

Formalisation of legal family formats in Belgium

by Paul Borghs 1

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

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

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¹ Paul Borghs (legal advisor, author of books and articles about samesex family law in Belgium) is grateful for the useful comments Geoffrey Willems (Professor of Family Law, Centre de droit de la personne, de la famille et de son patrimoine, Faculté de droit, Université catholique de Louvain) made on an earlier version of the answers in this section of the database.

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Families And **Societies**

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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 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 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 1 (Formalisation)** of the <u>LawsAndFamilies</u> <u>questionnaire</u>, 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.

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1.17 - Literature (Open question)

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

Olivier De Schutter and Anne Weyembergh (2001). Statutory Cohabitation Under Belgian Law: A Step Towards Same-Sex Marriage?. In Robert Wintemute and Mads Andenaes (Eds.), Legal Recognition of Same-Sex Partnerships (pp. 465-474). Oxford: Hart Publishing.

Ian Curry-Sumner (2005). All's well that ends registered?. Antwerpen: Intersentia.

Frederik Swennen and Sven Eggermont (2012). Same-Sex Couples in Central Europe: Hop, Step and Jump. In Katharina Boele-Woelki and Angelika Fuchs (eds.), Legal Recognition of Same-Sex Relationships in Europe (pp. 19-40). Antwerpen: Intersentia.

Patrick Wautelet (2012). Private International Law Aspects of Same-Sex Marriages and Partnerships in Europe - Divided We Stand? In Katharina Boele-Woelki and Angelika Fuchs (eds.), Legal Recognition of Same-Sex Relationships in Europe (pp. 143-188). Antwerpen: Intersentia.

Nicole Gallus (2004). Le mariage des homosexuels et le droit international privé. In Alain-Charles Van Gysel (ed.), Droit Familial. Actualité législative et jurisprudence (pp. 9-40). Bruxelles: Bruylant.

Patrick Wautelet (2007). Actualités de droit familial international. In Didier Pire (ed.), Droit des Familles (pp. 277-364). Liège: Anthemis.

Caroline Forder and Alain Verbeke (eds.) (2005). Gehuwd of niet: maakt het iets uit?. Antwerpen: Intersentia.

Jean-Louis Renchon and Fabienne Tainmont (eds.) (2000). Le couple non marié à la lumière de la cohabitation légale. Brussel: Bruylant.

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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 <u>Guidance for experts answering questions in the questionnaire</u>. 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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes 2000	2015 Yes 2000	2015 Yes 1996	2015 Yes 1996
	No 0000	No 0000	No 0000	No, but 1989	No, but 1990
				? 0000	? 0000
References to legal sources: Art. 143 of the Civil Code, as amended by law of 13 February 2003 (Belgisch Staatsblad 28 February 2003, p. 9.880, in force from 1 June 2003).		References to legal sources: Art. 1475 of the Civil Code (wettelijke samenwoning / cohabitation légale), as amended by law of 23 November 1998 (Belgisch Staatsblad 12 January 1998, p. 786, in force from 1 January 2000).		References to legal sources:	

Marriage		Registered par	tnership	Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: The law does not regulate de fact legal status attached to de facto duties (contrary to marriage and fraditionally de facto cohabitation the public order and the morality the judgements of the Cour de Consequence of the cohabitation is not morality anymore. Nevertheless decided that the so called 'adulter relatively unlawful character (whospouse – and only to the extent of may rely on the unlawful character (whospouse – and only to the extent of the is clear that around 1990 the compersons was not considered to be morality (Patrick SENAEVE, 'De reconcubinaat in België anno 1992 Concubinaat. De buitenhuwelijks 1992, p. 67-69). From the beginning of 1996 sever offered the opportunity to have cohabitations) between persons sex registered in a municipal regulation of the consequence of 5 September 190 October 1996 p. 25 484). More and more laws take into accohabitation (although there's not examples are: Law of 24 Noveml (article 410, 3°, Criminal Code); For succession rates (article 48 In 22 August 2002 on patients' righ Patients' Rights Law) and Law of adoption (article 343 § 1 Civil Code)	cohabitation with rights and legal cohabitation). In was considered contrary to y by the courts. However, from Cassation from 1 February be concluded unequivocally contrary to public order and the Cour de Cassation erous' cohabitation has a nich means that only the other that he may feel offended – ter). The judgements from the eterosexual couples, however it mabitation of homosexual be contrary to public order and echtswaardering van het it in Patrick SENAEVE (ed.) see tweerelatie. Leuven, Acco, eral cities and municipalities 'civil partnerships' (de facto of the same and/or differentifister under certain conditions. In the registration was cree of 12 June 1996 (Belgisch 2.653) as amended by the 96 (Belgisch Staatsblad 3 Count the situation of de facto of much coherence). Some ber 1997 on domestic violence elemish Decree of 15 July 1997 inheritance Tax Code); Law of ts (article 9 § 4 and 14 § 3 24 April 2003 on the reform of

