

Migration and legal family formats in Germany

by Nora Markard 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 4 – Migration)

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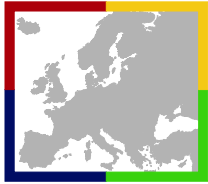


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Disclaimer

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 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 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

4.1 Partner of national citizen

4.2 Partner of national citizen (foreign status)

4.3 Partner of (non-EU) foreigner

4.4 Partner of EU citizen (foreign status)

4.5 Foreign status as impediment to marry

4.6 Foreign status and inheritance

4.7 Citizenship

4.8 Recognition of joint adoption

4.9 Recognition of second-parent adoption

4.10 General background regarding migration

In the following pages of this paper, first the answer to question 4.10 is presented, followed by the answers to questions 4.1 to 4.9.

4.10 - General background regarding migration (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 migration, then please do so here.

In 2007, German law introduced restrictions on family reunification for third-country spouses of foreigners to improve integration and to discourage forced marriages. These also extend to same-sex couples. These restrictions have been subject to debate.

Act Transposing EU Directives on Immigration and Asylum Law (Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union), 19 August 2007, amending (inter alia) art. 30 of the Residence Act (AufenthG).

For the time before 1990, the sources and explanations refer to the situation in West Germany only.

Jurisdiction: **Germany**

Source: N. Markard, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.01 - Partner of national citizen**

When one partner is a residing national citizen, while the other is a foreigner from another continent, will the foreign partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside. 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 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2001	2015 No, but 1996	2015 No, but 2001
			N/A 0000	No 0000	Yes, but 1996
					No 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 27(1) and 28 of the Residence Act (Aufenthaltsgesetz, AufenthG) Explanatory memorandum, BT-Drs. 16/5065, pp. 304-305.</p> <p>Until 2005: Art. 18 of the Aliens Act (Ausländergesetz, AuslG).</p> <p>Art. 6(1) of the Basic Law (Grundgesetz, GG).</p>		<p>References to legal sources: Art. 27(2) and 28 of the 2005 Residence Act (Aufenthaltsgesetz, AufenthG).</p> <p>2001-2005: Art. 23 of the Aliens Act (Ausländergesetz, AuslG).</p> <p>Draft Act on the Termination of Discrimination against Same-sex Partnerships (Entwurf eines Gesetzes zur Beendigung der Diskriminierung gleichgeschlechtlicher Gemeinschaften: Lebenspartnerschaften), BT-Drs. 14/3751 of 4 July 2000.</p>		<p>References to legal sources: Art. 7 and 15 of the 1990 Aliens Act (Ausländergesetz, AuslG), in 2005 replaced by the AufenthG.</p> <p>Art. 7(1) AufenthG Federal Administrative Court (BVerwG), judgment of 27 February 1996 – 1 C 41/93 –, BVerwGE 100, pp. 287-300.</p> <p>Federal Administrative Court (BVerwG), judgment of 4 July 1995 – 1 B 223/94.</p> <p>Higher Administrative Court of Northrhine-Westphalia (OVG Nordrhein-Westfalen), decision of 21 April 1997 – 17 B 1588/96.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: According to art. 28(1) of the Residence Act, residence entitlement will usually be granted even if financial self-sufficiency is not guaranteed. According to the explanatory memorandum to the Act, a reason to deny a residence title could be that the couple can be asked to live in the home country of the foreign spouse because the German spouse has lived and worked there for an extended period of time and speaks the language. This will usually be the case only for nationalized Germans with foreign roots. The right to family unity (not necessarily within Germany) is based on the constitutional protection of marriage, art. 6 GG.</p>		<p>Explanations and nuances: Same-sex partnerships: The 2001 Act on the Termination of Discrimination against Same-sex Partnerships only created new provisions for foreign registered partners of foreigners residing in Germany, leaving the provisions on family members of Germans unchanged. It was assumed that art. 23 AuslG (which only covered foreign spouses, children and parents or Germans) applied to same-sex partners by analogy (see Draft Act, Explanatory memorandum, p. 55). The 2005 Residence Act solved this problem. In terms of the exceptional expectation to live in the foreign partner's country if the German requirements are not met, this would additionally require that the partnership could actually be lived there.</p>		<p>Explanations and nuances: Since there was no statutory right to a visa and residence permit for family reunion of same-sex couples, many migration offices denied them altogether. In 1996, the Federal Administrative Court affirmed a right to a discretionary decision on the right to reside under art. 7 and 15 AuslG; this decision had to balance public and private interests, taking into account the same-sex relationship which was protected by art. 2(1) taken with art. 1(1) of the Basic Law (Grundgesetz) and by the right to private life under art. 8 ECHR. The exercise of discretion varied widely; further obstacles included the duty to leave the country for a minimum of 12 months after the completion of university studies under art. 28(3) AuslG. Since 2001, such couples can conclude life partnerships and thus benefit from art. 27(2) AufenthG. The discretionary grant of residence rights is still permitted under the AufenthG in art. 7(1), e.g., where one of the partners is still bound by a marriage or life partnership or where the marriage or life partnership is impending. Arguably, however, the possibility of concluding a life partnership has closed this door for couples who wish to remain unmarried, as the legislator has explicitly decided to only protect couples that are married or in a registered partnership. Otherwise, there would be a question of equal treatment with opposite-sex cohabiting couples.</p> <p>For different-sex cohabiting couples, the Federal Administrative Court confirmed in 1995 that they were not within the ambit of the constitutional protection of marriage and hence did not need to be treated like marriage in immigration law. However, citing the 1996 decision on same-sex cohabiting couples, a higher administrative court argued that a discretionary right to remain could also be granted to different-sex couples.</p>	

