

Migration and legal family formats in Portugal

by Miguel Freitas¹

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

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 4 – Migration)

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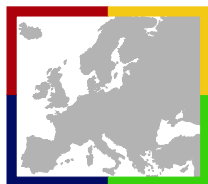
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The six sections of the questionnaire

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 Portugal

The answers concerning Portugal 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 Portugal
by Carlos Pamplona Côrte-Real (Section 1)**

**Income, troubles and legal family formats in Portugal
by Miguel Freitas (Section 2)**

**Parenting and legal family formats in Portugal
by Miguel Freitas (Section 3)**

**Migration and legal family formats in Portugal
by Miguel Freitas (Section 4)**

**Splitting up and legal family formats in Portugal
by Carlos Pamplona Côrte-Real (Section 5)**

**Death and legal family formats in Portugal
by Carlos Pamplona Côrte-Real (Section 6)**

So this paper is based on **Section 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 4.1 Partner of national citizen**
- 4.2 Partner of national citizen (foreign status)**
- 4.3 Partner of (non-EU) foreigner**
- 4.4 Partner of EU citizen (foreign status)**
- 4.5 Foreign status as impediment to marry**
- 4.6 Foreign status and inheritance**
- 4.7 Citizenship**
- 4.8 Recognition of joint adoption**
- 4.9 Recognition of second-parent adoption**
- 4.10 General background regarding migration**

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

4.10 - General background regarding migration (Open question)

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

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Jurisdiction: **Portugal**

Source: **M. Freitas**, "Migration and legal family formats in Portugal". 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-PT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

(Please assume that they married/registered/cohabited in the country where they now want to reside. As to the meaning of 'residing', see section c of the [Guidance for experts answering questions in the questionnaire](#).)

| Marriage | | Registered partnership | | Cohabitation | |
|---------------------|---------------------|------------------------|---------------------|---------------------|---------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 1981 | 2016 Yes 2010 | 2016 N/A 0000 | 2016 N/A 0000 | 2016 Yes 1999 | 2016 Yes 2001 |
| ? | N/A 0000 | | | No 0000 | No, but 1999 |
| | | | | | No 0000 |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>References to legal sources: Arts. 30, 31 and 32(d) of Decree-Law No. 264-B/81, of 3 September 1981.</p> <p>Art. 28 of Decree-Law No. 59/93, of 3 March 1993.</p> <p>Arts. 51(1)(2)(a) (see also arts. 56, 57(1)(a) and 58) of Decree-Law No. 244/98, of 8 August 1998, as amended by Law No. 97/99, of 26 July 1999).</p> <p>Arts. 1(2), 2(e)(ii) and 3(5) of Law No. 37/2006, of 9 August 2006.</p> | | <p>References to legal sources:</p> | | <p>References to legal sources: See references under Marriage.</p> | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|--|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: It should be noted that the wording of the aforementioned Decree-Law No. 264-B/81 was somewhat equivocal, although it was clear that "family ties" with a Portuguese national (or other legally foreign residents) was to be given relevance when deciding whether to issue a residence authorisation or not. This is the reason for the inclusion of all the period between 1981 and 2015 (as regards different-sex couples) under the "Yes" answer.</p> <p>Currently, entry into the country of "family members" of national citizens (a category which includes the spouse and the cohabiting partner of a Portuguese national) follows the same rules that are applicable to "family members" of EU citizens (the aforementioned provisions of Law No. 37/2006, of 9 August 2006).</p> <p>Civil marriage was only opened to same-sex couples in 2010 (by Law No. 9/2010, of 31 May, 2010).</p> | | <p>Explanations and nuances: This family format is not recognised by Portuguese law.</p> | | <p>Explanations and nuances: Law No. 97/99, of 26 July 1999, by which the Portuguese Parliament ratified (assented to) the Decree-Law No. 244/98, of 8 August 1998, included partners to a de facto union (for more than two years) in the category of "family members" for the purpose of the issuance of "residence authorizations" to foreign nationals. Although the law was clearly thought for different-sex couples (then the only ones that the legislator usually had in mind), it could be argued that, for reasons of equality, same-sex cohabiting couples should already be included under the terms of the law. After the entry into force of Law No. 7/2001, of 11 May 2001, this doubt, in my opinion, could no longer be entertained, since the wording of the applicable statute made no distinction concerning the sex of the cohabiting partners, and the law recognised, from that moment onwards, both different-sex and same-sex cohabiting couples.</p> <p>See also the remarks under Marriage.</p> | |

