

Income, troubles and legal family formats in Italy

by Marco Gattuso ¹

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

Edited by Kees Waaldijk,² Marie Digoix,³ Natalie Nikolina,² Giuseppe Zago,² Daniel Damonzé,² Arianna Caporali,³ Kamel Nait Abdellah ³

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

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¹ Marco Gattuso (judge at the Court of Bologna; Director of [Articolo29](http://www.articolo29.it) and co-director of *Genius*, *Rivista di studi giuridici sull'orientamento sessuale e l'identità di genere*, www.articolo29.it) is grateful for the useful comments that Matteo M. Winkler (Dr. Jur., Ph.D., LL.M., Assistant Professor, HEC Paris) made on an earlier version of the answers in this section of the database.

² [Grotius Centre for International Legal Studies](#), Leiden University, Netherlands, www.leiden.edu.



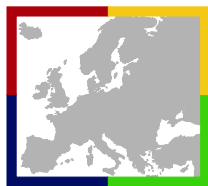
³ Institut national d'études démographiques, Paris, France, www.ined.fr.



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

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

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

**2.09 - General background regarding income and troubles
(Open question)**

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

As already pointed out answering some of the former questions, Italian law had a tremendous change due to the Law 20 May 2016, n. 76. Article 1, § 20, of this Law requires that all marriage rules about rights and duties apply now also to same-sex Civil Union. It has also to be said that in the past, in the absence of any legislation providing protection to same-sex couples, the Italian legal system had slowly developed thanks to the Italian jurisprudence. The Constitutional Court (judgment n. 138 of 15 March 2010) and the Italian Superior Court [Corte di Cassazione], judgment nr. 4184 of 2012 and nr. 2400 of 2015) stressed the necessity, even in absence of a law, to grant protection to fundamental rights of same-sex partners, leaving concrete solutions to the ordinary judges. These indications from the highest courts eventually led to a surprising activity of Italian courts (you may read almost all known Italian case law on the topic in the database of the site Articolo29 [www.articolo29.it]).

