



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

Kees Waaldijk, José María Lorenzo Villaverde, Natalie Nikolina, Giuseppe Zago

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Abstract:

This Working Paper of the research project FamiliesAndSocieties contains the text of the LawsAndFamilies questionnaire, and the text of the guidance document provided to legal experts answering this questionnaire. These texts are preceded by a brief introduction to the background, aims and development of this questionnaire on legal family formats for same-sex and/or different-sex couples. The majority of questions ask if – in the jurisdiction of the legal expert concerned – a specific legal consequence is attached or not to (same-sex and/or different-sex) marriage, registered partnership and/or cohabitation. And it asks since when this is so. The questions are about legal aspects of formalisation, income and troubles, parenting, migration, splitting up and death. The questionnaire is used to create *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, www.LawsAndFamilies.eu, where from early 2017 the answers to the questionnaire provide an overview of the legal situation in more than 20 European countries.

Keywords: family law, marriage, registered partnership, cohabitation, same-sex couples, different-sex couples

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1. Introduction

Family diversity is an important aspect in the large research project *FamiliesAndSocieties – Changing families and sustainable societies: Policy contexts and diversity over the life course and across generations* (www.familiesandsocieties.eu), of which this LawsAndFamilies questionnaire and the resulting LawsAndFamilies Database are a part.¹

This legal survey is about families and laws beyond different-sex marriages. It looks at the legal aspects of family diversity across more than 20 European countries. It introduces the new term *legal family format* to refer to family forms (for couples) that have legal effects.² It distinguishes between three broad categories of legal family formats for different-sex and/or same-sex couples: marriage, registered partnership, and cohabitation. The questionnaire focuses on the legal consequences (rights and obligations) that are attached (or not) to these legal family formats in six wide fields, formalisation, income and troubles, parenting, migration, splitting up and death. It also asks about the possibilities for getting into or out of legal family formats.

Aims and hypotheses

In emails sent out in 2015 to selected legal experts, inviting them to complete this questionnaire for their jurisdictions, its aim was articulated as getting closer to answering various research questions:

“Which of the main legal consequences of different-sex marriage are now, in different European countries, also available to same-sex couples and/or to non-married different-sex couples? Since when have these legal consequences been available to these couples, and through which family formats? Which trends and patterns can be found in this progressive realization of the human right to non-discriminatory respect for family life? Do these

¹ Although the questionnaire in this project had first been given the name “FamiliesAndLaws” it was later decided to change this to “LawsAndFamilies” (with the resulting database being called “The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples”), because this would distinguish it better from other projects, and it would emphasize the legal focus of this research project.

² This term proposed by Kees Waaldijk was already presented in earlier publications that he wrote for this project, including: Waaldijk, K. (2014). Legal Family Formats for (Same-Sex) Couples. In Thevenon, O., & Neyer, G. (Eds.), *Family Policies and Diversity in Europe: The state-of-the-art regarding fertility, work, care, leave, laws and self-sufficiency* (pp. 42-55). Stockholm: Stockholm University (FamiliesAndSocieties Working Paper Series, nr. 7(2014), www.familiesandsocieties.eu); and Waaldijk, K. (2014). Great diversity and some equality: non-marital legal family formats for same-sex couples in Europe. *GenUS – Rivista di studi giuridici sull'orientamento sessuale e l'identità di genere*, 1(2), 42-56 (www.articolo29.it).

European countries meet the minimum standards that are developing in European law? It is hoped that the results will also suggest ways how (European) legislation and case law could build further on the emerging consensus and trends in the countries studied. Finally, the outcomes of this legal research will be made available for use in sociological and demographic research.”

And at the first Annual Meeting of the *FamiliesAndSocieties* research project in Tallinn in January 2014, José María Lorenzo Villaverde and Kees Waaldijk presented the following tentative hypotheses regarding the possible outcomes of this survey:

“Legislative trends on different legal family formats:

1. There has been a trend of legal recognition of same-sex couples – by creating registration schemes, by opening up marriage, and/or by attaching more legal consequences to these schemes.
2. Legal recognition of informal cohabitation plays a limited role in the trend towards further legal recognition of same-sex couples.
3. There is no general trend regarding the access of different-sex couples to registration schemes.
4. The introduction of same-sex marriage is never followed by the introduction of registered partnership.
5. Most introductions of same-sex marriage stop or slow down the attachment of more legal consequences to registered partnership.
6. Most introductions of same-sex marriage are preceded by introduction of registered partnership.