Jurisdiction: **Portugal**

Source: **M. Freitas**, "Migration and legal family formats in Portugal". 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-PT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

| Marriage | | Registered partnership | | Cohabitation | |
|---|---------------------|---|---------------------|--------------|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 1981 | 2016 Yes 2010 | 2016 Yes 2006 | 2016 Yes 2006 | X | X |
| ? 0000 | Yes, but 2006 | Yes, but 1999 | Yes, but 2001 | X | X |
| | No, but 2001 | Doubt 1998 | Doubt 1989 | X | X |
| | N/A 0000 | N/A 0000 | N/A 0000 | X | X |
| References to legal sources: See references to question 4.01. | | References to legal sources: See references to question 4.01. | | | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|--------------|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: See also the remarks under question 4.01.</p> <p>Until 2010 civil marriage was not open to same-sex couples in Portugal, and any kind of family formats that were not explicitly recognised under Portuguese law, according to what can be considered the predominant opinion, were considered to be in violation of the principles of Portuguese international public policy.</p> <p>Since 2001, however, Portuguese legislation recognised, for certain purposes, same-sex cohabiting couples, so a same-sex spouse could avail him/herself of that status to gain entry and residence in the country (a de facto union is defined as a couple living in conditions similar to those of a marriage).</p> <p>As for the period after 2006, it should be noted that Law No. 37/2006 of 9 August 2006 (regarding the entry into the country of EU citizens), which applies also to the "family members" of a Portuguese citizen, seems to have been designed to encompass other family formats other than those that are (were) recognised under Portuguese law, which means that although eventually not as such, a married same-sex couple would still be considered as a family unit for immigration purposes under the statute.</p> <p>After 2010, and the opening up of civil marriage to same-sex couples, there is no doubt that same-sex marriages, even if concluded abroad, are fully recognised under Portuguese law.</p> | | <p>Explanations and nuances: For the reasons I mention under the heading "Marriage", until 1999 it is doubtful that a registered partnership would be recognised for immigration purposes. After 1999, immigration law recognised a cohabiting couple for such purposes, and therefore a couple in a registered partnership could avail of such status to gain entry and residence in Portugal (hence the "but").</p> <p>After 2006, Law No. 37/2006, of August 9, 2006 (that I mention in my remarks under the heading "Marriage"), seems to have been designed to accommodate other family formats beyond cohabitation, especially registered partnerships, therefore justifying the simple "yes" answer.</p> <p>The previous remarks apply to same-sex registered partnerships, although only from 2001 onwards (the law recognising same-sex cohabiting couples coming into force in that year; see also the remarks made under this same heading in answer to question 4.01).</p> | | | |

Jurisdiction: **Portugal**

Source: **M. Freitas**, "Migration and legal family formats in Portugal". 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-PT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

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

| Marriage | | Registered partnership | | Cohabitation | |
|---------------------|---------------------|------------------------|---------------------|---------------------|---------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 1981 | 2016 Yes 2010 | 2016 N/A 0000 | 2016 N/A 0000 | 2016 Yes 2007 | 2016 Yes 2007 |
| ? 0000 | N/A 0000 | | | Yes, but 2001 | Yes, but 2001 |
| | | | | No 0000 | No 0000 |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>References to legal sources: Arts. 30, 31 and 32(d) of Decree-Law No. 264-B/81, of 3 September 1981.</p> <p>Art. 28(1)(d) and (2)(a) of Decree-Law No. 59/93, of 3 March 1993.</p> <p>Arts. 56(1) and 57(1)(a) of Decree-Law No. 244/98, of 8 August 1998.</p> <p>Arts. 98(1) and 99(1)(a) of Law No. 23/2007, of 4 July 2007.</p> | | <p>References to legal sources:</p> | | <p>References to legal sources: See the references made under the heading "Marriage".</p> | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: Between 2003 and 2007 a minimum period of one year residing in the country was required for the foreign national to be able to avail him or herself of the right to family reunification. This requirement was eliminated by the current immigration law (Law No. 23/2007, of 4 July 2007).</p> | | <p>Explanations and nuances: This family format is not recognised by Portuguese law.</p> | | <p>Explanations and nuances: Family reunification was only explicitly made available to couples living in a de facto union by the current legislation on immigration (see art. 100(1)(a) of Law No. 23/2007, of 4 July 2007).</p> <p>However, since 2001, art. 87(1)(i) of Decree-Law No. 244/98, as amended by Decree-Law No. 4/2001, of 10 January 2001, already allowed the entry into national territory, without the need of a visa, of the de facto partner of a national citizen or of a foreigner already legally residing in Portugal for the purpose of obtaining a "residence authorization".</p> <p>As explained previously, Decree-Law No. 244/98, of 8 August 1998, was amended by Parliament in order to extend to the de facto partner of a Portuguese citizen the right to reside in the country (see remarks made under this heading in answer to question 4.01) and in the same year the first law on de facto unions was passed. Also since 2001, the law on de facto unions was altered, with the effect of extending the provisions protecting such unions to same-sex cohabiting partners.</p> | |

