

## Formalisation of legal family formats in Portugal

by Carlos Pamplona Côrte-Real <sup>1</sup>

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

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Published by INED, Paris, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)

Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 1 – Formalisation)

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**Recommended citation:**  
C. Pamplona Côrte-Real, 'Formalisation of legal family formats in Portugal', 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) (question 1.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](http://www.familiesandsocieties.eu).



# 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 Portugal

The answers concerning Portugal 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 Portugal by Carlos Pamplona Côrte-Real (Section 1)**

**Income, troubles and legal family formats in Portugal by Miguel Freitas (Section 2)**

**Parenting and legal family formats in Portugal by Miguel Freitas (Section 3)**

**Migration and legal family formats in Portugal by Miguel Freitas (Section 4)**

**Splitting up and legal family formats in Portugal by Carlos Pamplona Côrte-Real (Section 5)**

**Death and legal family formats in Portugal by Carlos Pamplona Côrte-Real (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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**Pamplona Côrte-Real, Carlos, "Direito da Família: Tópicos para uma Reflexão Crítica" - aafdl, Associação Académica da Faculdade de Direito de Lisboa, 2011.**

**Pereira Coelho, Francisco / de Oliveira, Guilherme, "Curso de Direito da Família" Volume 1 & 2 - Coimbra Editora, 2008.**

**Duarte Pinheiro, Jorge, "O Direito da Família Contemporâneo" - aafdl, Associação Académica da Faculdade de Direito de Lisboa, 2010.**

**Dias, Maria Berenice / Pinheiro, Jorge Duarte (coordenação), "Escritos de Direito das Famílias: Uma perspectiva luso-brasileira", Porto Alegre, Magister, 2008.**

**Dias, Maria Berenice, "Manual do Direito das Famílias", 5ª edição, São Paulo, Editora Revista dos Tribunais, 2009.**

**Pitão, França, "Uniões de facto e economia comum", 2ª edição, Coimbra, Almedina, 2006.**

**Salter Cid, Nuno de, "A comunhão de vida à margem do casamento: entre o facto e o direito", Coimbra, Almedina, 2005.**

**Henriques, Sofia, "Estatuto patrimonial dos cônjuges. Reflexos da atipicidade do regime de bens", Coimbra, Coimbra Editora, 2009.**

**Xavier, Rita Lobo, "Limites à autonomia privada na disciplina das relações patrimoniais entre os cônjuges", Coimbra, Almedina, 2000.**

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 0000	2015 Yes 2010	2015 No 0000	2015 No 0000	2015 Yes 1999	2015 Yes 2001
	No 0000			No, but 1977	No 0000
				No 0000	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b> Civil Code, Articles 1587 to 1589.</p> <p>Concordat of 1940, revised in 1975 and 2004.</p> <p>Law 16/2001, Articles 19, 33, 37 and 39.</p> <p>Law 9/2010, May 31.</p>		<p><b>References to legal sources:</b></p>		<p><b>References to legal sources:</b> Law 135/1999, August 28, later revoked by Law 7/2001.</p> <p>Law 7/2001 May 11, as amended by Law 23/2010, August 30.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      There are two marriage formats in Portugal - religious and civil.</p> <p>The catholic marriage was regulated successively by the concordat of May 7, 1940, by the additional protocol to the concordat of February 15, 1975, and revision of the concordat of May 18, 2004.</p> <p>Other religious marriages, compatible with Portuguese public order, in relation to religious communities established in Portugal, were made possible in June 21, 2001.</p> <p>All religious marriages must be transcribed to the civil register and require a process at the civil register to assess the capabilities of the spouses.</p> <p>Civil and religious marriage can be celebrated between Portuguese citizens abroad - with another Portuguese citizen, or a foreign citizen - before local authorities under the laws in force, or according to Portuguese civil law before diplomatic or consular offices, which will later transcribe it in Portugal.</p> <p>Law 9/2010 extends marriage for people of the same sex.</p>		<p><b>Explanations and nuances:</b>                      Registered Partnership does not exist in Portugal.</p>		<p><b>Explanations and nuances:</b>                      These laws require 2 years of cohabitation on terms analogous to marriage.</p> <p>For earlier examples of some recognition of different-sex cohabitation, see questions 2.7 (domestic violence) and 2.8 (criminal procedure).</p> <p>As a reference, in Portuguese, cohabitation is called União de Facto.</p>	

