

The rights of homosexual families in Europe: the LawsAndFamilies database

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Starting in the late 1980s, new laws concerning same-sex unions were passed, first in Denmark (registered partnerships in 1989) and the Netherlands (marriage in 2001), and then in several other European countries (Table 1). To better investigate and compare national contexts, the new [LawsAndFamilies](#) Database (Waldijk et al. 2017) provides information on the legal consequences attached to marriage, legally registered partnerships and cohabitation for different-sex and same-sex couples for 23 European jurisdictions (countries and regions). It also gives access to country-specific [statistical overviews](#) including data on same-sex marriage rates, and numbers of same-sex couples. These data can be used to test whether legal contexts are factors of differentiation in marriage or registered partnership behaviours (Cortina and Festy 2014). The database also includes a qualitative [sociological survey](#) conducted in France, Iceland, Italy and Spain.

Table 1 – Years in which same-sex marriage and registered partnerships were legalized in selected European countries

	Marriage	Registered partnership
Austria	–**	2010
Belgium	2003	2000
Bulgaria	–	–
Czech Republic	–	2006
Denmark	2012 ^o	1989 ^{oo*}
Finland	(2017)**	2002*
France	2013	1999
Germany	(2017)**	2001
Greece	–	2015
Hungary	–	2009
Iceland	2010	1996*
Ireland	2015	2011*
Italy	–	2016
Malta	–	2014
The Netherlands	2001	1998
Norway	2009	1993*
Poland	–	–
Portugal	2010	–
Romania	–	–
Slovenia	–	2005
Sweden	2009	1995*
England and Wales	2014	2005
Northern Ireland	–	2005
Scotland	2014	2005
Source: The lawsAndFamilies Database (Waldijk et al. 2017) except Denmark (^o Lov om ændring af lov om ægteskabs indgåelse og opløsning, lov om ægteskabets retsvirkninger og retsplejeloven og om ophævelse af lov om registreret partnerskab, 12. juni 2012, ^{oo} Lov nr. 372 af 07.06.1989 om registreret partnerskab)		
*registered partnerships only available for those contracted before same-sex marriage was legalized.		
**laws enacted or scheduled to be enacted after the LawsAndFamilies legal survey		

A comparative legal database for contextual settings

Table 2 - Example of the results of a query to the interactive database: answers of 8 legal experts to a question on legal parenthood for the year 2015

QUESTION: 3.04 - 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? (For example automatically, or by way of recognition/acknowledgement.)								
Jurisdiction	Year	Marriage		Registered partnership		Cohabitation		References to legal sources & Explanations and nuances
		diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex	
CONTINENT: EUROPE								
Austria (a)	2015	Yes	N/A	N/A	Yes	Yes	Yes	More...
Czech Republic (b)	2015	Yes	N/A	N/A	No	Yes	No	More...
France (c)	2015	Yes	No	Yes	No	Yes	No	More...
Germany (d)	2015	Yes	N/A	N/A	No	Yes	No	More...
Iceland (e)	2015	Yes	No, but	N/A	No, but	Yes	No, but	More...
Italy (f)	2015	Yes	N/A	N/A	N/A	Yes	No	More...
Netherlands (g)	2015	Yes	Yes	Yes	Yes	Yes	Yes	More...
Norway (h)	2015	Yes	Yes, but	N/A	Yes, but	Yes, but	Yes, but	More...
Sources								
(a) H. Graupner, "Parenting and legal family formats in Austria". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-AT-Section3.pdf								
(b) L.L. Otáhal, "Parenting and legal family formats in Czech Republic". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-CZ-Section3.pdf								
(c) E. Ronzier, "Parenting and legal family formats in France". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-FR-Section3.pdf								
(d) N. Markard, "Parenting and legal family formats in Germany". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-DE-Section3.pdf								
(e) H. Friðriksdóttir, "Parenting and legal family formats in Iceland". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-IS-Section3.pdf								
(f) M. Winkler, "Parenting and legal family formats in Italy". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-IT-Section3.pdf								
(g) N. Nikolina, "Parenting and legal family formats in Netherlands". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-NL-Section3.pdf								
(h) T. Eeg, "Parenting and legal family formats in Norway". In: K. Waaldijk et al. (eds.), <i>The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples</i> . Paris: INED, 2017, www.LawsAndFamilies.eu , LawsAndFamilies-NO-Section3.pdf								

