

Formalisation of legal family formats in Italy

by Matteo Winkler¹

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 1 – Formalisation)

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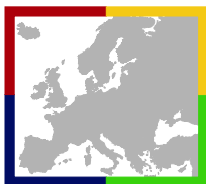


Recommended citation:

M.M. Winkler, 'Formalisation of legal family formats in Italy', 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 1.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 Italy

The answers concerning Italy 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 Italy
by Matteo Winkler (Section 1)**

**Income, troubles and legal family formats in Italy
by Marco Gattuso (Section 2)**

**Parenting and legal family formats in Italy
by Matteo Winkler (Section 3)**

**Migration and legal family formats in Italy
by Matteo Winkler (Section 4)**

**Splitting up and legal family formats in Italy
by Marco Gattuso (Section 5)**

**Death and legal family formats in Italy
by Marco Gattuso (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).

As the last country in western Europe to enact a specific statutory regulation of same-sex couples, Italy was missing any general law on both registered partnership and cohabiting couples until the new Law No. 76 of 20 May 2016. Until recently, only "legitimate family", that is the family based on marriage, was available as legal family format, although piecemeal legislation existed in respect of cohabiting couples. In the last decade, courts have established a network of principles such as the establishment of same-sex couples and same-sex parents as family and the equality of their treatment under the law.

Maria Federica Moscati, Pasolini's Italian Premonitions. Same-Sex Unions and the Law in Comparative Perspectives (London: Wildy, Simmonds & Hill Publishing, 2014).

Francesco Alicino, The Road to Equality. Same-Sex Relationships within the European Context: The Case of Italy, LUISS School of Government Working Paper Series (Rome, 2015).

Tiago Fidalgo de Freitas & Diletta Tega, Judicial Restraint and Political Responsibility: A Review of the Jurisprudence of the Italian, Spanish and Portuguese High Courts on Same-Sex Couples, in Daniele Gallo, Luca Paladini & Pietro Pustorino (eds.), Same-Sex Couples before National, Supranational and International Jurisdictions 287 (Berlin/Heidelberg: Springer, 2014).

Jurisdiction: **Italy**

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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
2016 Yes 0000	2016 No 0000	2016 No 0000	2016 Yes 2016	2016 Yes 2016	2016 Yes 2016
			No 0000	Yes, but 2000	Yes, but 2010
				No, but 0000	No, but 1993
					No 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Article 84 and following of the Civil Code (requirements to enter into marriage).</p> <p>Constitution (1948), Articles 2 (fundamental rights), 3 (equal protection) and 29 (family protection and equality in family).</p> <p>Constitutional Court, Judgement No. 138 of 15 April 2010.</p>		<p>References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation, entered into force on 5 June 2016.</p>		<p>References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation, entered into force on 5 June 2016.</p> <p>Constitutional Court, Judgement No. 138 of 15 April 2010.</p>	
<p>Explanations and nuances: Under the Civil Code, civil marriage is accessible only to different-sex couples. Even if the Civil Code does not mention expressly the difference of sex as a requirement to enter into marriage, the Constitutional Court has stated that this is an implicit requirement "under an ultra-millenary legal tradition" (Judgement No. 138 of 15 April 2010).</p>		<p>Explanations and nuances: Law No. 76 of 20 May 2016 has been passed to recognise civil unions for same-sex couples.</p>		<p>Explanations and nuances: In 2010 the Constitutional Court recognised the constitutional dignity of same-sex couples "to be free to live their condition as a couple". Since such ruling, same-sex cohabiting couples have begun being considered as protected by the Constitution.</p> <p>Law No. 76 of 20 May 2016 recognizes cohabitation for same-sex and different-sex couples. Until that date, only certain rights have been recognized by case-law and a piecemeal series of statutes. Under this new law, cohabitation does not impact civil status but provides for certain minimal rights to partners with no need of registration. Further examples of legal recognition of different-sex and/or same-sex cohabitation are indicated in questions 2.4, 2.5, 2.7, 2.8, 2.9, 3.9, 4.1, 4.4 and 6.6.</p>	