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 No 0000	2015 No 2010	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
	N/A 0000				
<b>References to legal sources:</b> Civil Code, Article 1602(b) - for biological siblings.  Article 1986 - for adopted siblings.  Article 1607(d) - for siblings adopted by the same parent.		<b>References to legal sources:</b>		<b>References to legal sources:</b> Law 7/2001, Article 2(d).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      These articles correspond to a marriage impediment between siblings, involving the nullity of the marriage, according to Article 1631(a), Number 1.</p> <p>Regarding restricted adoption, siblings of adoptive parents can not marry between themselves, but this impediment can be dismissed and does not generate nullity.</p> <p>Since Law 143/2015, 8 September, there is only full adoption. Marriage between two adopted siblings by the same parent is impossible.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
References to legal sources: Civil Registration Code, Article 164.		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
<b>References to legal sources:</b> Civil Registration Code, Articles 164 and 166.		<b>References to legal sources:</b>			
<b>Explanations and nuances:</b> Civil Registration Code, Article 166 demands that foreign citizens present a matrimonial aptitude certificate from their country of nationality.		<b>Explanations and nuances:</b>			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes, but 0000	2015 Yes, but 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
<b>References to legal sources:</b> Civil Registration Code, Articles 165 and 166.  Civil Code, Articles 50 and 51, Numbers 1 and 2.		<b>References to legal sources:</b>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Article 165 of the Civil Registration Code says the marriage between foreigners in Portugal may be celebrated in the form and in the terms of the law of the country of one of the spouses, as long as there is reciprocity. If there is no reciprocity, they need to marry under Portuguese law. Reciprocity means an equal treatment of Portuguese citizens in the foreign country.</p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes, but 0000	2015 Yes, but 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
<b>References to legal sources:</b> Civil Registration Code, Articles 165 and 166.  Civil Code, Articles 50 and 51, Numbers 1 and 2.		<b>References to legal sources:</b>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Article 195 of the Civil Registration Code says the marriage between foreigners in Portugal may be celebrated in the form and in the terms of the law of the country of one of the spouses, as long as there is reciprocity. If there is no reciprocity, they need to marry under the Portuguese law. Reciprocity means an equal treatment of Portuguese citizens on the foreign country.</p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes, but 0000	2015 Yes, but 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
<b>References to legal sources:</b> Civil Code, Article 50.		<b>References to legal sources:</b>			
<b>Explanations and nuances:</b> They may marry according to the Portuguese law.		<b>Explanations and nuances:</b>			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
<b>References to legal sources:</b> Civil Code, Articles 51 to 53.  Civil Registration Code, Articles 134, 135 and 153.		<b>References to legal sources:</b>			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 No 0000	2015 No 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
<b>References to legal sources:</b> Civil Registration Code, Article 153, Numbers 1 and 2.		<b>References to legal sources:</b>			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 2001	2015 Doubt 2010	2015 N/A 0000	2015 N/A 0000	X	X
Yes, but 0000	N/A 0000			X	X
<b>References to legal sources:</b> Concordat of 1940, revised in 1975 and 2004.  Law 16/2001 on religious freedom, Article 19.  Civil Registration Code, Articles 151 and 167 to 177.  Law 9/2010, May 31.		<b>References to legal sources:</b>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Regarding different-sex marriage, until 2001 it was already possible to celebrate it in catholic churches. Marriages must be transcribed to the civil registry. Law 9/2010 applies to same-sex couples, in conjunction with Law 16/2001. There is doubt on same-sex marriage, because it is not clear if any recognised religion in Portugal recognises marriage between persons of the same sex.</p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	2015 Doubt 0000	2015 Doubt 0000
	N/A 0000				
<b>References to legal sources:</b> Civil Code, Articles 1698, 1714, and 1717 to 1736.		<b>References to legal sources:</b>		<b>References to legal sources:</b> Law 7/2001, which revoked Law 135/1999; as amended by Law 23/2010, August 30. Law 7/2001 did not change anything in terms of patrimony, it only extended União de Facto to same-sex relationships.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      There is a prenuptial convention, in which the couple may choose the matrimonial property scheme. The schemes may be defined in the law: community property, separate property and partial community property. It is possible to choose atypical schemes. The prenuptial convention cannot be altered.</p> <p>The applied scheme in case the spouses do not make a prenuptial convention is the partial community property.</p> <p>Regarding personal obligations, it is not possible to change the legal framework.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      There is doubt whether or not the cohabitants can make a contract to choose for a different matrimonial property scheme. Without such a contract the applicable scheme for cohabitation is separate property. However, there are protective provisions in Law 7/2001, Articles 4 and 5, which protect the residential home in case of separation or death, as well as social protective measures within social security, regarding survivor's pension, Articles 3(e, f) and 6 of the same law.</p>	

