

Splitting up and 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 5 – Splitting up)

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¹ Paul Borghs (legal advisor, author of books and articles about same-sex 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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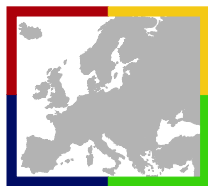
³ Institut national d'études démographiques, Paris, France, www.ined.fr.



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

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

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

5.12 - General background regarding splitting up (Open question)

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

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Jurisdiction: **Belgium**

Source: **P. Borghs**, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.01 - Dissolution by court**

Can this type of relationship be ended by court decision?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 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. 229 and 230 of the Civil Code.		References to legal sources: Art. 1476 § 2 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, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.02 - Agreed administrative dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 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. 230 of the Civil Code (divorce by mutual consent).		References to legal sources: Art. 1476 § 2 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: Divorce by mutual consent needs final approval of the Family Court (Art. 1298 of the Judicial Code).		Explanations and nuances:			

Jurisdiction: **Belgium**

Source: **P. Borghs, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.03 - Unilateral administrative dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2003	2015 Yes 2000	2015 Yes 2000	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources:		References to legal sources: Art. 1476 § 2 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, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.04 - Agreed informal dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
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:		References to legal sources: Art. 1476 § 2 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**, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.05 - Unilateral informal dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
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:		References to legal sources: Art. 1476 § 2 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**, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2015 Yes 2000	2015 Yes 2000	X	X
X	X	N/A 0000	N/A 0000	X	X
		References to legal sources: Art. 1476 § 2 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:			

Jurisdiction: **Belgium**

Source: **P. Borghs**, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.07 - Ending by conversion**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
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:		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Belgium**

Source: **P. Borghs**, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2015 Yes 2000	2015 Yes 2000	X	X
X	X	N/A 0000	N/A 0000	X	X
		References to legal sources: Art. 1476 § 2 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:			

Jurisdiction: **Belgium**

Source: **P. Borghs, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.09 - Property at dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 Yes, but 2003	2015 No, but 2000	2015 No, but 2000	2015 No 0000	2015 No 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 1398-1450 of the Civil Code.		References to legal sources: Art. 1478 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: Legal regime: all revenues ... acquired after the date of marriage become the joint property of the spouses.</p> <p>However: the legal regime can be modified by means of a matrimonial convention (art. 1451 and following of the Belgian Civil Code), e.g. partners can choose for a regime of separate property (article 1466 of the Belgian Civil Code).</p>		<p>Explanations and nuances: Art. 1478(1): each of the legal cohabitants retains the goods of which he can prove ownership.</p> <p>However: art. 1478(2): if no ownership can be proven the goods are considered to be undivided.</p>		<p>Explanations and nuances:</p>	

Jurisdiction: **Belgium**

Source: **P. Borghs, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.10 - Alimony**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 No, but 2000	2015 No, but 2000	2015 No, but 0000	2015 No, but 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 301 of the Civil Code.		References to legal sources: Art. 1479 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: Temporary alimony according to certain jurisprudence (urgent and provisionally measures): e.g. Vrederecht Zelzate 7 July 2009 (Tijdschrift voor Vrederechters 2012 p. 27) and Vrederecht Brussel 11 August 2009 (Journal des Tribunaux 2010 p. 14).</p>		<p>Explanations and nuances: No explicit statutory rules apply, however courts can grant alimony on the basis of e.g. the existence of a natural commitment, or by way of an indemnification.</p>	

Jurisdiction: **Belgium**

Source: **P. Borghs, "Splitting up and 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-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.11 - Parental authority**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2003	2015 Yes 2000	2015 Yes 2000	2015 Yes 0000	2015 Yes 0000
	N/A 0000	N/A 0000	N/A 0000		
References to legal sources: Art. 374 of the Civil Code.		References to legal sources: Art. 374 of the Civil Code.		References to legal sources: Art. 374 of the Civil Code.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Art. 374:</p> <p>General principle: When the parents do not live together, the exercise of the parental authority remains with both of them.</p> <p>Exception: In case of disagreement (e.g. organization of accommodation of the child, important decisions concerning health, education, ...) or in case of agreement contrary to the child's interest, possibility to entrust the exclusive exercise of the parental authority to one of the parents (decision of the Family Court). The other parent has a right to maintain personal contact with the child.</p>		<p>Explanations and nuances: Art. 374:</p> <p>General principle: When the parents do not live together, the exercise of the parental authority remains with both of them.</p> <p>Exception: In case of disagreement (e.g. organization of accommodation of the child, important decisions concerning health, education, ...) or in case of agreement contrary to the child's interest, possibility to entrust the exclusive exercise of the parental authority to one of the parents (decision of the Family Court). The other parent has a right to maintain personal contact with the child.</p>		<p>Explanations and nuances: Art. 374:</p> <p>General principle: When the parents do not live together, the exercise of the parental authority remains with both of them.</p> <p>Exception: In case of disagreement (e.g. organization of accommodation of the child, important decisions concerning health, education, ...) or in case of agreement contrary to the child's interest, possibility to entrust the exclusive exercise of the parental authority to one of the parents (decision of the Family Court). The other parent has a right to maintain personal contact with the child.</p>	