Legal consequences of legal family formats

7. There is no general pattern in the attachment of legal consequences of marriage to informal cohabitation. The focus of such attachment varies from private law in some countries to public law in others. This variation may resemble different welfare models.
8. In an increasing number of countries, informal cohabitation and/or registered partnership and/or same-sex marriage are – in their legal consequences – equivalent to the legal consequences of marriage.
9. There is a number of legal consequences of marriage that are typically among the first to be made available to same-sex couples or informal different-sex cohabitants.

European standards

10. The standards developed in European Union law and by the European Court of Human Rights (ECtHR) are not met in all countries studied.

11. There is a number of legal consequences of marriage that are now so commonly available to same-sex couples, that the ECtHR could observe an existing or emerging consensus in Europe.
12. There is a number of legal consequences of marriage that are now so commonly available to cohabiting different-sex couples, that the ECtHR could observe an existing or emerging consensus in Europe.

Non-legal factors

13. The general trends mentioned above are (still) highly subject to variations because of the political and cultural context of each country.

Frequency of marriage, partnership registration, informal cohabitation

14. Attachment of a high level of legal consequences (LLC) to informal cohabitation does not necessarily correspond with a high percentage of couples living in informal cohabitation.
15. The LLC of registered partnership, especially positive consequences, does not correlate much (on its own or in relation to the LLC of informal cohabitation) with the frequency of partnership registration.
16. The frequency of partnership registration correlates to some degree with the availability of non-judicial termination of such partnerships.
17. The frequency of same-sex marriages or same-sex partnership registrations can in part be explained by the (non-)availability of legal parenting consequences.”

Please note that these hypotheses were formulated before the text of the questionnaire was finalised (so before we changed the term “informal cohabitation” into “cohabitation”), and long before the legal experts in the countries started to answer the questionnaire.

Acknowledgements

The texts of the LawsAndFamilies questionnaire and of its accompanying Guidance document have been developed at Leiden Law School / Universiteit Leiden (on the basis of earlier versions used for the 2005 report *More or less together*³), by Kees Waaldijk (www.law.leidenuniv.nl/waaldijk) in collaboration with three researchers there: José María Lorenzo Villaverde at first, and at a later stage Giuseppe Zago and Natalie Nikolina.

³ Waaldijk, K. (ed.) (2005). *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries*. Paris: Institut national d'études démographiques (INED), <http://hdl.handle.net/1887/12585>.

As a researcher for this project at Leiden Law School (2013/2014) José María Lorenzo Villaverde contributed to the selection and formulation of the questions, and to the drafting of the Guidance document; one of the important aspects he contributed to, on the basis of his expertise on Spanish legislations,⁴ was defining the characteristics that distinguish “cohabitation” from “registered partnership”. As researchers for this project at Leiden Law School, both Giuseppe Zago (2014/2016) and Natalie Nikolina (2015/2016) contributed to finalising the formulation of the questions and of the Guidance document, and they were involved in coordinating the LawsAndFamilies questionnaire together with Kees Waaldijk, and especially in keeping in contact with more than 40 experts in more than 20 European countries completing the questionnaire and in making the results of the questionnaire ready for inclusion in the online LawsAndFamilies Database,⁵ hosted by the Institut national d’études démographiques (INED) in Paris. From early 2017 the results of this questionnaire are publicly available in this database, that can be accessed via www.LawsAndFamilies.eu, with more results being added, and soon with links to publications making a comparative analysis of these legal data.

Many improvements and clarifications in the text of this questionnaire and of its Guidance document were possible thanks to the various responses that were received in several rounds of consultations about draft versions of the questionnaire in 2013 and 2014. These consultations led to useful suggestions from several partners and stake-holders of the FamiliesAndSocieties project, and from legal experts from various countries. And a final round of clarifications could be made thanks to legal experts from Spain (including Belén Trigo García, Miguel Vieito Villar, and José María Lorenzo Villaverde) who kindly agreed to answer parts of this questionnaire using a 2014 test-version of the questionnaire. Subsequently, the web application used to let experts from other countries answer this secured questionnaire online, has been developed (with *Voozango* software of the company EpiConcept) by Kamel Nait Abdellah at the Institut national d’études démographiques (INED) in Paris.

⁴ Expertise gained and developed in his PhD research at the Faculty of Law of the University of Copenhagen since 2009. See Lorenzo Villaverde, J.M. (2015). *The Legal Position of Same-Sex Couples in Spain and Denmark. A Comparative Study of Family Law*. Copenhagen: Faculty of Law of the University of Copenhagen (PhD thesis defended April 2016, not yet published).

⁵ Waaldijk, K., Digoix, M., Nikolina, N., Zago, G., Damonzé, D., Caporali, A., & Nait Abdellah, K. (2017). *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, www.LawsAndFamilies.eu.

In short: too many people and organisations to mention here individually: great thanks to everyone!