Jurisdiction: **Italy**

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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
2016 No 0000	2016 N/A 0000	2016 N/A 0000	2016 No 2016	2016 No 0000	2016 No 0000
			N/A 0000		
References to legal sources: Civil Code, articles 84 and following.		References to legal sources: Para. 4(c) of Law No. 76 of 20 May 2016.		References to legal sources:	
Explanations and nuances: No civil marriage is possible for two siblings under the Civil Code.		Explanations and nuances: No civil union is possible for two siblings under Law No. 76/2016.		Explanations and nuances: No legally qualified cohabitation relationship is possible between siblings.	

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	X	X
			N/A 0000	X	X
References to legal sources: Civil Code, articles 84 and following and 116.		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Citizenship or residence is not a requirement for marriage. An Italian citizen and a foreigner residing in the Italy can marry in Italy, provided that the foreigner presents a public document from the foreign national authority certifying his/her unmarried status.</p> <p>For same-sex couples, a foreign marriage between an Italian and a foreigner is recognised as a civil union in Italy (see questions 4.2, 4.4, 4.5 and 4.6). No case-law on this point exists.</p>		<p>Explanations and nuances: Law No. 76/2016 does not provide a citizenship or residence requirement for entering a civil union. An Italian citizen and a foreigner residing in Italy can enter into a civil union in Italy, provided that the foreigner presents a public document from the foreign national authority certifying his/her unmarried or unpartnered status. Secondary regulation provides that such a document is not mandatory and can be replaced with an equivalent if the foreign country does not recognise same-sex unions.</p>			

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	X	X
			N/A 0000	X	X
References to legal sources: Civil Code, articles 84 and following.		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Citizenship or residence is not a requirement for marriage. An Italian citizen and a foreigner residing abroad can marry in Italy, provided that the foreigner presents a public document from the foreign national authority certifying his/her unmarried status.</p>		<p>Explanations and nuances: Law No. 76/2016 does not provide a citizenship or residence requirement for entering a civil union. An Italian citizen and a foreigner residing abroad can enter into a civil union in Italy, provided that the foreigner presents a public document from the foreign national authority certifying his/her unmarried or unpartnered status. Secondary regulation provides that such a document is not mandatory and can be replaced with an equivalent if the foreign country does not recognise same-sex unions.</p>			

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	X	X
			N/A 0000	X	X
<p>References to legal sources: Civil Code, articles 84 and following.</p> <p>Constitution (1948), Articles 2 (fundamental rights), 3 (equal protection) and 29 (family protection and equality in family).</p> <p>Art. 27 Law No. 218 of 31 May 1995 (reform of private international law).</p>		<p>References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Citizenship or residence is not a requirement for marriage.</p> <p>No same-sex couple is allowed to marry in Italy. The Italian private international law rules nevertheless, as amended by the recent Law No. 76 of 20 May 2016, refer to the personal law of the spouses to determine the validity of marriage. Therefore, if both foreigners are nationals of a State that permits same-sex marriage, they might be considered as validly married in Italy (see questions 4.2, 4.4, 4.5 and 4.6).</p>		<p>Explanations and nuances: Law No. 76/2016 does not provide a citizenship or residence requirement for entering a civil union. Two foreigners, one of whom residing in Italy, can enter into a civil union in Italy, provided that each of them present a public document from the foreign national authority certifying his/her unmarried or unpartnered status. Secondary regulation provides that such a document is not mandatory and can be replaced with an equivalent if the foreign country does not recognise same-sex unions.</p> <p>Private international law rules, as amended by the Law No. 76/2016, provide that the national law of each partner applies, unless it does not recognise or prohibits same-sex unions, in which case Italian law prevails.</p> <p>Foreign registered partnerships are recognised in Italy as civil unions under Law No. 76/2016.</p>			

