

## Splitting up and 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 5 – Splitting up)

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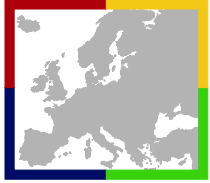
<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).



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

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

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

**5.12 - General background regarding splitting up (Open question)**

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

**Federal Constitutional Court, case on successive adoption: Decision of 19 February 2013 - 1 BvL 1/11. English version available at [www.bundesverfassungsgericht.de/EN](http://www.bundesverfassungsgericht.de/EN).**

Jurisdiction: **Germany**

Source: L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.01 - Dissolution by court**

Can this type of relationship be ended by court decision?

| Marriage   |                     | Registered partnership  |                     | Cohabitation |          |
|--|---------------------|---|---------------------|--------------|----------|
| diff.-sex  | same-sex            | diff.-sex   | same-sex            | diff.-sex    | same-sex |
| 2015<br>Yes<br>0000  | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000   | 2015<br>Yes<br>2001 | X            | X        |
|  |                     |   | N/A<br>0000         | X            | X        |
| <b>References to legal sources:</b><br>Art. 1564 Bürgerliches Gesetzbuch - Civil Code. |                     | <b>References to legal sources:</b><br>Art. 15 Lebenspartnerschaftsgesetz - Life partnership Act. |                     |              |          |
| <b>Explanations and nuances:</b>   |                     | <b>Explanations and nuances:</b>  |                     |              |          |

Jurisdiction: **Germany**

Source: L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.02 - Agreed administrative dissolution**

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

| Marriage  |                     | Registered partnership  |                    | Cohabitation |          |
|---|---------------------|---|--------------------|--------------|----------|
| diff.-sex   | same-sex            | diff.-sex   | same-sex           | diff.-sex    | same-sex |
| 2015<br>No<br>0000  | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000   | 2015<br>No<br>2001 | X            | X        |
|   |                     |   | N/A<br>0000        | X            | X        |
| <b>References to legal sources:</b><br>See references to question 5.01. |                     | <b>References to legal sources:</b><br>See references to question 5.01. |                    |              |          |
| <b>Explanations and nuances:</b>  |                     | <b>Explanations and nuances:</b>  |                    |              |          |

Jurisdiction: **Germany**

Source: **L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.03 - Unilateral administrative dissolution**

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

| Marriage                     |                     | Registered partnership       |                    | Cohabitation |          |
|------------------------------|---------------------|------------------------------|--------------------|--------------|----------|
| diff.-sex                    | same-sex            | diff.-sex                    | same-sex           | diff.-sex    | same-sex |
| 2015<br>No<br>0000           | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000          | 2015<br>No<br>2001 | X            | X        |
|                              |                     |                              | N/A<br>0000        | X            | X        |
| References to legal sources: |                     | References to legal sources: |                    |              |          |
| Explanations and nuances:    |                     | Explanations and nuances:    |                    |              |          |

Jurisdiction: **Germany**

Source: **L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.04 - Agreed informal dissolution**

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

| Marriage  |                     | Registered partnership  |                    | Cohabitation |          |
|---|---------------------|---|--------------------|--------------|----------|
| diff.-sex   | same-sex            | diff.-sex   | same-sex           | diff.-sex    | same-sex |
| 2015<br>No<br>0000  | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000   | 2015<br>No<br>2001 | X            | X        |
|   |                     |   | N/A<br>0000        | X            | X        |
| <b>References to legal sources:</b><br>See references to question 5.01. |                     | <b>References to legal sources:</b><br>See references to question 5.01. |                    |              |          |
| <b>Explanations and nuances:</b>  |                     | <b>Explanations and nuances:</b>  |                    |              |          |



Jurisdiction: **Germany**

Source: L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.05 - Unilateral informal dissolution**

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

| Marriage                     |                     | Registered partnership       |                    | Cohabitation |          |
|------------------------------|---------------------|------------------------------|--------------------|--------------|----------|
| diff.-sex                    | same-sex            | diff.-sex                    | same-sex           | diff.-sex    | same-sex |
| 2015<br>No<br>0000           | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000          | 2015<br>No<br>2001 | X            | X        |
|                              |                     |                              | N/A<br>0000        | X            | X        |
| References to legal sources: |                     | References to legal sources: |                    |              |          |
| Explanations and nuances:    |                     | Explanations and nuances:    |                    |              |          |