Use of this questionnaire

Open Access is one of the basic principles of *FamiliesAndSocieties*: Therefore the LawsAndFamilies Database and the accompanying documentations, including this working paper, are made publicly available. The text of the questionnaire and the guidance in this working paper may be used for further research and other non-commercial use beyond the project, on condition that appropriate credit is given by referring to this working paper. The authors would like to hear about any such use of the questionnaire, and of course also about any results obtained or published (see the contact form at www.LawsAndFamilies.eu). If the questionnaire is used with any variation in the selection or the text of the questions, a specific mention of these variations must be included in the reference to this working paper.

The authors and Universiteit Leiden cannot be held liable for damage or consequences from the direct or indirect use of contents of this working paper.

Recommended citation

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2. Text of the LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples

The text of the questions below was finalised in May 2015.⁶ See also the Guidance document included after the text of the questionnaire.

The overview of questions below follows the subdivision of the questionnaire in six sections:

Section 1 – Formalisation

Section 2 – Income and troubles

Section 3 – Parenting

Section 4 – Migration

Section 5 – Splitting up

Section 6 – Death

Example of how the answer-fields for most questions look in the actual questionnaire:

| | | | | | | | |
|---------------------------------|--|--|--|--|--|--|--|
| | | In grey fields below, please give one of the following answers: Yes; Yes, but; No; No, but; N/A. If <i>you yourself</i> do not know or find an answer, please put a question mark (?); but if <i>the law</i> does not know the answer, please put “Doubt”. On dots below please mention a year, or a question mark (?). In open fields below, please give the relevant references and – if necessary – some explanations or nuances. | | | | | |
| | | Marriage | | Registered partnership | | Cohabitation | |
| | | different sex | same sex | different sex | same sex | different sex | same sex |
| 1.1 Legal family formats | Which of the three legal family formats mentioned here are available to different-sex and/or same-sex couples? | Now: [grey] Until : [grey] Until : [grey] Until : [grey] Until | Now: [grey] Until : [grey] Until : [grey] Until : [grey] Until | Now: [grey] Until : [grey] Until : [grey] Until : [grey] Until | Now: [grey] Until : [grey] Until : [grey] Until : [grey] Until | Now: [grey] Until : [grey] Until : [grey] Until : [grey] Until | Now: [grey] Until : [grey] Until : [grey] Until : [grey] Until |
| | References to legal sources | | | | | | |
| | Explanations and nuances | | | | | | |

⁶ Although the questionnaire in this project had first been given the name “FamiliesAndLaws” it was later decided to change this to “LawsAndFamilies”.

Section 1 – Formalisation

| | |
|--|--|
| 1.1 Legal family formats | Which of the three legal family formats mentioned here are available to different-sex and/or same-sex couples? <i>(For the distinction between registered partnership and cohabitation, see section e of the Guidance. If there are two or more formats available for cohabiting couples, then please mention these formats separately in the explanation to this question.)</i> |
| 1.2 Two siblings | Is starting this type of relationship legally possible for two siblings? |
| 1.3 With resident foreigner | Is starting this type of relationship legally possible for a national citizen and a foreigner both residing in the country? <i>(As to the meaning of “residing”, see section c of the Guidance.)</i> |
| 1.4 With non-resident foreigner | Is starting this type of relationship legally possible for a national citizen residing in the country and a foreigner residing abroad? |
| 1.5 Two foreigners | Is starting this type of relationship legally possible for two foreigners, only one of whom is residing in the country? |
| 1.6 Two resident foreigners | Is starting this type of relationship legally possible for two foreigners residing in the country? |
| 1.7 Two non-resident foreigners | Is starting this type of relationship legally possible for two foreigners residing abroad? |
| 1.8 Start at registry | Can you legally start this type of relationship at the registry of births, marriages and deaths (<i>État civil, Standesamt</i>)? |
| 1.9 Start at public authority | Can you legally start this type of relationship at another public authority (e.g. notary public, local population administration, court)? |
| 1.10 Start at religious building | Can you legally start this type of relationship at a church, synagogue, mosque or other religious building? |
| 1.11 Contract | Can the partners make a contract (with or without third-party effect) to organise their relationship, for example with regard to property or personal obligations? <i>(Think of prenuptial contracts and cohabitation contracts.)</i> |
| 1.12 Statutory contract | Are there specific statutory rules regarding such a contract? <i>(See question 1.11 about the possibility for the partners to make a contract to organise their relationship.)</i> |
| 1.13 Surname | Can (or must) one partner use or have the surname of the other partner? |
| 1.14 Living together | Do partners in this type of relationship have a duty to live together in the same house? |
| 1.15 Sex | Does the law require relationships of this type to be sexual or intimate? |
| 1.16 General background regarding formalisation | If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, constitutional, legal-cultural, religious, etc.) that may be relevant for the understanding of your answers above regarding formalisation, then please do so here. |
| 1.17 Literature | Please list some relevant literature about the family formats concerned, especially in English and/or online (with web links). Please start the list with the publications in English. |