Jurisdiction: **Germany**

Source: N. Markard, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.02 - Partner of national citizen (foreign status)**

When one partner is a residing national citizen, while the other partner is a foreigner from another continent, and this couple married/registered in the country of the foreigner, will the foreign partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 Yes 2001	2015 No 1998	2015 Yes 2001	X	X
	N/A 0000	N/A 0000	Yes, but 1996	X	X
			No 1989	X	X
			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: As mentioned in question 4.01.</p> <p>Art. 6, 13, 14 and 17b of the Introductory Act to the Civil Code (EGBGB).</p> <p>Higher civil court of Kaiserslautern (LG Kaiserslautern), decision of 30 September 2010 – 1 T 218/09 Administrative Court of Berlin (VG Berlin), judgment of 15 June 2010 – 23 A 242.08.</p> <p>Coester, in: Münchner Kommentar BGB, EGBGB Art. 17b, paras. 136-141.</p>		<p>References to legal sources: As mentioned in question 4.01.</p> <p>Higher Administrative Court of Kassel (VGH Kassel), NVwZ-RR 1994, 55.</p> <p>Nr. 27.2.2 of the General Administrative Instructions on the Residence Act (AVV-AufenthG).</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: As mentioned in question 4.01.</p> <p>A foreign marriage cannot be incompatible with German ordre public, see art. 13-14 and 6 EGBGB. For example in the case of polygamy, only the first spouse will be entitled to residence (see art. 30(4) AufenthG).</p> <p>According to the courts, same-sex marriages concluded abroad will only be recognised as life partnerships, in accordance with art. 17b EGBGB (and not art. 13-17 EGBGB, which apply to marriages concluded abroad). This is subject to debate in the legal literature, see Coester (following the courts' opinion).</p>		<p>Explanations and nuances: As mentioned in question 4.01.</p> <p>Different-sex partners: In 2001, the legislative did not mean to extend the right to family reunification to unmarried opposite-sex couples, which were not considered protected by the Constitution (art. 6(1) Basic Law), see VGH Kassel. In the same way, art. 27(2) of the 2005 Residence Act is only meant to apply to registered partnerships between same-sex couples.</p> <p>Same-sex partners: A registered partnership concluded abroad will only confer a residence entitlement if it is recognized by the state where it was concluded and if it largely corresponds to the German legal framework of same-sex partnership. This is the case if the foreign law presupposes a community of living, mutual maintenance obligations, and possible post-resolution obligations. In 1996, the Federal Administrative Court recognized a right to reside for same-sex partners, subject to a balancing of public and individual interests. See question 4.3.</p>			

Jurisdiction: **Germany**

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Section: **4 - Migration**

Question: **4.03 - Partner of (non-EU) foreigner**

When both partners are foreigners from another continent, and one of them is residing in the country, will the other partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside.)