Jurisdiction: **Germany**

Source: **L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

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

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

| Marriage  |          | Registered partnership   |                    | Cohabitation |          |
|-----------|----------|--|--------------------|--------------|----------|
| diff.-sex | same-sex | diff.-sex  | same-sex           | diff.-sex    | same-sex |
| X         | X        | 2015<br>N/A<br>0000  | 2015<br>No<br>2001 | X            | X        |
| X         | X        |  | N/A<br>0000        | X            | X        |
|           |          | <b>References to legal sources:</b><br>Art. 15 Lebenspartnerschaftsgesetz - Life Partnership Act.  |                    |              |          |
|           |          | <b>Explanations and nuances:</b><br>The grounds for a and the form of a dissolution are exhaustively listed in art. 15. The partnership can be ended by a court proceeding only, and solely because the partners' companionship has ended.<br><br>N.B.: Art. 1306 BGB (Civil Code): A life partnership is an obstacle to marriage. |                    |              |          |

Jurisdiction: **Germany**

Source: L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.07 - Ending by conversion**

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

| Marriage                     |                     | Registered partnership       |                         | Cohabitation |          |
|------------------------------|---------------------|------------------------------|-------------------------|--------------|----------|
| diff.-sex                    | same-sex            | diff.-sex                    | same-sex                | diff.-sex    | same-sex |
| 2015<br>No, but<br>2007      | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000          | 2015<br>No, but<br>2007 | X            | X        |
| No<br>0000                   |                     |                              | No<br>2001              | X            | X        |
|                              |                     |                              | N/A<br>0000             | X            | X        |
| 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><b>Explanations and nuances:</b><br/>                     One spouse changing legal gender (in case of trans*) is the only case that allows a conversion.</p> <p>However, the Federal Constitutional Court ruled that the conversion is not required (Decision of 27 May 2008 - 1 BvL 10/05), thus allowing the exceptional case of a same-sex marriage. Accordingly, a conversion is a personal choice of the spouses and an administrative procedure (lacking statutory regulation).</p> |          | <p><b>Explanations and nuances:</b><br/>                     One partner changing legal gender (in case of trans*) is the only case that allows a conversion.</p> <p>However, the Federal Constitutional Court ruled that the conversion is not required (Decision of 27 May 2008 - 1 BvL 10/05), thus allowing the exceptional case of a different-sex life partnership. Accordingly, a conversion is a personal choice of the partners and an administrative procedure (lacking statutory regulation).</p> |          |              |          |

Jurisdiction: **Germany**

Source: **L. Adamietz, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-DE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

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

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

| Marriage  |          | Registered partnership  |                    | Cohabitation |          |
|-----------|----------|---|--------------------|--------------|----------|
| diff.-sex | same-sex | diff.-sex   | same-sex           | diff.-sex    | same-sex |
| X         | X        | 2015<br>N/A<br>0000   | 2015<br>No<br>2001 | X            | X        |
| X         | X        |   | N/A<br>0000        | X            | X        |
|           |          | <b>References to legal sources:</b>   |                    |              |          |
|           |          | <b>Explanations and nuances:</b><br>See answer to question 5.07, conversion in case of gender reassignment; also, same-sex marriage does not exist. |                    |              |          |

Jurisdiction: **Germany**

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Section: **5 - Splitting up**

Question: **5.09 - Property at dissolution**

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

| Marriage   |                     | Registered partnership   |                    | Cohabitation                        |                    |
|--|---------------------|--|--------------------|-------------------------------------|--------------------|
| diff.-sex  | same-sex            | diff.-sex  | same-sex           | diff.-sex                           | same-sex           |
| 2015<br>No<br>0000   | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000  | 2015<br>No<br>2001 | 2015<br>No<br>0000                  | 2015<br>No<br>0000 |
|  |                     |  | N/A<br>0000        |                                     |                    |
| <b>References to legal sources:</b><br>Art. 1363 and following, Bürgerliches Gesetzbuch - Civil Code.  |                     | <b>References to legal sources:</b><br>Art. 6 Lebenspartnerschaftsgesetz - Life Partnership Act. |                    | <b>References to legal sources:</b> |                    |
| <b>Explanations and nuances:</b><br>Joint marital property has to be stipulated by the spouses. In absence of a contractual arrangements (that require a public notary act) each spouse acquires property for themselves only. |                     | <b>Explanations and nuances:</b><br>The rules for marriage apply respectively.                   |                    | <b>Explanations and nuances:</b>    |                    |