Section 2 – Income and troubles

| | |
|---|---|
| 2.1 Lower income tax | Can a relationship of this type result in lower income tax than for two individuals without a partner? |
| 2.2 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? |
| 2.3 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? |
| 2.4 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? |
| 2.5 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? |
| 2.6 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)? |
| 2.7 Domestic violence | When one partner uses violence against the other partner, does specific statutory protection apply? |
| 2.8 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? |
| 2.9 General background regarding income and troubles | 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. |

Section 3 – Parenting

| | |
|------------------------------|---|
| 3.1 Assisted insemination | Is it legally possible in this type of relationship to become pregnant through medically assisted insemination using sperm of a donor? |
| 3.2 IVF | Is it legally possible in this type of relationship become pregnant through <i>in vitro fertilisation</i> (IVF) using donated egg or sperm? |
| 3.3 Surrogacy | Is it legally possible for both partners in this type of relationship to become the legal parents of a child through the help of a surrogate mother in the country? |
| 3.4 Legal parenthood | When one partner gives birth, will (or can) the other partner then also become legal parent of the child, without having to go through adoption? <i>(For example automatically, or by way of recognition/acknowledgement.)</i> |
| 3.5 Parental authority | Is joint parental authority/responsibility possible for the couple, while only one of the partners is the legal parent of the child? |

| | |
|--|---|
| 3.6 Parental leave for both parents | When both partners are the legal parents of a child, does each partner then have a statutory right to paid or unpaid parental leave? |
| 3.7 Parental leave for partners | When only one partner is the legal parent of a child, does each partner then have a statutory right to paid or unpaid parental leave? |
| 3.8 Grandparents | Do grandparents have a statutory right to visit the children in this type of relationship? |
| 3.9 Second-parent adoption | When only one partner is the legal parent of a child, does the other partner then have the possibility of becoming the child's second parent by way of adoption? |
| 3.10 Joint adoption | Can partners jointly adopt a child? |
| 3.11 Individual adoption | Can one partner in this type of relationship individually adopt a child? |
| 3.12 General background regarding parenting | 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 of your answers above regarding parenting, then please do so here. |
| 3.13 Single parenting | If there are any developments in legal policy and case law regarding the possibilities of an individual person without a partner to have a child through adoption, medically assisted insemination, and/or IVF, you could indicate that here. |
| 3.14 Multiple parenting | If there are any developments in legal policy or case law regarding possibilities for a child to have more than two parents, you could indicate that here. |

Section 4 – Migration

| | |
|---|--|
| 4.1 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? <i>(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.)</i> |
| 4.2 Partner of national citizen (foreign status) | When one partner is a residing national citizen, while the other partner is a foreigner from another continent, <i>and this couple married/registered in the country of the foreigner</i> , will the foreign partner then have a residence entitlement/eligibility? |
| 4.3 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? <i>(Please assume that they married/registered/cohabited in the country where they now want to reside.)</i> |
| 4.4 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, <i>and this couple married/registered/cohabited in the country of the EU citizen</i> , will the non-EU partner then have a residence entitlement? |

| | |
|--|---|
| 4.5 Foreign status as impediment to marry | <i>When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?</i> |
| 4.6 Foreign status and inheritance | <i>When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?</i> |
| 4.7 Citizenship | Does a relationship of this type make it easier for a foreign partner to obtain citizenship? |
| 4.8 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? |
| 4.9 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? |
| 4.10 General background regarding migration | 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 of your answers above regarding migration, then please do so here. |

Section 5 – Splitting up

| | |
|--|---|
| 5.1 Dissolution by court | Can this type of relationship be ended by court decision? |
| 5.2 Agreed administrative dissolution | Can this type of relationship be ended by mutual agreement in an administrative procedure? |
| 5.3 Unilateral administrative dissolution | Can this type of relationship be ended by one partner unilaterally in an administrative procedure? |
| 5.4 Agreed informal dissolution | Can this type of relationship be ended by mutual agreement without involvement of any authority? |
| 5.5 Unilateral informal dissolution | Can this type of relationship be ended by one partner unilaterally without involvement of any authority? |
| 5.6 Dissolution by marrying someone else | Can a registered partnership be ended by one partner marrying someone else? |
| 5.7 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)? |
| 5.8 Ending by marrying each other | Can a registered partnership be ended by the partners marrying each other? |
| 5.9 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? |
| 5.10 Alimony | In case the partners split up, do statutory rules on alimony apply? |

| | |
|---|--|
| 5.11 Parental authority | In case the partners split up, do statutory rules on parental authority/responsibility apply? |
| 5.12 General background regarding splitting up | 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 of your answers above regarding splitting up, then please do so here. |