The legal information in the database on the rights, duties, benefits and responsibilities of life transitions affecting same-sex and different-sex couples is collected from a [sample of legal experts](#). The information, covering several decades, relates to marriage, registered partnership and/or cohabitation, i.e., formal and informal family formats that national laws may have made available to couples. The list of themes is long: formalization of unions (e.g., residence and gender of persons entitled to enter into marriage, legal partnerships and cohabitation), income (e.g., income tax and health insurance), problematic situations (e.g., domestic violence, care between partners), parenting (e.g., assisted insemination, surrogacy, adoption), migration (e.g., residence and citizenship entitlements for a foreign partner,

recognition of foreign marriage). They also cover issues related to union dissolution (e.g., alimony and consequences on property), and death (e.g., tenancy, property, inheritance, survivor's pensions) (Waalwijk et al. 2016). The results can be accessed via an [interactive database](#) by jurisdiction or legal question. For example, it is possible to identify whether marriage is an option for same-sex couples (and, if yes, since when), and whether the legal consequences of such marriages are the same as for different-sex marriages with regard to parenting, taxes, separation, death, etc. (Waalwijk 2017; see also the example of Table 2).

Information provided in the legal database is particularly useful for comparative international analysis. For instance, it can be used to contextualize the situation of homo-bi-trans-sexuals in everyday life. This was done for the qualitative sociological survey of the *LawsAndFamilies* Database, which is briefly presented in the following sections.

Law in everyday life

The legal provisions concerning same-sex couples (specific, universal or private contracts) are usually framed in terms of equality and human rights (Roseneil et al. 2013). But what impact do they have in practical terms? To answer this question, we analysed more than 120 qualitative interviews with homo-bi-trans-sexual individuals carried out in 2015 in four countries: France, Iceland, Spain, and Italy (Digoix et al. 2016). By that time, marriage and some or all parental rights were open to same-sex couples in France, Iceland and Spain, but not in Italy, where civil unions (open also to same-sex couples) were introduced only later, in 2016.

We dealt with questions of principles (equality and human rights), but focused mostly on daily lives and on the extent to which respondents felt that they could live their relationships safely in their own countries. The prevalent opinion of the respondents was that the opening of laws on marriage and registered partnerships to same-sex couples was essential from a symbolic, economic and social point of view. This may sound contradictory among a subpopulation that had emphasized the specificity of its behaviours during the “sexual revolution” of the 1960s (Lützen 1998).

Today, instead, there is an obvious trend towards “normalization”: respondents highlighted the need to be treated on the same basis as heterosexual couples, for instance in terms of marriage and parenting. This is not only a symbolic issue, but also a practical one. With the growing social acceptance of homosexuality in Western Europe, homosexual couples tend to have the same aspirations as heterosexual couples, such as living together, having children, and seeking mutual emotional and economic support.

Parental rights in question

Although rights tend to be increasingly accessible, same-sex parenting is still an issue in all the countries observed, while the number of homosexuals wishing to have children has increased. Access to assisted reproduction technologies (ART) is now open to lesbians in Iceland, partially open in Spain, where it is accessible almost exclusively in the costly private sector, but still prohibited in France and Italy. Surrogacy is illegal in all the countries (Mignot 2017, Rozée, Toulemon 2017). Couples can access these rights abroad, but with no legal protection. Same-sex couples in France, Iceland and Spain can adopt, but this is still difficult and rare, and international adoption especially so, due to the homophobia of many of the countries offering children for adoption.

Law is essential

Research has shown that being entitled to the same legal protection as everybody else is important for homosexual couples, for both symbolic and practical reasons. With growing confidence in the possibility of living a life based on the social models they were raised in, the respondents underline the importance of full access to rights, and note society's positive view of their families once they have acquired legal recognition.

Note

table 2 is complemented by precise explanations accessible and downloadable for each country by clicking on "More..." or on the .pdf source documents. For the meaning of the answer-codes, see the [online database](#) or Waaldijk 2017: section 1.4.3 pp. 16-19.x

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