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 2005	2015 No, but 1996	2015 No, but 2001
			Yes, but 2001	No 0000	Yes, but 1996
			N/A 0000		No 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: 1965-1990: Aliens Act (Ausländergesetz – AuslG 1965).</p> <p>Innenministerium Baden-Württemberg, Grundsätze der Ausländerpolitik. Nr. II 685/303 v. 25.7.1966, p. 7.</p> <p>1990-2005: art. 18 of the Aliens Act (Ausländergesetz – AuslG).</p> <p>Since 2005: Art. 27(1), 29 and 30 of the Residence Act (Aufenthaltsgesetz, AufenthG), reformed in 2007.</p> <p>Court of Justice EU, Case C-138/13, Naime Dogan v Germany.</p>		<p>References to legal sources: Since 2005: as with marriages, see art. 27(2) AufenthG.</p> <p>2001–2005: art. 27a Aliens Act (Ausländergesetz, AuslG).</p>		<p>References to legal sources: As mentioned in question 4.01.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Different-sex marriages: The 1965 Aliens Act provided for wide discretion. The state ministers of interior agreed to limit family reunification by imposing a number of criteria: three-year legal residence, a perspective of continued employment in Germany, and sufficient living space. The 1990 Aliens Act granted a right to the spouse if certain conditions were met, including living space and self-sufficiency. Sufficient living space continues to be required. Also, the couple usually has to be able to support itself without recourse to public assistance. Since 2007, when art. 30 of the Residence Act was reformed, both spouses have to be at least 18 years of age, and the non-residing spouse has to be able to communicate in the German language at least on a basic level. There are some exceptions for privileged categories of foreigners, or to avoid hardship. The language requirement does not apply to Turkish citizens, as it was found to be incompatible with the Association Agreement by the CJEU.</p> <p>Same-sex marriages concluded abroad will only be recognised as life partnerships.</p>		<p>Explanations and nuances: Since 2005: as with marriages.</p> <p>Before 2005: life partners of foreigners could only obtain a residence permit on discretionary grounds.</p>		<p>Explanations and nuances: As mentioned in question 4.01.</p> <p>The 1996 judgment on the discretionary right to reside weighs the involvement of a German citizen as a factor counting against the expectation that the couple live together abroad; in the case of two foreigners, this would have been different. However, the judgment also took into account the fact that the partner's home country criminalised same-sex couples. The latter factor (is there another country where the couple could live freely?) would also have to be taken into account post-2001 and could possibly justify different treatment in comparison to different-sex cohabiting couples.</p>	