Section 6 – Death

| | |
|---|--|
| 6.1 Tenancy continuation | When the partner who holds the rental contract dies, does the other partner then have a right to continue to rent the home? |
| 6.2 Property at death | When one partner dies, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship? <i>(In other words: would the surviving partner be deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law?)</i> |
| 6.3 Inheritance | When one partner dies without testament, is the other partner then an inheritor? |
| 6.4 Inheritance tax | Is the surviving partner exempted from paying inheritance tax (or required to pay less than a mere friend would have to pay)? |
| 6.5 Survivor's pension | When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension? <i>(For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)</i> |
| 6.6 Wrongful death | In case of wrongful death of one partner, is the other partner then entitled to compensation from the wrongdoer? |
| 6.7 General background regarding death | 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 of your answers above regarding the death of one partner, then please do so here. |

3. Guidance for experts answering questions in the LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples

The text of this Guidance was finalised in June 2015.⁷ For the text of the questionnaire itself, see above, under 2.

Introduction

Family diversity is an important aspect in the large research project *FamiliesAndSocieties – Changing families and sustainable societies: Policy contexts and diversity over the life course and across generations* (www.familiesandsocieties.eu), of which the LawsAndFamilies Questionnaire is a part. This legal survey is about families and laws beyond different-sex marriages. It looks at the legal aspects of family diversity across some 20 European countries. It distinguishes between three broad categories of legal family formats for different-sex and/or same-sex couples: marriage, registered partnership, and cohabitation.

In many European countries a lot has been changing in this field over the last few decades. These changes have brought an increase in legal diversity across the continent, while simultaneously prompting several countries to legally recognise each other's legal family formats. For the purposes of this questionnaire, “legal family formats” (or “family formats”) are understood as family forms (for couples) that have legal effects. This study will focus on the legal consequences (rights and duties, benefits and responsibilities) that national law attaches – or not – to marriage, registered partnership and/or cohabitation; i.e. to family formats that national law has made available – or not – to different-sex and/or same-sex couples. To this end a survey is being held among selected legal experts in the countries concerned. These experts are asked to complete a detailed questionnaire, so that these results can be included in an open-access online database of legal aspects of different family formats.

⁷ Although the questionnaire in this project had first been given the name “FamiliesAndLaws” it was later decided to change this to “LawsAndFamilies”.

The questions need to be answered with one of the following options:

Yes; Yes, but; No; No, but; N/A; Doubt; and question mark (?).

For a detailed explanation of these possible answer-codes, see below under a.

Almost all questions require separate answers for different-sex and/or same-sex marriage, for same-sex and/or different-sex registered partnership, and in most cases also for different-sex and same-sex cohabitation. Therefore, each question would typically get at least six separate answers (one in each column). Furthermore, in each column an answer-code is not only asked for the current period, but also for previous periods (ideally stretching back to the 1960s).

At each question there is space – for each of the three legal family formats – to provide references to the relevant legal source(s) and explanations or nuances regarding the answers given.

The *methodology* of this survey is largely based on that developed for and used in the report *More or less together*.⁸ That report was based on a questionnaire (also held among legal experts), that consisted of 33 questions about legal consequences of family formats, and 33 questions about various procedural aspects of family formats. Since then, a number of issues gained prominence that were not adequately covered by these questions, while some of the questions that were included, now seem less relevant or less clear than thought at the time. Therefore, a wide consultation has been held to get input from many experts and stakeholders regarding the ideal set of questions that can ensure a good picture of this dynamic and diverse field. To that end earlier drafts of this questionnaire have been sent out to several persons and organisations, including the people responsible at INED for developing the questionnaire software and the eventual database, the partners and stakeholders in the FamiliesAndSocieties research project, various activists in the field of same-sex families, and potential legal experts who could later be asked to complete the questionnaire (including also some legal experts from the USA). Many of them have responded with questions, criticisms, and suggestions regarding the structure of the questionnaire, and regarding the content and wording of a number of questions. All this, plus the test-round that was held among Spanish legal experts using a 2014 version of the Questionnaire and its Guidance document, has led to many clarifications and improvements. To a few questions a line of clarification has been added

⁸ Waaldijk, K. (ed.) (2005). *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries*. Paris: Institut national d'études démographiques (INED), <http://hdl.handle.net/1887/12585>.

(sometimes referring to points of guidance below), so as to ensure that different experts will interpret the questions in the same way.