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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	
diffsex	same-sex	diffsex same-sex		diffsex	same-sex
2015 No 0000	2015 No 2003	2015 Yes 2000	2015 Yes 2000	2015 Yes 1996	2015 Yes 1996
	N/A 0000	N/A 0000	N/A 0000	? 0000	? 0000
References to legal sources: Art. 162 of the Civil Code.		References to legal sources: Art. 1475 of the Civil Code (wettelijke samenwoning / cohabitation légale), as amended by law of 23 November 1998 (Belgisch Staatsblad 12 January 1998, p. 786, in force from 1 January 2000).		References to legal sources:	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: See question 1.1.	

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Jurisdiction: **Belgium**

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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 <u>Guidance for experts answering questions in the questionnaire</u>.)

Mar	Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex	
2015 Yes 2004	2015 Yes 2004	2015 Yes 2004	2015 Yes 2004	X	X	
Yes 0000	No, but 2003	Doubt 2000	Doubt 2000	X	X	
	N/A 0000	N/A 0000	N/A 0000	x	x	

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
References to legal sour Art. 44 and 46 of the Code Law, in force from 1 Octol Art. 46 al. 2 of the Code of Law applies to all same-se from 1 June 2003 (art. 127 International Private Law)	e of Private International ber 2004. f Private International ex marriages entered into 7 § 3 of the Code of	the Law of 23 November cohabitation, two opinior	vate International Law, in 4. ode of Private polity to foreigners, either in Belgium, of the ganized in Belgium under 1998 on legal as may be defended. See of 61-62 (table E) in Olivier aldijk (2005), Major legal as cohabitation and per different-sex and gium. In: Kees Waaldijk		

consequence of marriage, cohabitation and registered partnerships for different-sex and same-sex partners. A comparative study of nine

European countries. Paris: Ined.

Marriage		Registered	partnership	Cohab	itation
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Belgian, has his domicile is esidence (for at least three Art. 46 al. 2 stipulates that national law of a partner between persons of the sone of the partners has that allows such marriage esidence within the territaries are Same-Sex marriage was of oreigners whose national hem to contract such a national hem to contr	rriage may be nen one of the partners is n Belgium or his habitual ee months) in Belgium. It a provision from the that prohibits marriage ame sex does not apply if ne nationality of a State or has its habitual tory of such a State. 2004 (before entry into rnational Law): at first nly open to Belgians or I law made it possible for narital relationship etter from 8 May 2003). The from 23 January 2004 eign legal prohibition on considered discriminatory an public order', and thus at least one of the sizen or a habitual an law had to be applied	Explanations and nuance Art. 59 stipulates that the partnership (defined in Arrivate International Law) Belgium when both partnership (by the latest and the	conclusion of a t. 58 of the Code of can be registered in ers have their common fium at the moment of e vie commune / relatie ed as a cohabitation oublic authority and not the cohabitants that is et. 58 of the Code of . Civil Code (wettelijke ion légale), as amended 698 (Belgisch Staatsblad in force from 1 January		

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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?

Ма	Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex	
2015 Yes 2004	2015 Yes 2004	2015 No 2004	2015 No 2004	X	X	
Yes 0000	No, but 2003	Doubt 2000	Doubt 2000	x	x	
	N/A 0000	N/A 0000	N/A 0000	x	x	