Jurisdiction: **Germany**

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Section: **4 - Migration**

Question: **4.04 - Partner of EU citizen (foreign status)**

When one partner is a foreign EU citizen who is residing in the country, while the other is a foreigner from another continent, and this couple married/registered/cohabited in the country of the EU citizen, will the non-EU partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes, but 2001	2015 No 1998	2015 Yes 2005	2015 No, but 1996	2015 No, but 1996
	N/A 0000	N/A 0000	Yes, but 1996	No 0000	No 0000
			No 1989		
			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: 1965-1969: see question 4.03.</p> <p>1969–2005: art. 1(2) and 8(1) of the 1969 Act on Entry and Residence of Nationals of Member States of the European Economic Community (Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft).</p> <p>1997–2005: art. 1 of the Regulation on the General Freedom of Movement of Nationals of Member States of the European Union (Verordnung über die allgemeine Freizügigkeit von Staatsangehörigen der Mitgliedstaaten der Europäischen Union).</p> <p>Since 2005: art. 3 of the Free Movement Act (Gesetz über die allgemeine Freizügigkeit von Unionsbürgern, FreizügG/EU).</p>		<p>References to legal sources: Since 2013: art. 3(1) and (2) no. 1 of the Free Movement Act (Gesetz über die allgemeine Freizügigkeit von Unionsbürgern, FreizügG/EU), as amended in 2013.</p> <p>2005–2013: art. 3(6) of the Free Movement Act.</p> <p>2001–2005: art. 2(2) and 27a of the 1990 Aliens Act (Ausländergesetz, AuslG).</p>		<p>References to legal sources: See questions 4.03 and 4.01.</p> <p>Court of Justice EU, Reed v Netherlands, 17 April 1986, Case 59/85.</p> <p>Art. 3(2) Directive 2004/38/EC.</p> <p>Art. 36(2) of the 2005 Residence Act (AufenthG) BT-Drs. 17/10442, 9 No. 36.2.2.9 of the General Administrative Instructions for the Residence Act (AVV-AufenthG).</p> <p>CJEU (Grand Chamber), UK v Rahman and others, 5 September 2012, Case C-83/11.</p> <p>Tewocht, in: Beck Online Kommentar AuslR, AufenthG § 36 Rn. 12.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Same-sex marriages concluded abroad will only be recognised as life partnerships.</p>		<p>Explanations and nuances: Since 2013, life partners and spouses of EU citizens are treated equally. Between 2005 and 2013, life partners of EU citizens were treated like life partners of Germans under the Residence Act; see explanations to 4.01. Before 2005, they were treated like life partners of foreigners under the 1990 Aliens Act, see explanations to 4.02.</p>		<p>Explanations and nuances: See questions 4.03 and 4.01.</p> <p>According to Reed v Netherlands, a country granting the foreign unmarried partners of its own citizens a right to reside is guilty of discrimination on the grounds of nationality if it denies the same right to workers from another member state with foreign unmarried partners.</p> <p>Art. 3(2) of Directive 2004/38/EC requires that a member state "facilitate" residence of other family members of Union citizens. Germany has not passed a law to transpose this duty into domestic law, citing the discretionary clause of art. 36(2) of the 2005 Residence Act, according to which: "Other dependents of a foreigner may be granted a residence permit for the purpose of subsequent immigration to join the foreigner, if necessary in order to avoid particular hardship." The government therefore argues that it is unnecessary to change the law, which can be interpreted in line with the Directive. Tewocht argues that, especially in light of UK v Rahman, this is not clear enough.</p>	

Jurisdiction: **Germany**

Source: N. Markard, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.05 - Foreign status as impediment to marry**

When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes 2001	2015 No, but 2005	2015 Yes 2001	X	X
	N/A 0000	No 1998	? 1989	X	X
		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. 1306 of the Civil Code (Bürgerliches Gesetzbuch, BGB).</p> <p>Bamberger/Roth, in: Beck'scher Online-Kommentar BGB, 38th edn., last updated 1 February 2016.</p>		<p>References to legal sources: Art. 1306 of the Civil Code (Bürgerliches Gesetzbuch), as amended in 2004, in force since 2005.</p> <p>Federal Constitutional Court (BVerfG), judgment of 17 July 2002 – 1 BvF 1/01, 1 BvF 2/01 –, BVerfGE 105, 313 (Life Partnership Act).</p> <p>Federal Supreme Court (BGH), decision of 11 July 2012 – IV AR (VZ) 1/12.</p> <p>Higher Civil Court of Berlin (KG Berlin), decision of 22 October 2013 – 1 VA 12/11.</p> <p>Art. 13(2) no. 2 EGBGB.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Art. 1306 BGB does not distinguish between existing different-sex and same-sex marriages. According to Bamberger/Roth, all that matters is that the marriage was validly concluded, whether in Germany or abroad.</p>		<p>Explanations and nuances: In 2004, art. 1306 BGB was amended to include existing registered partnerships as an impediment to marriage, as suggested in the BVerfG judgment. The amendment entered into force in 2005.</p> <p>While the legislative was apparently only considering existing registered life partnerships under German law (that is, same-sex partnerships), the wording of the provision does not distinguish between different-sex and same-sex registered partnerships.</p> <p>However, in a 2012 decision, the BGH decided a case where a German and a Dutch citizen had concluded a different-sex registered partnership in the Netherlands and wished to marry in Germany. The Netherlands had denied the Dutch partner a certificate of no impediment, as partnerships are an impediment to marriage under Dutch law. The BGH found that when deciding whether the couple could reasonably be asked to dissolve the partnership in the Netherlands before marrying, the lower court had to take into account whether the partnership could also be dissolved in other ways, such as by recognising the German marriage. In 2013, the KG Berlin found that that option does not exist and that the Dutch partner therefore had to obtain a no impediment certificate in accordance with the Dutch regulations.</p> <p>This suggests that even under art. 1306 BGB as amended in 2004, it depends on the law of the country where the different-sex partnership was concluded whether the partnership is an impediment to marriage in Germany or not.</p>			