The following criteria for selecting the questions have been used. The questions should:

- give a good overview of the main aspects of the legal position of non-marital and/or same-sex partners (and their children) in the law of the country concerned;
- include the main issues that have been the subject of major litigation, or of early legislation, or of controversial exceptions to legislation, or that are key demands of social movements;
- be easy to understand for legal experts in different countries (and ideally also for non-lawyers interested in the topic);
- not be too difficult to research for the legal experts;
- not be too many.

The questionnaire has been divided into six sections, roughly reflecting the main legally relevant transitions that many families go through:

1. Formalisation
2. Income and troubles
3. Parenting
4. Immigration
5. Splitting up
6. Death

Below, are various points of guidance (lettered a to u), to ensure that experts approach the questions in similar ways.

Providing answer-codes and years

- a. For most questions (i.e. for all multi-column questions) you are asked to choose an answer-code for each of the columns. In other words: you are asked to give an answer for each of the (six) types of relationship. (In fields with an “X”, no answer is expected from you.) If a certain type of relationship does/did not exist in your country/jurisdiction, then the answer is “N/A” (not applicable). The seven possible answer-codes (here in bold) and their meanings are:

| | |
|-----------------|---|
| 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 | = no, this is not so in the law of this country/jurisdiction. |
| 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. |
| Doubt | = the law is unclear (the law does not “know” the answer). |
| 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). |
| ? | = the expert does not know and cannot find the answer. |

- b. For each answer to a multi-column question, you are also asked to indicate what the answer was during *previous periods*. For each period you are asked to indicate the year *until when the answer applied*. The form gives you four lines starting with “Until”, please start with the most recent previous period and put the earlier periods below that. If you cannot find an exact year, then you have a few options: You can mention a probable year by adding a question mark to it (1989?), or you can indicate a decade (1980s), or you can put “0000” (if you know it was before 1965 but you do not know the exact year), or you put a question mark (?). Obviously, it will not always be possible to provide answers for all previous periods since the 1960s, but please try to give at least answers going back to the time that the answer was “No” or “N/A” for cohabiting and/or same-sex relationships.

If you want to give answers for more than five periods, then please use the space for explanations for the oldest periods.

But remember: the most important is the answer regarding what the law is now (on the day in 2015 that you submit a completed section of the questionnaire), and until when this was different (or unknown). So do not spend too much time looking for information (and legal sources) about previous period(s).

Each complete set of answers in any column would look like a *vertical timeline*. You are asked to close each timeline by inserting “0000” or “?” in the highest Until-field that has remained open. The result will be that every answer-code is sandwiched between two years. These two years mark beginning and end of the period during which that answer-code was applicable. Here is an example, that shows this for the question on second-parent adoption, in the Netherlands, regarding same-sex registered partnership. Registered partnerships for same-sex couples in the Netherlands became available in 1998, and second-parent adoption by someone in such a partnership became possible in 2001. So the answers in the relevant column of the questionnaire would look like this:

| | |
|--------------|-----------------|
| Now | 2015 |
| | Yes, but |
| Until | 2001 |
| | No |
| Until | 1998 |
| | N/A |
| Until | 0000 |

- c. When choosing an answer-code (and unless the specific question implies otherwise) please make the following *five assumptions*:
- both partners have the citizenship of the *country where they are residing* (and for which you are a legal expert);
 - they are also residing in this country (in the jurisdiction of your expertise);
 - in this jurisdiction they *have been living together as a couple for already at least two years*;
 - if they have formalised (or are formalising) their relationship, this formalisation will have taken place (or will take place) in that same jurisdiction (and not in any consulate!); and
 - if they want to split up, they will also do that in this same jurisdiction.

This way the chosen answer-codes mostly do not need to reflect possible international or interregional complications (nor the eventuality of the partners not living together). If you like, you can say something about such complications in the explanations. And

there are several questions that specifically deal with international complications (section 4: Migration). In most questions, however, the jurisdiction of citizenship and the jurisdiction of celebration are assumed to be the same as the jurisdiction of residence.

By “*residence*” and “*residing*” we mean: having lawful residence and/or, as the case may be, domicile, habitual residence, etc.

Different legal family formats

- d. Please remember that in many of the countries where cohabitation is regulated in some way, there actually are *several regimes of cohabitation* (with different sets of criteria), often different for different areas of law, sometimes different for same-sex and different-sex cohabitation. In this questionnaire all these different regimes are lumped together under the heading “cohabitation” (terms used elsewhere for such family formats include: *de facto* cohabitation, informal cohabitation, domestic partnership, etc.). So the term “cohabitation” covers any relationship of cohabiting partners who have not made their relationship into a marriage or into a registered partnership. Sometimes such informal relationships can be formalised a little, for example by (notarial) contract. Sometimes this formalisation is required by law before certain legal consequences of the cohabitation will take effect. The formalisation of cohabitation can sometimes even involve some form of registration, but that does not always make it a form of “registered partnership”.

