

## Splitting up and legal family formats in Italy

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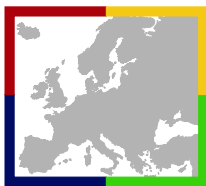
<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).



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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](http://www.LawsAndFamilies.eu) is based on the [LawsAndFamilies questionnaire](http://www.LawsAndFamilies.eu), 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](http://www.LawsAndFamilies.eu), 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](http://www.LawsAndFamilies.eu) 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](http://www.LawsAndFamilies.eu) 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](http://www.LawsAndFamilies.eu).

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](http://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 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.

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Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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
2016 Yes 1970	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	X	X
No 0000			N/A 0000	X	X
<p><b>References to legal sources:</b> First Book, sixth Title, fifth Chapter, of the Civil Code.</p> <p>Fourth book, second Title, of the Civil Procedure Code.</p> <p>Law 1 December 1970, n. 898.</p>		<p><b>References to legal sources:</b> First Book, sixth Title, fifth Chapter, of the Civil Code.</p> <p>Fourth book, second Title, of the Civil Procedure Code.</p> <p>Law 1 December 1970, n. 898.</p> <p>Art. 1, § 20, Law 20 May 2016, n. 76.</p>			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>			

Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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
2016 Yes, but 2014	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2016	X	X
No 0000			N/A 0000	X	X
<b>References to legal sources:</b> Art. 12 of the Legislative Decree of 12 September 2014, n. 132, converted into Law 10 November 2014, n. 162.		<b>References to legal sources:</b> Art. 12 of the Legislative Decree of 12 September 2014, n. 132, converted into Law 10 November 2014, n. 162.  Art. 1, § 25, Law 20 May 2016, n. 76.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The agreement that ends in an administrative procedure in front of the local public registrar can be made only in particular situations (i.e. the couple has no children).</p>		<p><b>Explanations and nuances:</b>                      The agreement that ends in an administrative procedure in front of the local public registrar can be made only in particular situations (i.e. the couple has no children). This rule now applies also to same-sex Civil Union, due to article 1, § 25, of Law n. 76 of 20 May 2016.</p>			

Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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
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:			
Explanations and nuances:		Explanations and nuances:			



Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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
2016 Yes, but 2014	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2016	X	X
No 0000			N/A 0000	X	X
<b>References to legal sources:</b> Art. 6 of the Legislative Decree of 12 September 2014, n. 132, converted into Law 10 November 2014, n. 162.		<b>References to legal sources:</b> Art. 6 of the Legislative Decree of 12 September 2014, n. 132, converted into Law 10 November 2014, n. 162.  Art. 1, § 25, Law 20 May 2016, n. 76.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The agreement [Convenzione di negoziazione assistita] can be made only in particular situations and must be finalised in front of a lawyer, who will send it to the registrar.</p>		<p><b>Explanations and nuances:</b>                      The agreement [Convenzione di negoziazione assistita] can be made only in particular situations and must be finalized in front of a lawyer, who will send it to the registrar. This rule now applies also to same-sex Civil Union, due to article 1, § 25, of Law n. 76 of 20 May 2016.</p>			

Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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
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:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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 N/A 0000	2016 No 2016	X	X
X	X		N/A 0000	X	X
		References to legal sources:			
		Explanations and nuances:			

Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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
2016 No, but 2016	2016 N/A 0000	2016 N/A 0000	2016 No 2016	X	X
No 0000			N/A 0000	X	X
<b>References to legal sources:</b> Art. 1, § 27, Law 20 May 2016, n. 76.		<b>References to legal sources:</b> Art. 1, § 26, Law 20 May 2016, n. 76.			
<b>Explanations and nuances:</b> Since marriage is for different-sex only while registered partnership is for same-sex only, marriage automatically converts into a same-sex Civil Union if the spouses declare that they want to remain "married" after the legal gender reassignment of one of them.		<b>Explanations and nuances:</b> Since marriage is for different-sex only while registered partnership is for same-sex only, in case of legal gender reassignment of one of the partners, same-sex Civil Union automatically ends.			