Jurisdiction: **Germany**

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Section: **4 - Migration**

Question: **4.06 - Foreign status and inheritance**

When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 Yes, but 2001	2015 Yes 1998	2015 Yes 2001	X	X
	N/A 0000	N/A 0000	? 1989	X	X
			N/A 0000	X	X
References to legal sources: Art. 25 of the Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch, EGBGB).		References to legal sources: Art. 17b of the Introductory Act to the Civil Code (EGBGB). Art. 10 Life Partnership Act (Lebenspartnerschaftsgesetz, LPartG). Coester, in: Münchner Kommentar BGB, EGBGB Art. 17b paras. 120-135.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Succession is governed by the law of the country of which the deceased was a national at the time of his death. Art. 1931 BGB gives the surviving spouse a quarter to half of the inheritance if there are surviving relatives; if there are none, the spouse inherits everything. Same-sex marriages concluded abroad will only be recognised as life partnerships, see question 4.02.</p>		<p>Explanations and nuances: According to art. 17b EGBGB, matters related to succession of same-sex registered partnerships shall be governed by the law designated as applicable by the general rules, i.e. as in the case of marriage under art. 25 EGBGB (see marriage). If the deceased was German, the German law of succession applies, i.e., art. 10 LPartG, which contains parallel rules to art. 1931 BGB. If under these rules, the life partnership fails to qualify for statutory rights to succession, succession will be governed by the substantive provisions of the country in which the life partnership is registered. However, art. 17b and 25 EGBGB do not apply if there is an international agreement on succession (art. 3 no. 2 EGBGB); the law declared applicable in the agreement can thus exclude life partners from inheritance rights.</p> <p>For different-sex registered partnerships, German international private law does not contain specific rules. There is therefore a debate over whether to treat them like marriages (art. 13-17 EGBGB) or like same-sex registered partnerships (art. 17b EGBGB). In the latter case, art. 17b(4) EGBGB, which limits the recognition of foreign registered partnerships to the level achieved in Germany, is not considered applicable. See discussion in Coester. For the effects, see the explanations for marriage and for same-sex registered partners.</p>			

Jurisdiction: **Germany**

Source: **N. Markard, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).**

Section: **4 - Migration**

Question: **4.07 - Citizenship**

Does a relationship of this type make it easier for a foreign partner to obtain citizenship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1969	2015 N/A 0000	2015 N/A 0000	2015 Yes 2001	2015 No 0000	2015 No 0000
No, but 0000			N/A 0000		
References to legal sources: Art. 8 and 9 of the Nationality Act (Staatsangehörigkeitsgesetz, StAG), as amended in 2007.		References to legal sources: See Marriage column for references.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Until 1969, women (but not men) acquired German citizenship through marriage (art. 3 no. 3 and art. 6 of the Nationality Act (Reichs- und Staatsangehörigkeitsgesetz, RuStAG). Art. 3 no. 3 was deleted and art. 9 added in 1969. Under art. 8 StAG, naturalization "can" be granted; under art. 9 StAG, for spouses (of both genders), it "should" be granted under the conditions of art. 8, if they give up their previous citizenship and if it is ensured that they will conform to the German way of life, unless they do not have sufficient command of the German language. The language requirement was introduced in 2007.</p>		<p>Explanations and nuances: See Marriage column for explanations.</p>		<p>Explanations and nuances:</p>	