Jurisdiction: **Portugal**

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Section: **4 - Migration**

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

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

| Marriage | | Registered partnership | | Cohabitation | |
|---------------------|---------------------|--------------------------|--------------------------|---------------------|---------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 1987 | 2016 Yes 2010 | 2016 Yes, but 1999 | 2016 Yes, but 2001 | 2016 Yes 2006 | 2016 Yes 2006 |
| Yes, but 1981 | Yes, but 2006 | No 1998 | No 1989 | Yes, but 1999 | Yes, but 2001 |
| ? 0000 | No, but 2001 | N/A 0000 | N/A 0000 | No 0000 | No 0000 |
| | N/A 0000 | | | | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>References to legal sources: Art. 2(c) of Decree-Law No. 267/87, of 2 July 1987 (although with some limitations stemming from the transitory measures then in force).</p> <p>Arts. 3 and 9 of Decree-Law No. 60/93, of 3 March 1993.</p> <p>Art. 3(e)(i) of Law No. 37/2006, of 9 August 2006.</p> | | <p>References to legal sources:</p> | | <p>References to legal sources: Art. 2(e)(ii) of Law No. 37/2006, of 9 August 2006.</p> | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: The legal references mentioned are the different statutes dealing with this matter that were published during the period considered.</p> <p>Before Portugal entered the EU and issued the first legislative provisions regarding entry and permanence of nationals of EU Member States in the country (in 1987), general rules on immigration applied, hence the "Yes, but" answer in the case of different-sex couples.</p> <p>As far as same-sex married couples are concerned, civil marriage is only available to them since 2010.</p> <p>Although such a family format was regarded, according to what may be considered the then predominant opinion, as violating principles of Portuguese international public policy, same-sex married couples could have probably avail themselves of the status of cohabiting couple for immigration purposes (hence the "No, but" answer until 2006).</p> <p>For the period after 2006, Law No. 37/2006 of 9 August 2006 (concerning the entry into the country of EU citizens), seems to have been designed to encompass other family formats other than those that are (were) recognised under Portuguese law, which means that although not as such, a married same-sex couple would eventually still be considered as a family unit for immigration purposes (hence the "Yes, but" answer).</p> | | <p>Explanations and nuances: See the remarks made under question 4.02.</p> | | <p>Explanations and nuances: See also the remarks made under question 4.03.</p> <p>Until 1999 cohabiting couples as such received no recognition under Portuguese law. Since then, different-sex cohabiting couples were recognised for a number of purposes, including immigration purposes. Although the law on the admission of EU citizens in the country then in force (Decree-Law No. 60/93, of 3 March 1993) made no explicit reference to cohabiting couples, from 1999 onwards it would have been inconsistent for the immigration authorities to object to the entry of the different-sex partners of EU citizens into Portugal. The same reasoning is valid, as stated previously, regarding same-sex cohabiting partners since 2001.</p> <p>With the entry into force of Law No. 37/2006, of 9 August 2006 (which replaced the above mentioned Decree-Law No. 60/93), Portuguese law has explicitly recognised the cohabiting partner as a "family member" of a EU citizen for immigration purposes, no reason existing to differentiate between different-sex and same-sex couples in this matter.</p> | |

