

## Income, troubles and 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 2 – Income and troubles)

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of the answers in this section of the database.

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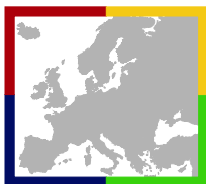


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# FamiliesAndSocieties

## 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 2 (Income and troubles)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 2.1 Lower income tax
- 2.2 Social benefits
- 2.3 Health insurance
- 2.4 Care between partners
- 2.5 Care for a parent
- 2.6 Next of kin
- 2.7 Domestic violence
- 2.8 Criminal procedure
- 2.9 General background regarding income and troubles

In the following pages of this paper, first the answer to question 2.9 is presented, followed by the answers to questions 2.1 to 2.8.

**2.09 - General background regarding income and troubles (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, family support, etc.) that may be relevant for the understanding of your answers above regarding income and troubles, then please do so here.

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Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.01 - Lower income tax**

Can a relationship of this type result in lower income tax than for two individuals without a 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 2010	2016 Yes, but 1992	2016 Yes, but 2003
			N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Art. 106 Einkommenssteuergesetz (Income Tax Act) (Bundesgesetzblatt 1988, Nr. 400, in force from 30 July 1988).</p>		<p><b>References to legal sources:</b> Art. 106 Einkommenssteuergesetz (Income Tax Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p>		<p><b>References to legal sources:</b> Art. 106 Einkommenssteuergesetz (Income Tax Act) (Bundesgesetzblatt 1988, Nr. 400, in force from 30 July 1988), as amended by law of 26 June 1992 (Bundesgesetzblatt 1992, Nr. 312, in force from 27 June 1992).</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>                      See also the reference under question 1.1 as to how Austria courts have followed the judgement of the ECtHR of 24 July 2003 in the case of Karner v. Austria (Appl. 40016/98) by including same-sex couples in the concept of "eheähnlich" ("similar to marriage").</p> <p>At least one child must live in the household of cohabitants (art. 106 (3) Einkommenssteuergesetz).</p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.02 - Social benefits**

When one partner (long-term unemployed or even never having been employed at all) would be entitled to a basic social benefit, will the income of the other partner then be taken into consideration and will it possibly result in loss or reduction of this entitlement?

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 0000	2016 Yes 2003
			N/A 0000		No 0000
<p><b>References to legal sources:</b> Art. 36(2) and 36(3)(B) Arbeitslosenversicherungsgesetz (Unemployment Insurance Act) (Bundesgesetzblatt 1977, Nr. 609, in force from 22 December 1977).</p> <p>Sozialhilfe- or Mindestsicherungsgesetze (Social Welfare or Minimum Social Security Acts) of the nine states of Austria.</p>		<p><b>References to legal sources:</b> Art. 36(2) and 36(3)(B) Arbeitslosenversicherungsgesetz (Unemployment Insurance Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p> <p>Sozialhilfe- or Mindestsicherungsgesetze (Social Welfare or Minimum Social Security Acts) of the nine states of Austria.</p>		<p><b>References to legal sources:</b> Art. 36(2) and Art. 36(3)(B) Arbeitslosenversicherungsgesetz (Unemployment Insurance Act) (Bundesgesetzblatt 1977, Nr. 609, in force from 22 December 1977).</p> <p>Sozialhilfe- or Mindestsicherungsgesetze (Social Welfare or Minimum Social Security Acts) of the nine states of Austria.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	



Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.03 - Health insurance**

Is the amount of money that the two partners in this type of relationship would have to pay for (public or private) health insurance, normally smaller than what two individuals without a partner would have to pay?

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		
<b>References to legal sources:</b> Allgemeines Sozialversicherungsgesetz (General Social Insurance Act) (Bundesgesetzblatt 1955, Nr. 189, in force from 1 January 1956); and numerous other social insurance legislation.		<b>References to legal sources:</b> Allgemeines Sozialversicherungsgesetz (General Social Insurance Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010); and numerous other social insurance legislation.		<b>References to legal sources:</b> Allgemeines Sozialversicherungsgesetz (General Social Insurance Act) (Bundesgesetzblatt 1955, Nr. 189, in force from 1 January 1956); and numerous other social insurance legislation.	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.04 - Care between partners**

In case one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1976	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 Yes 1976	2016 Yes 2003
? 0000			N/A 0000	? 0000	No 0000
<b>References to legal sources:</b> Art. 16 Urlaubsgesetz (Leave Act) (Bundesgesetzblatt 1976, Nr. 360, in force from 4 August 1976); and numerous other labour law legislation.		<b>References to legal sources:</b> Art. 16 Urlaubsgesetz (Leave Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010); and numerous other labour law legislation.		<b>References to legal sources:</b> Art. 16 Urlaubsgesetz (Leave Act) (Bundesgesetzblatt 1976, Nr. 360, in force from 4 August 1976); and numerous other labour law legislation.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Maximum: one week per year.</p>		<p><b>Explanations and nuances:</b>                      Maximum: one week per year.</p>		<p><b>Explanations and nuances:</b>                      See also the reference under question 1.1 as to how Austria courts have followed the judgement of the ECtHR of 24 July 2003 in the case of Karner v. Austria (Appl. 40016/98) by including same-sex couples in the concept of “eheähnlich” (“similar to marriage”).</p> <p>Maximum: one week per year.</p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.05 - Care for a parent**

