-Section4.pdf (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.05 - Foreign status as impediment to marry

When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes, but 2004	2015 Yes, but 2004	X	X
	No 2001	? 1998	? 1989	X	х
	N/A 0000	N/A 0000	N/A 0000	Х	X
References to legal sources: Art. 27 and 46 Private internal belge, 27 July 2004, p. 57344). Art. 147 of the Civil Code.	tional law Code (Moniteur	References to legal sources: Art. 27, 46, 58 and 60 Private international law Code (Moniteur belge, 27 July 2004, p. 57344). Art. 1476 of the Civil code.			

Marriage		Registered p	partnership	Cohabi	tation
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: A foreign marriage is recognised need for a legal procedure (art. 2 Code) if the provisions of the apply and if the necessary document legalised (al. 2). In Belgian private international law of further international law Code). In Belgium, polygamic marriage Civil code). The existence of a foreign marriage marry, even if the national law of allows polygamy. Indeed, polyga Belgian international public order international law Code). See: F. Rigaux et M. Fallon, Droit Bruxelles, Larcier, 2005, p. 520. Before 2003, foreign same-sex marriage could not have been reimpediment to marry someone of marriage was allowed only in the marriage was allowed only in the same content in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry someone of marriage was allowed only in the same could not have been reimpediment to marry some one of the same could not have been reimpediment to marry some one of the same could not have been reimpediment to marry some one of the same could not have been reimpediment to marry some one of the same could not have been reimpediment to marry some one of the same could not have been reimpediment to marry some one of the same could not have been reimpediment to marr	27 Private international law oblicable law are fulfilled (al. tation is provided and aw, the conditions to marry sture spouses (art. 46 is forbidden (art. 147 of the age is an impediment to f the prospective spouses my contravenes the er (art. 21 of the Private international privé, harriages were considered r. Accordingly, such a ecognised as an else. However, same-sex	Explanations and nuances: A foreign partnership is recogn need for a legal procedure (art Code) if the provisions of the a 1) and if the necessary docume legalised (al. 2). A difference is made between equivalent to marriage and parsimple common life relationshic commune")(art. 58 Private international depend on the national law Code) If the partnership is considered then it is an impediment to marriage" column). If the partnership is considered then it is an impediment to marriage commune", then the existence impediment to marriage will do national law of the prospective instance, it is possible to marry registered partnership. This parautomatically dissolved by marriage is a conflict between the prospective spouses, the possithe content of the law of the cowas registered (article 60 of the Code). See: P. Wauthelet, "Partenariat autres relations de vie communiternationales - l'actualité vue Anthemis, 2010, pp. 113-124.	27 Private international law pplicable law are fulfilled (al. entation is provided and partnerships considered rtnerships considered as ips ("relation de vie rnational law Code). I law, the conditions to marry future spouses (art. 46 of the law). I dequivalent to marriage, arriage because of the law or absence of an epend on the content of the espouses. In Belgium, for a even if you are into a lartnership will be rriage (art. 1476 Civil code). The respective national laws of bility to marry will depend on bountry where the partnership esprivate international law.		

Source: G. Willems, "Migration and legal family formats in Belgium". 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, <u>LawsAndFamilies-BE-Section4.pdf</u> (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.06 - Foreign status and inheritance

When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes 2007	2015 Yes 2007	x	x
	No 2001	Yes, but 2004	Yes, but 2004	x	X
	N/A 0000	? 1998	? 1989	X	x
		N/A 0000	N/A 0000	х	x

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex same-sex		diffsex	same-sex
References to legal sourd Art. 27 of the Private inter (Moniteur belge, 27 July 20 Regulation (EU) No 650/20 Parliament and of the Coujurisdiction, applicable law enforcement of decisions enforcement of authentic succession and on the cre Certificate of Succession (i 2015).	national law Code 104, p. 57344). 12 of the European ncil of 4 July 2012 on r, recognition and and acceptance and instruments in matters of ation of a European	References to legal sour Art. 27 of the Private inter (Moniteur belge, 27 July 2 Regulation (EU) No 650/20 Parliament and of the Conjurisdiction, applicable law enforcement of decisions enforcement of authentic succession and on the cre Certificate of Succession (2015). Art. 745octies Civil Code.	cnational law Code 004, p. 57344). 012 of the European uncil of 4 July 2012 on v, recognition and and acceptance and instruments in matters of eation of a European		

