

# Formalisation of legal family formats in Germany

by Laura Adamietz <sup>1</sup>

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

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

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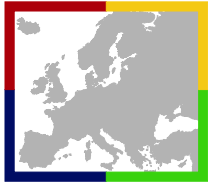
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# FamiliesAndSocieties

## Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about Germany

The answers concerning Germany can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)):

### Formalisation of legal family formats in Germany by Laura Adamietz (Section 1)

### Income, troubles and legal family formats in Germany by Laura Adamietz (Section 2)

### Parenting and legal family formats in Germany by Nora Markard (Section 3)

### Migration and legal family formats in Germany by Nora Markard (Section 4)

### Splitting up and legal family formats in Germany by Laura Adamietz (Section 5)

### Death and legal family formats in Germany by Laura Adamietz (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).

The formalisation of same-sex partnerships had necessarily the set up of an Institution clearly different to marriage in order to get it politically passed. After the Maruko decision of the European Court of Justice (Decision of 1 April 2008, C-267/06) the German Federal Constitutional Court declared in all cases the discrimination between marriage and registered partnership to be unconstitutional (survivors' pensions: decision of 7 July 2009 - 1 BvR 1164/07; gift and inheritance taxation: decision of 21 July 2010 - 1 BvR 611/07; real estate taxation: decision of 18 July 2012 - 1 BvL 16/11; successive Adoption: decision of 19 February 2013 - 1 BvL 1/11; income splitting for Spouses: decision of 13 May 2013 - 2 BvR 1981/06). Marriage might soon be opened to same-sex couples.

Overview on legal Situation in 2005: Dirk Siegfried & Kees Waaldijk, "Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex Partners in Germany" (Country Report in the More or less together Project - <https://openaccess.leidenuniv.nl/handle/1887/12585>).

Jurisprudence of the Federal Constitutional Court (in English:) successive Adoption: decision of 19 February 2013 - 1 BvL 1/11 - [www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2013/02/ls20130219\\_1bvL00111en.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2013/02/ls20130219_1bvL00111en.html).

Gift and inheritance taxation: decision of 21 July 2010 - 1 BvR 611/07 - [www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2010/07/rs20100721\\_1bvr061107en.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2010/07/rs20100721_1bvr061107en.html).

Survivors' pensions: decision of 7 July 2009 - 1 BvR 1164/07 - [www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/07/rs20090707\\_1bvr116407en.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/07/rs20090707_1bvr116407en.html).

Introduction of registered partnership: constitutional court decision of 17 July 2002 - 1 BvF 1/01 -

[www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2002/07/fs20020717\\_1bvf000101en.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2002/07/fs20020717_1bvf000101en.html).

Overview on jurisprudence regarding registered partnership (in German): Herbert Grziwotz, Rechtsprechungsübersicht zur eingetragenen Lebenspartnerschaft, FamRZ 2015, p. 2014-2018.

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 No 0000	2015 No 0000	2015 Yes 2001	2015 Yes 1972	2015 Yes 1969
			No 0000	Yes, but 0000	No, but 0000
<b>References to legal sources:</b> Art. 1303 et seq. Bürgerliches Gesetzbuch - Civil Code.  Art. 6(1) Grundgesetz - Federal Constitution.		<b>References to legal sources:</b> Reg. Partnership introduced by Lebenspartnerschaftsgesetz - Registered partnership Act - of 16 February 2001.		<b>References to legal sources:</b> Art. 181 Strafgesetzbuch - Criminal Code (Prohibition of procuring, abolished 1973) Art. 175 Strafgesetzbuch - Criminal Code (Prohibition of male homosexuality, amended 1969).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Neither statutory nor constitutional law define marriage as only being open to different-sex partners, but legal doctrine is quite clear about this, so is the federal constitutional court.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            Cohabitation is hardly recognised in German law at all.</p> <p>Legal obstacles for cohabiting couples existed historically:</p> <p>For different-sex couples due to the prohibition for landlords of giving shelter to non-married couples, i.e. allowing possible sexual encounters. Being a different-sex couple was legally possible only by either not sharing a household or by living in own property.</p> <p>The obstacle for same-sex couples was the prohibition of sexual encounters, valid until 1969 - but only for men. Women cohabitating were facing mere discrimination but no legal obstacles.</p> <p>As regards to legal consequences of cohabitation today: Social benefits: In case of cohabitation social benefits have been calculated not on an individual but on a household basis since 1956 for different-sex and since 2006 for same-sex couples (see question 2.2). In tenant law, the surviving Partner of a tenant can continue the rental contract (since 1993 for different-sex, since 2001 for same-sex, see question 6.1).</p> <p>In 2008, the Federal Supreme Court also recognised that cohabiting partners who had both contributed to the creation of an item of significant economic value (e.g. a house) that was in the name of only one partner were entitled to compensation after separation (BGHZ 177, 193). There is no such jurisprudence yet on same-sex cohabitation.</p>	

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 N/A 0000	2015 N/A 0000	2015 No 2001	2015 No 0000	2015 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 1307 BGB.		<b>References to legal sources:</b> Art. 1(3) LPartG.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> Siblings cannot be recognized as cohabiting partners for social security purposes.	



Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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, but 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2001	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 13 EGBGB - Introductory Act of Civil Code.		<b>References to legal sources:</b> Art. 17b EGBGB - Introductory of Civil Code.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            According to Art. 13 EGBGB, the conditions for the conclusion of marriage are governed by the law of each partner's country of nationality. If under that law, a requirement is not fulfilled, German law shall apply to that extent if at least one of the partners is habitually resident in Germany or of German nationality, and if a refusal would be incompatible with the freedom of marriage.</p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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, but 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2001	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 13 EGBGB - Introductory Act of Civil Code.		<b>References to legal sources:</b> Art. 17a EGBGB - Introductory Act of Civil Code.			
<b>Explanations and nuances:</b> According to Art. 13 EGBGB, the conditions for the conclusion of marriage are governed by the law of each partner's country of nationality. If under that law, a requirement is not fulfilled, German law shall apply to that extent if at least one of the partners is habitually resident in Germany or of German nationality, and if a refusal would be incompatible with the freedom of marriage.		<b>Explanations and nuances:</b>			

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section1.pdf](#) (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?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2001	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 13 EGBGB - Introductory Act of Civil Code.		<b>References to legal sources:</b> Art. 17a EGBGB - Introductory Act of Civil Code.			
<b>Explanations and nuances:</b> According to Art. 13 EGBGB, the conditions for the conclusion of marriage are governed by the law of each partner's country of nationality. If under that law, a requirement is not fulfilled, German law shall apply to that extent if at least one of the partners is habitually resident in Germany or of German nationality, and if a refusal would be incompatible with the freedom of marriage.		<b>Explanations and nuances:</b>			

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section1.pdf](#) (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	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2001	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 13 EGBGB - Introductory Act of Civil Code.		<b>References to legal sources:</b> Art. 17a EGBGB - Introductory Act of Civil Code.			
<b>Explanations and nuances:</b> According to Art. 13 EGBGB, the conditions for the conclusion of marriage are governed by the law of each partner's country of nationality. If under that law, a requirement is not fulfilled, German law shall apply to that extent if at least one of the partners is habitually resident in Germany or of German nationality, and if a refusal would be incompatible with the freedom of marriage.		<b>Explanations and nuances:</b>			

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 Yes, but 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2001	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 13 EGBGB - Introductory Act of Civil Code.		<b>References to legal sources:</b> Art. 17b EGBGB - Introductory Act of Civil Code.			
<b>Explanations and nuances:</b> If neither one is residing in Germany, German law does not apply, so the legal possibility depends on the law(s) of the country/countries of origin. Art. 1309 Bürgerliches Gesetzbuch - Civil Code - requests proof of ability to marry (i.e. not being married in country of origin) if German law does not apply.		<b>Explanations and nuances:</b> Any foreign same-sex couple could go to Germany to register as partners, because neither residency nor citizenship is required.			

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 N/A 0000	2015 N/A 0000	2015 Yes 2001	X	X
			N/A 0000	X	X
<b>References to legal sources:</b> Art. 1310 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 1 Lebenspartnerschaftsgesetz - Registered Partnership Act.			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 N/A 0000	2015 N/A 0000	2015 No 2001	X	X
			N/A 0000	X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			



Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 N/A 0000	2015 N/A 0000	2015 No 2001	X	X
			N/A 0000	X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 N/A 0000	2015 N/A 0000	2015 Yes 2001	2015 Yes 1972	2015 Yes 1969
			N/A 0000	Yes, but 0000	Yes, but 0000
<b>References to legal sources:</b> Art. 1408 and following, Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 7 Lebenspartnerschaftsgesetz - Registered Partnership Act.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      Different-sex cohabitation met obstacles until 1972 (prohibition of "procuring" for landlords, see 1.1), so the continuation of a rental contract in case of death could not be stipulated. Same-sex cohabitation between men would be suspicious because of the criminalisation of sex between men until 1969, so any form of contractual organisation of the (male, same-sex) relationship could raise suspicion and lead to prosecution.</p>	

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 N/A 0000	2015 N/A 0000	2015 Yes 2001	2015 No 0000	2015 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 1408 and following, Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 7 Lebenspartnerschaftsgesetz - Registered Partnership Act (referring to the marriage regulations of art. 1409 and following, Civil Code).		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 N/A 0000	2015 N/A 0000	2015 Yes, but 2001	2015 No 0000	2015 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 1355 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 3 Lebenspartnerschaftsgesetz - Registered Partnership Act.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Now: Spouses may but need not have same name or combine their names (combination possible only for one spouse).</p> <p>1957: Gleichberechtigungsgesetz (Equality Act) kept the man's name as family name, but permitted the wife to add her maiden name.</p> <p>1976: 1. Ehechtsgesetz (First Marriage Law Act) enabled the couple to choose one or the other name as family name; by default, it was the man's name (choosing the woman's name required unanimity). The spouse changing names could add his or her name.</p> <p>1991, BVerfGE 84, 9: The Federal Constitutional Court declared the default rule a violation of sex equality. By default, both spouses retained their names; codified in 1993 (FamNamRG).</p>		<p><b>Explanations and nuances:</b>            Partners may but need not have same name or combine their names (combination possible only for one partner).</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Germany**

Source: L. Adamietz, "Formalisation of legal family formats in Germany". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-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 No, but 0000	2015 N/A 0000	2015 N/A 0000	2015 No, but 2001	2015 Yes 0000	2015 Yes 2006
			N/A 0000		N/A 0000
<p><b>References to legal sources:</b> Art. 1353 Bürgerliches Gesetzbuch - Civil Code.  Art. 27(1a) Aufenthaltsgesetz - Residence Act.</p>		<p><b>References to legal sources:</b> Art. 2 Lebenspartnerschaftsgesetz - Registered Partnership Act.  Art. 27(2) Aufenthaltsgesetz - Residence Act.</p>		<p><b>References to legal sources:</b> Art. 7(3) Sozialgesetzbuch II - Social Security Code II.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            No legal duty, just a legal assumption. Art. 1353 BGB requires "conjugal community" which today is understood primarily as mutual responsibility. Thus, living apart does not have legal consequences - exceptions:            - suspicion of fictitious marriage (migration law);            - one spouse asks for divorce (living apart is requirement of divorce).</p>		<p><b>Explanations and nuances:</b>            Art. 2 Reg. Partnership Act does not require cohabitation, it does not even use the term "conjugal community" (or "community of partners"). Thus, living apart does not have legal consequences - exceptions:            - suspicion of fictitious partnership (migration law);            - one partner asks for dissolution (equivalent of divorce; living apart is requirement of dissolution).</p>		<p><b>Explanations and nuances:</b>            For the law of social benefits, living together is part of the definition of cohabitation. Applicable to same-sex cohabitation since 2006, see question 2.2. For rental continuation see question 6.1.</p>	



Jurisdiction: **Germany**

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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 No, but 1994	2015 N/A 0000	2015 N/A 0000	2015 No 2001	2015 No, but 1992	2015 No, but 2001
			N/A 0000	? 0000	N/A 0000
<b>References to legal sources:</b> Art. 1353 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 2 Lebenspartnerschaftsgesetz - Registered Partnership Act.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            The law asks for conjugal cohabitation and spouses are free to define this term (and consequently their relationship) themselves. In the past the term has been understood to include so called "conjugal duties". However this duty could not be enforced (Art. 888(3) Zivilprozessordnung - Code of Civil Procedure). Conjugal rape became a crime only since 1994.</p>		<p><b>Explanations and nuances:</b>            Contrary to the law on marriage, the law on registered partnerships does not even require cohabitation but only mutual support and "life organization". The legislative restrained from installing any type of duty to same-sex intimacy.</p>		<p><b>Explanations and nuances:</b>            Sexual relations are not part of the definition of cohabitation.</p> <p>According to the Federal Constitutional Court, a "non-marital cohabitation" (Nichteheliche Lebensgemeinschaft) is a long-term union of a man and a woman at the exclusion of other, similar unions and characterized especially by inner ties that motivate mutual responsibility, which goes beyond a mere joint economy of Household (BVerfG, NJW 1992, 643).</p> <p>The figure of the "non-registered same-sex cohabitation" has not yet been developed in such an explicit way. However, it is likely that a court that would have to consider these questions in the future, would apply the above mentioned jurisprudence by analogy. It has to be pointed out though, that such an analogy might not work out, because marriage and registered partnerships differ on the question of intimacy (see answers to marriage and registered partnership in this question.)</p>	