Jurisdiction: **Germany**

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Section: **5 - Splitting up**

Question: **5.10 - Alimony**

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

| Marriage   |                     | Registered partnership  |                     | Cohabitation  |                         |
|--|---------------------|---|---------------------|---|-------------------------|
| diff.-sex  | same-sex            | diff.-sex   | same-sex            | diff.-sex   | same-sex                |
| 2015<br>Yes<br>0000  | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000   | 2015<br>Yes<br>2001 | 2015<br>No, but<br>1969   | 2015<br>No, but<br>2011 |
|  |                     |   | N/A<br>0000         | No<br>0000  | No<br>0000              |
| <b>References to legal sources:</b><br>Art. 1361 Bürgerliches Gesetzbuch - Civil Code. |                     | <b>References to legal sources:</b><br>Art. 12 Lebenspartnerschaftsgesetz - Life Partnership Act. |                     | <b>References to legal sources:</b><br>Art. 1615I Bürgerliches Gesetzbuch - Civil Code. |                         |

| 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><br/>                     The father of a child born out of wedlock owes the mother alimony for herself:<br/>                     - six weeks before and eight weeks after giving birth;<br/>                     - at least three years if the mother stays home to take care of the child.</p> <p>Art. 1615I BGB was introduced for mothers in 1969, but limited to a maximum of one year alimony; also the requirement to work was stricter. In 1995, conditions were relaxed and the maximum time raised to three years, even longer in cases of hardship. Since 1998, a father taking care of the child has identical claims against the mother.</p> <p>These statutory rules apply to same-sex couples only if a child was conceived within the couple, i.e. only if a transgendered woman fathers the child of her partner or if a transgendered man gives birth to a child conceived by his partner. This constellation is legally possible only since 2011, when the Federal Constitutional Court abolished the sterilisation requirement for a legal gender change (decision of 11 January 2011 - 1 BvR 3295/07).</p> |          |



Jurisdiction: **Germany**

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Section: **5 - Splitting up**

Question: **5.11 - Parental authority**

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

| Marriage   |                     | Registered partnership   |                     | Cohabitation  |                    |
|--|---------------------|--|---------------------|---|--------------------|
| diff.-sex  | same-sex            | diff.-sex  | same-sex            | diff.-sex   | same-sex           |
| 2015<br>Yes<br>0000  | 2015<br>N/A<br>0000 | 2015<br>N/A<br>0000  | 2015<br>Yes<br>2001 | 2015<br>Yes, but<br>2010  | 2015<br>No<br>0000 |
|  |                     |  | N/A<br>0000         | Yes, but<br>1997  |                    |
|  |                     |  |                     | No, but<br>0000   |                    |
| <b>References to legal sources:</b><br>Art. 1671 Bürgerliches Gesetzbuch - Civil Code. |                     | <b>References to legal sources:</b><br>Art. 9 LPartG.<br><br>Art. 1671 Bürgerliches Gesetzbuch - Civil Code. |                     | <b>References to legal sources:</b><br>Art. 1626a Bürgerliches Gesetzbuch - Civil Code. |                    |

| Marriage  |          | Registered partnership  |          | Cohabitation  |          |
|---|----------|---|----------|---|----------|
| diff.-sex   | same-sex | diff.-sex   | same-sex | diff.-sex   | same-sex |
| <p><b>Explanations and nuances:</b><br/>           Shared parental authority has been the general rule since 1998, divorce or splitting up has no effect on this.</p> <p>Art. 1671(1) Bürgerliches Gesetzbuch – Civil Code:<br/>           If the parents have separated permanently and have joint custody, either parent can claim sole custody if the other parent agrees or if this is in the best interest of the child.</p> |          | <p><b>Explanations and nuances:</b><br/>           The Life Partnership Act allows the adoption of the biological or the adopted child of the life partner, which leads to shared parental authority. Splitting up has no effect on this.</p> <p>However, following permanent separation, either parent can request sole custody in the same way as with married couples.</p> |          | <p><b>Explanations and nuances:</b><br/>           The same-sex parent not being the biological or adoptive parent does not have parental authority and will not have it after a separation.</p> <p>Different sex couples: until 1997 fathers had parental authority solely if mother completely failed; between 1997 and 2010 mother could "grant" father shared custody; in 2010 the Federal Constitutional Court declared this to be unconstitutional and established shared custody upon request of the father if this served the child's wellbeing; this requirement was amended by the legislature in 2013 into "if this does not contradict the child's well being".</p> |          |