Marriage	Registered	Registered partnership		pitation
diffsex same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: A foreign marriage is recognised in Belgium withouthe need for a legal procedure (art. 27 Private international law Code) if the provisions of the applicable law are fulfilled (al. 1) and if the necessary documentation is provided and legalised (al. 2). According to article 21 of the European regulation no 650/12, successions are governed by the law of the State of the last habitual residence of the deceased (before July 2015, article 78 of the Private international law Code provided the same rule). In Belgian civil law, the surviving spouses benefits from ab intestat inheritance rights (art. 745bis Civil Code). If the couple married abroad, the surviving spouse will be recognised the ab intestat inheritance rights provided by art. 745bis Civil Code. Before 2003, foreign same-sex marriages were considered to be in conflict with public order. Accordingly, such a marriage could not have been recognised. However, same-sex marriage was allowed only in the Netherlands.	without the need for a legal Private international law of the applicable law are fulfunecessary documentation (al. 2). A difference is made betwo considered equivalent to partnerships considered a relationships ("relation de Private international law of the State of the last habite deceased (before July 201 international law Code professed the same inheres (see the "marriage" column of the partnership is consimarriage, then the surving recognised the same inheres (see the "marriage" column of the partnership is consimated in the partner will be granted the partner will be granted the partner will code). In this recognises Civil Code). In this recognises civil Code). In this recognises civil Code).	gal procedure (art. 27 Code) if the provisions of filled (al. 1) and if the is provided and legalised ween partnerships marriage and as simple common life evie commune")(art. 58 Code). The European regulation e governed by the law of ual residence of the 5, article 78 of the Private ovided the same rule). Idered equivalent to g partner will be eritance rights as a spouse in). Idered as a simple eritance rights as a spouse in). Idered as a simple eritance rights as a spouse in all cohabitant (art. 745) espect, it must be rights for legal cohabitant		

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Jurisdiction: **Belgium**

Source: G. Willems, "Migration and legal family formats in Belgium". 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, LawsAndFamilies-BE-Section4.pdf (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.07 - Citizenship

Does a relationship of this type make it easier for a foreign partner to obtain citizenship?

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 1984	2015 Yes 2003	2015 No 2000	2015 No 2000	2015 No 0000	2015 No 0000
Yes, but 0000	N/A 0000	N/A 0000	N/A 0000		
References to legal sou Art. 12bis of the National as amended by law of 4 Moniteur belge, 14 Decer	ity Code of 28 June 1984 December 2012,	References to legal sources: ne 1984 Art. 12bis of the Nationality Code of 28 June (as amended by law of 4 December 2012,		References to legal sou Art. 12bis of the Nationa (as amended by law of 4 Moniteur belge, 14 Dece	lity Code of 28 June 198 December 2012,

Marriage		Registered partnership		Cohabitation	
diffsex same-sex		diffsex	same-sex	diffsex	same-sex
Explanations and nuance Under the Belgian Nation who are married with a B have been living with him years are allowed to make nationality. They are exen economic requirements in foreigners who want to ac (art. 12bis § 1(3)). Before 1984, the consolid of 14 December 1932 (Mc December 1932, p. 6782) the Belgian nationality to man. However, this did no of a Belgian woman (art. 4 Traité de la nationalité en Larcier, 2004, p. 338 et se	ality Code, foreigners elgian national and who or her for at least three e a declaration of npted from some mposed on other cquire Belgian nationality nated laws on nationality oniteur belge, 17 granted automatically the wife of a Belgian ot apply to the husband 4 and 15) (CL. Closset, droit belge, Bruxelles,	Explanations and nuanc	es:	Explanations and nuar	nces:

Source: G. Willems, "Migration and legal family formats in Belgium". 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, <u>LawsAndFamilies-BE-Section4.pdf</u> (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.08 - Recognition of joint adoption

When the partners have jointly adopted a child while residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 1987	2015 Yes 2006	2015 Yes 2005	2015 Yes 2006	2015 Yes 2005	2015 Yes 2006
No 0000	No 2003	Doubt 2000	No 2000	Doubt 0000	No 0000
	N/A 0000	N/A 0000	N/A 0000		