In case the parent of one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

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		
<b>References to legal sources:</b> Art. 16 Urlaubsgesetz (Leave Act) (Bundesgesetzblatt 1976, Nr. 360, in force from 4 August 1976); and numerous other labour law legislation.		<b>References to legal sources:</b> Art. 16 Urlaubsgesetz (Leave Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010); and numerous other labour law legislation.		<b>References to legal sources:</b> Art. 16 Urlaubsgesetz (Leave Act) (Bundesgesetzblatt 1976, Nr. 360, in force from 4 August 1976); and numerous other labour law legislation.	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.06 - Next of kin**

In case of accident or illness of one partner, is the other partner considered as next of kin for medical purposes (even without power of attorney)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2007	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 Yes, but 2007	2016 Yes, but 2007
No 0000			N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Art. 284c(1) Allgemeines Bürgerliches Gesetzbuch (General Civil Code) as amended by law of 23 June 2006 (Bundesgesetzblatt 2006, Nr. I 92, in force from 1 July 2007).</p>		<p><b>References to legal sources:</b> Art. 284c(1) Allgemeines Bürgerliches Gesetzbuch (General Civil Code) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p>		<p><b>References to legal sources:</b> Art. 284c(1) Allgemeines Bürgerliches Gesetzbuch (General Civil Code) as amended by law of 23 June 2006 (Bundesgesetzblatt 2006, Nr. I 92, in force from 1 July 2007).</p>	
<p><b>Explanations and nuances:</b> No statutory power to represent next of kin in case of accident or illness until 2007.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b> After three years of cohabitation.</p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.07 - Domestic violence**

When one partner uses violence against the other partner, does specific statutory protection apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1997	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 Yes 1997	2016 Yes 1997
No 0000			N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b>                      Art. 38a Sicherheitspolizeigesetz (Security Police Act) as amended by law of 30 December 1996 (Bundesgesetzblatt 1996, Nr. 759, in force from 1 May 1997).</p> <p>Art. 382b Exekutionsordnung (Execution Act) as amended by law of 30 December 1996 (Bundesgesetzblatt 1996, Nr. 759, in force from 1 May 1997).</p>		<p><b>References to legal sources:</b>                      Art. 38a Sicherheitspolizeigesetz (Security Police Act) as amended by law of 30 December 1996 (Bundesgesetzblatt 1996, Nr. 759, in force from 1 May 1997).</p> <p>Art. 382b Exekutionsordnung (Execution Act) as amended by law of 30 December 1996 (Bundesgesetzblatt 1996, Nr. 759, in force from 1 May 1997).</p>		<p><b>References to legal sources:</b>                      Art. 38a Sicherheitspolizeigesetz (Security Police Act) as amended by law of 30 December 1996 (Bundesgesetzblatt 1996, Nr. 759, in force from 1 May 1997).</p> <p>Art. 382b Exekutionsordnung (Execution Act) as amended by law of 30 December 1996 (Bundesgesetzblatt 1996, Nr. 759, in force from 1 May 1997).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<b>Explanations and nuances:</b> Preliminary injunctions.		<b>Explanations and nuances:</b> Preliminary injunctions.		<b>Explanations and nuances:</b> Preliminary injunctions.	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.08 - Criminal procedure**

In case of a criminal prosecution against one partner, can the other partner then refuse to testify against the partner who is being prosecuted?

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 1975	2016 Yes 1998
			N/A 0000	? 0000	No 0000
<p><b>References to legal sources:</b> Art. 156(1)(1) Strafprozessordnung (Code of Criminal Procedure) as amended by the law of 13 August 2015 (Bundesgesetzblatt 2015, Nr. I 112, in force from 1 January 2016) in conjunction with Art. 72(1) Strafgesetzbuch (Criminal Code) (Bundesgesetzblatt 1974, Nr. 60, in force from 1 January 1975).</p>		<p><b>References to legal sources:</b> Art. 156(1)(1) Strafprozessordnung (Code of Criminal Procedure) as amended by the law of 13 August 2015 (Bundesgesetzblatt 2015, Nr. I 112, in force from 1 January 2016) in conjunction with Art. 72(1) Strafgesetzbuch (Criminal Code) as amended by law of 30 December 2009 Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p>		<p><b>References to legal sources:</b> Art. 156(1)(1) Strafprozessordnung (Code of Criminal Procedure) as amended by the law of 13 August 2015 (Bundesgesetzblatt 2015, Nr. I 112, in force from 1 January 2016) in conjunction with Art. 72(2) Strafgesetzbuch (Criminal Code) as amended by law of 20 August 1998 (Bundesgesetzblatt 1998, Nr. 153, in force from 1 October 1998).</p>	



Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<b>Explanations and nuances:</b> The right to refuse to testify against the partner persists after divorce.		<b>Explanations and nuances:</b> The right to refuse to testify against the partner persists after dissolution of registered partnership.		<b>Explanations and nuances:</b> The right to refuse to testify against the partner ends with dissolution of cohabitation.	