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.01 - Lower income tax**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1986	2016 N/A 0000	2016 N/A 0000	2016 No, but 2016	2016 No 0000	2016 No 0000
? 0000			N/A 0000		
References to legal sources: Presidential Decree of 22 December 1986, nr. 917.		References to legal sources: Presidential Decree of 22 December 1986, nr. 917. Law of 20 May 2016, nr. 76, article 1, § 20.		References to legal sources:	
Explanations and nuances: If one of the two members of the married couple has no income, the other member has a (little) tax reduction.		Explanations and nuances: If one of the two members of the married couple has no income, the other member has a (little) tax reduction. This rule now applies also to same-sex Civil Unions, due to the Law of 20 May 2016, n. 76, article 1, § 20.		Explanations and nuances:	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.02 - Social benefits**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 N/A 0000	2016 N/A 0000	2016 No, but 2016	2016 No 0000	2016 No 0000
			N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: In Italy there is no basic social benefit scheme for long-term unemployment. The Italian social system has only very short social benefits which last only a few months (8-16 months) and which are independent from the partner's income. People older than 65 years, who have been unemployed, may be entitled to special social retirement benefits, where the income of the other partner is taken into consideration and may result even in the loss of this entitlement if it is higher than a certain level (nowadays € 11.650).</p>		<p>Explanations and nuances: See under Marriage.</p>		<p>Explanations and nuances:</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.03 - Health insurance**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 N/A 0000	2016 N/A 0000	2016 No, but 2016	2016 No, but 0000	2016 No, but 0000
			N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Since Italian general tax system includes and covers all public expenses for the health system, it does not have a "public health insurance". General taxes may be influenced by marriage as already explained at question 2.01. Private health insurances do not have common rules and their conditions may differ heavily in the way they consider marriage.</p>		<p>Explanations and nuances: Since Italian general tax system includes and covers all public expenses for the health system, it does not have a "public health insurance". General taxes may be influenced by same-sex Civil Union as already explained at question 2.01. Private health insurances do not have common rules and their conditions may differ heavily in the way they consider marriage and Civil Union.</p>		<p>Explanations and nuances: Since Italian general tax system includes and covers all public expenses for the health system, it does not have a "public health insurance". Private health insurances do not have common rules and their conditions may differ heavily in the way they consider cohabitation. Nevertheless, we may say that they seldom ask for a smaller amount of money for individuals who cohabit with a partner.</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.04 - Care between partners**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 Yes 2000	2016 Yes, but 2010
Yes, but 1957			N/A 0000	No, but 1957	No, but 2000
					No, but 1957
References to legal sources: Art. 4 of Law 8 March 2000, n. 53. Art. 2 of Ministerial Decree 21 July 2000, n. 278. Art. 37 of President of the Republic Decree 10 January 1957, n. 3.		References to legal sources: Art. 4 of Law 8 March 2000, n. 53. Art. 2 of Ministerial Decree 21 July 2000, n. 278. Art. 37 of President of the Republic Decree 10 January 1957, n. 3. Law 20 May 2016, n. 76, article 1, § 20.		References to legal sources: Art. 4 of Law 8 March 2000, n. 53. Art. 2 of Ministerial Decree 21 July 2000, n. 278. Art. 37 of President of the Republic Decree 10 January 1957, n. 3.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Paid leave: up to three days; unpaid leave: up to two years.</p> <p>Before 2000, admission to the leave was discretionary.</p>		<p>Explanations and nuances: Paid leave: up to three days; unpaid leave: up to two years.</p> <p>This rule now applies also to same-sex Civil Union, due to the Law of 20 May 2016, n. 76, article 1, § 20.</p>		<p>Explanations and nuances: Paid leave: up to three days; unpaid leave: up to two years.</p> <p>Art. 4 of the above mentioned Law refers to "cohabitant" and does not specify whether it means also same-sex partners or not. Even if it probably did not when the law entered into force (2000), it would nowadays be applied to same-sex relations (recent Italian jurisprudence does not admit relevant differences in treatment between different and same-sex cohabitations; see question 2.9, General background). Nevertheless, there are no published or known same-sex cases, so far.</p> <p>Before 2000, admission to the leave was discretionary and the law did not mention cohabitation at all: there are no known different-sex or same-sex cohabitation cases before 2000.</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 Yes 2000	2016 Yes, but 2010
Yes, but 1957			N/A 0000	No, but 0000	No, but 2000
					No, but 1957
References to legal sources: Art. 4 of Law 8 March 2000, n. 53. Art. 2 of Ministerial Decree 21 July 2000, n. 278. Art. 37 of President of the Republic Decree 10 January 1957, n. 3.		References to legal sources: Art. 4 of Law 8 March 2000, n. 53. Art. 2 of Ministerial Decree 21 July 2000, n. 278. Art. 37 of President of the Republic Decree 10 January 1957, n. 3. Law 20 May 2016, n. 76, article 1, § 20.		References to legal sources: Art. 4 of Law 8 March 2000, n. 53. Art. 2 of Ministerial Decree 21 July 2000, n. 278. Art. 37 of President of the Republic Decree 10 January 1957, n. 3.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Art. 4 of Law 8 March 2000 applies also to the partner's parents; see, therefore, answer to question 2.04.</p>		<p>Explanations and nuances: Art. 4 of Law 8 March 2000 applies also to the partner's parents; see, therefore, answer to question 2.04. This rule now applies also to same-sex Civil Union, due to Law 20 May 2016, article 1, § 20.</p>		<p>Explanations and nuances: Art. 4 of Law 8 March 2000 applies also to the partner's parents; see, therefore, answer to question 2.04.</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.06 - Next of kin**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 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:		References to legal sources:		References to legal sources:	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.07 - Domestic violence**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2001	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 Yes 2001	2016 Yes, but 2010
No 0000			N/A 0000	No 0000	No, but 2001
					No 0000
References to legal sources: Art. 342 ter Civil Code, introduced by Law 4 April 2001 n. 154.		References to legal sources: Art. 342 ter Civil Code, introduced by Law 4 April 2001 n. 154. Law 20 May 2016, n. 76, article 1, § 20.		References to legal sources: Art. 342 ter, Civil Code, introduced by Law 4 April 2001 n. 154.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances:</p>		<p>Explanations and nuances: The rule now applies also to same-sex Civil Union, due to Law 20 May 2016, n. 76, article 1, § 20.</p>		<p>Explanations and nuances: Art. 342 ter refers to cohabitation and does not specify whether it means also same-sex relations or not. Even if it probably did not when the law entered into force (2001), it would nowadays be applied to same-sex for sure (recent Italian jurisprudence does not admit relevant differences in treatment between different and same-sex cohabitations; see question 2.9, General background). Nevertheless, there are no published same-sex cases, so far.</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.08 - Criminal procedure**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 Yes, but 0000	2016 Yes, but 1993
			N/A 0000		? 0000
References to legal sources: Art. 199 of the Criminal Procedure Code. Art. 307 of the Penal Code.		References to legal sources: Art. 199 of the Criminal Procedure Code. Art. 307 of the Penal Code. Art. 1, § 20, Law 20 May 2016, n. 76.		References to legal sources: Art. 199 of the Criminal Procedure Code. Art. 307 of the Penal Code.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Art. 199 of the Criminal Procedure Code (which refers to the definition of "relatives" in art. 307 of the Penal Code) applies to cohabitants only for facts known during the cohabitation. The Corte d'Assise di Torino, in a decision of 19 November 1993, held that the provision applies also to same-sex partners.	