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex same-sex		diffsex	same-sex
References to legal sources Art. 72 of the Private internat (Moniteur belge, 27 July 2004) Art. 364-1 to 367-3 Civil Code of 24 April 2003 reforming ac belge, 16 May 2003, p. 26956) Law of 18 May 2006 modifyir order to allow adoption by sa Moniteur belge, 20 June 2006	tional law Code I, p. 57344). e (as amended by Law doption, Moniteur i). ng the Civil Code in ame-sex couples,	References to legal sour Art. 72 of the Private inte (Moniteur belge, 27 July 2) Art. 364-1 to 367-3 Civil Co of 24 April 2003 reformin belge, 16 May 2003, p. 26 Law of 18 May 2006 mod order to allow adoption by Moniteur belge, 20 June 2	rnational law Code 2004, p. 57344). Tode (as amended by Law ag adoption, Moniteur 1956). Ifying the Civil Code in by same-sex couples,	References to legal sou Art. 72 of the Private inte (Moniteur belge, 27 July 2) Art. 364-1 to 367-3 Civil Co of 24 April 2003 reformin belge, 16 May 2003, p. 26 Law of 18 May 2006 mod order to allow adoption by Moniteur belge, 20 June 2	rnational law Code 2004, p. 57344). Tode (as amended by Law ig adoption, Moniteur 5956). Iifying the Civil Code in by same-sex couples,

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuand In Belgium, a foreign ado	ption is recognized	Explanations and nuand In Belgium, a foreign ado	ption is recognized	Explanations and nuances: In Belgium, a foreign adoption is recognized	

In Belgium, a foreign adoption is recognized automatically if it is certified by the national competent authority under the Hague Convention of 29 May 1993 (art. 364-1 Civil Code). For adoptions that fall outside the scope of the Convention, additional requirements apply (art. 365-1 Civil Code). In both cases, recognition may be refused on the basis of Belgian international public order (art. 21 Private international law Code juncto art. 346-1, al. 1 and art. 365-2 Civil Code).

In Belgium, joint adoption by homosexual couples (married, registered or de facto partners) was opened by law of 18 May 2006.

Before 2006, a foreign adoption by a homosexual couple would have been considered to be in conflict with the Belgian public order.

In Belgium, a foreign adoption is recognized automatically if it is certified by the national competent authority under the Hague Convention of 29 May 1993 (art. 364-1 Civil Code). For adoptions that fall outside the scope of the Convention, additional requirements apply (art. 365-1 Civil Code). In both cases, recognition may be refused on the basis of Belgian international public order (art. 21 Private international law Code juncto art. 346-1, al. 1 and art. 365-2 Civil Code).

In Belgium, joint adoption by heterosexual registered partners was opened by law of 24 April 2003 reforming adoption which entered into force on 1 September 2005.

Before 2005, it is thus doubtful that a foreign adoption by heterosexual registered partners could have been recognised in the Belgian jurisdiction.

In Belgium, joint adoption by homosexual couples (married, registered or de facto partners) was opened by law of 18 May 2006.

Before 2006, a foreign adoption by a homosexual couple would have been considered to be in conflict with the Belgian public order.

In Belgium, a foreign adoption is recognized automatically if it is certified by the national competent authority under the Hague Convention of 29 May 1993 (art. 364-1 Civil Code). For adoptions that fall outside the scope of the Convention, additional requirements apply (art. 365-1 Civil Code). In both cases, recognition may be refused on the basis of Belgian international public order (art. 21 Private international law Code juncto art. 346-1, al. 1 and art. 365-2 Civil Code).

In Belgium, joint adoption by heterosexual de facto partners was opened by law Law of 24 April 2003 reforming adoption which entered into force on 1 September 2005.

Before 2005, it is doubtful that a foreign adoption by heterosexual de facto partners could have been recognised in the Belgian jurisdiction.

In Belgium, joint adoption by homosexual couples (married, registered or de facto partners) was opened by law of 18 May 2006 allowing adoption by same-sex persons.

Before 2006, a foreign adoption by a homosexual couple would have been considered to be in conflict with the Belgian public order.

Source: G. Willems, "Migration and legal family formats in Belgium". 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, <u>LawsAndFamilies-BE-Section4.pdf</u> (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.09 - Recognition of second-parent adoption

When one partner has become the second parent of a child of the other partner, by way of adoption while the partners were residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 2005	2015 Yes 2006	2015 Yes 2005	2015 Yes 2006	2015 Yes 2005	2015 Yes 2006
Yes, but 1987	No 2003	Doubt 2000	No 2000	Doubt 0000	No 0000
Yes 1969	N/A 0000	N/A 0000	N/A 0000		
? 0000					