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
References to legal sourd Art. 44 and 46 of the Code Law, in force from 1 Octob Art. 46 al. 2 of the Code of Law applies to all same-se from 1 June 2003 (Art. 127 International Private Law).	of Private International per 2004. Private International x marriages entered into , § 3 of the Code of	References to legal sourd Art. 59 of the Code of Privatoric force from 1 October 2004. Before entry into force Conternational Law: The hypothesis of a legal of contracted by a non-reside explicitly excluded in the Conot to correspond to the prinstitution. With regard to foreigners, either resident Belgium, of the registered in Belgium under the Law legal cohabitation, two opins See detailed explanation of Olivier De Schutter and Kelmajor legal consequences cohabitation and registered different-sex and same-see In: Kees Waaldijk (ed.), Monumer Level of legal consequences cohabitation and registered different-sex and same-see comparative study of nine Paris: Ined.	de of Private cohabitation being ent, although not civil Code, would seem ourpose of the the availability to or non-resident in partnership organized of 23 November 1998 on inions may be defended. On p. 61-62 (table E) in the west waldijk (2005), of marriage, and partnerships for ex partners in Belgium. The or Less Together: the of marriage, and partnerships for ex partners. A		

Marriage		Marriage Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Belgian, has his domicile in esidence (for at least three art. 46 al. 2 stipulates that hational law of a partner to between persons of the same of the partners has the hat allows such marriage esidence within the territories same-Sex marriage work for eigners whose nation or them to contract such confirmed in a Circular Letter was stated that 'any for eame-sex marriage was come ame-sex marriage was come and the contract such the confirmed in a Circular Letter was stated that 'any for eame-sex marriage was contract sex marriage.	rriage may be nen one of the partners is n Belgium or his habitual ne months) in Belgium. It a provision from the chat prohibits marriage neme sex does not apply if ne nationality of a State or has its habitual cory of such a State. 2004 (before entry into nate International Law): at nas only open to Belgians nal law made it possible na marital relationship netter from 8 May 2003). Petter from 23 January 2004 neign legal prohibition on considered discriminatory n public order', and thus nat least one of the nizen or a habitual nan law had to be applied	Explanations and nuand Art. 59 stipulates that the partnership (defined in Al Private International Law) Belgium when both partnership and the partnership (relation devan samenleven) is definisituation registered by a partnership a link between the equivalent to marriage (A Private International Law) See also Art. 1476 of the asamenwoning / cohabitatic by law of 23 November 1912 January 1998, p. 786, in 2000) requiring a commoning a commoning of the samenwoning and samenwon	conclusion of a rt. 58 of the Code of can be registered in ers have their common gium at the moment of e vie commune / relatie ed as a cohabitation oublic authority and not ne cohabitants that is rt. 58 of the Code of outlice civil Code (wettelijke ion légale), as amended 698 (Belgisch Staatsblad on force from 1 January		

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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?

Mar	Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex	
2015 Yes 2004	2015 Yes 2004	2015 No 2004	2015 No 2004	X	X	
Yes 0000	No, but 2003	Doubt 2000	Doubt 2000	Х	X	
	N/A 0000	N/A 0000	N/A 0000	х	x	

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
References to legal sources: Art. 44 and 46 of the Code of I force from 1 October 2004. Art. 46 al. 2 of the Code of Privapplies to all same-sex marria June 2003 (Art. 127, § 3 of the Private Law).	Private International Law, in vate International Law ges entered into from 1	References to legal sources: Art. 59 of the Code of Private of from 1 October 2004. Before entry into force Code of The hypothesis of a legal cohe a non-resident, although not be Code, would seem not to correct the institution. With regard to either resident or non-resident registered partnership organis. Law of 23 November 1998 on opinions may be defended. See 61-62 (table E) in Olivier De Sc (2005). Major legal consequent cohabitation and registered pand same-sex partners in Belg More or Less Together: Level of marriage, cohabitation and redifferent-sex and same-sex partners. Proceedings of the countries of the control of the	of Private International Law: bitation being contracted by explicitly excluded in the Civil espond to the purpose of the availability to foreigners, t in Belgium, of the exed in Belgium under the legal cohabitation, two see detailed explanation on p. hutter and Kees Waaldijk. ces of marriage, extnerships for different-sex gium. In Kees Waaldijk (ed.), of legal consequence of gistered partnerships for urtners. A comparative study		