Jurisdiction: **Germany**

Source: N. Markard, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.08 - Recognition of joint adoption**

When the partners have jointly adopted a child while residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

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 0000	2015 Yes, but 2001
			N/A 0000		? 0000
<p>References to legal sources: Art. 22 of the Introductory Act to the Civil Code (EGBGB).</p> <p>Art. 108, 109(1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG).</p> <p>1993 Hague Adoption Convention.</p>		<p>References to legal sources: See Marriage column for references.</p> <p>Federal Supreme Court (BGH), decision of 17 June 2015 – XII ZB 730/12.</p> <p>Federal Constitutional Court (BVerfG), judgment of 19 February 2013 – 1 BvL 1/11, BVerfGE 133, 59 (Successive adoption).</p>		<p>References to legal sources: See Marriage column for references.</p> <p>Federal Supreme Court (BGH), decision of 17 June 2015 – XII ZB 730/12.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Adoptions concluded in states party to the 1993 Hague Adoption Convention will be recognised by law if they are certified to have been concluded in accordance with the Convention. Other adoptions require recognition in accordance with art. 108 FamFG. Recognition will be denied in accordance with art. 109(1) no. 4 FamFG if it would lead to a result that is obviously incompatible with significant principles of German law, in particular when recognition is incompatible with fundamental rights (art. 24 of the Hague Convention contains a similar clause, requiring a consideration of the best interests of the child). In adoption matters, with respect to the ordre public test, it is crucial that the best interests of the child and the rights of the former legal parents were respected.</p>		<p>Explanations and nuances: See Marriage column for explanations.</p> <p>Under German law, same-sex partners cannot adopt jointly; however, art. 109(1) no. 4 FamFG applies the more lenient, international ordre public standard. Moreover, the best interests of the child control the ordre public test. Therefore foreign joint adoptions will be recognised in Germany as not violating the ordre public, unless exceptional circumstances apply (see explanations to marriage). The Supreme Court also references the Federal Constitutional Court judgment on successive adoption to underscore the point that nothing points to the fact that same-sex couples should not raise children together.</p>		<p>Explanations and nuances: See Marriage column for explanations.</p> <p>Under German law, cohabiting partners cannot adopt jointly. See Registered partnership column; the BGH judgment actually concerns a cohabiting couple having jointly adopted a child in South Africa. It is unclear how far back the recognition practice reaches.</p>	

Jurisdiction: **Germany**

Source: N. Markard, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.09 - Recognition of second-parent adoption**

When one partner has become the second parent of a child of the other partner, by way of adoption while the partners were residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

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 0000	2015 Yes, but 2001
			N/A 0000		? 0000
<p>References to legal sources: See references to question 4.08.</p> <p>Federal Supreme Court (BGH), decision of 10 December 2014 – XII ZB 463/13 (Surrogacy).</p>		<p>References to legal sources: See references to question 4.08.</p> <p>Art. 9 of the Life Partnership Act (Lebenspartnerschaftsgesetz, LPartG), as amended in 2004.</p>		<p>References to legal sources: See references to question 4.08.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: See explanations to question 4.08.</p> <p>If the second-parent adoption follows surrogacy, which is forbidden in Germany, there is an ordre public concern. Where the sperm donor is biologically related to the child and the birth mother is unmarried, the sperm donor would be the father also under German law, and a second-parent adoption would also be legal in Germany. If therefore the birth mother agreed freely, and in light of the best interests of the child, the adoption will be recognised (see the BGH judgment for two German same-sex life partners who were both recognised as parents by a Californian court).</p>		<p>Explanations and nuances: See explanations to question 4.08; step-child adoptions were made legal for same-sex partners in Germany in 2004. This removed any possible ordre public problems in recognising foreign adoptions.</p>		<p>Explanations and nuances: Under German law, cohabiting partners cannot adopt the partner's child as a step-child; but see explanations to question 4.08.</p>	