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
References to legal sources: Art. 72 of the Private international law Code (Moniteur belge, 27 July 2004, p. 57344). Art. 364-1 to 367-3 Civil Code (as amended by Law of 24 April 2003 reforming adoption, Moniteur belge, 16 May 2003, p. 26956).		References to legal sources: Art. 72 of the Private international law Code (Moniteur belge, 27 July 2004, p. 57344). Art. 364-1 to 367-3 Civil Code (as amended by Law of 24 April 2003 reforming adoption, Moniteur belge, 16 May 2003, p. 26956).		References to legal sources: Art. 72 of the Private international law Code (Moniteur belge, 27 July 2004, p. 57344). Art. 364-1 to 367-3 Civil Code (as amended by Law of 24 April 2003 reforming adoption, Moniteur belge, 16 May 2003, p. 26956).	
Law of 18 May 2006 modifying the Civil Code in order to allow adoption by same-sex couples, Moniteur belge, 20 June 2006, p. 31128.		Law of 18 May 2006 modifying the Civil Code in order to allow adoption by same-sex couples, Moniteur belge, 20 June 2006, p. 31128.		Law of 18 May 2006 modifying the Civil Code in order to allow adoption by same-sex couples, Moniteur belge, 20 June 2006, p. 31128.	

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex

Explanations and nuances:

In Belgium, a foreign adoption is recognized automatically if it is certified by the national competent authority under the Hague Convention of 29 May 1993 (art. 364-1 Civil Code). For adoptions that fall outside the scope of the Convention, additional requirements apply (art. 365-1 Civil Code). In both cases, recognition may be refused on the basis of Belgian international public order (art. 21 Private international law Code juncto art. 346-1, al. 1 and art. 365-2 Civil Code).

Between 1987 and the entry into force of the law reforming adoption in 2005, second parent adoption by the parent's spouse was not organized by Belgian law. According to former article 370 of the Civil Code, a full adoption severed the legal link existing between the adopted child and the originary parent.

However, in 1997, the Constitutional Court ruled that, taking into account the intent of the legislature, such links should not be suppressed when the child is adopted by his or her parent's spouse (C. const., 67/97, 6 November 1997).

The Constitutional Court gave much weight to the fact that between 1969 and 1987, the Belgian Law organised "legitimation by adoption" allowing a married person to adopt his or her spouses's child without severing the existing ties.

It is thus likely that, even before 2005, a foreign secondparent adoption would have been recognised in the Belgian jurisdiction.

In Belgium, second-parent adoption in homosexual couples (married, registered or de facto partners) was opened by law of 18 May 2006.

Before 2006, a foreign adoption by a homosexual couple would have been considered to be in conflict with the Belgian public order.

Explanations and nuances:

In Belgium, a foreign adoption is recognized automatically if it is certified by the national competent authority under the Hague Convention of 29 May 1993 (art. 364-1 Civil Code). For adoptions that fall outside the scope of the Convention, additional requirements apply (art. 365-1 Civil Code). In both cases, recognition may be refused on the basis of belgian international public order (art. 21 Private international law Code juncto art. 346-1, al. 1 and art. 365-2 Civil Code).

Before 2005 and the entry into force of the law reforming adoption, second parent adoption was not organized by Belgian law.

However, "there [was] some case law [suggesting] that second parent adoption by a non-married different-sex partner should sometimes be possible" (see O. de Schutter and K. Waaldijk, "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Belgium", in: More or less together, Paris, INED, 2005, p. 52).

It is thus doubtful that before 2005 a foreign second-parent adoption could have been recognised in the Belgian jurisdiction.

In Belgium, second-parent adoption in homosexual couples (married, registered or de facto partners) was opened by law of 18 May 2006.

Before 2006, a foreign adoption by a homosexual couple would have been considered to be in conflict with the Belgian public order.

Explanations and nuances:

In Belgium, a foreign adoption is recognized automatically if it is certified by the national competent authority under the Hague Convention of 29 May 1993 (art. 364-1 Civil Code). For adoptions that fall outside the scope of the Convention, additional requirements applies (art. 365-1 Civil Code). In both cases, recognition may be refused on the basis of Belgian international public order (art. 21 Private international law Code juncto art. 346-1, al. 1 and art. 365-2 Civil Code).

Before 2005 and the entry into force of the law reforming adoption, second parent adoption was not organized by Belgian law.

However, "there [was] some case law [suggesting] that second parent adoption by a non-married different-sex partner should sometimes be possible" (see O. de Schutter and K. Waaldijk, "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Belgium", in: More or less together, Paris, INED, 2005, p. 52).

It is thus doubtful that before 2005 a foreign second-parent adoption could have been recognized in the Belgian jurisdiction.

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Before 2006, a foreign adoption by a homosexual couple would have been considered to be in conflict with the Belgian public order.