Marriage	Marriage Registered partnership		Cohabitation	
diffsex same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: Art. 44 stipulates that marriage may be solemnized in Belgium when one of the partners is Belgian, has his domicile in Belgium or his habitual residence (for at least three months) in Belgium. Art. 46 al. 2 stipulates that a provision from the national law of a partner that prohibits marriage between persons of the same sex does not apply if one of the partners has the nationality of a State that allows such marriage or has its habitual residence within the territory of such a State. Same-Sex marriage 2003-2004 (before entry into force Code of Private International Law): at first same-sex marriage was only open to Belgians or foreigners whose national law made it possible for them to contract such a marital relationship (confirmed in a Circular Letter from 8 May 2003). However in a Circular Letter from 23 January 2004 it was stated that 'any foreign legal prohibition on same-sex marriage was considered discriminatory and contrary to the Belgian public order', and thus 'should not be applied'. If at least one of the partners was a Belgian citizen or a habitual resident of Belgium, Belgian law had to be applied according to the Circular Letter. Before 2004 (different sex): see footnote 90 on p. 305 in Patrick Wautelet (2007). Actualités de droit familial international. In Didier Pire (ed.), Droit des Familles (pp. 277-364). Liège: Anthemis ("Il est frappant de noter qu'avant la codification du droit international privé belge, la compétence de l'officier de l'état civil belge pour célébrer un mariage, ne faisait l'objet d'aucune règle écrite. J. de Burlet précisait que l'étranger pouvait contracter mariage en Belgique à la condition qu'il y possède un domicile au sens de l'article 102 C.Civ. (J. Burlet. Traité de l'état civil, T. II, Les relations internationales, Larcier, 1987, 105-106, § 1490-1491')."	Explanations and nuances: Art. 59 stipulates that the condition (defined in art. 58 of the Code Law) can be registered in Belghave their common habitual moment of conclusion. A partnership ('relation de vie samenleven') is defined as a cregistered by a public authoribetween the cohabitants that (Art. 58 of the Code of Private See also Art. 1476 of the Belgisamenwoning / cohabitation 23 November 1998 (Belgisch p. 786, in force from 1 January domicile.	e of Private International gium when both partners residence in Belgium at the commune / relatie van cohabitation situation ty and not creating a link is equivalent to marriage International Law). ian Civil Code (wettelijke légale), as amended by law of Staatsblad 12 January 1998,		

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 2004	2015 Yes 2004	2015 Yes 2004	2015 Yes 2004	X	X
Yes 0000	No, but 2003	Doubt 2000	Doubt 2000	X	X
	N/A 0000	N/A 0000	N/A 0000	х	x

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
References to legal sources: Art. 44 and 46 of the Code of I force from 1 October 2004. Art. 46 al. 2 of the Code of Privapplies to all same-sex marria June 2003 (Art. 127, § 3 of the Private Law).	Private International Law, in vate International Law ges entered into from 1	References to legal sources: Art. 59 of the Code of Private from 1 October 2004. Before entry into force Code of With regard to the availability resident or non-resident in Before partnership organized in Belg November 1998 on legal cohabe defended. See detailed expection Olivier De Schutter and Klegal consequences of marriag registered partnerships for direction partners in Belgium. In: Kees Vogether: Level of legal consecond same-sex partners. A come European countries. Paris: Ine	of Private International Law: to foreigners, either elgium, of the registered ium under the Law of 23 abitation, two opinions may blanation on p. 61-62 (table fees Waaldijk (2005), Major ge, cohabitation and fferent-sex and same-sex Waaldijk (ed.), More or Less quence of marriage, artnerships for different-sex inparative study of nine		

