

Income, troubles and legal family formats in Germany

by Laura Adamietz ¹

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

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Published by INED, Paris, 2017, www.LawsAndFamilies.eu

Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 2 – Income and troubles)

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¹ Dr. Laura Adamietz is grateful for the helpful information provided by Gerlinde Ebert (attorney at law and public notary, Bremen) and Dirk Sigfried (attorney at law and public notary, Berlin), and also for the useful comments that Prof. Dr. Nora Markard, MA, made on an earlier version of the answers in this section of the database.

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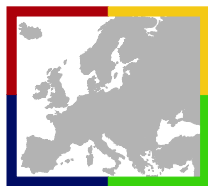


Recommended citation:

L. Adamietz, 'Income, troubles and 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 (question 2.x).

Acknowledgment

The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement no. 320116 for the research project FamiliesAndSocieties, www.familiesandsocieties.eu.



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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 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):

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 2 (Income and troubles)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 2.1 Lower income tax
- 2.2 Social benefits
- 2.3 Health insurance
- 2.4 Care between partners
- 2.5 Care for a parent
- 2.6 Next of kin
- 2.7 Domestic violence
- 2.8 Criminal procedure
- 2.9 General background regarding income and troubles

In the following pages of this paper, first the answer to question 2.9 is presented, followed by the answers to questions 2.1 to 2.8.

**2.09 - General background regarding income and troubles
(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, family support, etc.) that may be relevant for the understanding of your answers above regarding income and troubles, then please do so here.

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Jurisdiction: **Germany**

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Section: **2 - Income and Troubles**

Question: **2.01 - Lower income tax**

Can a relationship of this type result in lower income tax than for two individuals without a partner?

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, but 2001	2015 No 0000	2015 No 0000
			N/A 0000		
References to legal sources: Art. 32a (5) Einkommenssteuergesetz - Income Tax Act.		References to legal sources:		References to legal sources:	
Explanations and nuances:		Explanations and nuances: Equal treatment of marriage and registered partnership is only due to the decision of the Federal Constitutional Court (Bundesverfassungsgericht) of 7 May 2013 (2 BvR 909/06; 2 BvR 1981/06; 2 BvR 288/07). The decision back dated the equal treatment to the year 2001 (introduction of registered partnership).		Explanations and nuances:	

Jurisdiction: **Germany**

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Section: **2 - Income and Troubles**

Question: **2.02 - Social benefits**

When one partner (long-term unemployed or even never having been employed at all) would be entitled to a basic social benefit, will the income of the other partner then be taken into consideration and will it possibly result in loss or reduction of this entitlement?

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 0000	2015 Yes 2006
			N/A 0000		No 0000
References to legal sources: Art. 7(3) Sozialgesetzbuch II - Social Security Code II.		References to legal sources: Art. 7(3) Sozialgesetzbuch II - Social Security Code II.		References to legal sources: Art. 7(3) Sozialgesetzbuch II - Social Security Code II.	

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: Opposite-sex: YES since 1956 (Law of 1956 on Unemployment Insurance, confirmed by the Federal Constitutional Court in 1958). Same-sex: For the longest time, same-sex couples did not count as cohabiting couples. They were included in the relevant Art. 7(3) SGB II only in 2006: Gesetz zur Fortentwicklung der Grundsicherung für Arbeitsuchende vom 20.7.2006 (BGBl I S 1706), Act on the Development of Basic Benefits for the Employment Seekers.</p>	

Jurisdiction: **Germany**

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Section: **2 - Income and Troubles**

Question: **2.03 - Health insurance**

Is the amount of money that the two partners in this type of relationship would have to pay for (public or private) health insurance, normally smaller than what two individuals without a partner would have to pay?

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 No 0000	2015 No 0000
			N/A 0000		
References to legal sources:		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: The contribution for public health insurance is based on each individual's own income, irrespective of their spouse's income. Free public health insurance is available for the spouse of a member of the public (not: private) health insurance if the member's spouse has an income of less than 450 Euro and is neither self-employed, nor a civil servant, nor a member of a private health insurance.</p>		<p>Explanations and nuances: See marriage. Registered Partners have the same entitlements to free public health insurance as spouses do.</p>		<p>Explanations and nuances:</p>	

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Section: **2 - Income and Troubles**