Jurisdiction: **Portugal**

Source: **M. Freitas**, "Migration and legal family formats in Portugal". 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-PT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

| Marriage | | Registered partnership | | Cohabitation | |
|--|---------------------|------------------------------|-----------------------|--------------|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 0000 | 2016 Yes 2010 | 2016 Doubt 1998 | 2016 Doubt 1989 | X | X |
| | Doubt 2001 | N/A 0000 | N/A 0000 | X | X |
| | N/A 0000 | | | X | X |
| References to legal sources: Arts. 1601(c) of the Civil Code. | | 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 civil marriage was only opened to same-sex couples in 2010, and since, according to what can be considered the predominant opinion then, same-sex marriages were held to be contrary to the principles of Portuguese public international policy, it is not clear if a previous same-sex marriage would be considered as an impediment to a different-sex marriage, hence the "doubt".</p> | | <p>Explanations and nuances: Since this family format is not recognised by Portuguese law (and it being contentious how and to what extent they can be recognised under Portuguese law), it is not specifically listed as an impediment to marriage.</p> <p>Depending on whether the relationship is considered akin to marriage or to a de facto union - something that will, in turn, depend on the law of the country in which the relationship was registered - it then will (or won't, respectively) be held as an impediment to marriage under Portuguese law (a previous marriage is an impediment to marriage, as mentioned, but a de facto union is not).</p> <p>See also the remarks made under the same heading in the answer to question 4.06.</p> | | | |

Jurisdiction: **Portugal**

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Section: **4 - Migration**

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

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

| Marriage | | Registered partnership | | Cohabitation | |
|--|---------------------|------------------------------|--------------------------|--------------|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 0000 | 2016 Yes 2010 | 2016 Yes, but 1998 | 2016 Yes, but 2010 | X | X |
| | Doubt 2001 | N/A 0000 | Doubt 1989 | X | X |
| | N/A 0000 | | N/A 0000 | X | X |
| References to legal sources: Art. 62 of the Civil Code. | | References to legal sources: | | | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|--|----------|--------------|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: Before the opening up of civil marriage to same-sex couples in 2010, recognition of marriages concluded abroad, as such, was a matter of contention (with some arguing that such recognition would be against Portuguese international public policy). It should be noted, however, that even if a same-sex marriage concluded abroad may not have been recognised under Portuguese law, the underlying contract could, however, be recognised some effects, including for inheritance purposes. Since this question has not been tested before the courts, that justifies an answer of "Doubt" for the period preceding the aforementioned date of 2010.</p> <p>As regards different-sex couples, the answer assumes that at least almost all national legal orders would consider the spouse as an heir in case of the intestate demise of the other spouse, and so, either by application of Portuguese law or in accordance with the applicable foreign law, the answer to this question should be "Yes". If this is not so in a specific case, then the surviving spouse would not be recognised as regards inheritance in the absence of a will (and in case Portuguese law was not to apply in the circumstances).</p> | | <p>Explanations and nuances: Although this family format is not recognised by Portuguese law (and it being contentious how and to what extent it can be recognised under Portuguese law), for inheritance purposes the law of the country in which the relationship was registered will be relevant, so registered partners will, in principle, be regarded as heirs to a deceased partner even in the absence of a testament. Given the diversity of legal regimes concerning registered partnerships, however, it is not possible to give a single "yes/no" answer to this question.</p> <p>For the "Doubt" answer concerning same-sex couples, see the remarks made under the heading "Marriage".</p> | | | |

Jurisdiction: **Portugal**

Source: **M. Freitas**, "Migration and legal family formats in Portugal". 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-PT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.07 - Citizenship**

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

| Marriage | | Registered partnership | | Cohabitation | |
|---|--------------------------|-------------------------------------|---------------------|--|--------------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes, but 1994 | 2016 Yes, but 2010 | 2016 N/A 0000 | 2016 N/A 0000 | 2016 Yes, but 2006 | 2016 Yes, but 2006 |
| Yes 1981 | N/A 0000 | | | No 0000 | No 0000 |
| ? 0000 | | | | | |
| References to legal sources: Art. 3(1) of Law No. 37/81, of 3 October 1981, as amended by Law No. 25/94, of 19 August 1994. | | References to legal sources: | | References to legal sources: Art. 3(3) of Law No. 37/81, of 3 October 1981, as added by "Organic" Law ("Lei Orgânica") No. 2/2006, of 17 April 2006. | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|--|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: In its original version, Law No. 37/81 allowed the spouse of a Portuguese national to obtain Portuguese citizenship by just making a declaration to such effect while still married.</p> <p>Law No. 25/94 added a temporal requirement: only if the marriage has lasted for, at least, 3 years, can the spouse of a Portuguese national acquire Portuguese citizenship by making the aforementioned declaration.</p> | | <p>Explanations and nuances: This family format is not recognised by Portuguese law.</p> <p>As for registered partnerships concluded abroad, and although this family format is not recognised by Portuguese law, see the remarks made under questions 4.05 and 4.06.</p> <p>In any case, if not considered as a married couple for the purpose of obtaining citizenship, partners to a registered partnership can always obtain the (almost) same result by invoking their cohabiting status (see the remarks made under the heading "Cohabitation").</p> | | <p>Explanations and nuances: Organic Law No. 2/2006 has added section 3 to art. 3 of Law No. 37/81, allowing the partner living in a de facto union with a Portuguese national for at least 3 years to obtain Portuguese citizenship, although, in this case, judicial recognition of the existence of the de facto union is required.</p> | |

