

# Splitting up and legal family formats in Portugal

by Carlos Pamplona Côte-Real <sup>1</sup>

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

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 5 – Splitting up)

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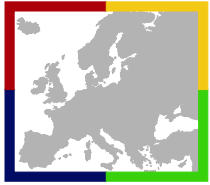
<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).



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# FamiliesAndSocieties

## Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about 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](http://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 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: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.01 - Dissolution by court**

Can this type of relationship be ended by court decision?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2008	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	X	X
Yes, but 1975	N/A 0000			X	X
Yes, but 1940				X	X
Yes, but 1910				X	X

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<b>References to legal sources:</b> Civil Code, Articles 1773, 1775, 1776-A and 1778, as amended by Law 61/2008, 31 October.  Decree 272/2001, 13 October.  Decree 3 November 1910.		<b>References to legal sources:</b>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Unless the divorce happens by mutual consent (in which case it must be requested at the civil registry), but even then there can be no irreparable divergences regarding the exercise of parenthood, nor may the demanded agreements damage the interest on any of the spouses or minor children. Before 2008, the regime was similar, but after 2008, the competences of the civil registries were extended, namely in divorces with mutual agreement.</p> <p>Although cohabitation is not included in this question, it is worth mentioning that Law 7/2001, 11 May, mentions cases in which the dissolution of cohabitation (de facto union) should be decreed by judicial decision (see Article 8 numbers 2 and 3).</p> <p>The additional protocol of 15 February 1975 to the 1940 concordat admitted divorce to catholic marriages, although it recommended catholic people not to apply for divorce. This was maintained in the 2004 revision of the concordat. The 1940 concordat forbids the divorce to catholic marriage (but not to civil marriage).</p> <p>Divorce to civil marriage was admitted in 1910 by Decree 3 November.</p>		<p><b>Explanations and nuances:</b>                      As a reference, in Portugal there is no Registered Partnership.</p>			

Jurisdiction: **Portugal**

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

Section: **5 - Splitting up**

Question: **5.02 - Agreed administrative dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 2001	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	X	X
No 0000	N/A 0000			X	X
<b>References to legal sources:</b> Decree Law 272/2001, partially altered by Law 61/2008.		<b>References to legal sources:</b>			



Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Yes, at the civil registry, for mutual consent divorces. As long as the following documents are attached to the divorce request: specified listing of common assets and an agreement for the sharing of those assets, by statutory requirement; previous certificate of a judicial sentence which regulates the exercise of parental responsibilities or an agreement on this exercise; agreement on alimony; agreement on the family residency; certificate of the prenuptial agreement (Article 1775 of the civil code). Until Law 272/2001 of 13 October, it was not possible for a divorce to be done in an administrative procedure.</p>		<p><b>Explanations and nuances:</b></p>			

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.03 - Unilateral administrative dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.04 - Agreed informal dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.05 - Unilateral informal dissolution**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Portugal**

Source: **C. Pamplona Côrte-Real**, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-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	2015 N/A 0000	X	X
		References to legal sources:			
		Explanations and nuances:			

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: **5 - Splitting up**

Question: **5.07 - Ending by conversion**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 No 0000	2015 No 2010	2015 N/A 0000	2015 N/A 0000	X	X
	N/A 0000			X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **Portugal**

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

Section: **5 - Splitting up**

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

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2015 N/A 0000	2015 N/A 0000	X	X
		References to legal sources:			
		Explanations and nuances:			

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-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
2015 Yes, but 0000	2015 Yes, but 2010	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
	N/A 0000				
<b>References to legal sources:</b> Civil Code, Articles 1724 and following, and 1732 and following.  Civil Code, Articles 1790 to 1793.		<b>References to legal sources:</b>		<b>References to legal sources:</b> Law 7/2001, altered by Law 23/2010 30 August.	



Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            It depends on the property scheme adopted by the couple. In case of divorce, none of the spouses can receive more than they would receive if the marriage had been celebrated in partial community (Article 1790 of the Civil Code). Article 1793 allows the court to rule that the residency home, property of one of the spouses or both, is assigned to the spouse that needs it the most, under a leasing agreement. The same happens when the leasehold of the residency home is held by one the spouses.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            The law has no property consequences except the right to the family home and rights attached to social security.</p>	

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-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
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	2015 Yes 0000	2015 Yes 0000
	N/A 0000				
<b>References to legal sources:</b> Civil Code, Articles 2015, 2016, 2016-A, 2018 and 2019.		<b>References to legal sources:</b>		<b>References to legal sources:</b> Civil Code, Article 2020, Numbers 1 and 2.  Law 7/2001, 31 May, Article 3 (e, f, g), as amended by Law 23/2010, 30 August.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The law determines that alimony may be judicially denied for reasons of equity, and whenever the receiver remarries, or starts cohabitation or if by any other relevant motive he/she becomes unworthy. When one of the former spouses has excessively dedicated his/her life to household and parental responsibilities, he/she is entitled to a compensatory pension from the other spouse. The right to alimony is not designed to maintain the same standard of living one had during the marriage, although many factors must be taken into consideration, which may increase the monthly amount (see Article 2016, Numbers 1 and 2 of the Civil Code).</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      The surviving partner is entitled to alimony from the inheritance of the deceased, which will cease in case of new marriage, new cohabitation or undignified behaviour. The surviving partner is entitled to a survivor's pension and death benefits.</p>	

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-PT-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 Yes 2016	2016 N/A 0000	2016 N/A 0000	2016 Yes 0000	2016 Yes 2016
	No 2010				No 0000
	N/A 0000				
<b>References to legal sources:</b> Civil Code, Article 1906, Numbers 1, 3 and 5, 1910, 1911, 1912, as amended by Law 2/2016, 29 February.  Constitution of the Portuguese Republic, Article 36, Numbers 3 and 5.		<b>References to legal sources:</b>		<b>References to legal sources:</b> Civil Code, Article 1911 and 1912, as amended by Law 2/2016, 29 February.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Civil Code, Article 1906, Numbers 1, 3 and 5 determine that in matters of particular importance to the life of the child, parental responsibilities are exercised by both divorced parents or judicially separated, while parental responsibilities related to daily life are exercised by the parent who lives with the child. The other parent must respect the decisions made by the other parent and supervise the exercise of parental responsibilities. This solution is discriminatory and seems to affect the principle of equality established by the Constitution, Article 36, Numbers 3 and 5, as it seems not to accept a shared custody.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>                      These articles apply to cohabitation a similar regime as established in Articles 1904 to 1908, especially Article 1906, with due adaptations.</p>	