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	X	X
			N/A 0000	X	X
<p>References to legal sources: Civil Code, articles 84 and following.</p> <p>Constitution (1948), Articles 2 (fundamental rights), 3 (equal protection) and 29 (family protection and equality in family).</p> <p>Art. 27 Law No. 218 of 31 May 1995 (reform of private international law).</p>		<p>References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Citizenship or residence is not a requirement for marriage.</p> <p>No same-sex couple is allowed to marry in Italy. The Italian private international law rules nevertheless refer to the personal law of the spouses to determine the validity of marriage. Therefore, if both foreigners are nationals of a State that permits same-sex marriage, they might be considered as validly married in Italy (see question 4.2, 4.4, 4.5 and 4.6). No case-law is available, however, on this issue. Against this background, however, the Court of Appeals of Naples has ruled on 13 May 2015 that two French women, married in France, can register their marriage in Italy in the register of civil status in the municipality where they reside.</p>		<p>Explanations and nuances: Law No. 76/2016 does not provide a citizenship or residence requirement for entering a civil union. Two foreigners residing in Italy can enter into a civil union in Italy, provided that each of them presents a public document from the foreign national authority certifying his/her unmarried or unpartnered status. Secondary regulation provides that such a document is not mandatory and can be replaced with an equivalent if the foreign country does not recognise same-sex unions.</p>			

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	X	X
			N/A 0000	X	X
<p>References to legal sources: Civil Code, articles 84 and following.</p> <p>Constitution (1948), Articles 2 (fundamental rights), 3 (equal protection) and 29 (family protection and equality in family).</p> <p>Art. 27 Law No. 218 of 31 May 1995 (reform of private international law).</p>		<p>References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Citizenship or residence is not a requirement for marriage.</p> <p>No same-sex couple is allowed to marry in Italy. The Italian private international law rules nevertheless refer to the personal law of the spouses to determine the validity of marriage. Therefore, if both foreigners are nationals of a State that permits same-sex marriage, they might be considered as validly married in Italy (see questions 4.2, 4.4, 4.5 and 4.6). No case-law is available, however, on this issue.</p>		<p>Explanations and nuances: Law No. 76/2016 does not provide a citizenship or residence requirement for entering into a civil union. Two foreigners residing abroad can enter into a civil union in Italy, provided that the foreigner presents a public document from the foreign national authority certifying his/her unmarried or unpartnered status. Secondary regulation provides that such a document is not mandatory and can be replaced with an equivalent if the foreign country does not recognise same-sex unions.</p>			

Jurisdiction: **Italy**

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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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	X	X
			N/A 0000	X	X
References to legal sources:		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.			
Explanations and nuances: A civil marriage can be entered into in front of the officer for civil status (ufficiale di stato civile).		Explanations and nuances: The registration of a civil union under the new Law No. 76/2016 has effect under the civil status regime.			

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 No 0000	2016 N/A 0000	2016 N/A 0000	2016 No 2016	X	X
			N/A 0000	X	X
References to legal sources:		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.			
Explanations and nuances: Marriage is possible only before a civil status officer.		Explanations and nuances: Civil union is possible only before a civil status officer.			

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 No 2016	X	X
			N/A 0000	X	X
References to legal sources: Civil Code, articles 82-83. Constitution (1948), articles 7 (Concordat with the Catholic Church) and 8 (freedom of confessions).		References to legal sources:			
Explanations and nuances: Relationships with the Church, including marriage, are regulated by the Concordat. Religious marriages need to be registered in the register of civil status immediately after the ceremony.		Explanations and nuances:			