Jurisdiction: **Portugal**

Source: **M. Freitas**, "Migration and legal family formats in Portugal". 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-PT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

| Marriage | | Registered partnership | | Cohabitation | |
|---|---------------------|------------------------------|---------------------|------------------------------|---------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 0000 | 2016 Yes 2016 | 2016 N/A 0000 | 2016 N/A 0000 | 2016 Yes 2001 | 2016 Yes 2016 |
| | Doubt 2010 | | | Doubt 0000 | No 0000 |
| | N/A 0000 | | | | |
| References to legal sources: Art. 60(2) of the Civil Code. | | 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: As for same-sex married couples, in the absence of legislation specifically authorizing it, the Portuguese civil registry authorities refused to incorporate, into the Portuguese civil registry, any "fact" (vital event) subject to registration – namely, the parentage of a child, or his/her adoption by a same-gender couple – in contravention with national legislation, including the ban on 'surrogate motherhood' (art. 8(1)(2) of Law No. 32/2006, of 26 July 2006) and the unavailability, to same-gender couples, of joint and stepparent adoption (arts. 7 of Law No. 7/2001, of 11 May 2001, and 3(1)(2) of Law No. 9/2010, of 31 May 2010; see para. 3 of the decision No. 87/2010, taken on 19 July 2010 by the President of the Registries and Notaries Institute, available at).</p> <p>It was not clear, therefore, if and to what extent Portuguese authorities would be inclined to recognise a joint adoption by a same-sex married couple concluded abroad, hence the answer "No".</p> <p>UPDATE 2016: Since the entry into force of Law No. 2/2016, of 29 February 2016, no reason exists not to recognise joint and second-parent adoptions concluded in a foreign country. This, in my opinion, is also true regarding couples living in a registered partnership, although it is a family format not available under Portuguese law, since recognition of the adoption wouldn't necessarily mean the recognition of the legal format of the adoptive parents' relationship.</p> | | <p>Explanations and nuances: This family format is not recognised by Portuguese law.</p> | | <p>Explanations and nuances: Art. 7 of Law No. 7/2001, of 11 May 2001, specifically granted different-sex cohabiting couples the right to jointly adopt children, which cannot but be interpreted as excluding the possibility of a second-parent adoption by a same-sex partner (which would have the same practical effect).</p> <p>As for the period previous to 2001, the answer will depend on if the "personal law" of the adoptive(s) parent(s) allow such adoption, which will depend on the law applicable under Portuguese private international law rules (the already mentioned art. 60 of the Civil Code).</p> <p>See also the remarks made under the heading "Marriage".</p> | |

Jurisdiction: **Portugal**

Source: **M. Freitas**, "Migration and legal family formats in Portugal". 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-PT-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

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

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

| Marriage | | Registered partnership | | Cohabitation | |
|--|---------------------|---|---------------------|--|---------------------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| 2016 Yes 0000 | 2016 Yes 2016 | 2016 N/A 0000 | 2016 N/A 0000 | 2016 Yes 2001 | 2016 Yes 2016 |
| | Doubt 2010 | | | Doubt 0000 | No 0000 |
| | N/A 0000 | | | | |
| References to legal sources: | | References to legal sources: | | References to legal sources: | |
| Explanations and nuances: See the remarks made under this same heading to question 4.08. | | Explanations and nuances: This family format is not recognised by Portuguese law. | | Explanations and nuances: See the remarks made under the heading "Marriage" to question 4.08; see also the remarks made under the heading "Cohabitation" to answers 3.09 and 3.10. | |