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Marriage	Marriage Registered partnership		Cohabitation	
diffsex same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: Art. 44 stipulates that marriage may be solemnized in Belgium when one of the partners is Belgian, has his domicile in Belgium or his habitual residence (for at least three months) in Belgium. Art. 46 al. 2 stipulates that a provision from the national law of a partner that prohibits marriage between persons of the same sex does not apply if one of the partners has the nationality of a State that allows such marriage or has its habitual residence within the territory of such a State. Same-Sex marriage 2003-2004 (before entry into force Code of Private International Law): at first same-sex marriage was only open to Belgians or foreigners whose national law made it possible for them to contract such a marital relationship (confirmed in a Circular Letter from 8 May 2003). However in a Circular Letter from 23 January 2004 it was stated that 'any foreign legal prohibition on same-sex marriage was considered discriminatory and contrary to the Belgian public order', and thus 'should not be applied'. If at least one of the partners was a Belgian citizen or a habitual resident of Belgium, Belgian law had to be applied according to the Circular Letter. Before 2004 (different sex): cf. footnote 90 on p. 305 in Patrick Wautelet (2007). Actualités de droit familial international. In Didier Pire (ed.), Droit des Familles (pp. 277-364). Liège: Anthemis ("Il est frappant de noter qu'avant la codification du droit international privé belge, la compétence de l'officier de l'état civil belge pour célébrer un mariage, ne faisait l'objet d'aucune règle écrite. J. de Burlet précisait que l'étranger pouvait contracter mariage en Belgique à la condition qu'il y possède un domicile au sens de l'article 102 C.Civ. (J. Burlet. Traité de l'état civil, T. II, Les relations internationales, Larcier, 1987, 105-106, § 1490-1491').	Explanations and nuances: Art. 59 stipulates that the cond (defined in art. 58 of the Code Law) can be registered in Belghave their common habitual moment of conclusion. A partnership ('relation de vie samenleven') is defined as a cregistered by a public authoribetween the cohabitants that (Art. 58 of the Code of Private See also Art. 1476 of the Civil samenwoning / cohabitation of 23 November 1998 (Belgist 1998, p. 786, in force from 1 J common domicile.	c of Private International gium when both partners esidence in Belgium at the commune / relatie van ohabitation situation ty and not creating a link is equivalent to marriage International Law). Code (wettelijke égale), as amended by law th Staatsblad 12 January		

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Jurisdiction: **Belgium**

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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?

Mar	Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex	
2015 No 2004	2015 No 2004	2015 No 2004	2015 No 2004	Х	X	
No 0000	No 2003	Doubt 2000	Doubt 2000	X	X	
	N/A 0000	N/A 0000	N/A 0000	Х	X	

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Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex same-sex		diffsex	same-sex
References to legal sources Art. 44 and 46 of the Code of force from 1 October 2004. Art. 46 al. 2 of the Belgian Co Law applies to all same-sex in 1 June 2003 (Art. 127, § 3 of t International Private Law).	Private International Law, in de of Private International narriages entered into from	References to legal sources Art. 59 of the Code of Private from 1 October 2004. Before entry into force Code of the hypothesis of a legal comby a non-resident, although in Civil Code, would seem not to of the institution. With regard foreigners, either resident or the registered partnership or the Law of 23 November 1990 opinions may be defended. Sp. 61-62 (table E) in Olivier De (2005), Major legal consequence cohabitation and registered pand same-sex partners in Bel More or Less Together: Level marriage, cohabitation and redifferent-sex and same-sex pof nine European countries. For the control of	of Private International Law: abitation being contracted not explicitly excluded in the correspond to the purpose of to the availability to non-resident in Belgium, of ganized in Belgium under son legal cohabitation, two ee detailed explanation on exchutter and Kees Waaldijk notes of marriage, partnerships for different-sex gium. In: Kees Waaldijk (ed.), of legal consequence of egistered partnerships for artners. A comparative study		

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nartnarchin	Cohahitation

Wari	Marriage		partnersnip	Conaditation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: Art. 44 stipulates that marria, Belgium when one of the par domicile in Belgium or his ha three months) in Belgium.	ge may be solemnized in tners is Belgian, has his	Explanations and nuances: Art. 59 stipulates that the cor (defined in Art. 58 of the Cod Law) can be registered in Bel have their common habitual	nclusion of a partnership e of Private International gium when both partners		

Art. 46 al. 2 stipulates that a provision from the national law of a partner that prohibits marriage between persons does not apply if one of the partners has the nationality of a State that allows such marriage or has its habitual residence within the territory of such a State.

Same-Sex marriage 2003-2004 (before entry into force Code of Private International Law): at first same-sex marriage was only open to Belgians or foreigners whose national law made it possible for them to contract such a marital relationship (confirmed in a Circular Letter from 8 May 2003). However in a Circular Letter from 23 January 2004 it was stated that 'any foreign legal prohibition on same-sex marriage was considered discriminatory and contrary to the Belgian public order', and thus 'should not be applied'. If at least one of the partners was a Belgian citizen or a habitual resident of Belgium, Belgian law had to be applied according to the Circular Letter.

Before 2004 (different sex): cf. footnote 90 on p. 305 in Patrick Wautelet (2007). Actualités de droit familial international. In Didier Pire (ed.), Droit des Familles (pp. 277-364). Liège: Anthemis ("Il es frappant de noter qu'avant la codification du droit international privé belge, la compétence de l'officier de l'état civil belge pour célébrer un mariage, ne faisait l'objet d'aucune règle écrite. J. de Burlet précisait que l'étranger pouvait contracter mariage en Belgique à la condition qu'il y possède un domicile au sens de l'article 102 C.Civ. (I. Burlet. Traité de l'état civil, T. II, Les relations internationales, Larcier, 1987, 105-106, § 1490-1491').

have their common habitual residence in Belgium at the moment of conclusion.