When a condition for registration is that the partners must have been living together already for a substantial period (six months or more), then such a legal regime does not count as registered partnership, because it is not created by the act of registration. It should then be classified as “cohabitation”. Also when the registration is not in a *public* register, it should be considered here as a form of cohabitation. Idem, when the formalisation is only valid for as long as the partners live together. See also below under e, and when in doubt whether a form of formalised cohabitation should be dealt with in the column of “cohabitation” or of “registered partnership, please first consult the coordination team of this survey; you can do so by emailing [...].

Please note: When a country attaches a certain legal consequence only to “cohabitation” after the couple has formalised their cohabitation a little (by notarial contract, by registration, etc.), then the typical answer in this questionnaire would be “Yes, but” (“Yes, but only after ...”). For a legal consequence that is also available to cohabitants who have *not* formalised their cohabitation, the typical answer would be “Yes”.

e. The term “*registered partnership*” (sometimes called “civil union” or “civil partnership”) is difficult to define; it covers not only very marriage-like family formats with a comprehensive set of legal consequences, but also many registration-based family formats with only a limited set of such consequences. Essential is that “registered partnership”, like marriage, is created (constituted) in a procedure that results in registration, and that this registration is done in a register such as the Registry of births, marriages and deaths (*État civil*) or any other register kept by a public authority. In that way it can be distinguished from cohabitation, which arises out of the *fact* that two people live together (see above under d).

When a condition for registration is that the partners must have been living together already for a certain period (six months or more), then such a family format does not count as registered partnership, because it is not created in the procedure of registration. It should then be classified as “cohabitation” (albeit a formalised form of cohabitation). Furthermore, a registered partnership does not end automatically when the partners stop living together, but only when one or both partners follow a dissolution procedure prescribed in the legislation (as is also the case for marriage, but mostly not for cohabitation). Therefore, if a legal family format can be ended by stopping to live together, then this family format should not be classified as “registered partnership”, but as “cohabitation” (see above under d).

In short, a registered partnership is defined here as a legal family format for two partners:

- (1) that is constituted in a procedure that results in registration,
- (2) for which it is *not* a condition that the partners are already living together for a substantial period of time (six months or more),
- (3) that is registered in a register kept by a public authority,
- (4) that has an extended or limited set of substantive legal consequences,
- (5) and that is *not* dissolved automatically when the partners no longer live together.

Nevertheless, if you think that a certain legal family format is so marriage-like that it should be classified as registered partnership, although it does not quite meet all the criteria listed above for registered partnership, then please first consult the coordination team of this survey; you can do so by emailing [...].

Complex countries

- f. When you are completing this questionnaire for a regional/provincial/state jurisdiction that is part of a larger (federal/national/central) country (like Spain or the United Kingdom), and the subject matter of a question is regulated both at federal and regional level, then you have to assess which of the possible answer-codes best represents the *combined picture of regional and federal law*; questions that are regulated only by federal law, you should answer according to federal law; and questions that are regulated only by regional law, you should answer according to the law of the region concerned.
- g. When you are completing this questionnaire for a country that consists of several regional/provincial/state jurisdictions (like Germany or Switzerland), then please indicate *regional variations* by choosing “Yes, but” (if the answer is yes in most of the country) or “No, but” (if the answer is yes in only a few parts of the country); when the subject matter of a question is regulated both at federal and regional level (and differently at the two levels), then you have to assess which of the possible answer-codes best represents the *combined* picture of federal and regional law.

Providing legal sources for the answers

- h. After the closed part of most questions you are asked to mention the legal sources of your answers. This should be done for each of the three family formats – and for each of the periods for which you have given an answer. If a *primary source* is not easily available (for example regarding a previous period), please refer to a reliable *secondary source*, such as a legal handbook or journal article.
- i. In most cases the source of law will be in *legislation*; please give the article plus the name/date/number of the law (name also in English). If you are referring to a recently changed article of a law, please refer to “art. X of law Y as amended by law Z”. But only use the last phrase (“as amended by law Z”) where the amendment of law Z has been really relevant for your answer to a question.
- j. Even if your legal system uses other words or symbols for the numbered articles of a law (e.g. paragraph or section), you should use “art.” here. This will make the database more uniform, and easier to understand. The preferred notation is: “art. 4 of Law X”. If Law X has more than one article 4 in different chapters or books, the preferred notation becomes: “art. 4 of chapter Y of Law X”. If you are referring to the second ‘subsection’, ‘subparagraph’ or other subdivision of art. 4, the notation becomes: “art.