Jurisdiction: **Italy**

Source: **M. Gattuso, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IT-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	2016 N/A 0000	2016 No 2016	X	X
X	X		N/A 0000	X	X
		References to legal sources:			
		Explanations and nuances:			

Jurisdiction: **Italy**

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

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
2016 Yes, but 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2016	2016 No, but 2016	2016 No, but 2016
			N/A 0000	No 0000	No 0000
<b>References to legal sources:</b> First Book, sixth Title, sixth Chapter, of the Civil Code.		<b>References to legal sources:</b> First book, sixth Title, sixth Chapter, of the Civil Code.  Art. 1, § 20, Law 20 May 2016, n. 76.		<b>References to legal sources:</b> Art. 1, § 53, Law 20 May 2016, n. 76.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      By choosing a special regime [Regime della separazione dei beni], married couples may decide that possessions acquired during marriage will not be considered as joint possession.</p>		<p><b>Explanations and nuances:</b>                      By choosing a special regime [Regime della separazione dei beni], couples may decide that possessions acquired during marriage will not be considered as joint possession. This rule now applies also to same-sex Civil Union, due to article 1, § 20. of Law n. 76 of 20 May 2016.</p>		<p><b>Explanations and nuances:</b>                      By choosing a special regime [Regime della comunione dei beni], (opposite or same-sex) cohabitants may decide that possessions acquired during cohabitation will be considered as joint possession.</p>	



Jurisdiction: **Italy**

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

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
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><b>References to legal sources:</b> First Book, sixth Title, fifth Chapter, of the Civil Code.</p> <p>Art. 433 of the Civil Code.</p> <p>Fourth Book, second Title, of the Civil Procedure Code.</p> <p>Law 1 December 1970, n. 898.</p>		<p><b>References to legal sources:</b> First Book, sixth Title, fifth Chapter, of the Civil Code.</p> <p>Art. 433 of the Civil Code.</p> <p>Fourth Book, second Title, of the Civil Procedure Code.</p> <p>Law 1 December 1970, n. 898.</p> <p>Art. 1, § 25, Law 20 May 2016, n. 76.</p>		<p><b>References to legal sources:</b> Art. 1, § 65, Law 20 May 2016, n. 76.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> The law stresses that alimony should be proportionate to the duration of cohabitation.	

Jurisdiction: **Italy**

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

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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2016	2016 Yes 2012	2016 Yes, but 2012
			N/A 0000	Yes, but 2007	No 0000
				No 0000	
<b>References to legal sources:</b> Art. 315 bis of the Civil Code.		<b>References to legal sources:</b> Art. 315 bis of the Civil Code.		<b>References to legal sources:</b> Art. 315 bis of the Civil Code, as modified with Law n. 219/2012.	

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>                      The new law of 2016 about same-sex Civil Unions does not explicitly mention this issue, but it requires in case of divorce the use of the same rules of marriage (and mentions some rules which refer to "children" of the couple who is going through a divorce procedure). Moreover, with Law nr. 219 of 2012 Italy has introduced a complete harmonisation and equal treatment for parenthood inside and outside marriage and therefore children born inside and outside marriage have to be treated equally. Since the law is so recent, we do not have any case law, yet.</p>		<p><b>Explanations and nuances:</b>                      With Law nr. 219 of 2012, Italy has introduced a complete harmonisation and equal treatment for parenthood inside and outside marriage; i.e. children born inside and outside marriage have to be treated equally; there are some special procedural rules in order to achieve this principle for unmarried parents, considering that most procedural rules are in the separation and divorce regulation.</p> <p>There is some important case law for sons and daughters of same-sex couples, as explained in question 3.9 (second-parent adoption): once the double parental relation would be recognised, the same rules as for any parents should apply.</p> <p>The Court of Palermo [Tribunale di Palermo], decree of 15 April 2015, has recently held that the "social mother" of two children has the right to keep in touch and see them weekly, after the separation from the "legal mother"; this decision has already been overruled by the Court of Appeal on 31 August 2015, which sent the procedure to the Constitutional Court. The latter Court's decision will be of great importance.</p> <p>In the past, the Juvenile Court of Milan [Tribunale per i minorenni di Milano, which deals with civil and criminal cases], decree of 20 October 2009, held that the "social mother" of two children had no right to keep in touch and see them after separation from the "legal mother". All these decisions may be found on <a href="http://www.articolo29.it/genitori-2/coppie-omosessuali-con-figli-merito/">www.articolo29.it/genitori-2/coppie-omosessuali-con-figli-merito/</a></p>	