A partnership ('relation de vie commune / relatie van samenleven') is defined as a cohabitation situation registered by a public authority and not creating a link between the cohabitants that is equivalent to marriage (Art. 58 of the Code of Private International Law).

See also Art. 1476 of the Civil Code (wettelijke samenwoning / cohabitation légale), as amended by law of 23 November 1998 (Belgisch Staatsblad 12 January 1998, p. 786, in force from 1 January 2000) requiring a common domicile.

Source: P. Borghs, "Formalisation of 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-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	
diffsex	same-sex	diffsex same-sex		diffsex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes 2000	2015 Yes 2000	X	X
	N/A 0000	N/A 0000	N/A 0000	X	x
References to legal sources: Art. 75 of the Civil Code.		References to legal sources: Art. 1476 of the Civil Code (wettelijke samenwoning / cohabitation légale), as amended by law of 23 November 1998 (Belgisch Staatsblad 12 January 1998, p. 786, in force from 1 January 2000).			
Explanations and nuances:		Explanations and nuano	es:		

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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 p	Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex	
2015 No 0000	2015 No 2003	2015 No 2000	2015 No 2000	X	X	
	N/A 0000	N/A 0000	N/A 0000	x	x	
References to legal sources: Art. 75 of the Civil Code.		References to legal source Art. 1476 of the Civil Code / cohabitation légale), as a November 1998 (Belgisch 1998, p. 786, in force from	(wettelijk samenwoning mended by law of 23 Staatsblad 12 January			
Explanations and nuances: Nuance: Art. 75 of the Civil Code refers to the possibility of assigning 'other public places with a neutral character' of which the municipality has the exclusive right of use.		Explanations and nuance	es:			

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 No 0000	2015 No 2003	2015 No 2000	2015 No 2000	X	X
	N/A 0000	N/A 0000	N/A 0000	x	x
References to legal sources: Art. 75 of the Civil Code. See also art. 21 of the Constitution.		References to legal sour Art. 1476 of the Civil Code / cohabitation légale), as a November 1998 (Belgisch 1998, p. 786, in force from	e (wettelijk samenwoning amended by law of 23 Staatsblad 12 January		
Explanations and nuand	ces:	Explanations and nuanc	es:		

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes 2000	2015 Yes 2000	2015 Yes 1996	2015 Yes 1996
	N/A 0000	N/A 0000	N/A 0000	Yes, but 1989	Yes, but 1990
				? 0000	? 0000
References to legal sources: Art. 1387 of the Civil Code (see als	so Art. 1451 ff. of the Civil Code).	References to legal sources: Art. 1478 of the Civil Code (wettel légale), as amended by law of 23 Staatsblad 12 January 1998, p. 78	November 1998 (Belgisch	References to legal sources: Art. 1134 of the Civil Code.	

Marr	iage	Registered pa	rtnership	Cohabit	ation
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances: Matrimonial conventions.		Explanations and nuances: Cohabitation contracts.		Explanations and nuances: Mainly with regard to property oblig	gations.
See Jean-Louis Renchon and Fabie L'autonomie de la volonté et les co cohabitants, Brussels: Larcier.		See Jean-Louis Renchon and Fabienr L'autonomie de la volonté et les con cohabitants, Brussels: Larcier.		See Jean-Louis Renchon and Fabien L'autonomie de la volonté et les cor cohabitants, Brussels: Larcier.	
				The law does not regulate de facto of status attached to de facto cohabita (contrary to marriage and legal cohabita)	ition with rights and duties
				Traditionally de facto cohabitation ver public order and the morality by the judgements from the Cour de Cassat 15 February 1990 can be concluded cohabitation is not contrary to public Nevertheless the Cour de Cassation 'adulterous' cohabitation has a relat means that only the other spouse — may feel offended — may rely on the judgements from the Cour de Cassat couples, however it is clear that arown homosexual persons was not consider and morality (Patrick SENAEVI concubinaat in België anno 1992' in Concubinaat. De buitenhuwelijkse trep. 67-69).	e courts. However, from the ation from 1 February 1989 and unequivocally that de facto ic order and morality anymore. decided that the so called ively unlawful character (which and only to the extent that he unlawful character). The ation concerned heterosexual und 1990 the cohabitation of dered to be contrary to public E, 'De rechtswaardering van het Patrick SENAEVE (ed.)
				From the beginning of 1996 several the opportunity to have 'civil partne between persons of the same and/o municipal register under certain cor largely symbolic. The registration was Decree of 12 June 1996 (Belgisch Sta	rships' (de facto cohabitations) or different-sex registered in a nditions. This registration was as given a legal basis by a Royal aatsblad 27 August 1996, p. ecree of 5 September 1996
				More and more laws take into account cohabitation (although there's not	nuch coherence). Some 24 1997 on domestic violence ish Decree of 15 July 1997 on nce Tax Code); Law of 22 August 4 and 14 § 2 Patients' Rights Law)

