

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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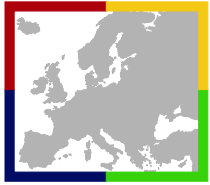
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Disclaimer

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 Belgium

The answers concerning Belgium 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 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 [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 1.1 Legal family formats
- 1.2 Two siblings
- 1.3 With resident foreigner
- 1.4 With non-resident foreigner
- 1.5 Two foreigners
- 1.6 Two resident foreigners
- 1.7 Two non-resident foreigners
- 1.8 Start at registry
- 1.9 Start at public authority
- 1.10 Start at religious building
- 1.11 Contract
- 1.12 Statutory contract
- 1.13 Surname
- 1.14 Living together
- 1.15 Sex
- 1.16 General background regarding formalisation
- 1.17 Literature

In the following pages of this paper, first the answers to questions 1.16 and 1.17 are presented, followed by the answers to questions 1.1 to 1.15.

1.16 - General background regarding formalisation (Open question)

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, constitutional, legal-cultural, religious, etc.) that may be relevant for the understanding of your answers above regarding formalisation, then please do so here.

1.17 - Literature (Open question)

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

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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.

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.01 - Legal family formats**

Which of the three legal family formats mentioned here are available to different-sex and/or same-sex couples?

(For the distinction between registered partnership and cohabitation, see section e of the [Guidance for experts answering questions in the questionnaire](#). If there are two or more formats available for informally cohabiting couples, then please mention these formats separately in the explanation to this question.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 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 partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances:</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances: The law does not regulate de facto cohabitation. There is no legal status attached to de facto cohabitation with rights and duties (contrary to marriage and legal cohabitation).</p> <p>Traditionally de facto cohabitation was considered contrary to the public order and the morality by the courts. However, from the judgements of the Cour de Cassation from 1 February 1989 and 15 February 1990 can be concluded unequivocally that de facto cohabitation is not contrary to public order and morality anymore. Nevertheless the Cour de Cassation decided that the so called 'adulterous' cohabitation has a relatively unlawful character (which means that only the other spouse – and only to the extent that he may feel offended – may rely on the unlawful character). The judgements from the Cour de Cassation concerned heterosexual couples, however it is clear that around 1990 the cohabitation of homosexual persons was not considered to be contrary to public order and morality (Patrick SENAËVE, 'De rechtswaardering van het concubinaat in België anno 1992' in Patrick SENAËVE (ed.) Concubinaat. De buitenhuwelijkse tweerelatie. Leuven, Acco, 1992, p. 67-69).</p> <p>From the beginning of 1996 several cities and municipalities offered the opportunity to have 'civil partnerships' (de facto cohabitations) between persons of the same and/or different-sex registered in a municipal register under certain conditions. This registration was largely symbolic. The registration was given a legal basis by a Royal Decree of 12 June 1996 (Belgisch Staatsblad 27 August 1996, p. 22.653) as amended by the Royal Decree of 5 September 1996 (Belgisch Staatsblad 3 October 1996 p. 25 484).</p> <p>More and more laws take into account the situation of de facto cohabitation (although there's not much coherence). Some examples are: Law of 24 November 1997 on domestic violence (article 410, 3°, Criminal Code); Flemish Decree of 15 July 1997 on succession rates (article 48 Inheritance Tax Code); Law of 22 August 2002 on patients' rights (article 9 § 4 and 14 § 3 Patients' Rights Law) and Law of 24 April 2003 on the reform of adoption (article 343 § 1 Civil Code).</p>	

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.02 - Two siblings**

Is starting this type of relationship legally possible for two siblings?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 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.	

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.03 - With resident foreigner**

Is starting this type of relationship legally possible for a national citizen and a foreigner both residing in the country?
 (As to the meaning of "residing", see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 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	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 44 and 46 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Art. 46 al. 2 of the Code of Private International Law applies to all same-sex marriages entered into from 1 June 2003 (art. 127 § 3 of the Code of International Private Law).</p>		<p>References to legal sources: Art. 59 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Before entry into force Code of Private International Law:</p> <p>With regard to the availability to foreigners, either resident or non-resident in Belgium, of the registered partnership organized in Belgium under the Law of 23 November 1998 on legal cohabitation, two opinions may be defended. See detailed explanation on p. 61-62 (table E) in Olivier De Schutter and Kees Waaldijk (2005), Major legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners in Belgium. In: Kees Waaldijk (ed.), More or Less Together: Level of legal consequence of marriage, cohabitation and registered partnerships for different-sex and same-sex partners. A comparative study of nine European countries. Paris: Ined.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>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.</p> <p>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.</p> <p>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.</p>		<p>Explanations and nuances: Art. 59 stipulates that the conclusion of a partnership (defined in Art. 58 of the Code of Private International Law) can be registered in Belgium when both partners have their common habitual residence in Belgium at the moment of conclusion.</p> <p>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).</p> <p>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.</p>			

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.04 - With non-resident foreigner**

Is starting this type of relationship legally possible for a national citizen residing in the country and a foreigner residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 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	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 44 and 46 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Art. 46 al. 2 of the Code of Private International Law applies to all same-sex marriages entered into from 1 June 2003 (Art. 127, § 3 of the Code of International Private Law).</p>		<p>References to legal sources: Art. 59 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Before entry into force Code of Private International Law:</p> <p>The hypothesis of a legal cohabitation being contracted by a non-resident, although not explicitly excluded in the Civil Code, would seem not to correspond to the purpose of the institution. With regard to the availability to foreigners, either resident or non-resident in Belgium, of the registered partnership organized in Belgium under the Law of 23 November 1998 on legal cohabitation, two opinions may be defended. See detailed explanation on p. 61-62 (table E) in Olivier De Schutter and Kees Waaldijk (2005), Major legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners in Belgium. In: Kees Waaldijk (ed.), More or Less Together: Level of legal consequence of marriage, cohabitation and registered partnerships for different-sex and same-sex partners. A comparative study of nine European countries. Paris: Ined.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>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.</p> <p>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.</p> <p>Same-Sex marriage 2003-2004 (before entry into force Belgian 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.</p>		<p>Explanations and nuances: Art. 59 stipulates that the conclusion of a partnership (defined in Art. 58 of the Code of Private International Law) can be registered in Belgium when both partners have their common habitual residence in Belgium at the moment of conclusion.</p> <p>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).</p> <p>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.</p>			

Jurisdiction: **Belgium**

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Section: **1 - Formalisation**

Question: **1.05 - Two foreigners**

Is starting this type of relationship legally possible for two foreigners, only one of whom is residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 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	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 44 and 46 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Art. 46 al. 2 of the Code of Private International Law applies to all same-sex marriages entered into from 1 June 2003 (Art. 127, § 3 of the Code of International Private Law).</p>		<p>References to legal sources: Art. 59 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Before entry into force Code of Private International Law:</p> <p>The hypothesis of a legal cohabitation being contracted by a non-resident, although not explicitly excluded in the Civil Code, would seem not to correspond to the purpose of the institution. With regard to the availability to foreigners, either resident or non-resident in Belgium, of the registered partnership organized in Belgium under the Law of 23 November 1998 on legal cohabitation, two opinions may be defended. See detailed explanation on p. 61-62 (table E) in Olivier De Schutter and Kees Waaldijk. (2005). Major legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners in Belgium. In Kees Waaldijk (ed.), More or Less Together: Level of legal consequence of marriage, cohabitation and registered partnerships for different-sex and same-sex partners. A comparative study of nine European countries. Paris: Ined.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>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.</p> <p>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.</p> <p>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.</p> <p>Before 2004 (different sex): see footnote 90 on p. 305 in Patrick Wautelet (2007). <i>Actualités de droit familial international</i>. In Didier Pire (ed.), <i>Droit des Familles</i> (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. <i>Traité de l'état civil</i>, T. II, Les relations internationales, Larcier, 1987, 105-106, § 1490-1491')."</p>		<p>Explanations and nuances: Art. 59 stipulates that the conclusion of a partnership (defined in art. 58 of the Code of Private International Law) can be registered in Belgium when both partners have their common habitual residence in Belgium at the moment of conclusion.</p> <p>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).</p> <p>See also Art. 1476 of the Belgian 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.</p>			

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Section: **1 - Formalisation**

Question: **1.06 - Two resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 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	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 44 and 46 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Art. 46 al. 2 of the Code of Private International Law applies to all same-sex marriages entered into from 1 June 2003 (Art. 127, § 3 of the Code of International Private Law).</p>		<p>References to legal sources: Art. 59 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Before entry into force Code of Private International Law:</p> <p>With regard to the availability to foreigners, either resident or non-resident in Belgium, of the registered partnership organized in Belgium under the Law of 23 November 1998 on legal cohabitation, two opinions may be defended. See detailed explanation on p. 61-62 (table E) in Olivier De Schutter and Kees Waaldijk (2005), Major legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners in Belgium. In: Kees Waaldijk (ed.), More or Less Together: Level of legal consequence of marriage, cohabitation and registered partnerships for different-sex and same-sex partners. A comparative study of nine European countries. Paris: Ined.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>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.</p> <p>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.</p> <p>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.</p> <p>Before 2004 (different sex): cf. footnote 90 on p. 305 in Patrick Wautelet (2007). <i>Actualités de droit familial international</i>. In Didier Pire (ed.), <i>Droit des Familles</i> (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. <i>Traité de l'état civil</i>, T. II, Les relations internationales, Larcier, 1987, 105-106, § 1490-1491').</p>		<p>Explanations and nuances: Art. 59 stipulates that the conclusion of a partnership (defined in art. 58 of the Code of Private International Law) can be registered in Belgium when both partners have their common habitual residence in Belgium at the moment of conclusion.</p> <p>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).</p> <p>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.</p>			

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.07 - Two non-resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 2004	2015 No 2004	2015 No 2004	2015 No 2004	X	X
No 0000	No 2003	Doubt 2000	Doubt 2000	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 44 and 46 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Art. 46 al. 2 of the Belgian Code of Private International Law applies to all same-sex marriages entered into from 1 June 2003 (Art. 127, § 3 of the Belgian Code of International Private Law).</p>		<p>References to legal sources: Art. 59 of the Code of Private International Law, in force from 1 October 2004.</p> <p>Before entry into force Code of Private International Law:</p> <p>The hypothesis of a legal cohabitation being contracted by a non-resident, although not explicitly excluded in the Civil Code, would seem not to correspond to the purpose of the institution. With regard to the availability to foreigners, either resident or non-resident in Belgium, of the registered partnership organized in Belgium under the Law of 23 November 1998 on legal cohabitation, two opinions may be defended. See detailed explanation on p. 61-62 (table E) in Olivier De Schutter and Kees Waaldijk (2005), Major legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners in Belgium. In: Kees Waaldijk (ed.), More or Less Together: Level of legal consequence of marriage, cohabitation and registered partnerships for different-sex and same-sex partners. A comparative study of nine European countries. Paris: Ined.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>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.</p> <p>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.</p> <p>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.</p> <p>Before 2004 (different sex): cf. footnote 90 on p. 305 in Patrick Wautelet (2007). <i>Actualités de droit familial international</i>. In Didier Pire (ed.), <i>Droit des Familles</i> (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. (J. Burlet. <i>Traité de l'état civil</i>, T. II, Les relations internationales, Larcier, 1987, 105-106, § 1490-1491').</p>		<p>Explanations and nuances: Art. 59 stipulates that the conclusion of a partnership (defined in Art. 58 of the Code of Private International Law) can be registered in Belgium when both partners have their common habitual residence in Belgium at the moment of conclusion.</p> <p>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).</p> <p>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.</p>			

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, [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	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	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 nuances:			

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.09 - Start at public authority**

Can you legally start this type of relationship at another public authority (e.g. notary public, local population administration, court)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 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 sources: Art. 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).			
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 nuances:			

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.10 - Start at religious building**

Can you legally start this type of relationship at a church, synagogue, mosque or other religious building?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 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 sources: Art. 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).			
Explanations and nuances:		Explanations and nuances:			

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.11 - Contract**

Can the partners make a contract (with or without third-party effect) to organise their relationship, for example with regard to property or personal obligations? (Think of prenuptial contracts and cohabitation contracts.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 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 also Art. 1451 ff. of the Civil Code).		References to legal sources: Art. 1478 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: Art. 1134 of the Civil Code.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Matrimonial conventions.</p> <p>See Jean-Louis Renchon and Fabienne Tainmont (eds.) (2015). L'autonomie de la volonté et les conventions entre époux et cohabitants, Brussels: Larcier.</p>		<p>Explanations and nuances: Cohabitation contracts.</p> <p>See Jean-Louis Renchon and Fabienne Tainmont (eds.) (2015). L'autonomie de la volonté et les conventions entre époux et cohabitants, Brussels: Larcier.</p>		<p>Explanations and nuances: Mainly with regard to property obligations.</p> <p>See Jean-Louis Renchon and Fabienne Tainmont (eds.) (2015). L'autonomie de la volonté et les conventions entre époux et cohabitants, Brussels: Larcier.</p> <p>The law does not regulate de facto cohabitation. There is no legal status attached to de facto cohabitation with rights and duties (contrary to marriage and legal cohabitation).</p> <p>Traditionally de facto cohabitation was considered contrary to the public order and the morality by the courts. However, from the judgements from the Cour de Cassation from 1 February 1989 and 15 February 1990 can be concluded unequivocally that de facto cohabitation is not contrary to public order and morality anymore. Nevertheless the Cour de Cassation decided that the so called 'adulterous' cohabitation has a relatively unlawful character (which means that only the other spouse – and only to the extent that he may feel offended – may rely on the unlawful character). The judgements from the Cour de Cassation concerned heterosexual couples, however it is clear that around 1990 the cohabitation of homosexual persons was not considered to be contrary to public order and morality (Patrick SENAËVE, 'De rechtswaardering van het concubinaat in België anno 1992' in Patrick SENAËVE (ed.) Concubinaat. De buitenhuwelijkse tweerelatie. Leuven, Acco, 1992, p. 67-69).</p> <p>From the beginning of 1996 several cities and municipalities offered the opportunity to have 'civil partnerships' (de facto cohabitations) between persons of the same and/or different-sex registered in a municipal register under certain conditions. This registration was largely symbolic. The registration was given a legal basis by a Royal Decree of 12 June 1996 (Belgisch Staatsblad 27 August 1996, p. 22.653) as amended by the Royal Decree of 5 September 1996 (Belgisch Staatsblad 3 October 1996 p. 25 484).</p> <p>More and more laws take into account the situation of de facto cohabitation (although there's not much coherence). Some examples are: Law of 24 November 24 1997 on domestic violence (article 410, 3° Criminal Code); Flemish Decree of 15 July 1997 on succession rates (article 48 Inheritance Tax Code); Law of 22 August 2002 on patients' rights (article 9 § 4 and 14 § 2 Patients' Rights Law) and Law of 24 April 2003 on the reform of adoption (article 343 § 1 Civil Code).</p>	

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, [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	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	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 sources: Art. 1478 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) and the law of 14 January 2013 (Belgisch Staatsblad 1 March 2013, p. 12.945, in force from 1 September 2013).		References to legal sources:	
Explanations and nuances: Notarial contract.		Explanations and nuances: Notarial contract.		Explanations and nuances:	

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.13 - Surname**

Can (or must) one partner use or have the surname of the other partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, 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 sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: In civil life spouses have a mutual right to use each other's surname or a combined name (confirmed in Cass. 6 February 1967).</p> <p>In professional life spouses may use each other's surname only with each other's consent (art. 216, § 2 of the Civil Code). Before 1976 the Civil Code stipulated in article 216 § 2 (Law of 30 April 1958) regarding to professional life: "La femme qui exerce séparément une profession ou un commerce ne peut user dans ses relations professionnelles ou commerciales du nom de son mari que du consentement de ce dernier. De même, le mari ne peut adjoindre à son nom, dans ses relations professionnelles ou commerciales, celui de sa femme, que du consentement de cette dernière."</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances:</p>	

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.14 - Living together**

Do partners in this type of relationship have a duty to live together in the same house?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 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:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances:</p>		<p>Explanations and nuances: Both partners have to declare 'their common residence' (Art. 1476 § 1(3) of the Civil Code) and are thus supposed to live together; although there is no formal (sanctionable) obligation to live together as there is for married partners (cf. art. 213 of the Civil Code).</p>		<p>Explanations and nuances: Cohabiting partners have no (general) formal obligation to live in the same house.</p> <p>However most laws regulating aspects of cohabitation require some form of cohabitation. Some examples are:</p> <p>Law of 24 November 1997 on domestic violence (article 410, 3°, Criminal Code): “person with who he lives together or has lived together and has or has had a durable affective and sexual relation”;</p> <p>Flemish Decree of 15 July 1997 on succession rates (article 48 Inheritance Tax Code): “person that lived together with the deceased uninterrupted for at least one year and had a common household with that person”;</p> <p>Law of 22 August 2002 on patients' rights (article 14 § 3 Patients' Rights Law): “de facto cohabiting partner”;</p> <p>Law of 24 April 2003 on the reform of adoption (article 343 § 1 Civil Code): “after three years of cohabitation” .</p>	

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, [LawsAndFamilies-BE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.15 - Sex**

Does the law require relationships of this type to be sexual or intimate?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 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. 213 of the Civil Code.		References to legal sources:		References to legal sources:	
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) <i>Handboek voor Familierecht 2</i> . <i>Huwelijksvermogensrecht</i> , Brugge: Die Keure, p. 27.		Explanations and nuances:		Explanations and nuances:	