Question: **2.04 - Care between partners**

In case one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 2008	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2008	2015 Yes, but 2008	2015 Yes, but 2008
No 0000			No 2001	No 0000	No 2001
			N/A 0000		N/A 0000
References to legal sources: Art. 1, 7 Pflegezeitgesetz - "Care-Giver Leave" Act (from 2008). Art. 2 Familienpflegezeitgesetz - "Family Care-Giver Leave" Act (from 2011).		References to legal sources: Art. 1, 7 Pflegezeitgesetz - "Care-Giver Leave" Act. Art. 2 Familienpflegezeitgesetz - "Family Care-Giver Leave" Act.		References to legal sources: Art. 1, 7 Pflegezeitgesetz - "Care-Giver Leave" Act. Art. 2 Familienpflegezeitgesetz - "Family Care-Giver Leave" Act.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Care-Giver Leave Act confers statutory right to unpaid leave for up to six months, but only applies for employers with more than 15 employees. The Family Care-Giver Leave Act confers a statutory right to part-time employment for up to 24 months, but only applies for employers of more than 25 employees. The loss of income can be lessened by the possibility to have 50% of the lost income granted as a loan by the public social insurance, e.g. earning 75% while working 50% of the previous time. The loan is then paid back by working again full-time while earning the part-time percentage.</p>		<p>Explanations and nuances: Same as for marriage.</p>		<p>Explanations and nuances: Same as for marriage. The named norms grant the leave to "partnerships similar to a marriage or registered partnership". Naturally, a partnership similar to a registered partnership did not exist prior to the introduction of the registered partnership act.</p>	

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Section: **2 - Income and Troubles**

Question: **2.05 - Care for a parent**

In case the parent of one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 2007	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2007	2015 No 2007	2015 No 2007
No 0000			No 2001	No 0000	No 2001
			N/A 0000		N/A 0000
References to legal sources: Norms named under question 2.04 apply to care for parents of partner, too.		References to legal sources: Norms named under question 2.04 apply to care for parents of partner, too.		References to legal sources: Norms named under question 2.04 do not apply to care for parents of cohabitating partner.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Germany**

Source: L. Adamietz, "Income, troubles and 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, [LawsAndFamilies-DE-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.06 - Next of kin**

In case of accident or illness of one partner, is the other partner considered as next of kin for medical purposes (even without power of attorney)?

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 Yes, but 2009	2015 Yes, but 2009
			N/A 0000	No 0000	No 0000
References to legal sources: Art. 1901a, 1901b Bürgerliches Gesetzbuch - Civil Code (inserted in 2009).		References to legal sources: See under Marriage.		References to legal sources: See under Marriage.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Being next of kin does not have a direct effect for medical purposes. Immediate life-saving actions (e.g. after an accident) can be carried out without explicit consent (i.e. presuming the consent of the injured person). All other medical procedures require a power of attorney (Art. 1901a). In lack of a power of attorney a legal guardianship has to be established. When determining the will of the patient regarding necessary medical procedures, the physicians and the legal guardian have to consider close relatives and persons of trust, if this is possible in due time (Art. 1901b). The spouse can also be appointed legal guardian.</p>		<p>Explanations and nuances: See under Marriage. The registered partner can also be appointed legal guardian.</p>		<p>Explanations and nuances: See under Marriage. The cohabiting partner can also be appointed legal guardian. The cohabitant partner is considered a "person of trust" within the meaning of Art. 1901b.</p>	

Jurisdiction: **Germany**

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Section: **2 - Income and Troubles**

Question: **2.07 - Domestic violence**

When one partner uses violence against the other partner, does specific statutory protection apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 2001	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2001	2015 Yes, but 2001	2015 Yes, but 2001
No 0000			N/A 0000	No 0000	No 0000
<p>References to legal sources: Art. 2 Gewaltschutzgesetz - Protection Against Violence Act (from 2001).</p> <p>Art. 230 Strafgesetzbuch - Criminal Code.</p> <p>Art. 234 Richtlinien für das Strafverfahren und das Bussgeldverfahren - Guidelines for criminal and administrative-fine proceedings.</p> <p>Art. 177 Strafgesetzbuch alte Fassung (1997) - Criminal Code, Version of 1997.</p>		<p>References to legal sources: See under Marriage.</p>		<p>References to legal sources: See under Marriage.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Victim can apply for eviction from the shared Household (Art. 2 Protection Against Violence Act). However, bodily injury is prosecuted only if the victim files complaint or if in the public interest (Art. 230 Criminal Code). According to Art. 234 of the Guidelines for criminal proceedings, there is public interest in the prosecution if filing the complaint is intolerable for the victim due to their close relationship to the offender.</p> <p>N.B.: Rape inside of marriage was not a crime until 1997. The husband could only be prosecuted for coercion.</p>		<p>Explanations and nuances: See under Marriage.</p>		<p>Explanations and nuances: See under Marriage.</p>	

Jurisdiction: **Germany**

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Section: **2 - Income and Troubles**

Question: **2.08 - Criminal procedure**

In case of a criminal prosecution against one partner, can the other partner then refuse to testify against the partner who is being prosecuted?

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, but 0000	2015 No, but 2001
			N/A 0000		No 0000
References to legal sources: Art. 52 Strafprozessordnung - Code of Criminal Procedure.		References to legal sources: Art. 52 Strafprozessordnung - Code of Criminal Procedure.		References to legal sources: Art. 52 Strafprozessordnung - Code of Criminal Procedure.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Mere cohabitation is not sufficient, but being engaged is. In practice, when faced with having to testify, partners often suddenly appear to be engaged to get married/registered.	