

Splitting up and legal family formats in Austria

by Helmut Graupner¹

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 Abdellah³

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 5 – Splitting up)

© 2017 Helmut Graupner

¹ Dr. Helmut Graupner (www.graupner.at, attorney-at-law in Vienna; Co-Coordinator, European Commission on Sexual Orientation Law (ECSOL); Director, ILGLaw Europe; President, Rechtskomitee LAMBDA (RKL); Co-President, Austrian Society for Sexologies) is grateful for the useful comments that MMag. Maria Sagmeister (University of Vienna) made on an

earlier version of the answers in this section of the database.

² [Grotius Centre for International Legal Studies](#), Leiden University, Netherlands, www.leiden.edu.



**Universiteit
Leiden**
The Netherlands

³ Institut national d'études démographiques, Paris, France, www.ined.fr.

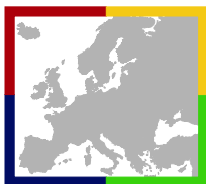


Recommended citation:

H. Graupner, 'Splitting up 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 (question 5.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.



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. 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.

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):

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 5 (Splitting up)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 5.1 Dissolution by court
- 5.2 Agreed administrative dissolution
- 5.3 Unilateral administrative dissolution
- 5.4 Agreed informal dissolution
- 5.5 Unilateral informal dissolution
- 5.6 Dissolution by marrying someone else
- 5.7 Ending by conversion
- 5.8 Ending by marrying each other
- 5.9 Property at dissolution
- 5.10 Alimony
- 5.11 Parental authority
- 5.12 General background regarding splitting up

In the following pages of this paper, first the answer to question 5.12 is presented, followed by the answers to questions 5.1 to 5.11.

5.12 - General background regarding splitting up (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 splitting up, then please do so here.

–

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.01 - Dissolution by court**

Can this type of relationship be ended by court decision?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	X	X
			N/A 0000	X	X
References to legal sources: Art. 27 & 40 & 55a Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).		References to legal sources: Art. 13 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.02 - Agreed administrative dissolution**

Can this type of relationship be ended by mutual agreement in an administrative procedure?

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	X	X
			N/A 0000	X	X
References to legal sources: Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).		References to legal sources: Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.03 - Unilateral administrative dissolution**

Can this type of relationship be ended by one partner unilaterally in an administrative procedure?

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	X	X
			N/A 0000	X	X
References to legal sources: Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).		References to legal sources: Art. 13 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.04 - Agreed informal dissolution**

Can this type of relationship be ended by mutual agreement without involvement of any authority?

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	X	X
			N/A 0000	X	X
References to legal sources: Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).		References to legal sources: Art. 13 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.05 - Unilateral informal dissolution**

Can this type of relationship be ended by one partner unilaterally without involvement of any authority?

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	X	X
			N/A 0000	X	X
References to legal sources: Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).		References to legal sources: Art. 13 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.06 - Dissolution by marrying someone else**

Can a registered partnership be ended by one partner marrying someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2016 N/A 0000	2016 No 2010	X	X
X	X		N/A 0000	X	X
		References to legal sources: Art. 13 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.07 - Ending by conversion**

Can this type of relationship be ended by the partners by way of conversion (of a marriage into a registered partnership or vice versa)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 2010	2016 N/A 0000	2016 N/A 0000	2016 No 2010	X	X
N/A 0000			N/A 0000	X	X
References to legal sources: Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).		References to legal sources: Art. 13 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.08 - Ending by marrying each other**

Can a registered partnership be ended by the partners marrying each other?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2016 N/A 0000	2016 No 2010	X	X
X	X		N/A 0000	X	X
		References to legal sources: Art. 13 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).			
		Explanations and nuances:			

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.09 - Property at dissolution**

In case the partners split up, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1978	2016 N/A 0000	2016 N/A 0000	2016 No, but 2010	2016 No 0000	2016 No 0000
? 0000			N/A 0000		
<p>References to legal sources: Art. 82ff Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p>		<p>References to legal sources: Art. 24ff Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p>		<p>References to legal sources:</p>	
<p>Explanations and nuances: Statutory rules do not consider as joint property any possessions acquired by either of them after they started this type of relationship. Nevertheless most of such possessions are divided among the partners after dissolution.</p>		<p>Explanations and nuances: Statutory rules do not consider as joint property any possessions acquired by either of them after they started this type of relationship. Nevertheless most of such possessions are divided among the partners after dissolution.</p>		<p>Explanations and nuances:</p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.10 - Alimony**

In case the partners split up, do statutory rules on alimony apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 No 0000	2016 No 0000
			N/A 0000		
References to legal sources: Art. 66-80 Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).		References to legal sources: Art. 20-23 Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).		References to legal sources:	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Splitting up 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, [LawsAndFamilies-AT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.11 - Parental authority**

In case the partners split up, do statutory rules on parental authority/responsibility apply?

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 2013	2016 Yes 1989	2016 Yes 2013
			No 2010	No 0000	No 0000
			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 177, 177a and 182 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812) as amended by law of 29 December 2000 (Bundesgesetzblatt 2000, Nr. I 35, in force from 1 July 2001).</p> <p>Art. 55a(2) Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938), as amended by law of 27 June 1978 (Bundesgesetzblatt 1978, Nr. 97, in force from 1 July 1978).</p>		<p>References to legal sources: Art. 43(1)(27) Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010) as amended by law of 6 August 2013 (Bundesgesetzblatt 2013, Nr. I 179, in force from 1 August 2013).</p> <p>Art. 144(3) Allgemeines Bürgerliches Gesetzbuch (General Civil Code) as amended by law of 23 February 2015 (Bundesgesetzblatt 2015, Nr. I 35, in force from 1 January 2015).</p>		<p>References to legal sources: Art. 167 and 182 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812), as amended by law of 11 April 1989 (Bundesgesetzblatt 1989, Nr. 66, in force from 1 July 1989) and by law of 6 August 2013 (Bundesgesetzblatt 2013, Nr. 179, in force from 1 August 2013).</p> <p>Art. 144(3) Allgemeines Bürgerliches Gesetzbuch (General Civil Code) as amended by law of 23 February 2015 (Bundesgesetzblatt 2015, Nr. I 35, in force from 1 January 2015).</p>	
<p>Explanations and nuances:</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances: See also questions 3.4 and 3.9.</p> <p>The amendment of 2013 regards parenthood by adoption. The amendment of 2015 regards co-motherhood established by automatic motherhood or motherhood recognition (in cases of medically assisted procreation).</p>	