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
	N/A 0000				
<b>References to legal sources:</b> Civil Code, Articles 1698 and further.		<b>References to legal sources:</b>		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes 1977	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
Yes, but 0000	N/A 0000				
<b>References to legal sources:</b> Civil Code, Article 1677.  Civil Code, Article 1677-A.  Civil Code, Article 1677-B.		<b>References to legal sources:</b>		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Yes, they can use the surname. According to Civil Code, Article 1677, each spouse keeps his/her surname, but can add surnames from the spouse, to a maximum of 2. If one of the spouses has kept a surname from a previous marriage, he/she can't take the name of the new spouse. Until 1977, the wife should take the surname of the husband.</p> <p>According to Article 1677-A, the spouse that has added a surname of the other spouse may keep it in case of widowhood. And if this is declared until a second marriage, the widow(er) may decide to keep the surname in a second marriage, but in that case he or she cannot take the surname of the new spouse. According to Article 1677-B, to maintain the surname of the former spouse may happen in case of divorce, as long as the former spouse allows it or by court ruling. Regarding same-sex marriage, it only exists since 2010, but the same rule applies.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes, but 0000	2015 Yes, but 2010	2015 N/A 0000	2015 N/A 0000	2015 Yes 1999	2015 Yes 2001
	N/A 0000			No 0000	No 0000
<b>References to legal sources:</b> Civil Code, Articles 1577, 1673 and 1675.  Civil Code, Article 1792.		<b>References to legal sources:</b>		<b>References to legal sources:</b> Law 7/2001, Article 1, Number 2, as amended by Law 23/2010, 30 August.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            According to the Civil Code, Articles 1577, 1673 and 1675, marriage presupposes full life communion, unless it is judicially recognised that there is a ponderous reason for non-cohabitation. By eliminating guilt, the Divorce Law 61/2008 of 31 October (giving a new wording to Article 1792 of the Civil Code) weakened the referred duty of cohabitation.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            Law 7/2001, Article 1, Number 2, as amended by Law 23/2010 defines that the existence of cohabitation depends on the living together for more than 2 years in similar conditions demanded from married couples. This means that the meagre rights recognised for cohabitation depend on the proof of the life in common.</p>	

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Formalisation of legal family formats in Portugal". 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-PT-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
2015 Yes, but 2008	2015 Yes, but 2010	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 1999	2015 Yes, but 2001
Yes 0000	N/A 0000			No 0000	No 0000
<b>References to legal sources:</b> Civil Code, Article 1672.  Law 61/2008, 31 October.		<b>References to legal sources:</b>		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Until 2008, Civil Code, Article 1672 implied the obligation of sexual intimacy. After 2008 (Law 61/2008) the duty of cohabitation became less imposing. Because our law adopted the concept of failed marriage, the demand for sexual intimacy faded, as well as for the before mentioned duty of cohabitation.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            The lack of sexual intimacy may raise doubts regarding an effective cohabitation.</p>	