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes, but 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2016	2016 Yes 2016	2016 Yes 2016
			N/A 0000	Yes 0000	Yes 2010
					Doubt 0000
References to legal sources: Civil Code, article 160.		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.		References to legal sources: Para. 50 of Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation. Constitutional Court, Judgement No. 138 of 15 April 2010.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Spouses may regulate some aspects of their life, but limited to the monetary and property-related issues. Prenuptial agreements are prohibited. Under Article 160 of the Civil Code, spouses are not permitted to derogate from the obligations provided by the law. Communion of property during marriage is regulated by the Civil Code.</p>		<p>Explanations and nuances: Law No. 76/2016 extends to registered same-sex couples the legal regime of marriage contracts.</p>		<p>Explanations and nuances: Monetary and property-related issues may be regulated by the partners via an appropriate contract. As a matter of practice these contracts may be submitted to a Notary Public to assign them legal certainty towards third parties.</p> <p>Partners can regulate:</p> <ol style="list-style-type: none"> (1) their respective participation to common expenses; (2) assignation of property acquired during the cohabitation; (3) the use of the house; (4) obligations in the event of cessation of cohabitation; (5) assistance and alimony obligations. <p>Law No. 76/2016 establishes a new regime for such contracts for both different-sex and same-sex couples.</p> <p>In 2010 the Constitutional Court's ruling no. 138 defined the constitutional dignity of same-sex couples. Because of this, they now are deemed to be able to regulate their relationship through cohabitation contracts, with the same limits and conditions of different-sex couples.</p>	

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 Yes 2016	2016 Yes 2016
			N/A 0000	No 0000	No 0000
<p>References to legal sources: Civil Code, article 160 (no derogation from marriage obligations).</p>		<p>References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.</p>		<p>References to legal sources: Para. 50 of Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.</p>	
<p>Explanations and nuances: The only principles fixed by the law is that spouses cannot derogate the obligations imposed by the law to them. They can regulate the monetary and patrimonial aspects of their relationship.</p>		<p>Explanations and nuances: For registered same-sex couples, the legal regime of contracts is the same as marriage.</p>		<p>Explanations and nuances: Under the new Law No. 76/2016, cohabiting partners can regulate through a contract the monetary and patrimonial aspects of their relationship.</p>	

Jurisdiction: **Italy**

Source: **M. Winkler**, "Formalisation of legal family formats in Italy". 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-IT-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
2016 Yes, but 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 No 0000	2016 No 0000
			N/A 0000		
References to legal sources: Civil Code, article 143 bis (wife's surname).		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.		References to legal sources:	
Explanations and nuances: With marriage the wife takes the surname of the husband and so do their children.		Explanations and nuances: New Law No. 76/2016 provides registered partners with the possibility of adopting a common surname. This option is currently not available to married couples.		Explanations and nuances:	

Jurisdiction: **Italy**

Source: **M. Winkler**, "Formalisation of legal family formats in Italy". 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-IT-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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 No 2016	2016 Yes, but 2016	2016 Yes, but 2016
			N/A 0000	No, but 2000	No, but 2010
				? 0000	? 0000
References to legal sources: Civil Code, article 144 (common residence).		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.		References to legal sources: Para. 37 of Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.	
Explanations and nuances: Spouses fix the "family residence" according to their needs and those of the family.		Explanations and nuances: No common residence requirement is provided under the new Law No. 76/2016 for registered same-sex couples.		Explanations and nuances: Cohabiting couples are considered by the law only if they are registered as such in the "dichiarazione anagrafica", and common residence is a requirement to obtain such a declaration.	

Jurisdiction: **Italy**

Source: **M. Winkler, "Formalisation of legal family formats in Italy".** 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-IT-Section1.pdf](#) (please use this full citation when citing any information from this table).

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
2016 Yes, but 0000	2016 N/A 0000	2016 N/A 0000	2016 No 2016	2016 Yes 2016	2016 Yes 2016
			N/A 0000	? 0000	? 0000
References to legal sources: Law No. 898 of 1 December 1970 (marriage dissolution), article 3(f).		References to legal sources: Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.		References to legal sources: Para. 26 of Law No. 76 of 20 May 2016 on civil unions for same-sex couples and cohabitation.	
Explanations and nuances: Marriage that has not been consummated can be dissolved by request of one spouse.		Explanations and nuances:		Explanations and nuances: Under Italian case-law and scholarship, to be qualified as cohabitation, a relationship must involve both life experience and affection continuity. The new Law No. 76/2016 provides that cohabiting couples, to be recognised as such, live in "an affectionate couple relationship".	