4(2) of Law X”. If you are referring to the fifth subdivision of that second subsection etc., the notation becomes: “art. 4(2)(5) of Law X”. You can refer to articles 3 and 4 with the notation: “art. 3 and 4”.

- k. For some questions/columns it is possible that the legal source is the absence of any legislation and of any case law. If necessary, please explain.
- l. Occasionally the source for an answer may be found in an *administrative guideline*, in *case law*, or even in the *doctrine*. For each of these, please give a full reference, either to these sources themselves or to a reliable secondary sources, such as a legal handbook, report or journal article. For case law always give the court’s name in the original language and also in English, plus the date of the judgment, and a full citation in accordance with national usage.
- m. For doctrine, please use *full references in APA Style*,⁹ as follows:

For a book: Author/Editor's Last Name, Author/Editor’s Initial(s). (Ed. or Eds. if edited book with no author) (Publication year). *Title [in italics]* (Edition - if given).

Place of publication: Publisher, relevant page(s). Examples:

- Wolf, D., Jaffe, P. G., & Crooks, C. V. (2006). *Adolescent risk behaviors: Why teens experiment and strategies to keep them safe*. New Haven, CT: Yale University Press.
- Galvin, K. M., & Cooper, P. J. (Eds.). (2006). *Making connections: Readings in relational communication* (4th ed.). New York, NY: Routledge.

For a chapter in an edited book: Author of article’s Last Name, Author’s Initial(s). (Publication year). Title of article/chapter. In Editor Initials and Last Name (Ed.), *Title [in italics]* (pages of chapter). Place of publication: Publisher, relevant page(s).

Example:

- Burke, R. J. (2006). Workaholism. In T. G. Plante (Ed.), *Mental disorders of the new millennium* (pp. 171-192). Westport, CT: Praeger.

For a journal article: Author’s Last Name, Author’s Initial(s). (Publication year). Title of article. *Title of Journal [in italics]*, *volume number [in italics]*, (issue number for journals or magazines paginated by issue), pages, relevant page(s). Examples:

- Mellers, B. A. (2000). Choice and the relative pleasure of consequences. *Psychological Bulletin*, *126*, 910-924.

⁹ See www.apastyle.org. This referencing style is used throughout the very multidisciplinary *FamiliesAndSocieties* project.

- Klimoski, R., & Palmer, S. (1993). The ADA and the hiring process in organizations. *Consulting Psychology Journal: Practice and Research*, 45(2), 10-36.

And please add [translations of titles] in square brackets, and *web links*, where appropriate. To avoid printing problems, longer web addresses (more than 50 and less than circa 150 characters) should only be used in the “General background” question at the end of each section. You can refer to those web addresses by including “see web link in question X.Y below”.

Providing explanations and/or nuances to the answers

- n. After mentioning the source, you can add an explanation to your given answers. In most questions, there is space for three explanations – one regarding marriage, one regarding registered partnership, and one regarding cohabitation. For example, *when you consider it necessary or useful*, you can give some (legal, factual, political, etc.) *explanations and/or nuances* to your answer. When an answer is “Yes, but” or “No, but”, you must always explain the “but”.

Background questions

- o. Each section of this questionnaire ends with one or more “background” questions. We encourage you to answer these questions too, and thus give a better overall picture. In your answer to “background” questions you might also mention issues that are relevant in your country/jurisdiction but that we have not included in this questionnaire. (We have tried to include issues that may be most important for individuals considering the legal impact of a specific relationship type, and/or that have been most prominent in the legal and political debates about family diversity, but of course we could not include everything that would fit these criteria, for example because it would be too complex, or too difficult to compare between countries.)

General points

- p. Please use the English language (British spelling).
And try to reach a balance between legal technicality, and comprehensibility for non-lawyers. But do be accurate.
- q. If you would like to refer to what you have explained in another question of the same section, or to a sources already referenced in another question of the same section, then please use references such as: “(as explained/mentioned at question Y.X)”. If the

explanation is in another section, then you will have to repeat the explanation or reference.

Avoid abbreviations – also when you have defined an abbreviation in the explanation to another question.

- r. Please give all dates in full form: “21 June 2003” (not 21.6.03 or so).
And please give all money amounts (also) in euro (rounded off to hundreds or thousands).
- s. Please put (???) after each source or explanation that still needs to be checked.
- t. When in doubt, you can ask a question to the coordination team. You can do that by emailing [...].
- u. After you will have submitted your initial answers, these will be reviewed by a reviewer, who will make comments and suggestions. At a later stage your (revised) answers will be reviewed by the coordinators, who may also make comments and suggestions. In both cases you will have one month to adjust your questions in light of the comments and suggestions.

Thank you!