Source: P. Borghs, "Formalisation of 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-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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes 2000	2015 Yes 2000	2015 No 0000	2015 No 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 1392 ff. of the Civil Code (see also art. 1451 ff. of the Civil Code).		References to legal source Art. 1478 of the Civil Code / cohabitation légale), as a November 1998 (Belgisch 1 1998, p. 786, in force from law of 14 January 2013 (Be March 2013, p. 12.945, in f 2013).	(wettelijk samenwoning mended by law of 23 Staatsblad 12 January 11 January 2000) and the elgisch Staatsblad 1	References to legal sour	rces:
Explanations and nuances: Notarial contract.		Explanations and nuances: Notarial contract.		Explanations and nuano	ces:

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes, but 0000	2015 Yes, but 2003	2015 No 2000	2015 No 2000	2015 No 0000	2015 No 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 216 § 2 of the Civil Code.		References to legal sources:		References to legal soul	rces:

Marriage		Registered partnership		Cohabitation	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
other's surname or a comin Cass. 6 February 1967) In professional life spous	es mutual right to use each abined name (confirmed confirmed confi	Explanations and nuances		Explanations and nuances	s:

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes 2000	2015 Yes 2000	2015 No, but 0000	2015 No, but 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 213 of the Civil Code.		References to legal sources: Art. 1475 and 1476 of the Civil Code (wettelijk samenwoning / cohabitation légale), as amended by law of 23 November 1998 (Belgisch Staatsblad 12 January 1998, p. 786, in force from 1 January 2000).		References to legal sources:	

Marriago	e	Registered	partnership	Cohabi	tation
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
Explanations and nuances:		Explanations and nuance Both partners have to decresidence' (Art. 1476 § 1(3) are thus supposed to live is no formal (sanctionable together as there is for m 213 of the Civil Code).	clare 'their common s) of the Civil Code) and together; although there e) obligation to live	Explanations and nuance Cohabiting partners have a obligation to live in the sar However most laws regular cohabitation require some Some examples are: Law of 24 November 1997 (article 410, 3°, Criminal Cohe lives together or has lived has had a durable affective flemish Decree of 15 July rates (article 48 Inheritance that lived together with the uninterrupted for at least common household with the Law of 22 August 2002 on 14 § 3 Patients' Rights Law partner"; Law of 24 April 2003 on the (article 343 § 1 Civil Code): cohabitation".	no (general) formal me house. ating aspects of e form of cohabitation. Ton domestic violence ode): "person with who red together and has or e and sexual relation"; 1997 on succession to the Tax Code): "person e deceased one year and had a chat person"; patients' rights (article v): "de facto cohabiting

Source: P. Borghs, "Formalisation of 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-Section1.pdf</u> (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	
diffsex	same-sex	diffsex	same-sex	diffsex	same-sex
2015 Yes 0000	2015 Yes 2003 N/A 0000	2015 No 2000 N/A 0000	2015 No 2000 N/A 0000	2015 No 0000	2015 No 0000
References to legal sources: Art. 213 of the Civil Code.		References to legal sources: References to legal sour		rces:	
Explanations and nuances: 'Duty to live together, fidelity, help and assistance.' The duty to live together more precisely includes the duty to have intercourse. Cf. Jan Gerlo (1996) Handboek voor Familierecht 2. Huwelijksvermogensrecht, Brugge: Die Keure, p. 27.		Explanations and nuano	es:	Explanations and nuan	ces: