

Les couples homosexuels et l'enregistrement de leur union. Rapprochement avec les couples hétérosexuels et recherche comparative internationale

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Chapitre I

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

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Introduction

by Kees Waaldijk¹

Background

Through the institution of *civil marriage* all countries in Europe recognise regulate different-sex couples. As a legal institution marriage can be characterised as a form of partnership between two persons that is created by a formal act of registration, and that results in a number of legal consequences (rights and obligations, both between the partners, and between the partners and others including the state). Since the 1970s a growing number of European countries have made a growing number of these legal consequences available to unmarried partners in *informal cohabitation*. This legal recognition of informal cohabitation has sometimes been restricted to different-sex couples, while sometimes same-sex couples have been included. Since 1989 several European countries have introduced *registered partnership*, a legal institution that is more or less analogous to marriage, resulting in some or almost all of the legal consequences of marriage. In some countries registered partnership has only been made available to same-sex couples, while others made it also available to different-sex couples. And since 2001 a few European countries have opened up civil marriage to same-sex partners.

With all these developments,² the field of ‘family law’ (in the wide sense of the word) has become much more complex and varied (and ‘same-sex-friendly’) than it used to be. Even lawyers rarely have a comprehensive understanding of the differences between the marriage, registered partnership and cohabitation in their own country, let alone in other countries. Over the next few years these developments will become evident in more countries.³ Therefore it is becoming simultaneously more interesting and less easy to analyse this field of law. The challenge is how to carry out comparisons in at least five ‘dimensions’: between marriage, registered partnership and cohabitation, between different-sex and same-sex partners, between different areas of private and public law, between different countries, and between now and previous years or decades.

The present study introduces a tool for such a complex comparative analysis. The tool is called ‘level of legal consequences’ or ‘LLC’. That tool is applied here to the nine European countries that by 2003 had introduced a form of registered partnership at national level: Belgium, Denmark, Finland, France, Germany, Iceland, Netherlands, Norway and Sweden.

This study is the result of the cooperation of nine lawyers in the multi-disciplinary project of the French National Institute of Demographic Studies (INED) on the phenomenon of registered partnership. That multi-disciplinary project also comprises sociologists, historians, statisticians and demographers. The results of their work are and will be published elsewhere.⁴

Aims

The aims of this study are:

- to assess more accurately the levels of legal consequences (hereafter LLC) of existing forms of registered partnership in comparison with the LLC of marriage and the LLC of cohabitation;
- to discover similarities and differences between the nine countries;
- to document the exclusion and inclusion of same-sex couples;

¹ Dr. C. Waaldijk is a senior lecturer at the E.M. Meijers Institute of Legal Studies, Universiteit Leiden, the Netherlands (www.emmeijers.nl/waaldijk). I am grateful to the Institut National d’Études Démographiques in Paris, for making this study financially possible, to Marie Digoix and Patrick Festy (of INED) and Daniel Borrillo and Hans Ytterberg, for their inspiration and support in carrying out the study, to Wout Morra (law student/research-assistant) and Riekje Boumlak (secretary at the Meijers Institute) for their technical support, and to the eight lawyers who did most of the work on the national tables: Olivier De Schutter (Belgium), Dirk Siegfried (Germany), Søren Baatrup (Denmark), Rainer Hiltunen (Finland), Daniel Borrillo (France), Hrefna Fridriksdóttir (Iceland), John Asland (Norway), Hans Ytterberg (Sweden). (The Netherlands was taken care of by myself.) Any corrections and suggestions are welcome at c.waaldijk@law.leidenuniv.nl.

² And with regional registered partnership legislation already in force in parts of Spain and Switzerland.

³ In 2004 registered partnership legislation was adopted in Luxembourg (in force 1 November 2004), in Switzerland (subject to a referendum to be held in 2005), in England and Wales (expected to enter into force late 2005 or early 2006). Proposals for registered partnership legislation are being discussed in Ireland and the Czech Republic, and legislation for opening up marriage to same-sex couples is being prepared in Spain and Sweden. Countries with some legislation recognising same-sex cohabitation include Hungary, Portugal, Scotland and Croatia.

⁴ The first results of this project were presented at a conference of Stockholm, Sweden, in September 2003. The proceedings of that conference can be found in: Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials*.- Documents de travail n°124, Ined, 2004, which also includes the ‘Comparative overview’ and ‘Comparative analysis’ of this study on the levels of legal consequences.

- to indicate differences in LLC between cohabitation and registered partnership (and between registered partnership or cohabitation and marriage), that might potentially explain national differences in the frequency of partnership registrations (or marriages).

Such data and insights could be useful for lawmakers (in any jurisdiction of the world) wishing to propose or consider legislation in this field, for courts and lawyers being called upon to decide whether a certain foreign marriage/partnership/cohabitation should be recognised, and for legal and non-legal researchers trying to understand the developments in this field.

Methodology

The research made use of a *questionnaire* (in the form of tables) that could be filled out by a specialist lawyer from each of the nine country.

For this purpose 33 possible legal consequences of marriage/partnership/cohabitation were selected, divided over three broad fields:

- (A) 'parenting consequences',
- (B) 'material consequences' and
- (C) 'other legal consequences'.

In the selection of these consequences (from the many hundreds of legal rights and obligations that are attached to marriage in most countries), the intention was to include all legal consequences that may be most important for individuals considering the legal impact of entering a specific relationship type, and/or that have been most prominent in the legal and political debates about relationship diversity and non-discrimination. Nevertheless, some legal consequences that would fit these criteria (for example in social security) have been left out because they would be too complex, or too difficult to compare between countries. The final questionnaire was decided upon, after several lawyers and non-lawyers from various countries had made suggestions for changing the selection of legal consequences, and for phrasing them more clearly and accurately. One such suggestion led to the subdivision of the large category of 'material consequences' into three:

- (B part one) material consequences in private law,
- (B part two) positive material consequences in public law, and
- (B part three) negative material consequences in public law.

Each lawyer filling out the questionnaire was invited to suggest an additional major legal consequence of marriage, of particular relevance in his or her country, but this did not lead to any further suggestion.

To make a more complete picture of marriage, registered partnership and cohabitation, the questionnaire also contained tables with questions about:

- (D) prohibitions of civil status and sexual orientation discrimination,
- (E) types of couples qualifying for marriage or registered partnership,
- (F) authorities for starting a marriage or registered partnership, and
- (G) procedures for ending a marriage or registered partnership.

Each lawyer filling out the questionnaire was asked to indicate to what degree a certain legal consequence (or condition, procedure, etc.) applies to same-sex and/or different-sex cohabitants, to same-sex and/or different-sex registered partners, and to same-sex and/or different-sex married spouses. For each of these types of relationships, each question had to be answered with one out of six codes 'yes', 'yes, but', 'no, but', 'no', 'doubt', or 'not applicable'. The legal source for each answer had to be indicated in a note, where the answer could also be further specified or nuanced. To promote a more uniform and thus more comparable approach, the lawyers have been given a document with general and specific guidance on how to read and fill out the questionnaire. For the same reason, the answers and notes provided by the lawyers have been discussed with the coordinator of the study, which in some instances has led to corrections and clarifications of the answers and notes.

The nine filled out questionnaires have become the *nine national chapters* in this study. For the benefit of the readers, brief introductions and short lists of literature (mostly in English) have been added to these.

To calculate the level of legal consequences (LLC), each of the codes in the tables was given a numerical value ranging from 0 points for 'no', to 3 points for 'yes'. Per table these points have been added up for each of the available types of relationship. To enable a comparative analysis, these numbers of points were then translated into a percentage, with the LLC of different-sex marriage always considered as 100%. Thereby it became possible to say for any country what percentage of the (studied) legal consequences of different-sex marriage is available to same-sex cohabitants, for example, or to different-sex registered partners.

In the *Comparative overview* the 'comparative tables' (A to G) briefly indicate the answers for each country to each question, while the numbers of points and the corresponding LLC-percentages are listed in 'levels tables' (O and A to C). The percentages are also visualised in pie charts (O and A to C), in which the whole circle represents the LLC of different-sex marriage, while the green segment represents the LLC of informal cohabitation, the yellow segment the additional LLC of registered partnership, the pink segment the additional

LLC of marriage, and the red segment the percentage of legal consequences not available to any same-sex couple.

The final stage of the study consisted of making a *Comparative analysis* of the data provided in the national chapters and in the Comparative overview.

Further research

It is hoped that this study can be continued in several directions.

Firstly, the legal analysis of this study can be extended to include more jurisdictions in Europe and perhaps in other parts of the world: How typical are the levels of legal consequences found in these nine countries for other (European) countries, or for North American states or provinces?

Secondly, the data and insights provided in this lawyers' study can perhaps be combined with data and insights provided by sociologists, historians, statisticians and demographers: Do the legal data help to explain national differences in the frequency of partnership registration? Can the legal situation be explained by non-legal factors, or vice versa?

Thirdly, the data about national law could be confronted with the requirements of international human rights law and European Union law: Do the distinctions that national laws make between same-sex and different-sex partners, or for example between marriage and cohabitation, amount to unlawful discrimination?

And finally, the data about national law could be analysed from a perspective of private international law, of conflict of laws, and of freedom of movement: Where, when, as what, and for what purposes could or should informal cohabitants, registered partners and same-sex spouses be recognised outside the country in which they started to live together, registered their partnership or married each other?

Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners:

Comparative overview

by Kees Waaldijk ¹

Introduction

This study introduces the concept of ‘levels of legal consequences’ (LLC) as a tool for a comparative analysis of civil marriage, registered partnership, and informal cohabitation (of different-sex or same-sex partners) in different countries. For nine countries (Belgium, Denmark, Finland, France, Germany, Iceland, Netherlands, Norway and Sweden) 33 possible major legal consequences of these three types of relationship status were investigated.

This comparative overview is based on nine sets of *national tables*, one set for each country.² Each national table consisted of a list of questions, to be answered for six types of relationships (as far as applicable in the country): different-sex and same-sex civil marriage, different-sex and same-sex registered partnership, and different-sex and same-sex informal cohabitation. Each set of tables consists of seven tables. All tables aim to reflect the law as it stood early in 2004, but it is still an imperfect work in progress.

This comparative overview contains two types of tables: *comparative tables*, with the same questions as the corresponding national tables; and (only for the tables O, A, B and C) *levels tables*. The latter bring together the *levels of legal consequences* (LLC) per country; these levels are based on the numbers of points calculated in the corresponding national tables. The figures in the levels tables are also visualised as *pie charts*, in which the whole circle represents the LLC of different-sex marriage (set at 100%), while the green segment represents the LLC of informal cohabitation, the yellow segment the additional LLC of registered partnership, and the pink segment the additional LLC of marriage.

In the *levels tables* the countries are listed in an order that facilitates easy comparisons: first the two countries that have opened up marriage to same-sex couples (Netherlands and Belgium), then the third country (France) that has introduced registered partnership both for same-sex and for different-sex couples, then the other countries that have introduced registered partnership, with Germany being placed between France and the five Nordic countries (because the level of legal consequences of German registered partnership lies between the French and Nordic levels). The Nordic countries are put in the order in which they have introduced registered partnership, Denmark first and Finland last.

The country codes (iso 3166) used in the comparative tables are the following:

BEL	= Belgium
DEU	= Germany
DNK	= Denmark
FIN	= Finland
FRA	= France
ICE	= Iceland
NLD	= Netherlands
NOR	= Norway
SWE	= Sweden
(ALL)	= all nine countries)

¹ Dr. C. Waaldijk is a senior lecturer at the E.M. Meijers Institute of Legal Studies, Universiteit Leiden, the Netherlands (www.emmeijers.nl/waaldijk). I am grateful to Wout Morra (law student/research-assistant) and Riekje Boumlak (secretary at the Meijers Institute) for the support and patience in helping to create this overview. Any corrections and suggestions are welcome at c.waaldijk@law.leidenuniv.nl.

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Codes used in the tables

Applicable answer	Answer code in national tables	Points given for calculation of level of legal consequences	Type used for country code in comparative tables
The legal consequence applies.	Yes	3 pt	BOLD
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	2 pt	ORDINARY
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	1 pt	<i>(ITALICS IN BRACKETS)</i>
The legal consequence does not apply.	No	0 pt	Country is not mentioned
No information was available on this point, or the legal position is unclear.	Doubt	1 pt	<i>(ITALICS WITH QUESTION MARK IN BRACKETS)</i>
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	0 pt	Country is not mentioned

Below you will find the following tables and pie charts:

Table O (Levels)	Parenting, material and other consequences together ('overall levels')
Pie charts O	Idem
Table A (Comparative)	Parenting consequences
Table A (Levels)	Idem
Pie charts A	Idem
Table B part one (Comparative)	Material consequences in public law
Table B part one (Levels)	Idem
Pie charts B part one	Idem
Table B part two (Comparative)	Positive material consequences in private law
Table B part two (Levels)	Idem
Pie charts B part two	Idem
Table B part three (Comparative)	Negative material consequences in public law
Table B part three (Levels)	Idem
Pie charts B part three	Idem
Table C (Comparative)	Other legal consequences
Table C (Levels)	Idem
Pie charts C	Idem
Table D (Comparative)	Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation
Table E (Comparative)	Types of couples that qualify for starting a civil marriage or registered partnership in the country itself
Table F (Comparative)	Authority for starting a civil marriage or registered partnership
Table G (Comparative)	Means of ending a civil marriage or registered partnership

Table O (Levels): Parenting, material and other consequences together

This table adds up the totals of points given in the the levels tables on legal consequences (A – parenting consequences, B – material consequences, C – other consequences). Because of their specific nature, tables D, E, F and G have not been used in the adding up in this table.

Because a total of 33 legal consequences have been considered in these three tables, the maximum number of points in each cell of this table is 99. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

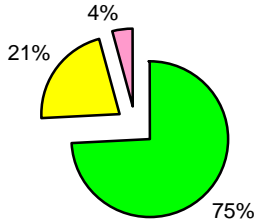
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	70 pt = 100%	67 pt = 96%	67 pt = 96%	67 pt = 96%	52 pt = 75%	51 pt = 73%
Belgium	76 pt = 100%	67 pt = 88%	38 pt = 50%	36 pt = 48%	31 pt = 41%	27 pt = 36%
France	76 pt = 100%	0 pt = 0%	48 pt = 63%	42 pt = 55%	32 pt = 42%	26 pt = 34%
Germany	65 pt = 100%	0 pt = 0%	0 pt = 0%	44 pt = 68%	15 pt = 23%	11 pt = 17%
Denmark	61 pt = 100%	0 pt = 0%	0 pt = 0%	51 pt = 84%	32 pt = 52%	27 pt = 45%
Norway	71 pt = 100%	0 pt = 0%	0 pt = 0%	61 pt = 86%	41 pt = 58%	34 pt = 48%
Sweden	64 pt = 100%	0 pt = 0%	0 pt = 0%	58 pt = 91%	48 pt = 75%	43 pt = 68%
Iceland	71 pt = 100%	0 pt = 0%	0 pt = 0%	60 pt = 85%	45 pt = 63%	16 pt = 23%
Finland	64 pt = 100%	0 pt = 0%	0 pt = 0%	56 pt = 87%	36 pt = 56%	27 pt = 42%

Pie charts based on Table O: Parenting, material and other consequences together

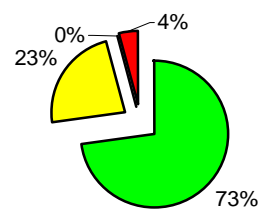
Used colour codes (LLC = level of legal consequences)

- Green = LLC of *informal cohabitation*
- Yellow = additional LLC of *registered partnership* (Green + Yellow = LLC of registered partnership)
- Pink = additional LLC of *civil marriage* (Green + Yellow + Pink = LLC of civil marriage)
- Red = LLC *not* available to same-sex partners of any status

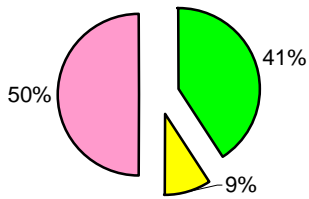
Netherlands: different-sex



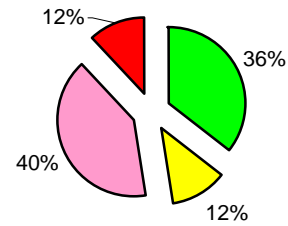
Netherlands: same-sex



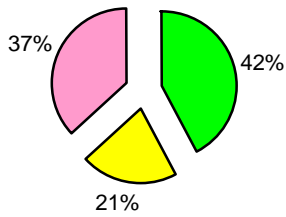
Belgium: different-sex



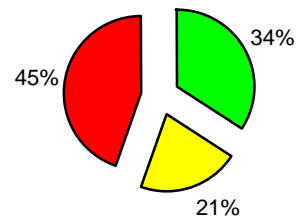
Belgium: same-sex



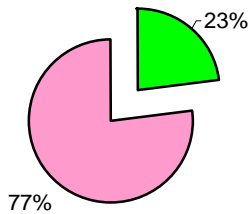
France: different-sex



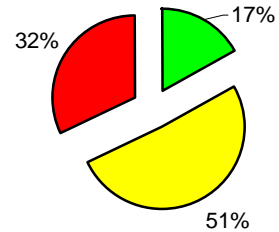
France: same-sex



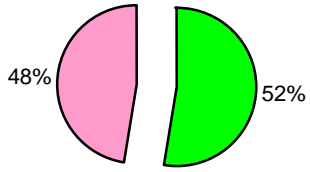
Germany: different-sex



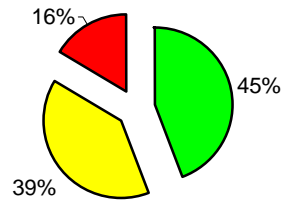
Germany: same-sex



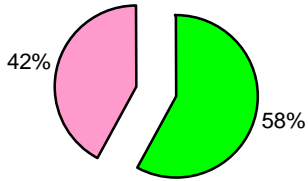
Denmark: different-sex



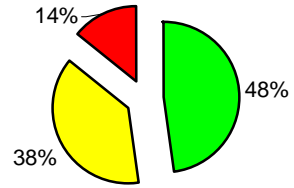
Denmark: same-sex



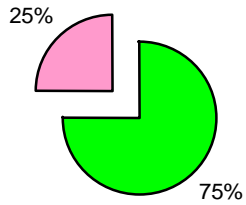
Norway: different-sex



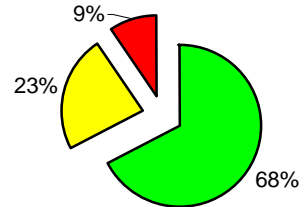
Norway: same-sex



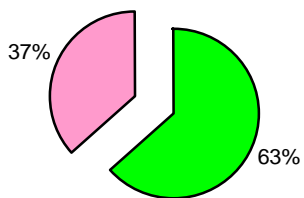
Sweden: different-sex



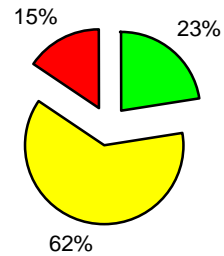
Sweden: same-sex



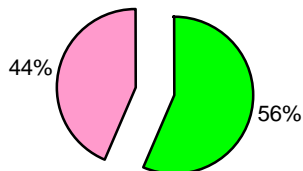
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

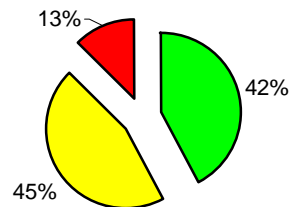


Table A (Comparative): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	ALL	(NLD)	(BEL), (FRA) (NLD)	(NLD)	DNK (BEL), (DEU) (FIN), (FRA) (ICE), (NLD) (NOR), (SWE)	
2. Medically assisted insemination is lawful for women in such a relationship	ALL	BEL, NLD	BEL, NLD FRA	BEL, FIN, NLD SWE (DEU?)	BEL, DNK, FIN, NLD, SWE FRA, ICE, NOR (DEU?)	BEL, FIN, NLD SWE (DEU?)
3. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	DEU, FIN, ICE, NLD NOR (DNK), (SWE)	NLD	NLD	DEU, FIN, ICE, NLD NOR (DNK), (SWE)	FIN, ICE, NLD NOR (DNK), (SWE)	FIN, NLD NOR (DNK), (SWE)
4. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	ALL	NLD	NLD (BEL)	NLD, SWE ICE, DNK, NOR	NLD ICE (BEL)	NLD
5. Partners can jointly adopt a child	ALL	NLD	NLD	SWE NLD	ICE, NLD	NLD
6. One partner can individually adopt a child	BEL, FRA, NLD (DEU), (ICE) (NOR), (SWE)	BEL, NLD	BEL, FRA, NLD	BEL, FIN, NLD DEU, FRA (NOR), (SWE)	BEL, DNK, FIN, FRA, NLD DEU, SWE (ICE), (NOR)	BEL, DNK, FIN, NLD DEU, FRA, ICE, SWE (NOR)
7. Partners can jointly foster a child	ALL	BEL, NLD	BEL, FRA, NLD	BEL, DNK, FIN, ICE, NLD, NOR, SWE (DEU) (FRA?)	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE (DEU)	BEL, DNK, FIN, ICE, NLD, NOR, SWE (DEU) (FRA?)

Table A (Levels): Parenting consequences

The maximum number of points in each cell of this table (covering 7 legal consequences) is 21. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

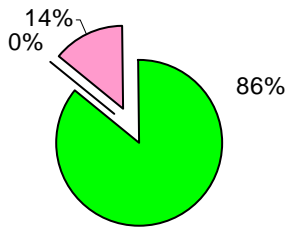
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	21 pt = 100%	18 pt = 86%	18 pt = 86%	18 pt = 86%	18 pt = 86%	17 pt = 81%
Belgium	18 pt = 100%	9 pt = 50%	11 pt = 61%	9 pt = 50%	11 pt = 61%	9 pt = 50%
France	18 pt = 100%	0 pt = 0%	9 pt = 50%	3 pt = 17%	9 pt = 50%	3 pt = 17%
Germany	19 pt = 100%	0 pt = 0%	0 pt = 0%	7 pt = 37%	5 pt = 26%	4 pt = 21%
Denmark	16 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 37%	12 pt = 75%	7 pt = 44%
Norway	18 pt = 100%	0 pt = 0%	0 pt = 0%	8 pt = 44%	9 pt = 50%	6 pt = 33%
Sweden	17 pt = 100%	0 pt = 0%	0 pt = 0%	13 pt = 76%	10 pt = 59%	8 pt = 47%
Iceland	19 pt = 100%	0 pt = 0%	0 pt = 0%	8 pt = 42%	14 pt = 74%	5 pt = 26%
Finland	18 pt = 100%	0 pt = 0%	0 pt = 0%	12 pt = 67%	13 pt = 72%	12 pt = 67%

Pie charts based on Table A: Parenting consequences

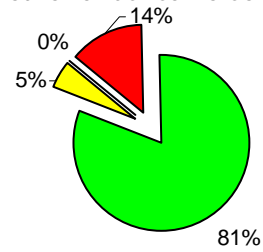
Used colour codes (LLC = level of legal consequences)

- Green = LLC of *informal cohabitation*
- Yellow = additional LLC of *registered partnership* (Green + Yellow = LLC of registered partnership)
- Pink = additional LLC of *civil marriage* (Green + Yellow + Pink = LLC of civil marriage)
- Red = LLC *not* available to same-sex partners of any status

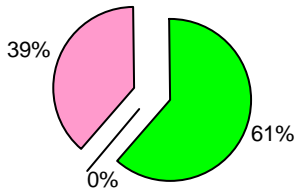
Netherlands: different-sex



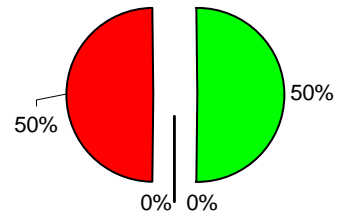
Netherlands: same-sex



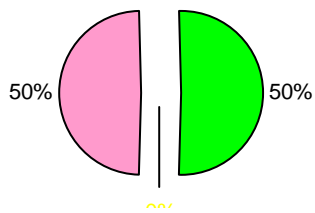
Belgium: different-sex



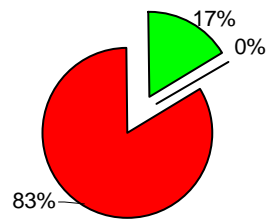
Belgium: same-sex



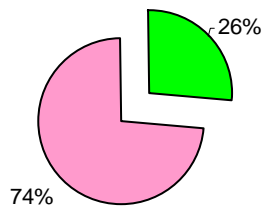
France: different-sex



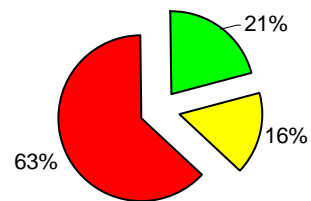
France: same-sex



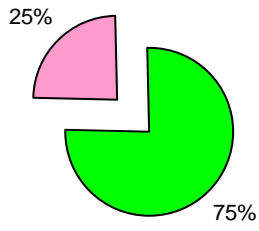
Germany: different-sex



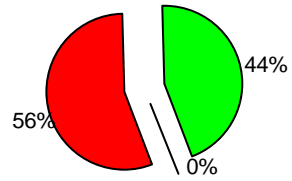
Germany: same-sex



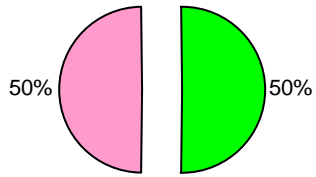
Denmark: different-sex



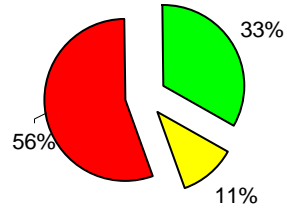
Denmark: same-sex



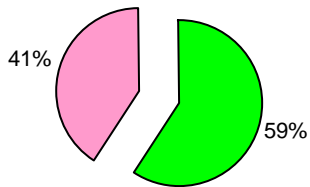
Norway: different-sex



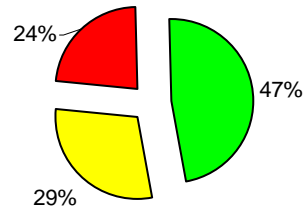
Norway: same-sex



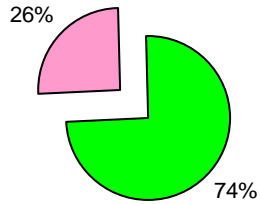
Sweden: different-sex



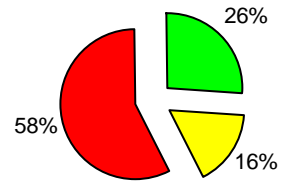
Sweden: same-sex



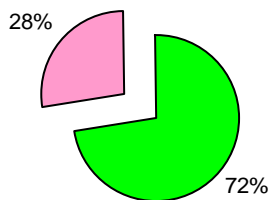
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

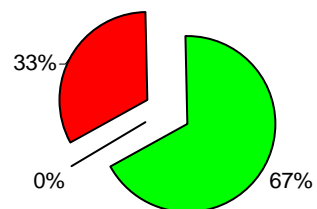


Table B – part one (Comparative): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
1. Properties of each partner are considered joint property	BEL, DNK, FRA, NLD (DEU)	BEL, NLD	FRA, NLD (BEL)	DNK, FRA, NLD (BEL)	(FRA), (NLD)	(FRA), (NLD)
2. Debts of each partner are considered joint debt	BEL, FRA, NLD (DEU), (FIN) (NOR), (SWE)	BEL, NLD	FRA, NLD (BEL)	FRA, NLD (BEL), (FIN) (NOR), (SWE)	(FRA), (NLD), (SWE)	(FRA), (NLD), (SWE)
3. In case of splitting up, statutory rules on alimony apply	BEL, FIN, FRA, ICE, NLD, NOR, SWE DNK, DEU	BEL, NLD	FRA, NLD (BEL)	FIN, FRA, ICE, NLD, NOR, SWE DNK, DEU (BEL)	(BEL), (NLD)	(BEL), (NLD)
4. In case of splitting up, statutory rules on redistribution of properties apply	FIN, FRA, ICE, NOR DNK, DEU, SWE		FRA	FIN, FRA, ICE, NOR DNK, DEU, SWE	NOR, SWE (DEU), (FRA)	NOR, SWE (DEU), (FRA)
5. In case of wrongful death of one partner, the other is entitled to compensation	BEL, DEU, FIN, FRA, ICE, NLD, SWE DNK, NOR	BEL, NLD	BEL, FRA, NLD	BEL, DEU, FIN, FRA, ICE, NLD, SWE DNK, NOR	BEL, FIN, FRA, NLD, SWE DNK, ICE, NOR	FIN, FRA, NLD, SWE DNK, NOR (ICE) (BEL?)
6. When one partner dies without testament, the other is an inheritor	BEL, DNK, DEU, FIN, FRA, ICE, NLD, NOR SWE	BEL, NLD	NLD	DNK, DEU, FIN, ICE, NLD, NOR SWE	(SWE)	(SWE)

Table B – part one (Levels): Material consequences in private law

The maximum number of points in each cell of this table (covering the 6 legal consequences of table B – part one) is 18. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

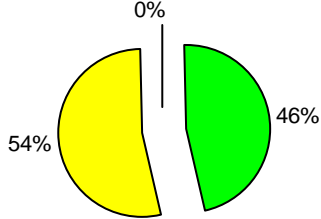
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	13 pt = 100%	13 pt = 100%	13 pt = 100%	13 pt = 100%	6 pt = 46%	6 pt = 46%
Belgium	13 pt = 100%	13 pt = 100%	6 pt = 46%	6 pt = 46%	4 pt = 31%	2 pt = 15%
France	16 pt = 100%	0 pt = 0%	13 pt = 81%	13 pt = 81%	6 pt = 38%	6 pt = 38%
Germany	12 pt = 100%	0 pt = 0%	0 pt = 0%	10 pt = 83%	1 pt = 8%	1 pt = 8%
Denmark	11 pt = 100%	0 pt = 0%	0 pt = 0%	11 pt = 100%	2 pt = 18%	2 pt = 18%
Norway	12 pt = 100%	0 pt = 0%	0 pt = 0%	12 pt = 100%	4 pt = 33%	4 pt = 33%
Sweden	11 pt = 100%	0 pt = 0%	0 pt = 0%	11 pt = 100%	7 pt = 64%	7 pt = 64%
Iceland	12 pt = 100%	0 pt = 0%	0 pt = 0%	12 pt = 100%	2 pt = 17%	1 pt = 8%
Finland	13 pt = 100%	0 pt = 0%	0 pt = 0%	13 pt = 100%	3 pt = 23%	3 pt = 23%

Pie charts based on Table B – part one: Material consequences in private law

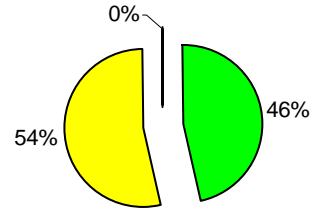
Used colour codes (LLC = level of legal consequences)

- Green = LLC of *informal cohabitation*
- Yellow = additional LLC of *registered partnership* (Green + Yellow = LLC of registered partnership)
- Pink = additional LLC of *civil marriage* (Green + Yellow + Pink = LLC of civil marriage)
- Red = LLC *not* available to same-sex partners of any status

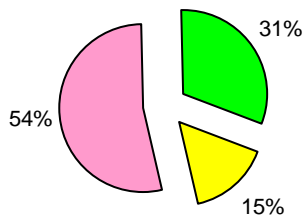
Netherlands: different-sex



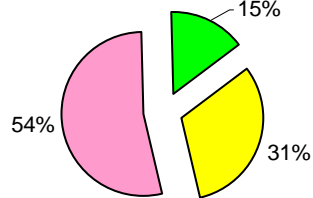
Netherlands: same-sex



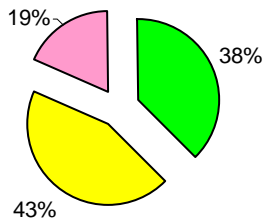
Belgium: different-sex



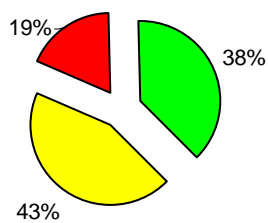
Belgium: same-sex



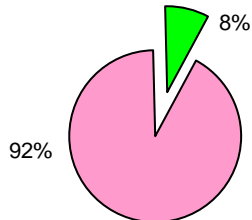
France: different-sex



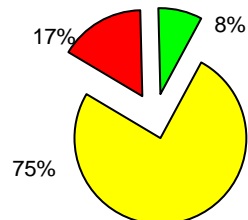
France: same-sex



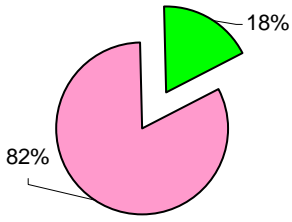
Germany: different-sex



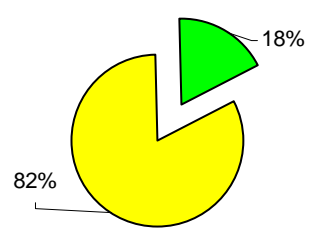
Germany: same-sex



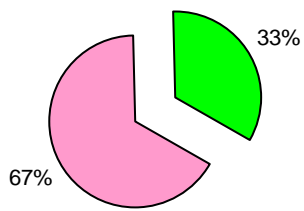
Denmark: different-sex



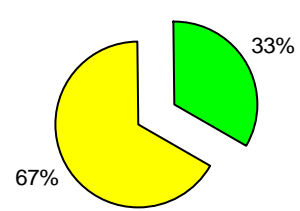
Denmark: same-sex



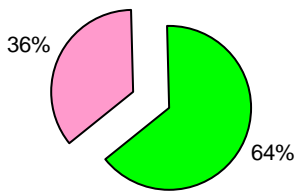
Norway: different-sex



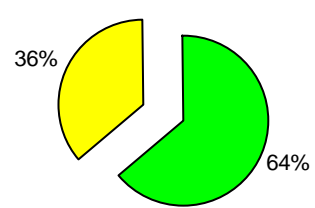
Norway: same-sex



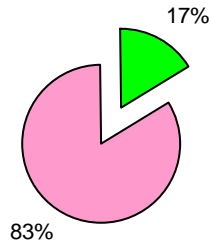
Sweden: different-sex



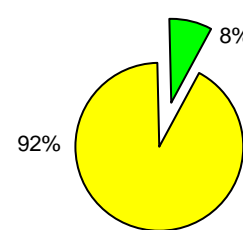
Sweden: same-sex



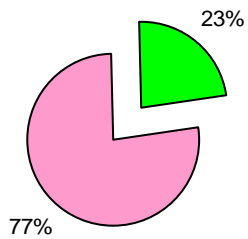
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

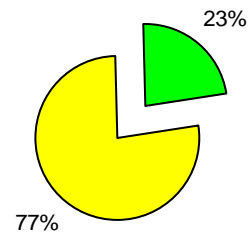


Table B – part two (Comparative): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
7. Relationship can result in lower property tax	ICE, NOR (NLD)	(NLD)	(NLD)	ICE, NOR (NLD)	ICE (NLD)	(NLD)
8. Relationship can result in lower income tax	DEU, DNK, FRA, ICE, NOR BEL (FIN), (NLD)	BEL (NLD)	FRA (NLD)	DNK, FRA, ICE, NOR DEU (FIN), (NLD)	ICE (DEU), (NLD)	(DEU), (NLD)
9. Public health insurance of one partner covers medical costs of other partner	DEU, FRA, NOR BEL, NLD (ICE)	BEL, NLD	BEL, FRA, NLD	DEU, NOR BEL, FRA, NLD (ICE)	BEL, FRA, NLD, NOR (ICE)	BEL, FRA, NLD (NOR)
10. Relationship can have positive impact on basic social security payment in case of no income	(NOR)			(NOR)	(NOR)	(NOR)
11. Relationship can have positive impact on statutory old age pension	BEL, ICE (NLD)	BEL (NLD)	(NLD)	ICE (NLD)	(ICE), (NLD)	(NLD)
12. When one partner dies, the other can get a statutory survivor's pension	DEU, FIN, FRA, NOR BEL, SWE (ICE), (NLD)	BEL (NLD)	(NLD)	FIN, NOR SWE (ICE), (NLD)	NOR, SWE (ICE), (NLD)	SWE (NLD), (NOR)
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	ALL	BEL, NLD	NLD BEL, FRA	DNK, FIN, ICE, NLD, NOR, SWE BEL, FRA	DNK, SWE ICE, NLD, NOR (BEL), (FIN) (FRA)	DNK, SWE NLD (BEL), (FRA) (ICE), (NOR)

Table B – part two (Levels): Positive material consequences in public law

The maximum number of points in each cell of this table (covering the 7 legal consequences of table B – part two) is 21. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

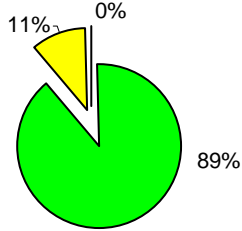
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	9 pt = 100%	9 pt = 100%	9 pt = 100%	9 pt = 100%	8 pt = 89%	8 pt = 89%
Belgium	12 pt = 100%	12 pt = 100%	4 pt = 33%	4 pt = 33%	3 pt = 25%	3 pt = 25%
France	12 pt = 100%	0 pt = 0%	7 pt = 58%	7 pt = 58%	3 pt = 25%	3 pt = 25%
Germany	12 pt = 100%	0 pt = 0%	0 pt = 0%	5 pt = 41%	1 pt = 8%	1 pt = 8%
Denmark	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	3 pt = 50%	3 pt = 50%
Norway	16 pt = 100%	0 pt = 0%	0 pt = 0%	16 pt = 100%	7 pt = 44%	4 pt = 25%
Sweden	5 pt = 100%	0 pt = 0%	0 pt = 0%	5 pt = 100%	5 pt = 100%	5 pt = 100%
Iceland	14 pt = 100%	0 pt = 0%	0 pt = 0%	14 pt = 100%	9 pt = 64%	1 pt = 7%
Finland	7 pt = 100%	0 pt = 0%	0 pt = 0%	7 pt = 100%	1 pt = 14%	0 pt = 0%

Pie charts based on Table B – part two: Positive material consequences in public law

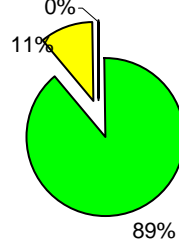
Used colour codes (LLC = level of legal consequences)

- Green = LLC of *informal cohabitation*
- Yellow = additional LLC of *registered partnership* (Green + Yellow = LLC of registered partnership)
- Pink = additional LLC of *civil marriage* (Green + Yellow + Pink = LLC of civil marriage)
- Red = LLC *not* available to same-sex partners of any status

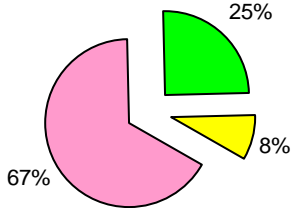
Netherlands: different-sex



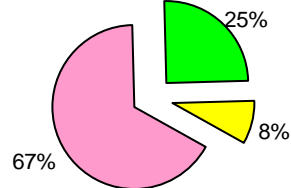
Netherlands: same-sex



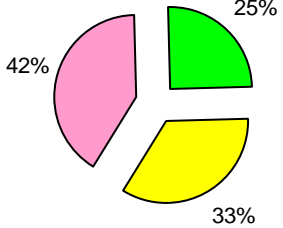
Belgium: different-sex



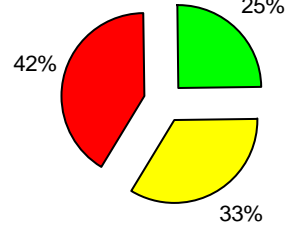
Belgium: same-sex



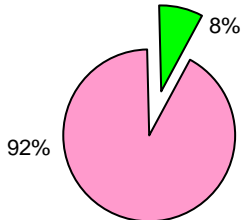
France: different-sex



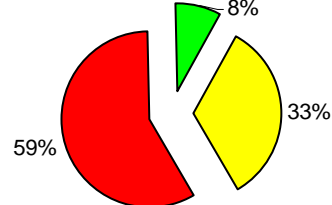
France: same-sex



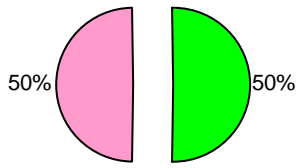
Germany: different-sex



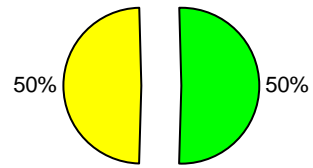
Germany: same-sex



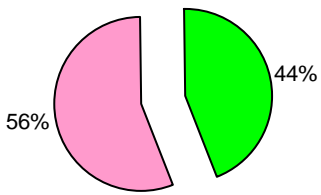
Denmark: different-sex



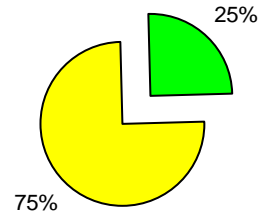
Denmark: same-sex



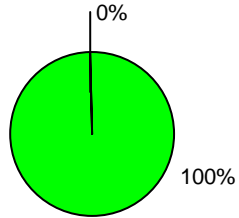
Norway: different-sex



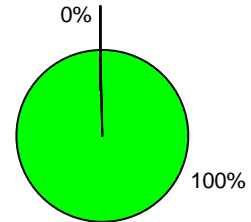
Norway: same-sex



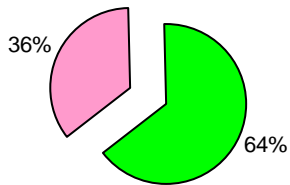
Sweden: different-sex



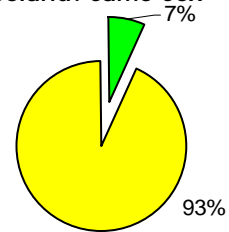
Sweden: same-sex



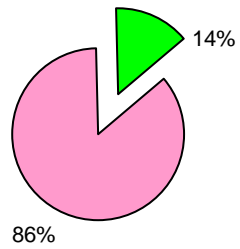
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

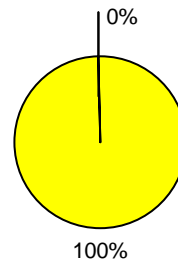


Table B — part three (Comparative): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
14. Relationship can result in higher property tax	SWE			SWE	SWE	(SWE)
15. Relationship can result in higher income tax	BEL, FRA (NLD)	BEL (NLD)	FRA (NLD)	FRA (NLD)		
16. Relationship can have negative impact on basic social security payment in case of no income	BEL, DEU, DNK, FIN, FRA, ICE, NLD, SWE (NOR)	BEL, NLD	FRA, NLD BEL	DEU, DNK, FIN, FRA, ICE, NLD, SWE BEL (NOR)	DEU, DNK, FIN, FRA, ICE, NLD, SWE BEL (NOR)	DNK, FRA, NLD, SWE BEL (NOR) (DEU?)
17. Relationship can have negative impact on statutory old age pension	DNK, FIN, ICE, NLD, NOR (SWE)	NLD	NLD	DNK, FIN, ICE, NLD, NOR (SWE)	DNK, FIN, ICE, NLD NOR	DNK, NLD (NOR)

Table B – part three (Levels): Negative material consequences in public law

The maximum number of points in each cell of this table (covering the 4 legal consequences of table B – part two) is 12. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

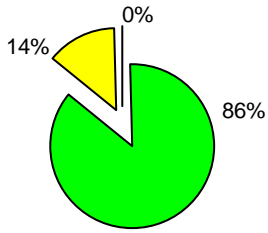
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	7 pt = 100%	7 pt = 100%	7 pt = 100%	7 pt = 100%	6 pt = 86%	6 pt = 86%
Belgium	6 pt = 100%	6 pt = 100%	2 pt = 33%	2 pt = 33%	2 pt = 33%	2 pt = 33%
France	6 pt = 100%	0 pt = 0%	6 pt = 100%	6 pt = 100%	3 pt = 50%	3 pt = 50%
Germany	3 pt = 100%	0 pt = 0%	0 pt = 0%	3 pt = 100%	3 pt = 100%	1 pt = 33%
Denmark	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	6 pt = 100%	6 pt = 100%
Norway	4 pt = 100%	0 pt = 0%	0 pt = 0%	4 pt = 100%	3 pt = 75%	2 pt = 50%
Sweden	7 pt = 100%	0 pt = 0%	0 pt = 0%	7 pt = 100%	5 pt = 71%	4 pt = 57%
Iceland	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	6 pt = 100%	0 pt = 0%
Finland	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	6 pt = 100%	0 pt = 0%

Pie charts based on Table B – part three: Negative material consequences in public law

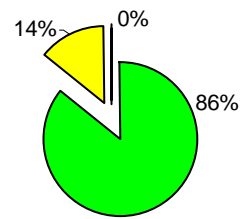
Used colour codes (LLC = level of legal consequences)

- Green = LLC of *informal cohabitation*
- Yellow = additional LLC of *registered partnership* (Green + Yellow = LLC of registered partnership)
- Pink = additional LLC of *civil marriage* (Green + Yellow + Pink = LLC of civil marriage)
- Red = LLC *not* available to same-sex partners of any status

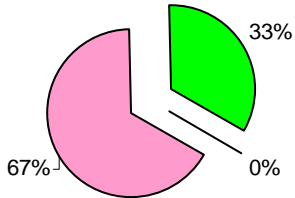
Netherlands: different-sex



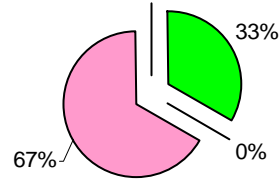
Netherlands: same-sex



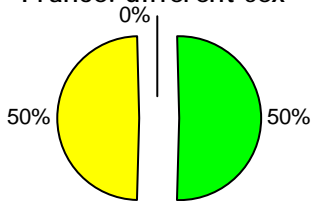
Belgium: different-sex



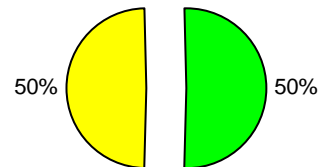
Belgium: same-sex



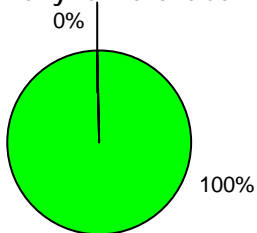
France: different-sex



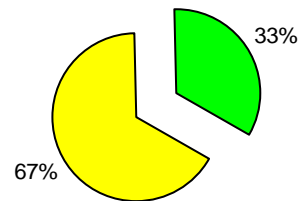
France: same-sex



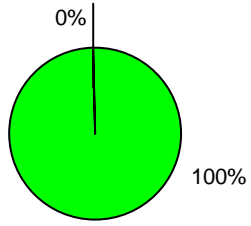
Germany: different-sex



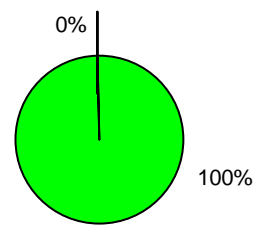
Germany: same-sex



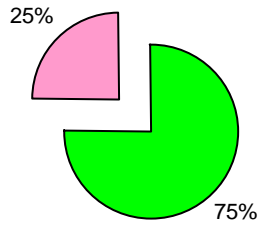
Denmark: different-sex



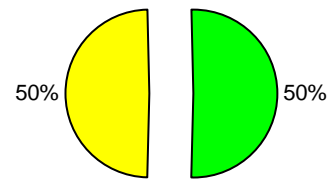
Denmark: same-sex



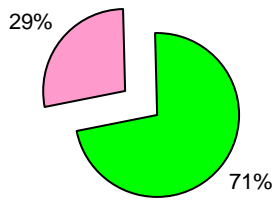
Norway: different-sex



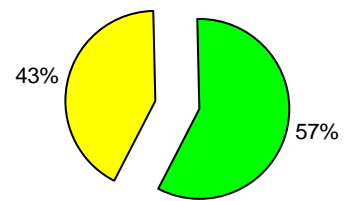
Norway: same-sex



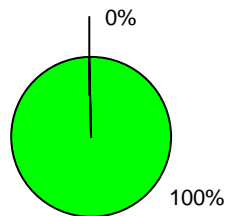
Sweden: different-sex



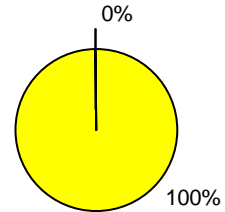
Sweden: same-sex



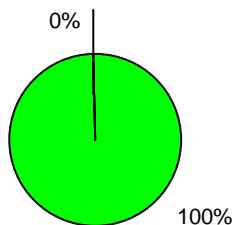
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

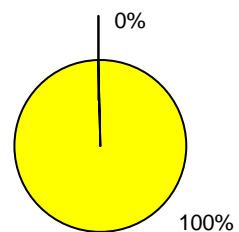


Table C (Comparative): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
1. One partner can have or use surname of the other	BEL, DEU, DNK, FIN, FRA, NLD, NOR, SWE (ICE)	BEL, NLD	NLD	DEU, DNK, NLD, NOR, SWE (FIN), (ICE)	NOR (NLD)	NOR (NLD)
2. Foreign partner of resident national is entitled to a residence permit	BEL, DEU, FRA, ICE, NOR, SWE DNK, FIN, NLD	BEL NLD	BEL FRA, NLD	BEL, DEU, ICE, NOR, SWE DNK, FIN, FRA, NLD	BEL, ICE, NOR, SWE FIN, NLD (FRA)	BEL, NOR, SWE FIN, NLD (FRA)
3. Relationship makes it easier for foreign partner to obtain citizenship	BEL, DEU, DNK, FIN, FRA, ICE, NLD, SWE	BEL, NLD	NLD (FRA)	DEU, DNK, FIN, ICE, NLD, SWE (FRA)	SWE ICE, NLD (FRA)	SWE NLD (FRA)
4. In case of criminal prosecution, one partner can refuse to testify against the other	BEL, DEU, DNK, FIN, ICE, NLD, NOR, SWE (FRA)	BEL, NLD	NLD	DEU, DNK, FIN, ICE, NLD, NOR, SWE	DNK, SWE FIN, ICE, NOR (DEU)	DNK, SWE FIN, ICE, NOR
5. When one partner uses violence against other partner, specific statutory protection applies	BEL, FRA, NOR, SWE (DNK), (ICE)	BEL	BEL, FRA	BEL, FRA, NOR, SWE (DNK), (ICE)	FRA, NOR, SWE BEL (ICE)	FRA, NOR, SWE BEL (ICE)
6. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE (DEU?)	BEL, NLD	BEL, NLD (FRA)	BEL, DNK, FIN, ICE, NLD, NOR, SWE (FRA) (DEU?)	BEL, FIN, NLD, NOR, SWE (FRA), (ICE) (DEU?)	BEL, FIN, NLD, NOR, SWE (FRA) (DEU?)
7. Organ donation from one living partner to the other is lawful	BEL, DEU, DNK, FIN, ICE, NLD, NOR, SWE FRA	BEL, NLD	BEL, NLD	BEL, DEU, DNK, FIN, ICE, NLD, NOR (SWE?)	BEL, DNK, FIN, ICE, NLD, NOR, SWE	BEL, DNK, FIN, ICE, NLD, NOR (SWE?)
8. When one partner dies, the other can continue to rent the home	ALL	BEL, NLD	BEL, FRA, NLD	ALL	DEU, DNK, FIN, FRA, NLD, SWE ICE, NOR	DEU, DNK, FRA, ICE, NLD, SWE FIN, NOR
9. Partners have a duty to have sexual contact	BEL, FRA	BEL	FRA	FRA	FRA	FRA

Table C (Levels): Other legal consequences

The maximum number of points in each cell of this table (covering 9 legal consequences) is 27. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

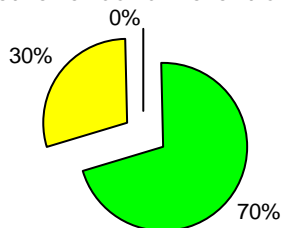
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	20 pt = 100%	20 pt = 100%	20 pt = 100%	20 pt = 100%	14 pt = 70%	14 pt = 70%
Belgium	27 pt = 100%	27 pt = 100%	15 pt = 56%	15 pt = 56%	11 pt = 41%	11 pt = 41%
France	24 pt = 100%	0 pt = 0%	13 pt = 54%	13 pt = 54%	11 pt = 46%	11 pt = 46%
Germany	19 pt = 100%	0 pt = 0%	0 pt = 0%	19 pt = 100%	5 pt = 26%	4 pt = 21%
Denmark	21 pt = 100%	0 pt = 0%	0 pt = 0%	21 pt = 100%	9 pt = 43%	9 pt = 43%
Norway	21 pt = 100%	0 pt = 0%	0 pt = 0%	21 pt = 100%	18 pt = 86%	18 pt = 86%
Sweden	24 pt = 100%	0 pt = 0%	0 pt = 0%	22 pt = 92%	21 pt = 87%	19 pt = 79%
Iceland	20 pt = 100%	0 pt = 0%	0 pt = 0%	20 pt = 100%	14 pt = 70%	9 pt = 45%
Finland	20 pt = 100%	0 pt = 0%	0 pt = 0%	18 pt = 90%	13 pt = 65%	12 pt = 60%

Pie charts based on Table C: Other legal consequences

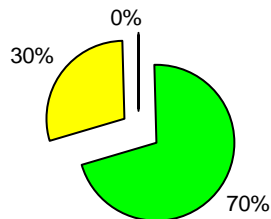
Used colour codes (LLC = level of legal consequences)

- Green = LLC of *informal cohabitation*
- Yellow = additional LLC of *registered partnership* (Green + Yellow = LLC of registered partnership)
- Pink = additional LLC of *civil marriage* (Green + Yellow + Pink = LLC of civil marriage)
- Red = LLC *not* available to same-sex partners of any status

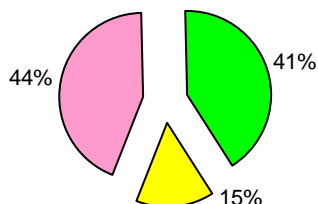
Netherlands: different-sex



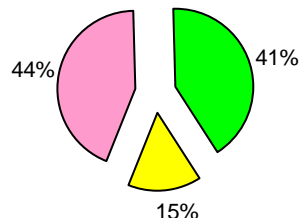
Netherlands: same-sex



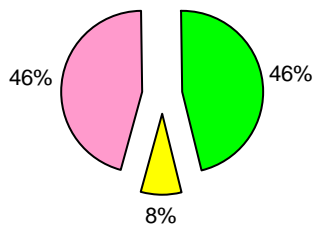
Belgium: different-sex



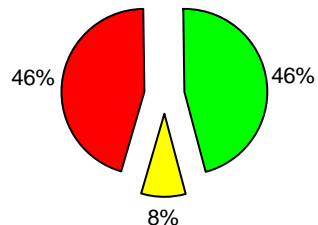
Belgium: same-sex



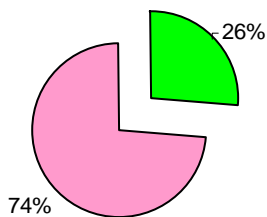
France: different-sex



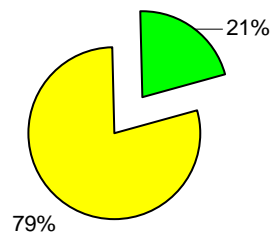
France: same-sex



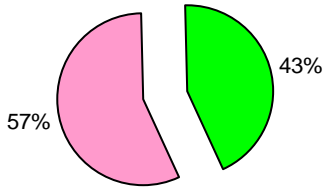
Germany: different-sex



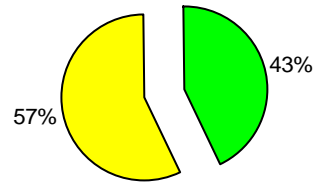
Germany: same-sex



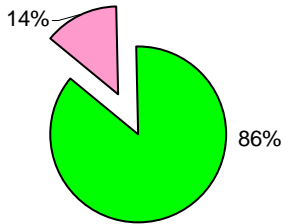
Denmark: different-sex



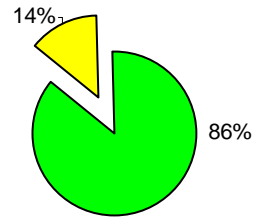
Denmark: same-sex



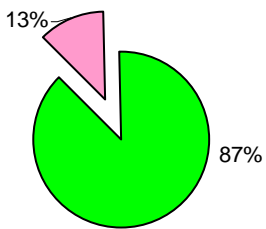
Norway: different-sex



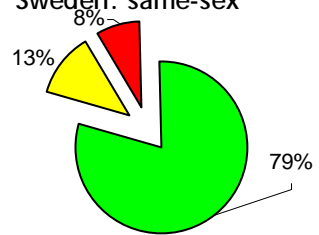
Norway: same-sex



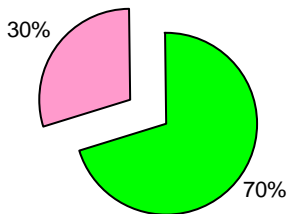
Sweden: different-sex



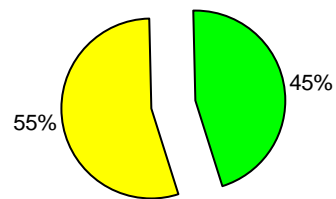
Sweden: same-sex



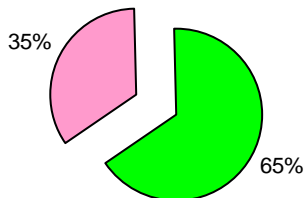
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

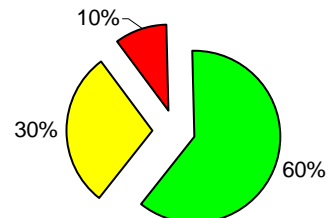


Table D (Comparative): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status)
1. With respect to housing	BEL, DNK, ICE, FIN, FRA, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
2. With respect to life insurance	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
3. With respect to health insurance	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
4. With respect to medically assisted insemination	BEL, NLD FIN, FRA	BEL, NLD FIN, FRA	BEL, NLD FIN, FRA	BEL, NLD FIN
5. With respect to other services	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
6. With respect to an occupational survivor's pension	BEL, DNK, FIN, ICE, NOR, SWE NLD (FRA?)	BEL (SWE) (FRA?)	BEL (SWE) (FRA?)	BEL, DNK, ICE, NLD, NOR, SWE (FIN) (DEU?), (FRA?)
7. With respect to other spousal benefits in employment	BEL, DNK, FRA, ICE, NLD, NOR, SWE FIN (DEU)	BEL, FRA, NLD (FIN), (SWE)	BEL, FRA, NLD (FIN), (SWE)	BEL, DNK, FRA, ICE, NLD, NOR, SWE FIN (FRA) (DEU?)

Table E (Comparative): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex
Resident national with:	1. Resident national	ALL	BEL, NLD	BEL, FRA, NLD	ALL
	2. Non-resident national	ALL	BEL, NLD	NLD FRA (BEL?)	DEU, DNK, FIN, NLD, NOR, SWE FRA (BEL?)
	3. Resident foreigner	ALL	BEL, NLD	FRA, NLD (BEL?)	DEU, DNK, FIN, FRA, ICE, NLD, NOR, SWE (BEL?)
	4. Non-resident foreigner	BEL, DEU, DNK, FIN, FRA, NLD, SWE ICE, NOR	BEL, NLD	NLD FRA (BEL?)	DEU, DNK, FIN, NLD, SWE FRA, NOR (BEL?)
Non-resident national with:	5. Non-resident national	BEL, DEU, DNK, FIN, ICE, NLD, NOR, SWE	BEL, NLD	NLD (BEL?)	DEU, NLD (BEL?)
	6. Resident foreigner	ALL	BEL, NLD	NLD FRA (BEL?)	DEU, NLD FRA, NOR, SWE (DNK), (FIN) (BEL?)
	7. Non-resident foreigner	BEL, DEU, DNK, FIN, NLD, SWE ICE, NOR	BEL, NLD	NLD (BEL?)	DEU, NLD (BEL?)
Resident foreigner with:	8. Resident foreigner	ALL	BEL, NLD	FRA, NLD (BEL?)	DEU, FRA, NLD DNK, FIN, NOR, SWE (ICE) (BEL?)
	9. Non-resident foreigner	BEL, DEU, DNK, FIN, FRA, NLD, SWE ICE, NOR	BEL, NLD	NLD FRA (BEL?)	DEU, NLD FRA, NOR, SWE (FIN) (BEL?)
Non-resident foreigner with:	10. Non-resident foreigner	BEL, DEU, DNK, SWE FIN, ICE, NOR	(BEL)	(BEL?)	DEU (BEL)
11. Sister or brother with sister or brother		(SWE)		BEL	BEL (SWE)
12. Parent with child		(SWE)		BEL	BEL (SWE)

Table F (Comparative): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex
1. Registry of births, marriages and deaths	BEL, DEU, FIN, FRA, NLD	BEL, NLD	BEL, NLD	BEL, FIN, NLD, DEU
2. Local population administration	DNK			DNK, DEU
3. Church	DNK, FIN, ICE, NOR, SWE			
4. Court	FIN, SWE		FRA	FIN, FRA, SWE
5. Private individual with special authorisation	SWE (NOR)			SWE (NOR)
6. Public notary	NOR			NOR, DEU
7. Administrative magistrate	ICE			ICE, DEU

Table G (Comparative): Means of ending a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex
1. By court decision (after joint or individual petition)	BEL, DEU, DNK, FIN, FRA, ICE, NLD, SWE NOR	BEL, NLD	NLD	DEU, DNK, FIN, ICE, NLD, SWE NOR
2. By mutually agreed contract (outside court)	<i>(BEL), (NLD)</i>	<i>(BEL), (NLD)</i>	BEL, FRA, NLD	BEL, FRA, NLD
3. Unilaterally by one partner (outside court)			BEL, FRA	BEL, FRA
4. By conversion of marriage into registered partnership, or vice versa (outside court)	NLD <i>(FIN)</i>	NLD	NLD	NLD <i>(FIN)</i>
5. By one registered partner marrying a third person (or by one married partner starting a registered partner with a third person)			BEL, FRA	BEL, FRA <i>(DEU?)</i>
6. By the registered partners marrying each other (or by the married partners starting a registered partnership together)			BEL, FRA,	BEL, FRA
7. By administrative decision (after joint or individual petition)	DNK, NOR ICE			DNK, NOR ICE

Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners:

Comparative analysis

by Kees Waaldijk ¹

Introduction

This study introduces the concept of ‘levels of legal consequences’ (LLC) as a tool for a comparative analysis of civil marriage, registered partnership, and informal cohabitation (of different-sex or same-sex partners) in different countries.² For nine countries (Belgium, Denmark, Finland, France, Germany, Iceland, Netherlands, Norway and Sweden) 33 possible major legal consequences of these three types of relationship status were investigated.³

On the basis of the national chapters about the nine countries, and on the basis of the Comparative overview ⁴ of the national information found, this chapter aims to provide a first tentative comparative analysis of the data. First, the legal character of civil marriage, of registered partnership and of informal cohabitation will be discussed.⁵ That discussion is largely based on the data that can be found in the *comparative tables* in the Comparative overview. Secondly, the attention will focus on the levels of legal consequences found for each type of relationship status. This will largely be based on the data as represented in the *levels tables* and *pie charts* in the Comparative overview. Thirdly the question will be addressed what this tells us about the legal exclusion (and inclusion) of same-sex couples. Finally some hypotheses will be formulated on how the different levels of legal consequences might explain differences in the frequency of partnership registration between the nine different countries.

The legal character of civil marriage

This study looks at civil marriage (and registered partnership and informal cohabitation) as a legal institution. This focus on the legal character of marriage means that other aspects (such as the social, the psychological, the religious, the economic, etc.) are left aside. As a legal institution marriage can be characterised as a form of partnership between two persons that is created by a formal act of registration, and that results in a number of legal rights and obligations (both between the partners, and between the partners and others including the state). The law sets *conditions* that must be met by the two persons who want to marry, gives rules for the *procedures* that need to be followed for starting or ending a marriage, and provides which legal *consequences* result from a marriage.

These characteristics of law and marriage can be found in each of the nine countries surveyed. In fact, the survey shows a great similarity between these nine countries, with respect to conditions and procedures as well as with respect to legal consequences of marriage.

In all countries but Belgium and the Netherlands, one of the conditions for marriage is that the partners are of different-sex. Only recently that condition has been dropped in Belgium (2003) and the Netherlands (2001). In all nine countries the condition applies that neither partner should be a sister, brother, parent or child of the other partner (see E11 and E12).⁶ This condition also applies to same-sex marriage in Belgium and the

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² For a discussion of the different approaches in the legal literature on how to categorise and name different types of relationship status, see: Kees Waaldijk, ‘Others may follow: the introduction of marriage (and quasi-marriage or semi-marriage) for same-sex couples in European countries’, 38 *New England Law Review* 2004, p.569-589 (online available via www.emmeijers.nl/waaldijk).

³ See the introductory chapter in this report.

⁴ The Comparative overview can be found on the pages before this Comparative analysis.

⁵ It should be noted that, for the sake of clarity, the distinctions made in the national chapters and in the Comparative overview, between ‘yes’ and ‘yes, but’, and between ‘no’ and ‘no, but’ are largely ignored in this chapter in the paragraphs on the legal character of marriage, registered partnership, and cohabitation.

⁶ All references like ‘E11’ here and below both refer to the corresponding items in the relevant national chapter(s), and to the corresponding items in the *comparative tables* in the Comparative overview.

Netherlands. As far as non-residents and foreigners are concerned, the nine countries are quite liberal. Only France requires that at least one of the partners is a resident (see E5, E7 and E10). In the Netherlands (and in Belgium for same-sex marriages) the requirement is that at least one of the partners is either a national or a resident (see E10). In all other countries (and in Belgium for different-sex marriages) citizenship or residency is not required.

Between the nine countries, the similarities with respect to procedures are also considerable. In each country a marriage can be started before a public authority (see F1, F2, F4, F6 and F7). However, in the five Nordic countries a different-sex civil marriage can also start in church (see F5), a possibility that is not available in Belgium, Germany, France and the Netherlands. In all nine countries a marriage can be ended in court (see G1). However, in Denmark, Iceland, the Netherlands and Norway a marriage can also end outside court (if certain conditions are met; see G4 and G7).

There are great similarities between the countries as regards the legal consequences that are attached to marriage.⁷ Yet, of the 33 legal consequences taken into account in this survey, only twelve consequences apply to different-sex marriage in all countries,⁸ and only one in no country at all (B10, positive impact of relationship on basic social security). One consequence applies in one country only, Sweden (B14, higher property tax); five other consequences apply in all but one of the countries.⁹ As regards the applicability of legal consequences, the variation between the countries mostly relates to parental authority and individual adoption (A3 and A6), joint property and debts (B1, B2 and B4), tax (B7, B8 and B15), public health insurance and pensions (B9, B11, B12 and B17), protection against domestic violence (C5), and the duty to have sex (C9).

Both in Belgium and the Netherlands the consequences of same-sex marriage are almost the same as those of different-sex marriage; the main difference between the two countries is that joint and second-parent adoptions (A4 and A5) are not possible for same-sex spouses in Belgium. In neither of the two countries the female spouse of a mother automatically becomes a legal parent of the new born child (A1).

The legal character of registered partnership

Forms of registered partnership have been introduced in all nine countries.¹⁰ In all countries registered partnership is conceived as a legal institution *more or less analogous* to marriage.¹¹ Therefore it can also be characterised as a form of partnership between two persons that is created by a formal act of registration, and that results in a number of legal rights and obligations (both between the partners, and between the partners and others including the state).¹² It would be interesting to see to what degree non-legal aspects of registered partnership (such as the social, the psychological, the economic, the religious, etc.) are also analogous to marriage, but that falls outside the scope of this study.

Like marriage law, the legal rules on registered partnership focus on the *conditions* that must be met by two persons who want to register their partnership, on the *procedures* that need to be followed for starting or ending a registered partnership, and on the legal *consequences* that result from registered partnership. With respect to all three the survey shows large similarities between the nine countries, but less so than as regards marriage.

In all countries but France, Belgium and the Netherlands, one of the conditions for partnership registration is that the partners must be of the same sex. From the beginning (Denmark, 1989; Norway, 1993; Sweden, 1995; Iceland, 1996) registered partnership was aimed at couples who were not *allowed* to get married because of the different-sex requirement of marriage laws. The more recent legislation on registered partnership in the Netherlands (1998), France (1999) and Belgium (2000) was not only aimed at such same-sex couples, but also at different-sex couples who did not *want* to get married. Nevertheless, the two most recent registered partnership laws (Germany, 2001; Finland, 2002) again include the same-sex requirement. Like for marriage, in most countries also the condition applies that neither partner should be a sister, brother, parent or child of the other partner. The only exception is Belgium, where inter-generational and inter-sibling partnerships can also be registered (see E11 and E12).

As far as non-residents and foreigners are concerned, some countries are as liberal for registered partnership as for marriage (Germany and the Netherlands), but most countries (especially Iceland, Denmark, Finland and perhaps Belgium) are more restrictive (see E2 and E4 to E10). It should be noted that in several countries the conditions with respect to non-residents and/or foreigners have been made more liberal a few years after the introduction of registered partnership (Denmark, Norway, Sweden, the Netherlands, Iceland and perhaps Belgium).

⁷ It should be remembered that for the purposes of this study it is assumed that married or registered partners are always living together, even when that is not required by law.

⁸ The twelve items are: A1, A2, A4, A5, A7, B3, B5, B6, B13, C2, C7 and C8.

⁹ The five items are: B16 and C3 not in Norway, C1 not in Iceland, C4 not in France, and C6 possibly not in Germany.

¹⁰ That is in fact why these nine countries have been included in this study.

¹¹ More about that at the end of this paragraph.

¹² On the demarcation line between 'registered' partnership and 'informal' cohabitation, see also the introductions to the chapters on Belgium and Iceland.

In no country a registered partnership can be entered into in a church, not even in the five Nordic countries, where it is possible to marry in church (see F3). Registered partnerships can be started before a public authority (see F1, F2, F4, F6 and F7). In most countries partnership registration is done by the same public authorities as those competent to do marriages. However, in France partnership registration can only take place at a court (see F4), and in Germany it varies from *Land* to *Land* which authority is declared competent to do such registrations.

Similarly, in most countries the procedures for ending a marriage (see above) also apply to the ending of registered partnership. However, in Belgium and France different procedures apply (mutual contract, unilateral declaration, marriage between the registered partners, or marriage of one partner with someone else; see G2, G3, G5 and G6). In the Netherlands the ordinary procedures for a divorce in court also apply to registered partnership, but registered partners can also choose to dissolve their partnership by mutual contract (G2), or by converting it into a marriage (G4). It is interesting to note that the three countries with this wider range of non-judicial means of ending a registered partnership (Belgium, France and the Netherlands) are also the three that allow different-sex couples to register their partnership.

The legal consequences of registered partnership¹³ are most like marriage in the Netherlands, where only the presumption of paternity (A1) does not apply, and in Sweden, where that presumption does not apply either, and where perhaps organ donation between living registered partners (C7) is not allowed. The consequences are also very similar in Finland, where only the presumption of paternity (A1), second-parent and joint adoption (A4 and A5), and the use of each other's surname (C1) are excluded,¹⁴ and in Denmark, Iceland and Norway, where the presumption of paternity (A1), medically assisted insemination (A2), and joint adoption (A5) are excluded.¹⁵

The list of legal consequences of marriage that are not attached to registered partnership is a little longer in Germany: apart from paternity, insemination, and second-parent and joint adoption,¹⁶ also fostering (A7) is normally not possible for registered partners; neither are they entitled to any statutory survivor's pension (B12), nor to a substantial reduction of inheritance tax (B13).

The lists in France and Belgium are even longer. Apart from most of the exceptions mentioned for the other countries,¹⁷ registered partners in France are not entitled to intestate inheritance (B6), nor to citizenship (C3) and they are not automatically considered as next of kin for medical purposes (C6). In Belgium, apart from some of the above,¹⁸ the list of exceptions also contains joint property, joint debt and alimony (B1, B2 and B3), positive impact on old age pension (B11), the right to refuse to testify against each other (C4), and the duty to have sex (C9); until the end of 2004, the list also comprises some positive and negative impact on income tax (B8 and B15).

The three countries that have made registered partnership also available to different-sex couples, make very few differences between same-sex and different-sex partnerships. The main differences can be found in France, where medically assisted insemination (A2) and perhaps fostering (A7) are only available to different-sex registered partners.

Above it was claimed that in all nine countries registered partnership is conceived as *more or less analogous* to marriage. We have now seen that as far as the *conditions* for getting into it, registered partnership is most analogous to marriage in Germany and the Netherlands, and least analogous in Belgium, Denmark, Finland and Iceland. As regards *procedures* for getting into it, however, registered partnership is completely analogous to marriage in Belgium and the Netherlands, and least analogous in France. As regards procedures for getting out of it, the analogy is complete in Germany and the Nordic countries, and the smallest in Belgium and France. Finally, as regards legal *consequences*, the analogy between marriage and registered partnership is largest in the Netherlands and the Nordic countries, and smallest in Belgium and France.

In most countries the analogy between marriage and registered partnership is further strengthened by the prohibition of discrimination. In all countries but Germany discrimination between married and registered partners is unlawful, both with respect to housing, insurance and most other services (D1, D2, D3 and D5), and with respect to most spousal benefits in employment (D6 and D7).¹⁹ With respect to medically assisted insemination, discrimination between married and registered women is only unlawful in Finland, France, Belgium and the Netherlands (see D4).

¹³ It should be remembered that for the purposes of this study it is assumed that registered partners are always living together, even when not legally required to do so. Therefore all the legal consequences of informal cohabitation are assumed to also apply to registered partnership.

¹⁴ Please note that in Finland (and in Germany) individual adoption (A6) is available to registered partners, but not to married individuals.

¹⁵ All this, without taking into account nuances such as between 'yes' and 'yes, but' (see above).

¹⁶ See A1, A2, A4 and A5. See also the previous note.

¹⁷ Especially A1, A4, A5, C1 and C7, and as far as only same-sex registered partners are concerned: A2 and perhaps A7.

¹⁸ These are: A1, A4, A5, B6, C1 and C3.

¹⁹ In all countries but Germany and France this prohibition of discrimination in employment extends to survivor's pensions (D6).

The legal character of informal cohabitation

It can no longer be said that the law does not concern itself with informal cohabitants, certainly in the countries surveyed here. In all these countries the law provides that when certain *conditions* are met, a number of legal *consequences* follows from the fact that two persons are informally living together. In most countries there are no specific *procedures* that need to be followed before a cohabiting couple becomes legally recognised. The main exception is Iceland, where for the purposes of certain specific laws different-sex cohabiting partners have to register with the National Registry.²⁰ However, for the purposes of this study, such a 'registered cohabitation' is still being considered as a form of informal cohabitation. One reason for that is that the partnership is not *created* by the act of registration, but simply recognised. In the previous paragraph, the term 'registered partnership' has been reserved for forms of partnership that are 'created by a formal act of registration'. It should be noted that in several other countries, too, cohabiting couples may be under a duty to officially declare that they are in fact cohabiting, sharing a household, having a joint address, or something like that. Such a declaration does not make their partnership fall into the category of 'registered partnership'. On the other hand, the relationship status known in Belgium as *cohabitation légale* ('legal cohabitation') is created by the act of registration, and therefore (for the purposes of this study) it is not considered as a form of informal cohabitation.

The absence of specific *procedures* for getting into informal cohabitation, is also reflected in the absence of specific legislative rules on how to get out of it. For that reason, tables F and G do not deal with informal cohabitation.

Within the context of this study, it would have been impossible to give a full overview of the *conditions* that need to be fulfilled before the informal cohabitation of a couple is recognised in law. The main reason for this is, that such conditions not only vary from country to country, but also from law to law. Furthermore, quite often the extension of certain legal consequences to informal cohabitation has been realised by administrative practice or by case law; in such circumstances it is not always exactly clear what the conditions are. In the national chapters it can be seen that only rarely a written contract, or sexual contact, between the cohabitants is required, and only occasionally their having a child together. More frequent conditions are a certain length of the duration of the cohabitation, and obviously a joint address or household. For more details, see the national chapters.

The most fruitful angle under which to study the legal recognition of informal cohabitation is that of its legal consequences. In all nine countries some of the legal consequences of marriage have been attached to informal cohabitation, both of different-sex and of same-sex couples. With respect to these legal consequences, the differences between the countries are rather larger than with respect to the legal consequences of marriage or registered partnership.

The country with the least legal consequences attached to informal cohabitation, is Germany, where it can have a negative impact on basic social security (B16) and where the surviving cohabitant can continue to rent the home (C8), and where cohabitants are perhaps entitled to assisted insemination (A2) and are perhaps considered as next of kin for medical purposes (C6).²¹ In Belgium and France the list of legal consequences of informal cohabitation is somewhat longer, and also includes, in both countries: fostering (A7), compensation for wrongful death (B5), partner cover in public health insurance (B9), and domestic violence protection (C5); and in Belgium also a residence permit for the foreign partner (C2), and in France also a duty to have sex (C9). The list is much longer in the five Nordic countries; of these Sweden, like the Netherlands, attaches the most consequences to informal cohabitation. In the latter two countries the main remaining differences between marriage and cohabitation relate to paternity (A1), alimony (B3), intestate inheritance (B6), and surname (C1); and in Sweden also to second-parent and joint adoption (A4 and A5), and in the Netherlands also to property and debts (B1 and B2) and to the right to refuse to testify against each other (C4).

In most countries informal cohabitation carries only slightly less legal consequences for same-sex cohabitants than for different-sex cohabitants, with most differences being in the parenting field. The exception is Iceland, where same-sex cohabitants are only entitled to fostering (A7), to organ donation (C7), and to continuation of the rent after the death of one partner (C8),²² and different-sex cohabitants to much more.²³

In general it is not unlawful for employers or service providers to distinguish between cohabitants on the one hand, and married or registered partners on the other. With respect to housing, insurance and other services, such discrimination is only prohibited in Finland, France, Belgium and the Netherlands (D1 to D5). And with respect to most spousal benefits in employment, only France, Belgium and the Netherlands prohibit such discrimination (D6 and D7).²⁴

²⁰ See the introduction in the chapter on Iceland.

²¹ Apart from the obvious possibility of individual adoption (A6).

²² Apart from the obvious possibility of individual adoption (A6).

²³ See A2, A3, A4, A5, B5, B7, B8, B13, B16, B17, C2 and C3.

²⁴ Only in Belgium this prohibition of discrimination in employment extends to survivor's pensions (D6).

The levels of legal consequences of civil marriage

Within the limitations of this study (only 33 of the hundreds of possible legal consequences of marriage have been taken into account; and for each only five different answer-codes were available), an effort was made to quantify the level of legal consequences of each type of relationship status. This quantification of course introduces a further limitation: all 33 legal consequences carry the same weight in the calculation, and the five answer-codes were crudely translated in zero points for the answer 'no', one point for the answer 'no, but' or 'doubt', two points for 'yes, but', and three points for 'yes'. With that in mind, some general conclusions may be drawn from the levels of legal consequences (LLC) as represented in the levels tables and pie charts in the Comparative overview.

The first striking result is that in no country the level of legal consequences of different-sex marriage comes near the possible maximum of $3 \times 33 = 99$ points. It would seem that in Belgium and France different-sex marriage has the highest level of consequences, but in both it is only a level of 76 points (see comparative table O). In the other countries the level is even lower, with the lowest level for different-sex marriage in Denmark (61 points), Finland and Sweden (both 64 points) and Germany (65 points).²⁵ Clearly there is no European consensus as to the precise (level of) consequences that the law should attach to marriage. The differences between the countries are not so great with respect to parenting consequences and material consequences in private law (see tables A and B part one), but quite substantial with respect to material consequences in public law (table B parts two and three) and with respect to other consequences (table C).

To enable a good comparison between countries, the level of legal consequences in points have been translated into percentages, with the total number of points for different-sex marriage in each country being defined as 100%. This allows for the conclusion that in the Netherlands the level of legal consequences (hereafter: LLC) of same-sex marriage is 96%, while in Belgium it is only 88%.²⁶ In other words: 4% of the LLC of different-sex marriage in the Netherlands does not apply to same-sex marriage. This 4% is represented by a red segment in the pie chart for the Netherlands (see the *pie charts* based on table O).²⁷ For Belgium 12% of the LLC of different-sex marriage does not apply to same-sex marriage; therefore the red segment in the pie chart for Belgium is bigger.²⁸

A look at the pie charts based on table A shows much bigger red segments, both for the Netherlands and for Belgium: this illustrates that the LLC not applicable to same-sex marriage is much larger with respect to parenting consequences, than with respect to material and other consequences. In fact, both in the Netherlands and in Belgium the LLC for same-sex marriage is 100% as far as material and other consequences are concerned (see the levels tables B and C).

Because same-sex marriage is not available in the other seven countries, there is no LLC for same-sex marriage in these countries (represented as an LLC of '0%' in the tables).

The levels of legal consequences of informal cohabitation

The pie charts in the Comparative overview can best be read clockwise, that is starting with the green segment. The green segment represents the LLC of informal cohabitation.

In all pie charts there is a green segment, because in all nine countries informal cohabitation (by same-sex or different-sex partners) carries at least some legal consequences, and this not only in the field of material consequences (see the pie charts based on the three parts of table B) but also in the field of parenting (A) and in the field of 'other' consequences (C). This is an important finding. The nine countries for this study were selected because of their having introduced a form of registered partnership, not because they attach legal consequences to informal cohabitation, but they happen to do that, too. This will not be a mere coincidence: it seems reasonable to assume that countries that already recognise (same-sex) informal cohabitation are more likely to then also introduce (same-sex) registered partnership.

Nevertheless, the LLC for informal cohabitation varies very much from country to country, and from field to field (and, only in Iceland, also between same-sex and different-sex cohabitation, see above). For different-sex cohabitation the overall LLC (see the pie charts based on table O) is highest in the Netherlands and Sweden (75%),²⁹ followed by Iceland (63%), Norway, Finland and Denmark (around 55%), and then by Belgium and

²⁵ It can be observed that the number of points for marriage in these four countries is even lower than the number of points (67) for registered partnership in the Netherlands.

²⁶ This means that in Belgium the LLC of same-sex marriage is even lower than the LLC of registered partnership in the Netherlands and Sweden (see below).

²⁷ The few consequences of different-sex marriage in the Netherlands that do not or not fully apply to same-sex marriage are: paternity and joint (intercountry) adoption (see A1 and A5 in the chapter on the Netherlands).

²⁸ In Belgium the consequences that do not apply to same-sex marriage are: paternity, parental authority, second-parent adoption and joint adoption (see A1, A3, A4 and A5 in the chapter on Belgium).

²⁹ This means that in the Netherlands and Sweden the LLC of informal cohabitation is even higher than the LLC of registered partnership in Belgium, France and Germany (see below).

France (around 40%), and is lowest in Germany (23%). For same-sex cohabitation the overall LLC is generally only a little lower, except in Iceland, where the LLC for same-sex cohabitation (23%) is just over a third of the LLC for different-sex cohabitation. Only in Germany the LLC for same-sex cohabitation is even lower (17%).

As far as the LLC for informal cohabitation is concerned, the countries are especially dissimilar with respect to material consequences in public law (tax and social security): see the great variation among the pie charts based on parts two and three of table B. In some countries all, or almost all tax and social security consequences of marriage are also attached to cohabitation (the Netherlands, Denmark, Sweden), or at least to *different-sex* cohabitation (Iceland, Finland). The same is true for Germany and Norway, but only with respect to *negative* tax and social security consequences of different-sex cohabitation (see pie charts based on table B part three). In Belgium and France, in the field of tax and social security, the LLC of cohabitation is much smaller; which is also true for the LLC for same-sex cohabitation in Germany, Norway, Iceland and Finland.

All countries except Germany are quite generous in attaching parenting consequences to different-sex cohabitation (see the pie charts based on table A). In the Netherlands the LLC for this is as high as 86%, and for Belgium, France and the Nordic countries it is at least 50% (in Germany it is 26%). This reflects the development that the law of many European countries has undergone in response to the social fact that an increasing number of children is born outside marriage. With respect to parenting, the LLC for *same-sex* cohabitation is only a little lower in the Netherlands, Belgium, Sweden, Finland and Germany, while in other countries it is substantially lower (especially in France and Iceland). As far as same-sex cohabitation is concerned, the LLC for parenting is lowest in France, Germany and Iceland (around 20%), and highest in the Netherlands (81%) and Finland (67%).

In all nine countries, the level of legal consequences of informal cohabitation has been growing over time. In none of them there is one general law specifying the legal consequences of cohabitation. Even the general cohabitation laws in force in Sweden (since 2003, merging several earlier laws) and in Norway (since 1991), primarily only deal with redistribution of property after splitting up (B4) and with continuing the rent after the death of one partner (C8).

In the tables of some of the national chapters it is specified when legislation or courts have started to consider certain consequences of marriage also applicable to (different-sex and/or same-sex) cohabitation. So far it has not been possible to fully document this historical step-by-step process for all countries. The earliest given examples for same-sex cohabitation date back to the 1970s: partner immigration rights (C2) in Sweden and the Netherlands, and rent law rights (C8) in the Netherlands. Even earlier examples relate to different-sex cohabitation only: since 1965 such cohabitation could negatively impact basic social security payments in the Netherlands (B16), a disadvantage that was extended to same-sex cohabitation in 1987; and since 1970 the courts in France have started to award compensation to the surviving different-sex partner in cases of wrongful death (B5), an advantage that was extended to same-sex cohabitants in 1995. It should be noted that in France most legal consequences of cohabitation at first only applied to different-sex cohabitation. Only the law introducing registered partnership in 1999 extended most of these consequences to same-sex cohabitation. The earliest given examples from Belgium relate to compensation in case of wrongful death (B5, since 1989 for different-sex cohabitants), to partner cover in public health insurance (B9, since 1996), and to immigration (C2, since 1997). The earliest given example from Norway also relates to immigration (C2, since 1990). In Germany rent law rights (C8) were recognised for different-sex cohabitants in 1993, and for same-sex cohabitants in 2001 (simultaneously with the introduction of same-sex registered partnership).

After the first legal recognition of informal cohabitation, the LLC of cohabitation has gradually risen in most of the nine countries; it could be expected to rise further, even after the introduction of registered partnership.

The levels of legal consequences of registered partnership

In the pie charts in the Comparative overview, the LLC of registered partnership is represented by the green and yellow segments together.³⁰ This LLC is highest in the Netherlands (96%) and Sweden (91%), followed by Finland, Norway, Iceland and Denmark (around 85%), and least for Germany (68%), France (around 60%) and Belgium (around 50%); see table O. The LLC of registered partnership in the Netherlands and Sweden is even higher than the LLC of same-sex marriage in Belgium (88%). And the LLC of registered partnership in Germany, France and Belgium is even lower than the LLC of informal cohabitation in the Netherlands (around 75%) and Sweden (around 70%).

The LLC of registered partnership in the Netherlands and in the five Nordic countries is so high because registered partnership results in almost all the consequences of marriage; therefore, registered partnership in these countries can be characterised as '*quasi-marriage*'.³¹ The lower LLC of registered partnership in Germany, France and Belgium signals that in these countries registered partnership only has a limited selection

³⁰ It should be remembered that for the purposes of this study it is assumed that registered partners are always living together, even when not legally required to do so. Therefore all the legal consequences of informal cohabitation are assumed to also apply to registered partnership.

³¹ See note 2, above.

of the consequences of marriage; therefore registered partnership in these three countries can be characterised as '*semi-marriage*'.³² It should be noted however, that in Germany and France there are proposals and plans to increase the LLC of registered partnership. Similarly, in several other countries at first the LLC of registered partnership was a little lower than it is now. In these countries adoption by same-sex registered partners (A4 and/or A5) only became possible after the enactment of subsequent legislation (Denmark in 1999, Iceland in 2000, the Netherlands in 2001, Norway in 2002, Sweden in 2003); in the Netherlands further subsequent legislation in 2002 provided that registered partners automatically acquire joint authority over children born during their registered partnership (A1 and A3). Quite possibly, the LLC of registered partnership could still rise further in most countries, even after the opening up of marriage to same-sex couples.

The 'quasi-marriage' character of registered partnership in the Nordic countries and the Netherlands becomes even more apparent in the LLC of their registered partnership in the field of *material* consequences (see tables B). With respect to these material consequences the LLC of registered partnership is the same as the LLC of marriage: 100%. In Belgium, France and Germany, on the other hand, the LLC of registered partnership in the field of material consequences is lower; this is in particular the case with respect to *positive* material consequences in *public* law (see table B - part two): 33% in Belgium, 41% in Germany, and 58% in France. Only with respect to the *negative* material consequences in public law, in Germany and France, is the LLC of registered partnership the same as that of marriage (100%).

As seen above, the main differences between registered partnership and marriage tend to relate to *parenting* consequences. This can also be seen in the LLC in the field of parenting (see table A). In this field the LLC of registered partnership is a little lower in the Netherlands (86%), Sweden (76%) and Finland (67%), and much lower in Belgium (around 55%), in Norway, Iceland, Germany and Denmark (around 40%),³³ and in France (17% for same-sex, 50% for different-sex).

In the field of *other* legal consequences (see table C), the LLC of registered partnership is 100% in the Netherlands, Denmark, Norway, Iceland, and also in Germany (an indication that in Germany registered partnership is already almost a 'quasi-marriage'). The LLC in this field is a little lower (around 90%) in Finland, because registered partners are not allowed to use each other's surname (C1), and in Sweden, because it is not certain that organ donation between male same-sex partners is allowed (C7). In Belgium and France the LLC in this field is much lower (around 55%).

Only in Belgium, France and the Netherlands registered partnership is open to different-sex couples. Of these countries, the Netherlands has the same LLC (96%) for different-sex and same-sex registered partnership. In Belgium and France the LLC is a little higher for different-sex registered partnership than for same-sex registered partnership (see table O); this is completely due to differences in the field of parenting (see table A).

The exclusion (and gradual inclusion) of same-sex couples

Traditionally, same-sex couples have been excluded from marriage, and from the rights and obligations that result from marriage. This study illustrates that as yet this exclusion has not been completely abolished in any European country, although all nine countries have attached a gradually growing number of the legal consequences of marriage to the informal cohabitation of same-sex partners, and all have introduced a form of registered partnership more or less analogous to marriage, while two countries (the Netherlands and Belgium) have also lifted the heterosexual exclusivity of marriage.

The continuing exclusion of same-sex partners from the legal consequences of marriage is represented by the red segments in the pie charts of the Comparative overview. The overall level of legal consequences from which same-sex couples are still excluded (see pie charts based on table O) is highest in France (45%), followed by Germany (32%), much lower in Denmark, Iceland, Norway, Finland and Belgium (around 15%), and lowest in Sweden (9%) and the Netherlands (4%). In the field of *parenting* (see pie charts based on table A) the ranking is similar, but the exclusion considerably higher, ranging from 83% in France and 63% in Germany, via around 55% in Iceland, Denmark, Norway and Belgium, to 33% in Finland, 24% in Sweden and 14% in the Netherlands. Even in the field of *material* consequences, same-sex partners are still excluded, but only in Germany and France (see pie charts based on table B, parts one and two). Same-sex partners are also still excluded in the field of *other legal consequences*, but only in France, and a little in Finland and Sweden (see pie charts based on table C).

What are the main rights that (married) different-sex couples have but from which same-sex couples are excluded (whether they are married, registered as partners, or just cohabiting)?

In all countries same-sex partners are excluded from automatically both becoming the legal parents of the child born to one of them (A1, a situation that only applies to lesbian couples). In France, Denmark, Iceland, Norway and perhaps Germany women in lesbian relationships are also excluded from medically assisted

³² Idem.

³³ In Denmark the parenting LLC of registered partnership, exceptionally, is lower than that of informal cohabitation. This is so because an informal cohabitant can individually adopt a child, while a registered partner cannot (see A6).

insemination (A2). In all countries but Sweden and the Netherlands, same-sex partners are excluded from joint adoption (A5), and in all but Sweden from inter-country joint adoption (in theory one of the easiest ways for gay men to get children). In Belgium, France, Germany and Finland same-sex partners are also excluded from second-parent adoption (A4), and in Belgium and France also from any possibility of acquiring joint authority/responsibility for a child of one of them (A3 and A4). Individual adoption by a person in a same-sex relationship (at least in theory, and only when certain strict conditions are met) is not excluded in any of the nine countries (A6); the same probably applies to the possibility of same-sex couples becoming foster-parents (A7).

In France and Germany same-sex partners are excluded from statutory survivor's pensions (B12), and they have to pay a far higher inheritance tax than married different-sex partners (B13). In Finland and France same-sex partners cannot use each other's surnames (C1). In France the same-sex partner of a French citizen is not entitled to French citizenship (C3), for medical purposes same-sex partners are not considered as each other's next of kin (C6), they are not allowed to donate organs to each other (C7), and without a testament one same-sex partner cannot inherit from the other (B6).

The exclusion of same-sex couples does not only relate to the legal consequences of marriage, but also to *status*, and to procedural/ceremonial aspects of status. The status of being married is not (yet) available to same-sex couples in France, Germany and the five Nordic countries. The lower ranking of the status of being registered as partners is not only underlined by the lesser level of legal consequences attached to registered partnership, but also by the fact that in France, and in several *Länder* of Germany, the Registry of births, marriage and deaths has not been made competent to perform a partnership registration (see table F).³⁴ It could be argued that the same follows from the fact that in the Nordic countries churches have not been made competent to perform partnership registrations,³⁵ and from the fact that in France (and Belgium) a registered partnership can be dissolved unilaterally by one of the partners (G3).

Furthermore, it is not only through legislation that same-sex partners have been excluded; employers and service providers also discriminate against them. Such social discrimination between same-sex and different-sex partners of identical status, and between married and registered partners, is now prohibited in all countries with the exception of Germany (see table D). For the time being this underlines the lower ranking in the law of Germany of the status of being registered as partners, and indeed of same-sex partners in general. In the other eight countries the enactment of anti-discrimination legislation covering sexual orientation (and civil status) can be seen as one of the necessary steps in the process of abolishing the exclusion of same-sex partners. The first country to do so was Norway (1981), followed by France (1985, but explicitly only since 2002), Denmark and Sweden (both in 1987), the Netherlands (1992), Finland (1995), Iceland (1996) and Belgium (2003). Most countries have elaborated their anti-discrimination further in subsequent legislation. An earlier step in the same development in all nine countries has been the elimination of different age limits and other anti-homosexual discrimination from their criminal law. The first country to complete those changes in its Penal Code was the Netherlands (1971), followed by Norway (1972), Denmark (1976), Sweden (1978), France (1982), Belgium (1985), Iceland (1992), Germany (1994) and Finland (1998).³⁶

This study documents the stages by which the nine European countries have taken steps to reduce the exclusion of same-sex couples in family law and in legal fields related to family law (such as social security, tax law, immigration, etc.). For three countries the first given example of a legal consequence of marriage being made available to (cohabiting) same-sex partners relates to residence permits (C2): the Netherlands (1975), Sweden (1970s) and Norway (1990), which also is among the first examples in Belgium (1997). The earliest example from Denmark (1986) relates to inheritance tax (B13), which also is among the first examples in the Netherlands (1981). The earliest examples from France (1993) and Belgium (1996) relate to health insurance (B9). The first given example from Germany (2001) concerns rent law (C8), which is also among the first examples in the Netherlands (1979), Sweden (1988) and Norway (1991). See the national chapters for more information about these first steps on the road to recognising cohabiting same-sex partners. As was pointed out above, in several countries many more steps have been taken on that road.

From 1989 several countries have also taken another road to reduce the exclusion of same-sex partners: the introduction of some form of registered partnership. Denmark was the first to do so in 1989, Norway followed in 1993, Sweden in 1995, Iceland in 1996, the Netherlands in 1998, France in 1999, Belgium in 2000, Germany in 2001 and Finland in 2002.

And from 2001 a third road was taken: the opening up of marriage to same-sex couples, first in the Netherlands (2001) and then in Belgium (2003). And while the introduction of registered partnership did not mean the abandonment of the instrument of attaching legal consequences to informal cohabitation, the opening up of marriage has not meant that the new institution of registered partnership was abandoned.

³⁴ See Daniel Borrillo, 'Pluralisme conjugal ou hiérarchie des sexualités: la reconnaissance juridique des couples homosexuels dans l'Union Européenne', *McGill Law Journal*, vol. 46, 2001, p. 877-922.

³⁵ In the five Nordic countries (but not in France, Belgium, the Netherlands and Germany) it is still possible to start a civil marriage in church (F3).

³⁶ See the appendix to Kees Waaldijk, 'Taking same-sex partnerships seriously: European experiences as British perspectives', *International Family Law*, 2003, p. 84-95 (online available at www.emmeijers.nl/waaldijk).

It seems likely that other countries will follow the Netherlands and Belgium in opening up marriage (in fact, Sweden and Spain are already preparing to do so, as is Canada), that more countries will introduce registered partnership (in fact, it has already been introduced in most autonomous regions of Spain, while in Luxembourg registered partnership becomes possible in November 2004, and in Switzerland and the United Kingdom the legislation is almost ready; and more countries are preparing to legislate), and that many countries will start or continue to attach (more) legal consequences to the informal cohabitation of same-sex couples (as Portugal and Hungary have already done).

The developments in the nine countries so far have been summarised in the following table.

Overview of stages of legal recognition of same-sex partners

	1970-1974	1975-1979	1980-1984	1985-1989	1990-1994	1995-1999	2000-2004
Completion of decriminalisation of homosexuality	Netherlands Norway	Denmark Sweden	France	Belgium	Iceland Germany	Finland	
Legislation against sexual orientation discrimination			Norway	France Denmark Sweden	Netherlands	Finland Iceland	Belgium
First recognition of same-sex cohabitation		Netherlands Sweden		Denmark	Norway France	Belgium (Finland?) (Iceland?)	Germany
Introduction of registered partnership				Denmark	Norway	Sweden Iceland Netherlands France	Belgium Germany Finland
Opening up of marriage							Netherlands Belgium

Explaining the frequency of partnership registration

One of the aims of this study has been to make it possible to assess whether the different frequencies of partnership registration in the different countries can be explained by the different levels of legal consequences of registered partnership. It is not (yet) the intention to make that assessment; for that purpose reliable statistical data about registration frequencies from all countries would be necessary, plus the close cooperation of statisticians, demographers, sociologists and lawyers. That will have to wait until a later stage. For now, this study tries to provide a reliable and quantified indication of the levels of legal consequences attached to marriage, cohabitation and registered partnership.

There are various problems that make it difficult to use the calculated levels of legal consequences as explanations for different frequencies of partnership registration. In the first place, it seems probable that legal consequences are at most *one* of the factors influencing people in their decisions whether or not to register their partnership. Other factors (social, psychological, religious, etc.) will also play a role, perhaps a bigger role.³⁷ It also seems probable that many people are not fully and accurately aware of the legal consequences that are attached to registered partnership (and to other relationship statuses).³⁸ Their decisions may thus be guided by misconceptions about what the legal consequences are. And apart from the legal consequences there may well be other legal factors influencing the frequency of partnership registration. For example, certain couples (foreigners, non-residents) may be excluded from partnership registration in a particular country (see table E); and the availability of easy ways to end a registered partnership (outside court as in the Netherlands, or even unilaterally as in Belgium and France, see table G) may make partnership registration more (or for some people: less) popular. It is also possible that some people choose to register as partners, not to obtain particular legal consequences, but simply to make it easier to prove that they are a couple; this could for example be the case with couples that do not (permanently) live together and therefore have difficulty in qualifying as cohabitants.

³⁷ A first, small survey of people who registered as partners in the Netherlands during the first year after the introduction of registered partnership, suggests that for most interviewees 'emotional considerations' do indeed play a role, but generally not a bigger role than 'financial/practical' considerations. See Yvonne Scherf, 'Registered partnership in the Netherlands. A quick scan', Commissioned by the Ministry of Justice, published in Amsterdam: by Van Dijk Van Soomeren en Partners BV, 1999, p. 23-24.

³⁸ The same study found that one third of the interviewed registered partners could not name any legal consequences of registered partnership (Scherf, 1999, p. 25).

Let's assume, however, that at least some people base their decision whether or not to register as partners on the legal consequences of doing so. Their decision would then not be influenced by the total LLC of registered partnership, but by the *additional LLC* of registered partnership as compared to the LLC of informal cohabitation. If people are looking rationally at the law, they would look what legal consequences they would obtain in addition to what they already enjoy as informal cohabitants. In the pie charts in the Comparative overview the *additional LLC of registered partnership* is represented as yellow segments. Their size could perhaps (partly) explain the different frequencies of partnership registration in the different countries. A complication in this context in the Netherlands and Belgium is the availability of marriage to same-sex couples. Some of the cohabitants who would be attracted by the additional LLC of registered partnership could also choose to get married.³⁹

Another complication is that while some legal consequences are clearly advantageous to registered partners (increased parenting rights, compensation for wrongful death, inheritance, lower taxes, higher social security, pension rights, immigration and citizenship, etc.),⁴⁰ other consequences are clearly disadvantageous (higher taxes, lower social security).⁴¹ And there are also legal consequences where it depends on the circumstances, and from whose perspective you look at it, whether they are advantageous or disadvantageous. This is true for joint property (B1), joint debts (B2), alimony (B3), redistribution of property at splitting up (B4), domestic violence protection (C5), and the duty to have sex (C9). And even if a certain legal consequence is clearly advantageous, it will depend on the circumstances whether the advantage will or could actually apply. For example, a male couple will not benefit from the possibility of medically assisted insemination (A2) nor from a presumption of 'paternity' (A1); and more generally, the parenting consequences will only be relevant for partners who have or would like to have children. Several consequences can only be advantageous for the partner who outlives the other.⁴² And finally, for certain legal consequences it seems unlikely that they would influence more than a few people in their decisions whether or not to get registered as partners; examples are the right to refuse to testify against each other (C4), the right to donate organs to each other (C7) and the duty to have sex (C9).⁴³

The conclusion could be that it is unlikely that the additional levels of legal consequences of registered partnership (as represented by the yellow segments in the pie charts of table O) would provide a *precise* explanation of the different frequencies of same-sex partnership registrations in the different countries. A more accurate explanation could perhaps be given, by attaching a weighing factor to each legal consequence (e.g. a weighing factor of 0 for consequences that are unlikely to influence people in their decision whether or not to register; a weighing factor of -1 for negative legal consequences; and a weighing factor of 2 for legal consequences that are most often mentioned in interviews as being decisive) and then recalculating the additional LLC of registered partnership for each country. Such an exercise, however, will have to wait until a later stage.

However, for a *rough* explanation of the different frequencies of same-sex partnership registrations, the data in the pie charts may be good enough. The additional LLC of registered partnership for same-sex couples (see the yellow segments in the pie charts of table O) is *highest* in Iceland (62%) and Germany (51%),⁴⁴ so in these two countries a higher frequency of partnership registrations could be expected than in the other seven countries. This would be largely due to the very limited LLC of informal cohabitation in these two countries. Same-sex cohabitants in Iceland and Germany have more to gain from partnership registration than same-sex cohabitants in the other countries. The additional LLC of registered partnership for same-sex couples is *lowest* in Belgium (12%), followed by France, Sweden and the Netherlands (around 20%). Therefore in these four countries the frequency of partnership registration could be expected to be lower than in the other four countries. In Belgium and France this would be largely due to the rather limited LLC of registered partnership, and in Sweden and the Netherlands this would be due to the rather high LLC of informal cohabitation. In these four countries same-sex cohabitants have less to gain from partnership registration than elsewhere. In Belgium and the Netherlands the frequency of partnership registration would also be lower because of the availability of marriage to same-sex couples.

In an earlier study I found that over the years up to 1999/2000 the frequency of partnership registration was lowest in Sweden, followed by Norway, then by Iceland and Denmark, and highest in the Netherlands (no

³⁹ Yet another complication relates to the passage of time. The levels of legal consequences calculated in this study reflect the legal situation as it was sometime early in 2004. By that time in several countries the level of legal consequences of registered partnership (or of marriage or of informal cohabitation) was already higher than a few years before. To really accurately correlate frequencies of partnership registration to levels of legal consequences, one would need to calculate the levels reflecting the period around (or just before?) the counted partnership registrations.

⁴⁰ See A1 to A7, B5 to B13, C1 to C4, C6, C7 and C8.

⁴¹ See B14 to B17.

⁴² See B5, B6, B12, B13 and C8.

⁴³ Similarly, some people could be influenced by other legal consequences than the 33 included in this study. However, because the 33 consequences were selected (among other reasons) because of their great practical importance for many people, it would be unlikely that many people would be influenced by other consequences than those 33.

⁴⁴ If you were to correct the figures of table O by not adding but subtracting the points given for negative material consequences in public law (table B part three), the additional LLC of registered partnership would still be highest in Iceland and Germany (and still be lowest in Belgium, France, Sweden and the Netherlands).

figures available for Belgium, France, Germany and Finland).⁴⁵ For Sweden that finding corresponds to the expectation I formulated above, but not for Iceland and the Netherlands. These discrepancies between expectations and findings may be attributable to non-legal factors (see above), or to other legal factors than legal consequences. In the Netherlands, for example, the popularity of partnership registration may be partly due to the possibility to end such a partnership by mutual contract (an option not available in the five Nordic countries and not in Germany, but also existing in Belgium and France).

Statistical data for more years, and for more countries, might give further indications whether or not levels of legal consequences, in general, do indeed partly explain differences in the frequency of partnership registration.

Conclusions

The concept of 'levels of legal consequences' (LLC) developed and applied in this study, has helped to clarify certain aspects of marriage, cohabitation and registered partnership. There appear to be great similarities between the nine European countries that by early 2004 had introduced some form of registered partnership. Their similarities with respect to marriage are greater than with respect to registered partnership, and yet somewhat smaller with respect to informal cohabitation. And even with respect to marriage there are important differences between the countries, for example as to the precise consequences that are attached to it.

Some misconceptions have been cleared up in this study. For example the idea that registered partnership in Belgium does not carry many legal consequences: the Belgian form of registered partnership is indeed lighter than anywhere else, but because registered partners also profit from the growing number of legal consequences attached to informal cohabitation, the LLC of Belgian registered partnership is not much lower than the LLC of French registered partnership. Another misconception is that registered partnership always has a higher LLC than informal cohabitation; not so, because the LLC of informal cohabitation in Sweden and the Netherlands is actually higher than the LLC of registered partnership in Belgium, France and Germany. And as to same-sex marriage: it can be noted that in the Netherlands same-sex marriage has exactly the same LLC as registered partnership, and that a Belgian same-sex marriage happens to have a lower LLC than a Swedish or Dutch registered partnership.

The LLC concept may help to partly explain the differences between countries in the frequency of partnership registration. In as far as couples actually base their decision, whether or not to register as partners, on the amount of extra legal consequences that would be the result of their partnership registration, the levels of legal consequences calculated in this study suggest the expectation that there will be a more than average number of partnership registrations in Iceland and Germany, and a less than average number in Sweden, Belgium, France and the Netherlands. It may be necessary to adjust this expectation because of the possibility in the latter three countries to end a registered partnership by mutual contract (which may make partnership registration more popular). Perhaps a recalculation of the additional LLC of registered partnership, with a weighing factor for each legal consequence, may provide a more precise explanation of the frequency differences.

Furthermore, the concept of levels of legal consequences may also be useful in dealing with questions of private international law. Could or should a certain national form of registered partnership (or of same-sex marriage) be recognised in other countries, either in general or for the application of specific legal consequences? For this it is important to note that different-sex marriage is almost always recognised by other European countries, although, as we have seen, the actual legal consequences of different-sex marriage (and therefore also its LLC) differ from country to country. The data of this study may thus help courts and other officials to overcome their possible hesitation in recognising foreign relationship statuses. The LLC of a Belgian or Dutch same-sex marriage (or of a Dutch registered partnership) is actually higher than the LLC of a — universally recognised — different-sex marriage from Germany, Finland, Sweden or Denmark.⁴⁶ And the LLC of a registered partnership from one of the Nordic countries is hardly lower. Therefore, in countries with lighter forms of registered partnership (Belgium, France and German), Dutch and Nordic registered partnerships *could* mostly be treated on the same basis as marriage. A more difficult question is whether in the Netherlands and in the Nordic countries a Belgian, French or German registered partnership should be treated on the same basis as a Dutch or Nordic registered partnership.

Finally, the study has also demonstrated that in all nine countries same-sex couples do not yet have access to all of the legal consequences that are attached to different-sex marriage. However, an increasing number of these consequences has been made available to same-sex couples, through the incremental legal recognition of informal cohabitation and/or through the introduction (and subsequent extension) of registered partnership, and also, in two countries so far, through the opening up of marriage.

⁴⁵ Kees Waaldijk, 'Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 462-464. See also: Patrick Festy, 'The "Civil Solidarity Pact" (PACS) in France: an impossible evaluation', *Population & Sociétés - Bulletin Mensuel d'Information de l'Institut National d'Etudes Démographiques*, no. 369, June 2001.

⁴⁶ See the points (rather than the percentages) in table O.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Belgium

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Symbols and words used in the national tables:

Applicable answer	Answer code	Color	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

¹ University of Louvain, www.cpd.r.ucl.ac.be/cridho/index.php?pageid=2.

² Universiteit Leiden, www.emmeijers.nl/waaldijk. The authors are grateful to Paul Borghs for his useful comments on an earlier version of this text. Any remaining errors are the sole responsibility of the authors.

Introduction

This chapter aims to represent the law as it stood early in 2004.

Civil marriage

In Belgium, the Law of 13 February 2003 had opened civil marriage to persons of the same sex (Loi ouvrant le mariage à des personnes de même sexe et modifiant certaines dispositions du Code civil). The law was published in the *Moniteur Belge* on 28 February 2003. It entered into force on 1 June 2003, according to the terms of Article 23. The differences between same-sex and different-sex marriages relate to parenting; see items A1 (paternity) and A4 and A5 (adoption), and to the possibilities for couples of non-resident foreigners to enter into a marriage in Belgium (see item E10).

Registered partnership

In the comments to the tables above, the expression 'registered partnership' - strictly speaking, such a form of union does not exist in Belgian law - should be understood to refer in fact to the 'legal cohabitation' created by the Law of 23 November 1998 (Loi instaurant la cohabitation légale, *Moniteur Belge*, 12 January 1999). This legislation entered into force on 1 January 2000 after the adoption of the Royal Decree (Arrêté royal) of 14 December 1999, *Moniteur Belge*, 23 December 1999. Where reference will be made to the 'registered partner', therefore, the reader should really understand that what is meant is 'legal cohabitee' in the meaning of this legislation.

In Belgium registered partnership is open to same-sex and to different-sex couples, and even to couples of close relatives (see E11 and E12). It is not quite clear whether it is open to foreigners and/or non-residents (see E2 to E9). Another difference between marriage and registered partnership is that the latter can be dissolved by mutual agreement of the partners, and even unilaterally by one partner - for example by marrying someone else (see G2, G3 and G5).

In its consequences registered partnership is a little stronger than informal cohabitation - see for example items B1 and B2 (joint properties and joint debts), B 13 (inheritance tax) and C8 (continuation of rent). Simultaneously, the consequences of registered partnership are far less numerous than those of marriage - see for example items A1 (paternity), A4 and A5 (adoption), B3 (alimony), B6 (intestacy), B 11 and B12 (pensions), C1 (surname) and C3 (citizenship).

There is hardly any difference between same-sex and different-sex registered partnership.

Informal cohabitation

There is no general law regulating informal cohabitation in Belgium. However, *de facto* couples are taken into account, explicitly or implicitly, in a growing number of legal rules. For examples where same-sex and different-sex cohabitation are treated in the same way, see the items B9 (public health insurance), B13 (inheritance tax in the Flemish region), B16 (basic social security), C2 (residence permits), C5 (domestic violence protection), C6 (next of kin rules for medical purposes). For a few differences between the position of same-sex and different-sex cohabitants, see items A1 (paternity), A4 (second parent adoption) and perhaps B5 (compensation for wrongful death).

Table A (Belgium): Parenting consequences

	Civil marriage		Registered partnership (2000)		Informal cohabitation	
	Different-sex	Same-sex (2003)	Different-sex	Same-sex	Different-sex	Same-sex
8. When female partner gives birth, both partners automatically become legal parents	Yes	No	No, but	No	No, but	No
9. Medically assisted insemination is lawful for women in such a relationship	Yes	Yes	Yes	Yes	Yes	Yes
10. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	No	No	No	No	No	No
11. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	Yes	No	No, but	No	No, but	No
12. Partners can jointly adopt a child	Yes	No	No	No	No	No
13. One partner can individually adopt a child	Yes	Yes	Yes	Yes	Yes	Yes
14. Partners can jointly foster a child	Yes	Yes	Yes	Yes	Yes	Yes
Level of legal consequences	6x3 + 1x0 = 18	3x3 + 4x0 = 9	3x3 + 2x1 + 2x0 = 11	3x3 + 4x0 = 9	3x3 + 2x1 + 2x0 = 11	3x3 + 4x0 = 9

Notes to table A

A1 - The presumption of paternity established by Art. 315 Civil Code (according to which the husband is presumed to be the father of the child born within marriage or during the 300 days following its dissolution or annulment) is explicitly excluded in the case of marriage between partners of the same sex: see Art. 143 Civil Code, introduced by the Law of 13 February 2003. Moreover, although the male partner of the woman who gave birth to a child (and will be considered legally the mother) may recognize the child (reconnaissance de paternité), such a recognition will not be possible for the female partner, whether she has entered a registered partnership with the mother or whether she lives de facto with her (see Article 313(1) Civil Code). It will be noted that in the remainder of the comments to the tables above, the expression 'registered partnership' - such a form of union does not exist in Belgian law - should be understood to refer in fact to the 'legal cohabitation' created by the Law of 23 November 1998 (Loi instituant la cohabitation légale, *Moniteur Belge* 12 January 1999). This legislation entered into force after the adoption of the Royal Decree (Arrêté royal) of 14 December 1999, *Moniteur Belge*, 23 December 1999. Where reference will be made to the 'registered partner', therefore, the reader should really understand that what is meant is 'legal cohabitee' in the meaning of this legislation.

A2 - The lawfulness of medically assisted insemination does not mean that it will always be available. The consulted physician will decide according to his/her deontology: see Tribunal de première instance de Courtrai (section jeunesse, chambre civile), 24 June 1997, *Journal des Procès*, 1997, 16, note Versluys, *Journal des tribunaux*, 1998, p. 731, note Massager.

A3 - In Belgian law parental authority continues beyond the marriage or the cohabitation of the parents (Article 372 Civil Code): even where the spouses divorce or are separated, they have joint parental responsibility on the child (on the equality of both parents in that respect, see the Law of 1 July 1974; on the maintenance of this joint parental responsibility beyond divorce or separation, see the Law of 13 April 1995 on the joint exercise of parental authority (Loi sur l'exercice conjoint de l'autorité parentale), *Moniteur Belge* 24 May 1995

and Art. 374 and 376 Civil Code), and this authority is not shared with others (J.-L. Renchon, 'La nouvelle réforme législative de l'autorité parentale', *Revue trimestrielle de droit familial*, 1995, p. 388; J. Sosson, 'L'autorité parentale conjointe. Des vœux du législateur à la réalité', *Annales de droit de Louvain*, 1996, p. 115). Civil marriage has been opened to same-sex couples by the Law of 13 February 2003. But marriage between two persons of the same sex is to have no consequence whatsoever on filiation of parental authority. Therefore, even if married to another woman, a lesbian mother would have sole parental authority on the child, even where the child would be *de facto* raised within the family.

A4 - Article 13 of the Law of 13 February 2003 opening civil marriage to persons of the same sex introduces a modification in Article 345 Civil Code which confirms that, even where one of the spouses is the parent of the child, the other spouse will be authorized to adopt the child only if he/she is of the opposite sex. However, there is some case law that suggests that second parent adoption by a non-married different-sex partner should sometimes be possible. The law of 24 April 2003 (*Moniteur Belge* 16 May 2003; not yet in force) will open the possibility of second parent adoption also to registered or informally cohabiting different sex partners, who are no relatives to each other, and who have cohabited in a permanent and affective manner since a least three years (new Art. 343(1) Civil Code).

A5 - When the Law of 13 February 2003 was adopted, opening civil marriage to same-sex partners, the legislator explicitly excluded any consequences either on filiation or on the possibility to adopt jointly: Article 346 Civil Code, which provided previously that 'Nul ne peut être adopté par plusieurs si ce n'est par deux époux', has been modified to add 'de sexe différent' (Art. 14 of the Law of 13 February 2003), precisely to avoid that spouses of the same sex will seek joint adoption on the basis of this provision of the Civil Code. Neither has the regime of legal cohabitation introduced by the Law of 23 November 1998 any consequence on adoption or filiation. The law of 24 April 2003 (*Moniteur Belge* 16 May 2003; not yet in force) will open the possibility of second parent adoption also to registered or informally cohabiting different sex partners, who are no relatives to each other, and who have cohabited in a permanent and affective manner since a least three years (new Art. 346 Civil Code).

A6 - According to Art. 347 Civil Code, where a married person wishes to adopt a child (in accordance with the forms prescribed in Articles 349 ff. of the Civil Code), the spouse has to consent to the adoption, unless he/she is incapable to do so, is absent, or cannot be found to consent. See also P. Senaeve, *Compendium van het Personen- en Familierecht*, 5de uitgave, Acco, Leuven, 200, n° 907. The law of 24 April 2003 (see comments to A6 above) will apply the same condition to registered and informally cohabitation partners.

A7 - The answers given in the table refer to *de facto* fostering (see P. Borghs, 'Homoseksualiteit en ouderschap. Actuele stand van zaken', *Nieuw Juridisch Weekblad* 2004, p. 299). Aside from *de facto* taking into care of a child in need of protection ('hébergement', 'pleeggezin'), Belgian law knows an institution called 'pleegvoogdij', 'tutelle officieuse', which is regulated by Articles 475bis to 475septies of the Civil Code. Although the Civil Code refers to the 'pleegvoogd' ('tuteur officieux') only in the singular, it is generally agreed that, just like both spouses of a married couple can adopt jointly, they may jointly become the 'tuteurs officieux' of the child (see e.g. Gent (Jk.)(Jeugdrechtbank Gent), 10 December 1975, *Rechtskundig weekblad* 1977-1978, 1259, noot J. Pauwels)). It is still uncertain, however, whether non-married couples, even in legal cohabitation, can become jointly 'tuteurs officieux'. And it is even less certain that same-sex couples, even married, can do so. Generally, this institution is considered rather analogous to adoption, except that no filiation is established with the child ('tuteur officieux'). This would point towards a negative answer. There is no case-law to my knowledge; the institution is very rarely resorted to.

Table B - part one (Belgium): Material consequences in private law

	Civil marriage		Registered partnership (2000)		Informal cohabitation	
	Different-sex	Same-sex (2003)	Different-sex	Same-sex	Different-sex	Same-sex
1. Properties of each partner are considered joint property	Yes, but	Yes, but	No, but	No, but	No	No
2. Debts of each partner are considered joint debt	Yes, but	Yes, but	No, but	No, but	No	No
3. In case of splitting up, statutory rules on alimony apply	Yes	Yes	No, but	No, but	No, but	No, but
4. In case of splitting up, statutory rules on redistribution of properties apply	No	No	No	No	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	Yes	Yes	Yes	Yes (1989)	Doubt
6. When one partner dies without testament, the other is an inheritor	Yes	Yes	No	No	No	No
Level of legal consequences	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	1x3 + 3x1 + 2x0 = 6	1x3 + 3x1 + 2x0 = 6	1x3 + 1x1 + 4x0 = 4	2x1 + 4x0 = 2

Notes to table B - part one

B1 - With respect to this question, the situation of legal cohabitation is an intermediate situation between marriage and informal cohabitation. On the one hand, Article 1478 al. 1 Civil Code states that 'Chacun des cohabitants légaux conserve les biens dont il peut prouver qu'ils lui appartiennent, les revenus que procurent ces biens et les revenus du travail'. This contrasts the situation of legal cohabitation with that of marriage - either heterosexual or homosexual -, where the legal regime is that all revenues acquired after the date of the marriage become the joint property of the spouses ('communauté d'acquêts'): this legal regime, codified under Articles 1398-1450 Civil Code, can be modified by the matrimonial convention concluded between the spouses (see Articles 1451 ff. Civil Code); hence the 'Yes, but' which appears in the tables. On the other hand, the regime of legal cohabitation introduced by the Law of 23 November 1998 has material consequences which clearly distinguish it from 'informal cohabitation'. Indeed, according to Art. 1478 al. 2 Civil Code, which forms the major innovation of the Law of 23 November 1998 on legal cohabitation (registered partnership), 'Les biens dont aucun des cohabitants légaux ne peut prouver qu'ils lui appartiennent et les revenus que ceux-ci procurent sont réputés être en indivision'. Thus, a legal presumption of indivision applies to the property of both legal cohabitants is introduced, which distinguishes the situation of legal cohabitants from that of unmarried partners living in 'informal cohabitation' ('concubinage' or 'union libre') (see Appeals Court Bruxelles, 6 September 1996, *Revue trimestrielle de droit familial*, 1997, p. 128; Appeals Court Gent, 16 November 1993, *Revue trimestrielle de droit familial*, 1995, p. 343).

B2 - The solidarity with respect to the debts of either partner, unless these debts are excessive, is provided for in identical terms for marriage (Art. 222 Civil Code) and for legal cohabitation (Art. 1477(4) Civil Code). In both institutions, this solidarity extends however only to debts incurred by each spouse or partner for 'les besoins du ménage et l'éducation des enfants' (marriage - Art. 22 Civil Code) or for 'les besoins de la vie commune et des enfants qu'ils éduquent' (registered partnership - Art. 1477(4) Civil Code). From the year 2005 registered partners will, like married partners, be liable for each other tax debts (law of 10 August 2001, *Moniteur Belge* 20 September 2001).

B3 - Although the Civil Code stipulates no right to alimony (pension alimentaire) either in the case of a legal cohabitation or in the case of informal or *de facto* cohabitation (concubinage), there is some case-law which considers that, at least where the cohabitation has lasted for a significant period of time or has entailed certain sacrifices from the partner in need (e.g., left his/her employment to dedicate him- or herself to the home or the upbringing of the child), there is an obligation of the other partner to assist financially the partner

in need (see e.g. Justice of the Peace (Vredesrechter, Juge de Paix) Gent, 4 November 1996, *Revue trimestrielle de droit familial*, 1999, p. 176, *Rechtskundig weekblad*, 1997-1998, p. 266, note F. Aps; Justice of the Peace (Vrederechter, Juge de Paix) Gent, 6 July 1998, *Revue générale de droit civil*, 1998, p. 468; or Rechtbank van eerste aanleg (civiele afdeling) Louvain, 27 September 1996, *Journal des Procès*, 1996, p. 26 – however the case-law remains divided on this issue: see Rechtbank van eerste aanleg (civiele afdeling) Leuven, 3 June 1991, *Rechtskundig Weekblad*, 1992-1993, p. 131).

B4 - See comments to B1.

B5 - The Court of Cassation has decided, in a decision of 1989, that *de facto* cohabitants (non married partners) could be considered to have a right to compensation for the wrongful death of their partner (Cass., 2^{ème} ch., aud. plén., 1^{er} février 1989, *Pas.*, 1989, p. 582; confirmed later by Cass., 1^{ère} ch., 15 février 1990, *Pas.*, 1990, I, p. 694, *Journal des tribunaux.*, 1990, p. 216, *Revue générale assurance et responsabilité*, 1990, n°11.658, note R.O. Dalcq): previously, this was considered unacceptable, as no legal consequences could be attached to a *de facto* situation, that of cohabitation outside marriage. However, this evolution only concerned *de facto* de cohabitants living together outside marriage when their relationship has the appearance of marriage ('apparence de mariage'); it may not extend to *de facto* cohabitation between two persons of the same sex.

B6 - Legal cohabitation, as organized by the Law of 23 November 1998, has no incidence on the rules of inheritance, except for one consequence which applies in the marginal situation where the surviving registered partner is already an inheritor of the deceased partner because of being a close relative (see Art. 1478 al. 3 Civil Code). One should recall that the Law of 23 November 1998 may be relied upon, to organize a form of legal cohabitation, in many situations, including between two persons of the same family who wish to institute this material solidarity between them although they would not be able to marry (a brother and sister, e.g., could register as legal cohabitants).

Table B - part two (Belgium): Positive material consequences in public law

	Civil marriage		Registered partnership (2000)		Informal cohabitation	
	Different-sex	Same-sex (2003)	Different-sex	Same-sex	Different-sex	Same-sex
7. Relationship can result in lower property tax	No	No	No	No	No	No
8. Relationship can result in lower income tax	Yes, but	Yes, but	No	No	No	No
9. Public health insurance of one partner covers medical costs of other partner	Yes, but	Yes, but	Yes, but	Yes, but	Yes, but (1996)	Yes, but (1996)
10. Relationship can have positive impact on basic social security payment in case of no income	No	No	No	No	No	No
11. Relationship can have positive impact on statutory old age pension	Yes	Yes	No	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes, but	Yes, but	No	No	No	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	Yes	Yes, but	Yes, but	No, but	No, but
Level of legal consequences	2x3 + 3x2 + 2x0 = 12	2x3 + 3x2 + 2x0 = 12	2x2 + 5x0 = 4	2x2 + 5x0 = 4	1x2 + 1x1 + 6x0 = 3	1x2 + 1x1 + 6x0 = 3

Notes to table B - part two

B7 - No property tax exists.

B8 - When one married partner has no income, or very little income, or is assisting in the independent business activities of the other spouse, then income tax is a little lower. From 2005 the same tax advantages will also apply to registered partners (law of 10 August 2001, *Moniteur Belge* 20 September 2001).

B9 - The public health insurance mechanism is organized by the Law of 14 July 1994 (*Loi coordonnée relative à l'assurance obligatoire soins de santé et indemnités* - Coordinating Law on the compulsory health insurance). This law is applicable to salaried workers, including public servants. A Royal Decree of 29 December 1997 has partly aligned the rules provided for in the Law of 14 July 1994 to the self-employed (Arrêté royal du 29 décembre 1997 portant les conditions dans lesquelles la loi du 14 juillet 1994 est étendue aux travailleurs indépendants et aux membres des communautés religieuses; last modified by the Arrêté royal du 15 mai 2003 modifiant l'arrêté royal du 29 décembre 1997 portant les conditions dans lesquelles l'application de la loi relative à l'assurance obligatoire soins de santé et indemnités, coordonnée le 14 juillet 1994, est étendue aux travailleurs indépendants et aux membres des communautés religieuses, *Moniteur Belge*, 26 May 2003). The Law of 14 July 1994 provides that the dependants of the workers contributing to the compulsory security scheme (assurance obligatoire soins de santé) will benefit from the same advantages as the contributor him- or herself (Art. 32, al. 1, 17°). These 'dependants' are the non-divorced spouse, even after separation, the children, and the ascendants (Art. 32, al. 1, 19° of the Law of 14 July 1994; Art. 123, 2° of the Royal Decree of 3 July 1996 (Arrêté Royal portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, coordonnée le 14 juillet 1994)). However, the Royal Decree of 3 July 1996 defines as 'dependants' ('personnes à charge') the spouse or the person cohabiting with the worker (Art. 123). Certain exceptions apply.

B10 - Please refer to the comments above, under B7. Where the person having a right to a basic income (revenu d'intégration) in the absence of other revenues cohabits with either a spouse or a de facto cohabitant

or a registered partner (cohabitant légal), the basic income afforded will be of a lesser amount, as it is presumed that living in a shared environment will be less expensive for each.

B11 - In the situation where the spouse effectively cohabits with his/her wife/husband, and receives no social benefit although he/she is dependent, the statutory old age pension will be augmented by 25%. This applies only where the partners are married: it does not apply where they are legal or *de facto* cohabitantes. *De facto* cohabitation has no consequence whatsoever on the amount of the statutory old age pension (see Bouille, Etienne, Meunier, Conrardy, Demet, Kreit and Petit, 'Les pensions', *Actualités du droit*, 1993/4, p. 1103).

B12 - A pension is paid to a surviving married partner, if the marriage has lasted at least since one year (or if a child was born from the marriage, or if at the time of death one partner was receiving child benefit, or if death resulted from an accident that took place after the start of the marriage) and the surviving partner has not remarried (Art. 17 Act on Pensions for Employees, and art. 54(1) General Regulation on Pensions for Employees).

B13 - Inheritance tax is regulated by the three regions of Belgium (see Art. 48 Succession Law of Flemish Region, Art. 48 Succession Law of Walloon Region, and Art. 48 Succession Law of Brussels Region). In all regions the same tariffs as for marriage apply in the case of registered partnership, but in the Walloon region only if the partners are no relative, had been registered at least since one year, and were living together at the time of death). In the Flemish region the same tariffs as for marriage also apply in the case of informal cohabitation, but only if the cohabitants at least since one year had a joined household. This does not apply in the Walloon and Brussels regions.

Table B - part three (Belgium): Negative material consequences in public law

	Civil marriage		Registered partnership (2000)		Informal cohabitation	
	Different-sex	Same-sex (2003)	Different-sex	Same-sex	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	No	No	No	No	No
15. Relationship can result in higher income tax	Yes	Yes	No	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	Yes	Yes, but	Yes, but	Yes, but	Yes, but
17. Relationship can have negative impact on statutory old age pension	No	No	No	No	No	No
Level of legal consequences	2x3 + 2x0 = 6	2x3 + 2x0 = 6	1x2 + 3x0 = 2	1x2 + 3x0 = 2	1x2 + 3x0 = 2	1x2 + 3x0 = 2

Notes to table B - part three

B14 - No property tax exists.

B15 - Until 2005 the basic tax free sum is a little higher for an unmarried person than for a married person. Also, until 2005 married couples have a disadvantage with respect to any income from other sources than work: such income is taxed as part of the work income of the spouse with the highest work income (the 'breadwinner'). These disadvantages for the married will be abolished as of 2005 (law of 10 August 2001, *Moniteur Belge* 20 September 2001). See also final comment on B2.

B16 - The relevant rules are in the Law of 26 May 2002 on the right to social integration (loi concernant le droit à l'intégration sociale), *Moniteur Belge*, 31 July 2002. The right to a basic income (called 'revenu d'intégration sociale') guaranteed by this legislation is subsidiary: it is afforded when the individual does not have sufficient revenues from other sources; those revenues are calculated taking into account both the revenues of the individual concerned and the revenues of the person he/she cohabits with. Whether married or not, when a couple cohabits, the revenues of the cohabitant (whether spouse, registered partner or *de facto* cohabitant) will therefore be considered, for the allocation of any basic income to the other partner (see Art. 34(1), al. 2, of the Law of 26 May 2002). Therefore, any form of cohabitation (marriage, legal cohabitation or *de facto* cohabitation) will make it more difficult to receive basic income at the same level as for an isolated person.

Another form under which a minimum income is afforded in Belgium is through the Law of 1 April 1969 instituting a guaranteed income for elderly (Loi instituant un revenu garanti aux personnes âgées). Article 2 of this Law stipulates that married beneficiaries (even in case of separation of less than ten years, and provided a part of the revenue of the beneficiary goes to the separated spouse) will be afforded a higher income; such an advantage does not extend to cases of *de facto* cohabitation or to registered partners.

B17 - See comment on B11.

Table C (Belgium): Other legal consequences

	Civil marriage		Registered partnership (2000)		Informal cohabitation	
	Different-sex	Same-sex (2003)	Different-sex	Same-sex	Different-sex	Same-sex
10. One partner can have or use surname of the other	Yes	Yes	No	No	No	No
11. Foreign partner of resident national is entitled to a residence permit	Yes	Yes	Yes	Yes	Yes (1997)	Yes (1997)
12. Relationship makes it easier for foreign partner to obtain citizenship	>3 years: Yes	>3 years: Yes	No	No	No	No
13. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	Yes	No	No	No	No
14. When one partner uses violence against other partner, specific statutory protection applies	Yes	Yes	Yes	Yes	Yes, but (1997)	Yes, but (1997)
15. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	Yes	Yes	Yes	Yes	Yes
16. Organ donation from one living partner to the other is lawful	Yes	Yes	Yes	Yes	Yes	Yes
17. When one partner dies, the other can continue to rent the home	Yes	Yes	Yes	Yes	No	No
18. Partners have a duty to have sexual contact	Yes	Yes	No	No	No	No
Level of legal consequences	9x3 = 27	9x3 = 27	5x3 + 4x0 = 15	5x3 + 4x0 = 15	3x3 + 1x2 + 5x0 = 11	3x3 + 1x2 + 5x0 = 11

Notes to table C

C1 - Article 216(2) of the Civil Code states that the spouse may use the surname of the other spouse in the context of professional relationships, with the agreement of the spouse whose name is used. Once such an agreement is given, it may only be withdrawn for serious reasons. Such a provision exists neither in the rules on registered partnership (legal cohabitation); nor do they apply to *de facto* cohabitation.

C2 - A circulaire adopted on 30 September 1997 by the Ministry of the Interior (Circulaire du 30 septembre 1997 relative à l'octroi d'une autorisation de séjour sur la base de la cohabitation dans le cadre d'une relation durable, *Moniteur Belge*, 14 November 1997) authorizes both Belgian nationals and aliens established in Belgium or authorized to reside in Belgium for periods of more than three months, to be joined in Belgium by the person with whom they have a 'stable relationship' ('relation durable'). This benefits all *de facto* couples, whether heterosexual or homosexual (indeed, the very purpose of the circulaire was to put an end to the discrimination against homosexuals with respect to family reunification, as they had no access to marriage).

Couples living under the regime of legal cohabitation will of course find it even easier to prove the 'longstanding character' of their relationship.

C3 - The foreign spouse of a Belgian national may obtain the Belgian nationality after the couple has resided in Belgium during at least three years, and provided the two spouses still are cohabiting at the time of the declaration of nationality (Art. 16 of the Code de la nationalité belge of 28 June 1984, *Moniteur Belge* 12 July 1984). Although these three years of residency in Belgium is also the period imposed to foreigners who are seeking to be naturalized as Belgians (Articles 18 to 21 of the Codes de la nationalité belge), the foreign spouse of a Belgian national does not have to be 'naturalized' by a formal act of the House of Representatives; rather, provided their declaration meets no opposition, it will automatically result in the obtention of the Belgian nationality.

C4 - See Art. 156 and 322 of the Code d'instruction criminelle (Code of Criminal Procedure), concerning the inadmissibility of testimonies by the spouse: spouses may not testify, neither can they be invited to testify in a criminal case concerning the other spouse. This is not extended either to legal cohabitantes or to cohabitantes de facto.

C5 - A Law of 24 November 1997 introduced a specific protection for the victim of intra-family violence in Article 410 of the Code pénal. This provision has been expanded by the Law of 28 November 2000, to include within that protection not only the spouse, but also the registered partner (legal cohabitant) and any *de facto* cohabitant with whom the author of the violent act entertains a durable affective and sexual relationship. See A. Jacobs, 'Les violences au sein du couple', in: *Formation permanente CUP*, February 2000, pp. 178-179. The protection of the spouse or registered partner (legal cohabitant) has also been recently ameliorated by a legislation attributing the common residence of the couple to the partner against whom abuse has been committed: see the Law of 28 January 2003 on the attribution of the family home to the spouse or the registered partner who is a victim of acts of physical violence from his/her partner and completing Article 410 of the Penal Code (Loi du 28 janvier 2003 visant à l'attribution du logement familial au conjoint ou au cohabitant légal victime d'actes de violence physique de son partenaire et complétant l'article 410 du Code pénal, *Moniteur Belge* 12 February 2003).

C6 - See Article 14(2) Law on the Rights of Patients.

C7 - Organ donation is regulated in Belgium by a Law of 13 June 1986 (Loi du 13 juin 1986 sur le prélèvement et la transplantation d'organes; see also Arrêté royal du 24 novembre 1997 relatif au prélèvement et à l'allocation d'organes d'origine humaine, *Moniteur Belge* du 23 December 1997). No distinction is made between organ donation between spouses or other persons, including *de facto* cohabitants or registered partners. The same rules (free and informed consent, purely altruistic purposes in particular) apply in all cases.

C8 - See Article 215(2) Civil Code, which concerns marriage, and which Article 1477(2) Civil Code makes applicable to the legal cohabitation.

C9 - The duty of spouses to live together (Art. 213 Civil Code) is deemed to imply a duty to have sexual contact.

Table D (Belgium): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (2003)	Between married spouses and informal cohabitants (2003)	Between registered partners and informal cohabitants (2003)	Between same-sex and different-sex partners (with same status) (2003)
1. With respect to housing	Yes	Yes	Yes	Yes
2. With respect to life insurance	Yes	Yes	Yes	Yes
3. With respect to health insurance	Yes	Yes	Yes	Yes
4. With respect to medically assisted insemination	Yes	Yes	Yes	Yes
5. With respect to other services	Yes	Yes	Yes	Yes
6. With respect to an occupational survivor's pension	Yes	Yes	Yes	Yes
7. With respect to other spousal benefits in employment	Yes	Yes	Yes	Yes

Notes to table D

D1 - Under Article 2(4) the Federal Law of 25 February 2003 prohibiting discrimination and modifying the Law of 15 February 1993 creating the Centre for Equal Opportunities and Fight against Racism, which is the main legislation implementing Directive 2000/78/EC in the Belgian legal order, the prohibition of direct and indirect discrimination extends to: the provision or offering to the public of goods and services; access to employment or to self-employment, and working conditions, in both the private and the public sector; the nomination or promotion in the public service, or the assignment of a public servant to a particular service; any mention in official documents; distribution, publication or public exposition of a text or sign under any other form; access, participation in, and any exercise of an economic, social, cultural or political activity open to the public. Moreover, not only discrimination based on *sexual orientation*, but also discrimination based on *civil status* (e.g., between married couples and legal cohabitants, or *de facto* cohabitants and legal cohabitants...) is prohibited by this legislation. It should be emphasized however that - and this somewhat compensates for the broad material scope of application of the Law as well as for the long list of prohibited grounds of discrimination - direct discrimination is defined as any distinction (based on a suspect ground) which *lacks a reasonable and objective justification* (Art. 2(2)).

D2 - See comment to D1.

D3 - See comment to D1.

D4 - See comment to D1.

D5 - See comment to D1.

D6 - See comments to D1.

D7 - See comment to D1.

Table E (Belgium): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership (2000)	
		Different-sex	Same-sex (2003)	Different-sex	Same-sex
Resident national with:	13. Resident national	Yes	Yes	Yes	Yes
	14. Non-resident national	Yes	Yes	Doubt	Doubt
	15. Resident foreigner	Yes	Yes	Doubt	Doubt
	16. Non-resident foreigner	Yes	Yes	Doubt	Doubt
Non-resident national with:	17. Non-resident national	Yes	Yes	Doubt	Doubt
	18. Resident foreigner	Yes	Yes	Doubt	Doubt
	19. Non-resident foreigner	Yes	Yes	Doubt	Doubt
Resident foreigner with:	20. Resident foreigner	Yes	Yes	Doubt	Doubt
	21. Non-resident foreigner	Yes	Yes	Doubt	Doubt
Non-resident foreigner with:	22. Non-resident foreigner	Yes	No, but	Doubt	Doubt
23. Sister or brother with sister or brother		No	No	Yes	Yes
24. Parent with child		No	No	Yes	Yes

Notes to table E

E1 - See comments to E2.

E2 - Under Article 1476 Civil Code, which is located in Title Vbis (De la cohabitation légale) of Book III (Des différentes manières dont on acquiert la propriété), the two persons wishing to declare that they intend to define their relationship as 'legal cohabitation' must declare their common domicile. The 'cohabitation légale' consists in a declaration before the 'officier de l'état civil' of the municipality in which the partners have chosen to share their common domicile (Art. 1476(1) Civil Code: 'Une déclaration de cohabitation légale est faite au moyen d'un écrit remis contre récépissé à l'officier de l'état civil du domicile commun'). Indeed, the institution is specifically set up to facilitate a form of material solidarity between two persons sharing the same roof. Therefore, the hypothesis of a 'legal cohabitation' being contracted by a non-resident, although not explicitly excluded in the Civil Code, would seem not to correspond to the purpose of the institution. It should also be noted that the Belgian diplomatic or consular agents are not explicitly given a competence to receive a declaration of registered partnership ('cohabitation légale'), although they do have such a competence with respect to celebrating marriage.

The doubt will disappear when the new Code of Private International Law ('Loi portant le Code de droit international privé' of 16 July 2004, *Moniteur Belge*, 27 July 2004), will take effect on 1 October 2004. Article 59 of the new Code provides that registration in Belgium can only take place if, at the moment of registration, both partners have their habitual residence in Belgium. Article 60 adds that Belgian law will be applicable to such a registration.

E3 - At first, same-sex marriage in Belgium was only open to Belgians or foreigners whose national law makes it possible for them to contract such a marital relationship. This was not stated explicitly in the Law of 13 February 2003 opening marriage to persons of the same sex, but was unanimously recognized in legal doctrine. This was done on the basis of an application by analogy of Article 170ter Civil Code, explicitly concerned only with the recognition of foreign marriages (concluded in foreign jurisdictions), and which subordinates the validity of marriage to the conditions imposed by the national law of the concerned persons (according to Article 170ter of the Civil Code: 'Les mariages visés à l'article 170 [these are the marriages celebrated under foreign jurisdictions] seront, quant au fond, valables en Belgique, si les parties contractantes ont satisfait aux conditions prescrites à peine de nullité par leur statut personnel pour pouvoir contracter mariage'). That solution was confirmed by the preparatory works of the Law. However, in a circular of 23 January 2004 (*Moniteur Belge*, 24 January 2004) the Minister of Justice made it clear that any foreign legal prohibition on same-sex marriage must be considered discriminatory and contrary to Belgian public order, and therefore should not be applied. The circular goes on to say that in such cases Belgian law should be applied if at least one of the future spouses is either a Belgian citizen or a habitual resident of Belgium. This means that Dutch nationals (and perhaps citizens of Canada or Massachusetts) are no longer the only foreigners who have access to same-sex marriage in Belgium.

The content of the circular has been codified into a new Code of Private International Law ('Loi portant le Code de droit international privé' of 16 July 2004, *Moniteur Belge*, 27 July 2004), that will take effect on 1 October 2004. Article 44 of the new Code provides that a marriage can be contracted in Belgium if one of the future spouses is a Belgian citizen or has his or her domicile or (since at least three months) his or her habitual residence in Belgium. Article 46 of the new Code provides that validity of marriage will be considered according to the national law of each future spouse; but it also provides that foreign legislation prohibiting same-sex marriages will not be taken into account if one of the spouses has the citizenship of a country allowing same-sex marriages, or if one of the spouses has his or her habitual residence in such a country.

With regard to the availability to foreigners, either resident or non-resident in Belgium, of the registered partnership organized in Belgium under the Law of 23 November 1998 on legal cohabitation, two opinions may be defended. Some would reason by analogy with the private international law rule governing access to marriage (see Article 170ter Civil Code mentioned in the comment to E3): whether they reside or not in Belgium, the regime of registered partnership ('cohabitation légale') would be accessible only to foreigners provided that their national law organizes a similar institution (such as the French pacte civil de solidarité, the Swedish registered partnership, etc.). This position (which appears to be defended by L. Barnich, in 'L'union libre et les unions légales en droit international privé', *L'Union libre - commentaire pratique*, 2002, V.1.6.) however underestimates the difficulty to make such comparisons between institutions of different countries - in which sense precisely can it be said that the French PACS sufficiently approximates the Belgian 'cohabitation légale' so that this institution should be accessible to French nationals in Belgium? More importantly, it assimilates the 'cohabitation légale' to a form of 'civil union' or 'registered partnership', despite the fact that the institution was deliberately crafted by the Belgian legislator to be a purely material arrangement, with no consequences on civil status or obligations which would relate to an *affectio maritalis* between the partners. Therefore, doubts remain on the availability to foreigners of the institution of 'cohabitation légale' created in Belgium by the Law of 23 November 1998.

The doubt will disappear in October 2004 (see the comments to E2).

E4 - See comments to E2 and E3.

E5 - See comments to E2 and E3.

E6 - See comments to E2 and E3.

E7 - See comments to E2 and E3.

E8 - See comments to E2 and E3.

E9 - See comments to E2 and E3.

E10 - Although foreigners may celebrate their marriage in Belgium (see Articles 63 to 75 Civil Code on the celebration of marriage and its conditions), the officier de l'état civil in charge, within the municipal administration, of celebrating the marriage, will have to verify whether each of the spouses complies with the requirements of his/her national law with respect to the conditions of marriage. The exception discussed in the comments to E3 does not apply in the case of two non-resident foreigners. Only very few same-sex couples of non-resident foreigners could marry in Belgium: for example a couple of Dutch citizens.

E11 - The Law of 23 November 1998 limitatively enumerates the conditions which the parties have to fulfill to be able to register under the regime of 'cohabitation légale', in inserting in Article 1475(2) of the Civil Code that 'Pour pouvoir faire une déclaration de cohabitation légale, les deux parties doivent satisfaire aux conditions suivantes :

1° ne pas être liées par un mariage ou par une autre cohabitation légale;

2° être capables de contracter conformément aux articles 1123 et 1124'.

The possibility for a brother and sister, two brothers, or a parent and child, to form such a registered partnership has explicitly been envisaged in the preparatory works of the Law of 23 November 1998: the purpose was to remove the institution from anything which would tend to make it similar to marriage - although, in what has been denounced by a number of authors as anomalous, the 'cohabitation légale' still remains restricted to two, unmarried individuals.

E12 - See comments to E11.

Table F (Belgium): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership (2000)	
	Different-sex	Same-sex (2003)	Different-sex	Same-sex
8. Registry of births, marriages and deaths	Yes	Yes	Yes	Yes
9. Local population administration	No	No	No	No
10. Church	No	No	No	No
11. Court	No	No	No	No
12. Private person with special authorisation	No	No	No	No
13. Public notary	No	No	No	No
14. Administrative magistrate	No	No	No	No

Notes to table F

F1 - The 'cohabitation légale' instituted by the Law of 23 November 1998 was presented by the legislator as an essentially patrimonial arrangement, excluding almost any affective or sexual elements (except that the 'legal cohabitantes' must be two and no more, and that the marriage of either legal cohabitantes or of the cohabitantes together automatically ends the legal cohabitation). Therefore, the 'cohabitation légale' is registered on the local registry of the population, held in the local municipality; in contrast to what was proposed when a form of 'civil union', equivalent to a registered partnership, was proposed in Belgium (Proposition de loi instituant l'union civile, *Doc. parl.*, Ch. repr., 1995-1996, n° 372/1), there is no notification in the margin of the birth act. Nevertheless, the competent authority is the same, before which both marriage and 'cohabitation légale' are passed: this is the *officier de l'état civil* of the municipal administration where the spouses / partners have their common domicile. See Article 75 of the Civil Code with respect to the celebration of marriage by the *officier de l'état civil*. See Article 1475(1) of the Civil Code, introduced by the Law of 23 November 1998, for registered partnership (cohabitation légale).

F2 - Neither persons who wish to marry nor those wishing to register their partnership as 'cohabitation légale' have the choice to go before another authority than the *officier de l'état civil* mentioned in F1.

F3 - Article 21 of the Belgian Constitution states that the religious celebration of marriage cannot precede the civil marriage by the public officer (*officier de l'état civil*). Religious marriage is without any legal effect. It is neither a substitute for, nor a condition of, civil marriage.

F4 to F7 - Articles 75 and 1475, respectively concerning marriage and registered partnership ('cohabitation légale'), stipulate that the *officier de l'état civil* is exclusively competent to celebrate marriage or to receive a declaration that partners intend to enter into a registered partnership. No other possibility is provided by the law.

Table G (Belgium): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership (2000)	
	Different-sex	Same-sex (2003)	Different-sex	Same-sex
1. By court decision (after joint or individual petition)	Yes	Yes	No	No
2. By mutually agreed contract (outside court)	No, but	No, but	Yes	Yes
3. Unilaterally by one partner (outside court)	No	No	Yes	Yes
4. By conversion of marriage into registered partnership, or vice versa (outside court)	No	No	No	No
5. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	No	Yes	Yes
6. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	No	Yes	Yes
7. By administrative decision (after joint or individual petition)	No	No	No	No

Notes to table G

G1 - An end can be put to a registered partnership ('cohabitation légale') upon the unilateral will of any of the partners, without the need for any particular justification (Article 1476(2) of the Civil Code: 'Il peut être mis fin à la cohabitation légale, soit de commun accord par les cohabitants, soit unilatéralement par l'un des cohabitants au moyen d'une déclaration écrite qui est remise contre récépissé à l'officier de l'état civil (...)'); the officier de l'état civil simply registers this unilateral notification by one partner, who simply must declare explicitly his/her desire to end the partnership but is not even required to give a justification). Therefore, there will never be any need to resort to the judge to end the registered partnership. Of course, the consequences of a cessation of the registered partnership may be disputed, and end up in being litigated.

G2 - Divorce is always pronounced by a tribunal. However, the spouses can mutually consent to the divorce, and the convention organizing their separation can be passed before a public notary. The role of the judge is then simply to ratify this agreement.

G3 - See comment on G1.

G4 - See comment on G5

G5 - Under Article 1476(2) of the Civil Code, the marriage of either of the partners registered within a 'cohabitation légale', or the marriage of these partners with one another, automatically puts an end to the partnership.

G6 - See comment on G5.

G7 - See comments on G1, G2 and G3.

Some literature in English

- Olivier De Schutter and Anne Weyembergh, ' "Statutory Cohabitation" under Belgian Law: A Step Towards Same-Sex Marriage?', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 465-474.
- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 147-150.
- Kees Waaldijk, 'Others may follow: the introduction of marriage (and quasi-marriage or semi-marriage) for same-sex couples in European countries', 38 *New England Law Review* 2004, p.569-589.

Some literature in French

- P. Borghs, 'Quel statut pour les parents de même sexe?', *Journal de Procès*, 4 April 2003, p. 14.
- N. Dandoy and F. Taimont, 'Contours de la loi du 23 novembre 1998 instaurant la cohabitation légale', *Revue régionale de droit*, 1995, p. 267.
- O. De Schutter and A. Weyembergh, 'La cohabitation légale: une étape dans la reconnaissance des unions entre personnes de même sexe', *Journal des tribunaux*, 2000, p. 98.
- Y.-H. Leleu, 'La loi du 23 novembre 1998 instaurant la cohabitation légale (Le régime juridique de la cohabitation légale)', in *Actualités du droit familial 1997-1999*, Formation permanente CUP, octobre 1999, p. 55.
- J.-L. Renchon, 'La régulation par la loi des relations juridiques du couple non marié', in X, *Le couple non marié à la lumière de la cohabitation légale*, Bruxelles, Bruylant, 2000, p. 33.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Denmark

by Søren Baatrup ¹
and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

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Introduction

This chapter aims to represent the law as it stood early in 2004.

Civil marriage

Only two persons of different sexes can enter into civil marriage and not if they are close family (e.g. children, grand-children, parents, grand-parents etc.). See for more details Act on Marriage of 9 March 1999 (*Ægteskabsloven*, Act no. 147; last changed by Act no. 365 of 6 June 2002); see www.retsinfo.dk.

Registered partnership

This was introduced by the Act on Registered Partnership of 7 June 1989 (*Lov om registreret partnerskab*, Act no. 372, entering into force on 1 October 1989; last changed by Act no. 360 of 2 June 1999; see www.retsinfo.dk). Only two persons of the same sex can register, and only if one of the partners lives in Denmark and is a Danish citizen or if both (foreign) partners have been living in Denmark in the last two years before the registration. Partners from countries with a similar law as the Danish are regarded as Danish citizens (see table E, below).

With a few exceptions the rules of the Act on Marriage also apply to registered partnership. The main differences between marriage and registered partnership concern the presumption of paternity, medically assisted insemination and joint adoption (see items A1, A2 and A5, below). Another difference is that unlike marriage a partnership registration cannot take place in a church (see item F3). And for marriage no residency or citizenship requirements apply (see items E5, E6 and E8).

An English translation of the Act on Registered Partnership can be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003.

Websites about registered partnership:

www.lbl.dk/english

www.civildir.dk/regler/aegteskab.htm (only partly in English and German)

www.steff.suite.dk/gaypol.htm

Informal cohabitation

There is no general legislation on cohabitation, but informal cohabitation is taken into account in some areas of law.

Table A (Denmark): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
15. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	Yes, but	No
16. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	No	Yes	No
17. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	No, but	X	X	No, but	No, but	No, but
18. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	Yes	X	X	Yes, but (1999)	No	No
19. Partners can jointly adopt a child	Yes	X	X	No	No	No
20. One partner can individually adopt a child	No	X	X	No	Yes	Yes
21. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	5x3 + 1x1 + 1x0 = 16	7x0 = 0	7x0 = 0	1x3 + 1x2 + 1x1 + 4x0 = 6	3x3 + 1x2 + 1x1 + 2x0 = 12	2x3 + 1x1 + 4x0 = 7

Notes to table A

A1 - If a man is married he is automatically recognised as father of the child without any further investigations. See art. 1 of Act no. 460, Act of Children (*Børneloven*) of 7 June 2001. If the child is born by an unmarried woman, a man can be recognised as father if both partners declare that they will take care of the child (see art. 2 of same Act).

A2 - It is only lawful, if the woman is married or living in a similar relation with a man. See art. 3 of Act no. 460, Act on Fertilization, of 10 June 1997 as changed 8 January 1999.

A3 - A stepfather or stepmother has no authority over the child. A stepfather or stepmother has no obligation to maintain the child either, but a single bread-winner loses some public payments when entering into a new relationship.

A4 - For heterosexuals - see Act no. 1040 of 16 December 1999, Act of Adoption. For same-sex couples see art. 4(1) of Act no. 372, Act of Registered Partnership of 7 June 1989 as last changed by Act no. 360 at the 2 June 1999, which reads that one registered partner can adopt the other partner's children as long as they are not adopted from foreign countries.

A5 -This is exclusively a right for married heterosexual couples. See art. 5(2) of Act no. 1040 of 16 December 1999, Act of Adoption.

A6 - A heterosexual spouse can not adopt alone. If you are married, you can only adopt as a couple. See art. 5(2) of Act no. 1040 of 16 December 1999, Act of Adoption. Registered partners can not adopt neither as a couple nor as an individual. Singles can adopt - no matter if they are heterosexuals or not.

A7 -If they are accepted by the municipalities, everyone can foster a child.

Table B - part one (Denmark): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	Yes, but	X	X	Yes, but	No	No
2. Debts of each partner are considered joint debt	No	X	X	No	No	No
3. In case of splitting up, statutory rules on alimony apply	Yes, but	X	X	Yes, but	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes, but,	X	X	Yes, but	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes, but	X	X	Yes, but	Yes, but	Yes, but
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	1x3 + 4x2 + 1x0 = 11	6x0 = 0	6x0 = 0	1x3 + 4x2 + 1x0 = 11	1x2 + 5x0 = 2	1x2 + 5x0 = 2

Notes to table B - part one

B1 - Properties of each partner are considered joint property, see art. 15 of Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*). But before the marriage/partnership is started, you can decide that part of one or both of the partners/spouses property or money shall be owned exclusively by the one.

B2 - See Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*) art. 25.

B3 - If there is a (large) difference between the income of the spouses/partners, the right to alimony can apply (see art. 5-9 of Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*) and art. 49-53 of Act no. 147, Act on Marriage).

B4 - All that is defined as joint property is divided 50:50. See art. 16(2) of Act no. 37 of 5 January 1995, Act on the Economical Consequences Marriage (*Retsvirkningsloven*). See also B1.

B5 - If a spouse, registered partner or a partner in an informal cohabitation loses a breadwinner the person has a right to compensation. See art. 12-13 of Act no. 750 of 4 September 2002, Act on Compensation. In all cases the other is entitled to an amount of 14.400 euro (2003).

B6 - See chapter two of Act no.727 of 14 August 2001, Act on Inheritance (*Arveloven*).

Table B - part two (Denmark): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
7. Relationship can result in lower property tax	No	X	X	No	No	No
8. Relationship can result in lower income tax	Yes	X	X	Yes	No	No
9. Public health insurance of one partner covers medical costs of other partner	No	X	X	No	No	No
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	X	No	No	No
11. Relationship can have positive impact on statutory old age pension	No	X	X	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	No	X	X	No	No	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	>2 years: Yes	>2 years: Yes (1986)
Level of legal consequences	2x3 + 5x0 = 6	7x0 = 0	7x0 = 0	2x3 + 5x0 = 6	1x3 + 6x0 = 3	1x3 + 6x0 = 3

Notes to table B - part two

B7 - You do not pay property tax in Denmark any longer except for a sort of house-tax on owned houses, summerhouse and flats - and that tax is the same whether you are married/registered or not.

B8 - In Denmark all citizens have a basic tax allowance (4.600 euro a year), but married/registered couples can transfer their allowance between them if e.g. one of the spouses has no income.

B9 - The Danish public health system is not based on an insurance system, but is paid through the taxes. Since the public health system is individual, it is of no importance whether you are married/registered or not.

B10 - See B16 - See chapter two of Act no. 727 of 14 August 2001, Act on Inheritance (*Arvefølgen*).

B11 - See B17 - The informal cohabitation partners have to have been living together for two years or more before they pay the same inheritance tax as married couples/registered partners.

B12 - There is no statutory survivor's pension in Denmark.

B13 - The informal cohabitation partners have to have been living together for two years or more before they pay the same inheritance tax as married couples/registered partners. For same-sex partners this was introduced by Act no. 339 of 4 June 1986, which remained in force until 1 October 1989 (when registered partnership was introduced).

Table B - part three (Denmark): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	X	X	No	No	No
15. Relationship can result in higher income tax	No	X	X	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	X	X	Yes	Yes	Yes
17. Relationship can have negative impact on statutory old age pension	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	2x3 + 2x0 = 6	4x0 = 0	4x0 = 0	2x3 + 2x0 = 6	2x3 + 2x0 = 6	2x3 + 2x0 = 6

Notes to table B - part three

B14 - See B7 - You do not pay property tax in Denmark any longer except for a sort of house-tax on owned houses, summerhouse and flats - and that tax is the same whether you are married/registered or not.

B15 - There are no such rules, on the contrary, see B8. In Denmark all citizens have a basic tax allowance (4.600 euro a year), but married/registered couples can transfer their allowance between them if e.g. one of the spouses has no income.

B16 - According to art. 1 of Act no. 37 of 5 January 1995, Act on the Economical Consequences of Marriage (*Retsvirkningsloven*) both partners shall do what they can to make a living for the couple, which means that the authorities will take a look at the couple as a whole, before the money from the social security system is paid out (see art. 2 of Act on Active Social Politics). Concerning informal cohabitation couples it is more or less the same - in many cases they are looked upon as a couple. Only if they prove that one of the two is only renting a room - the negative consequences will not apply.

B17 - Married spouses, registered partners, informal cohabitants and singles get the same basic amount of 7.000 euro per year. On top of that you get an additional pension which is 3.300 euro per year if you are a married spouse/registered partner/informal cohabitant and 7.100 euro if you are single.

Table C (Denmark): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)	Different-sex	Same-sex
19. One partner can have or use surname of the other	Yes	X	X	Yes	No	No
20. Foreign partner of resident national is entitled to a residence permit	Yes, but	X	X	Yes, but	No	No
21. Relationship makes it easier for foreign partner to obtain citizenship	Yes	X	X	Yes	No	No
22. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	X	X	Yes	Yes	Yes
23. When one partner uses violence against other partner, specific statutory protection applies	No, but	X	X	No, but	No	No
24. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	X	Yes	No	No
25. Organ donation from one living partner to the other is lawful	Yes	X	X	Yes	Yes	Yes
26. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	>2 years: Yes	>2 years: Yes
27. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	6x3 + 1x2 + 1x1 + 1x0 = 21	9x0 = 0	9x0 = 0	6x3 + 1x2 + 1x1 + 1x0 = 21	3x3 + 6x0 = 9	3x3 + 6x0 = 9

Notes to table C

C1 - Spouses and partners have to apply for the other partner's name, they do not get it automatically any longer. See art. 4 of Act no. 193, Act on Names, of 29 April 1981.

C2 - A foreigner, who is married/registered (and not an EU-citizen) with a Dane, can apply for a residence permit - see art. 9 of Act no. 608 of 17 July 2002, Act on Foreigners (*Udlændingeloven*). Please note, that the same paragraph states that the Dane does not have to be a native Dane: he/she can also be a citizen of the other Nordic countries or a 'convention refugee'. But the spouses have to be 24 years of age or more - and their relation to Denmark has to be stronger than the relation to the foreigner's homeland. The Minister of Integration has decided that these two rules do not necessarily apply on registered partners since they can not go to most of the countries and live as partners there.

C3 - To apply for a Danish citizenship you have to have a residence permit for more than seven years. You can get that permission in three ways - either through marriage/registered partnership, because you have an education which is attractive to Denmark (for example chemistry) or because you are recognised as a refugee.

C4 - See Act on Administration of Justice (*Retsplejeloven*) art. 171 (1)

C5 - The victim has a right to immediately get a divorce. See art. 34 of Act no. 147, Act on Marriage, (*Ægteskabsloven*) of 9 March 1999 as latest changed by Act no 365 of 6 June 2002.

C6 - See art. 105(5) of Act no. 129 of 15 April 1930, Act on Insurance Agreements (*Forsikringsaftaleloven*).

C7 - Special rules for persons under 18 years of age apply. See art. 13 of Act no. 402, Act on Organ Donation etc. of 13 June 1990.

C8 - If a spouse or a registered partner dies - the other spouse/partner can continue the rent. See art. 75(1) of Act no. 347 of 14 May .2001, Act on Renting homes and rooms, (*Lejeloven*). Informal cohabitation couples have the same right if they have been together for two years or more. See art. 75(2) of the same Act.

C9 - Not applicable.

Table D (Denmark): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (1989)	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status) (1987)
1. With respect to housing	Yes	No	No	Yes
2. With respect to life insurance	Yes	No	No	Yes
3. With respect to health insurance	Yes	No	No	Yes
4. With respect to medically assisted insemination	No	No	No	No
5. With respect to other services	Yes	No	No	Yes
6. With respect to an occupational survivor's pension	Yes (1996)	No	No	Yes (1996)
7. With respect to other spousal benefits in employment	Yes (1996)	No	No	Yes (1996)

Notes to table D

D1 - There is a general ban on discrimination on the grounds of race, belief, sexual orientation etc. in the Act on Race Discrimination, Act no. 626 of 29 Oktober 1987 (*Lov om forbud mod forskelsbehandling på grund af race m.v.*). This act covers all kinds of service providers including landlords. But it will not be discrimination if the landlord demands that people who rent his flats are married or registered - and therefore refuse to rent out to informal cohabitants of all kinds.

D2 - See D1.

D3 - See D1.

D4 - As mentioned in A2, only married women or women living in a similar relation with a man are allowed to get assisted fertilisation (insemination, IVF etc.) by help from a doctor. This is a direct discrimination of lesbians.

D5 - See D1.

D6 - See D7.

D7 - See Act no. 459, Act on Discrimination of 12 June 1996 (*Lov om forbud mod forskelsbehandling på arbejdsmarkedet*) which bans discrimination in employment and occupation - and giving heterosexual couples spousal benefits which homosexual couples are being refused will be a breach of the Act on Discrimination.

Table E (Denmark): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex (1989)
Resident national with:	25. Resident national	Yes	X	X	Yes
	26. Non-resident national	Yes	X	X	Yes
	27. Resident foreigner	Yes	X	X	Yes
	28. Non-resident foreigner	Yes	X	X	Yes
Non-resident national with:	29. Non-resident national	Yes	X	X	No
	30. Resident foreigner	Yes	X	X	No, but
	31. Non-resident foreigner	Yes	X	X	No
Resident foreigner with:	32. Resident foreigner	Yes	X	X	Yes, but
	33. Non-resident foreigner	Yes	X	X	No
Non-resident foreigner with:	34. Non-resident foreigner	Yes	X	X	No
35. Sister or brother with sister or brother		No	X	X	No
36. Parent with child		No	X	X	No

Notes to table E

E1 - See art 1-2 of Act no. 372, Act of Registered Partnership of 7 June 1989 as last changed by Act no. 360 of 2 June 1999, and Act no. 147, Act on Marriage (*Ægteskabsloven*) of 9 March 1999 as last changed by Act no 365 of 6 June 2002.

E2 - See E1.

E3 - See E1.

E4 - Beside the rules in the acts on Marriage and Registered Partnership mentioned above - also art. 9 of Act no. 608 of 17 July 2002, Act on Foreigners, applies. This means that you can get married or register your partnership - but you are not sure to be able to bring your partner to Denmark.

E5 - It is not possible for two Danes of the same sex living abroad to register - since it is a demand in art. 2(2) of the Act of Registered Partnership of 7 June 1989 as latest changed by Act no. 360 of 2 June 1999 that one of the partners is living in Denmark. Heterosexual couples are not met with the same demand.

E6 - If the resident foreigner is from a country with a similar legislation as the Danish Partnership Law they can register in Denmark. For the purposes of art. 2(2) of the Act of Registered Partnership, Norway, Sweden, Iceland, the Netherlands and Finland are considered to be such a country.

E7 - You still have to observe the rules of art. 9 of the Act on Foreigners, if the non-resident national wants to bring his/her spouse to Denmark.

E8 - For same sex-couples it is a demand that they have been living in Denmark for at least two years. However, if the foreigners (or just one of them) residing in Denmark are from countries with a similar legislation as the Danish Partnership Law, they are regarded as Danish citizens and can register like Danes, see art. 2 (2 and 3) of Act no. 372, Act on Registered Partnership (*Lov om registreret partnerskab*) of 7 June 1989 as last changed by Act no. 360 of 2 June 1999

E9 - For heterosexual couples see Act no. 147, Act on Marriage (*Ægteskabsloven*) of 9 March 1999 as last changed by Act no 365 of 6 June 2002 - and art. 9 of Act no. 608 of 17 July 2002, Act on Foreigners.

E10 - It has become quite popular among foreign heterosexual couples to go to Denmark just to get married. But of course they do not get any rights concerning social security, residence or working permit etc. The same possibility does not exist for homosexual couples.

E11 - Not applicable in Denmark.

E12 - See E11.

Table F (Denmark): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)
15. Registry of births, marriages and deaths	No	X	X	X
16. Local population administration	Yes	X	X	Yes
17. Church	Yes	X	X	No
18. Court	No	X	X	No
19. Private person with special authorisation	No	X	X	No
20. Public notary	No	X	X	No
21. Administrative magistrate	No	X	X	No

Notes to table F

F1 - See F2.

F2 - In Denmark you can start your marriage either at the City Hall or in a Church. The City Mayor (or an employee on behalf of him/her) does the investigation to find out whether the couple qualifies for marriage or partnership. The City Mayor can also delegate his authority to marry or register couples to a member of the City Council (which is rather common).

F3 - Only heterosexual couples can get legally married in a church. Homosexuals have to go to the City Hall only (but can get a blessing in a church - if they find a priest who is willing to do so).

F4 - This is not possible in Denmark.

F5 - This is not possible in Denmark.

F6 - This is not possible in Denmark.

F7 - This is not possible in Denmark.

Table G (Denmark): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1989)
8. By court decision (after joint or individual petition)	Yes	X	X	Yes
9. By mutually agreed contract (outside court)	No	X	X	No
10. Unilaterally by one partner (outside court)	No	X	X	No
11. By conversion of marriage into registered partnership, or vice versa (outside court)	No	X	X	No
12. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	X	X	No
13. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
14. By administrative decision (after joint or individual petition)	Yes	X	X	Yes

Notes to table G

G1 - See art. 32-34, and art. 23-24 (annulment of a marriage), of Act no. 147, Act on Marriage, (*Ægteskabsloven*) of 9 March 1999, as most recently changed by Act no. 387 of 28 May 2003. The same Act states in art. 29 that a spouse (or registered partner) who does not feel he or she is able to continue the relation has a right to separation, which after one year gives the right to final divorce (see art.31 (1) of the above mentioned Act), or after 6 months if the spouses/partners agree (see art. 31(2) of the same Act).

G2 - This is not possible in Denmark.

G3 - See G2.

G4 - You can not convert a marriage into a partnership or the other way around, since it has to be two of opposite sex who marry - and two of the same sex who register. If somebody wants to change sex - he/she will have to end the marriage (or partnership) and register (or marry).

G5 - If by mistake or by will someone marries a third person, or registers a partnership with a third person, the latest marriage or partnership is looked upon as not existing.

G6 - Since you can not marry as a same-sex couple and can not enter into a registered partnership as a different sex couple this question is of no relevance for Denmark.

G7 - Most separations/divorces are given by permission by the public authorities (*Statsamtet*), but under the condition that the couple agrees on divorce/separation (see Act on Marriage, cited above).

Some literature in English

- Ingrid Lund-Andersen, 'The Danish Registered Partnership Act', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 11-23.
- Ingrid Lund-Andersen, 'The Danish Registered Partnership Act, 1989: Has the Act Meant a Change in Attitudes?', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 417-426.
- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 61-80.
- Morten P. Broberg, 'The registered partnership for same-sex couples in Denmark', in: *Child and Family Law Quarterly*, vol. 8, no. 2, 1996, p. 149-155.
- E. Albæk, 'Political Ethics and Public Policy: Homosexuals between Moral Dilemmas and Political Considerations in Danish Parliamentary Debates', in: *Scandinavian Political Studies*, vol. 26, no. 3, 2003, p. 245-267.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Finland

by Rainer Hiltunen ¹
and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

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Introduction

This chapter aims to represent the law as it stood early in 2004.

Civil marriage

Civil marriage is only open for different-sex partners. See the Marriage Act (*Avoliittolaki*) 234/1929 of 13 June 1929. For an unofficial English translation by the Ministry of Justice of the Marriage Act, see www.finlex.fi/pdf/saadkaan/E9290234.PDF.

Registered partnership

Registered partnership is only open for same-sex partners. See the Act on Registered Partnerships (*Laki rekisteröidystä parisuhteesta*) 950/2001 of 9 November 2001, which entered into force on 1 March 2002. See www.finlex.fi/pdf/saadkaan/E0010950.PDF for an unofficial English translation by the Ministry of Justice of the partnership law

The main differences between marriage and registered partnership concern the presumption of paternity (see item A1, below), adoption (items A4 and A5) and the use of each other's surname (C1). Another difference is that unlike marriage a partnership registration cannot take place in a church (see item F3). And for marriage no residency or citizenship requirements apply (see items E5 to E10).

Informal cohabitation

There is no single definition of cohabitation in Finnish legislation. The description varies from one piece of legislation to the next. Usually cohabitation is defined as 'persons living in a marriage-like relationship', sometimes 'a man and a woman who live in a marriage-like relationship'. The government has decided to further define the legal position of same-sex cohabitants, but nothing has been done on that since 2001.

The definitions do not automatically rule out same-sex cohabitants, but there is no clear legislative rule or case law on this. Same-sex couples have been treated as common-law couples when the wording of the law allows it. Examples include joint parental authority (see item A3, below), fostering (A7), compensation in case of wrongful death (B5), next of kin rules (C6 and C7) and probably rent law (C8). See also items B13, B16 and B17.

Names, numbers and websites of laws cited in the notes

- Act on the Medical Use of Human Organs and Tissues (*Laki ihmisen elimien ja kudoksien lääketieteellisestä käytöstä*) 101/2001 www.finlex.fi/linkit/ajansd/20010101
- Act on Compensation for Crime Damage (*Rikosvahinkolaki*) 935/1973 www.finlex.fi/linkit/ajansd/19730935
- Act on confirming the sex of a transsexual (*Laki transseksuaalin sukupuolen vahvistamisesta*) 563/2002 [http://finlex1.edita.fi/dynaweb/stp/stp/2002sd/@ebt-link?showtoc=false;target=IDMATCH\(id,20020563.sd](http://finlex1.edita.fi/dynaweb/stp/stp/2002sd/@ebt-link?showtoc=false;target=IDMATCH(id,20020563.sd)
- Act on Inheritance and Gift Tax (*Perintö- ja lahjaverolaki*) 378/1940 www.finlex.fi/linkit/ajansd/19400378
- Act on Registered Partnerships (*Laki rekisteröidystä parisuhteesta*) 950/2001 www.finlex.fi/linkit/ajansd/20010950
- Act on Residential Leases (*Laki asuinhuoneiston vuokrauksesta*) 481/1995 www.finlex.fi/linkit/ajansd/19950481
- Act on Social Assistance (*Laki toimeentulotuesta*) 1412/1997 www.finlex.fi/linkit/ajansd/19971412
- Act on the Status and Rights of Patients (*Laki potilaan asemasta ja oikeuksista*) 785/1992 www.finlex.fi/linkit/ajansd/19920785
- Adoption Act (*Laki lapseksiottamisesta*) 153/1985 www.finlex.fi/linkit/ajansd/19850153
- Child Custody and Right of Access Act (*Laki lapsen huollosta ja tapaamisoikeudesta*) 361/1983 www.finlex.fi/linkit/ajansd/19830361
- Code of Inheritance (*Perintökaari*) 40/1965 www.finlex.fi/linkit/ajansd/19650040
- Code of Judicial Procedure (*Oikeudenkäymiskaari*) 4/1734 www.finlex.fi/linkit/ajansd/17340004
- Criminal Investigations Act (*Esitutkintalaki*) 449/1987 www.finlex.fi/linkit/ajansd/19870449
- Employment Accidents Act (*Tapaturmavakuutuslaki*) 608/1948 www.finlex.fi/linkit/ajansd/19480608
- Marriage Act (*Avoliittolaki*) 234/1929 www.finlex.fi/linkit/ajansd/19290234

- Names Act (*Nimilaki*) 694/1985
www.finlex.fi/linkit/ajansd/19850694
- National Pension Act (*Kansaneläkelaki*) 347/1956
www.finlex.fi/linkit/ajansd/19560347
- Paternity Act (*Isyyslaki*) 700/1975
www.finlex.fi/linkit/ajansd/19750700
- Penal Code (*Rikoslaki*) 39/1889 as amended by law 578/1995 www.finlex.fi/linkit/ajansd/18890039
- Survivors Pension Act (*Perhe-eläkelaki*) 38/1969
www.finlex.fi/linkit/ajansd/19690038
- The Aliens Act (*Ulkomaalaislaki*) 378/1991
www.finlex.fi/linkit/ajansd/19910378
- The Nationality Act (*Kansalaisuuslaki*) 359/2003
www.finlex.fi/linkit/ajansd/20030359
- Workers Pension Act (*Työntekijäin eläkelaki*) 395/1961
www.finlex.fi/linkit/ajansd/19610395

Table A (Finland): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
22. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but	No
23. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	Yes	Yes	Yes
24. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	Yes	X	X	Yes	Yes	Yes
25. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	Yes	X	X	No	No	No
26. Partners can jointly adopt a child	Yes	X	X	No	No	No
27. One partner can individually adopt a child	No	X	X	Yes	Yes	Yes
28. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	6x3 + 1x0 = 18	7x0 = 0	7x0 = 0	4x3 + 3x0 = 12	4x3 + 1x1 + 2x0 = 13	4x3 + 3x0 = 12

Notes to table A

A1 - Marriage: art. 2 Paternity Act; partnership: art. 9(1) Act on Registered Partnerships. For different-sex cohabitation paternity is not automatic, but male partner can easily register paternity by announcement (art 3 Paternity Act).

A2 - No legislation on assisted insemination; in fact many lesbian couples are assisted every year.

A3 - Marriage: art. 6 Child Custody and Right of Access Act; partnership and cohabitation: art. 9(1)(i) of the same Act. Many same-sex registered couples and same-sex informal cohabiting couples have been granted joint parental authority during the last years.

A4 - Marriage: art. 6(2) Adoption Act; partnership: art. 9(2) Act on Registered Partnerships; cohabitation: art. 7 Adoption Act.

A5 - Marriage: art. 6(1) Adoption Act; partnership: art. 9(2) Act on Registered Partnerships, cohabitation: art. 7 Adoption Act.

A6 - Marriage: art. 6(1) Adoption Act; partnership and cohabitation: art. 1(1) Adoption Act.

A7 - No legislation on child fostering. No information available on the number of same-sex foster parents.

Table B - part one (Finland): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	No	X	X	No	No	No
2. Debts of each partner are considered joint debt	No, but	X	X	No, but	No	No
3. In case of splitting up, statutory rules on alimony apply	Yes	X	X	Yes	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes	X	X	Yes	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	X	X	Yes	Yes	Yes
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	4x3 + 1x1 + 1x0 = 13	6x0 = 0	6x0 = 0	4x3 + 1x1 + 1x0 = 13	1x3 + 5x0 = 3	1x3 + 5x0 = 3

Notes to table B - part one

B1 - Marriage and partnership: art. 34 Marriage Act.

B2 - Marriage and partnership: art. 52 Marriage Act; only debts which are made for the subsistence of spouses/partners or children living in the household, are joint debts.

B3 - Marriage and partnership: art. 48 Marriage Act.

B4 - Marriage and partnership: art. 35 Marriage Act.

B5 - Marriage, partnership and cohabitation: art. 6a Act on Compensation for Crime Damage. The term used can be translated as 'person closely connected' (*läheinen*).

B6 - Marriage and partnership: art. 1 of chapter 3 of the Code of Inheritance.

Table B - part two (Finland): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
7. Relationship can result in lower property tax	No	X	X	No	No	No
8. Relationship can result in lower income tax	No, but	X	X	No, but	No	No
9. Public health insurance of one partner covers medical costs of other partner	No	X	X	No	No	No
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	X	No	No	No
11. Relationship can have positive impact on statutory old age pension	No	X	X	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes	X	X	Yes	No	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	No, but	No
Level of legal consequences	2x3 + 1x1 + 4x0 = 7	7x0 = 0	7x0 = 0	2x3 + 1x1 + 4x0 = 7	1x1 + 6x0 = 1	7x0 = 0

Notes to table B - part two

B7 - Relationships do not affect property tax.

B8 - Income taxation is as a rule individually based. Only in a few cases marriage or registered partnership can result in lower income tax, one example of this is that alimony payments after divorce are tax free (art. 91 Act on Income Tax).

B9 - Public health insurance is individually based.

B10 - No such impact.

B11 - No such impact.

B12 - Marriage and partnership: art. 19(1) Survivors Pension Act.

B13 - Married and registered surviving partners pay less tax (art. 11(3) Act on Inheritance and Gift Tax). The same applies to different-sex cohabitants, but only if the surviving partner has (had) a joint child with the deceased partner.

Table B - part three (Finland): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	X	X	No	No	No
15. Relationship can result in higher income tax	No	X	X	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	X	X	Yes	Yes	No
17. Relationship can have negative impact on statutory old age pension	Yes	X	X	Yes	Yes	No
Level of legal consequences	2x3 + 2x0 = 6	4x0 = 0	4x0 = 0	2x3 + 2x0 = 6	2x3 + 2x0 = 6	4x0 = 0

Notes to table B - part three

B14 - Relationships do not affect property tax.

B15 - No such impact.

B16 - Marriage, partnership and different-sex cohabitation: art. 3(1) Act on Social Security.

B17 - Marriage, partnership and different-sex cohabitation: art. 28(2) National Pension Act.

Table C (Finland): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)	Different-sex	Same-sex
28. One partner can have or use surname of the other	Yes	X	X	No, but	No	No
29. Foreign partner of a resident national is entitled to a residence permit	Yes, but	X	X	Yes, but	>2 years: Yes, but	>2 years: Yes, but
30. Relationship makes it easier for foreign partner to obtain citizenship	Yes	X	X	Yes	No	No
31. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	X	X	Yes	Yes, but	Yes, but
32. When one partner uses violence against other partner, specific statutory protection applies	No	X	X	No	No	No
33. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	X	Yes	Yes	Yes
34. Organ donation from one living partner to the other is lawful	Yes	X	X	Yes	Yes	Yes
35. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	Yes	Yes, but
36. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	6x3 + 1x2 + 2x0 = 20	9x0 = 0	9x0 = 0	5x3 + 1x2 + 1x1 + 2x0 = 18	3x3 + 2x2 + 4x0 = 13	2x3 + 3x2 + 4x0 = 12

Notes to table C

C1 - Marriage: art. 7(1) Names Act; partnership: art. 10(1)(iii) Names Act. The only way for a registered partner to get the name of his or her partner, is through the administrative procedure for changing a surname (see M. Savolainen, 'The Finnish and Swedish Partnership Acts - Similarities and Divergencies' in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 32-33). In that context registered partnership has been considered as a special reason needed when making an application to take a name that is already in use.

C2 - Marriage or partnership as a rule qualifies as a reason for a residence permit (art. 18(1)(i) Aliens Act). Both same-sex and different-sex cohabitation have usually been accepted as a reason for a residence permit after two years of cohabitation (art. 18(1)(i) Aliens Act).

C3 - Marriage and partnership: art. 22 Finnish Nationality Act.

C4 - Marriage, partnership and cohabitation: art. 20(1)(i) of chapter 17 Code of Procedure. This Code is from 1948 and the words used, 'married or engaged', would likely be interpreted so as to include same-sex and different-sex cohabitation.

C5 - No such provisions.

C6 - Marriage, partnership and cohabitation: art. 9(1) Act on the Status and Rights of Patients.

C7 - Art. 4(1) Act of the Medical Use of Human Organs and Tissues. The terms used 'next of kin' (*lähiomainen*) and 'person closely connected' (*läheinen henkilö*) are most likely to include informal cohabitation.

C8 - Marriage, partnership and cohabitation: art. 46(2) Act on Residential Leases. According to art. 11 of this Act, the term 'spouse' (*puoliso*) includes both married and cohabiting couples. It would be most likely to be interpreted to include also same-sex couples.

C9 - No such provisions.

Table D (Finland): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (2002)	Between married spouses and informal cohabitants (1995)	Between registered partners and informal cohabitants (2002)	Between same-sex and different-sex partners (with same status) (1995)
1. With respect to housing	Yes	Yes	Yes	Yes
2. With respect to life insurance	Yes	Yes	Yes	Yes
3. With respect to health insurance	Yes	Yes	Yes	Yes
4. With respect to medically assisted insemination	Yes, but	Yes, but	Yes, but	Yes, but
5. With respect to other services	Yes	Yes	Yes	Yes
6. With respect to an occupational survivor's pension	Yes	No	No	No
7. With respect to other spousal benefits in employment	Yes, but	No, but	No, but	Yes, but

Notes to table D

D1 - Provisions on discrimination in the Penal Code (art. 9 of chapter 11, as amended by law 578/1995) make it a criminal offence for anyone, exercising their trade or profession, to refuse service or place someone in an unequal or an essentially inferior position, without an acceptable reason, because of [...] sexual orientation, family ties [...] or another comparable circumstance.

D2 - Idem.

D3 - Idem.

D4 - Idem. There is no law on medically assisted insemination; however, several committee reports have suggested to restrict insemination services to married couples. This might be seen by the courts as an 'acceptable reason' needed for justified differential treatment according to the Penal Code.

D5 - See note to D1.

D6 - Idem. According to art. 4a Workers Pension Act, informal cohabitants are not eligible for survivors' pensions.

D7 - See note to D1. There are differences between registered partners and married couples in spousal benefits based on collective agreements. The issue has never been brought to court as a Penal Code discrimination issue. Differential treatment would more likely be considered as prohibited discrimination when between married and registered partners or between same-sex and different-sex partners, than when between married partners and informal cohabitants or between registered partners and informal cohabitants.

Table E (Finland): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex (2002)
Resident national with:	37. Resident national	Yes	X	X	Yes
	38. Non-resident national	Yes	X	X	Yes
	39. Resident foreigner	Yes	X	X	Yes
	40. Non-resident foreigner	Yes	X	X	Yes
Non-resident national with:	41. Non-resident national	Yes	X	X	No
	42. Resident foreigner	Yes	X	X	No, but
	43. Non-resident foreigner	Yes	X	X	No
Resident foreigner with:	44. Resident foreigner	Yes	X	X	>2 years: Yes, but
	45. Non-resident foreigner	Yes	X	X	No, but
Non-resident foreigner with:	46. Non-resident foreigner	Yes, but	X	X	No
47. Sister or brother with sister or brother		No	X	X	No
48. Parent with child		No	X	X	No
Level of access		9x3 + 1x2 + 2x0 = 29	12x0 = 0	12x0 = 0	4x3 + 1x2 + 2x1 + 5x0 = 16

Notes to table E

E1 - For partnership, see art. 10(1)(1) Act on Registered Partnerships. No such restrictions apply to marriage. The text of art. 10 of the Act on Registered Partnerships reads as follows:

‘(1) Partnership may be registered in Finland only if: (1) at least one of the partners is a Finnish citizen and habitually resident in Finland; or (2) both parties have been habitually resident in Finland for two years immediately before the registration.

(2) In the application of subsection (1), citizenship of a foreign state whose legislation allows for the registration of partnership with mainly the same legal effects as provided in this Act, shall correspond to Finnish citizenship.’

Governmental Decree 141/2002 currently designates corresponding citizenships to be Dutch, Icelandic, Swedish, Norwegian, German and Danish citizenships.

E2 - Idem.

E3 - Idem.

E4 - Idem.

E5 - Idem.

E6 - Art. 10(2) Act on Registered Partnerships allows registration if the resident foreigner has a citizenship of a country mentioned in the Governmental Degree 141/2002 (quoted in note to E1). No such restrictions apply to marriage.

E7 - See note to E1.

E8 - Art. 10(1)(2) Act on Registered Partnerships allows registration after two years of residence immediately before the registration for both parties, but according to 10(2) Act on Registered Partnerships two years residency is not required if one of the two resident foreigners has a citizenship of a country mentioned in Governmental Degree 141/2002 (quoted in note to E1). No such restrictions apply to marriage.

E9 - Art. 10(2) Act on Registered Partnerships allows registration if the resident foreigner has a citizenship of a country mentioned in Governmental Degree 141/2002 (quoted in note to E1). No such restrictions apply to marriage.

E10 - Art. 108(2) Marriage Act: ‘If neither the woman nor the man is a Finnish citizen and if neither is habitually resident in Finland, they have the right to marry before a Finnish authority only if the marriage is permissible under the law of Finland and if each of them has the right to marry in accordance with the law of the state whose citizen he or she is or where he or she is habitually resident, or in accordance with the law

applicable in one of these states on the examination of impediments to marriage.’ For partnership, see art. 10(1) Act on Registered Partnerships (quoted in note to E1).

E11 – Art. 7(2) Marriage Act; art. 2(1)(2) Act on Registered Partnerships.

E12 – Idem.

Table F (Finland): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)
22. Registry of births, marriages and deaths	Yes	X	X	Yes
23. Local population administration	No	X	X	No
24. Church	Yes	X	X	No
25. Court	Yes	X	X	Yes
26. Private person with special authorisation	No	X	X	No
27. Public notary	No	X	X	No
28. Administrative magistrate	No	X	X	No

Notes to table F

F1 – Art. 17(2)(ii) Marriage Act; art. 4(1) Act on Registered Partnerships, which reads as follows: ‘Partnership shall be registered by an authority entitled to perform *civil* marriage ceremonies’ (emphasis added). This means that partnership registrations can be done either by a judge of the local court of first instance, or by a registrar of the population register, which is comparable to what the French call ‘*l’état civil*’ and the English call ‘*the registry of births, marriages and deaths*’ (see M. Savolainen, ‘The Finnish and Swedish Partnership Acts – Similarities and Divergencies’ in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 30).

F2 – Marriages and partnerships can be registered by the registrar of the population register, which resembles most the Registry of births, marriages and deaths. See note to F1.

F3 – Art. 17(1) Marriage Act; art. 4(1) Act on Registered Partnerships (quoted in note to F1).

F4 – Art. 17(2)(i) Marriage Act; art. 4(1) Act on Registered Partnerships (quoted in note to F1).

F5 – No such provisions.

F6 – No such provisions.

F7 – No such provisions.

Table G (Finland): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (2002)
15. By court decision (after joint or individual petition)	Yes	X	X	Yes
16. By mutually agreed contract (outside court)	No	X	X	No
17. Unilaterally by one partner (outside court)	No	X	X	No
18. By conversion of marriage into registered partnership, or vice versa (outside court)	No, but	X	X	No, but
19. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	X	X	No
20. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
21. By administrative decision (after joint or individual petition)	No	X	X	No

Notes to table G

G1 - Art. 25 Marriage Act; art. 7(2) Act on Registered Partnerships.

G2 - No such provisions.

G3 - No such provisions.

G4 - Marriage and partnership: art. 2(2) Act on confirming the sex of a transsexual. When the sex of a transsexual is notarised in compliance with the procedures stated in the Act, the persons marriage is a automatically converted to registered partnership and vice versa.

G5 - No such provisions.

G6 - No such provisions.

G7 - No such provisions.

Some literature in English

- Matti Savolainen, 'The Finnish and Swedish Partnership Acts - Similarities and Divergencies', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 24-40.
- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 107-110.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in France

by Daniel Borrillo ¹
and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

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Introduction

This chapter aims to represent the law as it stood early in 2004.

In France there are three ways in which relationships are legally organized: civil marriage, registered partnership (civil pact of solidarity, PaCS) and informal cohabitation ('concubinage').

The Civil Code does not define marriage. Article 144 simply establishes the age limit of the partners: "A male, until the completion of eighteen years, a female until the completion of fifteen years, may not contract marriage." Only civil marriage produces legal consequences. Moreover, it is prohibited to celebrate a church wedding before the civil wedding.

Before Act n° 99-944 of 15 November 1999 on registered partnerships came into effect, same-sex couples were not legally recognized. The said law has since introduced into the Civil Code a new Article 515-1 which defines a registered partnership as a "contract entered into by two natural persons of age, of different sexes or of the same sex, to organize their common life".

Until 1999, homosexual couples were barred from the status of cohabitants. It was the same Act of 1999 that also amended the Civil Code by introducing cohabitation, defined by Article 515-8 of the Civil Code as follows: "Cohabitation is a de facto union, characterized by a life in common offering a character of stability and continuity, between two persons, of different sexes or of the same sex, who live as a couple".

These three conjugal formats occupy a different hierarchical position in the legal system. The rights and obligations entailed by each of these formats are in proportion to the formality of the act. Civil marriage, at the top of the conjugal hierarchy, is not open to same-sex couples.

Informal cohabitation produces very limited legal consequences, essentially connected with social law: health insurance, reductions for certain forms of transport, etc.

Although registered partnerships offer more rights than informal cohabitation, it does not offer nearly as many prerogatives as civil marriage. Unlike marriage, a registered partnership gives no right to filiation whatsoever (no shared parental authority, no adoption, no access to medically assisted procreation). Furthermore, it does not allow foreigners who entered into a registered partnership to instantly obtain a residence permit or to apply for French nationality after one year. Partners in registered partnerships are not entitled to survivor's pension, and where they were entitled to such a pension (by virtue of a previous marriage) they lose it once they enter into a registered partnership. A registered partnership does not change the rules of devolution of estate and, in the absence of a will, there can be no inheritance. For donations between partners, besides the fact that the tax allowance is far smaller, registered partners must wait for two years.

Where married partners can file a joint tax return immediately after marriage, registered partners must wait until the third year after the date of conclusion of the registered partnership.

Registered partners are only entitled to parental or compassionate leave in case of disease of the partner, whereas married couples are entitled to such leave in case of birth, adoption, marriage or death of a child, as well as in case of disease of the parents-in-law. Since a registered partnership does not alter the marital status of the partners, they cannot choose to bear the partner's name. Furthermore, there is no legal representation between the partners (Articles 218 and 219 of the Civil Code).

Paradoxically, joint and several liability for household debts is much greater in registered partnerships than in marriage (the concept of "manifestly excessive expenditures" in Article 220 of the Civil Code does not apply to registered partnerships; see Article 515-4 CC).

To put an end to a marriage, legal divorce proceedings must be instituted. The freedom to sever the relationship is in the very nature of informal cohabitation. As far as registered partnerships are concerned, a joint declaration or three months' notice from one of the partners suffices to put an end to the relationship.

The *Loi no 99-944 du 15 novembre 1999 relative au pacte civil de solidarité* (law on the civil pact of solidarity) was published in *Le Journal officiel de la République Française* of November 16, 1999, p. 16959, which can be found at www.legifrance.gouv.fr.

On that website the consolidated text of the whole Civil Code, including the provisions on marriage, registered partnerships and informal cohabitation can also be found (with translations); the English translation of the Civil Code is at www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm.

For more information about the Pacs, see also: www.chez.com/obspacs/ and <http://vosdroits.service-public.fr/particuliers/ARBO/NXFAM260.html?&n=Couples&l=NX23>.

Abbreviations

CC: *Civil Code*

CE: *Council of State*

Pacs: *Registered partnership*

Table A (France): Parenting consequences

	Civil marriage		Registered partnership (1999)		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex (1999)
29. When female partner gives birth, both partners automatically become legal parents	Yes	X	No, but	No	No, but	No
30. Medically assisted insemination is lawful for women in such a relationship	Yes	X	>2 years: Yes, but	No	>2 years: Yes, but	No
31. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	No	X	No	No	No	No
32. When only one partner is the parent of a child, the other partner can adopt it and thus become a second parent	Yes	X	No	No	No	No
33. Partners can jointly adopt a child	>2 years: Yes	X	No	No	No	No
34. One partner can individually adopt a child	Yes	X	Yes	Yes, but	Yes	Yes, but
35. Partners can jointly foster a child	Yes	X	Yes	Doubt	Yes	Doubt
Level of legal consequences	6x3 + 1x0 = 18	7x0 = 0	2x3 + 1x2 + 1x1 + 3x0 = 9	1x2 + 1x1 + 5x0 = 3	2x3 + 1x2 + 1x1 + 3x0 = 9	1x2 + 1x1 + 5x0 = 3

Notes to table A

A1 - The establishment of parental authority for the two parents springs from the principle of the presumption of paternity that is solely applicable in marriage. In accordance with Article 312 CC, a child is related to the husband of the mother if he was conceived in wedlock, from the 180th day after the wedding. This presumption is also extended to a child who was conceived before the marriage and was born during the marriage as a "child of the engaged couple", Art. 314 par. 1 CC: "A child born before the one hundred and eightieth day of marriage is legitimate and shall be deemed to have been so as from his conception". Presumption of paternity does not exist in the context of registered partnerships or informal cohabitation. The Act of 8 January 1993 instituted equality between married parents and unmarried parents in terms of the exercise of parental authority. Unlike in marriage, children born to a different-sex cohabiting couple (or registered partners) must be acknowledged by the two partners before the age of one year.

A2 - Art. L152-2, Public Health Code: "Medically assisted procreation is intended to respond to the parental wishes of a couple. The aim is to remedy infertility, the pathological nature of which has been medically diagnosed. It may also be intended to prevent a serious illness from being transmitted to the child. The man and woman forming the couple must be alive, of childbearing age, married or able to furnish proof of at least two years of conjugal life, and must have given prior consent to the transfer of embryos or to insemination".

A3 - The partner of the parent has no rights over the latter's child.

A4 - Art. 345-1 CC: "Plenary adoption of the spouse's child is allowed:

1° Where the child has a lawfully established parentage only with regard to that spouse;

2° Where the parent other than the spouse has been totally deprived of parental authority;

3° Where the parent other than the spouse is dead and has left no ascendant of the first degree or where the latter obviously took no further interest in the child."

A5 - Art. 343 CC: "Adoption may be petitioned by two spouses not judicially separated, married for more than two years or who are both older than twenty-eight years".

A6 - Art. 343-1: "Adoption may also be petitioned by a person over twenty-eight years of age. Where the adopter is married and not judicially separated, his or her spouse's consent is required unless this spouse is unable to express his or her intention." Homosexual individuals have far less chance of securing administrative approval prior to adoption. This practice was ratified on several occasions by the Council of State (Ph. Fretté case, Council of State, Sections 1 and 4 jointly, 9 October 1996; Parodi and Bettan cases, Council of State, 12 February 1997; Ms B. case, Council of State, 5 June 2002) and upheld by the European Court of Human Rights: *Fretté v. France*, 26 February 2002.

A7 - Although the law remains silent on this point, the case law may follow the example of adoption by considering that it is contrary to the interest of the child to be brought up by a homosexual couple or individual.

Table B - Part One (France): Material consequences in private law

	Civil marriage		Registered partnership (1999)		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex (1999)
1. Properties of each partner are considered joint property	Yes, but	X	Yes, but	Yes, but	No, but	No, but
2. Debts of each partner are considered joint debt	Yes, but	X	Yes, but	Yes, but	No, but	No, but
3. In case of splitting up, statutory rules on alimony apply	Yes	X	Yes	Yes	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes	X	Yes	Yes	No, but	No, but
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	X	Yes	Yes	Yes (1970)	Yes (1995)
6. When one partner dies without testament, the other is an inheritor	Yes	X	No	No	No	No
Level of legal consequences	4x3 + 2x2 = 16	6x0 = 0	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	1x3 + 3x1 + 2x0 = 6	1x3 + 3x1 + 2x0 = 6

Notes to table B - Part One

B1 - Married couples or partners having entered into a registered partnership may provide otherwise. In the absence of a contract, half of the property acquired after the marriage or registration of the partnership shall be considered joint property. In the case of informal cohabitation, the court may consider that there is a division of property if it is demonstrated that there was a de facto partnership between the cohabitants or joint ownership, or that there was unjust enrichment.

B2 - Joint and several liability for household debts is far greater for registered partners (Art. 515-4 par. 2, CC) than for married couples (Art. 220 CC). In the case of informal cohabitation, the case law has established a passive joint and several liability towards creditors by citing the theory of appearance or de facto partnership between cohabitants.

B3 - Articles 212 and 214 of the Civil Code provide for the benefit of alimony between spouses. For registered partnership couples there also exists an obligation of alimony, the terms and conditions of which are established by the partners. No obligation of alimony exists in informal cohabitation, and the court cannot impose such an obligation.

B4 - For married couples, the rules governing the liquidation of marriage settlements apply (Articles 1467 et seq., CC). For registered partnerships, the Civil Code also establishes rules for the distribution of the property after the dissolution (Art. 515-7, CC). No rules exist for informal cohabitation. The court may distribute the joint property after dissolution if the existence of a joint ownership agreement or a de facto partnership is established, or it may even apply the theory of unjust enrichment.

B5 - The law provides for compensation for married couples as well as for registered partners. For cohabitants, a judgment of the mixed chamber of the Court of Cassation of 27 February 1970 awards compensation for the prejudice suffered by a cohabitant as a result of the death of her partner. It was not until a judgment of the Belfort Court of First Instance on 25 July 1995 that the same rights were granted to homosexual cohabitants.

B6 - In the absence of a will, only married couples are entitled to inherit. Article 731 CC: "Succession devolves by law to the relatives and spouse entitled to inherit on the following terms".

Table B - Part Two (France): Positive material consequences in public law

	Civil marriage		Registered partnership (1999)		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex (1999)
7. Relationship can result in lower property tax	No	X	No	No	No	No
8. Relationship can result in lower income tax	Yes	X	>3 years: Yes	>3 years: Yes	No	No
9. Public health insurance of one partner covers medical costs of other partner	Yes	X	Yes, but	Yes, but	Yes, but	Yes, but (1993)
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	No	No	No	No
11. Relationship can have positive impact on statutory old age pension	No	X	No	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes	X	No	No	No	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	Yes, but	Yes, but	No, but	No, but
Level of legal consequences	4x3 + 3x0 = 12	7x0 = 0	1x3 + 2x2 + 4x0 = 7	1x3 + 2x2 + 4x0 = 7	1x2 + 1x1 + 5x0 = 3	1x2 + 1x1 + 5x0 = 3

Notes to table B - Part Two

B7 - Only the owner spouse is liable for tax (naturally, the spouses are both liable if the property belongs to them in joint ownership).

B8 - A joint tax return is compulsory for married couples. The amount of the tax may be higher or lower, depending on the income of the partners.

B9 - Sickness insurance is open to spouses who are not divorced or legally or de facto separated, if the spouse in question has no sickness insurance of his own, as well as to cohabitants or persons in a registered partnership who are effectively, totally and permanently dependent on the insured partner.

B10 - Relationship does not have a positive impact, since the benefits are individual. These benefits may be reduced or withdrawn from one of the partners if the income of the couple exceeds the amount laid down by law.

B11 - See B17 - Entitlement to old-age pension is an individual right and does not depend on the family situation.

B12 - In France, a special benefit called "widow's pension" is granted to surviving spouses on a means-tested basis. It is added to the reversion pension on condition that the surviving spouse does not marry or enter into a registered partnership. In order to be entitled to a reversion pension, the claimant must be at least 55 years of age and have been married for at least 2 years. This period does not apply if the couple has a child.

B13 - The tax reduction is not the same for married couples as for registered partnerships or informal cohabitation. There is a less expensive way for married couples to pass on their estate *mortis causa*. No inheritance tax is due between spouses on amounts up to 76,000 euros. For registered partnerships the nil-rate band is 57,000 euros and for cohabitants 1,525 euros (Articles 777b and 779 III of the General Tax Code).

Table B - Part Three (France): Negative material consequences in public law

	Civil marriage		Registered partnership (1999)		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex (1999)
14. Relationship can result in higher property tax	No	X	No	No	No	No
15. Relationship can result in higher income tax	Yes	X	>3 years: Yes	>3 years: Yes	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	X	Yes	Yes	Yes	Yes
17. Relationship can have negative impact on statutory old age pension	No	X	No	No	No	No
Level of legal consequences	2x3 + 2x0 = 6	4x0 = 0	2x3 + 2x0 = 6	2x3 + 2x0 = 6	1x3 + 3x0 = 3	1x3 + 3x0 = 3

Notes to table B - Part Three

B14 - Individuals are liable for tax, irrespective of their family situation.

B15 - It all depends on the income of the partners. For married couples, a joint tax return is compulsory immediately after marriage, for registered partners from the third year following the registration of the registered partnership. Cohabitants do not file a joint tax return for their income (Art. 6 of the General Tax Code).

B16 - The partners in a registered partnership, like cohabitants, are considered as a couple with respect to the rules concerning the upper limits of certain social security benefits (minimum social security benefit, housing benefit, etc), according to the income of the couple. Entitlement to income support or widow's pension ceases as soon as a registered partnership is entered into or a marriage is concluded, irrespective of the partner's means.

B17 - Entitlement to old-age pension is an individual right and is independent of the family situation.

Table C (France): Other legal consequences

	Civil marriage		Registered partnership (1999)		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex (1999)
37. One partner can have or use surname of the other	Yes	X	No	No	No	No
38. Foreign partner of resident national is entitled to a residence permit	Yes	X	>1 year: Yes, but	>1 year: Yes, but	No, but	No, but
39. Relationship makes it easier for foreign partner to obtain citizenship	>1 year: Yes	X	No, but	No, but	No, but	No, but
40. In case of criminal prosecution, one partner can refuse to testify against the other	No, but	X	No	No	No	No
41. When one partner uses violence against other partner, specific statutory protection applies	Yes	X	Yes	Yes	Yes	Yes
42. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	No, but	No, but	No, but	No, but
43. Organ donation from one living partner to the other is lawful	Yes, but	X	No	No	No	No
44. When one partner dies, the other can continue to rent the home	Yes	X	Yes	Yes	Yes	Yes
45. Partners have a duty to have sexual contact	Yes	X	Yes	Yes	Yes, but	Yes, but
Level of legal consequences	7x3 + 1x2 + 1x1 = 24	9x0 = 0	3x3 + 1x2 + 2x1 + 3x0 = 13	3x3 + 1x2 + 2x1 + 3x0 = 13	2x3 + 1x2 + 3x1 + 3x0 = 11	2x3 + 1x2 + 3x1 + 3x0 = 11

Notes to table C

C1 - Only married persons can use the name of their spouse (Art. 264 CC).

C2 - Foreign spouses immediately and automatically receive a temporary residence permit. The conclusion of a registered partnership is one of the elements that indicate the existence of personal ties in France, within the meaning of Art. 12b, par. 7, of Decree n° 45-2658 of 2 November 1945 establishing the conditions of entry and residence of foreigners in France, with a view to obtaining a residence permit. Foreign cohabitants must prove a certain period of cohabitation (exceptionally less than 5 years). Foreign partners having entered into a registered partnership must prove at least one year of conjugal life on French territory, irrespective of the nationality of the partner and the date of signature of the registered partnership (telegram of 4 April 2002 and Council of State, 29/7/02, n°231158). The issuing of a temporary residence permit to registered partners or cohabitants is left to the discretion of the public authorities.

C3 - Art. 21-2, par. 1, of the Civil Code provides that a foreigner or stateless person contracting marriage with a spouse having French nationality may, after one year of matrimony, obtain French nationality on the basis of

a declaration, provided that on the date of this declaration he or she is still living with his French spouse. This one-year period does not apply if a child is born of the two spouses. This provision does not apply to partners in a registered partnership or to cohabitants. Informal cohabitation or registered partnerships do not entitle foreign partners to French nationality. They simply constitute an element indicating the existence of personal ties in France with a view to obtaining French nationality.

C4 - According to Article 335 of the Code of Criminal Procedure, married partners are obliged to testify, but they are exempt from taking an oath, which is not the case for partners in a registered partnership or in informal cohabitation. In other words, married partners can tell lies in court without any penal consequences.

C5 - Several provisions of the Penal Code impose stiffer penalties for crimes or offences that are committed by the spouse or a close relation (e.g. Art. 222-8 of the Penal Code).

C6 - In principle, a spouse can legally represent the other spouse for certain acts in social life (Articles 217 and 219, Civil Code). In registered partnerships and informal cohabitation, an express power of attorney of the partner is required. In case of hospitalization, a homosexual person can always designate his partner as "confidant" to take decisions in his place.

C7 - According to Article L 671-3 of the Code of Public Health, a married partner can only donate organs in cases of emergency.

C8 - The Registered Partnerships Act amended Articles 14 and 15 of Act 89-462 of 6 July 1989 on tenancy relations by henceforth allowing the lease to be transferred to the partner in case of abandonment or death of the holder of the tenancy agreement with whom a registered partnership had been entered into. The same provisions apply to same-sex cohabitants.

C9 - The obligations of faithfulness and cohabitation that ensue from Article 212 of the Civil Code oblige married partners to have sexual relations. As far as registered partnerships are concerned, the Constitutional Council established that conjugal life implies "life as a couple", in other words, the obligation to have sexual relations. In case of informal cohabitation, although there is no formal obligation to have sexual relations, these relations are implicit in the very nature of the relationship, since the French word "concubinage" derives from the Latin *cum cubare*, which means "sleeping with". It does not suffice to live under the same roof to be considered cohabitants: the partners must actually sleep together.

Table D (France): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (1999)	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants (1999)	Between same-sex and different-sex partners (with same status)
1. With respect to housing	Yes	Yes	Yes	Yes (1989)
2. With respect to life insurance	Yes	Yes	Yes	Yes (1985)
3. With respect to health insurance	Yes	Yes	Yes	Yes (1993)
4. With respect to medically assisted insemination	Yes, but	Yes, but	Yes, but	No (1994)
5. With respect to other services	Yes	Yes	Yes	Yes (1985)
6. With respect to an occupational survivor's pension	Doubt	Doubt	Doubt	Doubt
7. With respect to other spousal benefits in employment	Yes	Yes	Yes	Yes

Notes to table D

D1 - Since the 1999 Act on registered partnerships, public authorities or private individuals must no longer make a distinction between married couples, registered partners or informal cohabitants, whether heterosexual or homosexual, with respect to access to housing. Moreover, Article 158 of Act 2002-73 of 17 January 2002 on "social modernization" amended Article 1 of the Act of 6 July 1989 as follows: "No person shall be refused rented accommodation on grounds of his or her origin, patronymic, physical appearance, sex, family situation, state of health, disability, morals, sexual orientation, political opinions, trade union activities, membership or non-membership, true or supposed, of a given ethnic group, nation, race or religion." For the first three cases, direct protection is afforded on the basis of "family situation", for the fourth case "sexual orientation".

D2 - Life insurance is a means to protect the partner, whether he be married, living in a registered partnership or in informal cohabitation. Discrimination in this area is a statutory offence under Articles 225-1 and 225-2 of the Penal Code (refusal to supply a product or service on grounds of sexual orientation or morals).

D3 - Same as above, but health insurance is generally part of the social security system, see note B9.

D4 - Only heterosexual couples who have been married or living together for at least two years, who are of childbearing age and have proved that they are infertile have access to medically assisted insemination (Art. L152-2, Public Health Code; see note A2).

D5 - Articles 225-1 and 225-2 of the Penal Code prohibit the refusal of a product or service on grounds of sexual orientation or morals.

D6 - Only the surviving partner of a married couple is entitled to a widow's pension. This depends on the general public social security system, which has the monopoly in this area (Article L356-1 of the Social Security Code).

D7 - In the area of employment, Articles L122-35 (company rules) and L122-45 (compensation) of the Employment Code prohibit discrimination on grounds of sexual orientation or morals.

Table E (France): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership (1999)	
		Different-sex	Same-sex	Different-sex	Same-sex
Resident national with:	49. Resident national	Yes	X	Yes	Yes
	50. Non-resident national	Yes	X	Yes, but	Yes, but
	51. Resident foreigner	Yes	X	Yes	Yes
	52. Non-resident foreigner	Yes	X	Yes, but	Yes, but
Non-resident national with:	53. Non-resident national	No	X	No	No
	54. Resident foreigner	Yes	X	Yes, but	Yes, but
	55. Non-resident foreigner	No	X	No	No
Resident foreigner with:	56. Resident foreigner	Yes	X	Yes	Yes
	57. Non-resident foreigner	Yes	X	Yes, but	Yes, but
Non-resident foreigner with:	58. Non-resident foreigner	No	X	No	No
59. Sister or brother with sister or brother		No	X	No	No
60. Parent with child		No	X	No	No

Notes to table E

E1 - Two French nationals aged 18 may enter into a registered partnership. Women can marry from the age of 16.

E2 - A couple can marry in France on condition that one of the future spouses has been domiciled in France for at least one month (Art. 74, Civil Code). As regards registered partnerships, Article 515-3 of the Civil Code requires the partners to choose a shared residence (see note E4).

E3 - A French national can marry or enter into a registered partnership with a resident foreigner.

E4 - A French resident can marry a non-resident foreigner. A French resident, however, cannot enter into a registered partnership with a foreigner with whom he does not have a shared residence in France. This provision, however, does not imply that the foreigner must be a resident before the registered partnership is celebrated: it simply suffices for him to establish his residence with the partner at the moment of entering into the registered partnership.

E5 - Article 165 of the Civil Code provides that the marriage shall be solemnized by the Registrar of the town where one of the spouses has his domicile or residence, while Article 74 stipulates that at least one of the spouses must have had his residence there for at least one month before the wedding.

E6 - A resident foreigner may marry a non-resident French national. He may also enter into a registered partnership on condition that he shares residence with the resident foreigner.

E7 - See E2. Article 170 of the Civil Code provides, "A marriage contracted in a foreign country between French persons and between a French person and an alien is valid". A French national residing abroad may enter into a registered partnership with a foreigner at the French embassy.

E8 - See E2.

E9 - A resident foreigner holding a residence permit (including residence permit for studying) may enter into a registered partnership with a non-resident foreigner in France on condition that the latter shares residence with the former.

E10 - Two non-resident foreigners can neither marry nor enter into a registered partnership.

E11 - As with marriage, registered partnerships or informal cohabitation are not allowed between direct ascendants and descendants (father and daughter, etc.), between direct relatives by marriage (parents-in-law and sons-in-law, etc.) and between collateral relatives up to the third degree (brother and sister, uncle and niece, uncle and nephew, etc.) (Art. 515-2, Civil Code).

E12 - Same as above

Table F (France): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership (1999)	
	Different-sex	Same-sex	Different-sex	Same-sex
29. Registry of births, marriages and deaths	Yes	X	No	No
30. Local population administration	No	X	No	No
31. Church	No	X	No	No
32. Court	No	X	Yes	Yes
33. Private person with special authorisation	No	X	No	No
34. Public notary	No	X	No	No
35. Administrative magistrate	No	X	No	No

Notes to table F

F1 - For marriages, the registry is kept at the town hall by the Registrar. Registered partnerships are registered at the office of the Magistrates' Court. No formal instrument exists for informal cohabitation.

F2 - The prefectorial authorities have no authority in this matter.

F3 - In France, civil marriage must take precedence, on pain of penal sanctions.

F4 - Registered partnerships must be registered at the office of the Magistrates' Court.

F5 - See F1 and F4.

F6 - Same as above

F7 - Same as above

Table G (France): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership (1999)	
	Different-sex	Same-sex	Different-sex	Same-sex
22. By court decision (after joint or individual petition)	Yes	X	No	No
23. By mutually agreed contract (outside court)	No	X	Yes	Yes
24. Unilaterally by one partner (outside court)	No	X	Yes	Yes
25. By conversion of marriage into registered partnership, or vice versa (outside court)	No	X	No	No
26. By one registered partner marrying a third person (or starting a registered partnership with a third person)	No	X	Yes	Yes
27. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	Yes	Yes
28. By administrative decision (after joint or individual petition)	No	X	No	No

Notes to table G

G1 - Only a court of law can end a marriage.

G2 - A registered partnership ends by a joint decision of the parties or by a unilateral notification by one of the parties (Art. 515-7, Civil Code).

G3 - Same as above

G4 - A marriage or registered partnership cannot be converted in France.

G5 - Marriage results in the immediate dissolution of the registered partnership (Art. 515-7, Civil Code).

G6 - Marriage results in the immediate dissolution of the registered partnership (Art. 515-7, Civil Code).

G7 - This facility does not exist in France.

Some literature in English

- Daniel Borrillo, "Sexual Orientation and Human Rights in Europe", in: *Peace, Justice and Freedom. Human Rights Challenges for the New Millennium*. The University of Alberta Press, Canada, 2000, pp. 303-311.
- Daniel Borrillo, "The *Pacte Civil de Solidarité* in France : Midway Between Marriage and Cohabitation", in: R. Wintemute et M. Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships: A study of National, European and International Law*, Hart Publishing, Oxford-Portland Oregon, 2001, pp. 475-493.
- Veronique Chauveau & Alain Cornec, "France", in: C. Hamilton & A. Perry (eds.), *Family Law in Europe*, second ed., London/Edinburgh, Butterworth Lexis Nexis, 2002, p. 251-290.
- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 136-142.

Some literature in French and Spanish

- *Au-delà du PACS : l'expertise familiale à l'épreuve de l'homosexualité* / sous la dir. de Daniel Borrillo, Eric Fassin, Paris : Presses universitaires de France, 2000. (Politique d'aujourd'hui).
- Roselyne Bachelot-Narquin, - *Le PACS entre haine et amour*, Paris : Plon, 1999.
- Gérard Bach-Ignasse, - Le Contrat d'union sociale en perspective. - *Temps modernes*. - (1998-03/04) 53e année:n° 598, p. 156-170.
- Daniel Borrillo, - Les unions du même sexe : entre mariage impossible et concubinage improbable. - *Banquet (Le)*. - (1998-01/06) n°12-13, p. 125-138.
- Idem, "Le mariage homosexuel : hommage de l'hérésie à l'orthodoxie", in *La sexualité a-t-elle un avenir?* PUF, coll. "Forum Diderot", Paris, mars 1999, p. 39-54.
- Idem, "Uniones del mismo sexo y libertad matrimonial", *Jueces para la democracia*, n° 35, juillet 1999, Madrid, pp. 15-18.
- Idem, "Fantasmes des juristes vs *Ratio juris* : la *doxa* des privatistes sur l'union entre personnes de même sexe" in *Au-delà du Pacs. L'expertise familiale à l'épreuve de l'homosexualité* (co-direction avec E. Fassin et M. Iacub), PUF, coll. Politique d'aujourd'hui, Paris, 1999.
- Idem, "La protection juridique des nouvelles formes familiales : le cas des familles homoparentales", *Mouvements* n°8, Paris, mars-avril 2000, p. 54-59.
- Idem, "L'orientation sexuelle en Europe : esquisse d'une politique publique anti-discriminatoire", *Le Temps Modernes* N° 609, Paris, juin-août 2000, p. 263-282.
- Idem, "Le Pacte civil de solidarité : une reconnaissance timide des unions de même sexe", *AJP, Aktuelle Juristische Praxis* n° 3/2001, Dike Verlag AG St Gallen Schweiz, p. 299-306.
- Idem, "Pluralisme conjugal ou hiérarchie des sexualités : la reconnaissance juridique des couples homosexuels dans l'Union Européenne", *McGill Law Journal*, vol. 46, 2001 p. 877-922.
- Idem, *Amoures égales ? Le Pacs, les homosexuels et la gauche*, (avec Pierre Lascombes), La Découverte, 2002.
- Idem, « L'aventure ambiguë du pacs » (avec E. Fassin) *Regards sur l'actualité*, La documentation française, n° 286, décembre 2002.
- Eglise catholique. Conférence épiscopale française. Conseil permanent. - *Une loi inutile et dangereuse*. - Paris : Conférence des évêques de France, 1998. - Déclaration du Conseil permanent de la Conférence des évêques de France, 17 septembre 1998.
- Famille, nouvelles unions, bonheur privé et cohésion sociale. - *Témoin (Paris)*. - (1998-05/06) n°12, p. 13-112.
- Fassin, Eric. - PACS socialiste : la gauche et le "juste milieu". - *Banquet (Le)*. - (1998-01/06) n°12-13, p. 147-159.
- Garneri, Stéphane. - Décision n° 99-419 DC du 9 novembre 1999. - *Revue française de droit constitutionnel*. - (2000) n°41, p. 104-120.
- Mariage, union et filiation. - *Banquet (Le)*. - (1998-01/06) n°12-13, p. 9-215.
- Mécarry, Caroline; Leroy-Forgeot, Flora. - *Le Pacs* - Paris: Presses universitaires de France, 2000. (Que sais-je ?).
- Leroy-Forgeot, Flora. - *Les enfants du PACS : réalités de l'homoparentalité* - La Ferté-Saint-Aubin : l'Atelier de l'Archer, 1999.
- « Le meccano familial » : les nouveaux enjeux de la vie privée. - *Mouvements (Paris, 1998)*. - (2000-03/04) n°8, p. 4-82.
- Moutouh, Hugues. - Controverses sur le Pacs : l'esprit d'une loi. - *Temps modernes*. - (1999-03/04) n°603, p. 189-213.
- Revillard, Mariel. - Le pacte civil de solidarité en droit international privé. - *Répertoire du notariat Defrénois*. - (2000-03-30) vol.120:n°6, p.337-351.
- Rivière, Bertrand. - PACS : pour une perspective communautaire. - *Témoin (Paris)*. - (1999-03/04) n°16, p. 183-191.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Germany

by Dirk Siegfried ¹
and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

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Introduction

This chapter aims to represent the law as it stood early in 2004.

In Germany marriage is regulated in the Civil Code (*Bürgerliches Gesetzbuch*). Marriage is only available to different-sex couples.

On 1 August 2001 the Registered partnership law (*Lebenspartnerschaftsgesetz*) of 16 February 2001 entered into force. Registered partnership (or 'life partnership') is only available to same-sex couples. To such a partnership the law only attaches a limited selection of the rights and obligations of marriage. Excluded are, among other things: presumption of paternity (see item A1, below), adoption (A4 and A5), statutory survivor's pension (B12), and certain tax reductions (e.g. with respect to income tax and inheritance tax, see items B8 and B13).

At the time of the enactment of the Registered partnership law, a proposal for a *Lebenspartnerschaftsgesetz-ergänzungsgesetz* (Life Partnership Extension Bill), aiming to also attach to 'life partnership' some of the now excluded rights, failed to get a majority in the German Senate (*Bundesrat*). The main bill that became the Registered partnership law did not require approval in the Senate.

It is expected that by the end of 2004 further legislation would raise the level of legal consequences of registered partnership.

Informal cohabitation of different-sex partners, and less often of same-sex partners, has only been recognized in German law for certain specific purposes (including some aspects of social security and of rent law; see items B8, B16 and C8, below).

The text of the Registered partnership law of 16 February 2001, plus a French and English translation of it, can be found at: www.lsvd.de/lpartg/index.html, a website that also contains a guide (*Ratgeber*) in German to the law. An English translation of the Registered partnership law can also be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003.

Abbreviations

BGB *Bürgerliches Gesetzbuch*- Civil Code

LPartG *Lebenspartnerschaftsgesetz* - Registered partnership law of 16 February 2001

Table A (Germany): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2001)	Different-sex	Same-sex
36. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but	No
37. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	Doubt	Doubt	Doubt
38. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	Yes (2001)	X	X	Yes	No	No
39. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	Yes	X	X	No	No	No
40. Partners can jointly adopt a child	Yes	X	X	No	No	No
41. One partner can individually adopt a child	No, but	X	X	Yes, but	Yes, but	Yes, but
42. Partners can jointly foster a child	Yes	X	X	No, but	No, but	No, but
Level of legal consequences	6x3 + 1x1 = 19	7x0 = 0	7x0 = 0	1x3 + 1x2 + 2x1 + 3x0 = 7	1x2 + 3x1 + 3x0 = 5	1x2 + 2x1 + 4x0 = 4

Notes to table A

A1 - Civil marriage: art. 1592(1) BGB. Non-married different-sex partner becomes legal father if both partners agree; art. 1592(2) BGB.

A2 - There is no codification; in regard to non-married women there are different opinions in different states.

A3 - Civil marriage: art. 1687b BGB, introduced by art. 2(13) LPartG; registered partnership: art. 9 LPartG.

A4 - Art. 1741(2) BGB.

A5 - Art. 1741(2) BGB.

A6 - Art. 1741(2) BGB. Civil marriage: single adoption is only possible if the other partner has no legal capacity or is under 21. Non-married people can only adopt singly, but in practice children go to married couples almost exclusively.

A7 - Non-married people can jointly foster a child only if there are specific reasons in the particular case; art. 1775 BGB.

Table B - part one (Germany): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2001)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	No, but	X	X	No	No	No
2. Debts of each partner are considered joint debt	No, but	X	X	No	No	No
3. In case of splitting up, statutory rules on alimony apply	Yes, but	X	X	Yes, but	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes, but	X	X	Yes, but	No, but	No, but
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	X	X	Yes	No	No
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	2x3 + 2x2 + 2x1 = 12	6x0 = 0	6x0 = 0	2x3 + 2x2 + 2x0 = 10	1x1 + 5x0 = 1	1x1 + 5x0 = 1

Notes to table B - part one

B1 - Married spouses can establish community of property by contract, but it's outmoded; art. 1415 BGB.

B2 - See B1

B3 - Civil marriage: art. 1361, 1569, 1585 c BGB, spouses can exclude the statutory rules, but the contracts are only valid after divorce and not during separation. Registered partnership: art. 12, 16 LPartG, partners can exclude the statutory rules, but the contracts are only valid after formal ending of the partnership, not during separation.

B4 - Civil marriage: art. 1363 BGB, deviating contracts are possible. Registered partnership: art. 6 LPartG, deviating contracts are possible. Informal cohabitation: only in very specific cases courts grant (re)distribution (mostly based on the company law notion of a commercial partnership).

B5 - Art. 844 BGB.

B6 - Civil marriage: art. 1931 BGB; registered partnership: art. 10 LPartG. The content of the rules is the same.

Table B - part two (Germany): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2001)	Different-sex	Same-sex
7. Relationship can result in lower property tax	No	X	X	No	No	No
8. Relationship can result in lower income tax	Yes	X	X	Yes, but	No, but	No, but
9. Public health insurance of one partner covers medical costs of other partner	Yes	X	X	Yes	No	No
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	X	No	No	No
11. Relationship can have positive impact on statutory old age pension	No	X	X	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes	X	X	No	No	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	No	No	No
Level of legal consequences	4x3 + 3x0 = 12	7x0 = 0	7x0 = 0	1x3 + 1x2 + 5x0 = 5	1x1 + 6x0 = 1	1x1 + 6x0 = 1

Notes to table B - part two

B7 - There is no general property tax in Germany.

B8 - Civil marriage: art. 26 EStG (*Einkommensteuergesetz* - Income tax law).

Registered partnership: art. 33a EStG: payments to the partner of up to circa EUR 7000 per year reduces the income tax of the paying partner, but it is much less than the reduction granted to married couples (the so-called *Splitting*).

Informal cohabitation: art. 33a EStG, see explanation of registered partnership, but only if the partners social benefits have been reduced or cut or refused due to the cohabitation.

B9 - Civil marriage: art. 10(1) SGB V (*Sozialgesetzbuch V* - Social Code V of 20 December 1988); registered partnership: art. 10(1) SGB V amended by art. 3 § 52 LPartG; in both cases the public health insurance has to pay only if the other partner has no appreciable income.

B10 - No form of partnership results in higher social security payment.

B11 - There is no positive impact of any partnership on statutory old age pension.

B12 - Art. 46 SGB VI (*Sozialgesetzbuch VI* - Social Code VI of 18 December 1989). Normally the other spouse will get a statutory survivor's pension.

B13 - Art. 15, 16, 17 ErbStG (*Erbschaftsteuer- und Schenkungsteuergesetz* - Inheritance and gift tax law of 27 February 1997) - A surviving married partner can get up to 563.000 € tax free. A surviving registered partner or informal cohabitant or a mere friend can get only 5.200 € tax free.

Table B - part three (Germany): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2001)	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	X	X	No	No	No
15. Relationship can result in higher income tax	No	X	X	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	X	X	Yes	Yes	Doubt
17. Relationship can have negative impact on statutory old age pension	No	X	X	No	No	No
Level of legal consequences	1x3 + 3x0 = 3	4x0 = 0	4x0 = 0	1x3 + 3x0 = 3	1x3 + 3x0 = 3	1x1 + 3x0 = 1

Notes to table B - part three

B14 - See B7 - There is no general property tax in Germany.

B15 - No form of partnership results in higher income tax compared to single individuals.

B16 - Civil marriage: art. 11(1) BSHG (*Bundessozialhilfegesetz* - Federal social welfare law of 23 March 1994; registered partnership: art. 2 BSHG; informal different-sex cohabitation: art.122 BSHG.

Informal same-sex cohabitation: there are different opinions about the question whether art. 122 BSHG refers to them.

B17 - No form of partnership can have negative impact on statutory old age pension.

Table C (Germany): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (2001)	Different-sex	Same-sex
46. One partner can have or use surname of the other	Yes	X	X	Yes	No	No
47. Foreign partner of a resident national is entitled to a residence permit	Yes	X	X	Yes	No	No
48. Relationship makes it easier for foreign partner to obtain citizenship	Yes	X	X	Yes	No	No
49. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	X	X	Yes	No, but	No
50. When one partner uses violence against other partner, specific statutory protection applies	No	X	X	No	No	No
51. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Doubt	X	X	Doubt	Doubt	Doubt
52. Organ donation from one living partner to the other is lawful	Yes	X	X	Yes	No	No
53. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	Yes (1993) (2001)	Yes (2001)
54. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	6x3 + 1x1 + 2x0 = 19	9x0 = 0	9x0 = 0	6x3 + 1x1 + 2x0 = 19	1x3 + 2x1 + 6x0 = 5	1x3 + 1x1 + 7x0 = 4

Notes to table C

C1 - Civil marriage: art. 1355 BGB; registered partnership: art. 3 LPartG.

C2 - Civil marriage: art. 17, 18, 23 AusIG (*Ausländergesetz* - Immigration law of 09 July 1990); registered partnership: art. 27 a AusIG, introduced by art. 3 § 11 LPartG.

Informal same-sex cohabitants could according to a decision of the Federal administrative court (*Bundesverwaltungsgericht* - BVerwG 1 C 41./93) of 27 February 1996 get a residence permit if there was enough income. The court used a general legal norm (art. 7, 15 AusIG) because of the lack of a registered partnership. It seems that authorities and courts do not grant a residence permit to an informal cohabitant after having the possibility of registration.

C3 - Civil marriage: art. 9 StAG (*Staatsangehörigkeitsgesetz* - Citizenship law); registered partnership: art. 9 StAG, amended by art. 3 § 1 LPartG.

C4 - Civil marriage: art. 52 StPO (*Strafprozeßordnung* - Criminal procedure law); registered partnership: art. 52 StPO, amended by art. 3 § 18 LPartG.

Informal cohabitation: different-sex partners engaged to be married can refuse to testify against each other (art. 52(1) StPO), however, in terms of same-sex partners there is no recognized engagement period.

C5 - There is no specific protection in any partnership.

C6 - There is no federal codification regarding this question, even married couples are advised to establish this through power of attorney.

C7 - Married spouses: art. 8(1) TPG (*Transplantationsgesetz* - Organ donation law of 05 November 1997); registered partners: art. 8 (1) TPG amended by art. 3 § 7 LPartG.

C8 - Married spouses can continue to rent the home if they lived together with the dead spouse. They are ranking above children of the dead spouse; art. 563(1,2) BGB. Registered partners who had lived together with the dead partner are ranking at the same level with children of the dead partner, if the children had lived together with the dead partner; art. 563(2) BGB amended by art. 2 LPartG. If the children did not live together with the dead partner, they are ranking above the surviving registered partner. Informal cohabitants are ranking below spouses, children and registered partners if someone from the latter three categories lived together with the dead partner; if not, spouses, children and registered partners are ranking below the informal cohabitant who had lived together with the dead partner; art. 563(2) BGB amended by art. 2 LPartG.

Before the amendment of the law there were differing decisions to this question, until the Federal civil court (*Bundesgerichtshof*) in its judgement of 13 January 1993 VIII (ARZ 6/92) affirmed this right for different-sex partners, denying it for same-sex partners, which was remarkable, because it was no case of same-sex partners. Because of this fact lower courts were not bound to this decision in same-sex cases.

C9 - There is no duty to have sexual contact in Germany.

Table D (Germany): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status)
1. With respect to housing	No	No	No	No
2. With respect to life insurance	No	No	No	No
3. With respect to health insurance	No	No	No	No
4. With respect to medically assisted insemination	No	No	No	No
5. With respect to other services	No	No	No	No
6. With respect to an occupational survivor's pension	No	No	No	Doubt
7. With respect to other spousal benefits in employment	No, but	No	No	Doubt

Notes to table D

D1 - There is no relevant federal or state anti-discrimination legislation in Germany.

D2 - See D1.

D3 - See D1.

D4 - See D1.

D5 - See D1.

D6 - There may be some protection against discrimination on the basis of sexual orientation because of art. 75 of the *Betriebsverfassungsgesetz* (Act on the Constitution of Companies).

D7 - A decision of the *Bundesarbeitsgericht* (Federal Labour Court) of 29 April 2004, based on the 'Federal collective wage agreement', has outlawed certain discriminations between married spouses and registered partners. See also D1 and D6.

Table E (Germany): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex (2001)
Resident national with:	61. Resident national	Yes	X	X	Yes
	62. Non-resident national	Yes	X	X	Yes
	63. Resident foreigner	Yes	X	X	Yes
	64. Non-resident foreigner	Yes	X	X	Yes
Non-resident national with:	65. Non-resident national	Yes	X	X	Yes
	66. Resident foreigner	Yes	X	X	Yes
	67. Non-resident foreigner	Yes	X	X	Yes
Resident foreigner with:	68. Resident foreigner	Yes	X	X	Yes
	69. Non-resident foreigner	Yes	X	X	Yes
Non-resident foreigner with:	70. Non-resident foreigner	Yes	X	X	Yes
71. Sister or brother with sister or brother		No	X	X	No
72. Parent with child		No	X	X	No

Notes to table E

E1 - There is no limitation concerning citizenship, residency or duration of residency.

E2 - See E1.

E3 - See E1.

E4 - See E1.

E5 - See E1.

E6 - See E1.

E7 - See E1.

E8 - See E1.

E9 - See E1.

E10 - See E1.

E11 - Civil marriage: art. 1307 BGB; registered partnership: art. 1(2) LPartG.

E12 - See E11.

Table F (Germany): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (2001)
36. Registry of births, marriages and deaths	Yes	X	X	Yes, but
37. Local population administration	No	X	X	Yes, but
38. Church	No	X	X	No
39. Court	No	X	X	No
40. Private person with special authorisation	No	X	X	No
41. Public notary	No	X	X	Yes, but
42. Administrative magistrate	No	X	X	Yes, but

Notes to table F

F1 - Art. 1 LPartG: The registering authority varies from state to state and in some states from town to town. In 8 of 16 states the registry of births, marriages and deaths was installed as the authority of starting a registered partnership.

F2 - See F1.

F3 - The federal law gives no opportunity to install the church as registering authority for registered partnerships. Church weddings do not have any legal status. They are even forbidden if the couple has not first married at the registry of births, marriages and deaths; art. 67 PStG (*Personenstandsgesetz* - Personal status law of 08 August 1957).

F4 - The federal law gives no opportunity to install courts as registering authorities.

F5 - The federal law gives no opportunity to install private persons as registering authority.

F6 - See F1. In Bavaria the public notary was installed by state law as registering authority.

F7 - See F1.

Table G (Germany): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (2001)
29. By court decision (after joint or individual petition)	Yes	X	X	Yes
30. By mutually agreed contract (outside court)	No	X	X	No
31. Unilaterally by one partner (outside court)	No	X	X	No
32. By conversion of marriage into registered partnership, or vice versa (outside court)	No	X	X	No
33. By one registered partner marrying a third person (or starting a registered partnership with a third person)	No	X	X	Doubt
34. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
35. By administrative decision (after joint or individual petition)	No	X	X	No

Notes to table G

G1 - Civil marriage: art. 1313 BGB; registered partnership: art. 17 LPartG.

G2 - See G1.

G3 - See G1.

G4 - There is no same-sex marriage and no different-sex registered partnership.

G5 - Registered partnership: there is no reference to this case in LPartG, but the Federal constitutional court (*Bundesverfassungsgericht*) has requested a solution to this question by legislation or jurisdiction in its decision of 17 July 2002 (1 BvF 1/01, 1 BvF 2/01- two source numbers because of two applications, but one decision).

G6 - See G4.

G7 - See G1.

Some literature in English

- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 142-147.
- Roland Schimmel and Stefanie Heun, 'The Legal Situation of Same-Sex Partnerships in Germany: An Overview', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 575-590.
- Karsten Thorn, 'The German Law on Same-Sex Partnerships', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 84-98.

Some literature in German

Civil marriage:

- Kurt H. Johannsen / Dieter Henrich: *Eherecht*, 3rd edition, München, 1998.
- Otto Palandt (Hrsg.): *Bürgerliches Gesetzbuch*, 62nd edition, München: Beck, 2003.
- Dieter Schwab: *Das neue Familienrecht*, Bielefeld, 1998.

Registered partnership:

- Manfred Bruns / Rainer Kemper (Hrsg.): *Handkommentar zum Lebenspartnerschaftsgesetz*, Baden-Baden: Nomos, 2002.
- Herbert Grziwotz: *Beratungshandbuch Lebenspartnerschaft*, München, 2003.
- Stephan Ladnar / Manfred Bruns: *Eingetragene Lebenspartnerschaft*, LSVD-Rechtsratgeber, Berlin: Lesben- und Schwulenverband in Deutschland e.V., 2001.
- Karl-Heinz Muscheler: *Das Recht der Eingetragenen Lebenspartnerschaft. Begründung - Rechtsfolgen - Aufhebung - Faktische Partnerschaft*, Berlin: Erich Schmidt Verlag, 2001.
- Dieter Schwab: *Die Eingetragene Lebenspartnerschaft - Text, amtliche Materialien, Abhandlungen*, Bielefeld, 2002.

Informal cohabitation:

- Herbert Grziwotz: *Rechtsfragen des nichtehelichen Zusammenlebens*, 2nd edition, München: dtv, 2002.
- Herbert Grziwotz: Rechtsprechung zur nichtehelichen Lebensgemeinschaft, *Zeitschrift für das gesamte Familienrecht*, 1994, S. 1217 ff und 1999, S. 413 ff.
- Ida Schillen / Elisa Rodé: *Familienbuch*, Berlin: Lesben- und Schwulenverband in Deutschland e.V., 2002.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Iceland

by Hrefna Fridriksdóttir ¹
and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

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Introduction

This chapter aims to represent the law as it stood early in 2004.

Civil marriage

Different-sex partners can get married in church or have a civil ceremony with a magistrate. The current Marriage Act no. 31/1933 deals with issues such as impediments to marriage, solemnization of marriage, annulment of marriage, separation and divorce, responsibility of spouses for the maintenance of the family, property and proprietary rights of spouses, financial obligations of spouses, agreements between spouses, marriage settlements and legal procedure in matrimonial action.

A translation of the Marriage Act no. 31/1993 can be found at <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/112>.

Registered partnership

The Icelandic term for registered same-sex partnership is *staðfest samvist* (literally 'confirmed partnership'). The Icelandic Parliament passed a resolution in 1992 commanding the government to appoint a committee to explore the legal, cultural and social situation of homosexuals and to propose measures to abolish discrimination against homosexuals in Iceland. The committee was appointed in 1993 and issued a report in 1994. The majority of the committee recommended the adoption of laws similar to those already adopted in Denmark, Norway and Sweden. In February 1996 the government proposed a bill that was passed and the Registered Partnership Act no. 87/1996 (the RPAct) came into effect on June 27th 1996. The RPAct was amended by Act no. 52/2000 (allowing for second-parent adoption, and extending the possibilities for registering a partnership with a foreigner).

The Icelandic Parliament passed a new resolution in 2003 commanding the government to appoint a committee to explore the legal situation of homosexuals. Same-sex informal cohabitation will be looked at in particular together with the issue of homosexuals and (JOINT ?) adoption and medically assisted insemination. The committee is expected to issue a report and proposals before January 15th 2004.

Same-sex partners can register their partnership under the RPAct with a magistrate and this is the same ceremony as a civil marriage. Such registration generally affords the partners the same rights as a married couple (with a few defined exceptions). Different-sex partners cannot register their partnership under the RPAct.

See <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/117> for an English translation of the RPAct. Such a translation can also be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003.

Informal cohabitation

There are basically two types of cohabitation that can be defined as informal.

a) The Icelandic term *óvígð sambúð* (literally 'non-marital cohabitation') is generally used for different-sex partners that share a household and have a relationship similar to a married couple. This is a theoretical definition that evolved hand in hand with the process of attaching legal rights and obligations to non-marital cohabitation, starting before and around the middle of the 20th century in Iceland. There is no general law on such cohabitation and therefore the term does not have a single legal definition. There are only specific provisions in different laws that are controlled by different requirements. Some of these provisions mention a man and a woman and are as such clearly meant only to apply to different-sex partners. Other provisions that use the term non-marital cohabitation are generally interpreted as only to apply to different-sex partners based on the theoretical definition. As mentioned before a committee is currently working on a new report on the legal status of homosexuals in Iceland and is expected to propose changes in this area.

As a general principle of family law in Iceland *óvígð sambúð* does not automatically afford the partners the same rights as a married couple. On the whole Icelandic legislation in practice affords such different-sex partners many of the same rights and obligations as married couples and registered same-sex partners. (Some are mentioned in Tables A, B and C.)

As mentioned above specific provisions in different laws affording rights and obligations to different-sex partners are controlled by different requirements. One of such requirements is a special registration of the cohabitation with the National Registry and there has been an increasing emphasis on this formal requirement in recent years. There are no special provisions that cover this kind of registration in the National Registry Act, but a procedure had to be developed to make a distinction between this registration and a simple registration of two persons at the same address. The registration of different-sex cohabitation with the National Registry is fundamentally different from registration of same-sex partnership under the RPAct. Different-sex partners sign a special form stating their wish to be registered as partners, submit the form to the National Registry and there is no ceremony involved. In practice the cohabitation is considered to have terminated if the partners marry and one of the partners can effectively terminate the cohabitation by registering his address elsewhere.

The director of the National Registry has confirmed that this kind of registration is only available to different-sex partners. He has also confirmed that it is impossible to register different-sex cohabitation of close relatives (those that are not permitted to marry). This is based on general principles of family law.

Other general requirements of provisions affording rights and obligations to different-sex partners are a minimum length of cohabitation and/or a child in the family.

b) Two different-sex partners can choose to live together and register their joint address without registering their cohabitation with the National Registry. This option is also open to same-sex partners. Icelandic law does not generally attach any specific legal consequences to such informal cohabitation save for a few limited exceptions. Such partners are therefore generally treated as two individuals.

Websites with legal information in English:

<http://eng.domsmalaraduneyti.is/laws-and-regulations/> (contains English translations of various Icelandic laws);

<http://eng.felagsmalaraduneyti.is/information/immigrants/nr/732> (information for foreigners who move to Iceland including info on marriage and cohabitation; published by the Ministry of Social Affairs in 1998);

Table A (Iceland): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
43. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but (1981)	No
44. Medically assisted insemination is lawful for women in such a relationship	>3 years: Yes	X	X	No	>3 years: Yes, but	No
45. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	Yes	X	X	Yes	>1 year: Yes	No
46. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	>3 years: Yes	X	X	>3 years: Yes, but (2000)	>5 years: Yes, but (2000)	No
47. Partners can jointly adopt a child	>3 years: Yes	X	X	No	>5 years: Yes, but (2000)	No
48. One partner can individually adopt a child	No, but	X	X	No	No, but	Yes, but
49. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	6x3 + 1x1 = 19	7x0 = 0	7x0 = 0	2x3 + 1x2 + 4x0 = 8	2x3 + 3x2 + 2x1 = 14	1x3 + 1x2 + 5x0 = 5

Notes to table A

A1 - Paternity in marriage and different-sex cohabitation is dealt with in art. 2 of the Child Act no. 76/2003: This is new Child Act that came into effect on 1 November 2003. If the mother of a child and a man she alleges to be its father are in a different-sex cohabitation, that is registered in the National Registry, at the time of the birth of the child, that man shall be presumed to be the father. Outside marriage and different-sex cohabitation paternity may be established through formal recognition by the man alleged by the mother to be the father, or by court decision.

A2 - Art. 3 of the Act on Artificial Insemination no. 55/1996, for marriage and different-sex cohabitation that is registered in the National Registry. Art. 6 of the RPAAct, for same-sex registered partnership.

A3 - Art. 29 of the Child Act no. 76/2003: If an unmarried parent who has *sole* custody (i.e. not joint custody with the other birth-parent) marries or enters into a same-sex registered partnership (RPAAct) the stepparent shall also have custody of the child. The same rule applies when a child is born during a registered partnership of two women: in that case the stepparent shall also have custody. If an unmarried parent who has sole custody enters into different-sex cohabitation that is registered in the National Registry, the partner shall also have custody of the child after one year of registration.

A4 - Art. 2 of the Adoption Act no. 130/1999: A married couple (*in practice* the marriage shall have lasted for at least three years) or a man and a woman cohabiting for a period of at least 5 years, may be granted permission to adopt the child or the adopted child of the other. Cohabitation in the Adoption Act means the cohabitation of a man and a woman which is registered in the National Registry or which can be ascertained by other unequivocal evidence. The provisions of the Adoption Act relating to marriage and step-parent adoption apply to registered same-sex partnership, provided the child has not been adopted from another country, according to art. 6 of RPAAct, as amended with Act. nr. 52/2000.

A5 - Art. 2 of the Adoption Act no. 130/1999: A married couple (*in practice* the marriage shall have lasted for at least three years) or a man and a woman cohabiting for a period of at least 5 years can be granted permission to adopt a child. For definition of cohabitation see note to A4.

A6 - Art. 2 of the Adoption Act no. 130/1999: As a general rule partners who can adopt can only engage in adoption together. Either spouse or either partner in different-sex cohabitation may only be granted individual permission for adoption if the other one has disappeared or is in such a mental state as not to understand the meaning of adoption. A single person may be granted permission for adoption under special circumstances (if the person is considered particularly fit to care for a child) and if the adoption is clearly beneficial for the child. In this respect different-sex cohabitants that have not registered their cohabitation in the National Registry could be defined as single persons and the same applies to same-sex informal cohabitants.

A7 - Art. 66 of the Child Protection Act no. 80/2002: The Governmental Agency for Child Protection grants licenses to provide foster care for children based on an individual evaluation of each applicant.

Table B - part one (Iceland): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	No	X	X	No	No	No
2. Debts of each partner are considered joint debt	No	X	X	No	No	No
3. In case of splitting up, statutory rules on alimony apply	Yes	X	X	Yes	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes	X	X	Yes	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	X	X	Yes	Yes, but	No, but
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	4x3 + 2x0 = 12	6x0 = 0	6x0 = 0	4x3 + 2x0 = 12	1x2 + 5x0 = 2	1x1 + 5x0 = 1

Notes to table B - part one

B1 - Art. 4 of the Marriage Act no. 31/1993: Each married person shall have control of his or her assets and be responsible for his or her liabilities. According to art. 53, the property of spouses can be either matrimonial property or separate property (the latter may be created by contract or by statute), and spouses may be joint owners of property. There are some limitations as to the spouses' proprietary rights during marriage (art. 60-63). The main difference between matrimonial property and separate property is that net matrimonial property of each is divided upon legal separation or divorce of spouses. Art. 5 of the RPAct: The provisions relating to marriage and spouses apply to registered same-sex partnership. All others are generally considered as individuals. Properties of each partner *can* in certain cases be considered joint property if that is proven to be the case. Courts have recognized that a partner in a different-sex cohabitation can have a part in properties accumulated during the cohabitation (leading principle in the Supreme Court judgment of 4 February 1981, H. 1981:128).

B2 - See note to B1, same principles apply to properties and debts.

B3 - Art. 50 of the Marriage Act no. 31/1993: The mutual obligation of spouses to maintain each other shall not be affected by legal separation. When legal separation takes place a decision shall be taken as to whether one spouse shall pay alimony to the other, and as to the amount of such alimony. After divorce has been granted one spouse shall not be ordered to pay alimony to the other, save in very exceptional circumstances. According to art. 5 of the RPAct, these provisions relating to spouses apply directly to registered same-sex partners.

B4 - Art. 6 of the Marriage Act no. 31/1993: Upon legal separation or divorce of spouses, or upon the death of either spouse, the net matrimonial property of each shall be divided into two equal parts. According art. 5 of the RPAct, these provisions relating to spouses apply directly to registered same-sex partners.

B5 - Art. 12 and 26 of the Tort Act no. 50/1993: In cases of wrongful death of a spouse the wrongdoer shall pay funeral costs, pay the other spouse for loss of a supporter and pay damages for non-material damage to the surviving spouse. According to art. 13 the provision also covers payments to cohabiting partners where the cohabitation is considered comparable to marriage. It is safe to assume that different-sex cohabitation registered in the National Registry is covered in this respect but the legal standard is otherwise uncertain. Courts can also under special circumstances order wrongdoer to pay damages to others who were close to the deceased. Art. 5 of the RPAct: Provisions relating to spouses apply directly to registered same-sex partners.

B6 - Art. 2 of the Inheritance Act no. 8/1962. Art. 5 of the RPAct: Provisions relating to spouses apply directly to registered same-sex partners.

Table B - part two (Iceland): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
7. Relationship can result in lower property tax	Yes	X	X	Yes	Yes, but	No
8. Relationship can result in lower income tax	Yes	X	X	Yes	Yes, but	No
9. Public health insurance of one partner covers medical costs of other partner	No, but	X	X	No, but	No, but	No
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	X	No	No	No
11. Relationship can have positive impact on statutory old age pension	Yes	X	X	Yes	No, but	No
12. When one partner dies, the other can get a statutory survivor's pension	No, but	X	X	No, but	No, but	No
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	Yes, but	No, but
Level of legal consequences	4x3 + 2x1 + 1x0 = 14	7x0 = 0	7x0 = 0	4x3 + 2x1 + 1x0 = 14	3x2 + 3x1 + 1x0 = 9	6x0 + 1x1 = 1

Notes to table B - part two

B7 - Art. 79 of the Act on Personal Income tax and Net Wealth tax no. 90/2003: The taxable base for net wealth (property and other assets) tax purposes is the aggregate value of an individual's assets at the end of the tax year, less his liabilities. According to art. 80 the taxable base of married couples consists of added assets less added liabilities. According to art. 116 of the Act, spouses have a joint responsibility for the payment of all their taxes. If one of the spouses has liabilities in excess of wealth such liabilities can lower net wealth taxes for the married couple. According to art. 62, different-sex cohabiting partners have a right to be taxed as a married couple if the woman is expecting their child, they have a child together or if the cohabitation has been registered in the National Registry for the period of at least one year. Art. 5 of the RPA: Provisions in tax law relating to marriage and spouses apply directly to registered same-sex partnership.

B8 - Art. 62 of the Act on Personal Income tax and Net Wealth tax no. 90/2003: Capital income of married couples is taxed in the hands of the spouse whose total employment income is the higher. According to art. 116 of the Act, spouses have a joint responsibility for the payment of all their taxes. Iceland's personal income tax structure is such that there is a basic tax-free income. The tax free income allowance has been made transferable between spouses and partners who are treated as married couples for tax purposes, see note to B12 (Art. 62 of the Act). Once that income has been earned in any given month, a specific tax rate is applied to all subsequent income. Incomes in excess of fixed amounts (approx. EUR 47.000 for a single individual and EUR 94.000 for a couple in 2003) are subject to a specific surtax. Certain expenses are deductible from total employment income of each individual. If total deductions for one spouse are higher than the spouse's income, the excess is added to the deductions of the other spouse (Art. 62 of the Act). According to art. 62 of the Act and art. 5 of the RPA, provisions in tax law relating to marriage and spouses apply directly to registered same-sex partnership.

B9 - Art. 9a of the Social Security Act no. 117/1993: A person who is resident in Iceland is considered insured, which means that public health insurance is based on personal individual status. The State Social Security

Institute may decide, on application, that a person insured under the Act will continue to be insured even if he is working abroad for a party who fulfills specific requirements. The same applies to the person's spouse and this seems to be the only instance where a spouse can be said to be covered by the other partners public medical insurance. Art. 44 of the Social Security Act: The same rules apply to different-sex cohabiting partners if the woman is expecting their child, they have a child together or if the cohabitation has been registered in the National Registry for the period of at least one year. Art. 5 of the RPAAct: Provisions in social security law relating to marriage and spouses apply directly to registered same-sex partnership.

B10 - See note to B16 - Local Authorities Social Services Act no. 40/1991 deals with basic social security. Each local authority is responsible for social services within its boundaries and shall ensure that persons are able to provide for themselves and their families (art. 4,12 and 21 of the Act). Each local authority lays down rules on the implementation of financial assistance so the rules are not uniform throughout Iceland. It may be assumed that assistance is generally higher for two individuals than for a married couple or different-sex cohabiting partners.

B11 - Art. 11 of the Social Security Act no. 117/1993: Persons 67 years of age or older who have been resident in Iceland for at least 3 calendar years between the ages of 16 and 67 are entitled to an old age pension. Full annual old age pension shall be paid to individuals who have been resident in Iceland for at least 40 calendar years between the ages of 16 and 67. In the case of married couples where both partners are pensioners, the income of both may be based on the time of residence of the partner possessing the longer entitlement period. The same applies to same-sex registered partners, and to different-sex cohabiting partners as defined in note B9.

B12 - Art. 6 of the Social Assistance Act no. 118/1993 deals with grants payable for six months following a spouse's death. The same applies to same-sex registered partners and different-sex cohabiting partners as defined in note B9.

B13 - Art. 4 of the Inheritance Tax Act no. 83/1984: Spouses pay no inheritance tax. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partners. Art. 2 and 4 of the Inheritance Tax Act: A different-sex partner pays no inheritance tax if the deceased partner leaves a testament clearly naming the other as a cohabiting partner. According to art. 4 the Minister for Social Affairs can decide to exempt others cohabiting from inheritance tax under very special circumstances, such as people that have lived together for a very long time.

Table B - part three (Iceland): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	X	X	No	No	No
15. Relationship can result in higher income tax	No	X	X	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	X	X	Yes	Yes	No
17. Relationship can have negative impact on statutory old age pension	Yes	X	X	Yes	Yes	No
Level of legal consequences	2x3 + 2x0 = 6	4x0 = 0	4x0 = 0	2x3 = 2x0 = 6	2x3 + 2x0 = 6	4x0 = 0

Notes to table B - part three

B14 - See note to B7. There is a tax-free net wealth base (approx. EUR 54.000 for the income year 2003) that is the same for all individuals without consideration of marital/cohabitation status.

B15 - See note to B8. It may be added that some specific income-related benefits under the tax law (not directly related to income tax, such as child benefits) are higher for two individuals than for a married couple or for cohabiting partners treated as married couples for tax purposes.

B16 - Local Authorities Social Services Act no. 40/1991 deals with basic social security. Each local authority is responsible for social services within its boundaries and shall ensure that persons are able to provide for themselves and their families (art. 4,12 and 21 of the Act). Each local authority lays down rules on the implementation of financial assistance so the rules are not uniform throughout Iceland. It may be assumed that assistance is generally higher for two individuals than for a married or registered different-sex cohabiting couple.

B17 - Art. 11 of the Social Security Act no. 117/1993 deals with old age pension. The old age pension of a married person shall be reduced if the combined annual income of both spouses is higher than a fixed amount. If the income is above the fixed maximum the old age pension shall be reduced by 30% of the surplus income up to the point where it lapses entirely. The same applies to same-sex registered partners, and to different-sex cohabiting partners as defined in note B9.

Table C (Iceland): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)	Different-sex	Same-sex
55. One partner can have or use surname of the other	No, but	X	X	No, but	No	No
56. Foreign partner of resident national is entitled to a residence permit	Yes	X	X	Yes	Yes	No
57. Relationship makes it easier for foreign partner to obtain citizenship	>3 years: Yes	X	X	>3 years: Yes	>5 years: Yes, but	No
58. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	X	X	Yes	Yes, but	Yes, but
59. When one partner uses violence against other partner, specific statutory protection applies	No, but (2000)	X	X	No, but (2000)	No, but (2000)	No, but (2000)
60. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	X	Yes	No, but	No
61. Organ donation from one living partner to the other is lawful	Yes	X	X	Yes	Yes	Yes
62. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	Yes, but	>1 year: Yes
63. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	6x3 + 2x1 + 1x0 = 20	9x0 = 0	9x0 = 0	6x3 + 2x1 + 1x0 = 20	2x3 + 3x2 + 2x1 + 2x0 = 14	2x3 + 1x2 + 1x1 + 5x0 = 9

Notes to table C

C1 - Art. 8 of the Personal Names Act no. 45/1996: The traditional rule on surnames in Iceland is that every person calls him/herself by a patronymic or matronymic so that one of the identification (first) names of his/her father or/and his/her mother is used as a surname, with the suffix "son" in the case of a man or "dóttir" in the case of a woman. Some people also have a family name; in special circumstances (art. 7) a spouse can take the family name of his or her partner as a middle name. Art. 5 of the RPAct: Provisions relating to spouses apply directly to registered same-sex partnership.

C2 - Art. 13 of the Act on Foreigners no. 96/2002: The closest family members of an Icelandic national or a national of another Nordic country residing in Iceland, or those of a foreigner allowed to stay in Iceland under a permit to stay which is not subject to limitations, or under a residence permit, shall be entitled to a permit to stay in Iceland, subject to a few conditions. According to art. 13 the closest family members are considered to be the foreigner's spouse, registered same-sex partner or different-sex cohabiting partner (see also art. 5 of the RPAct).

C3 - Art. 5a of the Icelandic Citizenship Act no. 100/1952, as amended with Act no. 62/1998 and no. 96/2002. A person can apply for citizenship if he/she has been resident in Iceland for three years from the date of marriage or same-sex partnership registration with an Icelandic citizen (who has been so for at least five years). A person can also apply for citizenship if he/she has been resident in Iceland for five years from the date of different-sex cohabitation according to the National registry with an Icelandic citizen (who has been so for at least five years). A single person can apply for citizenship if he/she has been resident in Iceland for seven years; in the case of a national of one of the other Nordic countries, the requirement is only four years.

C4 - Art. 50 of the Code of Criminal Procedure no. 19/1991: Spouses can refuse to testify against their married partners. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partners. A judge can exempt others from the duty to testify if they are closely connected to the defendant, such as a cohabiting partner.

C5 - In the year 2000 a new chapter was added to the Code of Criminal Procedure no. 19/1991 (amendment no. 94/2000): Chapter XIII A, on restraining orders. One of the main purposes of the legislation is to protect victims of domestic violence and abuse but such victims are not specifically mentioned or defined in the provisions of the Code.

C6 - Art. 7 of the Act on the Rights of Patients: Provisions of the Legal Majority Act no. 71/1997 apply to the consent to treatment of patients who, on account of lack of intelligence or for other reasons provided for by that Act, are incapable of making a decision regarding treatment. According to the Legal Majority Act the plaintiff in a case involving a request for deprivation of legal competence or for involuntary commitment can be the respondent's spouse by marriage. Art. 6 of the Act on the Rights of Patients no. 74/1997: If a patient is unable to master information on his health and treatment the information shall be given to a close relative or, if the patient has been deprived of legal majority, to his legal guardian. There is no definition of a close relative but it is safe to presume that a spouse, a registered same-sex partner and a different-sex cohabiting partner would generally be considered close relatives in this respect.

C7 - Art. 1 of the Act on Organ Donation no. 16/1998: Anyone over the age of 18 can donate their organs to another person of choice.

C8 - Art. 45 of the Rent Act no. 36/1994. If a tenant dies before the end of the rental period, the tenant's surviving spouse or family members of the tenant's household at the time of his death, shall be permitted to take over the lease unless the landlord presents valid reasons why they should not do this. According to art. 3, provisions of the Act regarding married couples or spouses shall also apply to cohabiting couples, the term 'cohabiting couple' referring to a man and woman who live together, both of them being unmarried, if they have had a child together, or if the woman is pregnant or if their cohabitation has lasted for at least one continuous year, or to another form of cohabitation between two individuals if it has lasted for at least one continuous year. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partners.

C9 - No such duty exists.

Table D (Iceland): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (1996)	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status) (1996)
1. With respect to housing	Yes	No	No	Yes
2. With respect to life insurance	Yes	No	No	Yes
3. With respect to health insurance	Yes	No	No	Yes
4. With respect to medically assisted insemination	No	No	No	No
5. With respect to other services	Yes	No	No	Yes
6. With respect to an occupational survivor's pension	Yes	No	No	Yes
7. With respect to other spousal benefits in employment	Yes	No	No	Yes

Notes to table D

D1 - Art. 65 of the Constitution of the Republic of Iceland no. 33/1944, as amended with Act no. 97/1995: Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, color, property, birth or other status. Art. 180 of the General Penal Code no. 19/1940, as amended with Act. no. 135/1996: It is prohibited to an employer or a service provider to deny anyone goods, services or access to public places or forums, on the basis of race, color, national origin, religion or sexual orientation. It is therefore widely prohibited to discriminate against anyone on the basis of sexual orientation. It is not generally prohibited to discriminate between people on the basis of their marital status or form of cohabitation.

Same-sex partners can register their partnership under the RPAct and such registration generally affords the partners the same rights as a married couple (with a few defined exceptions). It is generally prohibited to discriminate between married couples and registered same-sex partners. On the other hand it is accepted to afford married couples and registered same-sex partners more rights and obligations than informal cohabiting partners. Different-sex cohabitation does *not* generally afford the partners the same rights as a married couple (see general notes). Discrimination between married partners and registered same-sex partners is therefore generally prohibited but discrimination between married partners/same-sex registered partners on the one hand and different-sex cohabiting partners on the other, is not prohibited. As stated in the general notes different-sex cohabitation can be registered in the National Registry but not same-sex cohabitation and it is therefore not considered prohibited to discriminate between that type of different-sex and same-sex informal cohabitation. The status of informal same-sex cohabitants and different-sex cohabitants that choose not to register their cohabitation in the National Registry is the same with a few exceptions; discrimination between them is generally prohibited by art. 180 of the General Penal Code.

D2 - See note to D1.

D3 - See note to D1.

D4 - See note to D1 but also note to A2. The Act on Artificial Insemination no. 55/1996 applies the same rule to married spouses and different-sex cohabiting partners that meet certain requirements but the Act does discriminate between married spouses and registered same-sex partners.

D5 - See note to D1.

D6 - See note to D1.

Table E (Iceland): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex (1996)
Resident national with:	73. Resident national	Yes	X	X	>2 years: Yes
	74. Non-resident national	Yes	X	X	No
	75. Resident foreigner	Yes	X	X	>2 years: Yes
	76. Non-resident foreigner	Yes, but	X	X	No
Non-resident national with:	77. Non-resident national	Yes	X	X	No
	78. Resident foreigner	Yes	X	X	No
	79. Non-resident foreigner	Yes, but	X	X	No
Resident foreigner with:	80. Resident foreigner	Yes	X	X	>2 years: No, but
	81. Non-resident foreigner	Yes, but	X	X	No
Non-resident foreigner with:	82. Non-resident foreigner	Yes, but	X	X	No
83. Sister or brother with sister or brother		No	X	X	No
84. Parent with child		No	X	X	No

Notes to table E

E1 - Art. 13 of the Marriage Act no. 31/1993 and Regulation no. 326/1996 as amended with Regulation no. 87/2001. Art. 2 of the RPAAct, as amended with Act no. 52/2000: Same-sex partnership can only be registered in Iceland if two conditions are cumulatively fulfilled: a) at least one of the individuals concerned is an Icelandic national; and b) both individuals concerned have resided in Iceland for the two years preceding the registration. For the purposes of the Registered Partnership Act persons of Danish, Norwegian or Swedish nationality shall enjoy the same rights as Icelandic nationals. The Minister of Justice may decide by administrative provisions that nationals of other countries, where similar legislation on registered partnership is in effect, shall also enjoy the same rights as Icelandic nationals. This has not been done yet.

E2 - See note to E1.

E3 - See note to E1.

E4 - For source see note to E1. Icelandic nationals can always marry non-resident citizens from Norway, Denmark, Finland or Sweden. Icelandic nationals can marry other non-resident foreigners provided they have a permit to stay in Iceland. Art. 8, 15 and 35 of the Act on Foreigners no. 96/2002: Danish, Finnish, Norwegian and Swedish nationals may stay in Iceland without the issue of a permit. EEA nationals may enter Iceland without a particular permit and stay in Iceland for up to three months, or for up to six months if arriving for the purpose of seeking employment. Other foreigners may stay in Iceland for up to three months unless their entry is dependent upon a visa. A foreigner who has been staying in Iceland for a continuous period of three years under a permit to stay and has attended a course in the Icelandic language for foreigners may be granted a residence permit. A residence permit grants a right to stay in Iceland indefinitely

E5 - See note to E1 and E2.

E6 - See note to E1 and E2.

E7 - See note to E1, E2 and E4.

E8 - See note to E1.

E9 - See note to E1, E2 and E4.

E10 - For source see note to E1 and E4. Non-resident foreigners from Norway, Denmark, Finland or Sweden can marry in Iceland. Other non-resident foreigners can marry provided they have a permit to stay in Iceland.

E11 - Art. 9 of the Marriage Act no. 31/1993 and art. 2 of the RPAAct.

E12 - See note to E11.

Table F (Iceland): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)
43. Registry of births, marriages and deaths	No	X	X	No
44. Local population administration	No	X	X	No
45. Church	Yes	X	X	No
46. Court	No	X	X	No
47. Private person with special authorisation	No	X	X	No
48. Public notary	No	X	X	No
49. Administrative magistrate	Yes	X	X	Yes

Notes to table F

F1 -Registration in the National Registry is not an authority for starting a marriage or registered partnership.

F2 - The National Registry (see F1) is also similar to a local population administration.

F3 - Art. 17 of the Marriage Act no. 31/1993: Religious solemnization of marriage is performed by the ministers of the National Church, and priests or other representatives of registered religious organizations in Iceland who have been empowered to perform such ceremonies by the Ministry of Justice and Ecclesiastical Affairs.

F4 - Not applicable.

F5 - Not applicable.

F6 - Not applicable.

F7 - Art. 17 of the Marriage Act no. 31/1993 and art. 4 of the RPAAct. The Act on Executive Power in Government no. 92/1989 outlines the role of Magistrates in Iceland. Magistrates are the representatives of executive authority in administrative areas and they have no judicial powers. The magistrates have many functions, including acting as commissioners of police and directors of customs, collecting revenues for the Treasury, performing civil marriages and granting licences for judicial separations and divorces, delivering rulings on rights of access to children and maintenance payments following divorce, ruling on the legal competence of individuals, registering official documents, taking various measures in connection with estates following death, seizing property and carrying out other measures of compulsory possession and distraint and holding auctions in execution of judgement.

Table G (Iceland): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1996)
36. By court decision (after joint or individual petition)	Yes	X	X	Yes
37. By mutually agreed contract (outside court)	No	X	X	No
38. Unilaterally by one partner (outside court)	No	X	X	No
39. By conversion of marriage into registered partnership, or vice versa (outside court)	No	X	X	No
40. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	X	X	No
41. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
42. By administrative decision (after joint or individual petition)	Yes, but	X	X	Yes, but

Notes to table G

G1 - Art. 41 of the Marriage Act no. 31/1993: Permits for legal separation and divorce are granted by administrative magistrates (see note to F7) if both parties agree. An individual petition for separation or divorce can be submitted in court. Art. 5 of the RPAAct: Provisions relating to spouses apply directly to registered same-sex partnership.

G2 - See note to G7.

G3 - Art. 34, 36, 38, 39 and 40 of the Marriage Act no. 31/1993: One spouse can claim legal separation and divorce but has to seek resolution in court. See note to G1 on registered same-sex partnership.

G4 - Not applicable, see note to G6.

G5 - The RPAAct (referring to art. 11 of the Marriage Act no. 31/1993) requires a permit for divorce before a person can marry, or register partnership, with a third person.

G6 - Different-sex registered partnership would be considered to have ended without any formal resolution if the partners marry each other.

G7 - Art. 41 of the Marriage Act no. 31/1993: Permits for legal separation and divorce are granted by administrative magistrates (see note to F7) only if both parties agree. See note to G1 on registered same-sex partnership.

Some literature in English

- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 103-107.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in the Netherlands

by Kees Waaldijk ¹

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

¹ Universiteit Leiden, www.emmeijers.nl/waaldijk.

Introduction

This chapter aims to represent the law as it stood early in 2004.

Dutch laws have no numbers. Each new or amending law is published in a numbered issue of the '*Staatsblad*' (official journal). The full text of the updated version of legislation in force in the Netherlands can be found at <http://wetten.overheid.nl>. There are no official translations available in other languages than Dutch, but see: Ian Sumner & Hans Warendorf, *Family Law Legislation of the Netherlands. A translation including Book 1 of the Dutch Civil Code, procedural and transitional provisions and private international law legislation*, Antwerp/Oxford/New York: Intersentia, 2003.

For governmental information in English see www.overheid.nl/guest/sites/ and www.postbus51.nl; for family law see www.ministerievanjustitie.nl:8080/a_BELEID/fact/fact.htm; for social security see www.socialezekerheid.nl/english/index.html; for taxation see www.minfin.nl; and for immigration and citizenship see www.immigratiedienst.nl/Home.asp?LangID=1.

Civil marriage

Civil marriage ('*huwelijk*') is regulated by Book 1 of the Civil Code (*Burgerlijk Wetboek* = CC). Since 1 April 2001 art. 30(1) of Book 1 states that a 'marriage can be contracted by two persons of different sex or of the same sex'. On that date civil marriage was opened up to same-sex couples by the amendment of this article (and some others) by the law of 21 December 2000 (*Staatsblad 2001, nr. 9*). Also on 1 April 2001 the possibility of adoption was opened up to same-sex partners, whether married, registered as partners or only cohabiting (law of 21 December 2000, *Staatsblad 2001, nr. 10*). Summary-translations into English of parts of these laws can be found at www.emmeijers.nl/waaldijk. See also the translation of Book 1 of the Civil Code, by Sumner & Warendorf, cited above.

There are only two legal differences between a marriage of two people of the same sex and a marriage of two people of different sexes. One exception concerns intercountry adoption, which is only available to married different-sex couples (see item A5, below). The other exception is the presumption of paternity: when a child is born to a woman married to a man, the man is deemed to be the father of the child. That rule does not apply when a child is born to a woman married to another woman (see item A1, below). However, since 2002 a new rule provides that when a child is born in a marriage of two women, both women automatically get joint parental authority over the child, unless a man has acknowledged the child as his own before its birth (see items A1 and A3).

Registered partnership

Registered partnership ('*geregistreerd partnerschap*') is also regulated by Book 1 of the Civil Code. It was introduced, both for same-sex couples and of different-sex couples, on 1 January 1998 by the insertion of art. 80a to 80e into Book 1, by the law of 5 July 1997 (*Staatsblad 1997, nr. 324*). Almost all procedures and consequences of marriage also apply to registered partnership. This follows from art. 80b of Book 1 CC, from the many amendments of more than one hundred other laws that were made by the law of 17 December 1997 (*Staatsblad 1997, nr. 660*) that also came into force on 1 January 1998, and from various later amendments, including those contained in the law of 21 December 2000 to open up marriage to same-sex couples (*Staatsblad 2001, nr. 9*) and the law 13 December 2000 (*Staatsblad 2001, nr. 10*). See the summary-translations into English of some provisions at www.emmeijers.nl/waaldijk. See also the translation of Book 1 of the Civil Code, by Sumner & Warendorf, cited above.

There are very few difference between registered partnership and marriage. In a very simple procedure any registered partnership can be converted into a marriage, and vice versa. A difference exists with respect to the ways to split up: unlike a marriage a registered partnership can also be ended by way of mutual contract (see item G2, below). The legal consequences of registered partnership are the same as those of marriage, with two main exceptions: Registered partners are excluded from intercountry adoption (see item A5, below). And when a child is born to a woman in a registered partnership, her (male or female) partner does not automatically become a legal parent (see item A1). However, since 2002 a new rule provides that when a child is born in a registered partnership, both partners automatically get joint parental authority over the child, unless a man has acknowledged the child as his own before its birth (see items A1 and A3).

Informal cohabitation

There is no general law on informal cohabitation. Informal cohabitation of different-sex and same-sex partners has been recognised since the 1970s in an ever growing number of laws and policies. The first example can be found in the policy guidelines for immigration, which since 1975 recognised cohabitation. In legislation cohabitation was recognised for the first time in 1979, for the purposes of rent law (see item C8, below), and in 1981 for the purposes of inheritance tax (see item B13, below). By 2004 almost all legal consequences of marriage are also available to cohabitants. The exceptions include the presumption of paternity (item A1), intercountry adoption (item A5), joint property (B1), joint debt (B2), alimony (B3), inheritance (B6 and B13)

and use of each other's surname (C1). The only difference between the legal position of same-sex cohabitants and that of different-sex cohabitants is that only an unmarried male can simply acknowledge the child of his female partner. Others need to go through an adoption procedure (see items A1, A3 and A4).

Most laws that now do recognise informal cohabitation, refer to the fact of two persons having a lasting joint household (*duurzaam gemeenschappelijke huishouding*). Some legal provisions in the Civil Code, however, use the undefined notion of '*levensgezel*' (life companion).

Cohabitants may choose to make a cohabitation contract (for example with the help of a public notary), but in general such a contract will only bind themselves, not third parties. Cohabitation contracts are subject to general contract law and legally enforceable. However, there are no specific legislative provisions regulating cohabitation contracts. Some legal provisions, and some pension funds, require a cohabitation contract from cohabitants who want to be recognised for a specific purpose.

Abbreviation

CC = Civil Code (*Burgerlijk Wetboek*) as amended by numerous laws, including those mentioned above.

Table A (Netherlands): Parenting consequences

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	Yes	No, but (2002)	No, but	No, but (2002)	No, but	No
2. Medically assisted insemination is lawful for women in such a relationship	Yes	Yes	Yes	Yes	Yes	Yes
3. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	Yes	Yes (2001/2002)	Yes (1998/2002)	Yes (1998/2002)	Yes (1986)	Yes (1998)
4. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	>3 years: Yes (1979)	>3 years: Yes (2001)	>3 years: Yes (1998)	>3 years: Yes (2001)	>3 years: Yes (1998)	>3 years: Yes (2001)
5. Partners can jointly adopt a child	>3 years: Yes (1956)	>3 years: Yes, but (2001)	>3 years: Yes, but (1998)	>3 years: Yes, but (2001)	>3 years: Yes, but (1998)	>3 years: Yes, but (2001)
6. One partner can individually adopt a child	Yes (1998)	Yes	Yes	Yes	Yes (1998)	Yes (1998)
7. Partners can jointly foster a child	Yes	Yes	Yes	Yes	Yes (1980s)	Yes (1980s)
Level of legal consequences	7x3 = 21	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x1 = 18	5x3 + 1x2 + 1x0 = 17

Notes to table A

A1 - The man married to the woman giving birth is deemed to be the father of the child (art. 199(a) Book 1 CC). An unmarried man can become the legal father of a child by acknowledging it, before or after its birth, (*erkenning*; art. 199(c) Book 1 CC), whether or not he is the registered partner or informal cohabitant of the child's mother. Both rules do not apply to women: in a lesbian relationship the mother's partner can only become the legal parent of the child through second-parent adoption (see A4). However, when a child is born in a lesbian marriage or in a lesbian or different-sex registered partnership, both partners automatically get joint parental authority (including financial responsibility), unless a man (normally with consent of the mother) has acknowledged the child as his own before its birth. This is possible since 1 January 2002 (art. 253aa and 253sa, introduced by the law of 4 October 2001, *Staatsblad 2001, nr. 468*).

A2 - There is no legislation limiting the categories of women that can receive medically assisted insemination. The *Wet donorgegevens kunstmatige inseminatie* (Act on donor data in case of artificial insemination, of 25 April 2002, *Staatsblad 2002, nr. 240*) only regulates the keeping of records of data about donors.

A3 - Married partners automatically have joint parental authority over their common children (art. 251 Book 1 CC). From January 2002 registered partners, too, can *automatically* have joint parental authority (including financial responsibility), but only over children born to a female partner after the partnership registration (art. 253aa and 253sa, introduced by the law of 4 October 2001, *Staatsblad 2001, nr. 468*), and unless a man (normally with consent of the mother) has acknowledged the child as his own before its birth. This also applies to children born into a lesbian marriage (art. 253sa). In other situations joint parental authority can be requested (art. 252 and 253t).

A4 - See art. 227 Book 1 CC, as amended by the law of 24 December 1997 (*Staatsblad 1997, nr. 772*, in force from April 1998) so as to allow adoptions by unmarried different-sex partners, and by the law of 21 December

2000 (*Staatsblad 2001, nr. 10*, in force from April 2001) so as to allow adoptions by same-sex partners (whether married, registered as partners, or neither). Whatever their civil status or gender-combination, the partners must have lived together for three years (art. 227(2)).

A5 - Idem. However, intercountry adoption is only possible for married different-sex couples (art. 1 and 2 of the *Wet opnemng buitenlandse kinderen ter adoptie* (Act on reception of foreign children for adoption) of 8 December 1988, *Staatsblad 1988, nr. 566*), as amended by the the law of 8 March 2001, *Staatsblad, 2001, nr. 128*). Each year only very few Dutch children are available for joint adoption by a couple; the number of foreign children available for joint adoption is much larger. Unmarried couples, and married same-sex couples, are excluded from the possibility of intercountry adoption.

A6 - Art. 227 Book 1 CC, as amended by the law of 24 December 1997 (*Staatsblad 1997, nr. 772*, in force from April 1998), allows adoptions by 'one person alone', whether or not that person has a partner of any gender. Intercountry adoption by any person alone is not excluded.

A7 - There is no legislation limiting the categories of persons that can become foster parents. (From January 1998, foster parents can have joint authority over their foster children; art. 282 Book 1 CC, as amended by the law of 30 October 1997, *Staatsblad 1997, nr. 506*.)

Table B - part one (Netherlands): Material consequences in private law

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
1. Properties of each partner are considered joint property	Yes, but	Yes, but	Yes, but	Yes, but	No, but	No, but
2. Debts of each partner are considered joint debt	Yes, but	Yes, but	Yes, but	Yes, but	No, but	No, but
3. In case of splitting up, statutory rules on alimony apply	Yes	Yes	Yes	Yes	No, but	No, but
4. In case of splitting up, statutory rules on redistribution of properties apply	No	No	No	No	No	No
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes	Yes	Yes	Yes	Yes (1992)	Yes (1992)
6. When one partner dies without testament, the other is an inheritor	Yes	Yes	Yes	Yes	No	No
Level of legal consequences	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	3x3 + 2x2 + 1x0 = 13	1x3 + 2x0 + 3x1 = 6	1x3 + 3x1 + 2x0 = 6

Notes to table B - part one

B1 - Art. 93 and 94 Book 1 CC provide that, in the absence of a prenuptial contract, spouses have community of property: from the moment of marriage almost all present and future goods and debts of each spouse are considered joint property. According to art. 80b this also applies to registered partners. There are exceptions for some gifts and inherited goods (art. 94(1), for some very personal goods and debts (art. 94(3)), and for some pension rights (art. 94(4)). The (future) spouses and (future) registered partners can prevent some or all of their goods and/or debts from becoming joint property, by agreeing a prenuptial contract (*'huwelijks voorwaarden'*; art. 114-148 Book 1 CC). For informal cohabitants, the sole fact of cohabitation does not result in joint property. However, the cohabitants can become the joint owners of a specific good if they if they acquire the property jointly.

B2 - Idem, but household debts are always joint (art. 85 Book 1 CC).

B3 - When a marriage ends in court, the court may stipulate alimony for one partner (art. 157 Book 1 CC). The same applies when a registered partnership ends in court (art. 80e). When a registered partnership is ended by mutual contract, the contract must contain a provision on alimony (art. 80d). Cohabiting partners may make a cohabitation contract in which alimony is stipulated. In theory this can be an implicit, unwritten contract or stipulation (see W.M. Schrama, *Vermogensrecht voor ongehuwde samenlevers*, Kluwer, Deventer, 2000, p. 31-33).

B4 - The law makes no provision for a re-distribution of properties, so they will be distributed according to existing ownership; joint properties are divided (see B1).

B5 - According to art. 108 Book 6 CC the married, registered or cohabiting partner is entitled to compensation for loss of financial or other support. For registered partners this is so since the law of 17 December 1997, *Staatsblad 1997, nr. 660*; for cohabiting partners since the revision of the Civil Code in 1992.

B6 - In the absence of a testament the married or registered partner inherits in the same way as a child (art. 10 Book 4 CC). This does not apply to cohabitants.

Table B - part two (Netherlands): Positive material consequences in public law

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
7. Relationship can result in lower property tax	No, but	No, but	No, but	No, but	No, but	No, but
8. Relationship can result in lower income tax	No, but	No, but	No, but	No, but	No, but	No, but
9. Public health insurance of one partner covers medical costs of other partner	Yes, but	Yes, but	Yes, but	Yes, but	Yes, but (1989)	Yes, but (1989)
10. Relationship can have positive impact on basic social security payment in case of no income	No	No	No	No	No	No
11. Relationship can have positive impact on statutory old age pension	No, but	No, but	No, but	No, but	No, but (1987)	No, but (1987)
12. When one partner dies, the other can get a statutory survivor's pension	No, but	No, but	No, but	No, but	No, but (1996)	No, but (1996)
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	Yes	Yes	Yes	>6 months: Yes, but (1981/1985/2002)	>6 months: Yes, but (1981/1985/2002)
Level of legal consequences	1x3 + 1x2 + 4x1 + 1x0 = 9	1x3 + 1x2 + 4x1 + 1x0 = 9	1x3 + 1x2 + 4x1 + 1x0 = 9	1x3 + 1x2 + 4x1 + 1x0 = 9	2x2 + 4x1 + 1x0 = 8	2x2 + 4x1 + 1x0 = 8

Notes to table B - part two

B7 - In general it must be said that (since 2001) there is no property tax in the Netherlands. However, the phenomenon that is usually known as property tax can be said to be incorporated in the Dutch income tax : taxes are not imposed on the basis of property itself, but on what is supposed to be gained from it. Accordingly, a hypothetical rent value of the owned home is added to the owner's tax able income (art. 3.112 of the *Wet Inkomstenbelasting 2001*, Income Tax Act 2001, *Staatsblad 2000, nr. 215*). The income tax legislation also assumes a 4% profit on savings and investments, whatever the actual level of interest or dividend; a 30% tax is imposed on this 4% profit. The fact that a relationship can result in a lower 'property' tax follows from art. 5.1, 5.2, 5.5 and 1.2 of the *Wet Inkomstenbelasting 2001*. No tax is imposed over the first circa EUR 19.000 owned (for most people over 65 a higher threshold applies). In case of marriage, registered partnership or informal cohabitation, this amount can be doubled for one of the partners if the other partner is willing to forgo that tax-free threshold. If the latter owns less than circa EUR 19.000, this will result in a lower tax for the couple as a whole.

B8 - For most purposes income tax is the same for individuals and for persons in any relationship. However, in some cases a relationship can result in lower income tax, e.g. when all mortgage payments on the home owned by the couple can be tax-deducted by the partner with the highest income (art. 2.17 of the *Wet Inkomstenbelasting 2001*, Income Tax Act 2001, *Staatsblad, 2000, 215*), or when one partner works without salary in the company of the other partner (art. 3.78 of the *Wet Inkomstenbelasting 2001*). See also note B7.

B9 - Public health insurance (which takes the form of a statutory, compulsory insurance for mainly employees) is only available for people with an income below a certain level. If the partner of the person with such a low income earns even less or nothing, that partner is mostly also covered by the insurance (art. 4 *Ziekenfondswet*, Public Health Insurance Funds Act, *Staatsblad, 1964, nr. 392*). Art. 1(2) includes the insured person's registered partner (since the law of 17 December 1997, *Staatsblad 1997, nr. 660*, in force since 1998) in the

definition of spouse, and (since the law of 15 December 1988, *Staatsblad 1988, nr. 610*, in force since 1989) art. 1(3) does this for the unmarried/unregistered partner with whom the insured person has a joint household.

B10 - A relationship cannot have a positive impact with respect to basic social security.

B11 - In some cases, where the person entitled to the old age pension has a (married, registered or cohabiting) partner younger than 65 years whose income is below what he or she would receive at 65, the relationship may have a positive impact on the total income of the couple. See art. 8 and 11 of the *Algemene Ouderdomswet*.

B12 - Art. 14 and 3 *Algemene nabestaandenwet* (General Survivors Act, of 21 December 1995, *Staatsblad 1995, nr. 690*) only provides a statutory survivor's pension to the surviving (married or cohabiting, or since 1998 registered) partner who either was born before 1950, or who has an unmarried child under 18 which is not being raised in someone else's household, or who is medically unfit to have paid employment at the moment his or her partner dies, or who is pregnant.

B13 - The married or registered surviving partner does not pay inheritance tax over the first EUR 485,000 (art. 32 *Successiewet 1956* (Inheritance Tax Act 1956), as amended from time to time), and a lesser percentage than other inheritors over any amount above that sum (art. 24(1)). The same applies (since 1981/1985) to informal cohabitants who have had a joint household for at least five years. Since the law of 14 December 2001 (*Staatsblad 2001, nr. 643*) the same also applies to informal cohabitants who have had a joint household for less than five years but more than six months, but only if at least six months ago they have gone to a public notary to make a cohabitation contract containing a mutual obligation of support, and if they have also chosen to be treated as a couple for the purposes of income tax (art. 24(2)). Informal cohabitants were first recognised in an amendment to the *Successiewet 1956* by the law of 17 December 1980 (*Staatsblad 1980, nr. 686*), and first on an equal footing to married partners in an amendment by the law of 8 November 1984 (*Staatsblad 1984, nr. 545*).

Table B - part three (Netherlands): Negative material consequences in public law

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	No	No	No	No	No
15. Relationship can result in higher income tax	No, but	No, but	No, but	No, but	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	Yes	Yes	Yes	Yes (1965)	Yes (1987)
17. Relationship can have negative impact on statutory old age pension	Yes	Yes	Yes	Yes	Yes (1987)	Yes (1987)
Level of legal consequences	2x3 + 1x1 + 1x0 = 7	2x3 + 1x1 + 1x0 = 7	2x3 + 1x1 + 1x0 = 7	2x3 + 1x1 + 1x0 = 7	2x3 + 2x0 = 6	2x3 + 2x0 = 6

Notes to table B - part three

B14 - A relationship cannot result in a higher 'property' tax ; see note B7.

B15 - Only in very exceptional cases (e.g. small profit from a company) a marriage or registered partnership can result in a higher income tax . Informal cohabitants can always choose to be tax ed as individuals.

B16 - In principle a single person entitled to basic social security ('*bijstand*') will receive a payment which is 50% of the payment provided to a couple entitled to basic social security (see art. 30 *Algemene bijstandswet* (General Social Security Act, *Staatsblad*, 1995, nr. 199). However, for two reasons a relationship can have a negative impact on basic social security payments. Firstly, there is no entitlement to basic social security, if the (married, registered or cohabiting) partner earns enough to support both partners. And secondly, the local authorities have a discretionary power to pay out more than 50% to a single person, if he or she cannot share with someone else the basic costs of living (art. 33 *Algemene bijstandswet*); this supplement will stop as soon as the single beneficiary enters into cohabitation, marriage or registered partnership. Already under the predecessor of this Act (the *Algemene Bijstandswet* of 1965) different-sex cohabiting partners were treated in the same way as married partners. The law of 6 November 1986 (*Staatsblad* 1986, nr. 564) codified this equal treatment of different-sex cohabiting and married partners, and introduced the equal treatment of same-sex and different-sex cohabitants (see J.L.M. Schell, *De Algemene bijstandswet*, Tilburg University Press, 1995, p. 142-143). The equal treatment of married, registered and informal cohabitants can now be found in art. 3 of the *Algemene bijstandswet* (as amended by the law of 17 December 1997, *Staatsblad* 1997, nr. 660).

B17 - The statutory old age pension provided to a single living person constitutes 70% of the minimum wage, whereas (married, registered or cohabiting) partners will only receive 50% each. See art. 1 and 9 of the *Algemene Ouderdomswet*, General Old Age Act, of 31 May 1956, *Staatsblad*, 1956, nr. 287; art. 1 of the Act was amended by the law of 6 November 1986, *Staatsblad* 1986, nr. 563 to include informal cohabitants per 1987, and by the law of 17 December 1997, *Staatsblad* 1997, nr. 660 to include registered partners per 1998).

Table C (Netherlands): Other legal consequences

	Civil marriage		Registered partnership (1998)		Informal cohabitation	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex	Different-sex	Same-sex
64. One partner can have or use surname of the other	Yes	Yes	Yes	Yes	No, but	No, but
65. Foreign partner of resident national is entitled to a residence permit	Yes, but	Yes, but	Yes, but	Yes, but	Yes, but (1975)	Yes, but (1975)
66. Relationship makes it easier for foreign partner to obtain citizenship	>3 years: Yes	>3 years: Yes	>3 years: Yes (2003)	>3 years: Yes (2003)	> 3 years: Yes, but (1985)	>3 years: Yes, but (1985)
67. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	Yes	Yes	Yes	No	No
68. When one partner uses violence against other partner, specific statutory protection applies	No	No	No	No	No	No
69. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	Yes	Yes	Yes	Yes (1995)	Yes (1995)
70. Organ donation from one living partner to the other is lawful	Yes	Yes	Yes	Yes	Yes	Yes
71. When one partner dies, the other can continue to rent the home	Yes	Yes	Yes	Yes	>2 years: Yes (1979)	>2 years: Yes (1979)
72. Partners have a duty to have sexual contact	No	No	No	No	No	No
Level of legal consequences	6x3 + 1x2 + 2x0 = 20	6x3 + 1x2 + 2x0 = 20	6x3 + 1x2 + 2x0 = 20	6x3 + 1x2 + 2x0 = 20	3x3 + 2x2 + 1x1 + 3x0 = 14	3x3 + 2x2 + 1x1 + 3x0 = 14

Notes to table C

C1 - No one gets a different name through marriage or partnership registration: in Dutch law each partner keeps his or her own name. However, according to art. 9 Book 1 CC, a married or registered woman or (since 1998) man is entitled *to use* the name of his or her partner, or *to use* a combination of his or her own name and that of the partner (even without permission by that partner). In theory unmarried/unregistered partners may give each other permission *to use* each other's name, but this is not specified in the Civil Code.

C2 - Art. 3.13 to 3.17 of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000, Staatsblad 497*, in force since 1 April 2001) allow for the immigration of married, registered and unmarried/unregistered partners, provided that they live together and have a joint household. One of the conditions is that the 'receiving' partner has a sufficient income, i.e. 100% of the official minimum wage (art. 3.22 and 3.74; until 1 April 2004, 70% of the official minimum wage was considered sufficient for most married or registered partners; but not for informal cohabitants). See www.immigratiedienst.nl/Home.asp?LangID=1. Until 1 April 2001 the right to immigration of

partners was contained in policy guidelines (*Vreemdelingencirculaire*), which since 1975 recognized informally cohabiting different-sex and same-sex partners of Dutch citizens (see A.H.J. Swart, *De toelating en uitzetting van vreemdelingen*, Deventer, Kluwer, 1978, p. 165-166).

C3 - To acquire Dutch citizenship, a foreigner normally must have resided in the Netherlands for at least five years (art. 8(1) of the *Rijkswet op het Nederlanderschap*, Act on Dutch Nationality, *Staatsblad*, 1984, nr. 628). This condition does not apply to a foreigner who has been married to a Dutch citizen for at least three years (art. 8(2)). From 1 April 2003 the five year condition no longer applies to a foreigner who has been the registered partner of a Dutch citizen for at least three years (this follows from art. 1(2) as amended by the law of 21 December 2000, *Staatsblad* 2000, nr. 618). With respect to a foreigner who has been living together for at least three years in a permanent relationship with an unmarried/unregistered Dutch citizen, the requirement of five years of residence is reduced to one of three years of residence (Art 8(4), in force since 1985). See <www.immigratiedienst.nl/Home.asp?LangID=1>.

C4 - Art. 217 of the Code of Criminal Procedure (*Wetboek van Strafvordering*, as amended in by the law of 17 December 1997, *Staatsblad* 1997, nr. 660) exempts current and former married or registered partners, but not cohabitants.

C5 - Legislation is being prepared to increase the limited protection now provided under criminal law (art. 300 and 304 Penal Code, *Wetboek van Strafrecht*) and in divorce law (art. 821 and 822 Code of Civil Procedure, *Wetboek van Burgerlijke Rechtsvordering*).

C6 - Art. 450 and 465 Book 7 CC provides that for the purposes of a 'medical treatment contract' a patient who is incapable of considering his or her own interests, may be represented (in the absence of anyone mandated in writing by the patient) by his or her married or registered partner or by his or her 'life companion' (*levensgezel*). (This and the other articles on the 'medical treatment contract' were inserted into the Civil Code in 1995, by law of 17 November 1994, *Staatsblad* 1994, nr. 837; the reference to 'registered partner' has been inserted by the law of 17 December 1997, *Staatsblad* 1997, nr. 660.)

C7 - The Law on Organ Donation (*Wet op de orgaandonatie*, *Staatsblad* 1997, nr. 580) makes no restrictions as to those who can benefit from an organ donation by a living person over 18 years of age (see art. 3).

C8 - According to art. 268 Book 7 CC the rent contract is continued on the death of the tenant by the co-tenant. According to art. 266 the tenant's married partner is automatically the co-tenant; since 1998 this rule also applies to the tenant's registered partner, as amended by the law of 17 December 1997, *Staatsblad* 1997, nr. 660). According to art. 267 (as amended by the law of 21 June 1979, *Staatsblad* 1979, nr. 330) the tenant's partner in a 'lasting joint household' is entitled to become co-tenant after two years of cohabitation. Art. 268 (as amended by the said law of 1979) provides that the sub-district court may allow the continuation of the rent also to a tenant's cohabiting partner who on the death of the tenant has not yet become a co-tenant. Until 1 August 2003, the articles 266 to 268 could be found (as articles 1623g to 1623i) in Book 7A CC; on that day the law of 21 November 2002 (*Staatsblad* 2002, nr. 587) recodifying rent law came into force (see *Staatsblad* 2003, nr. 230).

Table D (Netherlands): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (1998)	Between married spouses and informal cohabitants (1994)	Between registered partners and informal cohabitants (1998)	Between same-sex and different-sex partners (with same status) (1992/1994)
1. With respect to housing	Yes	Yes	Yes	Yes
2. With respect to life insurance	Yes	Yes	Yes	Yes
3. With respect to health insurance	Yes	Yes	Yes	Yes
4. With respect to medically assisted insemination	Yes	Yes	Yes	Yes
5. With respect to other services	Yes	Yes	Yes	Yes
6. With respect to an occupational survivor's pension	Yes, but (1998/2000)	No	No	Yes
7. With respect to other spousal benefits in employment	Yes	Yes	Yes	Yes

Notes to table D

D1 - With respect to provision of goods and services, and to contracts relating to such provision, art. 7 General Equal Treatment Act (*Algemene wet gelijke behandeling, Staatsblad, 1994, nr. 230*) prohibits discrimination on many grounds, including sexual orientation and civil status. According to the text of art. 7, almost all forms of commercial, professional or public provision of services are covered, including services provided by institutions in the field of housing, welfare, health care, culture and education. From the *travaux préparatoires* of the law introducing registered partnership it appears that anyone can have one of three possible civil statuses: married, registered as partner, or unmarried/unregistered (see the Parliamentary Papers of the Second Chamber: *Kamerstukken II 1996/1997, 23761, nr. 11, p. 3*; and the Parliamentary Debates of the Second Chamber: *Handelingen II 1996/1997, p. 3285*). Since 1992, most sexual orientation discrimination in the performance of a 'profession, business, or official capacity' was already prohibited by art. 429quarter Penal Code (as amended by the law by the law of 14 November 1991, *Staatsblad 1991, nr. 623*); that provision does not cover civil status discrimination.

D2 - Idem.

D3 - Idem.

D4 - Idem. That this service is not excluded from the anti-discrimination rules governing other services, was confirmed by the Equal Treatment Commission (*Commissie Gelijke Behandeling*) in its opinion of 7 February 2000 nr. 2000-4. See <www.cgb.nl>.

D5 - See D1.

D6 - In the Netherlands most employees automatically are covered by the pension fund of their employer. Pensions therefore are part of the conditions of employment. With respect to employment, sexual orientation discrimination is prohibited by art. 5 of the General Equal Treatment Act of 1994, and since 1992 also by art. 429quarter Penal Code (see D1). Civil status discrimination in the field of employment is also prohibited by art. 5 of the General Equal Treatment Act (see D1), but art. 5(6) exempts survivor's pensions from that prohibition of civil status discrimination. Nevertheless, the Equal Treatment Commission has given a narrow interpretation to the exception of art. 5(6). According to several opinions of the Equal Treatment Commission only discrimination between cohabitants on the one hand, and married or registered partners on the other, is exempted; distinctions between married and registered survivors are not generally exempted from the prohibition (opinions of 13 August 2002, nrs. 2002-111 and 2002-113, see <www.cgb.nl>). However, art. 2c of the *Pensioen- en spaarfondsenwet* (Pension Funds Act), inserted by the law of 17 December 1997 (*Staatsblad 1997, nr. 660*) and amended by the law of 25 May 2000 (*Staatsblad 2000, nr. 256*), provides that surviving registered partners whose partner died, retired or changed to another pension scheme between January 1998 and June 2000 may receive a substantially smaller pension than surviving married partners (this probably affects less than 100 persons).

A limited number of pension funds in the Netherlands continue to exclude unmarried/unregistered partners from their schemes for survivor's pensions. However, art. 2b of the *Pensioen- en spaarfondsenwet* (inserted by the law of 21 December 2000, *Staatsblad 2000, nr. 625*) demands that employees covered by such a fund may opt-out from the provision for a (hypothetical) surviving partner; in stead they would then get a higher (or sooner) old age pension for themselves. This opt-out system only mitigates the discriminatory effects of any remaining exclusion of unmarried/unregistered partners.

D7 - With respect to other spousal employment benefits all civil status and sexual orientation discrimination is prohibited (see D6)

Table E (Netherlands): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership (1998)	
		Different-sex	Same-sex (2001)	Different-sex	Same-sex
Resident national with:	85. Resident national	Yes	Yes	Yes	Yes
	86. Non-resident national	Yes	Yes	Yes	Yes
	87. Resident foreigner	Yes	Yes	Yes	Yes
	88. Non-resident foreigner	Yes	Yes	Yes (2001)	Yes (2001)
Non-resident national with:	89. Non-resident national	Yes	Yes	Yes	Yes
	90. Resident foreigner	Yes	Yes	Yes	Yes
	91. Non-resident foreigner	Yes	Yes	Yes (2001)	Yes (2001)
Resident foreigner with:	92. Resident foreigner	Yes	Yes	Yes	Yes
	93. Non-resident foreigner	Yes	Yes	Yes (2001)	Yes (2001)
Non-resident foreigner with:	94. Non-resident foreigner	No	No	No	No
11. Sister or brother with sister or brother		No	No	No	No
12. Parent with child		No	No	No	No

Notes to table E

E1 - Both art. 43(1) Book 1 CC, and art. 2 of the Act on Conflicts of Law with Respect to Marriage (*Wet Conflictenrecht Huwelijk, Staatsblad 1989, nr. 392*), require for marriage that one partner either has residency in the Netherlands or has Dutch citizenship. Since April 2001 the same applies to partnership registration (art. 80a(4) Book 1 CC, as amended by the law of 13 December 2000, *Staatsblad 2001, nr. 11*). Whether or not the law of the country of origin of a foreigner permits or recognises registered partnership or same-sex marriage is not relevant in the Netherlands (see Katharina Boele-Woelki, 'Registered Partnership and Same-Sex Marriage in the Netherlands', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 43).

E2 - Idem

E3 - Idem

E4 - Idem. From January 1998 to 1 April 2001 a foreigner without lawful residency in the Netherlands could not enter a registered partnership.

E5 - Idem

E6 - Idem

E7 - See E4.

E8 - See E1.

E9 - See E4.

E10 - See E1. Two non-resident foreigners cannot come to the Netherlands to get married or to register their partnership.

E11 - This follows from art. 41(1) Book 1 CC, declared applicable to partnership registrations by art. 80a(6). However, the Minister of Justice may allow a marriage or partnership registration between those who are brother(s) / sister(s) through adoption (art. 41(2)).

E12 - This, too, follows from art. 41(1) and 80a(6) Book 1 CC.

Table F (Netherlands): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership (1998)	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex
1. Registry of births, marriages and deaths	Yes	Yes	Yes	Yes
2. Local population administration	No	No	No	No
3. Church	No	No	No	No
4. Court	No	No	No	No
5. Private person with special authorisation	No	No	No	No
6. Public notary	No	No	No	No
7. Administrative magistrate	No	No	No	No

Notes to table F

F1 - Art. 63 of Book 1 CC, declared applicable to partnership registrations by art. 80a(6). Normally, the Registry is in the town hall.

F2 - Not applicable.

F3 - Church weddings have no legal effect in the Netherlands. Art. 68 Book 1 CC even prohibits church weddings of couples who have not first married each other at the Registry (see F1).

F4 - Not applicable.

F5 - Not applicable.

F6 - Not applicable.

F7 - Not applicable.

Table G (Netherlands): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership (1998)	
	Different-sex	Same-sex (2001)	Different-sex	Same-sex
1. By court decision (after joint or individual petition)	Yes	Yes	Yes	Yes
2. By mutually agreed contract (outside court)	No, but (2001)	No, but	Yes	Yes
3. Unilaterally by one partner (outside court)	No	No	No	No
4. By conversion of marriage into registered partnership, or vice versa (outside court)	Yes (2001)	Yes	Yes (2001)	Yes (2001)
5. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	No	No	No
6. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	No	No	No
7. By administrative decision (after joint or individual petition)	No	No	No	No

Notes to table G

G1 - For marriage this follows from art. 149 Book 1 CC, for registered partnerships from art. 80c and 80e. The Registry is at the town hall.

G2 - For registered partnership this follows from art. 80c Book 1 CC. Both partners and at least one advocate or notary has to sign a declaration that the partners have agreed a contract to end the registered partnership. To sort effect, the declaration has to be registered in the same way as the divorce judgment of a court. Art. 80d specifies which points need to be covered in the contract. Indirectly, the possibility of a contractual divorce is also available for mutually agreeing married couples: they can first convert their marriage into a registered partnership (see G4), and then dissolve that by contract as provided by art. 80c.

G3 - Not applicable.

G4 - For marriage this follows from art. 77a Book 1 CC and for registered partnerships from art. 80g. Conversion only requires the consent of the two partners, and takes place at the Registry of births, marriages and deaths.

G5 - For a marriage or partnership registration both partners need to be unmarried and not registered as anyone's partner (art. 33, 42, 80a(1) and 80a(2) Book 1 CC).

G6 - Idem.

G7 - Not applicable.

Some literature in English

- M. Antokolskaia, 'Recent developments in Dutch filiation, adoption, and joint custody law', *Familia* 2002, p. 781-804.
- Katharina Boele-Woelki, 'Registered Partnership and Same-Sex Marriage in the Netherlands', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 41-53.
- Astrid Mattijssen, Charlene Smith & Nancy Maxwell, 'Legal protection for all children: Dutch-American comparison of lesbian and gay parent adoptions', 3.1 *Electronic Journal of Comparative Law* 1999, <http://law.kub.nl/ejcl/31/abs31-2.html>.
- Nancy Maxwell, 'Opening civil marriage to same-gender couples: A Netherlands-United States comparison', 18 *Arizona Journal of International and Comparative Law* 2001 p. 141-207. See also in the *Electronic Journal of Comparative Law* 2000, <http://law.kub.nl/ejcl/43/abs43-1.html>
- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 111-129.
- Barbara Reinhartz, 'The Netherlands', in: C. Hamilton & A. Perry (eds.), *Family Law in Europe*, second ed., London/Edinburgh, Butterworth Lexis Nexis, 2002, p. 437-467.
- Wendy M. Schrama, 'Registered partnership in the Netherlands', *International Journal of Law, Policy and the Family* 1999-13, p. 315-327.
- Ian Sumner, 'Comparative analysis and assessment of the gradual recognition of homosexuality with respect to the Netherlands and England' 9 *Maastricht Journal* 2002, p. 29-56.
- Ian Sumner & Hans Warendorf, *Family Law Legislation of the Netherlands. A translation including book 1 of the Dutch Civil Code, procedural and transitional provisions and private international law legislation*, Antwerp/Oxford/New York: Intersentia 2003.
- Kees Waaldijk, 'Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 437-464.
- Kees Waaldijk, 'Others may follow: the introduction of marriage (and quasi-marriage or semi-marriage) for same-sex couples in European countries', 38 *New England Law Review* 2004, p.569-589.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Norway

by John Asland ¹
and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

¹ University of Oslo, www.jus.uio.no/ifp/ansattesider/ansatte/asland.html.

² Universiteit Leiden, www.emmeijers.nl/waaldijk.

Introduction

This chapter aims to represent the law as it stood early in 2004.

Translations of many Norwegian laws can be found at www.ub.uio.no/ujur/ulov/. This site also links to the current Norwegian text of these laws.

Civil marriage

The Marriage Act (lov om ekteskap) of 4 July 1991 No. 47, which entered into force 1 January 1993, contains the main provisions of civil marriage according to Norwegian law. The act contains procedural provisions regarding marriage and divorce (part I). The Act also regulates the property relationship between spouses both during marriage and by divorce; in fact most of the provisions in the Norwegian Marriage Act are provisions regarding the economic relationship between the spouses (part II), such as the right of disposal of property, liability of spouses for debts and agreements regarding property. Part II of the Marriage Act does also contain regulations on the division of assets in case of separation. Part III contains provisions of maintenance and spouse's pension.

The provisions in the Marriage Act of 1991, or similar provisions were earlier found in three different acts; the Act on Contraction and Dissolution of Marriage of 31 May 1931 No. 2, the Act on Spouses Property Relationships of 20 May 1927 No. 1, and finally the Probate Act of 21. February 1930. However, the main principles in Norwegian family law are the same in the present Marriage Act as it was under the previous regulations.

The Marriage Act is not exhaustive regarding legal consequences of marriage. E.g. the National Insurance Act of 28 February 1997 No. 19, regulates the question of statutory survivor's pension, and the right to take the other spouse's name is regulated in the Act Relating to Names of Natural Persons of 6 July 2002 No. 19. Other consequences of marriage are regulated in a broad spectre of acts and regulations in various fields of law.

The wording of the law is of course the main source of law in Norwegian law in fields of statutory law, as it is in most other countries. In Norway, the preparatory works of the acts are also of great importance as sources of law. There are also quite a few Supreme Court decisions on family law. Preparatory works and Court decisions can be found at www.lovdاتا.no/. There is not much literature in English on Norwegian family law. The only reference I can give is P. Lødrup, 'Norway', in: C. Hamilton & A. Perry (eds.) *Family Law in Europe*, London/Edinburgh, 2002.

Registered partnership

The Act on Registered Partnerships for Homosexual Couples (partnerskapsloven) of 30 April 1993 No. 40, which entered into force 1 august 1993, was the first legislation in Norway that gave homosexual partners the possibility of having a formalized relationship with almost the same rights and liabilities as married couples have. Even though the relationship is not called a marriage, most of the provisions in the Marriage Act do apply also to registered partners.

The equal status of registered partnerships and marriages is emphasized in the Partnerships Act section 3. In the first paragraph of section 3, it says that 'registration of partnerships has the same legal consequences as entering into marriage, with the exceptions mentioned in section 4'. (Section 4 says that the Adoptions Act does not apply to registered partnerships). The main principle in the first paragraph is followed up in the second paragraph which says that 'the provisions in Norwegian legislation dealing with marriage and spouses shall be applied correspondingly to registered partnerships and registered partners'.

The Partnerships Act has been amended several times, for example by the Act of 21 December 2000 No. 104 (citizenship and residence requirement) and by the Act of 15 June 2001 No. 36 (adoption). The right of registered partners to adopt is an issue that is discussed at high level in the Norwegian parliament, where more amendments are likely to come. An English translation of the Act up to the amendments of 2001 can be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp, Intersentia, 2003, p. 218-219.

Informal cohabitation

There is no act that regulates the major consequences of informal cohabitation, such as the Marriage Act does for civil marriages and the Act on Registered Partnerships for Homosexual Couples does for registered partnerships. However, different-sex and same-sex informal cohabitation has been recognised in several laws. The regulations are very fragmentary, and you have to look up several acts and regulations to get an overview of the consequences of informal cohabitation. The Act Relating to the Joint Residence and Household when a Household Community Ceases to Exist, of 4 July 1991 No. 45, seems to be the only act that specifically regulates informal cohabitation.

The Norwegian government has set up an expert commission in connection to the legal aspects of informal cohabitation. Such commissions or expert panels are often set up when important acts are going to be revised, or when legislation is needed in a new area. The committee gives a draft bill or several draft bills and a

detailed report on the needs for legislation and the present state of the law in that specific field of law. These preparatory works are the first step of the legislation process in Norway. The preparatory works are printed in *Norges offentlige utredninger* (Public Reports of Norway) and published by the government. NOU 1999:25 *Samboerne og samfunnet* (The Cohabitants and the Community) contains all drafts to amendments to the present legislation. The draft can be found at www.lovdata.no (only Norwegian text).

In this first step of the legislation process the committee has, among other things, proposed a legal definition of informal cohabitants. Today there are several definitions of informal cohabitants. Some definitions refer to a marriage-like relationship; other definitions emphasize the permanence of the relationship (they have a time limit, e.g. two years) or whether the parties have common children. The committee emphasizes that a definition must include relationships that are marriage-like and stable. The criteria presented by the committee are that the parties must be over 18 years of age, they are not married (to somebody else), they are not close relatives, they have a common household, and that there are only two of them. If they have common children, there is no requirement for permanence, but if they do not have any children together, the relationship must have lasted for more than two years. The two year limit is not randomly picked. Statistics show that informal cohabitants break up 14 times more often than married couples do in the first two years of the relationship, but only four times more often after four years of cohabitation. For the proposed criteria for a legal definition of informal cohabitants and the statistics, see NOU 1999:25, chapter 12.1. The two year limit is also the most frequent requirement in legislation that gives informal cohabitants and married couples equal rights.

The next step in the legislation process is a hearing based on the NOU and a report from the ministry in charge of the specific field of law containing draft bills to the Parliament (*Stortinget*). This second step is not yet reached for legislation on informal cohabitation. However, the preparatory works will probably lead to more legislation on informal cohabitants, and give them a more equal status to married couples (and registered partners).

Abbreviations

AA = Act on Adoption of 28 February 1986 No. 8.

PA = Act on Registered Partnerships for Homosexual Couples of 30 April 1993 No. 40.

MA = Marriage Act of 4 July 1991 No. 47.

NIA = National Insurance Act of 28 February 1997 No. 19.

Table A (Norway): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1993)	Different-sex	Same-sex
50. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but	No
51. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	No	Yes, but	No
52. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	Yes, but	X	X	Yes, but	Yes, but	Yes, but
53. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	Yes	X	X	Yes, but (2002)	No	No
54. Partners can jointly adopt a child	Yes	X	X	No	No	No
55. One partner can individually adopt a child	No, but	X	X	No, but	No, but	No, but
56. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	5x3 + 1x2 + 1x1 = 18	7x0 = 0	7x0 = 0	1x3 + 2x2 + 1x1 + 3x0 = 8	1x3 + 2x2 + 2x1 + 2x0 = 9	1x3 + 1x2 + 1x1 + 4x0 = 6

Notes to table A

A1 - In marriage, the mother's husband is automatically recognized as legal parent due to the *pater est* provision in art. 3 of the Children's Act of 8 April 1981 No. 6. In different sex informal cohabitation, the male partner has to admit to public authorities that he is the biological father to the child in order to be recognized as legal parent (art. 4). The partner in a lesbian relationship will never become legal parent when her partner gives birth.

A2 - The cohabitation has to be 'marriage-like', i.e. the couple must have lived together for some period of time or having children together (art. 2-2 of the Act on Biotechnology of 5 August 1994 No. 56). The act excludes same-sex couples because it is required that the inseminated female shall be married to or in a 'marriage-like' relationship with a man.

A3 - Both partners can have parental authority only if the other parent of the child is dead. Then the court can decide to give the authority to the remaining parent and his/her partner.

A4 - Registered partners cannot adopt the child if the child is originally adopted from a country that does not permit such adoption (art. 5a AA). Registered partners were given the right to adopt the other partner's children, with the exception mentioned above, by amendment of 2001, which is in force from 1 January 2002.

A5 - Art. 5 AA.

A6 - Married spouses can only adopt individually if the other spouse is mentally incapacitated or has disappeared (art. 5 AA). The AA does not exclude registered partners from adopting individually if the general provisions in art. 2 and 3 AA are fulfilled, neither does the Act exclude informal cohabitants from adopting individually. However, it must be said that individual adoptions are rather rare, and that it requires a special binding between the child and the adoptive parent, e.g. biological relationship or a previous foster parent relationship.

A7 - Persons selected as foster parents shall have a special aptitude for giving children a secure and good home (art. 4-22 (2) of the Act Relating to Child Welfare Services of 17 July 1992 No. 100). The act does not by its wording exclude same-sex couples but the practise from the children welfare authorities show that they are quite reluctant to let homosexual parents foster children that are not one of the partners' own children.

Table B - part one (Norway): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1993)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	No	X	X	No	No	No
2. Debts of each partner are considered joint debt	No, but	X	X	No, but	No	No
3. In case of splitting up, statutory rules on alimony apply	Yes	X	X	Yes	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes	X	X	Yes	Yes, but (1991)	Yes, but (1991)
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes, but	X	X	Yes, but	Yes, but	Yes, but
6. When one partner dies without testament, the other is an inheritor	Yes	X	X	Yes	No	No
Level of legal consequences	3x3 + 1x2 + 1x1 + 1x0 = 12	6x0 = 0	6x0 = 0	3x3 + 1x2 + 1x1 + 1x0 = 12	2x2 + 4x0 = 4	2x2 + 4x0 = 4

Notes to table B - part one

B1 - Marriage entails no joining of properties and no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires (art. 31 MA). The same applies to registered partners (art. 3 PA). The same of course also applies to informal cohabitants.

B2 - The general rule regarding the liability of debts is that a spouse may not contract a debt which affects the other spouse unless this is specially authorized (art. 40 MA and art. 3 PA). However married couples and registered partners may on the liability of both spouses enter into ordinary agreements regarding the daily housekeeping and the upbringing of the children and ordinary agreements to cover the necessary requirements of individual spouse (art. 41 MA).

B3 - Chapter 16 MA.

B4 - Art. 62, 67 and 74 MA. There are special provisions regulating the common house, apartment, and movables. For informal cohabitants similar provisions are found in art. 2 of the Act Relating to the Right to the Joint Residence and Household when a Household Community Ceases to Exist of 4 July 1991 No. 45. This act does only apply to cohabitants who have lived together for more than two years or who have children together or are expecting children together (art.1).

B5 - It depends on whether the partner or spouse actually was supported economically by the deceased, regardless of any statutory obligation to support (see P. Lødrup, *Lærebok i erstatningsrett* (Law on torts), Oslo, 1995, p. 396 et seq.).

B6 - Art. 6 etc. of the Inheritance Act of 3 March 1972 No. 5.

Table B - part two (Norway): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1993)	Different-sex	Same-sex
7. Relationship can result in lower property tax	Yes	X	X	Yes	No	No
8. Relationship can result in lower income tax	Yes	X	X	Yes	No	No
9. Public health insurance of one partner covers medical costs of other partner	Yes	X	X	Yes	Yes, but	No, but
10. Relationship can have positive impact on basic social security payment in case of no income	No, but	X	X	No, but	No, but	No, but
11. Relationship can have positive impact on statutory old age pension	No	X	X	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes	X	X	Yes	Yes, but	No, but
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	Yes, but (2002)	No, but (2002)
Level of legal consequences	5x3 + 1x1 + 1x0 = 16	7x0 = 0	7x0 = 0	5x3 + 1x1 + 1x0 = 16	3x2 + 1x1 + 3x0 = 7	4x1 + 3x0 = 4

Notes to table B - part two

B7 - There are two classes of tax payers: class 1 and class 2. Class 2 does only apply to married (and registered) couples. Married and registered partners can decide for themselves whether to be taxed as class 1 or class 2 tax payers. The major difference between tax payers of class 1 and class 2, is that when a couple are taxed as class 2 tax payers, their joint income and joint allowances are summed up and subject to common assessment. The class 2 tax may be lower than class 1, but the total effect depends on the total economy of the family, and on which allowances can be made. See the Parliament's tax decisions for the year 2003 (tax decisions are taken annually by the Parliament (Stortinget); according to the Norwegian Constitution (Grunnloven of 17 May 1814) and constitutional doctrine, tax decisions are not considered as legislation but as plenary decisions).

B8 - A married or registered couple can choose whether to have separate or common assessment. It will depend on their income whether separate or common assessment gives the highest income tax (art. 2-10 to 2-12 of the Tax Act of 26 March 1999 No. 14).

B9 - Public health insurance covers medical costs for married spouses and registered partners. Public health insurance covers medical costs of the other cohabitant only if the couple have children together, previously have had children together or previously have been married (or registered partners) (art.1-5 NIA). (Only the last alternative will apply to same-sex cohabitants.)

B10 - See note B8 old / B16 new - It depends on the municipality social welfare office's discretionary power.

B11 - See note to B10 old / B17 new - Married spouses, registered partners, and cohabitants if the couple have children together, previously have had children together or previously have been married (or registered partners), get less pension than singles (art. 3-2, 3-3, 19-5 and 1-5 NIA).

B12 - Married and registered partners may have survivor's pension pursuant to chapter 17 of the NIA. The same applies to cohabitants if the couple have children together, previously have had children together or previously

have been married (or registered partners) (art. 1-5 NIA). (Only the last alternative will apply to same-sex cohabitants.)

B13 - Surviving married partners are exempted from paying any inheritance tax (art. 4(3) of the Act Relating to Inheritance Duty and Duty on Certain Gifts of 19 June 1964 No. 14). The same applies to surviving registered partners (art. 3(2) PA). By Act of 28 June 2002 No. 49, art. art 4(3) of the Act Relating to Inheritance Duty and Duty on Certain Gifts was amended, and the present provision applies to informal cohabitants (same-sex and different-sex). Informal cohabitation is defined in art. 47a, which refers to art. 1-5 NIA, i.e. informal cohabitants who have children together, who previously have had children together, or who previously have been married (or registered partners). Only the last alternative will apply to same-sex cohabitants.

Table B - part three (Norway): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1993)	Different-sex	Same-sex
14. Relationship can result in higher property tax	No	X	X	No	No	No
15. Relationship can result in higher income tax	No	X	X	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	No, but	X	X	No, but	No, but	No, but
17. Relationship can have negative impact on statutory old age pension	Yes	X	X	Yes	Yes, but	No, but
Level of legal consequences	1x3 + 1x1 + 2x0 = 4	4x0 = 0	4x0 = 0	1x3 + 1x1 + 2x0 = 4	1x2 + 1x1 + 2x0 = 3	2x1 + 2x0 = 2

Notes to table B - part three

B14 - The Parliament's tax decisions for the year 2003.

B15 - See note B8 - A married or registered couple can choose whether to have separate or common assessment. It will depend on their income whether separate or common assessment gives the highest income tax (art. 2-10 to 2-12 of the Tax Act of 26 March 1999 No. 14).

B16 - It depends on the municipality social welfare office's discretionary power.

B17 - Married spouses, registered partners, and cohabitants if the couple have children together, previously have had children together or previously have been married (or registered partners), get less pension than singles (art. 3-2, 3-3, 19-5 and 1-5 NIA).

Table C (Norway): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1993)	Different-sex	Same-sex
73. One partner can have or use surname of the other	Yes	X	X	Yes	Yes, but	Yes, but
74. Foreign partner of resident national is entitled to a residence permit	Yes	X	X	Yes	>2 years: Yes (1990)	>2 years: Yes (1990)
75. Relationship makes it easier for foreign partner to obtain citizenship	No	X	X	No	No	No
76. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	X	X	Yes	Yes, but	Yes, but
77. When one partner uses violence against other partner, specific statutory protection applies	Yes	X	X	Yes	Yes	Yes
78. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	X	Yes	Yes	Yes
79. Organ donation from one living partner to the other is lawful	Yes	X	X	Yes	Yes	Yes
80. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	Yes, but (1991)	Yes, but (1991)
81. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	7x3 + 2x0 = 21	9x0 = 0	9x0 = 0	7x3 + 2x0 = 21	4x3 + 3x2 + 2x0 = 18	4x3 + 3x2 + 2x0 = 18

Notes to table C

C1 - Married spouses and registered partners may use the surname of the other; art. 4 (1)(1) of the Act Relating to Names of Natural Persons of 6 July 2002 No. 19. The same applies to informal cohabitants who have children together or have been living together for more than two years (art. 4(2)).

C2 - Art. 9 of the Immigration Act of 24 June 1988 No. 64. This article uses the concept of 'closest members of the family', which is defined by art. 23(b) of an administrative regulation of 21 December 1990 (No. 1028); this definition includes informal cohabitants who have been living together for more than two years and who intend to keep on living together.

C3 - The provisions on citizenship do not say anything about this question.

C4 - Married spouses and registered partners can refuse to testify against the other (art. 122 of the Criminal Procedure Act of 22 May 1981 No. 25). The same applies to persons living together in a marriage like relationship; i.e. informal cohabitants who have for some period of time lived together or have children (or are expecting children) have the same status as married couples and registered partners.

C5 - Art. 228 of the General Civil Penal Code art. 228. ('Civil' is in contrast to military; there also is a military criminal code.)

C6 - Art. 3-3 of the Act of 2 July 1999 No. 63. The legal situation on this point was the same prior to 1999.

C7 - Art. 1 of the Transplantation Act of 9 February 1973 No 6. The act does not say anything about couples or partners.

C8 - Widows, widowers and widowed registered partners may continue to rent the home (art. 8-2 of the Tenancy Act of 26 March 1999 No 17). The same applies to informal cohabitants who have lived together for more than two years or who have children together or are expecting children together (art. 1 of the Act Relating to the Right to the Joint Residence and Household when a Household Community Ceases to Exist of 4 July 1991 No. 45).

C9 - Neither married couples, registered partners nor informal cohabitants have a duty to have sexual contact. However, in order to be registered partner it is provided that you are homosexual (PA art 1), but this does off course not imply that you are obliged to be sexually active. If a spouse, registered partner or informal cohabitant, by force compels his or her partner to perform sexual activities, this may constitute a rape under Norwegian law.

Table D (Norway): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status)
1. With respect to housing	Yes (1993)	No	No	Yes (1981)
2. With respect to life insurance	Yes (1993)	No	No	Yes (1981)
3. With respect to health insurance	Yes (1993)	No	No	Yes (1981)
4. With respect to medically assisted insemination	No	No	No	No
5. With respect to other services	Yes (1993)	No	No	Yes (1981)
6. With respect to an occupational survivor's pension	Yes (1998)	No	No	Yes (1998)
7. With respect to other spousal benefits in employment	Yes (1998)	No	No	Yes (1998)

Notes to table D

D1 - Discrimination because of homosexual lifestyle is a punishable offence (art. 349a of the General Civil Penal Code, as amended by the Act of 8 May 1981 No. 14)

D2 - See note D1.

D3 - See note D1.

D4 - Art. 2-2 of the Act on Biotechnology of 5 August 1994 No. 56.

D5 - See note D1.

D6 - Employment discrimination because of homosexual lifestyle is forbidden by Art. 55a of the Worker Protection and Working Environment Act (Lov om arbeidsmiljø) of 4 February 1977, as amended by the Act of 30 April 1998 No. 24.

D7 - See note D6.

Table E (Norway): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex (1993)
Resident national with:	95. Resident national	Yes	X	X	Yes
	96. Non-resident national	Yes	X	X	Yes
	97. Resident foreigner	Yes	X	X	Yes
	98. Non-resident foreigner	Yes, but	X	X	Yes, but
Non-resident national with:	99. Non-resident national	Yes	X	X	No
	100. Resident foreigner	Yes	X	X	Yes, but
	101. Non-resident foreigner	Yes, but	X	X	No
Resident foreigner with:	102. Resident foreigner	Yes	X	X	Yes, but (2001)
	103. Non-resident foreigner	Yes, but	X	X	Yes, but (2001)
Non-resident foreigner with:	104. Non-resident foreigner	Yes, but	X	X	No
105. Sister or brother with sister or brother		No	X	X	No
106. Parent with child		No	X	X	No

Notes to table E

E1 - Chapter 1 MA and art. 2 PA regulate these questions. People are qualified for starting a civil marriage or registered partnership if the general requirements (age 18, not close relatives, not mentally incapacitated, not already married, not already registered as partner) are fulfilled. For civil marriage there are no restrictions concerning the residence or citizenship of the parties involved; however non-resident foreigners who wish to marry or register as partners in Norway, must be there on a legal basis (art. 5a MA; see P. Lødrup, 'Norway', in: C. Hamilton & A. Perry (eds.) *Family Law in Europe*, London/Edinburgh, 2002, p. 497). For partnership registration at least one of the partners must be a habitual resident in Norway; this residency must have lasted for at least two years prior to the registration, unless the resident partner has Norwegian, Swedish, Danish, Icelandic, Finnish or Dutch citizenship (art. 2(3) PA).

E2 - See note E1.

E3 - See note E1.

E4 - See note E1.

E5 - See note E1.

E6 - See note E1.

E7 - See note E1.

E8 - See note E1.

E9 - See note E1.

E10 - See note E1.

E11 - Art. 3 MA prohibits marriage between sisters and brothers. According to art. 2(1) PA this also applies to partnership registration.

E12 - Art. 3 MA prohibit marriage between parent and child. According to art. 2(1) PA this also applies to partnership registration.

Table F (Norway): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1993)
50. Registry of births, marriages and deaths	No	X	X	No
51. Local population administration	No	X	X	No
52. Church	Yes	X	X	No
53. Court	No	X	X	No
54. Private person with special authorisation	No, but	X	X	No, but
55. Public notary	Yes	X	X	Yes
56. Administrative magistrate	No	X	X	No

Notes to table F

F1 - The Registry of births, marriages and deaths has no authority to start a marriage or registered partnership in Norway. They are merely a register, and a branch of the local tax authorities.

F2 - See note F1.

F3 - Civil marriages may be started in a church (art. 12 MA). The churches are not available for entering a registered partnership (art. 2(2) PA). It was a part of the compromise in the Norwegian parliament when the PA was passed, that the church should not have anything to do with the ceremony, and that the word marriage was reserved for the regular civil marriage.

F4 - The courts have the authority to end marriages and registered partnerships, but not to start them.

F5 - In areas where there are a very long distance to the nearest church or public notary, the government may give private persons a special assignment for starting marriages.

F6 - Art. 12 MA. The *notarius publicus* is an ordinary judge who also is competent to do marriages and partnership registrations.

F7 - Not applicable.

Table G (Norway): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1993)
43. By court decision (after joint or individual petition)	Yes, but	X	X	Yes, but
44. By mutually agreed contract (outside court)	No	X	X	No
45. Unilaterally by one partner (outside court)	No	X	X	No
46. By conversion of marriage into registered partnership, or vice versa (outside court)	No	X	X	No
47. By one registered partner marrying a third person (or starting a registered partner with a third person)	No	X	X	No
48. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
49. By administrative decision (after joint or individual petition)	Yes	X	X	Yes

Notes to table G

G1 - In Norwegian divorce law, the courts rarely have a role to play (for example in cases of domestic violence, or where the marriage or partnership is void; see art. 23 and 24 MA and art. 3(2) PA). See P. Lødrup, 'Norway', in: C. Hamilton & A. Perry (eds.) *Family Law in Europe*, London/Edinburgh, 2002, p. 504-506.

G2 - See G7.

G3 - See G7.

G4 - Marriage must be with partners of different sex and registered partnership must be with partners of same sex.

G5 - Idem.

G6 - Idem.

G7 - After one year of separation (or after two years of cessation of cohabitation), either spouse or registered partner (or both spouses/partners jointly) can ask the County authorities (*Fylkesmanner*) for a divorce by administrative decision (art. 21 and 22 MA and art. 3(2) PA).

Some literature in English

- Maarit Jänterä-Jareborg, 'Registered partnerships in private international law: the Scandinavian approach' in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 137-158.
- Peter Lødrup, 'Norway', in: Carolyn Hamilton & Alison Perry (eds.) *Family Law in Europe* (second edition), London/Edinburgh: Butterworths, 2002, p. 493-519.
- Yuval Merin, *Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States*, Chicago/London: The University of Chicago Press, 2002, p. 80-94.
- Tone Sverdrup, 'Norway', in: K. Boele-Woelki, B. Braat & I. Sumner (eds.), *European Family Law in Action, Volume I - Grounds for Divorce*, Antwerp: Intersentia, 2003.
- Tone Sverdrup, 'Norway', in: K. Boele-Woelki, B. Braat & I. Sumner (eds.), *European Family Law in Action, Volume II - Maintenance between Former Spouses*, Antwerp: Intersentia, 2003.

Major legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners in Sweden

by Hans Ytterberg ¹
and Kees Waaldijk ²

Symbols and words used in the national tables:

Applicable answer	Answer code	Colour	Points given for calculation of level of legal consequences
The legal consequence applies.	Yes	White	3 pt
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	Light pink	2 pt
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	Middle pink	1 pt
The legal consequence does not apply.	No	Dark pink	0 pt
No information was available on this point, or the legal position is unclear.	Doubt	Middle pink	1 pt
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	Dark pink	0 pt

Additional information	Answer code
The legal consequence is only available after the specified number of years.	>x years
The legal consequence is only available after the specified number of months.	>x months
Year of entry into force of the legislation providing the legal consequence (or the particular relationship type), or year of supreme court decision establishing its existence. (Where two years are given, the first indicates the introduction of a more limited version of the consequence; where no year is given, the legal consequence mostly applies since the introduction of the particular relationship type, or already for a long time.)	(Year)

Introduction

¹ Associate Judge of Appeal and Ombudsman against Discrimination on grounds of Sexual Orientation, www.homo.se.

² Universiteit Leiden, www.emmeijers.nl/waaldijk.

The tables refer to the legal situation as of 5 April 2004.

The term '*resident*' in the tables and notes shall be taken as meaning the same as what is often called 'having habitual residence' in private international law.

A reference between brackets containing a year, ':' and a number, refers to the year and number of publication in SFS (Svensk författningssamling), i.e. the official bulletin for the publication of all Acts of Parliament and Government decrees. Example: Registered Partnership Act (1994:1117). A searchable free of charge data base - albeit in Swedish language only - of all Acts of Parliament and Government Decrees presently in force, as well as some of the travaux préparatoires can be found at the web site of the Swedish Parliament at www.riksdagen.se/debatt/Index.asp. For Acts of Parliament and Government Decrees, you then click on '*Författningar i fulltext*' (full text) or '*Författningsregister*' (references to amendments and dates of entry into force and reference data to search for texts of travaux préparatoires). Then you either type the number of the Act (or Government Decree) in the box titled '*SFS-nummer*' or you type any word you expect to be found in the text of the document in the box titled '*Fritext*'. For access to the full text of the travaux préparatoires of Acts of Parliament from 1993 and onwards, you instead click on '*Propositioner och skrivelser*'.

The Registered Partnership Act (also in English) and the Cohabitation Act can also be found at the web site of the Ombudsman against Discrimination on grounds of Sexual Orientation at www.homo.se. An English translation of the Registered Partnership Act can also be found in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003. For translations into English of (other) Swedish Acts of Parliament or Government Decrees, please write to: Regeringskansliet, SE-103 33 STOCKHOLM, Sweden.

Civil marriage

According to older Swedish law, a marriage brought with it several important legal consequences on a personal level. Thus, in older times a woman's public rank and status would follow that of her husband. Domestically her husband would also have the right to take decisions with respect to the children and servants of the common household. He would also be the legal guardian of his wife in all matters except where she was the defendant in a criminal investigation or in matters of legal conflict between the spouses themselves.

With the introduction of the Matrimonial Code [Giftermålsbalken] of 1920, the position of the husband as legal representative of his wife disappeared altogether. From then on, under Swedish law, spouses are considered equal with respect to both economical and personal status matters. The purely personal rights and obligations between spouses were considered to be more of an ethical nature and were only reflected in legal terms in a catalogue (chapter 11 of the Code) of acts committed by one spouse, which gave the other spouse an immediate right to divorce. This list of reasons for immediate divorce was abolished in the reform of 1973 (Prop. [Government Bill] 1973:32, bet. [Parliament Standing Committee Report] LU 1973:20). Since then, marriage and divorce law in principle ignores how spouses treat each other from a purely personal perspective.

Under older Swedish marriage law, there was an obligation for the spouses to live together. To obtain dissolution of a marriage, a court order regarding physical separation was therefore necessary. Present day marriage legislation contains no corresponding obligations.

Today's Marriage Code [*Äktenskapsbalken* (1987:230)] entered into force 1 January 1988. Under this Code the spouses are equal. The general principle is that each spouse is the owner of her or his property and is solely responsible for her or his debts. However, there are some legal restrictions on what a spouse can do with important parts of her or his property, notably e.g. the common home, without the formal consent of the other spouse. Upon divorce, there is also a right to redistribution of property between the former spouses in the absence of a pre-nuptial agreement. Scattered provisions throughout Swedish legislation make reference to the marital status of a person. In general, however, spouses are treated as individuals rather than as couples. Exceptions from this general approach are found primarily in rules on property (fortune) taxes and parts of social security and pension law.

There is at present no possibility for same-sex couples to marry under Swedish law. Different-sex partners can, on the other hand, not register their partnership; see below regarding this latter legal instrument. The Swedish Parliament, however, on 29 April 2004 requested that the Government set up a special commission to look into the possibility of amending the Marriage Code in order to make it gender neutral.

For a comprehensive guide to the Swedish Marriage Code, albeit in Swedish, see Tottie, Lars, *Äktenskapsbalken* [a commentary to the Marriage Code], Norstedts Förlag, Stockholm 1990.

Registered partnership

The Registered Partnership Act [*Lag* (1994:1117) *om registrerat partnerskap*] entered into force 1 January 1995 (Bet. [Parliament Standing Committee Report] 1993/94:LU28). The Act was adopted explicitly to create a possibility for same-sex couples to legalise their relationship in order to have most of the legal rights and obligations of a heterosexual marriage applied to their relationship. At the same time, to simply open up access to marriage under the Marriage Code itself for same-sex couples was not considered politically possible.

According to the general equal treatment rule of the Registered Partnership Act (art. 1 of chapter 3), the legal consequences of a registered partnership are the same as that of a marriage and all provisions in Swedish law regarding married spouses apply *mutatis mutandis* to registered partners, unless specifically exempted.

Originally the possibility of adopting children, jointly or in the form of second-parent adoption, as well as the possibility to exercise joint custody over children, was exempt from this rule. Through an amendment of the Registered Partnership Act, which entered into force on 1 February 2003 (Förordning (2002:769) om ikraftträdande av lagen (2002:603) om ändring av lagen (1994:1117) om registrerat partnerskap [Government Decree (2002:769)] on the entering into force of the Act (2002:603) amending the Registered Partnership Act [1994:1117]), registered partners and married spouses are now treated equally also in these respects. Still exempted from the material rule of equality between married spouses and registered partners are provisions regarding presumption of paternity of children and access to assisted procreation within the public health service.

Informal cohabitation

Some statutory minimum protection for the financially more vulnerable party in a cohabiting different-sex couple has been in existence under Swedish law since 1974. With legal effect from 1 January 1988, similar legislation was introduced for same-sex couples. As of 1 July 2003 these earlier existing separate pieces of legislation that have applied to informal cohabitation depending on whether the cohabitantes are of the same sex or different sexes respectively, are now merged into one single Cohabitation Act (2003:376) (Prop. [Government Bill] 2002/03:80, bet. [Parliament Standing Committee Report] 2002/03:LU19). The merger brings about only few material legal changes.

For the Cohabitation Act to apply to couples (irrespective of sexes), there is no need for any registration or similar formalities. After a certain time (no statutory time limit exists) of cohabitation, the rules of the Act simply begin to apply, provided that both persons are unmarried and not in a registered partnership, that they share a common household and that their relationship is of the kind, in which sexual relations is generally an integral part. In the individual case, however, a sexual relation between the parties concerned is no requirement for the rules to apply. The provisions concern only the joint home and household goods. Such property is subject to redistribution rules in the event of a breakdown of the relationship. There are also restrictions regarding the right of a cohabitant to dispose of her or his property, which is used as common home or household goods to the couple, without the formal consent of the other cohabitant.

Abbreviations

FB = the Parents and Children Code [*Föräldrabalken* (1949:381)].

ÄktB = the Marriage Code [*Äktenskapsbalken* (1987:230)]

PL = the Registered Partnership Act [*Lag* (1994:1117) *om registrerat partnerskap*]

Cohabitation Act = *Sambolag* (2003:376); in force 1 July 2003, replacing *Lag* (1987:232) *om sambors gemensamma hem*, i.e. the Cohabitees (Joint Home) Act and *Lag* (1987:813) *om homosexuella sambor*, i.e. the Homosexual Cohabitees Act, both in force 1 January 1988

1999 Sexual Orientation Discrimination Act = *Lag* (1999:133) *om förbud mot diskriminering i arbetslivet på grund av sexuell läggning*

Table A (Sweden): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	Yes	X	X	No	No, but	No
2. Medically assisted insemination is lawful for women in such a relationship	Yes	X	X	Yes, but	Yes	Yes, but
3. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	No, but	X	X	No, but	No, but	No, but
4. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	Yes	X	X	Yes (2003)	No	No
5. Partners can jointly adopt a child	Yes	X	X	Yes (2003)	No	No
6. One partner can individually adopt a child	No, but	X	X	No, but	Yes, but	Yes, but
7. Partners can jointly foster a child	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	5x3 + 2x1 = 17	7x0 = 0	7x0 = 0	3x3 + 1x2 + 2x1 + 1x0 = 13	2x3 + 1x2 + 2x1 + 2x0 = 10	1x3 + 2x2 + 1x1 + 3x0 = 8

Notes to table A

A1 - Art. 1 of Chapter 1 FB. This provision on statutory legal parenthood for the husband, over a child born by a married mother was already from the start exempt from the general rule in art. 1 of chapter 3 PL that all legal consequences of a marriage apply in the same way for a registered partnership and registered partners. The exception is still found in art. 3 of chapter 3 PL. When a child is born by an *unmarried* woman, her male partner (informal cohabitation) can become the legal parent of the child by signing a confirmation that he is indeed the father. For such a confirmation to become legally valid and binding, it must however also be approved both by the mother and by the local social security board (art. 3-4 of chapter 1 FB). As the law now stands, a female partner of the mother can only become a legal parent of the child through a step child (second-parent) adoption.

A2 - The key words here are 'lawful for women'. Medically assisted insemination is yet another area which was exempt (art. 2 of chapter 3 PL) from the equal treatment clause of the Registered Partnership Act. This means that access to assisted procreation through the public health system is denied to lesbian couples. It is even a punishable offence (art. 7 of the Insemination Act [*Lag* (1984:1140) om insemination] to perform insemination on a woman who is neither married nor living in a long-term relation with a man, if it is done 'habitually' or for money. For a woman living in a lesbian relationship it is however perfectly lawful to have the insemination carried out in private with the non-commercial assistance of e.g. a male friend or to go to a clinic abroad. At the time when the possibilities of being considered for joint and second-parent adoption were opened up for registered same-sex partners, the government announced that it would come back to Parliament with a bill making also assisted procreation available on equal terms for lesbian couples as soon as possible. However, no such bill has been presented yet.

A3 - A partner - of whatever sex and civil status - can never have parental authority over his or her partner's child, together with the parent. Nevertheless, some *responsibilities* can fall upon such a partner in relation to the child. The partner is obliged to support the child financially together with his or her partner who is a

parent of the child, to the extent that the child can not obtain sufficient child support from the other legal parent who is not living with the child. This special obligation can occur only if the partner is the married or registered partner of the parent of the child, or if they, apart from the child in question, also have other children who are the children of both partners (art. 5 of chapter 7 FB). With respect to the former condition, the obligation could occur in the case of same-sex couples only from the entry into force of the Registered Partnership Act on 1 January 1995. With respect to the latter, the situation can clearly occur from 1 February 2003 when the amendment opening up the possibility for registered partners to adopt children together entered into force. However, also for same-sex informal cohabitants, at least theoretically, the situation could occur. This could be the case if they were joint adoptive parents after legally having adopted a child together (or after a second-parent adoption) abroad, where according to the law of that country such adoptions are possible. Under Swedish private international law, such an adoption is then valid also in Sweden automatically, albeit only under certain conditions (see art. 3 of the Act on International Legal Relations concerning Adoption [*Lag (1971:796) om internationella rättsförhållanden rörande adoption*]).

A4 - Married spouses as a general rule can only adopt jointly (art. 3 of chapter 4 FB). An exception from that general principle is given for the situation where one spouse wants to adopt a child of the other spouse, in order for them both to become the legal parents of that child (art. 3 last sentence of chapter 4 FB). In accordance with the general equal treatment rule of the Registered Partnership Act (art. 1 of chapter 3), the same applies to registered partners. Only married spouses and registered partners are allowed to adopt each other's children (a contrario art. 1 of chapter 4 FB). Therefore these possibilities do not exist for informal cohabitants of whatever sexes.

A5 - Art. 3 of chapter 4 FB and art. 1 of chapter 3 PL. Through the amendment of the Registered Partnership Act that entered into force 1 February 2003 (see also the general note above), registered partners can now adopt children jointly (including all forms of international adoptions) on the same conditions as married spouses. Only married spouses and registered partners are allowed to adopt jointly (art. 4 of chapter 4 FB).

A6 - According to art. 3, first sentence, of chapter 4 FB and art. 1 of chapter 3 PL, married spouses and registered partners are only allowed to adopt jointly or to adopt the child of the spouse/registered partner in order for both spouses/registered partners to become legal parents of that child. This general rule has one exception. According to the provision in art. 3, second sentence, of chapter 4 FB and art. 1 of chapter 3 PL, a spouse or registered partner may adopt individually if the other spouse or registered partner has disappeared or is suffering from a serious mental disorder. When it comes to informal cohabitants (of whatever sex), there is no legal provision stopping them from adopting individually. Since they will need the consent of the local social security board (subject to legal appeal) to obtain a court ruling granting the adoption, this may however be difficult in practice. During the home investigation, which is carried out to assess whether an adoption would be in the best interest of the child, questions would probably be raised as to why the cohabitants do not opt to marry or register their partnership in order to be able to adopt the child jointly. An unwillingness to do so may perhaps be interpreted as a sign of instability of the relationship or inability to put the best interest of the child first. I do not know of any such applications being turned down for this reason, however.

A7 - Without the permission of the local social security board (*'socialnämnden'*), a child must not be received for the purpose of care or fostering in the home of anyone who is not a legal parent of the child or who does not have parental authority over it (art. 6 of chapter 6 of the Social Services Act [*Socialtjänstlagen (2001:453)*]). There are no provisions with respect to sexual orientation or civil status in the Act, defining who can obtain such a permission. Sometimes when a child is placed in foster care also the parental authority over the child is transferred to the foster 'parents'. Such a transfer is possible under art. 10a of chapter 6 FB. This provision together with art. 1 of chapter 3 PL and art. 1 of the Cohabitation Act (*Sambolag [2003:000]*) respectively makes no difference between same-sex and different-sex couples.

Table B - part one (Sweden): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
1. Properties of each partner are considered joint property	No	X	X	No	No	No
2. Debts of each partner are considered joint debt	No, but	X	X	No, but	No, but	No, but
3. In case of splitting up, statutory rules on alimony apply	Yes	X	X	Yes	No	No
4. In case of splitting up, statutory rules on redistribution of properties apply	Yes, but	X	X	Yes, but	Yes, but	Yes, but (1988)
5. In case of wrongful death of one partner, the other is entitled to compensation	Yes (2002)	X	X	Yes (2002)	Yes (2002)	Yes (2002)
6. When one partner dies without testament, the other is an inheritor	Yes, but	X	X	Yes, but	No, but	No, but
Level of legal consequences	2x3 + 2x2 + 1x1 + 1x0 = 11	6x0 = 0	6x0 = 0	2x3 + 2x2 + 1x1 + 1x0 = 11	1x3 + 1x2 + 2x1 + 2x0 = 7	1x3 + 1x2 + 2x1 + 2x0 = 7

Notes to table B - part one

B1 - Chapter 7 ÄktB deals with property of spouses. There are no provisions that would make property of any of the spouses joint property of them both. The fact that distribution rules apply after the split-up of a marriage is a different matter, see B14 below. The same property regime applies to registered partners (art. 1 of chapter 3 PL). The Cohabitation Act also does not contain any joint property rules. Also for these relationships, there are distribution rules if the relationship breaks down.

B2 - There are no such provisions for any of the categories. A different matter is that if one spouse, partner, or cohabitant has a lot of debts, this will affect what the other will be able to get in accordance with the distribution rules after a split-up. This is so because the debts of one party have to be covered by property belonging to that party before any distribution can take place (art. 2 of chapter 11 ÄktB, art. 1 of chapter 3 PL and art. 13-14 of the Cohabitation Act). Also bankruptcy rules and some rules of procedure applicable for the purposes of securing the payment of debts of one spouse, partner or cohabitant can make it difficult to prove that certain property in joint *possession* (normally in the joint home) does not belong to the indebted partner but to the other and should therefore not be liquidated to cover the debts in question.

B3 - Art. 7 of chapter 6 ÄktB stipulates that after a divorce, each spouse is responsible for herself or himself, but also that under certain conditions an obligation to pay alimony can be imposed on one of the spouses, for a limited or longer period of time. These provisions apply also to registered partners (art. 1 of chapter 3 PL). There are no provisions on alimony in the Cohabitation Act.

B4 - Chapters 9-13 ÄktB deal extensively with the issue of distribution of properties after divorce. These provisions apply also to registered partners (art. 1 of chapter 3 PL). The possibility of opting out of the distribution rules exists through (pre-)nuptial agreements. Informal cohabitants are also subject to distribution of property rules in case of a breakdown of their relationship. These rules are found primarily in sections 8-22 of the Cohabitation Act, but only apply to the joint home and household goods (as a difference from the rules for married couples and registered partners which include all their properties as a general principle). Also for informal cohabitation, regardless of sexes, there is a possibility to opt out of most of the statutory distribution rules (art. 9 of the Cohabitation Act).

B5 - In the absence of statutory rules on this subject, case law from the Supreme Court (*Högsta domstolen*) had gradually developed. Entering into force 1 January 2002, this case law has now been codified and somewhat extended through art. 2 of chapter 5 of the Tort Act [*Skadeståndslag* (1972:207)] as amended by the Act (2001:732) amending the Tort Act. Compensation can now be claimed by anyone who was 'particularly close to

the deceased'. There is no doubt that married spouses, registered partners and informal cohabitants of whatever sex would all qualify for such compensation under this provision.

B6 - Art. 1 of chapter 3 of the Inheritance Code [*Ärvdabalken* (1958:637)] stipulates that a surviving spouse inherits from her or his deceased spouse. There are however some limitations to this right if the deceased also leaves children that are not the children also of the surviving spouse. On the other hand there is a special minimum protection rule (art. 1(2) of chapter 3 of the Inheritance Code), which even in such cases always gives the surviving spouse the right to enough property from the estate as to cover the equivalent of a certain minimum sum of money (approximately EUR 16000 for the year 2003), even if what the spouse would have a right to under the distribution rules is not enough to reach that sum. All these rules apply also to registered partners (art. 1 of chapter 3 PL). Informal cohabitants do not inherit from each other in lack of a testament. There are, nevertheless, rules applicable regardless of the sexes of the cohabitantes, that give the surviving cohabitee a certain minimum level of protection, unless the cohabitantes have opted out of the distribution rules (see B14 above). The surviving cohabitee thus always has the right to enough property from the estate as to cover the equivalent of a certain minimum sum of money (approximately 8 000 Euros for the year 2003), even if what the surviving cohabitee would have a right to under the distribution of joint home and household goods rules is not enough to reach that sum (art. 18 of the Cohabitation Act).

Table B - part two (Sweden): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
7. Relationship can result in lower property tax	No	X	X	No	No	No
8. Relationship can result in lower income tax	No	X	X	No	No	No
9. Public health insurance of one partner covers medical costs of other partner	No	X	X	No	No	No
10. Relationship can have positive impact on basic social security payment in case of no income	No	X	X	No	No	No
11. Relationship can have positive impact on statutory old age pension	No	X	X	No	No	No
12. When one partner dies, the other can get a statutory survivor's pension	Yes, but	X	X	Yes, but	Yes, but	Yes, but
13. Surviving partner pays no inheritance tax (or less than a mere friend would)	Yes	X	X	Yes	Yes	Yes
Level of legal consequences	1x3 + 1x2 + 5x0 = 5	7x0 = 0	7x0 = 0	1x3 + 1x2 + 5x0 = 5	1x3 + 1x2 + 5x0 = 5	1x3 + 1x2 + 5x0 = 5

Notes to table B - part two

B7 - There are no such rules for any of the categories, see further under B15 below.

B8 - For the purposes of income tax everyone is taxed individually.

B9 - The public health insurance is individualized.

B10 - There are no such rules for any of the categories, see also B16 below.

B11 - There are no such rules for any of the categories, see also B17 below.

B12 - In accordance with chapter 4 of the Act on Survivor's Pension and Pension for Surviving Children [*Lag (2000:461) om efterlevandepension och efterlevandestöd till barn*], the conditions for getting a statutory survivor's pension are that, at the time of death, you have not reached the age of 65 and that you and the deceased partner were living together. Furthermore, one of the two following criteria must be fulfilled: 1. You had been living together for at least five years at the time of death, or 2. at the time of death, you were living together with a child under the age of 18 over whom you, or you and the deceased together, had parental authority. This provision is applied also to registered partners (art. 1 of chapter 3 PL). For informal cohabitants, this applies if earlier they have been married to each other or have lived together in a registered partnership or if, at the time of death, they had, or had had or were awaiting children together. The latter could apply to same-sex informal cohabitation with respect to adoptive children.

B13 - According to Section 28 (as amended by the Act amending the Inheritance and Gifts Taxation Act [*Lag (2003:1198) om ändring i lagen (1941:416) om arvsskatt och gåvoskatt*]), married spouses, registered partners (by virtue of the general equality provision in art. 1 of chapter 3 PL) and informal cohabitants (with respect to same-sex cohabitants by virtue of the general equality provision in art. 1 of the Cohabitation Act) pay no inheritance tax at all.

Table B - part three (Sweden): Negative material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
14. Relationship can result in higher property tax	Yes	X	X	Yes	Yes, but	No, but
15. Relationship can result in higher income tax	No	X	X	No	No	No
16. Relationship can have negative impact on basic social security payment in case of no income	Yes	X	X	Yes	Yes	Yes
17. Relationship can have negative impact on statutory old age pension	No, but	X	X	No, but	No	No
Level of legal consequences	2x3 + 1x1 + 1x0 = 7	4x0 = 0	4x0 = 0	2x3 + 1x1 + 1x0 = 7	1x3 + 1x2 + 2x0 = 5	1x3 + 1x1 + 2x0 = 4

Notes to table B - part three

B14 - According to art. 19 and 21 of the Act on State Tax on Property [*Lag (1997:323) om statlig förmögenhetsskatt*], married spouses are taxed together for the purposes of property tax (or 'fortune tax'), as a difference from the ordinary income tax. This results in the couple reaching the limit for how much property you can own without having to pay property tax, quicker than if they had been taxed separately. The same rules apply to registered partners (art. 1 of chapter 3 PL). For informal cohabitants these 'negative' rules apply only if they have been married to each other or have been living in a registered partnership with each other before (to avoid sham divorces) or if they have, or have had, children together (art. 21 of the Act on State Tax on Property).

B15 - For the purposes of income tax everyone is taxed individually. See also under B7 above.

B16 - Rules on social security payment are found in art. 1-3 of chapter 4 of the Social Services Act [*Socialtjänstlag (2001:453)*], supplemented by art. 1 of chapter 2 of the Social Services Decree [*Socialtjänstförordning (2001:937)*]. Persons who share a common household always get a lower basic social security payment each than they would have got if they had been living alone. This is the case regardless of whether they have an intimate relation of one kind or another with any of the other members of the same household. See also under B10 above.

B17 - The pension system is extremely complicated and can not be described here in any comprehensive manner. The information is therefore limited to what is in general relevant for the majority of the population and only to strictly statutory payments. There are no such rules in the *general* statutory old age pension schemes for any of the categories. For persons born before 1954, there are some special rules due to the total reform of the Swedish pension system. For such persons being married or in a registered partnership may result in a lower old age pension than if they are single or living in informal cohabitation. The relevant legislation is primarily the Act regarding Income-based Old-age Pension [*Lag (1998:674) om inkomstgrundad ålderspension*] and the Act on Pension Guarantees [*Lag (1998:702) om garantipension*]. See also under B11 above.

Table C (Sweden): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)	Different-sex	Same-sex
82. One partner can have or use surname of the other	Yes	X	X	Yes	No	No
83. Foreign partner of resident national is entitled to a residence permit	Yes	X	X	Yes	Yes (1970s)	Yes (1970s)
84. Relationship makes it easier for foreign partner to obtain citizenship	Yes	X	X	Yes	Yes (2001)	Yes (2001)
85. In case of criminal prosecution, one partner can refuse to testify against the other	Yes	X	X	Yes	Yes	Yes
86. When one partner uses violence against other partner, specific statutory protection applies	Yes (1998)	X	X	Yes (1998)	Yes (1998)	Yes (1998)
87. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	Yes	X	X	Yes	Yes	Yes
88. Organ donation from one living partner to the other is lawful	Yes	X	X	Doubt	Yes	Doubt
89. When one partner dies, the other can continue to rent the home	Yes	X	X	Yes	Yes	Yes
90. Partners have a duty to have sexual contact	No	X	X	No	No	No
Level of legal consequences	8x3 + 1x0 = 24	9x0 = 0	9x0 = 0	7x3 + 1x1 + 1x0 = 22	7x3 + 2x0 = 21	6x3 + 1x1 + 2x0 = 19

Notes to table C

C1 - Art. 9-10 and 24 of the Names Act [*Namlagen* (1982:670)] and art. 1 of chapter 3 PL. When contracting a marriage, the spouses have some options. They can each of them keep their own surname or they can decide to take the surname of one of them as their common surname. One spouse who has taken the surname of the other as her or his surname may opt to also keep her or his own former surname as a 'middle name'. If they have chosen to keep each one their own surname, one of them may still take the surname of the other and use it as a 'middle name'. Both spouses can not use the surname of the other as a 'middle name'. These options are open to the spouses also later on during the marriage. All these options are open also to registered partners. Informal cohabitantes of whatever sex do not have these possibilities.

C2 - It has been a very long tradition (at least since the 1970s) not to tie the right to obtain a residence permit to civil status. Instead the immigration authorities have evaluated every application on its own merits, trying to determine if an intimate relationship between a legal resident and her or his non-resident foreign partner (regardless of sexual orientation) is a genuine one or not. This practice is now codified in art. 4 of chapter 2 of the Aliens Act [*Utlänningslag* (1989:529)], art. 1 of chapter 3 PL and art. 1 of the Cohabitation Act.

C3 - According to art. 12(2) of the Swedish Citizenship Act [*Lag (2001:82) om svenskt medborgarskap*], an applicant who is married to or cohabiting with a Swedish citizen can obtain citizenship after a shorter time of residence in the country than the statutory terms otherwise prescribe. It is not specified in the provision how much shorter the term can be. The rule also applies to registered partners and cohabitants of the same sex (art. 1 of chapter 3 PL and art. 1 of the Cohabitation Act). Before the entering into force in 2001 of this new Act on Swedish Citizenship, these shorter time requirements only applied to married couples and, with the entering into force in 1995 of the Registered Partnership Act, to registered partners.

C4 - Art. 3 of chapter 36 of the Code of Judicial Procedure [*Rättegångsbalk (1942:740)*] states that any person who is married to or in any similar way closely related to a party in the proceedings may refuse to testify against that party. After the entering into force of the Registered Partnership Act in 1995, the marriage exemption applies also to registered partners (art. 1 of chapter 3 PL) and informal cohabitants of whatever sex have for a long time been considered to be 'in a similar way related to a party...', for the purposes of this provision.

C5 - In 1998 the Penal Code [*Brottsbalk (1962:700)*] was amended through the Act (1998:393) amending the Penal Code, which introduced two new provisions (art. 4a(1-2)) into chapter 4 of the Penal Code, making it an specially aggravated offence to commit certain violent or threatening crimes against e.g. a partner or an ex-partner, making no distinction between married spouses, registered partners and informal cohabitants of whatever sex.

C6 - Art. 2b of the Health and Medical Services Act [*Hälso- och sjukvårdslag (1982:763)*] states that a patient shall be given individualised information about her or his state of health and about the existing methods for examination, care and treatment. If the information can not be given to the patient, it shall instead be given to 'someone who is close to the patient' (*'närstående'*). In an authoritative commentary on the Act, the term *'nära anhörig'* - which appeared in earlier versions of the Act and which must be interpreted as a more narrow concept - is described. Examples given include the person that the patient herself or himself has indicated as the next of kin upon admittance to e.g. a hospital. In the absence of such information, the term would include a spouse or informal cohabitee of whatever sex (the Registered Partnership Act did not exist at the time of release of the Commentary), children (including adopted children), parents and sisters and brothers (see Jan Sahlin, Jan, *Hälso- och sjukvårdslagen med kommentarer* ['The Health and Medical Services Act with Commentary'], 3 ed., Stockholm, Norstedts Tryckeri, 1990, p. 82).

C7 - According to Art. 7 of the Act on Transplantation [*Lag (1995:831) om transplantation m.m.*], biological material that does not reproduce itself (e.g. a kidney) may only be taken from a living human being if the donor is a relative of the receiver or otherwise is 'close to' the receiver. The purpose of this statutory limitation, according to the travaux préparatoires (*Prop. [Government Bill] 1994/95:148*), is to avoid commercial trade in organs. Spouses, registered partners and informal cohabitants of whatever sex are considered to be 'close to' the receiver. There is however one specific complication for registered partners and cohabitants of the same sex. The National Board for Health and Welfare [*Socialstyrelsen*] has issued administrative instructions and guidelines [*'Föreskrifter och allmänna råd'*] to avoid transmission of disease in relation to transplantations (SOSFS 1994:4 M - see www.sos.se/sosfs/1994_4/1994_4.htm). The instructions (binding upon health and medical services staff) forbid the use of a donor who 'can be suspected of having been exposed to hiv infection'. In the guidelines (not binding upon health and medical services staff) to this instruction, examples are given of such persons. The examples include men who have or have had sexual relations with other men. I know of no case where the issue has been raised.

C8 - Chapter 12 of the Real Estate Code [*Jordabalk (1970:994)*] deals, among other things, with the renting of houses or apartments for the purpose of using them as homes. Art. 34(2) of that chapter states that a person 'close to' (*'närstående'*) a deceased tenant who has lived in the home with the tenant, has a right to take over the contract of the apartment, unless the landlord has good reasons to object. Married spouses, registered partners and informal cohabitants are all considered 'close to' a deceased tenant for the purposes of this provision. Furthermore, they all have an even stronger right, than other persons, visavis the landlord to continue renting the home. This is a consequence of the distribution of properties rules (art. 8 of chapter 7 ÄktB, art. 1 of chapter 3 PL and art. 16, 18 and 22 of the Cohabitation Act, respectively; see B4 above).

C9 - No such obligation exists in the individual case for any of the categories. However, for an informal cohabitation to come under the provisions of the Cohabitation Act the relationship must be of such a nature, that sexual relations are usually considered an integral part of it.

Table D (Sweden): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners (1995)	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants (1995)	Between same-sex and different-sex partners (with same status)
1. With respect to housing	Yes	No	No	Yes (1987)
2. With respect to life insurance	Yes	No	No	Yes (1987)
3. With respect to health insurance	Yes	No	No	Yes (1987)
4. With respect to medically assisted insemination	No	No	No	No
5. With respect to other services	Yes	No	No	Yes (1987)
6. With respect to an occupational survivor's pension	Yes (1999)	No, but (1999)	No, but (1999)	Yes (1999)
7. With respect to other spousal benefits in employment	Yes (1999)	No, but (1999)	No, but (1999)	Yes (1999)

Notes to table D

D1 - There are no anti-discrimination provisions in Swedish law that specifically target discrimination on grounds of civil status, i.e. a non-justified difference in treatment between persons that are married and those that live in a registered partnership, in informal cohabitation or are single. Nevertheless, such differences in treatment can be construed as directly or indirectly discriminatory on grounds of (homo-)sexual orientation, which indeed is a protected category under both criminal law anti-discrimination provisions regarding goods and services and civil law provisions prohibiting such discrimination in employment. With respect to housing, art. 9 of chapter 16 of the Penal Code is applicable. This provision forbids private businesses as well as all public officials (employees as well as persons holding public office) to treat a person less favourably than they would treat another on grounds of his or her homosexual (NB not 'sexual') orientation. The provision is not applicable to the relationship between an employer on the one hand and employees or employment seekers on the other. The amendment to this provision, extending its protection from ethnic and religious discrimination only to also homosexual orientation discrimination, entered into force on 1 July 1987. However, at that point in time there was no registered partnership legislation in Sweden. Therefore, demanding that a person be married to be allowed to rent or buy an apartment or a house, would have amounted 'only' to discrimination of all unmarried persons on grounds of civil status, which is not covered by this prohibition. It also does not cover indirect discrimination, since there has to be a direct - albeit not malicious - link between the difference in treatment and the homosexual orientation. With the entering into force of the Registered Partnership Act in 1995, the issue must be judged differently. The Registered Partnership Act was adopted explicitly to create a possibility for same-sex couples to legalise their relationship in order to have access to a legal institution corresponding to that of civil marriage for heterosexual couples. Under Swedish law only different-sex couples can marry and only same-sex couples can register partnership in spite of the fact that the two systems result in virtually the same legal consequences. As a result, treating persons who are registered partners less favourably than how persons who are married would be treated most probably would amount to direct discrimination on grounds of homosexual orientation and therefore be unlawful under this penal code provision. The issue has never been tested in the courts as far as I know. However, according to an authoritative commentary on the provision, different treatment of cohabitantes (who also come under two 'different but equal' sets of rules) depending on whether they are of the same sex or different sexes, amounts to unlawful discrimination under this provision of the Penal Code (see Lena Holmqvist, '16 kap. Om brott mot allmän ordning' ['Chapter 16 On Crimes against Public Order'], in: L. Holmqvist, M. Leijonhufvud, P.O. Tråskman & S. Wennberg, 'Brottsbalken - En kommentar' ['The Penal Code - a Commentary'], Stockholm, Norstedts Juridik AB, 2002, p. 16:43-53). It is therefore most likely that the same would apply to registered partners compared to married spouses.

D2 - See D1.

D3 - See D1.

D4 - The anti-discrimination provision in art. 9 of chapter 16 of the Penal Code requires that a comparison is made between how a homosexual person is treated compared to how a heterosexual person would be treated.

This indicates that the persons compared must be, if not in an identical, at least in a similar (comparable) situation. In the case of medically assisted procreation, there are specific provisions excluding women in registered partnerships from access to such services. It is even a punishable offence (art. 7 of the Insemination Act) to perform insemination on a woman who is neither married nor living in a long-term relation with a man, if it is done 'habitually' or for money. Therefore, the situations of a married woman and a woman living in a registered partnership would probably not be considered 'comparable' for the purposes of this penal code anti-discrimination provision.

D5 - See D1.

D6 - Being married as well as being a registered partner (or living in a registered partnership) are different but equal civil statuses under Swedish law. Same-sex couples are not allowed to marry and different-sex couples are not allowed to register as partners. Instead, the Registered Partnership Act was meant precisely to create the same rights and obligations for same-sex couples as a marriage gives to different-sex couples. Therefore, if an occupational survivor's pension is included in the employment benefits for persons who work for a certain employer - private or public - it would amount to direct sexual orientation discrimination to treat married employees differently from how employees living in a registered partnership would be treated. Thus, such a difference in treatment would be unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 3 and 5. The Act makes no exception from the discrimination prohibition for differential treatment on grounds of marital status. Discrimination between *married spouses* and *same-sex informal cohabitees* could be construed as indirect sexual orientation discrimination, since same-sex couples can not marry under Swedish law, and would therefore also be unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 4 and 5. Such a difference in treatment visavis *different-sex informal cohabitees* would however not violate the discrimination prohibition since there is no general prohibition in Swedish law against discrimination on grounds of marital status alone. Discrimination between *registered partners* and *informal different-sex cohabitees* could likewise be construed as indirect (hetero-)sexual orientation discrimination, since different-sex couples can not register partnership under Swedish law, and would be unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 4 and 5. Such a difference in treatment visavis *same-sex couples* would however not violate the law since there is no general prohibition against discrimination on grounds of civil status alone in Swedish law. Discrimination between *same-sex* and *different-sex informal cohabitees* would be direct sexual orientation discrimination and therefore also unlawful under the 1999 Sexual Orientation Discrimination Act; see art. 3 and 5.

D7 - Any employer who treats employees differently with respect to any form of spousal benefits on grounds of sexual orientation violates the discrimination prohibitions in art. 3-5 of the 1999 Sexual Orientation Discrimination Act; see D6 above.

Table E (Sweden): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex (1995)
Resident national with:	107. Resident national	Yes	X	X	Yes
	108. Non-resident national	Yes	X	X	Yes
	109. Resident foreigner	Yes	X	X	Yes
	110. Non-resident foreigner	Yes	X	X	Yes
Non-resident national with:	111. Non-resident national	Yes	X	X	No
	112. Resident foreigner	Yes	X	X	Yes, but (2000)
	113. Non-resident foreigner	Yes	X	X	No
Resident foreigner with:	114. Resident foreigner	Yes	X	X	Yes, but (2000)
	115. Non-resident foreigner	Yes	X	X	Yes, but (2000)
Non-resident foreigner with:	116. Non-resident foreigner	Yes	X	X	No
117. Sister or brother with sister or brother		No, but	X	X	No, but
118. Parent with child		No, but	X	X	No, but

Notes to table E

E1 - The general principle in Swedish Private international law with respect to the possibility of entering into marriage before a Swedish authority is that the right to marry is tried for each of the future spouses individually, applying the law of the state of which he or she is a citizen; see art. 1 of chapter 1 of the Act on certain International Legal Conditions regarding Marriage and Guardianship [*Lag (1904:26 s. 1) om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*]. Therefore when a Swedish national wants to marry another Swedish national, regardless of residence, internal Swedish law will apply. According to art. 3 of chapter 1 PL, the right to register partnership is always considered applying Swedish law. Originally the PL stipulated that a partnership could only be registered if at least one of the partners was a resident Swedish national (art. 2 of chapter 1 PL of 1 January 1995). This provision has since been amended by the Act (2000:374) amending the Act (1994:1117) on Registered Partnership, which entered into force 1 July 2000. The purpose of the amendment was to broaden the possibilities of partnership registration in Sweden to a wider category of same-sex couples. The provision as it stands now says that at least one of the parties must *either* be a resident Swedish national (Art. 2(2) of chapter 1 PL) *or* have been residing in Sweden for at least 2 years (Art. 2(1) of chapter 1 PL). For the purposes of the Registered Partnership Act, Danish, Dutch, Icelandic and Norwegian citizens are treated as if they were Swedish citizens (last sentence of art. 2 of chapter 1 PL). To conclude, a resident national (or of equivalent nationality) can always register partnership with another resident national (or of equivalent nationality).

E2 - Since both parties are Swedish nationals, they can always marry in Sweden; see E1. Since one of the partners is a resident Swedish national they can register their partnership; see E1.

E3 - *Marriage*: So long as the law of the state of which a resident foreigner is a citizen does not prevent him or her from marrying, neither does Swedish law; see E1. If a foreigner has been resident since at least two years he or she can also have the right to marry considered exclusively under Swedish law (art. 2 of chapter 1 of the Act on certain International Legal Conditions regarding Marriage and Guardianship). Foreigners who are not resident or who have not been resident that long can still obtain this possibility by applying specially to the Government (last sentence of art. 2 of chapter 1 of the same Act). *Registered partnership*: Since one of the partners also in this example is a resident Swedish national, the couple can register their partnership; see E1.

E4 - See E3

E5 - *Marriage*: See E1. *Registered partnership*: Since there is always a residence requirement for at least one of the parties wanting to enter into a registered partnership before a Swedish authority and according to Swedish law, partnership registration is not possible in this situation; see E1.

E6 - *Marriage*: See E3. *Registered partnership*: Since only the foreigner is a resident, he or she must *either* be a Danish, Dutch, Icelandic or Norwegian citizen (i.e. equivalent to Swedish citizenship) *or* have been residing in Sweden for at least two years for the partnership registration to be allowed; see also E1.

E7 - *Marriage*: See E3. *Registered partnership*: See E5.

E8 - *Marriage*: See E3. *Registered partnership*: As long as at least one of the parties *either* has Danish, Dutch, Icelandic or Norwegian citizenship (i.e. equivalent to Swedish citizenship) *or* has been resident for at least two years in Sweden, they can register their partnership; see E1.

E9 - *Marriage*: See E3. *Registered partnership*: As long as the resident foreigner *either* has Danish, Dutch, Icelandic or Norwegian citizenship (i.e. equivalent to Swedish citizenship) *or* has been resident for at least two years in Sweden, they can register their partnership; see E1.

E10 - *Marriage*: See E3. *Registered partnership*: See E5.

E11 - It is not allowed for sisters and brothers (biological or by adoption) to marry each other (Art. 3(1) of chapter 2 ÄktB). Half-brothers and half-sisters may not marry each other without a special permission from the state (Art. 3(2) of chapter 2 ÄktB). The same rules apply to partnership registration (Art. 3(1-2) of chapter 1 PL).

E12 - Parents and biological children are neither allowed to marry each other (Art. 3(1) of chapter 2 ÄktB), nor are they allowed to register as partners (Art. 3(1) of chapter 1 PL). However, if an adoptive parent marries the adopted child, the adoption automatically ceases to have any legal effects. The same goes for registered partnerships between adoptive parents and children (Art. 7(2) of chapter 4 FB and art. 1 of chapter 3 PL). From this you can conclude that such marriages and registered partnerships are possible. This has been widely criticised and the Government has on several occasions announced that this possibility will be abolished.

Table F (Sweden): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)
57. Registry of births, marriages and deaths	No	X	X	No
58. Local population administration	No	X	X	No
59. Church	Yes	X	X	No
60. Court	Yes	X	X	Yes
61. Private person with special authorisation	Yes	X	X	Yes
62. Public notary	No	X	X	No
63. Administrative magistrate	No	X	X	No

Notes to table F

F1 - No such possibility is provided for; see F3-F5 below.

F2 - Idem.

F3 - A legally valid marriage can be performed either by a priest belonging to the Church of Sweden (art. 3(1) of chapter 4 ÄktB) or a priest or other official of certain other churches or religious organisations (art. 3(2) of chapter 4 ÄktB). No such possibilities exist for legally valid celebrations of registered partnerships.

F4 - A legally valid marriage can also be performed by a district court judge (Art. 3(3) of chapter 4 ÄktB). The same goes for a legally valid celebration of a registered partnership (art. 8 of chapter 1 PL). The ceremonies are almost identical.

F5 - A legally valid marriage can also be performed by any individual who has received special authorisation from the County administration to do so (Art. 3(4) of chapter 4 ÄktB). The same goes for a legally valid celebration of a registered partnership (art. 8 of chapter 1 PL). The ceremonies are almost identical. The use of this alternative is less common than the one mentioned in F4 above, both for marriages and registered partners.

F6 - No such possibility is provided for; see F3-F5 above.

F7 - Idem.

Table G (Sweden): Means of ending a marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex (1995)
50. By court decision (after joint or individual petition)	Yes	X	X	Yes
51. By mutually agreed contract (outside court)	No	X	X	No
52. Unilaterally by one partner (outside court)	No	X	X	No
53. By conversion of marriage into registered partnership, or vice versa (outside court)	No	X	X	No
54. By one registered partner marrying a third person (or starting a registered partnership with a third person)	No	X	X	No
55. By the registered partners marrying each other (or by the married partners starting a registered partnership together)	No	X	X	No
56. By administrative decision (after joint or individual petition)	No	X	X	No

Notes to table G

G1 - Art. 2 of chapter 2 PL stipulates that chapter 5 ÄktB applies *mutatis mutandis* also to the dissolution of a registered partnership. Chapter 5 ÄktB provides that dissolution can be obtained by a court decision, immediately if the spouses agree and neither one of them is living with a child under the age of 16 over which that spouse has parental authority, and otherwise after a 6 months period of reconsideration (art. 1-2 of chapter 5 ÄktB).

G2 - No such possibility is provided for.

G3 - Idem.

G4 - Idem.

G5 - Idem. In fact, marrying a third person would be a criminal offence for any person who is already married or a registered partner (art. 1-1a of chapter 7 of the Penal Code).

G6 - No such possibility is provided for.

G7 - Idem.

Some literature in English

- Yuval Merin, Equality for Same-Sex Couples. The legal recognition of gay partnerships in Europe and the United States, Chicago/London: The University of Chicago Press, 2002, p. 94-103.
- Åke Saldeen, 'Sweden', in: C. Hamilton & A. Perry (eds.), *Family Law in Europe*, second ed., London/Edinburgh, Butterworth Lexis Nexis, 2002, p. 619-660.
- Matti Savolainen, 'The Finnish and Swedish Partnership Acts - Similarities and Divergencies', in: K. Boele-Woelki & A. Fuchs (eds.), *Legal Recognition of Same-Sex Couples in Europe*, Antwerp: Intersentia, 2003, p. 24-40.
- Lars Tottie, *Äktenskapsbalken* [a commentary to the Marriage Code], Norstedts Förlag, Stockholm 1990.
- Hans Ytterberg, ' "From Society's Point of View, Cohabitation Between Two Persons of the Same Sex is a Perfectly Acceptable Form or Family Life". A Swedish Story of Love and Legislation', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 427-436.

For more literature references, see the database of the CERSGOSIG project at www.cersgosig.informagay.it/.

Sociological Questions

An epilogue to « More or Less Together »

by Eric Fassin¹

Legal discourse most often presents itself as a statement of facts, a declaration of values, or the unfolding of an argument - and sometimes, alternately or simultaneously, all of the above. For a social scientist, the comparative project put together by nine European lawyers under the direction of Kees Waaldijk is particularly fascinating because of its somewhat different presentation. It is more than facts, values, and more than an argument. Its specific interest resides in its taking the form of an artefact. The neatly-ordered tables and colorful pie-charts, as well as the near-perfect quantification (thirty-three questions, each worth up to three points, totalling a maximum of ninety-nine, thus allowing an easy calculation of percentages), keep reminding us that this comparison is indeed a methodological construct. Thus, "levels of legal consequences" (of marriage, cohabitation, and registered partnerships) should be apprehended as a *research tool*. There lies perhaps its greatest originality.

Three arguments

Not that the facts, in themselves, are of minor value: on the contrary, they provide a most useful resource. The rapid changes in the legal landscape revealed by the politicization of "same-sex unions" have been almost impossible to keep track of. Therefore, if putting together the information in this volume clearly required considerable effort, the result is definitely worthwhile, despite the constant updating it will surely require. But this accumulation of information is much more than a mere compendium of facts. The first, major argument that underlies the empirical data collected here is that, if legal consequences are to be taken into account, there is no universal definition of marriage (let alone registered partnership or even more clearly informal cohabitation): what marriage means depends on the meanings it is invested with by different societies at different points in time.

For example, in terms of legal consequences, for same-sex couples, marriage means less in Belgium than registered partnership does in Sweden and the Netherlands; and in these last two countries, informal cohabitation means more legally than registered partnership does, not only in Belgium, but also in France and Germany. The political implications of this point are obviously important. So are the practical ones: private international law could take these variations into account, and consider marriage (as well as alternative forms of legal recognition), not as a universal standard, but as currency for which rates of exchange need to be determined. But the methodological insights are no less interesting. This is a comparative project that takes into account the difficulty of comparing pears and apples - or rather different realities under the same name, as well as equivalent realities under different names.

The second argument is equally interesting: in all nine countries surveyed here, informal cohabitation entails legal consequences. One could say it is a modern form of "common law marriage". This is an important point. Otherwise, one might be tempted to characterize the rise of informal personal arrangements throughout Europe as a "privatization of private life" - individuals organizing their intimate relationships without the interference of the State. Actually, in the same way that informal cohabitation cannot be described by contrast to marriage as an absence, but rather as a different degree of commitment, it cannot be defined by an absence, but rather a lesser degree of State involvement. The battle for same-sex marriage thus reveals a broader issue in contemporary "liberal" societies that feminism had already established as its central tenet: the "two spheres" - public and private - cannot and should not be separated. "Privacy" is no absolute, even in a context of lesser institutional definition of private life.

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The third argument presented in this volume is that the registered partnerships that had appeared by 2003 in these nine European countries are to be apprehended not only in relation to marriage, but also to informal cohabitation. It is true that in some ways such partnerships can be described, in terms of their legal consequences, either as “semi-marriages” (in Belgium, France, and Germany) or as “quasi-marriages” (in the Netherlands as well as in the five Nordic countries examined here: Denmark, Iceland, Finland, Norway, and Sweden). But at the same time, these partnerships are to be understood in the context of preexisting legal definitions of informal cohabitation: the two lists would be the same – partnerships are closer to marriage in countries where cohabitation entails more legal consequences. This justifies fully studying not only partnerships and marriage, which are at the center of public debate as same-sex unions reached European political agendas, but also informal cohabitation, although it does not raise the same issues of legitimation, regardless of sexual orientation.

Process and progress

This methodological construct thus contributes much more than facts: it elaborates an argument – even a panoply of arguments. But it also implies, along with its narrative, a set of values. This is not to say that the legal experts who have contributed to this volume are “biased»: to start with, their data are not. However, their ideological commitment to the recognition of same-sex unions informs their approach: this is whiggish history, based on the assumption of the progress of sexual democracy. Of course, history supports this optimistic narrative: informal cohabitation, and its legal consequences, started gaining in importance in the 1970s, partnerships followed in the 1990s, for same-sex only and then also for different-sex couples, and since the early 2000s marriage itself has started opening to same-sex couples (in the Netherlands and Belgium), and soon in other European countries (in particular Sweden, and Spain – not included in this survey).

But at the same time, the methodological construct is organized around such premises: the standard of one hundred corresponds to different-sex marriage, and the rights (and obligations) attached to other statuses (or to same-sex couples) are measured by this standard. On this scale, the Netherlands is closest to perfect equality, not only because marriage now includes same-sex unions, but also because its legal consequences are almost equivalent to those for different-sex couples. At the other end of the scale, countries like France and Germany appear to be lagging behind. This process of modernization organizes the narrative: more rights attached to informal cohabitation seem to prepare the ground for the opening of marriage to same-sex couples. The question of sexual discrimination thus takes its place in a much broader narrative about the legal status of couples, regardless of sexuality.

Of course, some might criticize the ideological underpinnings of such a history: what is here analyzed as the progress of legal modernization could also be criticized as a process of social normalization – thus emphasizing the darker side of whiggish history. Such a perspective is present in the debates on same-sex marriage in particular: what some present as the emancipation of gays and lesbians, others will denounce as the imposition of heterosexual norms upon queer practices. But this is precisely where the methodological construct helps go beyond such an opposition: this narrative is worthwhile because it helps make sense of an evolution. It provides a perspective that illuminates reality differently. Replacing the specific issue of same-sex marriage in the context of the evolution of marriage and couples more generally sheds new light on the recent history.

The nine countries studied here may all be defined by the introduction of registered partnerships. But there is a major difference: what was early on reserved to same-sex couples in Nordic countries (Denmark, Norway, and Sweden, as well as Iceland) was then opened equally for different-sex couples (in the Netherlands, France, and Belgium). This changes the meaning of registered partnerships: what was presented as an alternative to marriage, in the early 1990s, later appeared as an intermediate form (and in social practice as a transitional stage) between informal cohabitation and marriage – and possibly as stepping-stone towards the opening of marriage to same-sex couples, as in the Netherlands and Belgium. French legislators may not have followed this path, but their anxieties reveal that this shift from alternative to transition is very much present in everyone’s mind today. Thus, the most recent examples of Germany and Finland, returning to a specific status for same-sex couples, might be understood as a reaction against this new logic.

Alternative narratives

This is not to say that the narrative underlying the present study is the only one possible. In fact, it is even more interesting if we take into account, not only the elements that confirm the logic of legal modernization and individual rights, but also those that do not quite fit in this picture of emancipation – not that they are left out of the picture, but on the contrary, as they are revealed by this study. The question is not any longer: underneath this liberal movement, is there not in fact a process of normalization? But rather: are there not different, potentially contradictory logics unfolding at the same time, and sometimes at odds in marriage (as well as registered partnership)? In this respect, two elements are of interest. One is particularly visible: parenting. The other does not stand out as much in the tables: citizenship.

To begin with citizenship, it is worth noting that whereas this issue does appear in the category “other legal consequences” (table C, 2 and 3), it is not represented on its own in the pie charts (two out nine motley consequences). This is the question raised in the study itself: do all items matter equally? For example, does the next question (table C, 4), on the right to refuse testimony against one’s partner, carry comparable weight? Of course, it depends on the perspective. Moreover, citizenship is also very important as a prerequisite, as much as a consequence (table E, first 10 questions out of 12). This is one issue where the privilege of marriage remains important - and where the benefits of registered partnership are worth a great deal. And this also perhaps an issue where the liberalizing trend underlying the narrative of this study may encounter an opposite trend towards more control: there is no “informalization” of citizenship. Thus, there may be a tension between the logic of same-sex unions, and that of mixed marriages - European states proving more liberal within their borders, and less liberal at their borders.

There is an easy transition to the other question, that of parenting - as it includes issues of international adoption (or even the globalization of the politics of reproduction, for example in access to reproductive technologies). In this study, the specificity of parenting consequences is taken into account. The pie charts based on table A are the ones with the most “pink”, and even more “red” - *i.e.* marriage matters most in issues of parenting, even more so for same-sex couples. Limitations of rights attached to same-sex partnerships (see in particular France) and even same-sex marriage are first and foremost related to parenting issues (see for example Belgium). This raises a question: what would another kind of study show, starting from parental rights, and not couple rights? Would the narrative of modernization look very different, if the parental relationship were the lens through which these issues were approached?

What we have here is perhaps a European narrative - not surprisingly, as this is a study conducted by Europeans about European countries. Parental rights may or may not follow from the rights of couples. It may very well be that the narrative would be quite different elsewhere - *e.g.* in the United States. On the other side of the Atlantic, one of the arguments frequently invoked (in the courts and outside the courts) to justify opening marriage to same-sex couples is that gays and lesbians have already established themselves as good parents. Parental rights may then open the way to rights for couples. On this side of the Atlantic, the logic seems to work the other way around: access to reproductive rights is often perceived as a potential consequence of partnership or marriage².

Is the American symmetrical version more or less than the European one based on a narrative of democratic progress? How much weight does the model of the “family” carry on each side - whether the couple’s autonomy is represented *a priori* or *ex post*? Or does the question of the family counterbalance (if not undermine) the liberal representation of individuals in either case? This would certainly be worth meditating. Let us just suggest that there is a paradox in both sequences - as births out of wedlock remain much more of a stigma on the other side of the Atlantic than on this one. In practice, babies precede unions more frequently in Europe; but legally, it is rather in the United States that marriage can be justified by the parental status. There is indeed a discrepancy, on both sides, between legal and social representations.

Law and society

This legal study initiates a discussion with the social sciences - demographers, as well as anthropologists and sociologists. Indeed, it raises anew a classical question on the relationship between law and society, *i.e.* laws and norms or practices. This question usually works in one of two ways: are laws a determining factor in social evolutions - or the other way round? This is of course a variation on the traditional metaphysical joke: which came first, the chicken or the egg? It is not likely to be answered this time either. However, it is worth considering the two sides of the question. Do social evolutions explain legal reforms? And do legal reforms explain social evolutions?

The first question leads us to pay attention to what we know of social transformations in these nine countries. In particular, since the starting point of the historical narrative provided by this study is informal cohabitation, what do we know about it? Clearly, the legal chronology here follows the social evolution: throughout Europe, marriage rates have been declining since the 1970s (or to be more accurate declined until the mid-1990s), and cohabitation rates have been rising since the 1980s. Legal rights attached to informal cohabitation and registered partnerships thus reflect this broad social evolution. However, things become somewhat more complex if we look at comparative figures for different countries.

In Southern Europe (and Ireland), cohabitation is low - which helps understand the absence of registered partnership laws, at least until today (Spain should soon force us to revise our preconceptions). But if we only consider countries included in this study, there are interesting revelations. As was to be expected, since Scandinavia first showed the way for registered partnerships, cohabitation is very high in Nordic countries - but

² This argument is developed at greater length in my article: “ Same Sex, Different Politics: Comparing and Contrasting ‘Gay Marriage’ Debates in France and the United States ”, *Public Culture*, Spring 2001, vol. 13, n° 2, pp. 215 - 232.

also, more surprisingly, in France. Cohabitation is much lower, as was to be expected, in Germany - but also, more surprisingly, in Belgium and the Netherlands³. If we look at another indicator, the same "hierarchy" can be found: extra-marital births are very low in Southern Europe and Ireland, very high in Scandinavia, but also in France, and intermediate in Germany, but also in Belgium and even the Netherlands⁴.

What this probably means is that there is no straightforward equivalence or simple causal relation between social evolutions and legal reforms. The legal ranking displayed in this study does not accurately reflect the social ranking derived from demographic surveys. What is missing from such a picture is the public sphere, in which social realities are articulated into political issues, and then potentially translated into legal realities. Politics is the process of transforming social evolutions into legal reforms, not only as a reflection of preexisting realities, but also as a performative interpretation of society. If the articulation between law and society is to be understood, it should not only take into account demographic facts, not only the way in which social actors experience these facts, but also the way they are represented politically in the public sphere.

Let us bear this in mind as we turn the question around. Are laws the key to social practices? And in particular, can the level of legal consequences be a good predictor of the frequency of partnership registration? Actually, this could also apply to the differences in marriage rates: are they related to varying legal consequences - or (more precisely), are these differences a consequence of such variations (since we already know that cohabitation rights followed the rise of cohabitation, thus decreasing the relative legal value of marriage and perhaps precipitating its statistical decline)? As Kees Waaldijk wisely points out, not only is the so-called "LLC" bound to be just one among many factors, but even that factor may be difficult to appreciate correctly as social actors may not be as knowledgeable about legal consequences as the legal experts who, with considerable effort, assembled the data for this study. We do not know very well why people do marry, or register their partnerships; and they may not know it themselves.

But at the same time, this complexity could be demonstrated thanks to this study. If both the Netherlands and France confirmed relatively high rates of registered partnerships, despite the fact that legal consequences are high in the former country and low in the latter, one could measure how little legal incentives matter. Perhaps partnerships reserved to same-sex couples prove less attractive to gays and lesbians (as seems to have been the case for Scandinavia) as they may be reluctant to endorse a "separate but equal" status⁵. Moreover, in the Netherlands, for same-sex couples, legal consequences are identical for marriage and registered partnership. Studying the intimate strategies of Dutch gay and lesbian couples will thus help understand better why people choose one or the other option - regardless of legal consequences. This may well be a way to approach the symbolic meaning attached to legal institutions.

From answers to questions

Finally, this study will probably turn out to be as interesting for the questions it raises as for the answers it helps provide. If legal consequences cannot fully account for rates of marriage or registered partnerships, then one has to wonder how the meaning of marriage is transformed by the emergence of registered partnerships, and the new rights attached to informal cohabitation. Political debates reveal a great deal about the new meaning of marriage. In France, opponents of the *pacte civil de solidarité*, in the late 1990s, and again more recently, in 2004, opponents of the recognition of same-sex marriages have been quite willing to concede practical benefits to same-sex couples, as long as they stayed clear from marriage itself. Actually, the very same politicians who had opposed the pacs now only wanted to improve it - in order not to go further in the direction of marriage.

This is not specific to France: in the United States, President George W. Bush has expressed his support for an amendment to the Constitution against "gay marriage", while conceding an interest in civil unions a few days before his 2004 (re-)election. In the same way, dissenting voices in the 2003 Massachusetts Supreme Court decision *Goodridge v. Public Health* were willing to go to great practical lengths to salvage the heterosexual exception of marriage: same-sex and different-sex couples should be equal in rights, as long as they are separate. This means that the opposition to gay and lesbian political claims aims at preserving at least the symbolic meaning of marriage.

³ Kiernan, Kathleen. "The State of European Unions: An Analysis of Partnership Formation and Dissolution.", *Dynamics of Fertility and Partnership in Europe: Insights and Lessons from Comparative Research*. Vol. 1. Edited by Macura, M. and Beets, G., UN, 2002, pp. 57-76.

⁴ « Évolution démographique récente en Europe » (« Recent Demographic Developments in Europe »), Conseil de l'Europe, 2003 (European Council), Table 3.2, p. 66.

⁵ For early comparative elements, see Patrick Festy, « Pacs : l'impossible bilan », *Population & Sociétés*, 369, June 2001. See also different contributions to the volume *Same-Sex Couples, Same-Sex Partnerships & Homosexual Marriages*, Marie Digoix and Patrick Festy eds., "Documents de travail INED", 124, 2004.

This symbolic reading of marriage may be precisely what is at stake in the practices of same-sex couples - as evidenced also in countries where civil marriage is *not* available, whether it be through religious ceremonies in the United States or "private" ceremonies of *pacs* in France. What happened in San Francisco around Valentine's Day in 2004, or a few weeks later in Massachusetts, can be understood symbolically. Many gays and lesbians who do not favor marriage were moved, even tempted by such demonstrations. The meaning of marriage was thus redefined, both for those who did marry and many others, as a form of "coming out" - a coming out for individual gays and lesbians, and a coming out of homosexuality. Marriage is a public language for intimate feelings and private practices.

This perspective is not directly part of the legal consequences studied here; but, thanks to the questions this volume raises, it becomes visible as we realize the importance of symbolic resistance to, and symbolic reclaiming of marriage for same-sex couples. This is all the more interesting as it happens precisely in an age that had been described before as "*démariage*", *i.e.* as a de-institutionalizing of marriage, transformed into a mere private choice. In fact, as the symbolic battle makes clear, marriage may be today more ambiguous than we had realized, and as the symbolic battle makes clear. Marriage as the ultimate form of "coming out" for same-sex couples is perhaps what surfaces from the paradoxes of variable legal consequences.

If the study helps rethink the definition of marriage, it also raises questions about the definition of a couple. What is a couple - today? This question is important, not only in theoretical terms, but also in political terms (who has access to the different rights linked to cohabitation, partnerships, and marriage?), as well as in scientific terms (if demographers and sociologists or anthropologists are to study couples, how are they to define them?). One might be tempted to say that a defining feature is cohabitation. This is after all the way legal rights attach to a relationship that would not otherwise be sanctioned by the State - *i.e.* through informal cohabitation (which usually entails "obviously a joint address", as Kees Waaldijk reminds us). But is cohabitation a defining element of registered partnerships? And what about marriage itself?

In fact, the criterion of cohabitation figures nowhere in this study - neither in the list of consequences, nor even in the list of prerequisites. Couples are not defined here by cohabitation. And indeed, many cohabitants would not be considered as a couple; while quite a few couples do not reside together, out of choice or necessity. Cohabitation is thus simultaneously too broad, and too narrow a criterion to define couples. But, at least in French law, does not the Civil Code state that "spouses mutually oblige themselves to a community of living" (article 215)? And is not the abandon of the home grounds for divorce: "A spouse may petition for divorce by reason of an extended breakdown of community life, where the spouses have lived apart in fact for six years." (article 237)? Certainly, jurisprudence is hesitant. But at least symbolically, does not the presumption of cohabitation still play a role in defining couples - not only according to social norms, but even legally? And is this not what links together, though implicitly perhaps, informal cohabitation, registered partnerships, and marriage?

What about sex, then? Sex does feature here. As the criterion is somewhat drily described (C9): "partners have a duty to have sexual contact." This is true for Belgium, but only in the case of marriage (both same-sex and different-sex), and more remarkably for France, not only in marriage, but also apparently both for *pacs* and *concubinage*, whether same-sex or different-sex. The French exception thus translates as compulsory sexuality (even compulsory homosexuality!). Again, the Civil Code goes further in prohibiting infidelity - but only in the case of marriage: "Spouses mutually owe each other fidelity" (article 212). But France is an exception - or almost. In addition to Belgian marriage, one could mention Swedish cohabitation (see the note to question C9: "for an informal cohabitation to come under the provisions of the Cohabitation Act, the relationship must be of such a nature, that sexual relations are usually considered an integral part of it.").

Or is it? Is France exceptional in its presumption of sexuality - or only in making it explicit? After all, as the comparative analysis reminds us, for marriage, "in all nine countries the condition applies that neither partner should be a sister, brother, parent or child of the other partner." But the same also applies to registered partnerships: "The only exception is Belgium, where intergenerational and inter-sibling partnerships can also be registered." But is this not the exception that confirms the rule? Was not this possibility preserved in Belgium precisely in order to distinguish partnerships from marriage while marriage was reserved to different-sex couples? In the same way, the Swedish loophole in the legislation may not undermine the rule. Marriage between adoptive parent and child is theoretically possible; but "this has been widely criticised and the Government has on several occasions announced that this possibility will be abolished." (see the note after question E12) In a word, rather than a radical desexualization, the systematic prohibition of incest does confirm some presumption of sexuality throughout Europe, at least for marriage and registered partnerships (questions E11 and E12 are not envisaged for informal cohabitation).

This does not mean that marriage (or registered partnerships, or informal cohabitation) should (still) be defined by cohabitation, nor even by "sexual contact". Rather, there seems to be a tension between two potentially contradictory, though equally modern logics. On the one hand, same-sex couples might point in the direction of a radical modernization (in the sense of privatization and individualization) of marriage, and other contemporary forms of organization of private life. In this perspective, a couple is defined neither by sex nor

by a home. A couple is two people who call themselves a couple - which means there is no institutional definition, but only an individual self-definition.

On the other hand, why two - if not because this reinvention of marriage is to be understood against the background of the history of matrimony? This history should not simply be understood as a legacy of the past and a burden on the present. In fact, this competing logic is no less modern - but differently. Marriage (and the lesser forms of partnership and cohabitation) cannot be understood merely as a practical arrangement, designed in terms of its legal consequences. Rather, this renewed institution should be apprehended as a symbol of gay and lesbian coming out, undermining the hierarchy of sexualities. Therefore, this other logic results in a social gesture, not simply private, as it is a claim for legitimacy, nor merely individual, as it reclaims the form of the couple.

This logic premised on the symbolic redefinition of history can thus be seen as the alternative visage of modernization. And the contemporary evolution of couples, whether same-sex or different-sex, and the legal forms of recognition they appropriate, should be understood as the point of tension between these two competing forms of modernization. There lie capacities for invention, not as the inevitable unfolding of the logic of modernity, but in the tensions of contradictory aspects of modernization, embodied in individuals trying to invent themselves as couples⁶.

⁶ Anthropological and sociological works on this tension could be traced to Kath Weston's pioneering *Families We Choose. Lesbians, Gays, Kinship* (Columbia U.P., New York, 1991), and more recently to *Same Sex Intimacies. Families of Choice and Other Life Experiments*, by Jeffrey Weeks, Brian Heaphy, and Catherine Donovan, Routledge, London and New York, 2001. I have tried to envisage the possibility of invention within marriage and family in: " Lieux d'invention. L'amitié, le mariage et la famille ", *Vacarme*, special issue on " Michel Foucault ", Fall 2004, n° 29, pp. 120-123 ; and : " Couples homosexuels et familles homoparentales ", *Femmes, sexe ou genre. L'état des savoirs*, Margaret Maruani ed., La Découverte, Paris, 2005, ch. 22, pp. 184-191.

Chapitre II

Enregistrer son union, comme d'autres se marient ?

Démographie des procédures de légalisation
des couples homosexuels et hétérosexuels
Analyse comparative dans neuf pays d'Europe

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A la suite du Danemark en 1989, neuf autres pays européens ont offert aux couples la possibilité de légaliser leur union par une procédure d'enregistrement distincte du mariage. Dans six pays sur dix (les cinq pays nordiques et l'Allemagne), la loi ne s'est adressée qu'aux couples de même sexe ; dans les quatre autres (le Benelux¹ et la France), elle concerne à la fois homosexuels et hétérosexuels. En outre, les Pays Bas puis la Belgique ont étendu aux homosexuels la possibilité de se marier, après leur avoir ouvert la voie du partenariat et de la cohabitation légale quelques années plus tôt².

La première partie du rapport s'est attachée au contenu juridique de ces procédures et à leurs conséquences légales, en comparant à la fois la situation faite aux couples homosexuels et hétérosexuels et celle faite aux participants des trois statuts de mariés, d'enregistrés (hors mariage) et de simples cohabitants. Nous nous penchons ici sur l'usage que les couples font des procédures d'enregistrement et de mariage, en mesurant la fréquence de recours à celles-ci et en les comparant. Nous nous appuyons pour cela sur les statistiques d'enregistrement, comme on le fait classiquement sur celles de mariage, et nous établissons dans quelle proportion s'engagent les couples visés par les lois des différents pays, dans les années qui suivent la mise en place de celles-ci.

Au cœur de l'étude se trouve la mesure du comportement des couples homosexuels face à des procédures d'enregistrement alternatives au mariage, à laquelle s'ajoute tout naturellement la mesure de la nuptialité de ces mêmes couples quand, aux Pays Bas et en Belgique, leur est ouverte la possibilité de se marier. Mais fait aussi partie de l'étude le cas des couples hétérosexuels à qui s'est offerte, au Benelux et en France, la possibilité d'enregistrer leur union dans une forme autre que le mariage.

L'analyse de la nuptialité est un chapitre courant de la démographie. Elle consiste, pour l'essentiel, à établir la proportion d'adultes qui se marient et à étudier ses variations à travers le temps, l'espace, les groupes sociaux, etc. Pourtant soucieuse de définir avec précision la population « exposée au risque », la statistique démographique a cependant toujours ignoré que le mariage était réservé jusqu'à présent aux couples hétérosexuels, en se fondant implicitement sur le fait que les homosexuels ne représentent qu'une proportion numérique marginale dont l'ignorance a peu de conséquences.

Cette position n'est évidemment plus tenable quand une large partie de la recherche porte sur les couples de même sexe, d'où la nécessité d'élaborer pour eux des outils d'observation et de mesure qui permettent à la fois d'établir la statistique de leur comportement et de comparer celle-ci à la statistique du comportement des couples hétérosexuels. Ainsi, ce chapitre repose sur la possibilité de distinguer, dans le dénombrement des mariages et des enregistrements alternatifs au mariage, ceux qui sont le fait des couples homo- et hétérosexuels chaque fois que la procédure est ouverte simultanément aux uns et aux autres. Il est par ailleurs nécessaire de pouvoir conduire en parallèle un dénombrement des couples eux-mêmes en distinguant ceux de même sexe et de sexe différent.

Comme le plus souvent en démographie, les statistiques nécessaires à la recherche émanent de deux catégories de source généralement gérées par les instituts nationaux de statistique : l'état civil pour les mariages ou les enregistrements et les recensements (ou équivalents : registres de population, grande enquêtes) pour le dénombrement des couples. Nous trouvons la plupart des données dans les publications des instituts de statistique (très souvent sur leurs sites internet pour les informations récentes), avec deux réserves essentielles :

- La statistique des enregistrements n'a pas atteint le degré de systématisation de celle des mariages, parce que les petits nombres empêchent la publication des mêmes détails, ou parce que la source est spécifique et qu'elle se heurte à des obstacles depuis longtemps surmontés par l'état civil ;
- Le dénombrement des couples homosexuels suppose une adaptation des instruments mis en place par les statisticiens pour les couples hétérosexuels pour faire face aux particularités du groupe, un effort qui n'a pas toujours été fait à ce jour.

La mise en place d'un réseau de correspondants auprès des instituts de statistique des différents pays a permis d'accéder aux données disponibles, y compris quand celles-ci n'étaient pas publiées³. Nous avons procédé à des estimations, justifiées dans le texte, quand il a fallu pallier des lacunes.

¹ Le cas du Luxembourg (loi du 9 juillet 2004 relative aux effets légaux de certains partenariats) n'est pas étudié.

² Le cas de l'Espagne, où le mariage vient d'être ouvert aux homosexuels sans forme alternative d'enregistrement, n'est pas étudié.

³ Nous remercions pour leur contribution Turid Noack et Ane Seierstad (Statistique Norvège), Jan Latten et Lisbeth Steinhof (Bureau Central de Statistique, Pays Bas), Anna Qvist (Statistique Danemark), Ólöf Garðarsdóttir (Hagstofa, Islande), Gunar Andersson (Max Planck Institute for Demographic Research, Allemagne).

I. Analyse comparative

Depuis quinze ans au Danemark, la possibilité est offerte à certains couples de légaliser leur union par une procédure autre que celle du mariage. Ceux qui l'ont fait ont été enregistrés en mairie, comme d'autres pour leur mariage. Des conséquences légales sont attachées à cet acte, qui ont été étudiées d'un point de vue juridique dans le précédent chapitre. Une d'elles est le changement d'état civil des partenaires, dont la statistique danoise fait la chronique depuis 1989. Nous nous fondons sur ces observations pour étudier le recours des couples à l'enregistrement de leur union, hors des liens du mariage. Nous nous interrogeons pour savoir s'ils sont nombreux à l'avoir fait.

La loi mise en application au Danemark en 1989 a ensuite eu des équivalents plus ou moins proches dans divers pays d'Europe, jusqu'en 2002 en Finlande (et 2004 au Luxembourg, que nous n'étudions pas ici). La chronique de l'enregistrement des unions dans ces pays s'établit donc sur des durées variables, la plus courte limitée à trois ans.

Nous posons la question de la fréquence du recours à la loi de manière relative, sur un mode comparatif, en nous demandant si les couples danois ont enregistré leur union plus ou moins fréquemment que ne l'ont fait leurs voisins et, plus généralement, en nous interrogeant sur les similitudes et les disparités entre pays en matière d'enregistrement. L'idée sous jacente est que les similitudes pourraient refléter des proximités dans le cadre contextuel qu'offrent les pays, au premier rang desquelles des similitudes dans les termes de leurs lois. Réciproquement et de façon plus convaincante encore, les disparités pourraient refléter celles des cadres contextuels nationaux, au premier rang desquelles des disparités législatives. L'étude démographique comparée est donc une étape vers une analyse interprétative ultérieure, qui intégrera aussi les résultats de l'analyse juridique comparée qui précède.

De manière relative encore, nous comparons la fréquence de légalisation de leur union par les couples homosexuels à la nuptialité des couples hétérosexuels, avec les réserves que les données statistiques mettent à cet exercice. Il y a là aussi des raisons pour cette comparaison dans le contenu même des lois, mais aussi dans les principes de non discrimination entre homosexuels et hétérosexuels qui ont souvent conduit à leur adoption. Les écarts que les juristes analysent entre le statut des époux et celui des partenaires enregistrés peuvent-ils contribuer à expliquer les écarts entre la fréquence des mariages et celle des enregistrements pour chacun des groupes concernés ?

Mais la référence au mariage n'est pas seulement celle d'une pratique ouverte à certains, fermée à d'autres, qui peut servir de repère commode parce que bien documenté aux plans juridique et statistique. C'est aussi la norme juridique et sociale dominante en matière conjugale, un élément clé du cadre national dans lequel viennent s'insérer de nouvelles procédures de légalisation des unions après des siècles de monopole. Or ce chapitre récent s'écrit dans une phase particulière de l'histoire du mariage, au moment où une proportion substantielle des couples concernés s'en détournent.

Dans un contexte de « démariage »

Adoptées à partir de la fin des années 1980 - au Danemark d'abord - les lois offrant une forme de légalisation aux couples homosexuels l'ont été dans un climat de défiance à l'égard du mariage de la part des hétérosexuels. Les premiers signes de ce mouvement étaient apparus dès les années 1960 en Scandinavie (Suède puis Danemark), avec une chute du nombre des mariages de jeunes couples, avant de se généraliser. Comparés à ce qu'ils étaient une quarantaine d'années plus tôt, les mariages (et les remariages) sont aujourd'hui sensiblement moins fréquents et plus tardifs ; les divorces rompent plus souvent les mariages et surviennent plus tôt dans la vie du couple ; les naissances se produisent moins systématiquement au sein de couples mariés.

Indicateurs de nuptialité en 2000

Pays	Proportion de femmes mariées avant 50 ans ^a	Age moyen des femmes au premier mariage ^b	Proportion de mariages rompus par divorce ^c	Proportion de naissances hors mariage ^d
Belgique	0,51	26,3 ans	0,45	
Danemark	0,73	29,5 ans	0,45	0,45
Finlande	0,62	28,0 ans	0,51	0,39
France	0,61	28,0 ans	0,38	0,43
Allemagne	0,59	27,0 ans	0,41	0,23
Islande	0,70	29,9 ans	0,40	0,65
Pays-Bas	0,59	27,8 ans	0,38	0,25
Norvège	0,60	28,3 ans	0,45	0,50
Suède	0,53	30,2 ans	0,55	0,55

^a Somme des taux de nuptialité de célibataires par âge en 2000.

^b Ages moyen calculé sur les taux de nuptialité des célibataires avant 50 ans.

^c Somme des taux de divorce par durée de mariage.

^d Proportion d'enfants nés de parents non mariés

Source : Evolution démographique récente en Europe : 2004 / Conseil de l'Europe. - Strasbourg : Conseil de l'Europe, 2005. - 130 p.

La proportion de femmes mariées avant 50 ans, qui était proche de 100 % au début des années 1960 dans à peu près tous les pays, est aujourd'hui comprise entre 50 et 70 %. Si les taux de nuptialité par âge qui concourent au calcul de cette proportion devaient durablement se maintenir à l'avenir, une fraction importante de jeunes femmes ne se marieraient pas au cours de leur vie conjugale - entre 30 et 50 % selon les pays (les compléments de 0,70 et 0,50 respectivement) - alors que ce pourcentage était très faible antérieurement (inférieur à 10 %). Des résultats équivalents valent pour les hommes. C'est un bouleversement majeur : dans les larges fresques historiques et géographiques, on disait de l'Europe occidentale que la nuptialité y était modérée parce que « seulement » 90 % des hommes ou des femmes s'y mariaient, par contraste avec les continents où on s'approchait au plus près de 100 % ; mais les statistiques n'avaient jamais enregistré de fréquences aussi basses.⁴

A l'inverse, le divorce est en forte hausse. Si les taux qu'on observe aujourd'hui aux différentes durées de mariage devaient se pérenniser, la proportion de couples ainsi rompus atteindrait presque partout 40 % et même 50 % dans certains pays. Au début des années 1960, le même indicateur n'approchait 1/5 qu'au Danemark (et d'un peu moins près en Suède) et plafonnait sous 1/10 dans les autres pays. Entre temps, les conditions d'accès au divorce ont été libéralisées partout, laissant plus de place à la volonté des conjoints, qu'elle s'exprime dans un accord pour divorcer ou qu'elle se constate par la rupture de la vie commune. La force du lien qui unit les deux conjoints repose de plus en plus exclusivement sur l'affinité élective qui rapproche les deux partenaires, de moins en moins sur l'institution qui établit entre eux une communauté de vie. Cette mise en cause, qui transparaît aussi bien dans la baisse du nombre de mariages que dans la hausse de celui des divorces, porte sur les fondements mêmes de l'institution matrimoniale.

Moins fréquents, les mariages sont aussi plus tardifs. L'âge moyen des femmes à leur premier mariage est compris entre 28 et 30 ans dans la plupart des pays, contre moins de 24 quatre décennies plus tôt. Les mariages sont devenus très peu nombreux avant 25 ans, les cérémonies étant reportées à des âges plus avancés, après des périodes de cohabitation informelle de plus en plus longues. Mais ce report reste incomplet, puisque la fréquence totale des mariages est en sensible recul. La situation des années 1960 était exceptionnelle en sens inverse, car on n'avait jamais enregistré depuis au moins le XIXe siècle des mariages aussi précoces ; mais on n'avait jamais noté non plus de mariages aussi tardifs qu'aujourd'hui. La situation des années 1960 était l'aboutissement d'un mouvement vers une sexualité de plus en plus précoce, mais difficile à vivre durablement hors du cadre légal du mariage, d'où l'importance numérique des « conceptions pré-nuptiales », régularisation hâtive par le mariage d'une grossesse débutée hors de celui-ci.

Le relâchement du lien entre mariage et fécondité se marque aujourd'hui par la forte proportion de naissances issues de parents non mariés, dans un éventail ouvert entre un quart et deux tiers, à comparer avec des pourcentages généralement inférieurs à 10 % en 1960⁵. Là encore, si des particularismes régionaux ou nationaux subsistent à travers le temps et créent une hétérogénéité, l'évolution est radicale et établit une

⁴ Les résultats numériques relatifs aux hommes et aux femmes étant étroitement corrélés, on considère indifféremment les uns ou les autres.

⁵ L'Islande est un cas à part, qui perd toutefois de sa spécificité à mesure que le mariage cesse d'être le cadre privilégié pour la naissance des enfants. Depuis longtemps, les naissances hors mariage sont fréquentes, déjà de l'ordre de 25 % en 1960 quand c'était moins de 10 % ailleurs en Europe occidentale et 65 % aujourd'hui contre un maximum de 50 % dans les autres pays.

situation nouvelle. La cohabitation des partenaires sans le formalisme du mariage est devenu à peu près partout un type d'union suffisamment reconnu pour que les enfants puissent y être accueillis et élevés : la grossesse de femmes non mariées mais vivant en couple stable ne provoque plus le mariage des parents à la veille de l'accouchement comme c'était le cas il y a quarante ans.

L'évolution du taux brut de nuptialité (rapport du nombre de mariages à la population de chaque pays) permet de mieux situer la chronologie des évolutions, en particulier par rapport à celle des innovations législatives concernant les couples de même sexe.

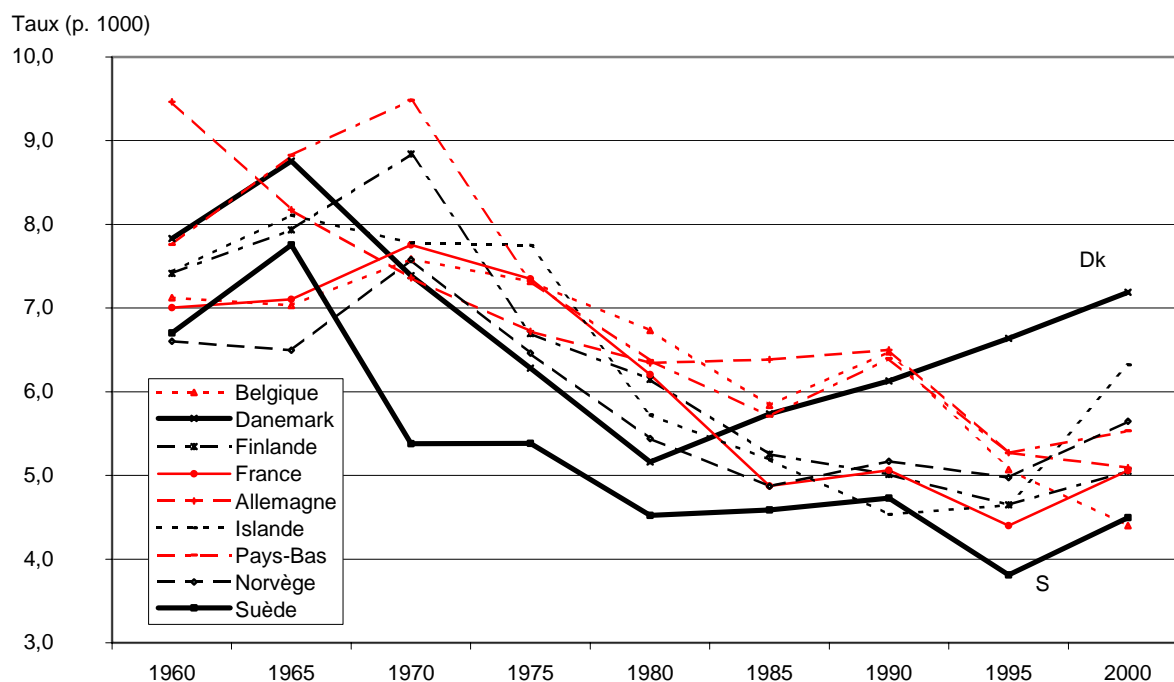
La Suède est généralement prise comme l'exemple emblématique de la longue période de recul de la nuptialité. C'est à la fois parce que le mouvement a précédé celui des autres pays, au cours des années 1960, et parce que les taux de nuptialité ont été à peu près constamment les plus faibles de tous, en particulier dans les décennies 1970 et 1980, quand la tendance se diffusait progressivement hors de l'Europe scandinave. Parce qu'il semblait donner l'exemple, on pouvait parler alors de « modèle suédois », adopté peu à peu par le reste du continent. A l'issue d'une chute, d'abord rapide puis ralentie mais toujours entretenue, le taux de nuptialité atteint un minimum au milieu des années 1990. Il est alors à un très bas niveau, inférieur à 4 pour 1 000, contre plus de 7 trois décennies plus tôt.

Non seulement la loi qui institue le partenariat homosexuel en prenant le mariage comme référence est adoptée en 1994 (et mise en application le 1^{er} janvier 1995) dans cette période d'étiage, mais l'ensemble du processus de réflexion et d'élaboration législative débuté dès les années 1980, s'est déroulé dans un contexte de très basse nuptialité, parfois considéré comme une « crise » du mariage.

Les autres pays nordiques ont emboîté le pas à la Suède avec cinq ou six années de retard (à peine une ou deux au Danemark, sur le cas duquel nous devrons revenir plus loin). La convergence est progressive : au début des années 1990, tous ont atteint une très faible nuptialité, inférieure à 5 pour 1 000.

Dans les pays non nordiques (Belgique, France, Allemagne et Pays-Bas), la France fait figure de pionnière, « à la scandinave », le taux de nuptialité descendant en-dessous de 5 pour 1 000 au milieu des années 1980, une dizaine d'années avant les autres pays de la région. Dans ces derniers pays, lorsque les diverses formes de légalisation des couples homosexuels ont été introduites, elles l'ont été avec quelques années de retard sur les voisins du nord, mais la nuptialité elle-même ne venait d'atteindre de très faibles niveaux qu'avec un certain décalage. En revanche, la France était déjà depuis plusieurs années dans cette situation au moment où a été adopté le Pacs, voire au moment où a débuté le long débat qui allait y conduire.

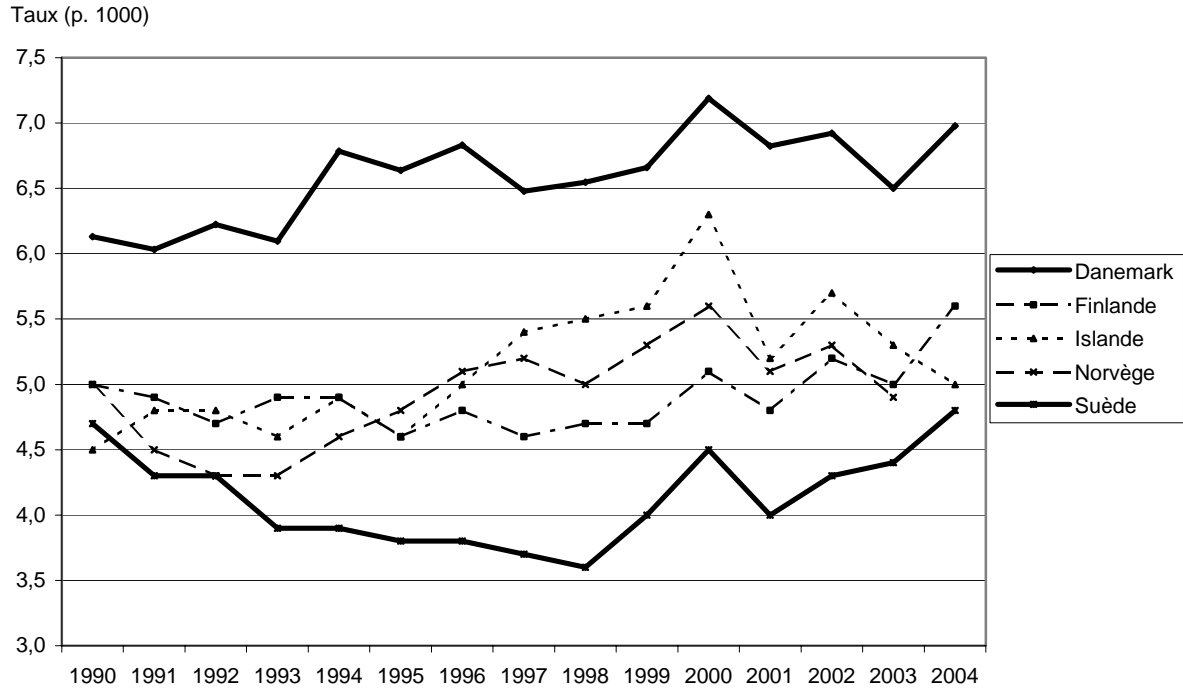
Taux brut de nuptialité (pour 1000 habitants)



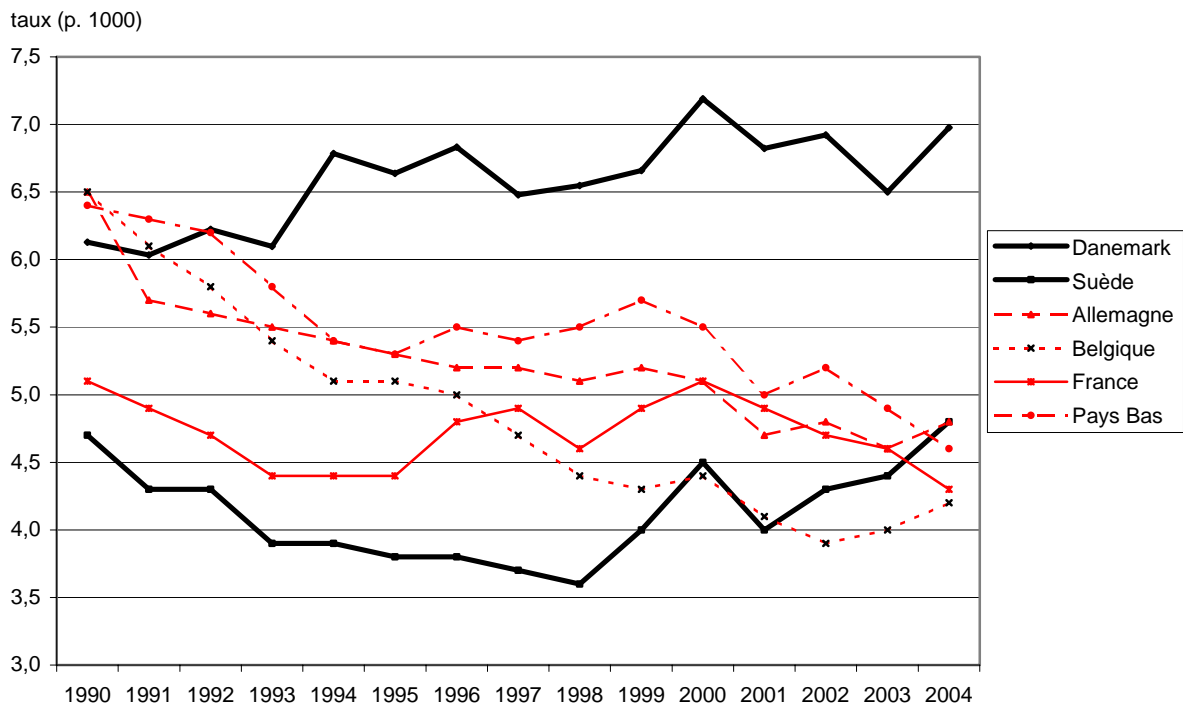
Le Danemark est un cas à part. La tendance - qui avait suivi de près celle de la Suède dans les années 1970, la nuptialité décroissant alors rapidement dans les deux pays - s'inverse brutalement dans la décennie suivante. Une reprise spectaculaire s'installe et se confirme au long de deux décennies. Le taux de nuptialité passe de 5 à 7 pour 1 000, pendant que celui de la Suède continue de décroître, même si c'est de façon irrégulière. La loi sur le partenariat enregistré a été adoptée, en 1989, alors que la nuptialité s'accroissait depuis quelques années.

Depuis que la loi est entrée en vigueur et a donné la possibilité effective aux couples homosexuels de légaliser leur union, la hausse de la nuptialité des hétérosexuels se prolonge, avec un léger ralentissement depuis 2000. Le mouvement est désormais partagé par les autres pays nordiques, dont la nuptialité s'est systématiquement relevée depuis le milieu ou la seconde moitié des années 1990. Depuis 1993 en Norvège (l'année d'adoption de la loi sur le partenariat), le taux de nuptialité est passé de 4,3 à 5,5 en 2000, avant de reculer vers 5 aujourd'hui ; depuis 1998 en Suède, il est passé de 3,6 à 4,8. La tendance est plus récente en Finlande (l'adoption de la loi sur le partenariat aussi) ; elle est plus hésitante en Islande ; mais aucune des deux ne contredit le mouvement d'ensemble de reprise de la nuptialité.

Taux brut de nuptialité. Pays nordiques



Taux de nuptialité. Divers pays



Dans les pays nordiques, si l'adoption des lois de partenariat s'est faite dans un contexte de nuptialité basse et décroissante (avec l'exception danoise, d'autant plus remarquable que le pays donne le ton en matière législative), ces lois se mettent en pratique partout au moment où la nuptialité hétérosexuelle se redresse après avoir atteint le niveau le plus bas.

Le contraste est frappant avec les pays non nordiques, où la nuptialité continue de décroître jusqu'aux années les plus récentes (Allemagne, Belgique et Pays Bas) ou reprend dès 2000 une baisse qui l'amène aujourd'hui à son plus bas niveau (France).

Dans ces pays, la mise en pratique des procédures de légalisation des couples homosexuels, plus récente que dans le nord de l'Europe, s'accompagne d'une baisse de la nuptialité hétérosexuelle.

Enregistrement des unions homosexuelles et statistiques

Depuis l'origine de la discipline, la démographie s'est appuyée sur la compilation des actes d'état civil à l'échelon local ou national (l'exemple originel est celui des *bills of mortality* de Londres utilisés par John Graunt). Les migrations, sanctionnées par un changement de résidence, sont également prises en compte par certaines administrations qui peuvent ainsi tenir à jour de façon permanente un état de la population résidente dans un registre et retracer les composantes naturelle et migratoire de la dynamique démographique. Ce n'est pas possible dans tous les pays mais, en revanche, l'état civil au sens strict inclut à peu près systématiquement l'enregistrement des mariages, qui ne concourent pas à l'évolution numérique des populations locales ou nationales mais qui sont enregistrés et comptabilisés au même titre que les naissances et les décès. L'analyse statistique de la nuptialité s'appuie essentiellement sur ces données.

Les cheminements qui conduisent de l'enregistrement des mariages à leur prise en compte statistique sont souvent plus complexes qu'on ne l'imagine à partir de l'exemple français contemporain, où une même personne reçoit en mairie les informations sur les époux et leur union, établit l'acte de mariage, organise la circulation de l'information (transcriptions en marge d'autres actes de la personne) et assure une compilation locale (avant transmission à l'institut de statistique pour les décomptes aux échelons géographiques plus élevés). Il en va à peu près de même dans les pays voisins de la France (Belgique, Allemagne et Pays Bas), mais les pays nordiques offrent plus de diversité à leurs concitoyens en leur laissant le choix de célébrer et d'enregistrer leur mariage religieusement ou civilement, le lieu civil pouvant lui-même faire l'objet d'un choix et variant d'un pays à l'autre (registre local de population, tribunal, notaire public, etc.)⁶. L'équivalent de l'officier d'état civil français n'est jamais une solution exclusive (son intervention n'est prévue en Finlande auprès du registre et au Danemark en mairie). Un regroupement est cependant assuré avec une grande efficacité dans des registres de population très performants.

En France, il a été exclu que le Pacs soit enregistré en mairie par l'officier d'état civil au même titre que le mariage : c'est le greffe du tribunal d'instance qui reçoit les pacsés. La procédure est donc strictement coupée de celle du mariage, aussi bien pour l'état civil proprement dit que pour la statistique. La situation de pacsé n'entre à aucun moment dans l'état civil des personnes (la mention n'est pas portée en marge des actes d'état civil) et la statistique est compilée par les greffes et centralisée par les services du ministère de la justice, sans intégration dans le circuit de l'institut de statistique.

Nulle part dans les pays voisins la distance avec la procédure d'enregistrement des mariages n'est aussi grande, mais la situation varie d'un pays à l'autre. Aux Pays-Bas, l'enregistrement du partenariat se fait par la même voie unique que pour le mariage : au registre de population, qui est généralement en mairie. La statistique s'établit selon la même procédure que pour les mariages. En Belgique, la cohabitation légale et le mariage sont également reçus en mairie, auprès du registre local, par l'officier d'état civil. La cohabitation légale n'est cependant pas rattachée aux autres actes d'état civil des personnes par transcription en marge. En Allemagne, la loi laisse une large liberté aux autorités locales et régionales (*länder*), d'où une grande diversité (registre, notaire public, etc.), même si la solution adoptée est unique dans chaque lieu. Dans ces deux pays, la compilation statistique reste à ce jour problématique : en Belgique, des informations ponctuelles ont été fournies sur la cohabitation légale et le mariage homosexuel par le ministère de l'Intérieur en réponse à des questions parlementaires ; en Allemagne, des informations ont été obtenues des ministères de l'Intérieur régionaux à l'initiative d'une association de juristes gays.

La situation est beaucoup plus simple et claire dans les pays nordiques. La procédure d'enregistrement des partenariats (homosexuels) est la même que celle des mariages (hétérosexuels), sauf sur un point : elle exclut l'intervention des églises. La centralisation statistique auprès des registres de population suit (à cette exception près) la même voie que celle empruntée par les mariages et la publication est faite par l'office de statistique dans des conditions similaires.

La production statistique est en outre soumise à des contraintes légales ou administratives qui en limitent la portée. Certaines sont spécifiques, d'autres sont plus générales.

En France, les décrets qui ont accompagné la mise en place du Pacs en 1999 ont limité fortement le détail possible des statistiques, en empêchant en particulier l'utilisation du sexe des partenaires comme variable de

⁶ On trouvera plus de détails dans la partie juridique du rapport : Waaldijk, Kees (ed).- *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.*- Documents de travail n° 125, Ined, 2005, 192 p.

dénombrement⁷. Ainsi, le Pacs est ouvert aux couples homo- comme hétérosexuels, mais la distinction de ceux-ci par la statistique a été rendue impossible dans les premières années d'application de la loi. Depuis lors, l'article 16 de la loi du 6 août 2004 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel a levé cette restriction, mais aucune application n'en a encore été faite par le ministère de la Justice, qui continue de publier une statistique des enregistrements (et des dissolutions) de Pacs sans autre détail sur les personnes. Ici, on a pallié cette carence par une estimation de la part des Pacs homosexuels et hétérosexuels fondée sur des informations des greffiers de tribunaux, mais c'est une tentative aventureuse (cf. détails dans le chapitre consacré à la France).

En Belgique, la loi du 23 novembre 1998 instaurant la cohabitation légale ouvre celle-ci aux situations de vie commune de deux personnes, aussi bien les couples homo- et hétérosexuels que les paires de proches parents (parents-enfants, frères-sœurs etc.) et d'autres. On peut décompter les cohabitations légales selon le sexe des partenaires, mais les personnes ne sont pas tenues de préciser leurs liens au-delà de leur volonté de cohabiter et il n'est donc pas possible de distinguer les couples des autres formes familiales et non familiales.

Dans les nordiques et les Pays-Bas, qui produisent leurs statistiques de partenariats enregistrés et de mariages homosexuels (Pays Bas) à partir de leurs registres de population, ceux-ci posent certaines contraintes générales de fonctionnement. Elles portent sur les caractérisations des partenaires et des conjoints, mais pas sur leur dénombrement. Les registres ne prenant en compte les personnes qu'au moment où leur résidence dans le pays est établie, il n'est pas toujours possible de prendre en compte les caractéristiques des partenaires ou des conjoints qui, venant de l'étranger pour l'enregistrement de leur union, n'ont pas encore de résidence à cette date⁸. Par ailleurs, les enregistrements de partenariats ou de mariages homosexuels représentant souvent des effectifs modestes, la caractérisation des conjoints doit rester sommaire lors de la publication des statistiques, pour éviter les écueils de la confidentialité des données : d'où des regroupements des âges en larges classes, etc.

Enfin, malgré les efforts de coordination qui ont pu présider à l'élaboration des lois (en particulier entre pays nordiques), la diversité règne dans le domaine de la production statistique et rend difficile l'établissement de séries comparables d'un pays à l'autre. Les disparités sérieuses sont d'ordre conceptuel.

Ainsi, les conditions de résidence lors de la comptabilité des partenariats sont prises en compte différemment par les pays. Au Danemark, la statistique publiée porte sur les couples où au moins un des partenaires réside dans le pays ; en Norvège, la condition porte non pas sur un des deux mais sur l'aîné des deux ; en Finlande, le détail est publié permettant de s'ajuster aux définitions danoise et norvégienne (nombres de partenariats (i) sans condition de résidence, (ii) et (iii) ceux où l'aîné ou le plus jeune résidant hors de Finlande). En Suède, on s'appuie sur une autre base : le nombre d'enregistrements publié n'est pas celui des partenariats mais des partenaires (soit environ le double), lorsqu'ils résident dans le pays⁹.

De 1989 à 1998, le Danemark n'a pas publié de statistiques de partenariats mais des statistiques de partenaires, comme en Suède qu'on vient de citer. Mais à la différence de la Suède (et des autres pays), il ne s'agissait pas de personnes dénombrées lors de l'enregistrement au long de l'année mais comptabilisées à une date précise (31 décembre), en distinguant celles qui étaient encore dans un partenariat et celles qui ne l'étaient plus, par suite d'une séparation ou du décès du partenaire. Il ne s'agit plus alors de données événementielles liées à l'année en cours mais de nombre cumulé de personnes ayant conclu un partenariat dans le passé et ne l'ayant pas encore rompu (ou l'ayant dissous par séparation ou décès). A défaut d'informer sur les « flux » annuels de partenariats, la série chronologique de ces « stocks » permet de reconstituer approximativement le nombre de partenariats enregistrés chaque année entre 1989 et 1998.

Les défauts de comparabilité liés à ces différences conceptuelles introduisent une certaine imprécision dans les confrontations internationales. On peut les négliger la plupart du temps, car nous verrons que les contrastes entre pays sont généralement trop accentués pour tenir à ces nuances, mais des incertitudes demeurent néanmoins. Nous verrons en particulier que les cas de partenaires nés à l'étranger sont nombreux en Suède ou ceux de nationalité étrangère en Norvège, surtout dans les couples d'hommes.

Les taux bruts d'enregistrement : tendances, niveaux, différences

Le Danemark a été le pionnier dans la légalisation des couples homosexuels. Il offre donc la série chronologique la plus longue, dont l'analyse peut servir de référence. Les taux bruts d'enregistrement (nombre d'enregistrements de partenariats masculins ou féminins pour 100 000 hommes ou 100 000 femmes, respectivement) peuvent être trompeurs la première année car celle-ci ne couvre que trois mois, la loi n'étant

⁷ Décret n° 99-1090 du 21 décembre 1999, *relatif aux conditions dans lesquelles sont traitées et conservées les informations relatives à la formation, la modification et la dissolution du PACS et autorisant la création à cet effet d'un traitement automatisé des registres mis en oeuvre par les greffes des tribunaux d'instance, par le greffe du tribunal de grande instance de Paris et par les agents diplomatiques et consulaires français*, article 2.

L'élaboration de statistiques est limitée à la "production d'informations rendues anonymes, exclusivement destinées à permettre de connaître le nombre de déclarations, de modifications et de dissolutions de pactes civils de solidarité ayant fait l'objet d'un enregistrement".

⁸ Les registres ayant un caractère permanent, un certain flou existe sur la date à laquelle les statistiques sont établies : une personne encore non résidente lors de l'enregistrement peut l'être devenue au moment où sont établies les statistiques, par exemple en fin d'année, voire plus tard.

⁹ Des différences du même ordre existent dans les statistiques de mariages couramment publiées et qui peuvent se référer aux couples dont au moins un des époux réside au pays (Danemark), ou l'époux (Norvège), ou l'épouse (Finlande), etc.

entrée en application qu'au 1^{er} octobre. Leur niveau élevé n'en est que plus remarquable, surtout pour les hommes. Il y a encore un taux fort en 1990, puis une stabilisation durable à un niveau plus modeste.

Il en va de même dans les autres pays : des taux élevés la première année (tronquée plus ou moins sévèrement) et parfois l'année suivante, puis un recul substantiel, qui marque généralement une stabilisation quand la loi d'enregistrement est suffisamment ancienne pour donner une série longue. L'observation n'est pas surprenante : elle correspond à l'existence d'un « stock » de couples qui attendaient depuis quelque temps l'adoption de la loi pour pouvoir enfin en faire usage. On est plutôt surpris par la brièveté et la modération de cette phase, par rapport au niveau qui s'établit ensuite : ce n'est jamais plus que les deux premières années civiles, la première étant souvent réduite à moins de douze mois. Cela suggère l'existence d'un stock peu volumineux.

Au Danemark, en Norvège et Suède, où les lois datent d'au moins une dizaine d'années, la période récente marque une augmentation par rapport au niveau de stabilisation. Le partenariat semble, à la longue, gagner en popularité. Les autres pays manquent de recul temporel pour offrir une vérification (Finlande, France, Allemagne) ; en outre aux Pays Bas et en Belgique, les adoptions successives d'une forme de partenariat (cohabitation légale en Belgique) puis du mariage ouvert aux homosexuels rendent la lecture de tendance difficile.

Pour comparer les niveaux d'enregistrement d'un pays à l'autre, le mieux est sans doute d'éviter les toutes premières années suivant l'adoption des lois et de se situer juste après, lorsque s'amorce la stabilisation provisoire des taux (ou ce qui s'avère être tel dans les pays où le regard ultérieur permet de le vérifier).

Les disparités sont alors très fortes. L'éventail s'ouvre de moins de 2 pour 100 000 en Suède à plus de 10 dans certains pays. Ce rapport de 1 à 5 dépasse de beaucoup celui qu'on enregistre dans le même temps entre les taux bruts de nuptialité hétérosexuelle.

Du côté des faibles taux figurent également, outre la Suède, la Norvège, la Finlande et l'Islande, tous au-dessous de 4 pour 100 000. C'est-à-dire, avec les nuances qui les séparent, l'ensemble des pays nordiques sauf le Danemark. Il faut peut-être ajouter l'Allemagne, où les taux des premiers 3 ans ½ atteignent à peine 5 pour 100 000 en moyenne annuelle, laissant imaginer une fréquence encore moindre en fin de période.

Du côté des taux élevés figure la France (environ 13 pour 100 000), avec toutes les réserves que peut inspirer la méthode d'estimation du nombre de Pacs homosexuels. Avec elle viennent les Pays-Bas, où les taux d'enregistrement du partenariat étaient de l'ordre de 10 la troisième année, puis ceux du mariage de l'ordre de 9 dans les mêmes conditions¹⁰. Au Danemark, les taux du début des années 1990 sont nettement différenciés entre gays et lesbiennes (un point sur lequel nous reviendrons) : 11 à 13 pour les premiers, 5 à 7 pour les secondes. Enfin la Belgique présente une situation complexe : des taux de l'ordre de 7 pour 100 000 pour la cohabitation légale (qui inclut des situations de non-couples) et un taux de 12 pour le mariage dans une période de deux ans après l'entrée en vigueur de la loi ; au total, une fréquence des enregistrements plutôt élevée malgré les incertitudes sur sa mesure.

Les regroupements des pays s'accordent mal aux intuitions que peut suggérer la lecture des lois instituant la légalisation des couples homosexuels. L'ensemble nordique est éclaté, bien qu'il y ait eu concertation sur un principe législatif commun : les enregistrements sont rares en Suède, peu fréquents en Finlande, Islande et Norvège et relativement nombreux au Danemark (au moins pour les hommes). A l'inverse, les pays non nordiques partagent des taux d'enregistrement largement supérieurs à la moyenne (à l'exception de l'Allemagne), alors que leur processus législatif a été extrêmement hétérogène. Par exemple, la relative proximité des résultats statistiques entre la France et les Pays Bas contraste avec la distance qui sépare le Pacs d'une part, le partenariat enregistré puis le mariage d'autre part.

Il est extrêmement difficile de rapprocher systématiquement le contenu des lois d'enregistrement et la fréquence des légalisations, pour révéler une éventuelle influence des premières sur les secondes. Non nous contentons d'un aperçu impressionniste en retenant deux indicateurs globaux empruntés à Kees Waaldijk¹¹. Le premier mesure l'ampleur des conséquences légales attachées au statut de couple homosexuel enregistré qui manquent pour en faire l'égal d'un couple hétérosexuel marié ; ce déficit peut être envisagé comme un frein à la légalisation de leur union par les homosexuels. Le second saisit l'aspect positif de la législation en mesurant le surplus relatif de conséquences légales apporté par l'enregistrement des couples homosexuels par rapport aux couples restant sous le régime de la seule cohabitation informelle ; ce surcroît peut être envisagé comme une incitation à la légalisation de leur union par les homosexuels.

¹⁰ Les statistiques de mariages sont plus difficiles à interpréter que celle de partenariat précédemment. Il se pourrait que se soit installée aujourd'hui une réelle concurrence entre les deux formes de légalisation des couples homosexuels, le recul récent du nombre de mariages s'accompagnant d'une hausse des partenariats.

¹¹ Waaldijk, Kees.- Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners: Comparative overview.- In: Waaldijk, Kees (ed).- *More or less together*, cité, p. 10-11.

Taux brut d'enregistrement des pacs, partenariats ou mariages homosexuels (pour 100 000)

Année	Danemark		Finlande		Islande		Norvège		Suède		Pays Bas		Allemagne		Belgique		France	
	HH	FF	HH	FF	HH	FF	HH	FF	HH	FF	HH	FF	HH	FF	HH	FF	HH	FF
1989	19	5																
1990	24	9																
1991	13	7																
1992	12	6																
1993	11	5					5,4	1,9										
1994	11	7					4,0	2,1										
1995	12	6					3,0	1,5	5,7	1,9								
1996	11	8			8	8	3,7	2,1	2,3	1,3								
1997	9	8			4	5	3,4	1,9	1,8	1,2								
1998	9	9			4	4	3,2	2,0	1,8	1,0	21,7	16,7						
1999	11,0	10,2			4	4	3,7	2,8	1,8	1,5	11,4	10,8						5
2000	12,1	9,7			4	5	3,5	3,4	2,5	1,5	10,3	9,8				7,3		18
2001	12,1	12,5			4	6	4,8	3,4	2,2	2,1	16,9	13,3	□			10,2		13
2002	9,5	12,0	9,4	7,7	4	3	4,7	3,4	2,4	2,3	11,7	11,1				6,8		14
2003	11,1	12,6	3,3	4,0	5	4	5,1	3,8	2,7	2,8	9,2	9,3	□ 6,8	3,2	□			13
2004			3,3	3,8	6	6			3,2	3,1	6,9	7,2	□		□	11,8		11
2005															□			

Danemark : Partenariat enregistré. L'année 1989 couvre seulement 3 mois.

Finlande : Partenariat enregistré. L'année 2002 couvre seulement 10 mois.

Islande : Partenariat confirmé. L'année 1996 couvre seulement 6 mois.

Norvège : Partenariat enregistré. L'année 1993 couvre seulement 5 mois.

Pays-Bas : Les années 1998-2000 traitent du partenariat enregistré, les années 2001 et suivantes du mariage. L'année 2001 couvre seulement 9 mois.

Allemagne : *Lebenspartnerschaft*. La période est de 3 ans 5 mois, d'août 2001 à la fin 2004. Les taux sont des moyennes annuelles.

Belgique : Les années 2000-2002 traitent de la cohabitation légale, les années 2003 et suivantes du mariage (période de 2 ans à partir de juin 2003 ; taux en moyenne annuelle)

France : Pacs. L'année 1999 couvre seulement 1½ mois.

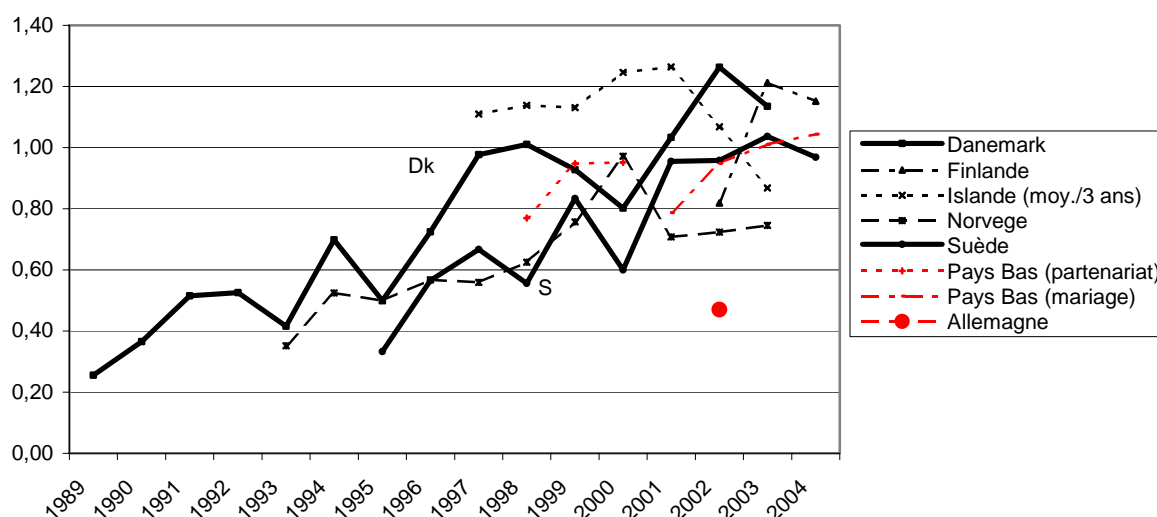
La distance entre la situation des couples homosexuels légalisés et celle des hétérosexuels mariés, frein potentiel à l'enregistrement, est maximale dans le Pacs français et le *Lebenspartnerschaft* allemand : 45 % des conséquences légales attachées au mariage manquent aux pacsés et 32 % à leurs homologues allemands (contre moins de 20 % dans les autres pays européens). Or ces deux cas s'opposent en matière d'enregistrement, le premier bénéficiant d'une adhésion beaucoup plus large que le second (avec les réserves statistiques qui s'imposent pour la France). A l'inverse, la distance est minimale entre le mariage hétérosexuel et le partenariat (ou le mariage homosexuel) aux Pays-Bas et en Suède : seules 4 % des conséquences légales attachées au mariage manquent aux Néerlandais et 9 % aux Suédois. Mais les deux cas divergent sensiblement sur la fréquence de légalisation, le taux d'enregistrement étant un des plus élevés aux Pays Bas et le plus faible de tous en Suède.

L'absence de corrélation transparait également lorsqu'on compare le surcroît de conséquences légales attaché à l'enregistrement et la fréquence de celui-ci. Plus de 45 % des conséquences légales attachées au mariage ne sont conférées aux couples homosexuels qu'en cas de légalisation de leur union en Islande, Allemagne et Finlande, trois pays où on pourrait s'attendre à ce que les couples trouvent là une incitation plus forte qu'ailleurs à légaliser leur union plutôt qu'à rester cohabitants. A l'inverse, le surplus relatif est le moins développé en France, Pays-Bas et Suède (moins de 25 %), trois pays où les partenaires pourraient puiser là des raisons moins pressantes qu'ailleurs à légaliser leur couple¹². Or les observations sur les taux d'enregistrement s'accordent très mal avec cette analyse des lois : les légalisations sont rares dans les trois premiers pays, où la loi pourrait paraître incitatrice ; les enregistrements sont largement plus fréquents que dans la moyenne des autres pays en France et aux Pays Bas, où les lois offrent peu d'avantages relatifs aux pacsés, partenaires enregistrés ou mariés homosexuels. Seule la Suède est en concordance avec l'hypothèse implicite d'un enregistrement influencé par la portée des lois de partenariat : celui-ci est peu incitatif car il apporte peu à ceux qui légalisent leur union, comparé à la situation des cohabitants déjà largement protégés par la loi. L'idée d'associer la fréquence des enregistrements dans les différents pays à un indicateur synthétique du contenu des lois de partenariat, pour révéler l'influence du second sur le premier, ne reçoit guère de soutien de ce rapide examen.

Les enregistrements de la première moitié des années 1990 sont fortement dominés par les hommes, dans les pays pionniers de la légalisation des couples homosexuels (Danemark, puis Norvège et Suède). Les couples lesbiens sont alors moitié moins nombreux que les gays à utiliser les lois de partenariat. Mais un mouvement continu amène progressivement à un meilleur équilibre numérique entre les sexes.

C'est d'abord une évolution propre à chaque pays. Dans les trois cas cités, où des séries longues sont disponibles, le ratio des taux d'enregistrement masculins et féminins se rapproche régulièrement de l'unité : en Norvège et en Suède (où l'enregistrement est moins fréquent qu'au Danemark), les taux des deux sexes augmentent dans les années récentes mais ceux des femmes plus vite que ceux des hommes ; au Danemark, les taux masculins, d'emblée élevés, ne varient guère alors que progressent les taux féminins.

Taux d'enregistrement comparé: femmes/hommes



¹² La Belgique est difficile à classer : la cohabitation légale apporte peu et le mariage bien davantage. On notera que, malgré ce, les taux d'enregistrement ne semblent pas très différents dans les deux types de légalisation (avec toutes les réserves dues aux approximations statistiques, déjà soulignées).

A ce mouvement s'ajoute l'extension du nombre de pays proposant une reconnaissance aux couples homosexuels. Dans ces nouveaux pays (Islande, Pays-Bas, Finlande), l'équilibre numérique s'établit presque immédiatement entre gays et lesbiennes dans les années 2000. L'Allemagne est une notable exception où les partenariats des années récentes sont à large prépondérance masculine, comme ils l'étaient en Scandinavie dix ans plus tôt¹³.

L'évolution des pays pionniers suggère une accoutumance progressive des lesbiennes aux lois sur le partenariat, comme si ce groupe surmontait peu à peu des réticences à donner une visibilité à leur union par une légalisation inspirée de la pratique hétérosexuelle. Mais la vue d'ensemble laisse supposer que l'évolution ici peut être ensuite un acquis ailleurs, puisque des pays plus tard venus au principe de légalisation enregistrent rapidement les couples d'hommes et de femmes en proportions voisines. Peut-on supposer qu'une large part de l'Europe participe à un mouvement général de meilleure acceptation de l'homosexualité féminine, qui bénéficie des efforts pionniers de quelques uns ? Le souci pédagogique d'une meilleure acceptation de l'homosexualité était d'ailleurs très présent dans la volonté des législateurs danois en 1989.

Rien évidemment ne distingue les hommes des femmes dans les conditions de reconnaissance légale faites aux couples homosexuels des différents pays. On ne saurait expliquer par là les différences de taux d'enregistrement des gays et des lesbiennes. Il en va de même des évolutions temporelles, impossibles à expliquer par des changements majeurs ayant affecté le cadre législatif d'ensemble, les lois de légalisation des unions homosexuelles étant restées stables depuis leur instauration dans les pays qui les ont adoptées précocement.

Il faut sans doute à la fois supposer une sensibilité différente des deux sexes aux mêmes conditions légales et postuler que certains aspects des lois revêtent une importance plus grande que d'autres dans ce mécanisme de différenciation. On pense ici aux conditions faites à la parentalité homosexuelle, qu'on peut supposer plus cruciales pour les lesbiennes que pour les gays et éventuellement déterminantes dans leur décision de légaliser leur union.

Par exemple, les trois pays scandinaves partagent d'avoir accordé aux partenaires homosexuels enregistrés le droit d'adopter l'enfant de leur conjoint, sans offrir cette même possibilité aux couples cohabitants, longtemps après les lois de partenariat (le Danemark dix ans après en 1999, la Norvège neuf ans après en 2002 et la Suède huit ans en 2003). En Islande, le décalage est seulement de quatre ans en 2000, aux Pays Bas de trois ans en 2001 (mais la loi bénéficie aussi aux couples non enregistrés)¹⁴. Comme la parité statistique des enregistrements, la prise en compte du statut de partenaire homosexuel dans les lois d'adoption se fait dans un petit nombre d'années autour de 2000, indépendamment de la chronologie antérieure des lois sur la légalisation des couples.

Dénombrément des couples non mariés ou non enregistrés.

Les taux bruts de nuptialité et d'enregistrement utilisés pour mesurer le comportement respectif des couples hétérosexuels et homosexuels se rapportent également à la population totale de chaque pays, comme si celle-ci était indifférenciée sexuellement. Ceci crée faussement les conditions de la comparabilité entre les comportements des hétéro- et des homosexuels, car les premiers sont beaucoup plus nombreux que les seconds. Que les taux de nuptialité soient beaucoup plus élevés que les taux d'enregistrement (les premiers sont exprimés pour 1 000 habitants, les seconds pour 100 000) reflète avant tout cette disparité.

La comparaison a bien davantage de sens si elle prend pour base respective chacun des deux groupes, en saisissant ceux-ci à la même phase du processus conduisant à la légalisation de leur union. Nous nous proposons de considérer ici les couples hétérosexuels non mariés, en mesurant la fraction de ceux qui légalisent leur union dans l'année, puis de procéder de même avec les couples homosexuels non enregistrés. Taux de nuptialité des couples hétérosexuels et taux d'enregistrement des couples homosexuels mesurent la fréquence de légalisation de façon telle qu'on puisse dire si la reconnaissance légale des unions est plus courante (plus « populaire ») chez les uns que chez les autres.

Les données nécessaires au calcul de ces taux ne sont cependant pas d'accès simple partout et la signification des résultats n'est pas toujours d'interprétation aussi directe qu'il paraît.

En France, le nombre de couples hétérosexuels non mariés est estimé grâce aux enquêtes sur l'emploi, avec une fiabilité satisfaisante depuis le début des années 1990. D'autres pays procèdent de même : l'Allemagne et les *Microzensus* depuis 1991 ; la Norvège et les *Omnibus Surveys* depuis 1993 ; la Suède et les *Living Conditions Surveys* (ULF) depuis 1985. Dans tous les cas, les couples identifiés résident dans le même ménage ; les estimations du nombre de couples vivant leur conjugalité dans des logements différents sont peu élevées¹⁵.

Dans les autres pays, il est fait recours aux registres de population. Ceux-ci s'appuient sur le constat de co-résidence des personnes et classifient comme couples non mariés les paires d'hommes et de femmes non

¹³ On n'a pas d'informations par sexe en Belgique et en France.

¹⁴ En Finlande et en Allemagne, les lois de 2001 n'ouvrent pas l'adoption pour l'enfant du partenaire enregistré.

¹⁵ Villeneuve-Gokalp Catherine.- Vivre en couple chacun chez soi.- *Population*, n° 5, 1997, p. 1059-1081.

Toulemon, Laurent.- La cohabitation hors mariage s'installe dans la durée.- *Population*, n° 3, 1996, p. 675-716

La notion de vie en couple séparé est néanmoins très hétérogène : Haskey, John.- Living arrangements in contemporary Britain: having a partner who usually lives elsewhere; Living-apart-together, LAT. A paper at *Statistics, Investment in the future*, International Conference, Prague, Czech Republic, 6-7 September 2004, 35 p.

apparentés, sous certaines conditions¹⁶. Les conditions permettent d'asseoir un jugement sur la probabilité que les deux personnes forment effectivement un couple (une différence d'âge trop grande réduit la vraisemblance, la présence d'un enfant né des deux parents ou l'emménagement simultané dans le logement actuel l'accroît fortement). Le lien de couple n'est donc pas déclaré par les intéressés mais postulé par les statisticiens¹⁷. Par construction, le dénombrement ne porte que sur les couples partageant à la même adresse. A cette restriction près, des statistiques existent dans tous les pays, qui peuvent être utilisées en confiance, moyennant quelques réserves au cas par cas.

La tâche est autrement ardue lorsqu'il s'agit d'estimer le nombre de couples homosexuels. Nous y avons consacré un article reproduit en annexe¹⁸.

La population qu'il faut mesurer étant beaucoup moins nombreuse que les couples hétérosexuels, l'utilisation des enquêtes est beaucoup plus problématique. Le recours au recensement (les micro-recensements en Allemagne) est nécessaire, avec des risques importants de sous-déclaration du lien de couple homosexuel, à cause de la sensibilité du sujet, de la concision du questionnaire et des pratiques de certains instituts de statistique peu soucieux de s'adapter aux réalités sociales contemporaines¹⁹. En Allemagne et en France, on a estimé que seuls un tiers des couples homosexuels se déclarent comme tels, les deux autres tiers se classant sans doute dans d'autres catégories comme des paires d'ami(e)s. En Norvège, le recensement de 2001 était mal adapté à un décompte fiable des couples de même sexe. En Suède, autre pays procédant par enquête pour évaluer le nombre de couples hétérosexuels non mariés, il n'y a plus de recensement de population²⁰.

Sur la base du registre de population néerlandais, la procédure adoptée pour les cohabitations hétérosexuelles a été transposée aux homosexuels²¹. A partir du constat de co-résidence d'adultes de même sexe non apparentés, un jugement est porté sur la probabilité qu'ils forment un couple à partir d'un petit nombre de critères (différence d'âge, emménagement simultané dans le même logement, etc.). Dans les autres pays où la transposition est envisageable, elle n'a pas été faite à ce jour.

En France, les couples homosexuels représentent environ 0,9 % de l'ensemble des couples à la fin des années 1990 ; en Allemagne, cette fraction est passée de 0,6 % en 1996 à 0,7 % en 2004 ; aux Pays Bas, de 1,0 à 1,2 % entre 1995 et 2002. Hors d'Europe, le pourcentage est du même ordre aux Etats Unis (1 % vers 2000), plus faible au Canada ou en Nouvelle-Zélande. Cet éventail relativement restreint nous laisse supposer une fraction de couples homosexuels comprise entre 0,7 et 1,2 % dans les pays où nous n'avons pas d'information.

Dans tous les cas - mesure, estimation ou supputation - le nombre est celui des couples partageant un même logement. Or les couples homosexuels résident ensemble moins systématiquement que les hétérosexuels. Dans les enquêtes conduites en France auprès des lecteurs de la presse gay, le pourcentage d'hommes vivant une relation stable sans pour autant cohabiter était encore de 40 % en 1997, malgré une décroissance régulière au cours des années passées. Pour les femmes, c'était 20 % (sur un échantillon restreint). En Allemagne, d'après le même type d'enquête, 59% d'hommes dans une relation stable ne cohabitaient pas avec leur partenaire en 2003²². Si l'objectif est de dénombrer les couples homosexuels, quel que soit leur mode de résidence, les résultats fondés sur les seuls partenaires cohabitants risquent d'être sensiblement sous-estimés, contrairement à ce qui concerne les hétérosexuels.

L'interprétation des taux de nuptialité des couples non mariés et des taux de légalisation des couples homosexuels non enregistrés aborde le même écueil sous un angle un peu différent.

Pour les hétérosexuels, le rapport du nombre de mariages à celui des couples non mariés mesure correctement la nuptialité si les futurs époux vivent ensemble à la veille de la cérémonie. C'est avéré dans la plupart des pays²³. Dès les années 1980, guère plus de 5 % des jeunes Suédoises en couple avant 25 ans s'étaient mariées sans cohabitation préalable. Dans les autres pays c'était encore 10 à 20 % en Finlande, 30 à 40 % ailleurs, mais l'écart avec la Suède se comblait très vite et c'était chose faite dans la décennie suivante. Seule la Belgique

¹⁶ Pour le Danemark et la Finlande, cf. les chapitres qui suivent consacrés aux deux pays. Pour les Pays Bas, cf. Steenhof, Liesbeth & Harmsen, Carel.- Same-sex couples in the Netherlands.- In: Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 233-243.

¹⁷ L'Islande fait cependant exception : la statistique y décompte les couples non mariés dans le registre de population sur la base de leur déclaration administrative de cohabitation ; manquent donc les couples non mariés qui ne se sont pas encore déclarés. Cf. le chapitre qui suit consacré à l'Islande et *Marriages, consensual unions and separations 2003*.- Statistics Iceland, Population, 89, year 31, vol. ISSN: 1670-4479, 24 p.

¹⁸ Festy, Patrick.- Numbering same-sex couples in censuses and population registers, a paper presented at the Canadian Population Society conference in London (Ontario), 1-3 June 2005, 16 p.

¹⁹ Digoix, Marie; Festy, Patrick & Garnier, Bénédicte.- What if same-sex couples exist in France after all? In: Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships & homosexual marriages. A focus on cross-national differentials*.- Documents de travail 124, INED, 2004, p. 193-210. [Repris en annexe]

²⁰ Cf. les chapitres qui suivent consacrés respectivement à l'Allemagne, à la France et à la Norvège.

²¹ Steenhof, Liesbeth & Harmsen, Carel.- Same-sex couples in the Netherlands, cité.

²² Bochow, Michael.- "Steady Partnerships Among Gay Men in Germany: Findings from the National Gay Press Survey".- Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 185-191.

²³ Macura, Miroslav, Mochizuki-Sternberg, Yumiko and Lara Garcia, Jose, Eastern and Western Europe's fertility and partnership patterns: selected developments from 1987 to 1999, in Macura, Miroslav and Beets, Gijs (editors), *Dynamics of fertility and partnership in Europe. Insights and lessons from comparative research, Volume I*, United Nations, New York and Geneva, 2002, p. 27-56 (en particulier, fig. 4.7, p. 38).

fait exception avec de fréquents mariages directs, en particulier en Flandre (mais les informations sont anciennes).

Le taux de nuptialité des couples non mariés est donc pertinent dès les années 1980 dans certains pays du nord, un peu plus tard ailleurs, avec des réserves pour la Belgique.

La question peut être transposée à la légalisation des couples homosexuels, mais les éléments de réponse sont rares. Celui-ci est extrait d'une enquête auprès des séropositifs en France en 2003 : 10 % des couples gays étaient pacsés, mais c'était 21 % de ceux qui partageaient le même logement et à peu près aucun pour ceux qui ne vivaient pas ensemble²⁴. Les légalisations sont donc exclusivement le fait des partenaires cohabitants ; le taux relatif à ces couples peut donc être tenu pour pertinent. Notons par ailleurs que si des enregistrements étaient le fait de couples vivant séparément, les taux que nous calculons surestimeraient la fréquence des légalisations, ce qui renforcerait les conclusions que nous tirerons plus loin.

Nuptialité des couples non mariés et légalisation des couples non enregistrés.

Les taux de nuptialité des couples non mariés sont pour la plupart entre 9 et 12 %. Ceci peut signifier que les couples attendent en moyenne une dizaine d'années avant de se marier, mais c'est en fait le reflet d'une réalité plus complexe où une fraction seulement des couples se marient (la moitié ?), mais le font dans un délai sensiblement moindre (3-5 ans ?). Les taux faibles correspondent à des situations de mariage rare et tardif ; l'inverse pour les taux forts. Comparée à la nuptialité de l'ensemble de la population (taux bruts de nuptialité analysés précédemment), celle des couples non mariés est essentiellement affectée par la durée de cohabitation de ceux-ci, qui sont d'autant plus nombreux qu'ils vivent ensemble longtemps sans se marier.

La nuptialité des couples est élevée au Danemark (plus de 12 %) et surtout en Allemagne (plus de 16 %). La nuptialité est faible en Norvège (autour de 9 %) et surtout en Suède (6 %). Le contraste est marqué entre les deux extrêmes (Allemagne et Suède). Il est très amplifié par rapport à ce que révélaient les taux bruts de nuptialité récents, inférieurs à 5 pour 1 000 habitants dans les deux pays les années récentes. C'est que les couples non mariés sont peu nombreux en Allemagne (un couple sur dix, les neuf autres étant mariés), contrairement à la Suède (un couple sur trois) : même si dans les deux cas la cohabitation pré-nuptiale est systématique, elle est brève en Allemagne et prolongée en Suède.

Plus généralement, la nuptialité des couples mariés est plus faible dans les pays nordiques que non nordiques, parce que la cohabitation hors mariage est sensiblement plus longue, mais aucun des deux ensembles n'est vraiment homogène : le Danemark se distingue de ses voisins par une nuptialité relativement forte ; la France par une nuptialité relativement faible.

Les taux de légalisation des couples homosexuels sont pour la plupart entre 2 et 7 %, ce qui implique soit une cohabitation extrêmement longue avant l'enregistrement (en moyenne, une vingtaine d'années !), soit, plus vraisemblablement, des durées nettement plus courtes et des proportions élevées de couples ne s'enregistrant pas.

Dans les pays nordiques, les taux d'enregistrement sont faibles, sauf au Danemark. Hormis dans la période d'installation des lois, les taux ne dépassent guère 2 % ; ils sont même encore plus bas en Suède et dans les années 1990. Ces taux sont faibles par rapport à ceux des autres pays, mais surtout par rapport aux taux de nuptialité des couples non mariés. Ils ne représentent guère que 15 à 30 % de ces derniers : 15 % dans la décennie passée, avant une hausse dans les années 2000. Malgré ce mouvement récent, le recours aux procédures de légalisation est extrêmement modeste par rapport à l'usage que les hétérosexuels font du mariage.

Le Danemark est un peu à part de ses voisins nordiques, avec des taux constamment plus élevés, mais une même tendance à la hausse depuis quelques années. Comme en outre la nuptialité des non mariés est elle-même plus forte que dans le reste de la région, la spécificité danoise est moindre s'agissant de l'écart entre les comportements des homo- et des hétérosexuels. Ici aussi la légalisation est très en retrait par rapport à la nuptialité, dont elle ne représentait que 20 % au début des années 1990, avant d'atteindre 40 % aujourd'hui.

²⁴ Schiltz, Marie.-Ange.- "Pacs: the chaotic emergence of the category in social surveys".- Digoix Marie & Festy, Patrick (eds).- "Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials".- Paris: Ined [Documents de travail n° 124], 2004, p. 225-232 (en particulier, p. 230).

Taux de légalisation des unions par les homosexuels et les hétérosexuels

Année	Danemark		Finlande		Islande		Norvège		Suède		Pays Bas*		Allemagne		Belgique*		France	
	Homo	Hétéro	Homo	Hétéro	Homo	Hétéro	Homo	Hétéro	Homo	Hétéro	Homo	Hétéro	Homo	Hétéro	Homo	Hétéro	Homo	Hétéro
1989	0,028 ^a	0,130																
1990	0,041	0,129																
1991	0,027	0,124																
1992	0,026	0,125																
1993	0,024	0,120					0,016 ^a	0,093										
1994	0,028	0,131					0,014	0,091										
1995	0,030	0,127					0,011	0,096	0,018	0,065								
1996	0,031	0,130					0,014	0,099	0,009	0,060								
1997	0,028	0,123					0,013	0,096	0,008	0,054								
1998	0,033	0,123			0,024 ^a	0,127	0,013	0,089	0,007	0,054								
1999	0,038	0,124			0,024	0,131	0,016	0,087	0,009	0,056							0,024 ^a	0,118
2000	0,041	0,133			0,027	0,149	0,018	0,102	0,010	0,064							0,081	0,118
2001	0,048	0,126			0,029	0,125	0,022	0,088	0,012	0,058	0,052 ^a	0,118	□				0,066	0,114
2002	0,044	0,127	0,042 ^a	0,099	0,020	0,141	0,021	0,083	0,013	0,057	0,041	0,121	□	0,027 ^b	0,165		0,072	0,104
2003	0,050	0,120	0,019	0,093	0,029	0,130	0,023	0,077	0,016	0,061	0,035	0,111	□			□	0,074	0,100
2004			0,019	0,104	0,039	0,124			0,018	0,067	0,028	0,103	□			□	0,058 ^b	0,131
2005																□		

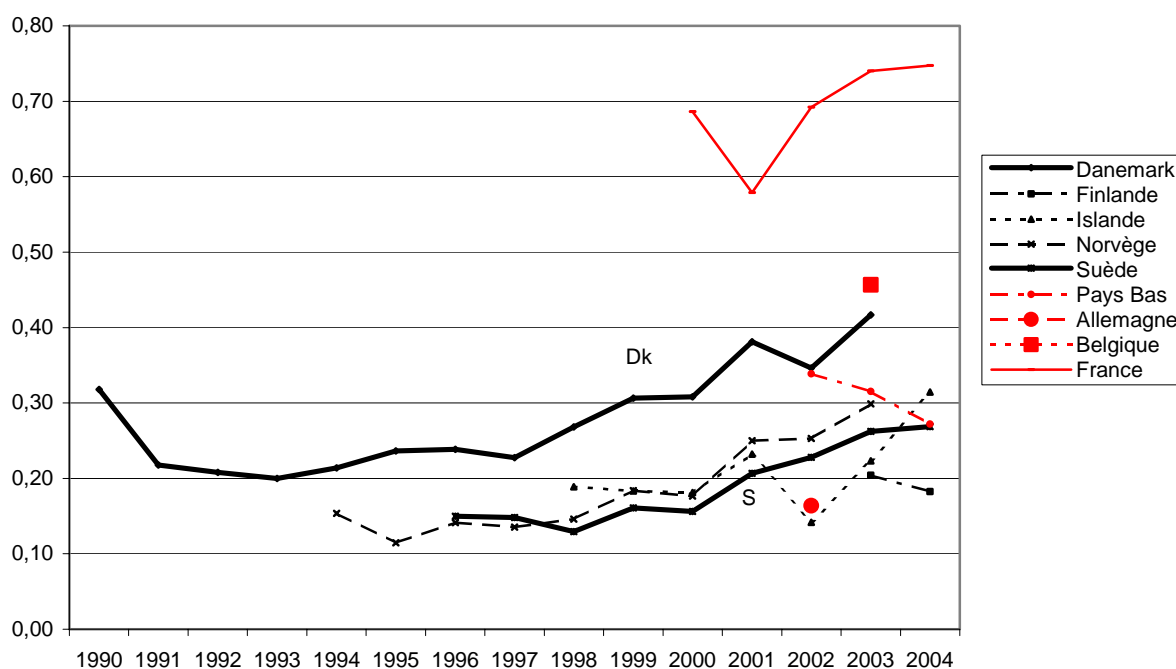
* Mariage homosexuel

^a Année incomplète

^b Moyenne annuelle

Les taux de légalisation des couples homosexuels sont une moyenne hommes femmes. Lorsque des estimation du nombre de couples ont été faites en pourcentages du nombre total de couples homo- et hétérosexuels, on a pris la moyenne des deux estimations (0,7 et 1,0 %). Voir les détails pour chaque pays dans les chapitres qui suivent.

Rapport des taux de légalisation des couples homosexuels
aux taux de nuptialité des couples hétérosexuels



Les pays non nordiques forment un ensemble plus disparate. Le taux de légalisation est faible en Allemagne (moins de 3 % par an, bien que la période inclue la phase initiale où les enregistrements sont généralement nombreux) et fort en France (7 % à partir de 2001, avec des réserves sur l'estimation du nombre de pacs homosexuels). Les Pays Bas (mariages) sont en position intermédiaire ; la Belgique aussi, mais la période est celle de mise en place de la loi sur le mariage.

Le contraste est encore accentué si l'on considère la relation entre légalisation des couples homosexuels et nuptialité des hétérosexuels, car on a vu que cette dernière est nettement plus élevée en Allemagne qu'ailleurs, en particulier en France. L'écart entre les comportements des uns et des autres est maximum en Allemagne (les légalisations ne représentent que 15 % des mariages, bien qu'il s'agisse d'une période plutôt favorable) ; il est au contraire minimum en France. De toutes les formes de reconnaissance des couples homosexuels développées en Europe, le pacs est celle dont la « popularité » se rapproche le plus du mariage hétérosexuel : le taux d'enregistrement est égal à 70 % du taux de nuptialité, soit un déficit de seulement 30 % (sous les réserves réitérées). La Belgique, dans les deux premières années d'application de la loi sur le mariage, se trouve en position intermédiaire entre ces deux extrêmes, mais bien au-dessus de la majorité des pays, y compris les voisins néerlandais.

Dans tous les pays, les écarts déjà très substantiels entre les comportements des homo- et des hétérosexuels concernant la légalisation de leur union seraient encore accentués si la référence ne se limitait pas aux seuls couples cohabitants, mais s'étendait aussi aux relations stables vécues partiellement à distance dans deux logements séparés.

Mariages hétérosexuels et enregistrements homosexuels : autres différences

Les comportements des homosexuels à l'égard de la légalisation de leurs unions ne diffèrent pas des hétérosexuels que par leur fréquence. Les enregistrements sont aussi plus souvent faits dans les grandes villes et à des âges plus tardifs. Ils se terminent aussi plus fréquemment par une rupture.

La proportion d'enregistrements dans les grandes villes est largement supérieure à celle des mariages, partout où l'observation est faite. Mais les différences entre pays sont difficiles à interpréter, tant sont variables les découpages administratifs :

- En Norvège, de 1993 à 2002, 61 % des partenariats masculins et 44 % des partenariats féminins ont été enregistrés à Oslo, alors que la capitale n'attire que 16 % des mariages (ratios de 4 à 1 et 3 à 1, respectivement pour les hommes et les femmes).
- En Suède, 1995 à 2003, 47 % des partenariats masculins et 37 % des partenariats féminins ont été enregistrés dans le comté de Stockholm, contre seulement 27 % des mariages (ratios inférieurs à 2).

- En Allemagne, entre 2001 et 2004, plus de 20 % des partenariats ont été enregistrés dans les deux villes-länder de Berlin et Hambourg, contre 6 % des mariages (ratios de 3 à 1).
- En Belgique, en 2002-2003, environ le quart des cohabitations légales de même sexe ont été enregistrées à Bruxelles-Capitale, qui ne représente que 12% des mariages du pays (ratios de 2 à 1). Mais les deux premières années d'application de la loi (2000-2001), les enregistrements avaient surtout eu lieu en région flamande (plus de 8 enregistrements sur 10, alors que les mariages de la Flandre représentent moins de 55 % du Royaume).
- [En France, on n'a pas de détails sur le sexe des pacés et donc aucun moyen de distinguer les homosexuels des hétérosexuels. Les Pacs sont plus nombreux dans le sud qu'au nord et dans chaque région, ils sont plus fréquents dans les départements les plus urbanisés. Le département de Paris est celui où les taux d'enregistrement sont les plus élevés, mais cette prédominance s'estompe au fil du temps.]

Les enregistrements aux jeunes âges sont beaucoup plus exceptionnels que les mariages. Pour l'observer, mieux vaut éviter les toutes premières années d'application des lois, où le phénomène est accentué par la relative abondance des régularisations de situations anciennes. Mais même par la suite, l'écart reste très net :

- En Norvège, en 1999-2001, les enregistrements avant 30 ans ne sont que 25 % des partenariats masculins et 22% des partenariats féminins (contre 42 % des hommes et 59 % des femmes dans les mariages).
- En Suède, en 2000-2004, les enregistrements avant 30 ans ne sont que 10 % des partenariats masculins et 27% des partenariats féminins (contre 26 % des hommes et 42 % des femmes dans les mariages).
- Aux Pays Bas, les différences entre les deux types de légalisation sont minimales : 12 % des partenaires (hommes comme femmes) ont moins de 30 ans en 1999, ainsi que 10 % des mariés homosexuels et 14 % des mariées en 2002 (contre 32 % des hommes et 50 % des femmes dans les mariages hétérosexuels).

Les écarts d'âge entre partenaires sont en outre beaucoup plus larges dans les couples homosexuels que dans les mariages hétérosexuels (Norvège et Suède). Par contre les différences entre gays et lesbiennes ne sont pas les mêmes en Norvège et aux Pays Bas (âges à l'enregistrement voisins) et en Suède (les lesbiennes plus jeunes que les gays).

A durée égale depuis la légalisation, les ruptures sont plus fréquentes chez les partenaires enregistrés que chez les hétérosexuels mariés. Mais le recul ne permet de juger que des premières années de vie commune légalisée :

- Au Danemark (1999-2003), la divortialité des partenariats d'hommes est légèrement supérieure à celle des mariages hétérosexuels (+ 12 %) ; celle des partenariats de femmes l'est plus largement (+ 58 %).
- En Islande depuis l'instauration du partenariat enregistré (1996-2004), la sur-divortialité des partenariats d'hommes est très forte (rapport de 3 à 1) ; celle des femmes un peu moindre (rapport de 2 à 1).
- En Norvège, depuis l'instauration du partenariat (1993-2001), la divortialité des partenaires masculins ne diffère pas de celle des mariés, alors que celle des partenaires féminins est double.
- En Suède (1998-2004), la divortialité des partenaires masculins est légèrement supérieure à celle des mariés (+20%), alors que celle des partenaires féminins est près du double. Au fil du temps, la sur-divortialité des partenariats se réduit, les comportements se rapprochant graduellement de ceux des mariés et l'écart entre hommes et femmes se résorbant légèrement.
- [En France, on n'a pas de détails sur le sexe des pacés et donc aucun moyen de distinguer les homosexuels des hétérosexuels ; ces derniers sont sans doute largement majoritaires dans les enregistrements. Les risques de rupture des pacés sont environ trois fois plus élevés que les risques de divorce des mariés. Ce ratio évolue peu au fil des ans depuis 2000.]

La divortialité est généralement plus forte dans les partenariats lesbiens que gays (sauf en Islande) ; l'écart est très net en Norvège et en Suède. La distance avec les mariés se réduit peut-être avec le temps, mais la tendance reste incertaine.

L'ensemble des disparités entre couples homo- et hétérosexuels face à la légalisation de leur union souligne bien que ceux-ci ne sont pas deux catégories-sœurs que ne distinguent que les orientations sexuelles. Sous les différences de localisation, d'âge, d'espérance de vie commune, mais aussi de partage du logement et autres, affleurent des modes de fonctionnement contrastés dont la différence des pratiques d'enregistrement sont une des dimensions. Au fil du temps, des signes apparaissent cependant, ici et là, d'un comblement des écarts entre couples de même sexe et de sexe différent : sur les âges, les risques de rupture, mais aussi la résidence conjointe, etc. Ces mouvements discrets accompagnent celui qui anime la fréquence des enregistrements, qui se rapproche lentement de la nuptialité des couples hétérosexuels, mais dans une période où celle-ci est elle-même faible et déclinante dans la plupart des pays.

Enregistrements de couples homo- et hétérosexuels : France, Pays Bas et Belgique

Dans trois pays, la loi a ouvert simultanément et dans les mêmes termes une possibilité de légalisation pour les couples homo- et hétérosexuels. C'est la Pacs en France, le partenariat aux Pays-Bas et la cohabitation légale en Belgique. Dans ce dernier pays, la cohabitation légale n'est pas seulement ouverte aux couples mais à toute paire de personnes vivant ensemble. Aux Pays Bas et en Belgique, après l'instauration de ces procédures, le mariage a également été ouvert aux couples homosexuels.

Ces possibilités créent des relations complexes entre légalisation des couples homosexuels et hétérosexuels, puisqu'en France ces derniers ne disposent pas seulement du mariage mais également du Pacs pour donner légalité à leur union, et qu'aux pays Bas et en Belgique, cette pluralité de procédures a d'abord été offerte aux hétérosexuels puis étendue aux homosexuels. S'il est interdit d'être à la fois dans l'un et l'autre statuts (pacsé, partenaire ou cohabitant et marié), il est revanche possible d'être l'un puis l'autre, d'où des doubles comptes à travers le temps pour les personnes qui changent de statut.

Les couples hétérosexuels recourent aux formes de légalisation hors mariage dans des proportions inégales selon les pays et selon les années. En France et aux Pays Bas, les taux de pacs et de partenariat sont faibles, comparés aux taux de nuptialité des non mariés, mais ils ont crû rapidement dans les années récentes, jusqu'à représenter plus du dixième des légalisations de couples hétérosexuels. En Belgique, le succès de la cohabitation légale est beaucoup mieux affirmé, avec des taux d'enregistrement largement supérieurs à ceux des deux autres pays, mais de larges fluctuations d'une année sur l'autre. En moyenne, la cohabitation légale représente plus de 20 % des différentes formes de légalisation.

On peut s'interroger sur l'existence d'une concurrence entre le mariage et les autres formes d'enregistrement auprès des couples hétérosexuels. En France et aux Pays Bas, la montée progressive du nombre de pacs et de partenariats accompagne une baisse du nombre de mariages. Il n'est donc pas exclu que le premier mouvement contribue au second. Toutefois, le cumul pacs + mariages ou partenariats + mariages diminue aussi au fil des années récentes : l'explication de la baisse du nombre des mariages par le développement de formes alternatives ne saurait être que partielle.

Aux Pays Bas, nouveaux partenaires et nouveaux mariés diffèrent sensiblement par leur âge, les premiers étant plus âgés que les seconds²⁵. Cet écart contredit l'idée que le partenariat serait une étape vers un mariage ultérieur ; il suggère que partenaires et mariés constituent deux « clientèles » distinctes, et non concurrentes. En outre, dans les deux pays, le pacs et le partenariat ont ouvert des possibilités administratives ou juridiques équivalentes à celles du mariage sans les contraintes attachées à celui-ci, rendant ainsi la légalisation attrayante à des couples qui ne l'auraient pas envisagée. Aux Pays Bas, depuis 2001, la transformation aisée d'un mariage en partenariat permet de déboucher sur des ruptures plus souples, de quoi expliquer le développement récent du partenariat (en 2004, 5 000 « annulations flash » ont été prononcées dans des partenariats, contre 32 000 divorces classiques). En France, les avantages administratifs accordés aux couples pacsés contribuent peut-être en partie à la popularité croissante du pacs.

En Belgique, les fluctuations du nombre de cohabitations légales n'ont pas de répercussions perceptibles sur le nombre de mariages. En revanche, l'importance des effectifs en jeu s'accorde bien avec le fait que la baisse de la nuptialité est plus ample en Belgique que chez ses deux voisins. Les conclusions ne peuvent néanmoins qu'être prudentes, sachant que la cohabitation légale ne s'adresse pas exclusivement à des couples, mais peut bénéficier à toute paire de personnes de sexe différent résidant ensemble.

L'année où le mariage a été ouvert aux couples de même sexe aux Pays Bas, le nombre de partenariats homosexuels a brutalement été divisé par trois et celui des mariages s'est fixé près du niveau qui avait marqué l'année inaugurale du partenariat en 1998. Comme en outre les distributions des âges au mariage et au partenariat sont très voisines (et sensiblement différentes de l'âge au mariage hétérosexuel), on peut penser que les clientèles des deux formes de légalisation se recoupent largement et font sans doute double compte à quelques années d'intervalle.

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Type d'unions et sexe	Pays Bas. Ages au mariage ou à l'enregistrement					
	< 30 ans	30-39 ans	40-49 ans	50-64 ans	65+ ans	Tous âges
Partenariats hétérosexuels, hommes (1999)	14%	31%	23%	24%	8%	100%
Partenariats hétérosexuels, femmes (1999)	21%	34%	22%	19%	4%	100%
Mariages hétérosexuels, hommes (2002)	32%	47%	12%	7%	1%	100%
Mariages hétérosexuels, femmes (2002)	50%	36%	9%	5%	1%	100%

Taux d'enregistrement des couples non légalisés
et taux de nuptialité des couples non mariés

Année	Pacs, Cohabitations, Partenariats			Mariages		
	HF	HH	FF	HF	HH	FF
France (Pacs)						
1998				117		
1999				118		
2000	5	81		118		
2001	5	66		114		
2002	6	72		104		
2003	9	74		100		
2004	11	68		91		
2005						
Belgique (Cohabitations légales et mariages)						
1998				201		
1999				185		
2000	16	33		174		
2001	75	48		152		
2002	30	34		137		
2003	37	39		133*	□	
2004				131*	□	58
2005					□	
Pays Bas (Partenariats et mariages)						
1998	3	77	66	143		
1999	2	42	44	141		
2000	2	36	40	134		
2001	4	13	13	118	54	49
2002	11	16	21	121	38	43
2003	14	12	16	111	31	38
2004	15	20	30	103	24	31
2005						

L'évolution des années récentes met cependant en doute ces conclusions. Le nombre de mariages n'a cessé de décroître, y compris en 2004 (soit trois ans après la mise en place de la loi), alors que le nombre de partenariats a commencé à augmenter après une forte baisse. Ce pourrait être le premier signe d'existence d'une alternative partenariat-mariage pour les couples homosexuels.

En Belgique, la confrontation entre les deux formes de légalisation ne date que de juin 2003 (et n'est documentée que pour cette seule année). Le nombre de dissolutions de cohabitations a fortement augmenté, atteignant 546 contre 120 l'année précédente. C'est sans doute le fait de couples désireux de passer de l'ancien statut au nouveau. Mais il n'y a pas pour autant de chute du nombre de cohabitations enregistrées en 2003, qui ont même augmenté par rapport à 2002. L'instauration du mariage ne semble pas avoir dissuadé les adeptes de la cohabitation (mais celle-ci est ouverte aussi à des paires de personnes de même sexe vivant ensemble sans lien de couple).

S'il se confirmait dans les deux pays que le partenariat (ou la cohabitation légale) et le mariage sont deux formes complémentaires plutôt qu'alternatives de légalisation des couples homosexuels, l'appréciation qu'on peut porter sur la fréquence de ces enregistrements pourrait s'en trouver sensiblement modifiée. Par exemple aux Pays Bas en 2004, moins de 3 % des couples homosexuels se sont mariés mais près du double ont fait l'une ou l'autre démarche de légalisation. C'est « seulement » moitié moins que les hétérosexuels, une des fractions les plus élevées observées en Europe (après la France). De quoi nuancer le jugement sur la popularité de la loi néerlandaise auprès des couples homosexuels.

II. Analyse par pays

Allemagne

L'Allemagne compte 82 500 849 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels

Le nombre de mariages en 2004 est de 396 007. Au cours des 25 dernières années, ce nombre a d'abord connu une légère hausse au cours des années 1980. Il culmine alors à 530 000 et un taux brut de 6,8 pour 1 000 habitants. Depuis lors la baisse a été sensible et à peu près continue, le nombre de mariages étant descendu jusqu'à 380 000 dans les années récentes (soit un recul de 150 000) et le taux brut étant désormais bien inférieur à 5 pour 1 000.

Allemagne. Nombre annuel de mariages hétérosexuels et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	496603	6,3	1990	516388	6,5	2000	418550	5,1
1981	487832	6,2	1991	454291	5,7	2001	389591	4,7
1982	486856	6,2	1992	453428	5,6	2002	391963	4,8
1983	495392	6,3	1993	442605	5,5	2003	382911	4,6
1984	498040	6,4	1994	440244	5,4	2004	396007	4,8
1985	496175	6,4	1995	430534	5,3			
1986	509320	6,6	1996	427297	5,2			
1987	523847	6,7	1997	422776	5,2			
1988	534903	6,8	1998	417420	5,1			
1989	529597	6,7	1999	430674	5,2			

Le nombre de couples hétérosexuels mariés a été à peu près stable au long des années 1990, autour de 19 500 000. Il est en léger recul depuis le début des années 2000 et ne dépasse plus guère 19 000 000. En revanche, le nombre de couples non mariés s'est accru constamment depuis 1991, passant de 1 400 000 à 2 400 000, une hausse qui compense largement la baisse du nombre de couples mariés. La part des non mariés dans le total des couples est passée de 7 à 11 %. Ce dernier pourcentage reste cependant faible par rapport aux résultats observés ailleurs en Europe occidentale.

L'augmentation de la proportion de couples non mariés marque la diversification des formes conjugales et la moindre formalité des unions.

Le taux de nuptialité des couples non mariés est constamment très élevé, quoique en très fort recul. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année. La fréquence de cette légalisation a été divisée par deux depuis 1991, de 33 à 16 %. Il pourrait y avoir dans ces valeurs fortes une part due au fait que tous les mariages ne sont pas précédés par une phase de cohabitation des couples non mariés, mais les enquêtes des années 1990 ne font pas apparaître l'Allemagne très différente de ses voisins sur ce point, le mouvement vers une prévalence systématique de la cohabitation avant mariage semblant irrésistible ici comme ailleurs. Il faut sans doute incriminer plutôt une sous déclaration des couples non mariés, suggérée à la fois par leur faible part dans l'ensemble des couples et par les taux de nuptialité très forts chez le non mariés. Le recul du taux reflète néanmoins, en l'amplifiant, celui du nombre de mariages.

Allemagne. Nombre de couples hétérosexuels mariés et non mariés
en avril de chaque année
et taux de nuptialité des couples non mariés

Année	Couples mariés	Couples non mariés	Taux de nuptialité	Année	Couples mariés	Couples non mariés	Taux de nuptialité
1990				2000	19455000	2113000	0,198
1991	19492000	1393000	0,326	2001	19357000	2185000	0,178
1992	19633000	1485000	0,305	2002	19307000	2276000	0,172
1993	19703000	1582000	0,280	2003	19185000	2361000	0,162
1994	19662000	1658000	0,266	2004	19200000	2400000	0,162
1995	19658000	1741000	0,247	2005			
1996	19590000	1824000	0,234				
1997	19617000	1904000	0,222				
1998	19541000	1982000	0,211				
1999	19479000	2054000	0,210				

Micro-recensements en avril de chaque année

L'enregistrement des partenariats homosexuels

L'enregistrement des partenariats date de août 2001. Il est organisé dans les länder et ne donne pas lieu à un décompte au niveau fédéral. Il n'y a pas de statistiques des enregistrements (ou des dissolutions) de partenariat sur le modèle de ce qui est réalisé pour les statistiques d'état civil. Toutefois en 2005, un groupe de travail de juristes gays (« Bundesarbeitsgemeinschaft Schwule Juristen ») a conduit une enquête auprès des ministères de l'intérieur des seize länder allemands en vue de connaître le nombre de partenariats enregistrés depuis l'instauration de la loi jusqu'à la fin de 2004. Les résultats manquent pour le Niedersachsen et ils ne couvrent pas l'ensemble de la période dans sept autres länder. La distinction entre partenariats d'hommes et de femmes manque dans le Niedersachsen et dans trois autres länder²⁶. C'est néanmoins une base suffisante pour estimer de façon fiable le nombre de partenariats enregistrés en Allemagne en 3 ans et 5 mois, en supposant que les partenariats non encore enregistrés dans certains länder sont en nombre proportionnel aux mois manquants et à la population du land (pour le Niedersachsen).

De août 2001 à décembre 2004, il aurait été conclu 14 000 partenariats, dont 9 400 partenariats d'hommes et 4 600 partenariats de femmes. En moyenne annuelle, c'est respectivement 2 750 et 1 350. Soit des taux bruts d'enregistrement de 6,8 pour 100 000 hommes et 3,2 pour 100 000 femmes.

La prédominance numérique des partenariats masculins est forte : ils sont plus des deux tiers du total des enregistrements.

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on dispose d'une estimation du nombre de couples homosexuels tirée des Mikrozensus depuis 1996. Le dénombrement identifie d'abord les personnes qui ont déclaré leur lien de couple dans la question sur la composition du ménage. Il s'élargit ensuite aux paires de personnes de même sexe appartenant au même ménage. Dans la définition restreinte, le nombre de couples homosexuels passe de 38 000 en 1996 à 56 000 en 2004 (la prépondérance des couples masculins décroît au fil du temps, de 61 % à 54 %) ; la part dans l'ensemble des couples est de 0,2 % en début de période et 0,3 en fin. Dans la définition large, le nombre de couples homosexuels passe de 124 000 en 1996 à 160 000 en 2004 ; la part dans l'ensemble des couples est de 0,6 % en début de période et 0,7 en fin. Les réticences des couples homosexuels à se déclarer comme tels dans les opérations statistiques de grande ampleur conduisent à privilégier la définition large.

²⁶ Cf. <http://typo3.lsvd.de/223.0.html>

Allemagne. Nombre de couples homosexuels aux micro-recensements, selon le mode de dénombrement

Date	Couples homosexuels déclarés comme tels			Ménages d'adultes de même sexe
	Ensemble	Couples d'hommes	Couples de femmes	
04/1996	38000	23000	15000	124000
04/1997	39000	22000	17000	114000
04/1998	44000	25000	19000	134000
04/1999	41000	25000	16000	128000
05/2000	47000	27000	20000	142000
04/2001	50000	29000	21000	147000
04/2002	53000	31000	22000	148000
05/2003	58000	32000	26000	159000
03/2004	56000	30000	26000	160000

Source : Ergebnisse des Mikrozensus, Statistisches Bundesamt

Pour calculer le taux d'enregistrement des couples homosexuels, on utilise le nombre de ceux-ci en mai 2003, qui est à peu près au milieu de la période couverte et on retranche la moitié du nombre cumulé de partenariats enregistrés. La répartition entre couples d'hommes et de femmes est celle constatée sur les couples qui se sont déclarés comme tels (55%/45%).

Les taux d'enregistrement (0,033 pour les hommes et 0,020 pour les femmes) sont sensiblement inférieurs au taux de nuptialité des couples hétérosexuels non mariés.

Autres aspects de la vie des partenariats homosexuels enregistrés et des mariages

Comparé au nombre de ménages dans chaque land, le nombre de partenariats enregistrés entre 2001 et 2004 est largement supérieur à la moyenne dans les deux länder de Berlin et Hambourg, où ont eu lieu plus de 20 % des partenariats allemands (contre 6 % de la population du pays).

A l'inverse, le nombre de partenariats est le plus faible dans les länder de l'est (hormis Berlin : Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt et Thüringen), où ont lieu 6 % des partenariats (contre 16 % de la population du pays).

Belgique

La Belgique compte 10 445 852 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels

Le nombre de mariages en 2004 est de 43 326. Au cours des 25 dernières années, ce nombre a d'abord connu un creux au milieu des années 1980, avant de se reprendre vers 1990. Le taux brut de nuptialité est alors de 6,5 pour 1 000 habitants et le nombre absolu approche 65 000. Depuis lors la baisse a été sensible, les derniers résultats étant en recul de 20 000 par rapport à ces valeurs et le taux brut n'étant plus que de 4 pour 1 000. Les deux dernières années (2003 et 2004) marquent une légère reprise par rapport aux précédentes.

Belgique. Nombre annuel de mariages hétérosexuels et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	66369	6,7	1990	64554	6,5	2000	45123	4,4
1981	64380	6,5	1991	60740	6,1	2001	42110	4,1
1982	62341	6,3	1992	58156	5,8	2002	40434	3,9
1983	59629	6,1	1993	54112	5,4	2003	41777*	4,0*
1984	58962	6,0	1994	51962	5,1	2004	43326*	4,2*
1985	57559	5,8	1995	51402	5,1			
1986	56780	5,8	1996	50552	5,0			
1987	56563	5,7	1997	47759	4,7			
1988	59075	6,0	1998	44393	4,4			
1989	63511	6,4	1999	44171	4,3			

* Il n'est pas précisé si la statistique englobe les mariages de couples homosexuels.

Le nombre de couples hétérosexuels mariés est en légère décroissance (environ - 80 000 en dix ans). En revanche, le nombre de couples non mariés s'est accru de plus de 130 000 dans le même temps, en doublant de 130 000 à 260 000. La part des non mariés dans le total des couples est passée de 5 à 11 %. Malgré la hausse, ce dernier pourcentage reste faible.

Belgique. Nombre de couples hétérosexuels mariés et non mariés au 1^{er} janvier de chaque année et taux de nuptialité des couples non mariés

Année	Couples mariés	Couples non mariés	Taux de nuptialité	Année	Couples mariés	Couples non mariés	Taux de nuptialité
1990				2000	2146403	258707	0,174
1991	2225916	128151	0,474	2001	2130000	277000	0,152
1992				2002	2120000	295000	0,137
1993	2227730	150456	0,360	2003	2110000	313000	0,133
1994				2004	2100000	331000	0,131
1995	2215944	180601	0,285	2005			
1996							
1997	2195878	205814	0,232				
1998	2182757	220553	0,201				
1999	2164203	238778	0,185				

Estimations faites par Michel Poulain (Gédap, Université Catholique de Louvain-la-Neuve), sur la base des données fournies par l'INS et le Registre National

L'augmentation de la proportion de couples non mariés marque la diversification des formes conjugales et la moindre formalité des unions.

Le taux de nuptialité des couples non mariés est constamment très élevé, quoique en très fort recul. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année. La fréquence de cette légalisation a été divisée par trois depuis 1991, de 47 à 17 %. Il pourrait y avoir dans ces valeurs fortes une part due au fait que tous les mariages ne sont pas précédés par une phase de cohabitation des couples non mariés. Il faut peut-être incriminer aussi une sous déclaration des couples non mariés, suggérée par leur faible part dans l'ensemble des couples. Le recul du taux reflète néanmoins, en l'amplifiant, celle du nombre de mariages.

L'enregistrement des partenariats homosexuels

L'enregistrement des « cohabitations légales » date de janvier 2000 ; il est possible aussi bien pour les couples homo- qu'hétérosexuels, mais il est ouvert aussi aux paires de proches parents (parents-enfants, frères-sœurs etc.). On peut décompter les cohabitations légales selon le sexe des partenaires, mais les personnes ne sont pas tenues de préciser leurs liens de parenté et il n'est donc pas possible de distinguer les couples des autres formes familiales. Les informations statistiques disponibles (par année de 2000 à 2003) émanent du Ministère de l'Intérieur, en réponse à une question parlementaire²⁷.

Par la suite, le mariage a été ouvert aux homosexuels en juin 2003. Il n'est pas clair si la statistique des mariages publiée par l'Institut national de statistique depuis lors inclut les mariages de couples de même sexe. Des informations sur le nombre de ces mariages ont été données par le Ministère de l'Intérieur pour la période de deux ans à partir du 1^{er} juin 2003²⁸.

Belgique. Nombre annuel de cohabitations légales et de mariages homosexuels selon le sexe et taux brut pour 100 000 hommes ou femmes

Année	Cohabitations			Mariages		Taux de cohabitation		Taux de mariage	
	HF	HH	FF	HH	FF	HH	FF	HH	FF
1998									
1999									
2000	4269		745				7,3		
2001	20345		1052				10,2		
2002	8189		712				6,8		
2003	10374		789	□			7,6	□	
2004				□	2442*			□	11,8**
2005				□				□	

* Du 1^{er} juin 2003 au 10 juin 2005, soit environ deux ans.

** Du 1^{er} juin 2003 au 10 juin 2005, rapporté à une dimension annuelle.

Le nombre de cohabitations légales entre partenaires de même sexe a été compris entre 700 et 800 chaque année entre 2000 et 2003, avec une valeur record au-dessus de 1 000 en 2001. D'où une moyenne sur quatre ans de 825 enregistrements. Les taux bruts sont de l'ordre de 7 pour 100 000 personnes avec une pointe au-dessus de 10 en 2001 (moyenne : 8,0). Contrairement à ce qu'on aurait pu attendre, il n'y a pas eu un nombre d'enregistrements exceptionnellement élevé la première année d'application de la loi, puis un recul les années suivantes. Il n'y a pas non plus de chute du nombre de cohabitations enregistrées en 2003, l'année où le mariage a été ouvert aux couples homosexuels. En revanche, cette année, le nombre de dissolutions de cohabitations a fortement augmenté, atteignant 546 contre 120 l'année précédente²⁹. Rappelons que ces statistiques ne permettent pas d'identifier les couples de même sexe (ou de sexe différent), ceux-ci n'étant pas distingués des cohabitations entre frères, ou entre sœurs, ou entre père et fils ou mère et fille.

Il y a eu 2442 mariages entre conjoints de même sexe dans les deux ans qui ont suivi la mise en œuvre de la loi. Soit un taux brut moyen annuel de l'ordre de 12 pour 100 000 hommes ou femmes. Ces nombres sont sensiblement supérieurs à ceux des cohabitations légales entre partenaires de même sexe les deux premières années d'application de la loi.

²⁷ Réponse du ministre de l'Intérieur du 31 mars 2004 à la question n° 177 de M. Servais Verherstraeten du 11 février 2004. In : Chambre, 2^e session de la 51^e législature, p. 4161-4162.

²⁸ Réponse de la ministre de la Justice du 6 juillet 2005 à la question n° 635 de Mme Hilde Vautmans du 19 avril 2005. In : Chambre, 3^e session de la 51^e législature, p. 14977-14978.

²⁹ Les cohabitations entre partenaires de sexe différent suivent une évolution beaucoup plus irrégulière. L'année initiale est celle où le nombre d'enregistrements a été le plus faible.

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on estime le nombre de couples non encore enregistrés car la statistique belge ne le fournit pas. On fait pour cela deux hypothèses conformes aux quelques données dont on dispose pour d'autres pays, en supposant que les couples homosexuels sont 1,2 % (comme aux Pays Bas en 2002) ou 0,7 % (aux Etats Unis c'est 1 % en 2000 ; en France sans doute plus de 0,7 % en 1999) des couples hétérosexuels. On utilise une estimation du nombre de couples hétérosexuels dans les premières années 2000 extrapolé des valeurs connues, soit 2 400 000.

Quand la proportion de couples homosexuels est supposée plus forte, le taux d'enregistrement apparaît plus faible, ce qui n'est pas une surprise : en moyenne 0,029 contre 0,049 pour les enregistrements de cohabitations légales en 2000-2003 ; en moyenne 0,042 contre 0,073 pour les deux premières années d'application de la loi sur le mariage, à partir de juin 2003. Mais quelle que soit la proportion supposée, le taux d'enregistrement est toujours sensiblement inférieur au taux de nuptialité des couples hétérosexuels non mariés.

Autres aspects de la vie des cohabitations légales

Les deux premières années d'application de la loi sur la cohabitation légale (2000-2001), les enregistrements ont surtout eu lieu en région flamande, qu'il s'agisse de partenaires de même sexe ou de sexe différent (plus de 8 enregistrements sur 10, alors que la population de la Flandre représente moins de 6/10 du Royaume). Les deux années suivantes (2002-2003), la sur-représentation est dans les deux autres régions mais il en va différemment pour les partenaires de même sexe et ceux de sexe différent : environ le quart des cohabitations de même sexe ont été enregistrées à Bruxelles-Capitale (qui ne représente que le dixième de la population du pays) ; la moitié des cohabitations de sexe différent ont été enregistrées en Wallonie (dont la population est le tiers du total belge).

Danemark

Le Danemark compte 5 411 405 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels

Le nombre de mariages en 2004 est de 37 711. Il s'est accru continuellement quoique irrégulièrement depuis les années 1980. Il était nettement inférieur à 30 000 au milieu des années 1980 ; il est largement supérieur à 35 000 depuis le milieu des années 1990. De même le taux brut de nuptialité est passé de moins de 5 à plus de 7 pour mille.

Cette hausse marque une reprise de la nuptialité après un sensible déclin. En témoignent des indicateurs beaucoup plus raffinés que le nombre annuel brut de mariages ou le taux brut de nuptialité (table de nuptialité ou indicateur conjoncturel de primo-nuptialité).

Danemark. Nombre annuel de mariages hétérosexuels et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	26448	5,2	1990	31513	6,1	2000	38388	7,2
1981	25411	5,0	1991	31099	6,0	2001	36567	6,8
1982	24330	4,8	1992	32188	6,2	2002	37210	6,9
1983	27096	5,3	1993	31638	6,1	2003	35041	6,5
1984	28624	5,6	1994	35321	6,8	2004	37711	7,0
1985	29322	5,7	1995	34736	6,6			
1986	30773	6,0	1996	35953	6,8			
1987	31132	6,1	1997	34244	6,5			
1988	32080	6,3	1998	34733	6,5			
1989	30894	6,0	1999	35439	6,7			

The number of marriages in Denmark comprises marriages which satisfy the condition that at least one of the two spouses is resident in Denmark. The number of persons married comprises male or female, Danish residents who marry. The basis for compiling the statistics is Statistics Denmark's populations register, which again is based on information drawn from the Central Population Register (CPR) about each married person with residence in Denmark.

Le nombre de couples hétérosexuels mariés a diminué du début des années 1980 au milieu des années 1990, de 1 100 000 à 1 million. Il s'est légèrement repris et stabilisé depuis.

Le nombre de couples hétérosexuels non mariés s'est accru continuellement depuis le début des années 1980 jusqu'à aujourd'hui : de 160 000 à 290 000. La hausse est nettement ralentie, voire interrompue depuis la fin des années 1990.

Les deux mouvements se compensent à peu près : moins de couples mariés et davantage de non mariés pour un nombre total de couples à peu près inchangé. La part des non mariés dans l'ensemble des couples a été presque doublée : de 1/8 à près de 1/4 (de 12,5 à 22,1%).

L'augmentation de la proportion de couples non mariés, très minoritaire en début de période, marque la diversification des formes conjugales et la moindre formalité des unions. Toutefois, la stabilité du nombre de couples mariés montre une résistance du mariage, aussi attestée par l'augmentation de sa fréquence (cf. plus haut).

Danemark. Nombre de couples hétérosexuels mariés et non mariés
au 1^{er} janvier de chaque année

Année	Couples mariés	Couples non mariés	Année	Couples mariés	Couples non mariés	Année	Couples mariés	Couples non mariés
1980	1120542	160355	1990	1024147	244916	2000	1023872	288854
1981	1107247	169419	1991	1019387	251343	2001	1026378	290999
1982	1092857	178692	1992	1016434	258201	2002	1026775	292101
1983	1077707	189983	1993	1013419	263171	2003	1026806	291828
1984	1065957	199757	1994	1009220	268865	2004	1024065	291266
1985	1056606	207907	1995	1009611	272445	2005	1024386	290030
1986	1048409	216664	1996	1013636	276641			
1987	1042683	225361	1997	1017221	277930			
1988	1037033	233350	1998	1018806	281668			
1989	1030625	238248	1999	1021701	286318			

Families can be divided in three main types. Families consisting of *couples*, families of *single persons* and families consisting of a *child not living with its parents*. For families of couples or single persons the family can include one or more children living with the parent(s).

Children are defined as persons who are under the age of 18, who have never been married, who do not have children by themselves and who are not parts in cohabiting couples (cf. below). If a child has a parent reference number to at least one adult person in the same household, the child is living at home, and if not the child is not living at home.

All persons who are not *children* are *adult persons*. Every adult person who is not part of a couple is a *single person*. There are four *types of couples*:

1. *Married couples*. The two persons have spouse reference numbers to each other.

2. *Registered partnerships*. The partners refer to each other in the CPR register in the same way as married persons.

3. *Consensual unions*. The two persons have at least one joint child (in this context the age of the child is immaterial) living in the home, or they had so on 1 January 1990 or 1 January in a subsequent year. If there are no joint children living in the home any longer, the parents must have been living together at all later dates of population status (= 1 January).

4. *Cohabiting couples*: A cohabiting couple consists of two persons of opposite sex with no joint children, but possibly with separate children. The two persons have an age difference of less than 15 years, they are not from the same family of origin as far as the reference numbers show and there are no other adult persons living at the address. Persons down to the age of 16 can be regarded as cohabiting.

A family is identified by the CPR number of the woman in the family in the case of a couple consisting of a man and a woman. In other cases by the CPR number of the oldest person in the family. The person whose CPR number identifies the family is sometimes called the *head person* or the *key person* of the family and the other adult person as the *partner* in the family.

Depuis la fin des années 1980, le taux de nuptialité des couples non mariés est à peu près constant, avec de faibles variations entre 12,0 et 13,3 %. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année. La fréquence de cette légalisation n'a guère varié depuis 1989 (année d'instauration du partenariat enregistré pour les couples homosexuels).

Cette stabilité contraste avec l'augmentation du nombre de mariages, car celle-ci est balancée par la montée parallèle du nombre de couples non mariés. Il y a donc davantage de couples non mariés, une fréquence constante de leur légalisation, donc un nombre croissant de mariages au fil des ans.

Danemark. Taux de nuptialité des couples non mariés

Année	Nombre	Année	Nombre	Année	Nombre
1980	0,165	1990	0,129	2000	0,133
1981	0,150	1991	0,124	2001	0,126
1982	0,136	1992	0,125	2002	0,127
1983	0,143	1993	0,120	2003	0,120
1984	0,143	1994	0,131	2004	0,129
1985	0,141	1995	0,127		
1986	0,142	1996	0,130		
1987	0,138	1997	0,123		
1988	0,137	1998	0,123		
1989	0,130	1999	0,124		

Au début des années 1980, la fréquence de légalisation était sensiblement plus élevée (et en régression). Il ne faut sans doute pas y voir le signe d'une légalisation plus fréquente des couples. C'est sans doute bien davantage dû au fait qu'une proportion encore importante de couples se mariaient sans avoir préalablement vécu ensemble. L'existence de tels couples en proportion non négligeable fausse le sens du taux de nuptialité des couples non mariés. Ainsi d'après les enquêtes FFS, la proportion de jeunes suédoises qui « consacrent » leur premier couple d'emblée par un mariage, sans cohabitation préalable, tombe sous 10% dans la première moitié des années 1980 (on n'a pas d'information semblable pour le Danemark).

L'enregistrement des partenariats homosexuels

L'enregistrement des partenariats date de 1989, mais la statistique de ces enregistrements débute seulement en 1999. En parallèle, le Bureau central de statistique a cependant établi depuis le début les nombres d'hommes et de femmes vivant en partenariat ou n'y vivant plus par suite de la séparation des partenaires ou le décès de l'un d'eux. Nous avons utilisé l'évolution de ces nombres d'année en année pour estimer le nombre d'enregistrements entre 1989 et 1998.

Danemark. Nombre annuel de partenariats homosexuels selon le sexe et taux brut pour 100 000 hommes ou 100 000 femmes

Année	Partenariats		Taux		Année	Partenariats		Taux		Année	Partenariats		Taux	
	HH	FF	HH	FF		HH	FF	HH	FF		HH	FF	HH	FF
1980					1990	329	113	24	9	2000	177	131	12,1	9,7
1981					1991	183	88	13	7	2001	178	169	12,1	12,5
1982					1992	167	82	12	6	2002	140	163	9,5	12,0
1983					1993	161	62	11	5	2003	148	172	11,1	12,6
1984					1994	150	98	11	7	2004				
1985					1995	177	82	12	6					
1986					1996	157	106	11	8					
1987					1997	124	113	9	8					
1988					1998	137	127	9	9					
1989	263	62	19	5	1999	161	137	11,0	10,2					

De 1989 à 1998: nos estimations.

The number of partnerships in Denmark comprises partnerships which satisfy the condition that at least one of the two partners is resident in Denmark. The number of persons partnered comprises male or female, Danish residents who partner. The basis for compiling the statistics is Statistics Denmark's populations register, which again is based on information drawn from the Central Population Register (CPR) about each partnered person with residence in Denmark.

Le nombre de partenariats masculins est élevé les deux premières années et il se stabilise ensuite autour de 150 annuellement (taux brut autour de 11 pour 100 000). Le nombre de partenariats féminins est beaucoup plus faible les premières années, mais il est en hausse continue depuis dix ans (triplement, de 62 en 1993 à 172 en 2003). Les deux dernières années, le nombre de partenariats féminins dépasse celui des partenariats masculins (taux brut supérieur à 12 pour 100 000).

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on estime le nombre de couples non encore enregistrés car la statistique danoise ne le fournit pas, malgré la tenue d'un registre de population performant. On fait pour cela deux hypothèses conformes aux quelques données dont on dispose pour d'autres pays, en supposant que les couples homosexuels sont 1,2 % (comme aux Pays Bas en 2002) ou 0,7 % (aux Etats Unis c'est 1 % en 2000 ; en France sans doute plus de 0,7 % en 1999) des couples hétérosexuels.

Aux Pays Bas, la proportion de couples homosexuels par rapport aux couples hétérosexuels a légèrement augmenté au fil du temps, de 1,0 à 1,2 % entre 1995 et 2002. Il n'est pas exclu qu'un semblable mouvement se soit déroulé au Danemark.

Danemark. Estimations du nombre de couples homosexuels non enregistrés au 1^{er} janvier de chaque année

Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels		Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF
1989	8222	7004	4796	4086	1998	8427	7179	4916	4188
1990	8224	7005	4797	4086	1999	8476	7220	4944	4212
1991	8234	7014	4803	4092	2000	8506	7246	4962	4227
1992	8260	7036	4818	4104	2001	8537	7272	4980	4242
1993	8272	7047	4826	4111	2002	8546	7280	4985	4247
1994	8282	7055	4831	4115	2003	8545	7279	4984	4246
1995	8308	7077	4846	4128	2004	8523	7261	4972	4235
1996	8361	7122	4877	4155	2005	8517	7256	4968	4232
1997	8393	7149	4896	4170					

Selon deux hypothèses, on suppose que le nombre de couples homosexuels est égal à 1,2 % ou 0,7 % des couples hétérosexuels (mariés ou non). On retranche de ce nombre celui des couples homosexuels enregistrés, tel que publié chaque année par Statistique Danemark.

Quand la proportion de couples homosexuels est supposée plus forte, le taux d'enregistrement apparaît plus faible, ce qui n'est pas une surprise. Mais quelle que soit la proportion supposée, le taux d'enregistrement est toujours sensiblement inférieur au taux de nuptialité des couples hétérosexuels non mariés. En fin de période par exemple, c'est-à-dire près de 15 ans après la loi sur le partenariat, le taux d'enregistrement est de l'ordre de 3 à 7 % selon les hypothèses, alors que le taux de nuptialité reste supérieur à 12 %.

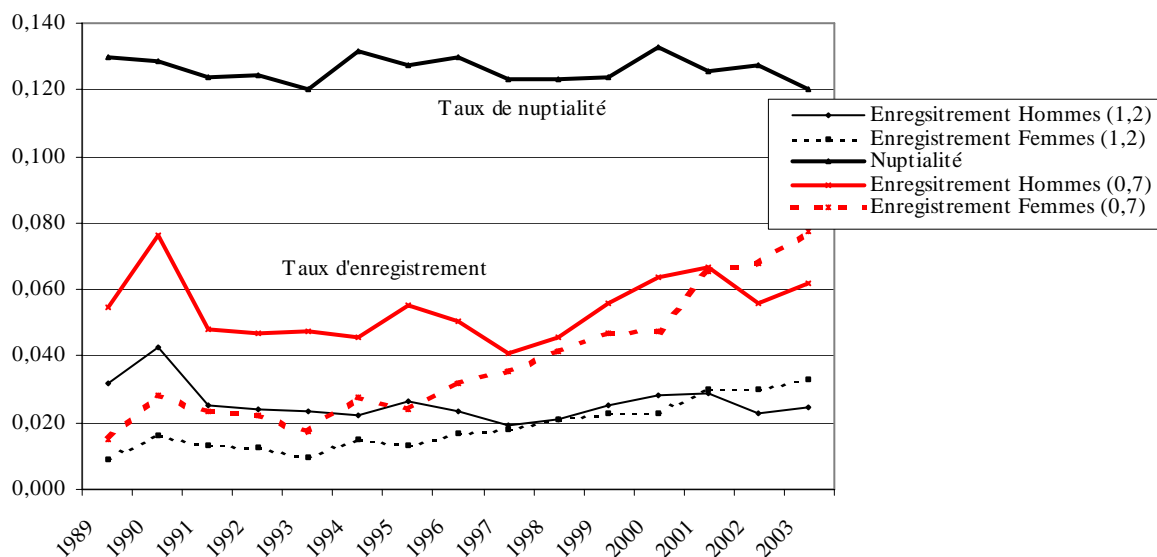
Danemark. Taux d'enregistrement des couples homosexuels

Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels		Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF
1989	0,032	0,009	0,055	0,015	1998	0,021	0,021	0,046	0,042
1990	0,042	0,016	0,076	0,028	1999	0,025	0,023	0,056	0,047
1991	0,025	0,013	0,048	0,023	2000	0,028	0,023	0,064	0,048
1992	0,024	0,012	0,047	0,022	2001	0,029	0,030	0,067	0,066
1993	0,023	0,009	0,047	0,017	2002	0,023	0,030	0,056	0,068
1994	0,022	0,015	0,046	0,028	2003	0,025	0,033	0,062	0,078
1995	0,027	0,013	0,055	0,024	2004				
1996	0,024	0,017	0,050	0,032	2005				
1997	0,019	0,018	0,041	0,035					

Selon deux hypothèses, on suppose que le nombre de couples homosexuels est égal à 1,2 % ou 0,7 % des couples hétérosexuels (mariés ou non). On retranche de ce nombre celui des couples homosexuels enregistrés, tel que publié chaque année par Statistique Danemark.

L'évolution du taux d'enregistrement au fil du temps est beaucoup plus difficile à dessiner. La hausse au cours des années récentes est sensiblement plus forte si la proportion de couples homosexuels est plus faible (hypothèse 0,7 %). Elle serait nettement moins forte si la proportion s'avérait élevée (hypothèse 1,2 %). Mais surtout, elle pourrait être complètement gommée si, comme aux Pays-Bas, si la proportion de couples homosexuels s'est élevée légèrement au fil du temps. Sur ces points la conclusion est indécise.

Danemark. Taux d'enregistrement et taux de nuptialité



Autres aspects de la vie des partenariats homosexuels enregistrés

Le nombre de partenariats rompus chaque année par un divorce est connu depuis 1999. Cette année là, les ruptures concernent des couples enregistrés au cours des 10 années précédentes. En 2000, ce sont des couples enregistrés sur 11 ans ; en 2001, sur 12 ans, etc. La lecture de la série des divorces s'en trouve compliquée. Il faut procéder indirectement, en prenant par exemple les risques de divorce des couples mariés comme référence :

- Nous calculons combien de divorces de couples enregistrés on aurait observé chaque année depuis 1999 si les risques de divorce à chaque durée de partenariat avaient été les mêmes que les risques de divorce par durée de mariage ;
- Nous comparons ensuite le résultat de ce calcul avec la réalité et mesurons ainsi le ratio de sur- ou sous-divortialité des partenaires par rapport aux mariés.
-

Danemark. Divorces dans les partenariats enregistrés et divortialité comparée à celle des mariés

Année	Divorces observés		Divorces attendus		Sur-divortialité		Divorce par mariage
	HH	FF	HH	FF	HH	FF	
1999	45	36	42,7	21,5	1,1	1,6	0,42
2000	60	33	47,0	25,6	1,3	1,2	0,44
2001	60	40	49,4	28,6	1,2	1,4	0,45
2002	50	62	53,0	32,4	0,9	1,9	0,46
2003	62	59	56,4	36,7	1,1	1,6	0,47
Moyenne	55,4	46,0	49,7	29,0	1,12	1,58	0,450

Chez les couples mariés, les taux de divorce par durée de mariage ont été obtenus en rapportant les divorces par durée au nombre de mariages célébrés dans le passé, chaque année. Ces taux ont été appliqués aux partenariats enregistrés dans le passé pour calculer le nombre de divorces attendus. La sur-divortialité est le rapport divorces observés/divorces attendus.

La somme des taux de divorce par durée de mariage mesure la proportion de mariages rompus par divorce (dernière colonne).

La divortialité des partenariats d'hommes est légèrement supérieure à celle des mariages hétérosexuels (+ 12 % en moyenne sur cinq ans). La divortialité des partenariats de femmes est largement supérieure à cette même référence (+ 58 % en moyenne). Les divorces sont donc sensiblement plus fréquents dans les partenariats de femmes que d'hommes.

La sur-divortialité par rapport aux mariés est d'autant plus remarquable que la fréquence des divorces est déjà forte chez les mariés. Toutes durées de mariage combinées, la fréquence des mariages rompus approche 50 %.

On reste vraisemblablement en dessous de cette valeur pour les partenariats car les durées supérieures à 15 ans ne sont pas représentées, en l'absence de partenariats enregistrés depuis aussi longtemps.

Au fil des ans, le nombre de femmes en âge d'avoir des enfants et participant à un partenariat enregistré n'a cessé d'augmenter, ne serait-ce que par cumul des nouvelles enregistrées d'année en année. En conséquence, le nombre d'enfants mis au monde par ces femmes augmente lui aussi, passant de 9 en 1993 à 70 dix ans plus tard.³⁰

Les mères jeunes sont peu nombreuses, à la fois parce que les femmes dans un partenariat sont peu nombreuses avant 30 ans et parce que la fécondité de ces femmes est sensiblement inférieure à celle des mariées, un écart qui ne cesse de se réduire à mesure de l'avance en âge. Au delà de 30 ans, la différence entre les deux groupes est modeste : la sous-fécondité des lesbiennes est de l'ordre d'un quart.

Danemark. Nombre de naissances et taux de fécondité des femmes dans un partenariat enregistré

Année	Total	Age de la mère					
		< 25 ans	25-29 ans	30-34 ans	35-39 ans	40-44 ans	45-49 ans
Nombre de naissances							
1993	9						
1994	8						
1995	21						
1996	14						
1997	24						
1998	40						
1999	33						
2000	48						
2001	59	-	18	22	17	2	-
2002	59	3	7	30	15	4	-
2003	70	1	22	32	12	3	-
Taux de fécondité par femme (moyenne 2001-2003)...							
...des partenaires		0,05	0,10	0,10	0,04	0,01	-
...des mariées		0,22	0,22	0,14	0,05	0,01	-

Depuis juin 1999, une modification de la loi sur le partenariat enregistré permet l'adoption de l'enfant du (de la) partenaire, à condition que cet enfant n'ait pas fait lui-même l'objet d'une adoption internationale et qu'il n'ait pas son autre parent. En 1999 et 2000, les adoptions ont porté fréquemment sur des enfants relativement âgés car des situations anciennes ont été régularisées à cette occasion. Depuis, quatre adoptions sur cinq portent sur des enfants de moins d'un an et environ 50 adoptions ont lieu chaque année.

Si on suppose que les adoptions des enfants du (de la) partenaire portent essentiellement sur les enfants nés de mères dans un partenariat enregistré, tels que décrits au tableau précédent, on peut établir un lien entre naissances et adoptions. Par exemple les enfants adoptés avant un an sont une fraction de ceux nés la même année et l'année précédente ; les enfants adoptés entre un et deux ans sont une fraction de ceux nés un et deux ans auparavant. A ces âges, les taux d'adoption de 2001-2003 sont respectivement 75 % et 9 %. Le total des adoptions avant 5 ans représente 100 % des naissances nées de mères lesbiennes dans les cinq et six années passées. Ce total ne laisse pas de place à d'autres types d'adoption (enfants nés d'une union précédente, enfants adoptés préalablement par l'autre parent), soit que ces pratiques soient très peu fréquentes, soit que l'adoption des enfants nés de mères lesbiennes ne soit pas aussi systématique qu'il paraît et que d'autres types d'adoption compensent.

³⁰ A noter : L'insémination assistée n'est pas autorisée pour les partenaires enregistrés, si elle est réalisée par un médecin, mais elle peut l'être un(e) infirmier(e).

Danemark. Nombre et taux d'adoptions d'enfants du partenaire enregistré
par âge et sexe

Année	Total	Age de l'enfant						Sexe	
		0 an	1 an	2 ans	3 ans	4 ans	5+ ans	Garçons	Filles
Nombre d'adoptions									
1999	61	7	17	12	4	4	17	36	25
2000	44	17	6	7	6	-	8	28	16
2001	46	36	3	1	-	2	4	19	27
2002	57	46	4	1	3	-	3	29	28
2003	51	37	5	2	4	1	2	27	24
2001-2003	51,3	39,7	4,0	1,3	2,3	1,0	3,0	25,0	26,3
Taux d'adoptions (pour 100 naissances de mères partenaires enregistrées à chaque âge)									
2001-2003	100	75	9	4	8	4			

Les adoptions par âge sont rapportées aux naissances de femmes dans un partenariat enregistré du tableau précédent. Par exemple, les 37 adoptions avant un an en 2003 sont rapportées aux naissances de 2002 et 2003 $[(59+70)/2=64.5]$; les 5 naissances entre un et deux ans sont rapportées aux naissances de 2001 et 2002 $[(48+59)/2=53.5]$; etc. On n'a pas inclus dans le calcul les enfants adoptés après 5 ans.

Finlande

La Finlande compte 5 236 611 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels non mariés

Le nombre de mariages en 2004 est de 29 389. Il n'avait jamais atteint cette valeur depuis vingt ans, évoluant dans une étroite marge entre 24 000 et 27 000. Le taux brut de nuptialité restait le plus souvent inférieur à 5 pour 1000, ce qui est faible historiquement. Après un minimum à la fin des années 1990, nombre de mariages et taux brut marquent un léger regain depuis le début des années 2000.

Finlande. Nombre annuel de mariages hétérosexuels et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	29388	6,1	1990	24997	5,0	2000	26150	5,1
1981	30100	6,3	1991	24732	4,9	2001	24830	4,8
1982	30459	6,3	1992	23560	4,7	2002	26969	5,2
1983	29474	6,1	1993	24660	4,9	2003	25815	5,0
1984	28550	5,8	1994	24898	4,9	2004	29389	5,6
1985	25751	5,3	1995	23737	4,6			
1986	25820	5,2	1996	24464	4,8			
1987	26259	5,3	1997	23444	4,6			
1988	25933	5,2	1998	24023	4,7			
1989	24569	4,9	1999	24271	4,7			

'Marriages' refer to marriages contracted by women permanently resident in Finland. The basis for compiling the statistics is Statistics Finland's populations register.

Le nombre de couples hétérosexuels mariés a légèrement diminué depuis les années 1980 de plus de 1 million à moins de 950 000 aujourd'hui.

Dans le même temps, le nombre de couples hétérosexuels non mariés s'est accru continuellement et substantiellement : de 100 000 à 280 000.

Ainsi, il y a moins de couples mariés et davantage de non mariés pour un nombre total de couples en légère hausse. La part des non mariés dans l'ensemble des couples a plus que doublé : de moins de 1/10 à près de ¼ (de 9 à 23 %).

L'augmentation de la proportion de couples non mariés, très minoritaire en début de période, marque la diversification des formes conjugales et la moindre formalité des unions.

Finlande. Nombre de couples hétérosexuels mariés et non mariés
au 1^{er} janvier de chaque année

Année	Couples mariés	Couples non mariés	Année	Couples mariés	Couples non mariés	Année	Couples mariés	Couples non mariés
1980			1990			2000	953395	255389
1981	1014044	102100	1991	1004514	189367	2001	950887	262713
1982			1992			2002	948385	272000
1983			1993	993732	204648	2003	947501	277811
1984			1994	988674	209231	2004	945701	283816
1985			1995	982204	213654	2005		
1986	1025128	134341	1996	975531	221305			
1987			1997	968270	229100			
1988			1998	964472	237615			
1989			1999	958826	246500			

A cohabiting couple is defined as two spouseless adults of different sex aged 18 and over and occupying the same dwelling on a permanent basis, provided their age difference is less than 16 years and they are not siblings. In case the couple has a common child these specifications do not apply. Same-sex persons living together are not inferred as cohabiting couples. Only registered partnerships are recorded in the statistics.

The computer program classifies persons on the basis of their permanent residence code into household-dwelling units. The record of each person permanently residing in the dwelling includes the personal identification codes of his or her parents, spouse and children. By comparing them the program forms the families.

Before 1990, cohabiting couples were solely inferred with the help of common children. Since year 1992 inferences have been made using a different program. After joining married couples in the household-dwelling units the program identifies as cohabiting partners persons who live in the same dwelling, do not have a spouse, are aged 18 or over, and are of the opposite sex, provided they are not siblings and their age difference is not more than 15 years. These rules do not apply to cohabiting couples with common children.

According to the former concepts, a sole-supporter mother with whom a man of suitable age is residing will be classified as a cohabiting couple. Likewise the daughter of a family and a man of a suitable age possibly residing with the family now form a cohabiting couple.

The inference of families is made difficult by the fact that the population information system is unable to distinguish between subtenants and the rest of the family. According to the reliability study of the 1990 census, there were less than 20,000 subtenants in Finland at that time. Hence any inferences where the subtenant is identified as the cohabiting partner of the landlord/lady cannot amount to any considerable number, as the condition is that the subtenant is of a suitable age and a different sex from the spouseless landlord/lady.

Depuis le milieu des années 1990, le taux de nuptialité des couples non mariés est à peu près constant, avec de faibles variations autour de 10 %. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année.

Cette stabilité contraste avec l'augmentation récente du nombre de mariages (après le creux des années 1990), car celle-ci est balancée par la montée parallèle du nombre de couples non mariés. Il y a donc davantage de couples non mariés, une fréquence constante de leur légalisation, donc un nombre croissant de mariages au fil des ans.

Finlande. Taux de nuptialité des couples non mariés

Année	Nombre	Année	Nombre	Année	Nombre
1980		1990		2000	0,102
1981	0,295	1991	0,131	2001	0,095
1982		1992		2002	0,099
1983		1993	0,120	2003	0,093
1984		1994	0,119	2004	0,104
1985		1995	0,111		
1986	0,192	1996	0,111		
1987		1997	0,102		
1988		1998	0,101		
1989		1999	0,098		

Au cours des années 1980, la fréquence de légalisation était sensiblement plus élevée (et en régression). Il ne faut sans doute pas y voir le signe d'une légalisation plus fréquente des couples. C'est sans doute bien davantage dû au fait qu'une proportion encore importante de couples se mariaient sans avoir préalablement vécu ensemble. L'existence de tels couples en proportion non négligeable fausse le sens du taux de nuptialité des couples non mariés. Ainsi d'après les enquêtes FFS, la proportion de Suédoises qui « consacrent » leur premier couple d'emblée par un mariage, sans cohabitation préalable, tombe sous 10% dans la première moitié des années 1980. Le comportement des Finlandaises suit de près dans le temps celui des Suédoises.

Par ailleurs on a vu que le nombre de couples cohabitants pendant les années 1980 était sous-estimé par une mauvaise prise en compte des couples sans enfants.

L'enregistrement des partenariats homosexuels

L'enregistrement des partenariats date du 1^{er} mars 2002.

Finlande. Nombre annuel de partenariats homosexuels selon le sexe, taux brut pour 100 000 hommes ou 100 000 femmes et taux d'enregistrement des couples homosexuels

Année	Partenariats		Taux brut		Année	Couples homosexuels				Année	Taux d'enregistrement			
						1,2 % des hétérosexuels		0,7 % des hétérosexuels			1,2 % des hétérosexuels		0,7 % des hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF		HH	FF	HH	FF
2000					2000					2000				
2001					2001					2001				
2002	240	206	9,4	7,7	2002	7908	6737	4613	3930	2002	0,031	0,031	0,052	0,052
2003	84	106	3,3	4,0	2003	7700	6558	4392	3739	2003	0,011	0,016	0,019	0,028
2004	84	102	3,3	3,8	2004	7643	6475	4324	3647	2004	0,011	0,016	0,019	0,028

The number of partnerships refers to those registered in without conditions of residence. In 2002, 20 male partnerships and 5 female partnerships had one partner residing abroad; in 2003, they were respectively 16 and 8.

The basis for compiling the statistics is Statistics Finland's populations register, which again is based on information drawn from the Central Population Register (CPR) about each partnered person with residence in Finland.

Selon deux hypothèses, on suppose que le nombre de couples homosexuels est égal à 1,2 % ou 0,7 % des couples hétérosexuels (mariés ou non). On retranche de ce nombre celui des couples homosexuels enregistrés, tel que publié chaque année par Statistique Danemark.

Le nombre de partenariats est élevé la première année (bien que réduite à 10 mois), avec une prédominance masculine. Il est nettement plus faible et semble stabilisé dès l'année suivante, avec une prédominance féminine cette fois.

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on estime le nombre de couples non encore enregistrés car la statistique finlandaise ne le fournit pas, malgré la tenue d'un registre de population performant. On fait pour cela deux hypothèses conformes aux quelques données dont on dispose pour d'autres pays, en supposant que les couples homosexuels sont 1,2 % (comme aux Pays Bas en 2002) ou 0,7 % (aux Etats Unis c'est 1 % en 2000 ; en France sans doute plus de 0,7 % en 1999) des couples hétérosexuels.

Quand la proportion de couples homosexuels est supposée plus forte, le taux d'enregistrement apparaît plus faible, ce qui n'est pas une surprise. Mais quelle que soit la proportion supposée, le taux d'enregistrement est toujours sensiblement inférieur au taux de nuptialité des couples hétérosexuels non mariés, même en 2002. En 2003 et 2004, le taux d'enregistrement varie de 1 à 3 % selon le sexe et selon les hypothèses, alors que le taux de nuptialité atteint 10 %.

Autres aspects de la vie des partenariats homosexuels enregistrés

Le nombre d'enfants mis au monde par des femmes des femmes vivant dans un partenariat enregistré a été de 6 en 2002 et 11 en 2003.³¹

³¹ A noter : L'insémination médicalement assistée est autorisée pour les partenaires enregistrés.

France

La France (métropolitaine) compte 60 561 200 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels

Le nombre de mariages en 2004 est de 259 400. Au cours des 25 dernières années, baisses et reprises ont alterné de manière quasi-cyclique : (i) recul jusqu'en 1986-1987 (il y a alors 265 000 mariages pour un taux brut de 4,8 pour 1 000 habitants), (ii) bref regain puis nouvelle décroissance jusqu'au milieu des années 1990 (254 000 mariages et taux brut de 4,4 pour 1 000), (iii) nouvelle reprise culminant en 2000 et rechute, le taux brut retombant à 4,3 pour 1 000.

France. Nombre annuel de mariages hétérosexuels
et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	334377	6,2	1990	287099	5,1	2000	297922	5,1
1981	315117	5,8	1991	280175	4,9	2001	288255	4,9
1982	312405	5,7	1992	271427	4,7	2002	279087	4,7
1983	300513	5,5	1993	255190	4,4	2003	275963	4,6
1984	281402	5,1	1994	253746	4,4	2004	259400*	4,3
1985	269419	4,9	1995	254651	4,4			
1986	265678	4,8	1996	280072	4,8			
1987	265177	4,8	1997	283984	4,9			
1988	271124	4,8	1998	271361	4,6			
1989	279900	5,0	1999	286191	4,9			

France métropolitaine

* Provisoire

Le nombre de couples hétérosexuels mariés a légèrement reculé depuis 1990, de 500 000 environ jusque vers 12 millions. En revanche, le nombre de couples non mariés s'est accru constamment et fortement dans le même temps : une augmentation largement supérieure au million et un doublement, de 1,4 à 2,7 millions. La part des non mariés dans le total des couples est passée de 10 à 18 %. Désormais, plus d'un couple sur cinq vit ensemble sans avoir légalisé son union par un mariage.

L'augmentation de la proportion de couples non mariés marque la diversification des formes conjugales et la moindre formalité des unions.

Le taux de nuptialité des couples non mariés est élevé mais en rapide régression au début des années 1990. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année. Il pourrait y avoir dans ces valeurs fortes une part due au fait que tous les mariages ne sont pas précédés par une phase de cohabitation des couples non mariés, le mouvement progressif vers une prévalence systématique de la cohabitation avant mariage atteignant sans doute son terme vers le milieu de la décennie, d'après les enquêtes conduites au cours de cette période. Il faut peut-être incriminer aussi une sous déclaration des couples non mariés, ensuite effacée par l'amélioration des instruments de collecte³².

Au milieu des années 1990, les taux de nuptialité des couples non mariés sont modérés (13 %). Ils ne cessent de diminuer depuis, pour n'être plus que 9 % en 2004. Une faible fraction des couples non mariés légalisent désormais chaque année leur union par un mariage.

³² Leridon, Henri; Villeneuve-Gokalp, Catherine.- Les nouveaux couples: nombre, caractéristiques et attitudes.- *Population*, 1988, vol. 43, 2, p. 331-374. (en particulier, p. 368-373)
Toulemon, Laurent.- La cohabitation hors mariage s'installe dans la durée.- *Population*, 1996, vol. 51, 3, p. 675-716 (en particulier, p. 707-710).

France. Nombre de couples hétérosexuels mariés et non mariés
en avril de chaque année
et taux de nuptialité des couples non mariés

Année	Couples mariés	Couples non mariés	Taux de nuptialité	Année	Couples mariés	Couples non mariés	Taux de nuptialité
1990	12631200	1362100	0,211	2000	12136400	2523700	0,118
1991	12511600	1570900	0,178	2001	12118200	2535700	0,114
1992	12490100	1732100	0,157	2002	12076100	2686400	0,104
1993	12537400	1857000	0,137	2003	12040000	2770000	0,100
1994	12546300	1931100	0,131	2004	12000000	2850000	0,091
1995	12438900	1988600	0,128	2005			
1996	12372700	2063900	0,136				
1997	12292200	2251700	0,126				
1998	12326800	2312900	0,117				
1999	12231300	2419300	0,118				

France métropolitaine

Enquête sur l'emploi en avril de chaque année.

Extrapolation tendancielle du nombre de couples mariés et non mariés en 2003 et 2004

L'enregistrement des partenariats homosexuels

L'enregistrement des Pacs date de mi-novembre 1999. Il a lieu au greffe des tribunaux d'instance et la statistique est dressée par le ministère de la Justice. Les décrets qui ont accompagné la mise en place de la loi ont limité fortement le détail possible de ces statistiques, en empêchant en particulier l'utilisation du sexe des partenaires comme variable d'identification³³. Ainsi, le Pacs est ouvert aux couples homo- comme hétérosexuels, mais la distinction de ceux-ci par la statistique a été rendue impossible dans les premières années d'application de la loi. Depuis lors, l'article 16 de la loi du 6 août 2004 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel a levé cette restriction, mais aucune application n'en a encore été faite par le ministère de la Justice, qui continue de publier une statistique des enregistrements (et des dissolutions) de Pacs sans autre détail sur les personnes.

Toutefois, les greffiers des tribunaux se livrent à des décomptes « sauvages » qui distinguent les enregistrements qui sont le fait de couples homo- et hétérosexuels. Une représentante de l'ensemble des greffiers français cite les pourcentages suivants : 45 à 50 % de couples homosexuels (et 50 à 55 % de couples hétérosexuels) en 2000, 15 à 20 % (et 80 à 85 %, respectivement) en 2004. La validité de ces résultats est impossible à préciser, mais nous les utiliserons faute de mieux, en interpolant linéairement entre ces valeurs pour estimer ceux des autres années.

Il a été enregistré plus de 6 000 Pacs en seulement un mois et demi en 1999 (soit 4 000) par mois). Les 22 000 de l'an 2000 puis les 19 000 de 2001 marquent donc en fait un continuel recul par rapport à cette courte période initiale. En revanche, les années suivantes, le nombre d'enregistrements est en constante et sensible progression : en 2004 il est double de ce qu'il était trois ans plus tôt.

³³ Le décret n° 99-1090 du 21 décembre 1999, *relatif aux conditions dans lesquelles sont traitées et conservées les informations relatives à la formation, la modification et la dissolution du PACS et autorisant la création à cet effet d'un traitement automatisé des registres mis en oeuvre par les greffes des tribunaux d'instance, par le greffe du tribunal de grande instance de Paris et par les agents diplomatiques et consulaires français*, a abordé dans son article 2 la question de la production de statistiques relatives au Pacs.

Une disposition réglementaire très restrictive a toutefois été prise, limitant l'élaboration de statistiques à la "production d'informations rendues anonymes, exclusivement destinées à permettre de connaître le nombre de déclarations, de modifications et de dissolutions de pactes civils de solidarité ayant fait l'objet d'un enregistrement".

France. Nombre annuel de Pacs selon le sexe,
taux brut de Pacs homosexuels pour 100 000 hommes ou femmes
et taux d'enregistrement des couples homosexuels non pacsés

Année	Nombre de pacs				Taux brut		Couples homosexuels non pacsés**	Taux d'enregistrement
	Total	HF*	HH*	FF*	HH	FF		
1999	6139	3100	3100		5 (*8)		131900	0,024 (*8)
2000	22108	11600	10500		18		128800	0,081
2001	19410	11600	7800		13		118500	0,066
2002	24979	16900	8100		14		112400	0,072
2003	31161	23400	7800		13		105800	0,074
2004	38763	32000	6800		11		100000	0,068

France métropolitaine

* Selon la présidente de l'association des greffiers en chef, il y aurait eu environ 45 à 50% de Pacs entre homosexuels en 2000 et 15 à 20% en 2004 (audition par le groupe de travail sur l'évaluation et l'amélioration du pacte civil de solidarité, mis en place par le ministre de la Justice). Nous avons estimé le pourcentages intermédiaires par interpolation linéaire.

** Le nombre de couples homosexuels est estimé à 0,9 % des couples. On en retranche le nombre cumulé de Pacs enregistrés et non dissous (on suppose que le nombre de Pacs dissous chaque année est réparti entre Pacs homo- et hétérosexuels au prorata du nombre cumulé de Pacs enregistrés)

L'évolution du nombre de Pacs homosexuels est sensiblement différente de celle de l'ensemble. Après le recul des premières années (environ 2 000 Pacs par mois fin 1999, puis 900 en 2000 et 650 en 2001), le nombre se stabilise entre 7 et 8 000 chaque année. Les taux bruts sont eux-mêmes stables autour de 13 pour 100 000 hommes ou femmes. On n'a pas d'éléments pour estimer séparément les Pacs d'homme et de femmes³⁴.

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on estime le nombre de couples non encore enregistrés. Il n'y a pas de source unique susceptible de nous fournir une information fiable sur ce sujet. Le recensement de 1999, qui devrait être le meilleur instrument d'observation compte tenu de sa couverture quasi exhaustive, n'a pas comptabilisé les couples homosexuels qui s'étaient déclarés comme tels. En revanche, on y dénombre 76 000 ménages formés de deux personnes de même sexe s'étant déclarées comme ami(e)s (les cas d'étudiants partageant un même logement ont été exclus). Les caractéristiques de ces ménages sont semblables à celles qu'on connaît par ailleurs des couples homosexuels et cette similitude donne à penser qu'il s'agit de couples qui ne se sont pas déclarés comme tels³⁵. D'ailleurs la procédure suivie dans d'autres pays pour identifier les couples homosexuels à partir des registres de population aurait conduit à la même conclusion³⁶. Au recensement de 1999, les ménages formés de deux personnes « amies » de même sexe (et d'éventuels enfants) représentent 0,6 % des couples.

Par ailleurs dans les enquêtes sur l'emploi conduites dans la seconde moitié des années 1990 permettent d'estimer le nombre de couples de même sexe qui se sont déclarés comme tels, car ils n'ont pas été rejetés de la procédure de classification comme cela a été le cas au recensement. En 1995-1999, ils ont été en moyenne 45 000 chaque année, soit 0,3 % des couples dénombrés aux mêmes enquêtes.

³⁴ La hausse du nombre de Pacs à partir de 2001 serait entièrement concentrée sur les Pacs hétérosexuels, qui passeraient en trois ans de 11 600 à 32 000, soit un accroissement supérieur à 20 000.

Dans le même temps, le nombre de mariages a reculé de 29 000, de 288 000 à 259 000, l'un compensant donc dans une large mesure l'autre, sans qu'il soit possible sur cette seule base un lien de cause à effet entre hausse du nombre de Pacs hétérosexuels et baisse du nombre de mariages.

Une fraction des mariages est le fait de couples précédemment pacsés. On en a une idée de la statistique de dissolutions de Pacs du fait du mariage d'au moins un des partenaires, bien qu'on mélange ici les cas où les deux partenaires prolongent leur union par un mariage et ceux où un seul d'entre eux rompt l'union par son mariage avec une tierce personne (ces dernières situations sont sans doute minoritaires). Ils étaient 88 en 2000, puis 246, 307, 504 et 721 les années suivantes (France métropolitaine et département d'outre mer). C'est donc une fraction faible des mariages (moins de 0,3 % en 2004).

Si on cumule en 2004 mariages et Pacs hétérosexuels, le total est de 219 400 et le taux de nuptialité des couples non mariés passe de 9 à 10 %, ce qui ne modifie guère les conclusions qu'on pourra tirer ni sur l'évolution au fil du temps (recul sensible depuis une dizaine d'années, quand le taux était encore de 13 %), ni sur les comparaisons européennes (la France parmi les pays de faible nuptialité des couples non mariés).

³⁵ Digoix, Marie; Festy, Patrick & Garnier Bénédicte.- What if same-sex couples exist in France after all?, In: Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 193-209.

³⁶ Steenhof, Liesbeth & Harmsen, Carel.- Same-sex couples in the Netherlands, In: Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 233-243.

On peut ainsi estimer à 0,9 % des couples (0,6 % + 0,3 %), la fraction homosexuelle des couples français. Ce résultat est dans la fourchette des valeurs que nous utilisons pour les pays où nous manquons totalement de données, soit 0,7 à 1,2 %, ce dernier résultat étant celui estimé par les statisticiens néerlandais à partir des registres de population de leur pays.

Après un recul les deux premières années d'application de la loi sur le Pacs, la fréquence des enregistrements parmi les couples homosexuels s'est stabilisée autour de 7 %. C'est à comparer avec le taux de nuptialité des couples hétérosexuels non mariés, de l'ordre de 9 % (10 % si on inclut les Pacs hétérosexuels). L'écart entre les deux est mince : le recours aux Pacs par les couples homosexuels n'est que légèrement inférieur au recours au mariage par les couples hétérosexuels³⁷.

On a cependant noté précédemment que la nuptialité des hétérosexuels est elle-même faible. Par ailleurs, l'estimation du nombre de pacs homosexuels et celle des couples homosexuels sont fragiles.

Autres aspects de la vie des partenariats homosexuels enregistrés et des mariages

Depuis l'instauration du Pacs au 15 novembre 1999 jusqu'à la fin 2004, 144 225 ont été enregistrés (y compris dans les départements d'outre-mer) et 17 624 ont été dissous, dont 14 433 par commun accord des partenaires, 807 par demande unilatérale d'un d'entre eux et 1 866 par mariage d'au moins un partenaire. On peut supposer que cette dernière catégorie concerne essentiellement des mariages entre partenaires du Pacs, plutôt que des ruptures par constitution d'un autre couple, le nombre total de ruptures se fixant donc à 15 240. On n'a pas de détails sur le sexe des pacsés et donc aucun moyen de distinguer les homosexuels des hétérosexuels ; on sait cependant que ces derniers sont vraisemblablement largement majoritaires dans les enregistrements.

Si les risques de rupture des pacsés avaient été identiques aux risques de divorce des mariés (à durée égale depuis l'enregistrement de leur union), le nombre de dissolutions aurait été trois fois moindre³⁸. Ce ratio évolue peu au fil des ans depuis 2000. Il témoigne d'un sensible sur-risque des pacsés, reflet sans doute de la situation des hétéro- plus que des homosexuels.

France. Nombre de couples dissous par séparation chaque année dans les Pacs, comparé au nombre attendu si les risques étaient les mêmes que dans les mariages

	2000	2001	2002	2003	2004	Total
Couples dissous	461	1498	2777	4665	5839	15240
Couples dissous attendus*	163	488	931	1475	2171	5229
Ratio	2,8	3,1	3,0	3,2	2,7	2,9

* On suppose que les risques de divorce par durée de mariage (moins 1 an) valent pour les partenariats par durée depuis l'enregistrement

Rapportés à la population de la région, les Pacs sont plus nombreux dans le sud de la France qu'au nord (Midi-Pyrénées, Languedoc-Roussillon, Aquitaine et Provence-Alpes-Côte d'Azur, d'un côté ; Nord-Pas de Calais, Picardie, de l'autre) et dans chaque région, ils sont plus fréquents dans les départements les plus urbanisés. Le département de Paris ressort comme celui où les taux sont les plus élevés, mais cette prédominance s'estompe au fil du temps³⁹.

³⁷ On peut aussi mesurer le recours au Pacs par les couples hétérosexuels non mariés non pacsés. En 2004, cette fréquence est de l'ordre de 1 %, soit sensiblement moins que pour les couples homosexuels. A la différence de ceux-ci également, ce pourcentage est en hausse rapide depuis 2001, où il n'était que de 0,25 %, soit un quadruplement en trois ans.

³⁸ Les délais de dissolution des Pacs sont sensiblement moindres que les délais de divorce. On en a tenu compte en décalant d'un an les taux de divorce. Ce n'est qu'une approximation car les divorces en début de mariage, ici concernés, bénéficient inévitablement de procédures courtes.

³⁹ Belliot, Nicolas.- Cinq années d'application du pacte civil de solidarité en France : bilan statistique et disparités géographiques.- In *La population de la France: évolutions démographiques depuis 1946* (édition préparée par Christophe Bergouignan, Chantal Blayo, Alain Parant, Jean-Paul Sardon, Michèle Tribalat.) - Pessac, CUDEP, 2005, vol. 1, p. 253-270

Islande

L'Islande compte 293 577 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels non mariés

Le nombre annuel de mariages, qui fluctuait autour de 1 300 jusqu'au milieu des années 1990, s'est sensiblement accru depuis et dépasse régulièrement 1 500. Le taux brut des cinq dernières années s'établit en moyenne autour de 5,5 pour 1 000 habitants.

Islande. Nombre annuel de mariages hétérosexuels et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	1306	5,7	1990	1154	4,5	2000	1777	6,3
1981	1357	5,9	1991	1236	4,8	2001	1484	5,2
1982	1303	5,6	1992	1241	4,8	2002	1652	5,7
1983	1396	5,9	1993	1219	4,6	2003	1532	5,3
1984	1413	5,9	1994	1310	4,9	2004	1472	5,0
1985	1252	5,2	1995	1238	4,6			
1986	1229	5,1	1996	1349	5,0			
1987	1160	4,7	1997	1481	5,4			
1988	1294	5,2	1998	1529	5,5			
1989	1176	4,7	1999	1560	5,6			

Le nombre de couples hétérosexuels mariés a légèrement augmenté au cours des années récentes, suite à la hausse du nombre de mariages. Il approche désormais 50 000.

Dans le même temps, le nombre de couples hétérosexuels non mariés a peu varié tout proche de 12 000.

La part des non mariés dans l'ensemble des couples est de l'ordre de 1/5.

Toutefois, le nombre de couples non mariés publié par Hagstofa (Statistique Islande) sous-estime sans doute la réalité car il reflète le nombre de couples ayant enregistré leur union dans une procédure certes simple et fréquemment suivie par les couples mais qui ne concerne ni l'ensemble des non mariés, ni toute la période de vie en couple hors mariage.⁴⁰

Parmi les mariages de 2001-2004, 87 % des mariages ont été précédés par une cohabitation enregistrée, témoignant à la fois que la cohabitation enregistrée n'est pas une étape systématiquement respectée mais que la pratique est extrêmement répandue.

A cause de ces insuffisances, le rapport du nombre de mariages au nombre de couples non mariés surestime sans doute un peu la mesure qu'on voudrait atteindre de la nuptialité des non mariés.. L'indice varie peu, autour de 13 % dans les années récentes.

⁴⁰ Les données publiées sont extrêmement riches et permettent une analyse détaillée du groupe des couples hétérosexuels enregistrés. Pour 100 couples s'étant enregistrés, environ 68 finissent par se marier (moyenne 2001-2004) et 40 finissent par se séparer sans se marier (moyenne 2001-2004). [Notez que les indices étant calculés par période et non pas pour une cohorte, la somme des indices de mariage et de dissolution peut dépasser 100 %]. Ceux qui se marient le font en moyenne 6 ou 7 ans après s'être enregistrés (2001-2004) ; ils le font de plus en plus tard au fil des quatre années. Ceux qui se séparent le font en moyenne 4 ans après s'être enregistrés (1996-2004) ; ils le font de plus en plus tard au fil des neuf années. Quelle que soit leur issue, les cohabitations de couples hétérosexuels sont de plus en plus durables.

Cf. *Marriages, consensual unions and separations 2003*. - Statistics Iceland, Population, 89, year 31, vol. ISSN: 1670-4479, 24 p. <http://www.statice.is/lisalib/getfile.aspx?ItemID=940>

Islande. Nombre de couples hétérosexuels mariés et non mariés
au 1^{er} janvier de chaque année
et taux de nuptialité des couples non mariés

Année	Couples mariés	Couples non mariés	Taux de nuptialité
1998	45905	12000	0,127
1999	46364	11947	0,131
2000	46749	11964	0,149
2001	47426	11831	0,125
2002	47740	11683	0,141
2003	48111	11784	0,130
2004	48473	11872	0,124
2005	48812	12037	

Les couples non mariés sont ceux ayant enregistré leur union hétérosexuelle.

Specific provisions in different laws affording rights and obligations to different-sex partners are controlled by different requirements. One of such requirements is a special registration of the cohabitation with the National Registry and there has been an increasing emphasis on this formal requirement in recent years. There are no special provisions that cover this kind of registration in the National Registry Act, but a procedure had to be developed to make a distinction between this registration and a simple registration of two persons at the same address. The registration of different-sex cohabitation with the National Registry is fundamentally different from registration of same-sex partnership under the RPAct. Different-sex partners sign a special form stating their wish to be registered as partners, submit the form to the National Registry and there is no ceremony involved. In practice the cohabitation is considered to have terminated if the partners marry and one of the partners can effectively terminate the cohabitation by registering his address elsewhere.

L'enregistrement des partenariats homosexuels

L'enregistrement des partenariats date du 27 juin 1996.

Islande. Nombre annuel de partenariats homosexuels selon le sexe
et taux brut pour 100 000 hommes ou 100 000 femmes

Année	Partenariats		Taux brut		Année	Couples homosexuels				Année	Taux d'enregistrement			
						1,2 % des hétérosexuels		0,7 % des hétérosexuels			1,2 % des hétérosexuels		0,7 % des hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF		HH	FF	HH	FF
1996	11	10	8,1	7,5	1996					1996				
1997	5	7	3,7	5,2	1997					1997				
1998	5	6	3,6	4,4	1998	359	303	203	169	1998	0,014	0,020	0,025	0,035
1999	6	5	4,3	3,6	1999	359	299	201	165	1999	0,017	0,017	0,030	0,030
2000	5	7	3,6	5,0	2000	355	297	197	162	2000	0,014	0,024	0,025	0,043
2001	5	8	3,5	5,6	2001	357	295	197	159	2001	0,014	0,027	0,025	0,050
2002	5	4	3,5	2,8	2002	355	290	195	153	2002	0,014	0,014	0,026	0,026
2003	7	6	4,8	4,2	2003	356	290	194	152	2003	0,020	0,021	0,036	0,040
2004	9	8	6,1	5,5	2004	354	287	191	148	2004	0,025	0,028	0,047	0,054
2005					2005	350	283	186	143	2005				

Le nombre de partenariats est élevé la première année (bien que réduite de moitié). Il est nettement plus faible et semble stabilisé dès l'année suivante. Il y a peut-être une baisse encours dans les années très récentes. Sur l'ensemble de la période, il s'est conclu 58 partenariats d'hommes et 61 de femmes

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on estime le nombre de couples non encore enregistrés car la statistique islandaise ne le fournit pas. On fait pour cela deux hypothèses conformes aux quelques données dont on dispose pour d'autres pays, en supposant que les couples homosexuels sont 1,2 % (comme aux Pays Bas

en 2002) ou 0,7 % (aux Etats Unis c'est 1 % en 2000 ; en France sans doute plus de 0,7 % en 1999) des couples hétérosexuels⁴¹.

Quand la proportion de couples homosexuels est supposée plus forte, le taux d'enregistrement apparaît plus faible, ce qui n'est pas une surprise. Mais quelle que soit la proportion supposée, le taux d'enregistrement est toujours sensiblement inférieur au taux de nuptialité des couples hétérosexuels non mariés. En 2004, où les taux d'enregistrement sont au plus haut, ceux-ci sont compris entre 2,5 et 5 % selon le sexe et selon les hypothèses

Autres aspects de la vie des partenariats homosexuels enregistrés

Depuis l'instauration du partenariat enregistré en 1996, 14 partenariats d'hommes ont été dissous par divorce sur les 58 conclus (soit 24 %) et 8 partenariats de femmes sur les 61 conclus (13 %).

Dans le même temps, 7 % des mariages célébrés en 1996-2004 ont été rompus. La sur-divortialité des partenariats d'hommes est donc très forte (rapport de 3 à 1) ; celle des femmes un peu moindre (rapport de 2 à 1).

⁴¹ On retranche le nombre de couples déjà enregistrés et non dissous.

Norvège

La Norvège compte 4 604 745 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels

Le nombre de mariages en 2003 est de 22 361. Au cours des 25 dernières années, ce nombre est passé par un minimum au début des années 1990, avec moins de 19 000 mariages par an (taux brut de nuptialité de 4,3 pour 1 000 habitants). Depuis lors, la reprise a été sensible, avec des nombres bien supérieurs à 22 000 et des taux bruts supérieurs à 5 pour 1 000. C'est un regain substantiel après un fort déclin, mais les taux bruts restent faibles historiquement.

Norvège. Nombre annuel de mariages hétérosexuels et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	22230	5,4	1990	21123	5,0	2000	25356	5,6
1981	22271	5,4	1991	19065	4,5	2001	22967	5,1
1982	21706	5,3	1992	18627	4,3	2002	24069	5,3
1983	20803	5,0	1993	18741	4,3	2003	22361	4,9
1984	20537	5,0	1994	19866	4,6	2004		
1985	20221	4,9	1995	20981	4,8			
1986	19873	4,8	1996	22478	5,1			
1987	20285	4,8	1997	22933	5,2			
1988	20806	4,9	1998	22349	5,0			
1989	19950	4,7	1999	23455	5,3			

The bridegroom resident in Norway

Le nombre de couples hétérosexuels mariés a légèrement régressé au cours des dix dernières années (environ - 40 000, de 870 000 à 830 000), mais la hausse du nombre de couples non mariés a plus que compensé (de moins de 210 000 à plus de 280 000, soit un accroissement supérieur à 70 000). La part des non mariés dans le total des couples dépasse désormais 25 %.

L'augmentation de la proportion de couples non mariés, très minoritaire en début de période, marque la diversification des formes conjugales et la moindre formalité des unions.

Norvège. Nombre de couples hétérosexuels mariés et non mariés au 1^{er} janvier de chaque année et taux de nuptialité des couples non mariés

Année	Couples mariés	Couples non mariés	Taux de nuptialité	Année	Couples mariés	Couples non mariés	Taux de nuptialité
1990				2000	844000	248000	0,102
1991				2001	829000	260000	0,088
1992				2002	836000	289000	0,083
1993	876000	201000	0,093	2003			
1994	865000	217000	0,091	2004			
1995	859000	219000	0,096	2005			
1996	868000	226000	0,099				
1997	847000	238000	0,096				
1998	849000	252000	0,089				
1999	837000	269000	0,087				

Estimated from the Omnibus Surveys 1993-2002, conducted each year on a representative sample of about 7,000 men and women aged 16-79. Proportions of persons in married or unmarried couples have been applied to the age and sex-specific population at the 1st of January of the year

Depuis les premières des années 1990, le taux de nuptialité des couples non mariés est à peu près constant, avec de faibles variations autour de 9 %. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année. La fréquence de cette légalisation n'a guère varié depuis 1993 (année d'instauration du partenariat enregistré).

Cette stabilité contraste avec l'augmentation du nombre de mariages, car celle-ci est balancée par la montée parallèle du nombre de couples non mariés. Il y a donc davantage de couples non mariés, une fréquence constante de leur légalisation, donc un nombre croissant de mariages au fil des ans.

L'enregistrement des partenariats homosexuels

L'enregistrement des partenariats date d'août 1993.

Norvège. Nombre annuel de partenariats homosexuels selon le sexe
et taux brut pour 100 000 hommes ou 100 000 femmes

Année	Partenariats		Taux		Année	Partenariats		Taux	
	HH	FF	HH	FF		HH	FF	HH	FF
1990					2000	78	76	3,5	3,4
1991					2001	108	77	4,8	3,4
1992					2002	105	78	4,7	3,4
1993	115	41	5,4	1,9	2003	116	88	5,1	3,8
1994	86	47	4,0	2,1	2004				
1995	64	34	3,0	1,5					
1996	80	47	3,7	2,1					
1997	74	43	3,4	1,9					
1998	71	44	3,2	2,0					
1999	82	62	3,7	2,8					

Elder partner resident in Norway

Le nombre de partenariats masculins a été élevé la première année, bien que celle-ci n'ait duré que 5 mois. Il s'est stabilisé ensuite autour de 80 annuellement (taux brut entre 3 et 4 pour 100 000). Les trois dernières sont d'un niveau nettement supérieur avec plus de 100 enregistrements et des taux bruts de l'ordre de 5 pour 100 000 hommes. Le nombre de partenariats féminins a été beaucoup plus faible les premières années (moins de 50 enregistrements et des taux bruts autour de 2 pour 100 000 femmes). La hausse récente laisse les nombres d'enregistrement et les taux bruts bien en dessous des équivalents masculins.

La statistique norvégienne ne fournit pas de statistique fiable sur les couples homosexuels⁴². Pour calculer un taux d'enregistrement des couples non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on estime le nombre de couples non encore enregistrés. On fait pour cela deux hypothèses conformes aux quelques données dont on dispose pour d'autres pays, en supposant que les couples homosexuels sont 1,2 % (comme aux Pays Bas en 2002) ou 0,7 % (aux Etats Unis c'est 1 % en 2000 ; en France sans doute 0,9 % en à la fin des années 1990 ; en Allemagne 0,7 % dans les années 2000) des couples hétérosexuels. On retranche le nombre cumulé de partenariats enregistrés non dissous.

⁴² Le recensement de 2001 ne visait pas à recueillir de l'information sur les personnes mais sur leur logement, en vue de préciser leur adresse dans le registre de population. Un questionnaire était envoyé aux personnes figurant dans le registre pour qu'elles confirment leur adresse et le nom de ceux avec qui elles partageaient ce logement.

Un dénombrement des couples homosexuels a été réalisé à partir des réponses des recensés.

"To be classified as living in a same sex cohabitation, some conditions had to be fulfilled.

- Both cohabitants should be registered at the same address in the Central Population Register.
- At least one of the two should have responded in the questionnaire that they were cohabiting.
- None of the two should be a member of another couple
- They should not be related
- Both should be minimum 16 years of age

Given these conditions, 2 295 couples were registered as same sex cohabitants (1 136 male and 1 159 female couples). These 2 295 couples constitute 0.2 per cent of all couples (married, cohabitants, same sex and opposite sex) or 1.2 per cent of all cohabitant couples." [Information de Turid Noack (Statistics Norway), qui ajoute:]

"As for opposite sex cohabitants, the conditions to be registered as a cohabitant couple is stricter than in our surveys. Comparing survey and census data, the census seems to register 80-85% of the numbers we estimate from surveys.

The underreporting may be even greater for same sex cohabitants, since we believe that not everybody want to confirm their relationship." [Turid Noack, 27/05/2004]

Aux Pays Bas, la proportion de couples homosexuels par rapport aux couples hétérosexuels a légèrement augmenté au fil du temps, de 1,0 à 1,2 % entre 1995 et 2002. Il n'est pas exclu qu'un semblable mouvement se soit déroulé au Norvège.

Norvège. Estimations du nombre de couples homosexuels non enregistrés au 1^{er} janvier de chaque année

Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels		Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF
1989					1998	6718	5873	3747	3342
1990					1999	6695	5869	3708	3324
1991					2000	6532	5735	3584	3224
1992					2001	6448	5671	3509	3167
1993	6981	5947	4072	3469	2002	6593	5808	3556	3221
1994	6905	5939	3980	3447	2003				
1995	6780	5859	3871	3381	2004				
1996	6824	5916	3871	3400	2005				
1997	6690	5824	3760	3328					

Selon deux hypothèses, on suppose que le nombre de couples homosexuels est égal à 1,2 % ou 0,7 % des couples hétérosexuels (mariés ou non). On retranche de ce nombre celui des couples homosexuels enregistrés non dissous

Quand la proportion de couples homosexuels est supposée plus forte, le taux d'enregistrement apparaît plus faible, ce qui n'est pas une surprise. Mais quelle que soit la proportion supposée, le taux d'enregistrement est toujours sensiblement inférieur au taux de nuptialité des couples hétérosexuels non mariés. En fin de période par exemple, c'est-à-dire près de 10 ans après la loi sur le partenariat, le taux d'enregistrement est de l'ordre de 2 ou 3 % selon les hypothèses, alors que le taux de nuptialité est au moins trois fois plus élevé (environ 9 %)

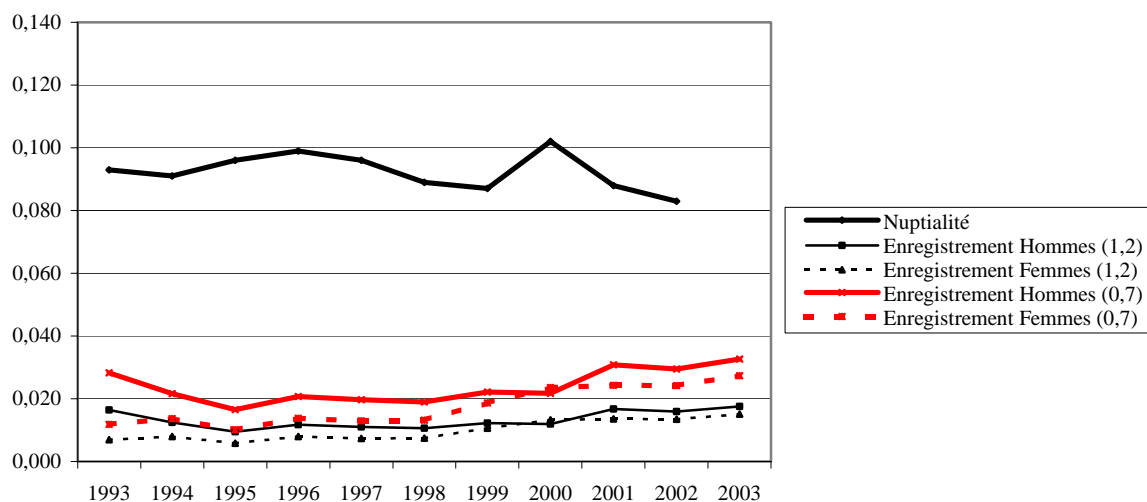
Norvège. Taux d'enregistrement des couples homosexuels

Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels		Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF
1989					1998	0,011	0,007	0,019	0,013
1990					1999	0,012	0,011	0,022	0,019
1991					2000	0,012	0,013	0,022	0,024
1992					2001	0,017	0,014	0,031	0,024
1993	0,016	0,007	0,028	0,012	2002	0,016	0,013	0,030	0,024
1994	0,012	0,008	0,022	0,014	2003	0,018	0,015	0,033	0,027
1995	0,009	0,006	0,017	0,010	2004				
1996	0,012	0,008	0,021	0,014	2005				
1997	0,011	0,007	0,020	0,013					

Selon deux hypothèses, on suppose que le nombre de couples homosexuels est égal à 1,2 % ou 0,7 % des couples hétérosexuels (mariés ou non). On retranche de ce nombre celui des couples homosexuels enregistrés non dissous.

L'évolution du taux d'enregistrement au fil du temps est beaucoup plus difficile à dessiner. La hausse au cours des années récentes est perceptible pour les hommes et les femmes, quelle que soit l'hypothèse sur le nombre de couples homosexuels. Mais s'il s'avérait que ce nombre s'est accru au fil du temps, comme ça a été le cas aux Pays Bas, la hausse du taux d'enregistrement pourrait s'en trouver réduite voire éliminée. Sur ces points la conclusion est indécise.

Norvège. Taux d'enregistrement et taux de nuptialité



Autres aspects de la vie des partenariats homosexuels enregistrés

En dix ans, de 1993 à 2002, 61 % des partenariats masculins et 44 % des partenariats féminins ont été enregistrés à Oslo, les autres ayant lieu dans le reste du pays⁴³. Il s'agit d'une très forte sur représentation de la capitale, qui par exemple n'attire que 16 % des mariages.

Seulement 57 % des partenariats masculins ont été conclus entre deux hommes de nationalité norvégienne. C'est le cas de 81 % des partenariats féminins⁴⁴. Par comparaison, 71 % des mariages de 2003 ont uni deux époux de nationalité norvégienne. Dans les mariages, ce sont les femmes plus que les hommes qui sont de nationalité étrangère (20 % contre 27 %).

15 % des partenariats masculins et 26 % des partenariats féminins ont été précédés d'un mariage hétérosexuel (28 % des mariages des années récentes font suite eux aussi à un autre mariage). Des pourcentages à peu près égaux concernent les partenariats où un au moins des partenaires a déjà eu des enfants (13 et 24 %, respectivement)⁴⁵.

L'âge au partenariat des hommes comme des femmes est sensiblement supérieur à l'âge au mariage des époux et des épouses. Les événements conclus avant 30 ans suffisent à donner un aperçu de la moindre précocité des partenariats. Le phénomène est particulièrement accentué les premières années, quand le partenariat attire des couples qui régularisent une situation déjà ancienne, mais les années récentes sont encore très marquées par les enregistrements tardifs : en 1999-2001, les enregistrements avant 30 ans ne sont encore que 25 % des partenariats masculins et 22 % des partenariats féminins (contre 42 % des hommes et 59 % des femmes dans les mariages).

Les larges différences d'âge entre partenaires sont nettement plus fréquentes chez les hommes que chez les femmes (35 % des premiers et 13 % des secondes ont dix ans ou plus d'écart)⁴⁶.

⁴³ Les partenariats sont classés par lieu de résidence du partenaire le plus âgé.

⁴⁴ Anderson, Gunnar ; Noack, Turid ; Seierstad, Ane & Weedon-Fekjær, Harald.- The demographics of same-sex "marriages" in Norway and Sweden.- In Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 254.

⁴⁵ *Idem, ibidem*

⁴⁶ *Idem, ibidem*

Norvège. Distribution des âges au mariage ou à l'enregistrement selon le sexe (1993-2001)

Type d'unions et sexe	Âges au mariage ou à l'enregistrement					
	< 30 ans	30-39 ans	40-49 ans	50-64 ans	65+ ans	Tous âges
Partenariats, hommes	22%	38%	26%	12%	1%	100%
Partenariats, femmes	20%	45%	24%	11%	0%	100%
Mariages, hommes	42%	38%	13%	6%	1%	100%
Mariages, femmes	59%	29%	9%	3%	0%	100%

Données aimablement communiquées par statistique Norvège.

Depuis l'instauration du partenariat, 60 couples d'hommes et 69 couples de femmes ont été rompus par un divorce (1993-2001). Si, à durée égale, les taux de divorce des couples mariés avaient prévalu chez les partenaires enregistrés, ces nombres auraient été de 60 et 32. C'est dire que la divortialité des partenaires masculins ne diffère pas de celle des mariés, alors que celle des partenaires féminins est double. Dans une comparaison directe, la divortialité des couples de femmes est deux fois plus élevée que celle des couples d'hommes.

Les facteurs classiquement associés au risque de divorce chez les mariés le sont aussi, dans la plupart des cas, chez les partenaires⁴⁷ :

- Risque plus élevé chez les partenaires les plus jeunes lors de l'enregistrement, surtout chez les hommes ;
- Risque moindre dans les couples de deux Norvégiens que dans les couples « mixtes » ou entre étrangers.

Aucun des facteurs associés au risque de divorce des partenaires n'est susceptible d'expliquer le surcroît de divortialité des couples de femmes.

⁴⁷ *Idem*, p. 257 et 259.

Pays-Bas

Les Pays-Bas comptent 16 305 526 habitants au 1^{er} janvier 2005.

Le mariage des couples hétérosexuels

Le nombre de mariages en 2004 est de 74 914. Au cours des 25 dernières années, ce nombre a d'abord connu un creux au milieu des années 1980, avant de se reprendre vers 1990. Le taux brut de nuptialité dépasse alors 6 pour 1 000 habitants et le nombre absolu approche 100 000. Depuis lors la baisse a été sensible, les derniers résultats étant en recul de 20 000 par rapport à ces valeurs et le taux brut passant sous les 5 pour 1 000.

Pays-Bas. Nombre annuel de mariages hétérosexuels
et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	90182	6,4	1990	95649	6,4	2000	88074	5,5
1981	85574	6,0	1991	94932	6,3	2001	79677	5,0
1982	83516	5,8	1992	93638	6,2	2002	83970	5,2
1983	78451	5,5	1993	88273	5,8	2003	78928	4,9
1984	81655	5,7	1994	82982	5,4	2004	74914	4,6
1985	82747	5,7	1995	81469	5,3			
1986	87337	6,0	1996	85140	5,5			
1987	87400	6,0	1997	85059	5,4			
1988	87843	6,0	1998	86956	5,5			
1989	90248	6,1	1999	89428	5,7			

Until October 1994, the figures refer to all the marriages contracted in The Netherlands, irrespective of registration of the persons(s) in the municipal registers.

From October 1994, the figures refer to married couples of which at least one partner is recorded in the municipal registers, irrespective from the country where the marriage was performed

Le nombre de couples hétérosexuels mariés a été à peu près stable depuis dix ans, au-dessus de 3 400 000, avec une baisse légère dans les toutes dernières années. En revanche, le nombre de couples non mariés s'est accru de plus de 200 000 dans le même temps, de 520 000 à 730 000. La part des non mariés dans le total des couples est passée de 13 à 18 %. Ce dernier pourcentage reste cependant modéré.

L'augmentation de la proportion de couples non mariés marque la diversification des formes conjugales et la moindre formalité des unions.

Au milieu des années 1990, le taux de nuptialité des couples non mariés est élevé, proche de 16 %. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année. La fréquence de cette légalisation a reculé ensuite sensiblement, jusqu'à 10 %, en 2004. Il pourrait y avoir dans les valeurs fortes des années 1990 une part due au fait que tous les mariages ne sont pas précédés par une phase de cohabitation des couples non mariés. Le recul du taux reflète néanmoins, en l'amplifiant, celle du nombre de mariages.

Pays-Bas. Nombre de couples hétérosexuels mariés et non mariés
au 1^{er} janvier de chaque année
et taux de nuptialité des couples non mariés

Année	Couples mariés	Couples non mariés	Taux de nuptialité	Année	Couples mariés	Couples non mariés	Taux de nuptialité
1990				2000	3440642	657579	0,134
1991				2001	3442027	674085	0,118
1992				2002	3432715	696290	0,121
1993				2003	3425384	714200	0,111
1994				2004	3416714	726722	0,103
1995	3436991	518116	0,157	2005			
1996	3429247	552889	0,153				
1997	3425385	583194	0,146				
1998	3427189	609834	0,143				
1999	3434157	633625	0,141				

The statistics on households are mainly based on integral data from the municipal population registers. These registers do not, however, contain all the information that is required to distinguish between all types of households. The position in the household and the composition of the household can be established if the relation between persons living at the same address is clear, which is the case in roughly 90 percent of the households. These are persons living alone, married couples with or without children, single-parent families, brothers and/or sisters living together, i.e. essentially anyone who either lives alone or has a family relationship with all other persons living at that address. If two persons move to the same address on the same date, they are included in the category 'unmarried couples'. Persons in homes and institutions are also individually identified. The composition of the remaining 10 percent of households is estimated by imputation. For some address types the probability of occupants belonging to one household is estimated on the basis of household information from the Labour Force Survey. By means of these probabilities the household composition is imputed.

If two persons are living together, it is assumed that they have a steady relationship. If a person does not have a steady relationship with the reference person and is not blood-related to the reference person nor to his/her partner, he/she is included in the category 'other member', (e.g. boarders, younger of two brothers constituting one household or foster children). Lastly, persons who live together with their children at the same address but without a partner, are included in the category 'single parents'.

L'enregistrement des partenariats homosexuels

L'enregistrement des partenariats date de janvier 1998 ; il est possible aussi bien pour les couples homo-qu'hétérosexuels. Par la suite, le mariage a été ouvert aux homosexuels en avril 2001. Cette suite d'innovations juridiques rend parfois difficile le suivi des tendances statistiques. Par exemple, à partir de 2001, le nombre de partenariats homosexuels est en net recul par rapport aux années précédentes, le mariage s'offrant comme une possibilité nouvelle de légaliser une vie de couple, sans qu'on sache précisément combien des nouveaux mariés avaient précédemment enregistré leur union avec le même partenaire.

Un autre effet de la loi de 2001 est d'introduire une passerelle d'accès facile entre les statuts de partenaires et de mariés. Il en résulte, chez les couples hétérosexuels, une fréquente transformation de leur mariage en partenariat, en vue de procéder à une dissolution de celui-ci par une procédure allégée⁴⁸. Il y a eu 5 000 « annulations flash » en 2004 pour 32 000 divorces classiques. La hausse très forte du nombre de partenariats homosexuels enregistrés à partir de 2001 est largement due à ce phénomène. On ne saurait exclure que les couples homosexuels procèdent de même, ou au moins que certains choisissent le partenariat plutôt que le mariage pour la souplesse que le premier offre en cas de dissolution.

⁴⁸ On 1 April 2001 the legal possibility was created to transform a registered partnership into a marriage and vice versa. The transformation is laid down in writing by a registrar.

The formal dissolution of a marriage is always settled in a court procedure but dissolution of a registered partnership can be settled before a lawyer or notary public, provided both partners agree on the dissolution and the agreement is laid down in writing before a lawyer or notary public. Apportionment of joint property and granting of alimony are settled in the agreement. The partnership is not formally terminated, until the agreement is entered into the municipal population registers.

Pays-Bas. Nombre annuel de partenariats et de mariages homosexuels selon le sexe et taux brut pour 100 000 hommes ou 100 000 femmes

Année	Partenariats			Mariages		Taux de partenariat		Taux de mariage	
	HF	HH	FF	HH	FF	HH	FF	HH	FF
1998	1616	1686	1324			21,7	16,7		
1999	1500	894	863			11,4	10,8		
2000	1322	815	785			10,3	9,8		
2001	2847	285	245	1339	1075	3,6	3,0	16,9	13,3
2002	7581	358	382	935	903	4,5	4,7	11,7	11,1
2003	9577	262	280	735	764	3,3	3,4	9,2	9,3
2004	10190	432	527	552	590	5,4	6,4	6,9	7,2
2005									

Le nombre de partenariats homosexuels a été élevé la première année (largement supérieur au millier pour les hommes comme les femmes ; taux brut supérieur à 20 pour 100 000 hommes et proche de 17 pour 100 000 femmes). Il a ensuite baissé fortement et en deux temps, d'abord quand on s'est éloigné de la mise en place, l'année 1998, puis lors de l'ouverture du mariage aux homosexuels en 2001. Depuis, le nombre annuel oscille entre 250 et 500, les résultats de 2004 étant nettement supérieurs à ceux des années précédentes. Systématiquement supérieurs aux enregistrements de couples féminins les quatre premières années, les enregistrements de couples masculins sont au contraire minoritaires en 2002, 2003 et 2004⁴⁹.

Le nombre de mariages reproduit, à partir de 2001, la même tendance que l'avait fait le nombre de partenariats les premières années. Il y a eu plus d'un millier de mariages d'hommes et à peine moins de femmes en 2001 (sur seulement neuf mois). Le nombre a ensuite baissé rapidement, surtout pour les hommes, les mariages féminins devenant majoritaires à partir de 2003. Ce parallélisme à quelques années de distance peut suggérer que les premiers adeptes du mariage faisaient souvent déjà partie des pionniers du partenariat. Toutefois, la prolongation du recul en 2004 au moment où les partenariats s'accroissent amènent les uns et les autres proches d'un niveau commun difficile à interpréter. La prééminence du mariage sur le partenariat ne semble pas aussi forte qu'on aurait pu le penser. Alors que les deux sont aujourd'hui simultanément disponibles et directement accessibles, le passage par le partenariat reste-t-il une étape vers le mariage, ou le retour vers le partenariat devient-il, comme pour les hétérosexuels, une étape vers le divorce, ou les deux statuts constituent-ils une alternative entre lesquelles les couples choisissent en fonction de leurs conditions personnelles ?

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on utilise le nombre de couples non encore légalisés estimé par la statistique néerlandaise⁵⁰. Au-delà de 2002, quand de telles estimations ne sont plus disponibles, on suppose que le nombre de couples homosexuels continue de représenter 1,2 % des couples hétérosexuels, soit la plus forte proportion qu'on enregistre dans les pays où cette mesure peut être prise (de 1995 à 2002, cette proportion est passée de 1,0 à 1,2 % aux Pays Bas). On retranche une estimation du nombre de couples déjà légalisés par partenariat ou mariage.

⁴⁹ Les enregistrements de couples hétérosexuels suivent une évolution très différente. Après un lent recul de la première à la troisième année d'application de la loi, la réforme de 2001 ne crée pas comme chez les homosexuels une concurrence entre partenariat et mariage comme formes alternatives d'enregistrement au détriment de la première. Elle ouvre au contraire un passage commode entre les deux statuts qui popularise le partenariat comme mode d'obtention d'une dissolution rapide. Conséquence de ces motifs divergents, le nombre de partenariats hétérosexuels restait sensiblement inférieur à celui des partenariats homosexuels jusqu'en 2001, même si la proportion croissait légèrement. Il y a désormais un rapport de 10 à 1 entre les premiers et les seconds.

⁵⁰ Steenhof, Liesbeth & Harmsen, Carel.- Same-sex couples in the Netherlands, In: Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 233-243.

Pays-Bas. Estimations du nombre de couples homosexuels non légalisés et non mariés au 1^{er} janvier de chaque année

Année	Couples		Couples non légalisés		Couples non mariés	
	HH	FF	HH	FF	HH	FF
1995	20000	19000	20000	19000	20000	19000
1996	21000	19000	21000	19000	21000	19000
1997	22000	19000	22000	19000	22000	19000
1998	22000	20000	22000	20000	22000	20000
1999	23000	21000	21300	19700	23000	21000
2000	25000	22000	22400	19800	25000	22000
2001	25000	22000	21700	19100	25000	22000
2002	26000	22000	22200	18600	24700	20900
2003	26000	22000	21800	18000	23800	20000
2004	26000	22000	21500	17600	23100	19300
2005	26000	22000	21100	17000	22600	18800

Jusqu'en 2002, le nombre de couples et celui des couples non légalisés (ni enregistrés, ni mariés) est calculé d'après les données du CBS.

Après 2002, ce sont des estimations personnelles où le nombre de couples est estimé constant, soit 1,2 % des couples hétérosexuels (mariés ou non). Pour estimer le nombre de couples non mariés, on retranche le nombre cumulé de mariages célébrés depuis 2001 (net des divorces estimés d'après l'expérience des partenariats dissous en 1998-2001). Pour estimer le nombre de couples non légalisés (ni enregistrés, ni mariés), on retranche le nombre de couples non mariés et celui des couples enregistrés (nets des divorces et dissolutions), moins une estimation des doubles comptes (mariés ayant transformé leur partenariat en mariage). En 2001, les données du CBS montrent que 1000 des 1339 mariages d'hommes étaient une conversion d'un des 3300 partenariats déjà conclus (soit 30 %) ; pour les femmes c'était 25 %. On a supposé que ces pourcentages se maintenaient ensuite.

Le taux d'enregistrement des partenariats à partir de 1998, puis le taux de mariage des couples homosexuels à partir de 2001, sont sensiblement inférieurs au taux de nuptialité des couples hétérosexuels, toujours supérieurs à 10 % au cours des années récentes. Même si on suppose que la somme des taux d'enregistrement et de mariage a un sens, par exemple en 2004, parce que ceux qui forment un partenariat et ceux qui concluent un mariage sont peut-être deux groupes mutuellement exclusifs, cette somme reste bien inférieure à 10 %.

L'évolution du taux d'enregistrement au fil du temps est beaucoup plus difficile à dessiner. Le changement de législation en 2001 rend les tendances incertaines, en l'absence d'informations sur le nombre de mariés qui avaient été précédemment unis par un partenariat. Les seules évolutions clairement perceptibles, parce qu'elles se reproduisent à trois ans d'intervalle sont (i) le recul après une année initiale exceptionnelle et (ii) le passage d'une minorité à une majorité de légalisations de couples féminins. La position majoritaire des femmes dans les années récentes est encore plus claire sur les taux que sur les nombres absolus, puisque les couples lesbiens sont moins nombreux que les couples gays.

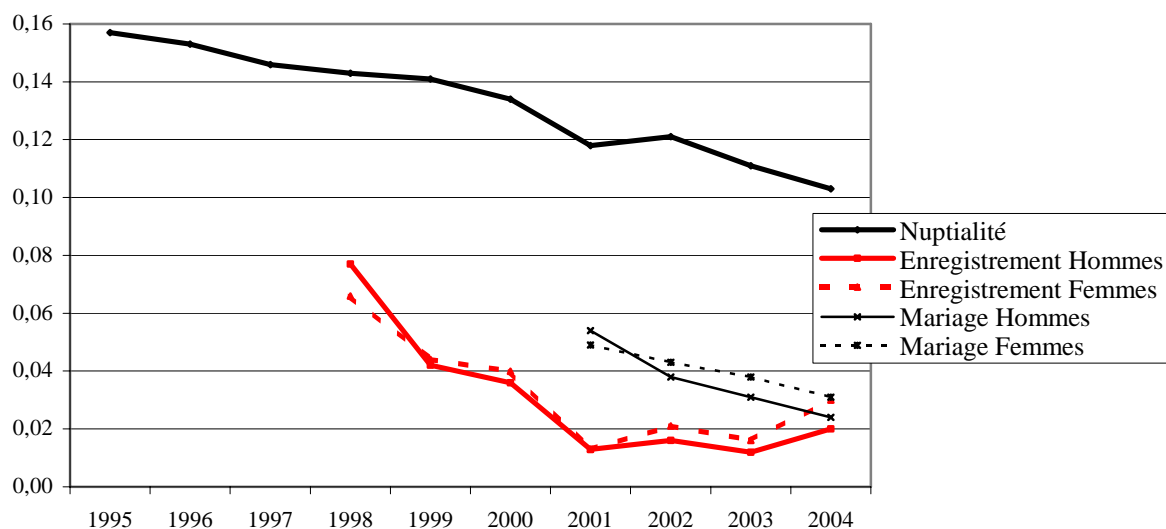
Pays-Bas. Taux d'enregistrement et de mariage des couples homosexuels

Année	Taux d'enregistrement		Taux de mariage		Année	Taux d'enregistrement		Taux de mariage	
	HH	FF	HH	FF		HH	FF	HH	FF
1995					2000	0,036	0,040		
1996					2001	0,013	0,013	0,054	0,049
1997					2002	0,016	0,021	0,038	0,043
1998	0,077	0,066			2003	0,012	0,016	0,031	0,038
1999	0,042	0,044			2004	0,020	0,030	0,024	0,031

Le taux d'enregistrement est calculé en rapportant le nombre de nouveaux enregistrements au nombre de couples non légalisé (ni mariés, ni enregistrés).

Le taux de mariage est calculé en rapportant le nombre de mariages au nombre de couples non mariés.

Pays Bas. Taux d'enregistrement, taux de mariage et taux de nuptialité



Autres aspects de la vie des partenariats homosexuels enregistrés et des mariages

Une fois passée l'année de mise en place de la loi, qui est un peu particulière (partenariats ou mariages à des âges un peu plus élevés que par la suite), la distribution des âges à l'enregistrement ou au mariage est très rapidement stabilisée. Les différences entre partenariats homosexuels et mariages homosexuels sont minimes, ce qui n'est guère surprenant si on suppose qu'il y a de grandes similitudes, à trois ans d'intervalle entre les personnes qui suivent les deux types de procédure pour légaliser leur union. En revanche, l'écart est sensible entre partenariats hétérosexuels et mariages hétérosexuels, les seconds étant célébrés à des âges nettement plus jeunes que les premiers. C'est plus surprenant si on considère que le partenariat est une forme juridique intermédiaire entre la cohabitation informelle et le mariage, dont on aurait pu s'attendre à ce qu'elle s'intercale entre les deux dans le cycle de vie conjugale des couples hétérosexuels. Plus généralement, il y a peu de différence entre les trois groupes, partenaires homo- et hétérosexuels et mariés homosexuels, et tous trois se distinguent sensiblement des mariés hétérosexuels par un âge à la légalisation plus tardif.

Pays-Bas. Distribution des âges au mariage ou à l'enregistrement selon le sexe

Type d'unions et sexe	Âges au mariage ou à l'enregistrement					
	< 30 ans	30-39 ans	40-49 ans	50-64 ans	65+ ans	Tous âges
Partenariats homosexuels, hommes	12%	34%	28%	22%	5%	100%
Partenariats homosexuels, femmes	12%	41%	29%	15%	2%	100%
Partenariats hétérosexuels, hommes	14%	31%	23%	24%	8%	100%
Partenariats hétérosexuels, femmes	21%	34%	22%	19%	4%	100%
Mariages homosexuels, hommes	10%	31%	33%	23%	3%	100%
Mariages homosexuels, femmes	14%	43%	28%	14%	1%	100%
Mariages hétérosexuels, hommes	32%	47%	12%	7%	1%	100%
Mariages hétérosexuels, femmes	50%	36%	9%	5%	1%	100%

Partenariats 1999.

Mariages 2002

En outre, les écarts entre hommes et femmes sont modérés dans ces trois groupes, à peine plus marqués dans les mariages homosexuels (les mariages lesbiens moins tardifs que les mariages gays) que dans les partenariats homo- et hétérosexuels. Cette modération contraste avec la classique différence d'âge entre hommes et femmes dans les mariages hétérosexuels.

Suède

La Suède compte 9 008 883 habitants au 1^{er} novembre 2004.

Le mariage des couples hétérosexuels

Le nombre de mariages en 2004 est de 43 088. Au cours des 25 dernières années, ce nombre a connu une hausse spectaculaire à la fin des années 1980 (modification de la loi sur les pensions de réversion), avant de baisser sensiblement. Depuis la fin des années 1990, une hausse soutenue a ramené le nombre de mariages de moins de 32 000 à plus de 43 000 et le taux brut de nuptialité de 3,6 à 4,8 pour 1 000 habitants. Cette augmentation d'un tiers en six ans est un regain substantiel après un fort déclin, mais les taux bruts restent faibles historiquement.

Suède. Nombre annuel de mariages hétérosexuels et taux brut de nuptialité (pour 1000 habitants)

Année	Nombre	Taux	Année	Nombre	Taux	Année	Nombre	Taux
1980	37569	4,5	1990	40477	4,7	2000	39895	4,5
1981	37793	4,5	1991	36836	4,3	2001	35778	4,0
1982	37051	4,5	1992	37173	4,3	2002	38012	4,3
1983	36210	4,3	1993	34005	3,9	2003	39041	4,4
1984	36849	4,4	1994	34203	3,9	2004	43088	4,8
1985	38297	4,6	1995	33642	3,8			
1986	38906	4,6	1996	33784	3,8			
1987	41223	4,9	1997	32313	3,7			
1988	44229	5,2	1998	31598	3,6			
1989	108919	12,8	1999	35628	4,0			

The bride resident in Sweden

Le nombre de couples hétérosexuels mariés a nettement régressé depuis 1985 (de plus de 1,5 million à moins de 1,4 aujourd'hui ; un recul de plus de 150 000), mais la hausse du nombre de couples non mariés a plus que compensé (de 440 000 à 640 000, soit un accroissement de 200 000). La part des non mariés dans le total des couples est passée de 22 à 32 %. Ce dernier pourcentage est très élevé : 1 couple sur trois n'est pas marié.

Suède. Nombre de couples hétérosexuels mariés et non mariés au 1^{er} janvier de chaque année

Année	Couples mariés	Couples non mariés	Année	Couples mariés	Couples non mariés	Année	Couples mariés	Couples non mariés
1980			1990	1531500	475000	2000	1381000	626500
1981			1991	1521500	472500	2001	1359500	615000
1982			1992	1515500	495000	2002	1359500	672000
1983			1993	1489000	497500	2003	1358000	638500
1984			1994	1481500	510500	2004		
1985	1523000	440500	1995	1471500	518000			
1986			1996	1441000	564500			
1987			1997	1473500	593500			
1988			1998	1404500	586000			
1989			1999	1381000	633500			

Estimated from the Living Conditions Surveys (ULF) 1985-2003. Averages of the male and female married populations aged 16-74; averages of the male and female cohabiting populations aged 16-74. Married populations of each sex are estimated with a +/-62000 confidence interval (95%); cohabiting populations of each sex are estimated with a +/-300000 confidence interval (95%).

L'augmentation de la proportion de couples non mariés marque la diversification des formes conjugales et la moindre formalité des unions. Dès 1985, le fait que près du quart des couples vivait hors du mariage témoignait d'une notable précocité de la Suède dans ces mouvements.

Depuis le milieu des années 1980, le taux de nuptialité des couples non mariés est faible, inférieur à 9 %. Ce ratio est une mesure de la proportion de couples non mariés qui légalisent leur union chaque année. La fréquence de cette légalisation a reculé au long des années 1990, jusqu'à 5,4 %, avant de reprendre. Sous l'effet combiné d'un léger accroissement du nombre de couples non mariés et d'une plus fréquente nuptialité de ceux-ci, le nombre de mariages connaît une hausse sensible depuis quelques années.

Suède. Taux de nuptialité des couples non mariés

Année	Taux	Année	Taux	Année	Taux
1980		1990	0,085	2000	0,064
1981		1991	0,078	2001	0,058
1982		1992	0,075	2002	0,057
1983		1993	0,068	2003	0,061
1984		1994	0,067	2004	0,067
1985	0,087	1995	0,065		
1986		1996	0,060		
1987		1997	0,054		
1988		1998	0,054		
1989		1999	0,056		

Estimated from the Living Conditions Surveys (ULF) 1985-2003. Averages of the male and female married populations aged 16-74; averages of the male and female cohabiting populations aged 16-74. Married populations of each sex are estimated with a +/-62000 confidence interval (95%); cohabiting populations of each sex are estimated with a +/-300000 confidence interval (95%).

L'enregistrement des partenariats homosexuels

L'enregistrement des partenariats date de janvier 1995.

Suède. Nombre annuel de partenariats homosexuels selon le sexe et taux brut pour 100 000 hommes ou 100 000 femmes

Année	Partenariats		Taux		Année	Partenariats		Taux	
	HH	FF	HH	FF		HH	FF	HH	FF
1990					2000	109	70	2,5	1,5
1991					2001	98	93	2,2	2,1
1992					2002	106	105	2,4	2,3
1993					2003	120	129	2,7	2,8
1994					2004	143	141	3,2	3,1
1995	249	84	5,7	1,9					
1996	101	59	2,3	1,3					
1997	79	52	1,8	1,2					
1998	79	46	1,8	1,0					
1999	77	67	1,8	1,5					

Partners resident in Sweden (/2)

Le nombre de partenariats masculins a été élevé la première année (près de 250 ; taux brut proche de 6 pour 100 000). Il a ensuite baissé fortement (moins de 80 enregistrements par an et des taux bruts inférieurs à 2 pour 100 000 à la fin des années 1990). Depuis lors, la reprise a été substantielle, le taux brut dépassant 3 pour 100 000 en 2004. Le nombre de partenariats féminins a été beaucoup faible les premières années (moins de 50 enregistrements et un taux brut de 1 pour 100 000 femmes, en 1998). Mais la hausse du début du siècle a amené très rapidement les nombres et taux féminins au niveau de leurs équivalents masculins.

Pour calculer un taux d'enregistrement des couples homosexuels non enregistrés, comparable au taux de nuptialité des couples hétérosexuels non mariés, on estime le nombre de couples non encore enregistrés car la statistique suédoise ne le fournit pas. On fait pour cela deux hypothèses conformes aux quelques données dont on dispose pour d'autres pays, en supposant que les couples homosexuels sont 1,2 % (comme aux Pays-Bas en 2002) ou 0,7 % (aux Etats Unis c'est 1 % en 2000 ; en France sans doute plus de 0,7 % en 1999) des couples hétérosexuels. On retranche le nombre cumulé de partenariats enregistrés non dissous.

Suède. Estimations du nombre de couples homosexuels non enregistrés au 1^{er} janvier de chaque année

Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels		Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF
1989					1998	12470	10793	7096	6215
1990					1999	12569	10888	7130	6254
1991					2000	12468	10801	7047	6184
1992					2001	12171	10574	6840	6032
1993					2002	12465	10826	6980	6154
1994					2003	12155	10551	6765	5959
1995	12892	10982	7520	6406	2004	12089	10468	6689	5868
1996	12747	10987	7332	6374	2005				
1997	13045	11267	7464	6513					

Selon deux hypothèses, on suppose que le nombre de couples homosexuels est égal à 1,2 % ou 0,7 % des couples hétérosexuels (mariés ou non). On retranche de ce nombre celui des couples homosexuels enregistrés non dissous

Aux Pays-Bas, la proportion de couples homosexuels par rapport aux couples hétérosexuels a légèrement augmenté au fil du temps, de 1,0 à 1,2 % entre 1995 et 2002. Il n'est pas exclu qu'un semblable mouvement se soit déroulé en Suède.

Quand la proportion de couples homosexuels est supposée plus forte, le taux d'enregistrement apparaît plus faible, ce qui n'est pas une surprise. Mais quelle que soit la proportion supposée, le taux d'enregistrement est toujours sensiblement inférieur au taux de nuptialité des couples hétérosexuels non mariés. En fin de période par exemple, c'est-à-dire près de 10 ans après la loi sur le partenariat, le taux d'enregistrement est de l'ordre de 1 ou 2 % selon les hypothèses, alors que le taux de nuptialité est au moins trois fois plus élevé (supérieur à 6 %)

Suède. Taux d'enregistrement des couples homosexuels

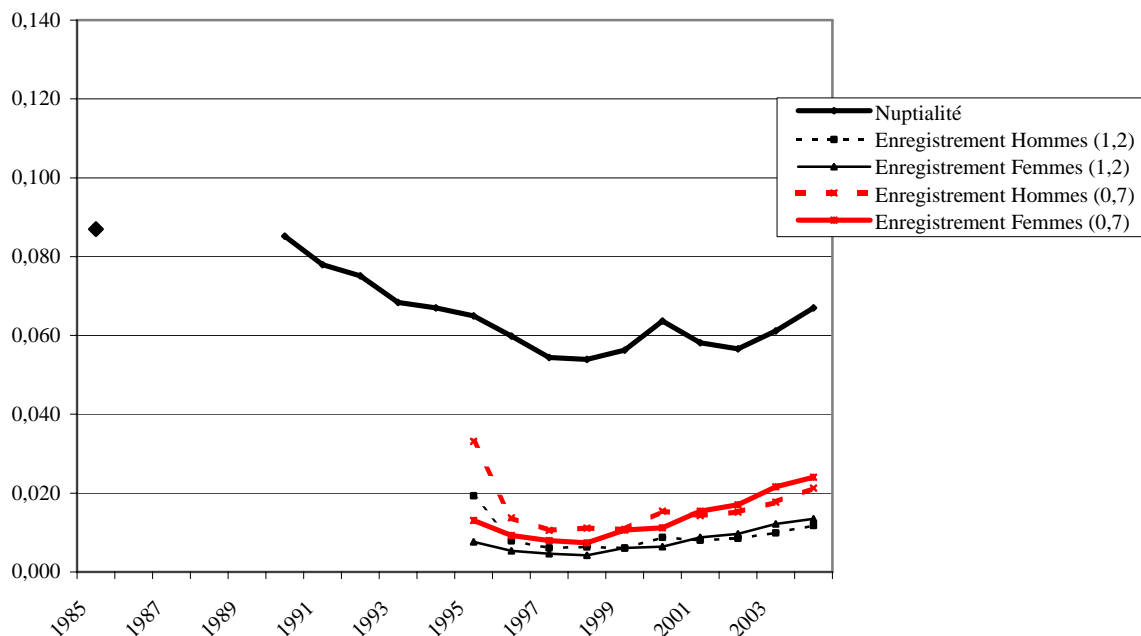
Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels		Année	1,2 % des couples hétérosexuels		0,7 % des couples hétérosexuels	
	HH	FF	HH	FF		HH	FF	HH	FF
1989					1998	0,006	0,004	0,011	0,007
1990					1999	0,006	0,006	0,011	0,011
1991					2000	0,009	0,006	0,015	0,011
1992					2001	0,008	0,009	0,014	0,015
1993					2002	0,009	0,010	0,015	0,017
1994					2003	0,010	0,012	0,018	0,022
1995	0,019	0,008	0,033	0,013	2004	0,012	0,013	0,021	0,024
1996	0,008	0,005	0,014	0,009	2005				
1997	0,006	0,005	0,011	0,008					

Selon deux hypothèses, on suppose que le nombre de couples homosexuels est égal à 1,2 % ou 0,7 % des couples hétérosexuels (mariés ou non). On retranche de ce nombre celui des couples homosexuels enregistrés non dissous.

L'évolution du taux d'enregistrement au fil du temps est beaucoup plus difficile à dessiner. La hausse au cours des années récentes est perceptible pour les hommes et les femmes, quelle que soit l'hypothèse sur le nombre

de couples homosexuels. Mais s'il s'avérait que ce nombre s'est accru au fil du temps, comme ça a été le cas aux Pays-Bas, la hausse du taux d'enregistrement pourrait s'en trouver réduite voire éliminée. Sur ces points la conclusion est indécise.

Suède. Taux d'enregistrement et taux de nuptialité



Autres aspects de la vie des partenariats homosexuels enregistrés

De 1995 à 2003, 47 % des partenariats masculins et 37 % des partenariats féminins ont été enregistrés dans le comté de Stockholm, les autres ayant lieu dans le reste du pays. Il s'agit d'une très forte sur représentation de la capitale, qui par exemple n'attire que 27 % des mariages.

Seulement 55 % des partenariats masculins ont été conclus entre deux hommes nés en Suède. C'est le cas de 70 % des partenariats féminins⁵¹. Par comparaison, 78 % des mariages de 1993-1999 ont uni deux époux de nés en Suède.

20 % des partenariats masculins et 27 % des partenariats féminins ont été précédés d'un mariage hétérosexuel (27 % des mariages des années récentes font suite eux aussi à un autre mariage). Des pourcentages du même ordre concernent les partenariats où un au moins des partenaires a déjà eu des enfants (19 et 34 %, respectivement, mais c'est 58 % pour les mariages, une forte proportion de ceux-ci étant conclus après la naissance d'enfants dans une période de cohabitation pré-nuptiale ou dans une union antérieure)⁵².

L'âge au partenariat des hommes comme des femmes est sensiblement supérieur à l'âge au mariage des époux et des épouses. Les événements conclus avant 30 ans suffisent à donner un aperçu de la moindre précocité des partenariats. Le phénomène est particulièrement accentué les premières années, quand le partenariat attire des couples qui régularisent une situation déjà ancienne, mais les années récentes sont encore très marquées par les enregistrements tardifs : en 2000-2004, les enregistrements avant 30 ans ne sont encore que 10 % des partenariats masculins et 27 % des partenariats féminins (contre 26 % des hommes et 42 % des femmes dans les mariages).

Les larges différences d'âge entre partenaires sont nettement plus fréquentes chez les hommes que chez les femmes (34 % des premiers et 15 % des secondes ont dix ans ou plus d'écart)⁵³.

⁵¹ Anderson, Gunnar ; Noack, Turid ; Seierstad, Ane & Weedon-Fekjær, Harald.- The demographics of same-sex "marriages" in Norway and Sweden.- In Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 254.

⁵² *Idem, ibidem*

⁵³ *Idem, ibidem*

Suède. Distribution des âges au mariage ou à l'enregistrement selon le sexe (2000-2004)

Type d'unions et sexe	Âges au mariage ou à l'enregistrement					
	< 30 ans	30-39 ans	40-49 ans	50-64 ans	65+ ans	Tous âges
Partenariats, hommes	10%	35%	29%	22%	4%	100%
Partenariats, femmes	27%	39%	24%	9%	1%	100%
Mariages, hommes	26%	45%	17%	11%	1%	100%
Mariages, femmes	40%	39%	13%	7%	1%	100%

Partenariats 2000-2003.

Depuis l'instauration du partenariat, 350 d'hommes et 317 femmes ont été impliqués dans le divorce de leur partenariat (1998-2004). Si, à durée égale, les taux de divorce des couples mariés avaient prévalu chez les partenaires enregistrés, ces nombres auraient été de 294 et 171. C'est dire que la divortialité des partenaires masculins est légèrement supérieure à celle des mariés (+20%), alors que celle des partenaires féminins est près du double. Dans une comparaison directe, la divortialité des couples de femmes est largement plus élevée que celle des couples d'hommes.

Au fil du temps, il semble que la sur-divortialité des partenariats se résorbe, les comportements se rapprochant graduellement de ceux des mariés et l'écart entre hommes et femmes se résorbant légèrement. Ces conclusions restent cependant fragiles, compte tenu des modestes effectifs en jeu.

Suède. Nombre d'hommes et de femmes divorcés chaque année dans les partenariats, comparé au nombre attendu si les risques étaient les mêmes que dans les mariages

	1998	1999	2000	2001	2002	2003	2004	Total
Hommes divorcés	45	42	53	43	47	61	59	350
Hommes divorcés attendus*	25,0	32,4	38,6	41,8	46,2	52,5	58,0	294,4
Ratio	1,8	1,3	1,4	1,0	1,0	1,2	1,0	1,2
Femmes divorcées	16	38	48	62	45	52	56	317
Femmes divorcées attendues*	10,7	15,0	19,5	22,9	27,6	34,2	41,3	171,2
Ratio	1,5	2,5	2,5	2,7	1,6	1,5	1,4	1,9

* On suppose que les risques de divorce par durée de mariage valent pour les partenariats par durée depuis l'enregistrement

Les facteurs classiquement associés au risque de divorce chez les mariés le sont aussi, dans la plupart des cas, chez les partenaires⁵⁴ :

- Risque plus élevé chez les partenaires les plus jeunes lors de l'enregistrement et risque accru par la différence d'âge entre partenaires ;
- Risque moindre dans les couples de niveau d'instruction élevé.

Aucun des facteurs associés au risque de divorce des partenaires n'est susceptible d'expliquer ni le surcroît de divortialité des partenaires par rapport aux mariés, ni l'écart entre partenaires masculins et féminins. En outre, la fréquente absence d'enfants dans les partenariats ne semble pas de nature à expliquer la sur-divortialité par rapport aux mariés : celle-ci subsiste lorsqu'on limite l'observation aux couples sans enfants, qu'ils soient partenaires ou mariés.

⁵⁴ *Idem*, p. 257 et 259.

Vue d'ensemble et conclusion

Conduite dans neuf pays d'Europe où des lois récentes ont ouvert des possibilités d'enregistrement alternatives au mariage, l'analyse comparative des procédures de légalisation des couples, révèle trois catégories de phénomène :

- La légalisation des couples homosexuels (par les procédures nouvelles d'enregistrement ou par le mariage) est sensiblement moins fréquente que celle des couples hétérosexuels par le mariage. Et ceci malgré la désaffection qui touche l'institution matrimoniale. Ce n'est peut-être pas une surprise puisque les lois nouvelles peuvent être jugées tout à la fois trop inférieures aux lois de mariage pour être attrayantes et trop proches d'elles pour être adaptées à la spécificité des couples qu'elles visent. C'est l'occasion de s'interroger sur ce qui fait la différence entre la légalisation des couples homosexuels et hétérosexuels et, plus radicalement, sur le bien-fondé de la comparaison entre les uns et les autres.
- La fréquence des enregistrements dans les différents pays est disparate, bien davantage que ne l'est le recours au mariage. Toutefois la diversité n'est pas forcément celle qu'une intuition aurait laissé attendre. Non seulement les pays nordiques, qui ont souvent paru pionniers dans l'adoption de nouveaux comportements conjugaux, ne sont pas ici en tête des plus fortes fréquences, mais ils présentent une hétérogénéité interne qui s'accorde mal avec le fait que les lois y ont suivi un processus commun d'élaboration. Plus généralement, on s'étonne que les pays qui semblent avoir accordé le plus de droits aux couples enregistrés ne soient pas toujours ceux où le recours à la loi est le plus élevé.
- Les lois ont été adoptées dans un contexte général de défiance à l'égard du mariage. Le « dé mariage » est aujourd'hui très diffusé en Europe, mais son origine historique est dans les pays du nord, là même où ont aussi été prises les premières lois dites de partenariat enregistré. D'où l'hypothèse d'une possible influence de cet environnement sur l'attitude des couples concernés à l'égard des nouvelles législations. D'autant que la faible nuptialité n'est qu'un élément d'un ensemble plus large de mise en cause des formes familiales classiques par la montée des divorces, le développement des naissances hors mariage, etc.

Les couples visés par les lois de partenariat, de pacs ou de cohabitation légale, selon les pays, n'enregistrent pas leur union aussi souvent que ceux concernés par le mariage. Le constat s'applique essentiellement à la comparaison entre homosexuels et hétérosexuels, même s'il a une portée plus générale puisque, par exemple, les couples de sexe différent qui ont le choix optent dans une large majorité pour le mariage plutôt que ses alternatives (pacs ou autres).

C'est peut-être un déficit provisoire que le temps finira par combler. Il est courant que les institutions familiales mises en place par la loi tardent à entrer dans la pratique des populations, même quand celles-ci les ont appelées de leurs vœux. Au trois grands stades de son développement, à son instauration en 1792, à sa réinstallation en 1874 et à son extension en 1975, le divorce en France n'a d'abord connu qu'un modeste afflux de demandeurs, compte tenu des attentes qu'on pouvait imaginer, avant une croissance lente et régulière de la fréquence des mariages rompus. Ainsi, huit décennies ont été nécessaires après la loi Naquet pour que s'établisse, dans les années 1950-1960, un régime stable où un mariage sur dix se concluait par un divorce. Quant au mariage, selon Georges Duby, il lui a fallu deux siècles au moins au Moyen Âge pour que l'église catholique l'impose comme cadre consacré, contrôlé par le clergé, au terme d'un long conflit où l'ordre nouveau se substituait à un ordre différent, contrariant d'autres obligations morales et de vieilles habitudes. Dans les pays nordiques où les lois de partenariat offrent un recul de plusieurs années, une hausse progressive du nombre de couples enregistrés a commencé de rapprocher le comportement des couples homosexuels de celui des hétérosexuels. Cette hausse est avant tout le fait des lesbiennes dont la fréquence d'enregistrement était la plus faible dans les premières années d'application de la loi. Avec le temps qui passe, les pratiques s'installent dans la vie des couples sans pour autant que l'évolution du cadre législatif puisse être tenue pour principal responsable.

Le contenu même des lois peut cependant être invoqué aussi pour expliquer le faible recours des couples aux possibilités nouvelles d'enregistrement. Dans aucun pays, les alternatives au mariage n'ont tous les attributs du mariage. Même celui-ci quand il s'ouvre aux homosexuels aux Pays Bas et en Belgique exclut certaines conséquences légales, qui restent propres à l'union des personnes de sexe différent. Le déficit est systématique en matière de droit à la parentalité (il n'y a jamais d'équivalent de la présomption de paternité au bénéfice de l'autre quand un des deux partenaires devient parent ; les partenaires ne peuvent se prévaloir de la légalité de leur union pour adopter ensemble un enfant qu'en Suède et aux Pays-Bas et avec des restrictions, etc.) ; des avantages matériels accordés aux mariés sont déniés aux partenaires ou pacés en Allemagne ou en France (le droit à la pension de réversion ou les exonérations de droit de succession) ; etc. Les procédures d'enregistrement diffèrent presque toujours des formes que la loi donne au mariage, soit qu'elles excluent l'intervention des églises dans les pays nordiques, soit qu'elles prévoient des voies spécifiques en France ou en Allemagne. Substantiellement ou symboliquement, il subsiste partout des éléments qui

distinguent ce que le vocabulaire différencie (partenariat et mariage) et même ce qu'il tend à confondre (mariage homosexuel et hétérosexuel).

A l'« offre » incomplète proposée par la loi se confronte la « demande » des couples qu'elle vise. Or rien n'assure que ces attentes se confondent avec celle des candidats au mariage. Les signes s'accumulent en particulier qui montrent les couples homosexuels différents des hétérosexuels par leurs conditions de vie et leurs comportements, formant un groupe à part susceptible de satisfaire des besoins spécifiques par la légalisation de leur union. Les formes de vie commune des homosexuels ne sont pas celles des hétérosexuels, avec des pratiques diverses en matière de fidélité, de partage des biens, des tâches ou des activités, etc. Les partenaires qui s'enregistrent sont souvent plus âgés que ceux qui se marient, les écarts d'âge entre eux sont plus larges, leur union est en moyenne plus éphémère. De même que la protection du mariage est inégalement recherchée par les hommes et les femmes de diverses classes sociales, de même différent par leurs besoins et leurs attentes les groupes susceptibles de s'enregistrer et de se marier. La revendication d'une originalité homosexuelle laisse attendre une spécificité des comportements vis à vis de l'institution matrimoniale. Dans le cas le plus radical, le mariage ou ses alternatives sont rejetés, quel qu'en soit le contenu, à cause de leur association historique avec l'hétérosexualité. A l'inverse, le recours à l'enregistrement peut être pris comme une mesure approximative de l'adhésion à la norme hétérosexuelle d'institutionnalisation du couple.

Les couples qui s'enregistrent le font dans des proportions très inégales selon les pays. La vue d'ensemble est encore compliquée par le fait que, parfois, les mêmes catégories de couples (homosexuels ou hétérosexuels) ont le choix entre le mariage et des procédures alternatives, qui peuvent se présenter comme des concurrents ou des étapes successive du processus de légalisation. D'autres différentiels s'ajoutent à ceux entre pays : selon le sexe, l'âge, le lieu de résidence, etc.

Les disparités internationales sont nettement plus grandes en matière d'enregistrement que de mariage, mais ces dernières ne sont pas négligeables pour autant. Le contenu même du mariage diffère selon les pays : le statut de marié a généralement moins d'implication dans les pays nordiques qu'en France et chez nos voisins, en particulier parce que les systèmes de protection sociale y sont davantage attachés à la personne qu'à l'unité familiale. Sur l'échelle établie par Kees Waaldijk pour mesurer les conséquences légales du mariage, le Danemark recueille 15 points de moins (sur 99) que la France ou la Belgique. Par ailleurs, la fréquence du recours au mariage diffère selon les pays : elle aussi est généralement moins élevée dans les pays nordiques qu'ailleurs, une fraction plus forte de couples hétérosexuels restant durablement dans le simple statut de cohabitants. Mais la corrélation se limite à ce niveau de généralité : plus en détail, il y a des disparités importantes dans le groupe nordique qui ne reflètent pas de différences visibles dans la substance légale du mariage (pourquoi la nuptialité est-elle sensiblement plus forte aujourd'hui au Danemark qu'en Suède ?) et des disparités également fortes entre les autres pays (pourquoi la nuptialité est-elle sensiblement plus forte aujourd'hui en Allemagne qu'en France ?). Au total, la diversité des comportements en matière de nuptialité est sensiblement plus grande que la diversité dans la substance du mariage, suggérant ainsi le jeu de facteurs contextuels autres que juridiques dans l'institutionnalisation des couples.

C'est à fortiori vrai pour l'enregistrement, en particulier celui des couples homosexuels, la dispersion étant encore plus grande que pour le mariage, sur les plans tant juridique que statistique. Le pacs français ou le *lebenspartnerschaft* allemand ont une portée bien moindre que le partenariat nordique ou néerlandais, en particulier parce qu'ils excluent toute conséquence sur le droit à la parentalité. Sur l'échelle de Kees Waaldijk appliquée à ces statuts, la France et l'Allemagne recueillent 24 points de moins (sur 99) que les Pays Bas. En regard, la dispersion des comportements est impressionnante, malgré les imprécisions qui entourent sa mesure. Mais la relation entre la loi et le nombre défie la plupart des intuitions et tout essai de généralisation. Au sein du groupe nordique, qu'un esprit commun a animé dans la rédaction des lois sur le partenariat, la distance est grande entre le Danemark et les autres en matière d'enregistrement ; entre la France et l'Allemagne, également restrictives dans les conséquences attachées à la légalisation des unions, le recours à celle-ci varie sans doute du simple au triple. D'ailleurs, l'étonnement le plus grand n'est-il pas de constater que la popularité la plus grande auprès des homosexuels européens est pour le pacs (avec bien des réserves sur la validité des estimations nécessaires à l'obtention du résultat) ? Ce qu'une lecture globale des lois ne permet pas d'atteindre devra sans doute être recherché dans une lecture en détail, car l'usage que les couples font des procédures de légalisation qui leur sont proposées dépend probablement de points spécifiques.

A l'inverse, des éléments d'un contexte plus global sont également à prendre en compte. L'exemple de la comparaison entre le Danemark et la Suède permet de suggérer la direction que pourrait prendre cet effort. Le rapprochement des deux pays étonne parce que la fréquence des enregistrements y est largement différente, plus forte au Danemark qu'en Suède, alors que les lois de partenariat sont pour l'essentiel calquées l'une sur l'autre. Par ailleurs, les deux pays ont montré presque simultanément dans les années 1960 les premiers signes d'un recul profond du mariage, qui en ont fait les pionniers du mouvement ensuite diffusé à la plupart des pays d'Europe. Mais le parallélisme des tendances dans ce domaine a été rompu depuis maintenant vingt ans, la nuptialité se redressant vigoureusement au Danemark pendant qu'elle continuait à reculer en Suède, si bien que les lois de partenariat sont entrées en vigueur dans des environnements sensiblement différents. D'où le constat que les lois-sœurs adoptées à cinq ans d'intervalle ont bénéficié d'une popularité nettement plus grande dans le pays où le mariage est lui-même dans une évolution beaucoup plus positive.

En fait, la similitude apparente le contenu des lois cache sans doute une divergence profonde dans leur esprit et dans les raisons qui ont conduit à leur mise en place. La défiance des couples suédois à l'égard du mariage et le développement de la vie en couple comme simples cohabitants ont d'abord conduit le législateur à

renforcer ce statut pour améliorer la protection des partenaires, puis à envisager de faire bénéficier les couples homosexuels des mêmes progrès que les hétérosexuels dans ce domaine. Dans le même temps, le parlement danois a préféré porter ses efforts vers le mariage, pour en accroître l'attractivité, et y inclure les homosexuels par l'instauration d'un statut spécifique mais largement inspiré de celui des mariés. La loi sur le partenariat a été ici, au Danemark, le point focal d'une action concertée visant à soutenir le regain de la nuptialité, alors qu'elle est là, en Suède, une opération d'harmonisation des législations nordiques, acte étant pris d'une désaffection à l'égard du mariage.

A bien des égards, le Danemark reste une exception en Europe où la tendance générale est au « démariage ». Les procédures nouvelles de légalisation des unions ont donc été proposées aux couples, en particulier homosexuels, dans une phase de déclin de l'institution matrimoniale. Les faibles taux d'enregistrement de la plupart des pays doivent être replacés dans ce contexte, où ils ne constituent pas une surprise. Mais à l'instar du Danemark et de la Suède, les états-providences ont aussi le souci de donner aux solidarités interpersonnelles le soutien d'un cadre légal que le mariage assurait traditionnellement, en offrant des formes nouvelles d'institutionnalisation inspirées des précédentes à des groupes élargis (couples hétérosexuels non mariés, couples homosexuels, voire paires de personnes vivant conjointement). Que ce soit pour réduire les discriminations entre les uns et les autres, pour combattre des fragilités spécifiques (Sida) ou pour réduire la charge des solidarités sociales. Dans le temps court de mise en place des nouvelles lois, ce jeu de facteurs complexes peut donner des résultats contradictoires que la démographie des procédures d'enregistrement fait affleurer.

Chapitre III

They should go all the way!

To register or not:

Law and behaviour in France and Iceland

The symbolic and the social

Preliminary analyses of a French-Icelandic survey with in-depth interviews

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They should go all the way!¹

*"No universal linkage exists between sex, love and marriage;
such linkages are socially constructed"*²

The different forms of modern sexuality led behaviours to dissociate with traditional modes of life and their legal institutionalisation.

Sexuality not being granted for life takes now different forms, independently from partners as it is attested in the recent sex surveys; it is appreciated through a life course. One might even question if sexuality can assign a type of unique behaviour. Still, the law rules through well defined categories. Thus, since the nineteenth century, heterosexuality and homosexuality appeared, lately, bisexuality and transsexuality, or recently transgender became terms to categorize even more.

After the sexual revolution of the late sixties, western societies have started to reflect about the homosexuals' life conditions. Slowly, it has been acknowledged that sexual behaviours, hetero- or/and homosexuals were of private matters. It led, with more or less time, to complete the legal decriminalisation of homosexual behaviours in most of the European countries. But decriminalisation is not the single path to anti-discrimination features.

Legal access to contraception and abortion disconnected marriage and procreation, birth out of wedlock started to dramatically rise. Meanwhile, Nordic countries that had pioneered the emancipation of women at the beginning centuries in offering equal rights through marriage and divorce laws, especially towards the children, continued to individualize social rights in order to reach social equality in practice. The principle of the primacy of individual well being to constitute an homogeneous society rules. This gave a new status to marriage.

In 1989, to equate legal status of couples, Denmark became the first country in the world to legalize same-sex unions, giving homosexual couples nearly as much rights as different sex-couples, except mainly those of parenting; the country appeared a pioneer although contextual factors pointed out at that time looked more or less applicable to others, especially the closest Nordic countries, especially Sweden that had already started to integrate homosexual couples in its legal system in 1987 through a cohabiting law³.

In this legislative process, more than two parties, the state and homosexuals, interacted. Passionate discussions in the political parties and public debates but also controversial and sometimes moderate interest from some homosexual circles were all gathered in a societal and political climate scattered with emotion and adventure. But why Denmark?⁴ All and all, it's hard to really assess why Denmark was the first to go further on than just implementing the anti discrimination directives from Norden or European Union⁵. Nonetheless, it has been followed by other countries, with a small period of time in the North of Europe, more as soon as it goes south. Indeed, ten other countries⁶ have adopted laws to legalise same-sex unions and the context where it took place in its specific time frame is not the less revealing the process.

¹ Lúðvík (IS17M).

² Plummer, Ken.- "Men in love: Observations on male homosexual couples".- Corbin, Marie.- *The Couple*.- Hardmonsworth: Penguin, 1978, p. 187.

³ *The Homosexual Cohabitees Act* (1987:813) entered into force, January 1, 1988.

⁴ Henning Bech has some interesting hypotheses in his article: Bech, Henning.- "Report from a rotten state".- Plummer, Ken (ed).- *Modern Homosexualities*.- London: Routledge, 1992, p. 142-144.

⁵ Digoix, Marie ; Festy, Patrick & Waaldijk, Kees.- "Same-sex couples and heteronormativity".- *Paper presented at the Population Association of America 2004 annual meeting, Boston, April 1-3, 2004*.- 2004.- 23 p.

⁶ Belgium, The Netherlands and Spain (marriage), Finland, Iceland, Norway and Sweden (registered partnership or confirmed partnership), France, Germany and Luxembourg (civil contract)

Independently from the contextual background and the legal side that drove to the enactment of the laws is the registration process, which we aim to understand. Where, when, who and how are closely intertwined and need to be loosened to figure out the determinants.

General conditions of social possibility and society acceptance are improving, social surveys on homosexual's welfare have proved needs for social protection and recognition. The State, that doesn't recognise anymore the couple by its reproductive function (since it has been conducted by the actors themselves, couples disregarding marriage and increased cohabitation lead to a growing percentage of birth out of wedlock spread out from Nordic countries in the late 60s) acknowledged the homosexual couple in its specificities and offered recognition and protection as to the heterosexual ones, but not fully the same. How the States have evaluated the specificities to justify a difference is difficult to assess. Nordic countries have performed extended reports on the condition of homosexuals but have more or less been driven by the Danish decision to produce registered partnership laws⁷. The Netherlands has set up a committee to propose the opening up of marriage. The other countries have followed more obscure paths that ranged from political will to civil initiative.

From the strict legal point of view as it has been concluded in the law part of this report, the laws are far from satisfying, accounting not the more on acknowledged specificities than on prejudices.

There is a discrepancy between the political discourses based on social surveys that aim to tell homosexuals are like other persons and the restrictions they get to have access to the same benefits of marriage's laws. And as marriage law has been considered as a model, nothing can prevent people to compare to it, no matter how much the interest in using it has decreased. Until they won't have access to the same law, there will be a difference that might be interpreted in different ways by people for at the end, all that matters is what is accessible, not really what you will use. It calls on the conditions of possibilities and carries on a social imaginary.

Our legal approach starts from the hypothesis that decriminalisation of homosexuality and a bigger tolerance had created social conditions where homosexuals and heterosexuals could experience similar expectations towards life and that the similarity (or not) of legal possibilities towards family life is a key understanding of the process of registration. People are living in the same social environment independently from their sexual orientation, and the teenage years where sexuality takes shape need improving conditions to come out spontaneously, either as an homosexual or as an heterosexual, without any differences.

Moreover, profile from homosexuals is changing because of the laws that create conditions of possibility that did not exist before. In this perspective, the still existing legal differences in the law are of prime importance if people feel a discrepancy between what social life offers to all and what laws are framing for them. It's not the rights granted that are important to homosexuals but the distance to what is accessible to heterosexuals, grossly as the model (the norm) is heterosexual, homosexuals mostly brought up in the heterosexual model are as well applying for. The distance between what is granted to heterosexuals is making them feel wider their difference which is only a matter of sexual orientation but any other thing, let's say like there is a difference between a right-hander and a left-hander. Although social sciences researchers have investigated this situation and assessed heterosexual and non-heterosexual forms of life are to some extent converging⁸, the society's reception is still lagging behind and is a key determinant factor of behaviours. Our work aims to measure the real and the perceived distance between situations and their effect to the process of registration.

In most of the countries concerned, statistical data have been available on registration but the data thus produced are new to demographers and sociologists to interpret. The population at risk being unknown, the figures are deprived of any contextual signification. From a statistical point of view, only comparisons between countries have a real meaning showing levels of registration that meant to be explained by societal contexts in which individual behaviours could be identified.

Through qualitative research we tackle a bottom-up approach to seize individual motivations that have been investigated with interviews in two countries in order to study differences and similarities in two societal contexts.

⁷ Social surveys on the conditions of homosexuals conducted in the Nordic countries before the passing of the laws are discussed in Hrefna Friðriksdóttir.- *The Nordic gay and lesbian «marriage»: No children allowed.*- Harvard Law School LLM paper, 1996, *mimeo*, p. 144.

⁸ Bech, Henning.- *When men meet: Homosexuality and modernity [Når mænd møtes].*- Cambridge/Oxford : Polity Press/Blackwell, 1997.- 314 p.

The life in couple and heteronormativity in question

There are many factors that can influence individual behaviours in which the personal input itself is not the least one. That's why simple biographical relation is only interesting when enlightening general trends. Studies in the United States of America⁹ and in Great-Britain¹⁰ have drawn the portrait of homosexual families in the context of societies that, if not hostile, were not offering legal protection for homosexual living arrangements. In case of juridical vacuum, and bearing in mind that law and norms are of different nature but are somewhat linked by a tight thread, we must also consider those who historically have been outside the law, sometimes casted out the norms, have different reception of social offers. From the time of repression where the only possibility was to hide, and thus preventing any social life, the decriminalisation of homosexuality in most countries had widened possibilities without offering an opening to social life. Social stigma drove people to construct strategies to part with everyday life. Those that had been developed during repression time were little by little amended and transformed by the new atmosphere of permissiveness and society acceptance. The shift between what was done because as nothing was permitted, everything being illegal lead to total inventiveness, born primarily of social adaptation to concrete reality and the normalisation process starting with the creation of laws to protect the life in couple is somewhat slow, riddled with difficulties and punctuated by irregular evolutions.

In terms of living arrangements, different forms tended to shape the homosexual life and can be related only the ones people wish to.

Societal influence is first next of kin. What emerged from the previous studies was that social network took the place of the family network because people were excluded by their family for their different sexual behaviour. But this trend that was generalized in the post sexual revolution decades is now reduced by the society tolerance allowing blood relatives to express a spontaneous solidarity that was not socially, externally, accepted before and might progressively equate the situation with heterosexuals. It's also obvious that through the legalisation of same-sex partnership, the States aimed to recreate a legal framework for couples and family. And in the meantime, as Ellen Lewin is stating, homosexual families are not new, what is new by now is this demand for legality and recognition¹¹; the laws on partnership will then join a desire of the homosexuals to be recognized and a will of the State to control and limit the non-subversion of other modes of life.

How the influence of the legal process (decriminalisation of homosexuality, law on same-sex partnership) has been perceived and in what extend it has changed the behaviours? Legalisation of unions does open in fact a normalisation of behaviours that already existed, being invisible because not legally recognised, and also creates a possible for those who had not crossed the border or even envisaged it. It settles a more favourable atmosphere and calls for a societal neutrality if not a complete acceptance that has still to be attested.

Law, norm, and social behaviours are closely linked in a temporality somewhat diffused and in a chronology no more obvious but as soon as the decriminalisation of homosexuality was achieved, the couple was legally possible leaving to individuals to take care of its appropriation. The time period between the clear emergence of new behaviours free from legal constraints depending on the society attitude.

As soon as the society will consider homosexuality as acceptable, homosexuals would be less stigmatised and would be able to adopt freely behaviours that are, or not, the same as heterosexuals but that would fit both in the environment and within their aspirations. Law is a step towards this process but, society in a whole is not changing so quickly. There is a huge difference between socio-cultural milieu, geographical or work areas. It is still in everyday life that bullying, discrimination at work, at lodging, direct or indirect, can stigmatise even if illegal.

Life in couple concerned by the law on same-sex unions is seen as following however the heterosexual model. Because mostly until now, homosexuals are born from heterosexual parents and families but also because the new generations will grow up within a more tolerant climate and won't notice such a big rejection, and at term, won't see it at all. At last, perhaps the heterosexual modes of life that are becoming now so diverse and multiple will, if not converge, make disappear the slight difference that represent the sex of the individuals in the couple.

⁹ Weston, Kath.- *Families we choose*.- New York : Columbia University Press, 1991.- 261 p.

¹⁰ Weeks, Jeffrey.- *Same-sex intimacies: families of choice and other life experiments*.- London : Routledge & Kegan Paul Ltd, 2001.- 245 p.

¹¹ Lewin, Ellen.- *Recognising ourselves: Ceremonies of Lesbian and Gay committment*.- New York: Columbia Univerestity Press.- 288 p.

Indeed, society proceeds by replication, by reproduction. The individual is taken in a general process of civilization independently of his own characteristics. One might call here to the habitus of the dominated that would lead homosexuals to think and act in taking into account the habitus of the dominants¹².

People follow models which they incorporated. When the model does not correspond, they seldom create but adapt. To invent a new form of life is even more difficult in the context of the stigmatisation, except if this can be put to extreme as it may be seen in the so-called "homosexual ghettos". However, this can only concern a small part of the population.

This question is not new as in the field of living modes, heterosexuals has adapted the marriage model to the cohabitation model quite slowly and are somewhat stuck to the couple model, the two-individual relationship keeping its primacy despite the more opening attempts of the sexual (hetero and homo) revolution of the late 60s.

Still the questioning exists and recurrent in the homosexual circles. At the time of the elaboration of the laws, the forms in which they should take shape were vividly discussed with strong cleavages, ranging from positions coming back from further on the sexual revolution and moreover the feminist stand that went along, a practical report of necessity in some dramatic cases, or the more youngest generation, ready to take all what is offered, etc.¹³. All and all, the positions held are perhaps even more tense now that the new laws have appeared¹⁴.

Some even questioned this recognition of the state, and still ten years after in Iceland an interviewee like Bryndis clearly reflects and sums up the two-fold position in which the offered new possibilities place the people once a new life perspective is reaching them:

"...And then I often wondered, you know, why should you register a partnership, why embrace this heterosexual pattern? You know, why do we have to take that path and why us it called registered partnership? Does it mean that we are resolutely partnershiped [word play that doesn't translate well-Translator note] or you know, you are not married like men and women so I just wondered what it would mean to me and I determined that it wasn't really meaningful to me unless we were going to introduce children into the relationship. And then I think it would be relevant with regards to settling the legal side of things as well as ensuring that we would inherit each other so that, I don't know, if one of us died the other would not be left with the children having to pay rent for housing that was really theirs, or... Or, yes that the legal side would be clear with regards to the child..." Bryndis (IS3F)

In the steps of the sexual liberation, one might underline the pressure from the gay movement theoreticians, because of the idea to get free from the constraints and the drawbacks of the heterosexual model. But still, the homosexual circles have been divided as Jeffrey Weeks mentions between "*a moment of transgression and a moment of citizenship*"¹⁵ because the 70s' position is quite far from the reality of everyday life, especially thirty years later. Homosexuality is already a stigma, having a different social behaviour is increasing the difficulty to part with. Invent or even diverge from the model calls on additional resources to people who already have to achieve an acculturation work with the society. However, there is a tension between what is possible, fashionable in homosexual circles and what part of everyday life outside the circles is.

Steady relationship

Social sciences research on sexualities, and especially homosexualities has rarely investigated the field of living arrangements so far. The information on trends has been gathered throughout the years thanks to the surveys on sexual behaviours, in general population or in the time of Aids, on male specific population.

As the result of a long historical and contextual process, new living arrangements have been widely adopted in the homosexual circles, basically disconnecting sexuality from the family life as traditionally known. There is a huge gap of knowledge on the lesbian couple as same sex relationships among women have barely been condemned and as such not put in the forefront. Men in-between sexuality has been more focused on, first because laws forbidding homosexuality and especially sodomy have been put into force in condemning actors, leaving documents (media, judicial archives, literature, etc.) and second, because the Aids epidemic bringing attention to homosexual modes of life in epidemiological and social sciences studies.

Precisely, as established in the Press gay surveys, (surveys conducted on a regular basis in the peak time of Aids epidemic in a prevention aim) privileged intimate relationships were to be described as steady or stable

¹² Halvorsen, Rune.- "The Ambiguity of Lesbian and Gay Marriages. Change and Continuity in the Symbolic Order".- *Journal of Homosexuality*, n° 35, 3/4, 1998, p. 219.

¹³ The conflicted views on the laws have been discussed in Digoix, Marie & Festy, Patrick.- *Registered same-sex partnership: a multidisciplinary approach*.- Paper presented at the 37th World Congress of the International Congress of Sociology "Frontiers of sociology", *Sociology and Demography session*, Stockholm, July 4-9, 2005, p.7-9.

¹⁴ See Pollak, Michael.- "L'homosexualité masculine, ou : le bonheur dans le ghetto ?".- Pollak, Michael.- *Une identité blessée*.- Paris: Métailié, 1982, p. 184-201. and its "response" 15 years later: Adam, Philippe.- "Bonheur dans le ghetto ou bonheur domestique. Enquête sur l'évolution des expériences homosexuelles".- *Actes de la recherche en sciences sociales*, n° 128, "Sur la Sexualité" , 1999, p. 56-72.

¹⁵ Weeks, Jeffrey.- *Same-sex intimacies...*, p.14.

relationships rather than the more common cohabiting couple scheme¹⁶. Coming out and everyday social visibility through cohabitation being difficult to handle in time of social disapproval of homosexual intercourse led a shift of behaviours. The socio-economic profile of the population identified in these surveys is quite above the average one which might be an indicator of practical possibilities¹⁷.

To have a stable relationship doesn't mean systematically monogamy. It does not imply co residency, nor the exclusivity. More than one steady relationship can coexist although it's slightly different from the family of choice concept in that it identifies a two-person relationship. It is a cell from where irradiates an explicit and/or negotiated hypergamy.

One of the clear particularities of the stable relationship model is that it is mostly experienced without living together, although the tendency to cohabit grows, which might be an indication that it could be linked with an increase of social possibilities for homosexual to cohabit without fear of strong social disapproval¹⁸. But in the meantime, and perhaps as a result of a melting of behaviours in our societies, heterosexuals have started to turn into this kind of relationships thus becoming a style and no more a constraint, with a vast range of motives, ideological or social which might be interesting to question in parallel with homosexual behaviours¹⁹.

All and all, the nineties witnessed the multiple shapes of the homosexual relationship facing a new offer: the entry into public space.

¹⁶ Schiltz, Marie.-Ange.- "Young homosexual itineraries in the context of HIV: Establishing lifestyles", *Population: An English selection*, 10 (2), 1998, p.417-446. The press gay surveys (i.e. so called because the questionnaires were distributed for free in the gay magazines) have been created by Michael Pollack and Marie-Ange Schiltz in France in 1985 and soon have been adopted in Germany. They are conducted in a regular basis. Some other countries have joined on a one off. For more information see Schiltz, Marie-Ange.- *Les homosexuels face au Sida: enquête 1995. Regards sur une décennie d'enquêtes*.- Paris : CAMS/CERMES, 1998.- 116 + 50 p.

¹⁷ The findings regarding the characteristics of the population in the Press gay surveys, in France and in Germany, have been confirmed when checked with other sources, such as surveys, censuses and population registers. (see Digoix, Marie ; Festy, Patrick & Garnier, Bénédicte.- "What if same-sex couples exist after all?".- Digoix, Marie & Festy Patrick (eds).- *Same-sex couples, same-sex partnerships and homosexual marriages: a focus on cross-national differentials*.- Paris: Ined, 2004, p. 193-210.)

¹⁸ for more developments on steady relationship see Digoix, Marie & Festy, Patrick.- *Registered same-sex partnership: a multidisciplinary approach*....., p. 4-6.

¹⁹ Charrier, Gilda & Deroff, Marie-Laure.- "La non cohabitation: moment ou condition de la vie conjugale?".- Le Gall, Didier (ed).- *Genres de vie et intimités: chroniques d'une autre France*.- Paris: L'harmattan, 2005, p. 101-120.

The contextual determinants

Comparing individual behaviours in two countries means two different contexts are to be taken into account. Societies evolve in their own tempos and we might use different profiles to adjust to what we believe might be similar conditions of possibility or to assess if not. Contextual social specificities are there put in parallel to legal characteristics of the law and linked to individual behaviours. The relation had two different levels that are closely interlinked. Laws emerge from their social context but have also to be seen and apprehended through their distance to the norm, that is closer to people's behaviour. The partnership laws being new, this might be important to take into consideration the interval between the two. Also, because of the complex origins of the laws, a discrepancy exists between what is offered and what might be possible in people's mind, progress in rights being quicker than progress in the mentality of general population, including sometimes the actors themselves, who only through reflections of their situations can make them point out the work that still has to be done. In a cross-national comparative approach, we might be able to disentangle the effect of context on the different levels of behaviours. But basically, our interest in comparing two countries, here France and Iceland²⁰, is directed towards the study of behaviours in various social contexts. Acknowledging and interpreting the similarities and differences in the legal situation as a frame, the relation with the behaviours is determinant to assess how the population understands and deals with the law.

The legal aspects

Of the nine countries that by 2003 had a law on same-sex partnerships, France and Iceland are representative of two different juridical models that are the most distant. One is a private contract, the other was established as part of family law to offer an equivalent to marriage to homosexuals. Indeed, Iceland, in the footsteps of Denmark and the other Scandinavian countries adopted in 1996 a law similar to registered partnership called *staðfest samvist* (confirmed partnership). France enacted the Pacte civil de solidarité or pacs (Civil solidarity pact) in 1999.

From the pure mere legal side, the extent of rights and duties are of different nature and of a different spirit that lead to barely compare the two. However, they offered both the only protection for homosexual couples. While the Icelandic law is nearly an equivalent to marriage, deprived of most of the features applying to parenting, the French law is more a regulation of material aspects of the life in couple (consequently not regulating parenting rights either). It is to be specified nonetheless that these material aspects being part of the regulation through marriage, they are also included in the Icelandic law²¹. To sum up, the Icelandic law grants far more rights than the French one, from a strict content, but also from a symbolic point of view²².

In Iceland, the law on Confirmed partnership as part of the family law amends the civil status of the contracting parties. Thus, the population register has accurate figures of registration, divorce and decease. From 1996 when the law entered into force to 2004, 119 confirmed partnerships among which 59 of male couples, have been registered and 22 have been dissolved (until 2003, 11 male and 7 female by divorce, 1 male and 1 female by death)²³.

As the other Nordic countries²⁴, Iceland has a low heterosexual marriage rate which hasn't stopped to decrease since the mid-nineties and is rather irregular since then²⁵. Cohabitation is a popular living arrangement for

²⁰ Iceland is a republic since 1944 after a period of controlled autonomy called Home rule that monitored the emancipation from the kingdom of Denmark. Born out of a Norwegian settlement of a more or less deserts land in the 10th century, the country has passed from independence to Norwegian then Danish domination. However, isolation coming from the geographical and climatic specificities led the institutions to bear an independent spirit different from the colonizers. The republic of Iceland belongs to Norden, the co-operation agreement of the Nordic countries (Denmark, Finland, Iceland, Norway, Sweden). In 2004 population is 293 577 among whom 113948 live in Reykjavik. A quick scan on Iceland is provided in Appendix 2, Kolbeinn Stefánsson.- *Iceland: background information and recent developments*. 17 p. France is a republic since 1792.

²¹ See Hrefna Friðriksdóttir & Waaldijk, Kees.- "Iceland".- Waaldijk, Kees (ed.).- *More Or Less Together: Levels of legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners: A comparative study of nine European countries*.- Paris: Ined [Documents de travail n°125], 2005. p.121-136. and Borrillo, Daniel & Waaldijk, Kees.- "France".- Waaldijk, Kees (ed.).- *More Or Less Together...*, . p.93-106.

²² For a detailed comparison of the content of the laws, see Waaldijk, Kees.- "Comparative overview".- Waaldijk, Kees (ed.).- *More Or Less Together...*, p.7-36.

²³ See in the demographic analysis part of this report, the monography on Iceland in the *Analyse par pays* part.

²⁴ See Digoix, Marie ; Festy, Patrick & Waaldijk, Kees.- "Same-sex couples and heteronormativity".- *Paper presented at the Population Association of America 2004 annual meeting, Boston, April 1-3, 2004*.- 2004.- 23 p.

couples and common practice dating from the 19th century where marrying was conditional to the possibility of financial independence, land ownership among other things being quite important. Throughout the 20th century cohabitation has spread among other western European countries, and has regularly increased in Iceland as elsewhere. As to legally cover the partners in case of split, which is one of the main characteristics of marriage also, Iceland has chosen to create a framework that would cover this living arrangement also, on a voluntary basis²⁶. Registered cohabitation is now the most popular mode of life among new couples and most of them have experienced it before marrying²⁷ although it is not possible to evaluate now the cohabitants that don't register, the significance of the figures being deduced compared to marriage.

In practice, registered cohabitation (*óvígð sambúð*) is the declaration at the national registry of one's cohabitation when registered at the same address. From this situation, the recognition of share properties is covered in case of split and apply some benefits such as tax reduction, social security coverage, etc during the cohabiting period. Because it's not a law per se and that the provisions applying to people having registered are to be found in different other laws that are mentioning specifically the relationship of a man and a woman, *óvígð sambúð* is not opened to same-sex partners, as for some unclear reasons, the option of opening it up to homosexuals has been forgotten to be taken into consideration in 1995 when the law on confirmed partnership has been discussed²⁸. In 2003, a committee has been appointed by the Parliament to examine the legal situation of homosexuals and the Committee's report was delivered in September 2004, suggesting among other things to open registered cohabitation to homosexuals²⁹. The Parliament's decision has been suspended as following the report which was strategically divided on the topic of parenting rights, the government proposed a bill that did not include the rights to adopt and to have artificial insemination and the opposition, one which sustained them, holding up the legislative process. It will thus get more debates than if the registration cohabitation, on which all the parties have agreed to grant access to, was only concerned.

What France offers to same-sex couples is of different inspiration. Being opened to different-sex couples, the law takes place at a different level by nature. Elaboration of the law had to take into consideration that marriage was in competition for heterosexual couples. When discussions on a law that would grant rights to homosexual couples started in the beginning of the nineties, only homosexual couples were concerned. In fact, from 1990 to 1998, six bill proposals have been brought in to put an end to the legal vacuum in which homosexual couples were, especially in case of illness and worse, the decease of one partner. It was even impossible by then to get a cohabiting certificate (*certificat de concubinage*) that would attest the relationship between the cohabitants and grant some minimal rights, this being granted at the same time the pacs has been adopted. Thus, with no legal tie, the cohabitation between two persons of the same sex was not recognised in any area of law, leaving for instance, to family members to rule all the affairs of the disable at the expense of his partner. At the peak of the Aids epidemic which has particularly affected France, concerns were at top in homosexual circles and started to reach political class. However, society was not ready by far to accept a high level of recognition such as partnership or marriage, mainly because homosexuality was not simply to be spoken of (the last ban on homosexuality was only repelled in 1982³⁰).

Because the French called on universalism, they also repelled all the proposals that were for same-sex couples only. At the end, the law that started out as an emergency law for homosexuals in distress ended up as a new conception of the regulation of relationship between two individuals. The law is original but such law is shadowed by the possibility of heterosexuals to marry, and conversely the impossibility of homosexuals to do so, the image of the forbidden marriage still pending in the spirit of the law. That's why in a sense it failed to apply to other unions that marriage-like (few proposals had suggested to include all kind of couples, including inter-family ones), proven to be more in the spirit of the Swedish cohabitation law, and less original than the Belgian *Cohabitation légale*³¹, or the Norwegian "law when the community ceases to exist", for example.

If opening the law to different sex couples aimed and meant to not compete with marriage (as well as granting far less rights), it is still the only possibility for homosexuals to register legally their couple. As such, the law is not always perceived in its original terms and people managed to appropriate diversely the spirit of union through it.

²⁵ Hagstofa Ístands.- "Hjúskapur, stofnun sambúðar, skilnaðir og sambúðarslit 2003".- *Hagstíðindi- Mannfjöldi*, 16, júní 2004, p.1.

²⁶ as opposed to Sweden (*Cohabitation Act (2003:376)* replacing *The Homosexual Cohabitees Act (1987:813)*) and Norway (*The Act Relating to the Joint Residence and Household when a Household Community Ceases to Exist*, of 4 July 1991 No. 45) where the same kind of protection for couples applies though a law by default. Both Swedish and Norwegian laws concern same-sex couples as well, the legal protection in Norway even covers all sort of cohabitants whatever their sexual relationship.

²⁷ *idem*, p.3.

²⁸ Personnal interview with Hrefna Friðriksdóttir, Reykjavík, December 18, 2003.

²⁹ see Nefnd sem forsætisráðherra skipaði til að kanna réttarstöðu samkynhneigðs fólks.- *Skýrsla nefndar um réttarstöðu samkynhneigðra*.- Reykjavík: Ágúst, 2004.- 133 p.

³⁰ Still, it was much later on in Iceland, in July 1992 where the age of consent became 14 for all citizens.

³¹ Loi instaurant la cohabitation légale, 23 novembre 1998.

Registered cohabitation, marriage, pacs and partnership

"...My view is that there should only be one marital law and that it should apply to everybody and that all that comes along with it should be included... ...On the other hand, if it's not possible to have just one marital law then there should also be some law on cohabitation for homosexuals, just like there is for heterosexuals. But in fact I think that there should be a law on cohabitation for two people like, parents and children often live together, share a home. There should be some law that makes it easier for them to do that, because they are actually doing the same thing, running a home on one, or one and a half, or two salaries depending on circumstances. So in my opinion it's kind of bizarre to differentiate them in terms of taxes. But I think this stems from the same thing, that they are constantly promoting the family, the nuclear family, that is politicians and the church, they are promoting this sacred marriage, that it's a man and a woman and two children and a house and a car and something like that, that ... yes, that a family is like that, the nuclear family, and that there shouldn't be any support for other family forms." Magnea (IS32F)

"Parce que dans mon idée il y a dans le mariage hétéro, les mariages de sécurité, enfin qui ne sont là que pour...oui, sécuriser, parce qu'on a acheté une baraque, parce qu'on a des enfants, parce que, je ne sais pas quoi, l'héritage, je n'en sais rien, la sécurité du conjoint si l'autre meurt, enfin 36 trucs, c'est normal que pour les hétéros ça existe, euh que pour les homos ça existe aussi." Marc (FR13M)

As seen, confirmed partnership is meant to be the equivalent of marriage for homosexuals whereas pacs is rather a cohabitation protection. Despite both are the only forms of union proposed to homosexuals, the spectre of the Registered cohabitation in Iceland is more important than the presence of the marriage law in France. It is perhaps related to the fact that access to registered cohabitation seems more feasible in Iceland than marriage in France, and that, in a more practical way, Icelanders fancying that kind of administrative arrangement as a step towards confirmed partnership, it represents the first degree of involvement in a relation, which bears a lot of significance in a life-course. The importance of registered cohabitation as a social practice in Iceland has already being underlined with the high rate of registration by heterosexuals while marriage in both countries is considered to be on decline.

It has been noticed in most studies on marriage in Iceland that marriages often took place after the birth of the first child or even at the baptism of second child³². Cohabitation, registered or not, has been popular since the custom of the *trúlofun* (the betrothal) common of all the Scandinavian countries³³, has been practiced even tolerated by church³⁴.

However, while the entry into couple relationship through cohabitation seems to be quite accepted, marriage tends to become the norm after the coming of children such as the real legal status of the relationship is hidden when not the married one³⁵. This is also made possible because spouses don't change their names in Iceland as Icelanders don't have surnames but only their first names followed by the one of their father. Thus a married woman will keep all her life the same name as a married man does.

Registering one's cohabitation is therefore mostly considered as a step towards marriage, a stage of one's relationship status. The fact that marriage is closely linked to children and that homosexuals still have not

³² Björn Björnsson.- *The Lutheran Doctrine of Marriage in Modern Icelandic Society*.- Oslo: Universitetsforlaget, 1971.- p.137. For a most recent but unpublished study, see: Ólöf Garðarsdóttir.- *Marriage patterns in Iceland over 150 years: Extra marital births and the transition into adulthood 1850-2000*.- Paper presented at the 3rd conference of European Social science history association, 23-26 March, 2004.- 18 p.

³³ see Matovic, Margareta.- "Illegitimacy and marriage in Stockholm in the nineteenth century".- Laslett, Peter; Oosterveen, Karla & Smith, Richard (eds.).- *Bastardy and its comparative history*.- London: E. Arnold, 1980, p. 336-48. or Lundh, Christer.- *Swedish marriages*.- Lund papers in economic history, n° 88, 2003.- 63 p.

³⁴ *Trúlofun* was a real commitment that authorized sexual relationships and can be considered as the prefiguration of what cohabitation represents nowadays.

³⁵ Björn Björnsson.- *The Lutheran Doctrine ...*, p.165-166.

been used to consider it might have also an impact on their complain not to have access to. In some cases as for, Nína, the registration of their union took place only because they could not register their cohabitation.

"Firstly, we could register a cohabitation. Obviously that wasn't allowed and we had an apartment together ... or have ... and we live together and of course we have decided to live our lives together and we couldn't register a cohabitation, and there's certain security, I think, in being registered in cohabitation. And since we were going to stay together anyway, then we decided to take this route [to confirmed partnership] and in fact we didn't have any other route to take, to do it ... yes, live together as a couple and get the rights that everyone else gets... ...I think politicians ... people are somehow also ... when I was considering this cohabitation arrangement, not being able to register cohabitation. Of course I didn't know until I sent the documents about registering us. Then I got a phone-call from the National Registry and people don't know about it." Nína (IS33F)

Still, it seems easier to claim for less than for more and many Icelanders don't see why the registered cohabitation has not been opened.

"every year I'd go to the national registry to register us into cohabitation and always got a letter where it stated that regrettably this wasn't possible for homosexuals.... ... I just got these replies, in a letter and, according to some law and something, only a man and a woman can ... or you know, I don't remember precisely ... but I decided to go there every year to register us... ...I think it's positively absurd that homosexuals can get married but not register a cohabitation, just silly, you know. But I don't really understand why it hasn't been changed already. But I did this, all these years when I was with my ex ... or all, yes, at least for 4 or 5 years." Þór (IS36M)

"...I would rather want, to have the option of registering a cohabitation, because we only have this one option, to register a partnership, while heterosexuals have marriages and cohabitation as options, then they can obviously choose to live together, enjoying certain rights for some time before they take the next step. To me it would be more important to remedy that." Drífa (IS5F)

Naming the declaration of commitment

"Have you been in a confirmed partnership?"

-No. I haven't. We call it marriage, in most cases. Of course, it's just our version of marriage.

-Yes, I just used to make a distinction

-Which is "legally" correct."

Dialogue with Íris (IS23F)

To register gives a status towards one's partner as pacs doesn't. Means of appropriation of the law in everyday life events such as how to call one's partner is somewhat a tool to measure the perception of the legal aspect in a practical way.

Iceland was the fourth European country to give a framework to homosexuals to register their union in 1996. To understand why they created *staðfest samvist* (confirmed partnership) and not opened marriage is clearly linked to the choice of its predecessors. Although driven by an internal process of reflection on the situation of homosexuals in society, the law was to follow the path of the Danish, Norwegian and Swedish ones as part of the Norden alignment³⁶. More exactly, the Danish law being pioneer and by far avant-garde, it led the associated countries to adopt the same structure. It has been clearly discussed as such by Norway that was the first to follow four years after Denmark.

The Danish choice being to create a law that would be only accessible to same-sex partners instituted the category as such defining marriage for heterosexuals and registered partnerships for homosexuals.

³⁶ The conditions of elaboration of the laws and the characteristics of the Norden association have been described in Digoix, Marie & Festy Patrick.- *L'Etat, la loi et le couple homosexuel: l'esprit nordique*.- Paper presented at the XVIIe Congrès de l'association internationale des sociologues de langue française, Tours, July 5-9, 2004, CR 03, sociologie du droit.- p.3-4. and the case of Iceland, in Kolbeinn Stefánsson & Guðný Björk Eydal.- "Restrained reform - Securing equality for same sex couples in Iceland".- Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials*.- Documents de travail n°124, Ined, 2004, p. 129-146.

Did the choice of a particular law mean that reflections had been conducted on the particularity of homosexuals?

The Danish political decision to enact the law on same sex-partnership calls on some fundamental preliminaries: at first glance, by doing so, the Danish government was recognising the minority and to some extent its specificities. It might have to be with the multiple cross over of the topic the previous years, between the governmental bodies and the gay and lesbian association.

At a political level, after a continual progress towards anti-discrimination, one step further had to be taken. One step, not two, the proposal failing to consider filiation as part of the deal. In a way, it was much easier to create a specific law by not tackling the filiation questions than to open the marriage by excluding them (which finally proved to be feasible by Belgium some thirteen years after). In fact, despite its disaffection, marriage still had some powerful representations in people mind and was dismissed quickly after not very convincing attempts. On the other side, the discussions were closely linked with the Danish Lesbian and Gay association (LBL) that had already reflected on a framework which internally they had called partnership rather than marriage and turned to become a same-sex partnership law proposal in 1984. Thus, 4 years later, the existing framework of a law shaped by the people involved took rapidly the lead. Considering the degree of involvement of the concerned party in the discussions and in lobbying actions, it was not surprising that this led to the creation of a brand new law.

What led political and homosexuals to agree on a law that would stigmatise homosexuals and, while decreasing discrimination on one side, would increase it in the same time on the other side? Because the law starts in its wording from the marriage law, comparison with the heterosexual model is obvious. The Danish state willing to equate rights between different and same-sex couples has adapted the heterosexual model to the image the homosexual should have in its mind: the same as heterosexual without filiation and procreation rights as these couple couldn't reproduce biologically.

Registered partnership (*registreret partnerskab*) in Denmark became Confirmed partnership (*staðfest samvist*) in Iceland which in a sense is perhaps less bureaucratic than the original Danish term. However, due to the use of "register" also in Norway and Sweden, English translation tends to mix it with registered partnership.

From a mere symbolic point of view, the effect of the concept on the actors is not clearly defined. Basically, it seems that the use of the term confirmed/registered partnership, and moreover, confirmed/registered partner does purely not exist.

"...I often say like, we the married couple. But I also say I'm married. I very rarely use that word, registered partnership..." Þór (IS36M)

"I don't understand why they must give it a different name, why homosexuals aren't married as well, why we're in a registered partnership, it's like when a man and a woman register a cohabitation, we're in registered cohabitation, registered partnership, it sounds alike. It seems to me that registered partnerships are somehow much lower than marriages, a marriage is somehow sacred, the word". Katrín (IS26F)

"No, I think it's fine. I mean, marriage ... it's just a word. Maybe that it would have more significance ... that it wouldn't just be ... I think registered partnership sound very bureaucratic ... and because of taxes and rights, it's not talked about in the same way as marriage. Marriage is somehow so sacred and they make such a big deal of it, and it's on a Saturday and in a church and the wedding dress and the wedding show on TV, and things like that. It's never, registered partnerships are never in a church and you know what I mean, and it's never..." Haraldur (IS12M)

When it comes to express what kind of ceremony he would like, Njörður is just using the term wedding... *"I don't really know what sort of ceremony I would want but I would want..., yes, a wedding..." - Njörður (IS19M).* Wedding in itself has then the whole signification of the act, no more is needed to express in people's mind.

Naming one's significant other

Creating a new framework in Iceland to offer same-sex couples to register their union doesn't prevent the comparison with heterosexual marriage also when it comes to everyday life, giving the structured **mark** of one's position towards family but also society³⁷.

Thus as previously mentioned, marriage and registered cohabitation bear a somewhat vague difference that is barely perceived as such at the symbolic level. Icelanders called their different-sex significant other, wife or husband, independently of their legal status. This is also perceived among same-sex couples in confirmed partnership. The discrepancy between the legal status and the status perceived is acknowledged by the terms people use to name their significant other.

In Iceland, where the status of confirmed partner is close and supposed to be equivalent to marriage, the words husband and wife are coming most often. None of the respondents who were in a confirmed partnership

³⁷ Bourdieu, Pierre.- "Des familles sans nom".- *Actes de la recherche en sciences sociales*, n° 113, juin, 1996, p. 4.

used the term partner. They all referred to their spouses as "my man" or "my woman", which given the context can be assumed to mean "*eiginmaður*" or "*eiginkona*" or husband and wife³⁸.

Thus their definition of the relationship is based on the terms of intimacy, that being a husband or wife is more a representation of a personal and private relationship rather than the legal definition of marriage and registered partnership, perhaps more a social function than a legal one. This is also underlined by George Rich in his remarks on the use of the term *hjón*³⁹, that normally applied to married couples but is also used by cohabitants that have raised a family⁴⁰.

In France, such words as "*ma femme*" or "*mon mari*", my wife or my husband would be hardly used in homosexual relationships whereas it is more common that non-married couples use these terms legally applying to married couples only. "*Mon pacs*" or "*mon pacsé*" which implies the creation of a new word is even as rare. Paced people are sticking more on "*mon ami(e)*" which can be used as well for man or woman without having to reveal one's sexual orientation as it would be basically the same with "*mon pacs*", pacs being masculine. Being clearly gendered, "*Mon copain*" / "*ma copine*" which are more often used by the different-sex partners are revealing more. In French, this doesn't specifically imply a sexual relationship but in a definite context can be mostly interpreted as one's explicit partner.

As such, naming one's partner is closely linked to the coming out⁴¹.

George Rich emphasises the importance of the family in the Icelandic society and especially of the family ties⁴². It is clearly a basis of the society⁴³. He even sees in the fact that Icelanders don't have surnames the primacy of family of birth towards the family of procreation⁴⁴. This would sustain the observation of the importance of the coming out in Iceland, as seen in the interviews performed. Iceland being a small country, anonymity barely exists. In this context, the coming out might be an even more important step of homo life than in other countries. It could bring more pressure before but also maybe more release after. The specificity of Iceland is underlined by many of our respondents as a lot have experienced a life abroad. Drifa who had lived in Norway feels the difference between a larger country (Norway has 4,6 millions inhabitants) and Iceland

"Well, I think that Icelanders are a lot more open, a hundred times more open, but maybe it's just, the larger the country you live in, and the larger the city, the easier it becomes for people to blend in and you don't really blend in that much in Iceland. Everyone knows something about you and their just very busy spreading the work, you know. I mean, I didn't have to tell people at work, everyone just knew immediately in the first week..." Drifa (IS5F)

But on the other hand, the proximity of everybody pleads for more acceptance.

"...The Icelandic people are very interested in looking at people who are different, you know, all you need to do is to wear yellow shoes and then people are watching you. That's just the way it is. In Denmark no one is looking at anyone, it doesn't matter if you have an extravagant hairdo or something, nobody stares at you...I haven't felt prejudices. I felt a difference compared to living in Denmark. There are more people over there, it's all bigger in Denmark. People don't notice if you are, you know, holding the hand of a woman or you know. It's different here in Iceland..." Oddný (IS34F)

All and all, the easiness of Icelanders to name their partners is far from being common with the French interviewees. The diversion of the word that one can consider the Icelanders are perfectly entitled to do in the spirit of their law is probably one more thing to take into account in the evolution of their living conditions.

Miles and miles and miles and miles and miles away

One would wonder what the future will be towards the marriage legislation in Iceland. As one respondent has pointed out, the confirmed partnership law that appeared pioneering the field of legal normalisation of same-sex relationships turned to be a brake upon full equality, although The Netherlands first and now Sweden took the step further on⁴⁵. Indeed, following the Swedish legislative process, a committee has been gathered to examine the question. It is very likely that the recent developments in Europe (Belgium and Spain) and in

³⁸ Here lies a bit of uncertainty in the evaluation of the use. The full terms for wife and husband are "*eiginkona*" and "*eiginmaður*". This actually means something like "my own woman or man". Unmarried people tend to use only "*konan mín*" and "*maðurinn minn*" which translates roughly as "my woman" and "my man". However, if unmarried people don't use the "*eigin-*" term, neither do married people, or they only do so rarely.

³⁹ Rich, George W. - "The Domestic Cycle in Modern Iceland".- *Journal of marriage and the family*, February, 1978, p. 179.

⁴⁰ Despite the fact that a special term exists for non married couples *hjónaleysingar*, Rich, George..., *idem.*.

⁴¹ the coming out will be a central figure of further analyses that have been impossible to develop in this report due to time constraints related to the French interviews that still have to be performed.

⁴² Rich, George..., *idem.*, p.177.

⁴³ Guðný Björk Eydal & Stefán Ólafsson.- *Social and Family Policy The case of Iceland*.- Third report for the project Welfare Policy and Employment in the Context of Family Change , 2003.- p. 4.

⁴⁴ This could be somewhat tempered by the fact that the choice of firstnames is very traditionally driven as to pick in the family ancestors.

⁴⁵ when the Ombudsman against discrimination on grounds of sexual orientation put a request in the Parliament for the opening of a gender neutral marriage act: *Införande av en könsneutral äktenskapsbalk [Introduction d'un mariage sans distinction de sexe]*.- Beslut om denna framställning till regeringen har fattats av ombudsmannen, Hans Ytterberg, utan föredragning, November 25, 2003.

Canada will have an influence on the decision, especially since Sweden has granted all the other rights (full adoption and medically assisted procreation) to homosexuals and that the Lutheran Church is discussing rather favourably of it⁴⁶. It would be then a realistic belief then that it's just a matter of time for the other Nordic countries to follow.

While the Icelanders have appropriated the term marriage and the symbolic aspect attached to it, the French are left aside. Current situation in France is far from being close to the opening of marriage but not absent from people minds and doesn't seem impossible, let's think about the Spanish situation before the political shift of 2004. Indeed, in June 5, 2004, the first marriage of two persons of same-sex has been performed in Bègles city hall. The validity of this marriage is currently discussed in Court of Appeal as first legal instances have invalidated it. Some political parties at the forefront of the political scenes (especially the Green Party and the Socialist party) have inscribed the opening of marriage in their programmes, which let think things are moving. So to speak, people are looking out quite closely on what is happening.

"...Non, je pense qu'il eût fallu accepter certaines choses dès le départ comme le droit au mariage. Je veux dire, là, effectivement, ça aurait été vraiment une symbolique. Etant obligée de rentrer dans une fumisterie, parce que pour moi, ça aussi c'était une fumisterie ce que le maire de Bègles... a fait parce que pour moi, là, c'est un coup politique, quoi. Alors que si on avait dit : « Oui, on leur accorde le droit de se marier en mairie parce que l'Eglise...heïn séparation de l'Eglise et de l'Etat, mais, nous, la Mairie on les reconnaît... ». Et ça je crois que ça aurait été vachement plus marquant, plus intéressant cette reconnaissance, quoi. Parce que, là, c'est reconnaissance du couple, quoi, et deux individus qui forment ce couple là et là c'est important d'être reconnus. On attend tous ça en fait..." Anne (FR18F)

Giving the option of rethinking the legal framework, French respondents that are more reflective than the Icelanders about marriage, would likely see an institution that would be rethought and reformed as to fit more to both heterosexual and homosexual new ways of life. Marriage is there not apprehended and discussed as the possible framework of their own relationship but rather as an "ultimate" institution. In the context of marriage decrease and on its still link with the raise of children, the consecration of a long commitment, it's likely in people minds farther to homosexual couples than to heterosexual ones.

"...moi je me dis, si effectivement on a le droit au mariage, moi je pense que je me marierais, quoi je me marierais pour ... pour faire évoluer ce mariage aussi, parce que c'est aussi une façon de, de le bousculer, de le faire ... de l'actualiser, de le voilà, je me marierais". Vincent (FR6M)

"...dans le sens où il y a des couples homosexuels qui aimeraient se marier. Moi personnellement vu heu, le cadre juridique du mariage j'ai pas envie de me marier, mais heu, oui c'est une discrimination qui ne de, qui ne devrait pas être. Heu, et puis d'ailleurs, les revendications que, qu'ont pas mal d'associations homosexuelles pour améliorer le pacs viseraient finalement à en faire quelque chose qui aurait les mêmes les mêmes avantages que le mariage, sans en avoir les inconvénients heu, partant de là pourquoi ne pas améliorer le mariage et, et le, l'ouvrir à tout le monde, ce qui fait qu'il n'y aurait plus besoin de faire mariage d'un côté, pacs de l'autre." Yves (FR16M)

But overall the French opinion on the symbolic value of marriage in our society is not far from some Icelandic ones that is expressed towards the religious aspect of the institution.

⁴⁶ Lund, Anna.- "Le mariage religieux des homos sur la bonne voie".- *Le quotidien de Têtu*, 20 septembre 2005. <http://www.tetu.com/rubrique/infos> accessed in September 2005.

Beyond faith

“...I think there should be the same rights, that everyone can get married in church.” Kristján (IS16M)

“...I think it should be an inviolable human right and I think the pope should consider his position. He’s well beyond the 20th century...
...I think that is very important. We feel that power that emanates from the church as much as heterosexual people do, and for a while I was considering becoming a catholic, you know, it’s important to me I just think that it should be a straight forward thing that we should be able to get married into church.” Íris (IS23F)

Cultural tradition

Compared to France, the religious question is widely brought up in interviewees’ claims in Iceland. This is of course the result of the deprivation of the church ceremony attached to marriage and not to confirmed partnership.

In Iceland, church is having an important role in society. The country has been long secularized⁴⁷ but religion is still much practiced as a belief but also as a rhythm of life course through the baptism, the confirmation and then the marriage. This is the occasion of social events regarded as essential in Icelandic culture⁴⁸.

In the Nordic countries, churches are closely linked to the States (except Sweden that has separated in 2000) that keep a minimum control of them, financially, but also in their legislation and the organisation of the hierarchy⁴⁹. Because of this close relationship between the State and the Church, one considers that people identify integrates religion. Religion is as well a sign of belonging to a nation⁵⁰. That’s why, in a sense, the religious wedding is not automatically linked to the religious practice. “I would still have like the choice of being able to get married in church, even though I’m not Christian” typically said Katrín (IS26F) who however is not representative of our sample who mostly declares being either “religious”, either having a “faith”.

This strong cultural tradition is also perceived in the relative lack of interest of the French towards the religion and also comes into consideration when other cultural traditions are involved. Martin doesn’t not turn down the idea of marriage but mentioned that his partner is strongly opposed, on spontaneous basis, as well in fact as he’s also not willing to pacs”...*Mais là ce n’est pas une question d’Etat, ce n’est pas une question de religion ou tout ce qu’on veut... parce que lui il est musulman, il m’a dit : “Ah deux hommes, ça ne se marie pas..”* Martin (FR14M). But the particularity of cultural matters it that it changes with time and it’s not only reflected after the integration in the use but also the perspective of the possibility: “...*moi jusqu’à, jusqu’au pacs, je me disais « mais le mariage de toutes façons, ça n’est même pas...”, enfin moi je ne m’étais jamais envisagé marié avec un garçon, ça n’était même pas dans le champ des possibles !..”* Vincent (FR6M). To get free from the cultural domination is rather a matter of time, and it depends also on how you have parted with the fact of being “different”. As a matter of fact, the difference might also be on the reverse side in France where heterosexuals are able to pacs and where traditional families have to face the enunciation of a new situation, as Alix, pacsed heterosexual underlined:

“...*les parents de [partenaire]... ça c’est trop drôle ils le cachent en fait, ils l’ont pas dit à leurs amis qu’on s’était pacsés, ils avaient trop honte quoi qu’on se marie pas, donc ils l’ont pas dit à leurs amis, donc ils disent rien”* Alix (FR15F)

⁴⁷ see Pétur Pétursson.- *Church and Social Change. A Study of the Secularization Process in Iceland 1830-1930*. Reykjavik: University of Iceland Press.- 1990.- 221 p.

⁴⁸ Although identified as quite recent (the 50s), the taste for church marriage is significantly present as a solemn public confirmation of the engagement. Björn Björnsson.- *The Lutheran Doctrine of Marriage in Modern Icelandic Society*.- Oslo: Universitetsforlaget, 1971, p.157.

⁴⁹ Dittgen, Alfred.- “Les mariages civils en Europe: histoires, contextes, chiffres”.- *Droit et société*, n° 36-37, 1997, p.318.

⁵⁰ Dittgen, Alfred.- “Les mariages civils en Europe...”, p.326.

Attitudes towards church blessing of same-sex unions in Iceland

About the role of religion

"Yes, I think it's important, because we are brought up in certain faiths, and I think it's bad of that religion has something against..." Aron (IS1M)

"We wanted to commit before god and it was like... we wanted to find the right priest in order to... It was mostly about the ceremony..." Anna (IS2F)

"I just think that people should be able to choose for themselves and I think that the church should open up to, because it's not a question of who you marry, it's not a question of that, it's just a question of committing to another person, you see, before god, you see. So, not necessarily whether she's like this or that, you know. I think that homosexuals should be able to do it in a church, like everyone else". Aron (IS1M)

About the church

"...I can't see that we're less to got than other people. I can't imagine that Jesus Christ, with all his love for people, that he wouldn't have blessed our relationship, because we're good people who are doing good things. I think that should be what counts rather than some, some other traditions based on some power structure from the ancient past..." Magnea (IS32F)

Religious outside church

"...I'm religious, in my own way. I'm ... you know, I would never have gone through confirmation now. And would never ... or I doubt that I will go to ... or, you know, I don't want to get married in a church or ... I just think it's, oh well, or I just can't be bothered, or you know, I think that they're retreating because of pressure from society, not because they want to, you know. They're opening up a bit but that's because everyone want them to, except for them. That's what I think. Then I don't like ... or you know, the church choir, even though I was in one for two years and that was a lot of fun and very cultural and all that. I know about that, the culture, but I just have my own faith which is just about the good..." Ómar (IS20M)

About the symbolic aspect

"But I don't know, for me, well I just find churches very comfortable, I enjoy being in a church and I like praying in a church and I think that there is beautiful music in churches and it's so much more than that I believe in any specific god and that some one thing is right. So it's more the environment. Rather than it being the religion and I can't assert that Jesus Christ actually existed and I am not even going to try to do that, can't even be bothered to think about it. That is not the main thing, it doesn't matter what the god is called or what. It's just a matter of being able to have this ceremony performed in a church. It's just important to me. I just think it's more enjoyable, I think it can create a very enjoyable atmosphere". Bryndís (IS3F)

Search for a different church

"...The priest who blessed us, she just thought it was an honour. So, the priest at the independent church is the only one in this country who blesses homosexuals in a church..." Anna (IS2F)

"I think it's changing, gradually. For instance, friends of ours are getting married this summer, and they are getting married in a church with a priest. And I know that the priest who will marry them, it's a woman and her husband is also a priest and they are, you know, the only one's who want to marry homosexuals in a church. But they have also had voodoo dolls delivered to their home and a letter from Gunnar in the Cross or some madness like that. But, I mean, at least it shows that something's changing a bit, I mean, there they are, you know, ready to, I mean, you know, ten years ago it was unheard of." Oddný (IS34F)

I wait until the Church will perform

"We're not [registering partnership]. It's like that, maybe because one is waiting for the Church to take the next step, which might happen in the coming years". Einar (IS8M)

"...It's just discrimination. My love isn't worse or more wrong than any other love. I can't see who I love really matters, I just love the person and it doesn't matter whether it's a man or a woman, I ... I would, if I were to marry again, which I've stated that I won't do again, but who know, then I would like to get blessed by a priest..." Hildur (IS21F)

Mostly Lutheran, 86 % of the Icelandic population belongs to the Church of Iceland. Only 2,4 % of the population declare being outside a religious organisation⁵¹.

The institutionalisation of church marriage is well anchored in people's mind. A marriage can be performed by a cult minister or a civil clerk. However, more than 80% of marriages are taking place in the Church. Church wedding is prohibited to same-sex couples that have no choice than register their partnership as a civil union.

The Lutheran Free Church of Iceland (4,3 % in 2004) is offering a church blessing from a couple of ministers from Reykjavík but the civil registration is mandatory for the union to be recognised. So it's by no way equivalent to what is offered to heterosexual couples.

Obviously, the religious question is at the chore of Icelandic interviewees' preoccupations which is not the case in the French sample where the only underlining is about the position of the Church. French interviewees discussed the position of the Church, here it is mainly referred to Catholic Church as it is culturally the most vocal in France. French position is also tempered as the law is not compared to marriage as in Iceland. This is mostly where people feel that the confirmed partnership law is prejudice vis-à-vis marriage.

The church marriage in France is a secondary option that has to take place by law, in any case, after the civil marriage. It has no legal validity per se.

In the catholic tradition, marriage is a sacrament whereas it's not in the protestant religion, giving primacy to its commitment dimension as opposed to the sacred.

The religious blessing of partnership has been an issue in Iceland as it is in the other Nordic countries where at least all the State's Churches have been summoned to reflect about. The first statement has been given by the Danish Church which has done an in-depth work on the meaning of the scriptures and homosexuality⁵². Although quite favourable to registered partnership, it didn't yet conduct any Nordic countries to perform the ceremony in Church as it seems that the idea is still controversial among the priests' ranks. However in Denmark, priests that are willing to, are giving church blessing as mentioned before.

In Sweden, a survey poll from September 7, 2005 published in *Kyrkans Tidning*, the Journal of the Lutheran Church of Sweden, shows that more than half of the candidates of the new election to the Church national assembly are favourable to the Church wedding of homosexuals⁵³.

In Iceland, only priests from the Free Church of Iceland are for now giving the blessing while it is still in discussion in the National Church. However, and perhaps in the light of what is happening in the other religious communities of the Nordic countries, the fact that some priests from other congregations have started to perform, it seems that the move towards a normalisation is quite advanced. Indeed, discussions are at their peak in the religious organisations, and maybe it's not irrelevant with the fact that hopes are raised among homosexuals, giving thus, both a pressure and a feeling of resentment. As always in the public debates, emphasis is put on the extremes. One preacher, Gunnar, from a side organisation, The Cross, is raising his voice against it loudly with provocative ideas such as to give seminars "to cure homosexuality" among other arguments to ban homosexuals the access to marriage. In a small country like Iceland, such vocal stand pushed by the media has an immediate echo but it comes along the rejection side also.

Religion and church matters

Attitudes towards religion and church matters are also of different nature in both countries.

As it appears, the church ceremony of marriage is not considered in its religious aspect per se which leads us to think about the primacy of its symbolic aspect. However, it is vividly noticed that marriage is associated to church in both countries.

"...Well, see, if you go ... I you get married ... yes, go with your man to the magistrate. If you get married there, then they can also register cohabitation. It's just called, when you go to the magistrate it's just called registered cohabitation, but it's marriage if you go to church. Of course it's the same thing. It's the same regulation behind it, you sign the same document and all that, except the only difference is that one is in front of a priest, the other in front of a magistrate..." Anna (IS2F)

Whereas in one country, France, it has a negative aspect, in Iceland the faith has the primacy on the religious infrastructure.

"...L'aspect religieux du mariage me ferait choisir le pacs. Parce que je, on en revient encore entre guillemets à ma condition homosexuelle mais les églises quelles qu'elles soient, les églises chrétiennes ou les musulmans ou les juifs ou autres, enfin l'homosexualité c'est un sujet qui est extrêmement tabou, qui est montré du doigt, qui n'est pas toléré, voir même très fortement réprimé dans certains pays, donc je ne m'y reconnais pas du tout et j'ai pas besoin d'eux non plus, pour savoir ce qui est bien, ce qui est mal..." Ludovic (FR1M)

⁵¹ *Landshagir*. - Reykjavík. Hagstofa Íslands, 2004, p.46.

⁵² Registreret partnerskab, samliv og velsignelse: rapport fra et af biskopperne nedsat udvalg vedrørende kirkelig velsignelse af registreret partnerskab, Århus, 1997, <http://www.folkekirken.dk/udvalg/partnerskab> accessed in February 2004.

⁵³ Lund, Anna.- "Les partisans du mariage religieux des homos sont de plus en plus nombreux au sein de l'Église".- *Le quotidien de Têtu*, 8 septembre 2005. <http://www.tetu.com/rubrique/infos> accessed in September 2005.

It has also to do with the strong opposition the Catholic Church showed when the pacs law has been discussed and the vocal street demonstrations held by catholic groups. Even in France, the protestant clergy has been discreet on the topic, either to favour the acceptance of the law, or in raising some questions.

In France, there is a clear distinction between the republican marriage that is to be performed and registered by an elected representative of the State and the religious marriage as mentioned before. As the pacs law is far from being close to marriage from a legal point of view, it is somewhat not surprising that the reflections on marriage and religion are not as prevalent as on the Icelandic side. Marriage in France is considered as somewhat distant and the understanding of differences is far more evident than in Iceland where the Confirmed partnership law is presented as the equivalent to marriage. There, the non-access to church ceremony is perceived as a deprivation and raises various motives, religious as well as others.

The difference between the catholic and the protestant religion is to be seen at the material level but also on religious beliefs. The belief on the Icelandic side that the clergy is wrong and that their relationship with faith is intact is very strong and raises anger against the institution.

In our sample, religion belief in itself seems already gone from French people, leaving to question only the material aspect. Thus, it doesn't appear as discrimination but as something not really linked to the right to access to marriage. Perhaps the catholic opposition is too strong also compared to the weak protestant one, which might lead to think that the Lutheran Churches will open their ceremonies soon as it raised stronger demand from the people.

The symbolic aspect of the church

If, as researches in Europe have concluded, the symbolic aspect of marriage is more fulfilled with a church ceremony than a civil ceremony, the act of marriage would be then more likely a social event only, the importance for the couple not being "the state of marriage" but the "act of marriage"⁵⁴. It's even more understandable in the case of Iceland where most of the heterosexual couples perform their marriage with a church ceremony.

"I don't know, maybe I've just been socialised into feeling that weddings should take place in a church. It is ceremonial and there is atmosphere". Bryndís (IS3F)

Thus the act is disconnected of its original meaning to become an act in itself. If it's more predominant in Iceland, it's even noticeable in France where both the quite popular civil marriage and especially the pacs are deprived of ceremonial features. « ... *Matériellement, c'est assez sordide, je trouve, comparé à... parce qu'on passe, on signe un bout de papier. Ce n'est pas officiel comme un mariage ou même si le mariage républicain c'est un peu tristounet*". (Daniel FR8M). Still, the difference between pacs and marriage is that big that people complain about the Administrative Court where the pacs is registered rather than performed as much as the missing of the church ceremony in Iceland.

"it just took place at the city magistrate and well, it would have been nice to be able to get married in a church or, if it had been more widely known, having a representative of the magistrate come to our home, which wasn't something they advertised, because it's not that romantic getting married in the magistrate's office on the same floor as people go to get divorced." Jórunn (IS24F)

The place of the registration is therefore as important to the Icelanders as to the French. There are no common features between confirmed partnership and pacs in the religious domain, but everything goes as if they complain at equal level about the symbolic aspect of the act.

The *tribunal d'instance* (Administrative Court), where the pacs are registered, seems the most unsuitable place to confirm one's love to the other⁵⁵. If Icelanders complain than the registration of Confirmed partnership is at the same place as the registration of divorces, Pacs is held at the same place as common criminal offences are dealt with. Most frequent complains are the place is symbolically deprived of intimacy. Moreover it is small, therefore it is impossible for friends to come along, no ceremonial is involved and the symbols of the Republic are absent as it is pure administrative matter. A lot of the interaction with society is missing in the lack of publicity that this situation is bringing to the act.

⁵⁴ Dittgen, Alfred.- "Les mariages civils en Europe...", p.326.

⁵⁵ For the symbolic aspect of the registration, see Rault, Wilfried.-*Donner sens au Pacs. Approche sociologique du Pacte civil de solidarité par son enregistrement*. Thèse sous la direction de F. de Singly. Université Paris 5- René Descartes. 2005. or Rault, Wilfried.- "The best way to court. The French mode of registration and its impact on the social significance of partnerships".- Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials*.- Documents de travail n°124, Ined, 2004, p 27-33.

Pacs associated with Tribunal d'instance

*"...certains de nos amis étaient vraiment très, très contents pour nous et auraient aimé être là et en fait, au tout début, on avait pensé uniquement à un témoin de chaque côté, mais les gens nous avaient dit non, non, c'est juste au Tribunal d'Instance, pas besoin de témoins et le pas besoin de témoins, on l'a pris plus comme un, « venez seul ça suffit, pas besoin... enfin ne venez pas accompagnés, ne nous embêtez pas avec trop de gens dans le Tribunal ». On l'a plus pris comme ça, donc du coup on a dit, « non, pas de témoins ». Donc on a juste été juste nous deux...
...ça mérite des grosses améliorations pour rendre le truc plus humain et moins administratif".* Ludovic (FR1M)

"associer ça à un tribunal, moi je trouve ça... enfin il y a quelque chose qui..." Béatrice (FR2F)

"...c'est vrai que ben, sûr le Tribunal d'Instance c'était un peu pareil, c'est à dire que bon c'est tellement pas, officiel, y a pas de témoins par exemple, on n'a pas besoin d'amener de témoins bon, y a, y a rien, que bon ben, pis on se retrouve avec un pauvre bout de papier, qu'est pas très, qu'a rien, qu'est pas non plus heu, enfin je veux dire bon heu, qu'est, qu'a rien de spécial, qu'on a fait soi même..." Alix (FR15F)

The symbolic is also something social. Homosexuals are like heterosexuals, they feel the external pressure both from the family and the society. It would be contrary to the spirit of enacting the confirmed partnership law if people were to register only to prove something to themselves. It's part of their inclusion in the society that is at stake and the law is there to help as it is probably more the State that wants to normalize than people who want to conform.

"I also think it's a certain token of recognition for the family or you know, I imagine ... or you know, at least when I told my father that we were getting married in a church he said like: "Yes, yes, indeed" or like that, you know, it's being recognised that we're normal, or you know ... that it's alright, that we can come in. In fact, and it also an emotional issue, so one understands that. But yes, it's a recognition, so to speak". Pálína (IS35F)

All and all, the complaint in Iceland is related to the non-access of something that is opened for heterosexuals. It is perfectly synthesised by Jórunn who states, without clearly expressing it as such, what is accessible to heterosexuals as her personal wish:

"...I want there to be 3 levels. I want it to be that I can register a cohabitation, pragmatism and nothing but pragmatism in order to be able to get joint taxation and all that, it doesn't involve a declaration, is less than engagement, I just want to be able to get married with a magistrate, if I feel like it, and I want to be able to get married in a church..." Jórunn (IS24F)

What maybe overcomes the religious question per se is the organisation of the Church of Iceland as a State dependant organisation, which people finance through their taxes and which a part of the population, homosexuals, can't expect the most in return: This touches the area of discrimination, but also of politics.

"I think of course that a big religious organisation like the State church should stand by all citizens. Obviously it's a state religion and a nation religion and it should stand by everyone, all citizens". Friðrik (IS10M)

"There's no one who forbids me from coming to church and no one who prevents me from participating in the activities of the congregation, but they want to baptise my children, and baptise me, and bury me and all that, but they don't want to grant me the blessing to be allowed to have an emotional relationship with a person of the same sex and undertake the same vows as heterosexual Christians, within the institution of the church. I feel that is discrimination. I resent that, but you can't let that get to you". Unnar (IS30M)

It is difficult to evaluate if this is related to the difference with the heterosexuals, although it is often presented as such, or a lack of a social act, dear to all because part of the custom, that is still impossible to perform as homosexual. The relationship with faith and church per se seems to lag behind. This is probably because the protestant faith is more turned to the own relationship of the individual to the belief than in the catholic faith, for example, where the intermission of the Church is more important. Most Icelanders who in

our sample have a lot of religious belief declare having still kept this relationship with their belief, clearly differentiating the faith and the Church representatives.

So all and all, it's not intrinsically the religious aspect that is missed by the non-access to the church blessing in Iceland, but the properties associated with, the feeling of commonness, the welcome of the family, the society benevolence, all what is culturally anchored in people's mind.

"...I don't think we should boycott registered partnerships because the church isn't granting us rights. I think, obviously, that the state is above the church and if we don't register with the state, with registered partnerships, then we're really saying that we don't need marriage. So I think we have to continue doing that, but then the question becomes what the state can do to correct the rights deficit within registered partnerships..." Unnar (IS30M)

A social concern

"...No one can prove to me that... for example, that a person's ability to be a parent or to raise another person has anything to do with sexuality..." Njörður (IS19M)

Parentality and filiation

One of the general characteristics of the original same-sex union laws was that the question of parentality was mostly excluded through mainly a refusal of a full reflection on filiation. Only Spain in 2005 has coupled the two in its law, perhaps at the light of what happened in some countries like The Netherlands and Sweden that modified their views after the passing of the legislation, marriage and adoption laws being adopted after registered partnerships law in The Netherlands. Still, Spain is opening up the marriage and adoption, more than 15 years after Denmark and has already even regional laws, for Spain is quite decentralised, that had opened adoption to same-sex couples before 2005⁵⁶.

The debate on the making of the laws has drawn a vast literature about the exclusion of the filiation rights⁵⁷ which can be summed up in most of the case by shortness of reflection on the construction of the family which might be due in some cases to the lack of time.

As it's not a logic of family law that led the different states to enact same-sex partnership laws but the pressure for equal individual rights, i.e. non-discrimination rights, the laws have in a first place not primarily dealt with the children questions. But the Danish choice to nonetheless inscribe the rights in the family law raised the questions that France, in choosing pacs' form, tried, without success, to avoid.

Tackling unfair treatments related to the situation of couples was inevitably leading to the question of parenting because individuals are not disconnected with social features. Iceland, the last of the four Scandinavian countries to have adopted the law six years after Denmark could not avoid the discussion and has been first to grant rights towards the partner's child. Then the other Nordic countries amended their laws in the same way to extend them in the late nineties to the adoption of the partner's child. There, children rights are governed by particular laws independent from marriage and that's also why it was possible to tackle easily the marriage-like question without conducting reflections on filiation and parentality.

"...il y a une ... résistance incroyable quoi, sur ... sur qu'est ce que c'est le mariage ... qui est dominant qui est dominé, comment on instaure une famille, qu'est ce qu'on crée, et tout ça, les gens sont pas du tout ... et le, le, oui enfin, aussi le, le, le fait que les homosexuels puissent avoir des enfants ou les élever, ... ça remet aussi une norme, enfin une chose à laquelle personne ne veut penser, c'est qui est apte à éduquer les enfants. Parce que si des gens qui sont biologiquement pas à même d'en avoir, on leur donne le droit d'en avoir, ... qu'est ce que ça veut dire ... comment on va choisir et comment on va leur donner cette autorisation et donc du coup, si eux il faut qu'ils passent par un truc, est-ce que tout le monde a le droit d'avoir des enfants, est ce que simplement, être à même d'être père et mère ... biologiquement d'être un couple ... hétérosexuel, ça donne le droit d'avoir des enfants et ça donne la, la, le savoir et les connaissances pour les élever. Donc ça c'est un truc que la société veut pas du tout voir, parce que c'est pour le moment ... vous faites des gosses..." Vincent (FR6M)

⁵⁶ Pichardo Galán, José Ignacio.- Same-sex couples in Spain. Historical, contextual and symbolic factors.- Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 159-173. The Spanish case is very interesting from a social and a political perspective and would deserve a particular attention in a comparative view of societal evolutions between countries like France.

⁵⁷ For more details on the topic see Fassin, Eric.- "L'illusion anthropologique: homosexualité et filiation".- *Témoign*, n° 12, mai-juin, 1998, p. 43-56.

Family is a social construction

The States have prevented to attach parental rights to same-sex partnership laws because they were considering in a sort of naturalistic assumption (that have been recurrent during the discussions of the laws, even for the access to unions' laws) that two persons of same-sex couldn't become parents. It has never been questioned that they could already be, because then existing laws would apply, nor that they want to become parents, on the grounds that existing laws makes it illegal.

This scheme of thought is national. Since non-European countries have allowed adoption for same-sex partners, since medical assisted procreation is allowed in some European countries (Belgium, The Netherlands then and now Sweden and to a lesser extent, Denmark), the question has to deal with international issues.

It does not take either into consideration the societal evolutions, the position of homosexuals in society that the creation of the registered partnerships laws were particularly wanting to improve. In other words, they didn't count on the success of homosexual integration in society that they advocated for and that homosexuals would want to become parents like any other couples.

Moreover, it didn't take into account the more recent researches concluding that family is a social construction⁵⁸.

In substance, the grounds of privacy applying to sexual relationships didn't spread in the legislator's minds to filiation and parentality, established as a society concern.

Child's best interest and the symbolic order

One concept under different names appeared in all the countries to prevent the link between the registered partnership laws and parentality: the child's best interest and the symbolic order.

Under the assumption, not evidenced⁵⁹, that a child was better raised by a man and a woman, the child's best interest led first the Nordic countries to push aside the introduction of rights towards parentality, then they started quickly to change their mind, at least for the children already born. First Iceland then Denmark and the others gave custody then adoption rights towards the child's partner, with not much more evidences than before, but on the practical situations that they faced. Homosexual couples are legally granted the right to foster children. Practically, the child's best interest (to have two parents independently from their sex) turned in the other way round. Leading their logic to the end, Sweden, after, at last, an extended survey on child's condition in homosexual families opened the adoption, including international adoption, to same-sex couples in 2003 and legalised Medical Assisted Procreation in 2005 for lesbians, going further on than The Netherlands that had granted only internal adoption⁶⁰.

This is in the French debate on pacs that we can really find some insights about objectives and reasons that led to this situation.

The symbolic order appeared in French debates, perhaps because of the strong intellectual tradition (arguments being called on anthropological work of Levi-Strauss), and also of the simultaneous debate on the parity law (equal access of women to Parliament), that led the discussions on the basis of society was based on the difference of sexes. The link with filiation being that "*the couple is the institution where the difference of the sexes to the difference of the generations is articulated*"⁶¹. Main argument was that creating a registered partnership law would threaten that symbolic order necessary for the society to reproduce itself, and proposal was to stick to a cohabitation protection because it applies to an existing situation.

From this big debate, social sciences researchers have demonstrated that this essentialist view of society is more political than anthropological all the false arguments being dismissed, Claude Levi-Strauss himself entering the debate.

All the laws passed thanks to a strong political will of the progressive forces and with opposition from the conservative ones based from both sides on political principles more than on real investigations of the social concerns.

⁵⁸ Godelier, Maurice.- *Métamorphoses de la parenté*.- Paris : Fayard , 2004.-678 p.

⁵⁹Strangely enough, before the Swedes, European politics didn't think to call on American researchers that had conducted many studies evidencing that no difference was shown between children raised in an opposite sex family or in a same-sex family.

⁶⁰ SOU 2001:10.- *Barn i homosexuella familjer: Betänkande från kommittén i homosexuella familjer*.- Stockholm: Justitiedepartementet, 2001.- 554 p. + 194 p.

⁶¹ Fassin, Eric & Feher, Michel.- "Parité et Pacs : anatomie politique d'un rapport".- Borillo, Daniel & Fassin, Eric (eds) .- *Au-delà du Pacs*.- Paris : PUF , 1999, p. 31., citing Irène Théry, Théry, Irène.- "Le contrat d'union sociale en question".- *Esprit*, n° 236, Octobre, 1997, p. 159-187.

The need for parental rights

"We don't have any rights to have children. Consequently the laws are insufficient in that respects, which is just nonsense and a violation of human rights. It's of course a primal instinct of the human being to want to reproduce itself, to have children, no matter whether you raise your own or adopted children". Iris (IS23F)

"I think its weird to determine people's ability to raise a child on the basis of their sexuality. There are so many people out there who shouldn't have children and so many people who should be allowed to have children. And well, I just think its unfair, that I can't get assisted fertilisation because I'm a lesbian. And my girlfriend can't be the mother of my child unless I have a child from a previous relationship, except if I go to Nina Stork and have it done there, then she can adopt it like that. But we can't have a child together in Iceland, except by bypassing the system". Hildur (IS21F)

"the only thing that matters to me, if we're going to have a child I want to have all those things settled. Then we're registered as cohabitants and I can adopt the child and then it's also my child. But there's the whole process we must go through, it's a bit extensive, see. But well, but it's kind of, I don't think cohabitation is ... I think it's just something on a paper. At least mine, somehow. (In this reply cohabitation should be taken to refer to registered partnership)". Oddný (IS34F)

"...Ben, les gens qui le réclament, les homos qui le réclament c'est surtout pour les enfants parce que quand ils ont des enfants, il n'y a toujours qu'un seul parent, le parent biologique, qui est reconnu et l'autre pas du tout. Donc, en cas de séparation, l'enfant est privé de son deuxième parent, ce qui est assez insupportable. Donc avec un mariage, au moins, ça serait...ça serait bien pour ces enfants." Nathalie (FR12F)

"...dans un premier temps, j'étais prêt effectivement à ne pas avoir de statut précis de parent ou...Moi ce qui m'importe c'était avoir un contact avec une vie avec un enfant et pouvoir participer à son éducation. Que ce ne soit pas mon fils, ma fille reconnu sur les papiers, je m'en foutais un peu. Maintenant, peut-être un peu moins parce que... Ben oui parce que...ben, ça, c'est après tout ce qui est au niveau des droits, des droits de succession etc. C'est un peu con, effectivement, de...pourquoi m'écraser ? Pourquoi ne pas donner tous les droits, ben, comme les autres, quoi, pour la succession, enfin, bon. Donc, maintenant, je commence à y penser..." Jacques (FR3M)

"...Donc le Pacs, bon, aussi la frustration petit à petit de se rendre compte que ce n'était pas...que c'était quand même un truc un peu merdique, que même si on n'en avait pas vraiment besoin c'était énervant. Et puis quand on est arrivé sur le projet d'enfant, là on s'est vraiment rendu compte et on se rend compte tous les jours autour de nous parce qu'on a quand même connu pas mal de familles. Bon, a priori, ça serait moi qui porterais l'enfant donc on voit bien...très, très bien ce que ça veut dire pour le second parent. Enfin, aucun droit." Annie (FR5F)

"...le jour où l'agrément sera donné aux homosexuels de la même façon, qu'aux hétéros, si seul celui des deux qui a fait la démarche est le parent légal et pas l'autre, ce sera un autre problème qui se présentera à mes yeux. C'est-à-dire qu'il est évident que, si par exemple moi j'arrive à adopter un enfant, que je suis le, le père légal et que mon compagnon ne l'est pas et qu'il m'arrive quelque chose, que je meurs..., si [...] a élevé cet enfant avec moi, il n'est pas envisageable une seule seconde, que cet enfant soit confié, à mes parents ou à mes frère et sœur, plutôt qu'à [...]; ça me semble complètement aberrant, donc, donc oui c'est un problème, mais je dirais on en est même pas là, il faudrait commencer déjà par réformer, les procédures d'agrément." Yves (FR16M)

Children in homosexual families

Homosexuals have always been married, even if in heterosexual couples⁶². They had children and raised them. What the states are facing now is the visibility of such practices through homosexual families.

"Homosexual parents do exist, but often it's parents, at least, lesbians can get a sperm donor but there are homosexual fathers in society, maybe it isn't as common that a child is raised by two men, at least it hasn't been very visible and maybe there's a lack of experience but you've got to start somewhere, someone has to be the first because otherwise there's no progress". Sigurður (IS27)

Einar has a child from a previous heterosexual union whom he has brought up in share custody:

"Well, I think these matters are progressing fast. But where things aren't working is, of course, the issue of adoption. And I think that if people familiarise themselves with, for example, children who have been brought up by homosexuals, like with me. There's absolutely no way by which I can contaminate a child with my sexuality. It's not possible because it's born with its own sexuality. And, and, it was obvious from the start that he was heterosexual, and it didn't affect him in any way, whether I was homosexual or heterosexual. The only thing that affected him was whether I gave him love, affection, and stability and all those things that stick from childhood. But, of course, people are differently capable of raising children. I'm not saying homosexuals are any better than everyone else, but they're not worse either. And I think people would see that as soon as they looked at the issue." Einar (IS8M)

Same with Friðrik who has raised his child in his new home.

"...Obviously because we have a child, my child. So we have always taken part in his upbringing and all that. So, but we certainly would have considered it if we hadn't had him, and obviously that wouldn't have been a possibility. And, if I was interested in that now, then we're obviously too old, because it's after the age of 45, adoptions aren't allowed after that. But of course that's just a part of it. I think it's very common that people who live together for a long time, that they want to raise a child. I think that's very normal. But sometime when we were thinking about it, some years ago, then obviously it wasn't even discussed. Okay, if you are homosexual and with a person of the same sex, the obviously you're not going to have any children. Nature takes care of that, you see. And it was easy to come to terms with that, as such. It's not a big deal, coming to terms with that, but having the option of adopting a child is wonderful, of course. And it should be granted. Because obviously, even though it's a law of nature that people of the same sex can't have a child together, that doesn't mean that society can't react and loosen the rules so that it becomes possible. That's just reasonable". Friðrik (IS10M)

In Iceland, people have a different relationship to children than in France. Interviewees are still coming for most of them from big families with more than 2 or even 3 siblings. Children have a particular privilege position in the society which can explain the very positive position of the respondents towards parenthood. When questioned about children, respondents mostly go over how they had, will, have one, why they postponed it, but only at a second thought, they tackled the question of rights.

"...Well, of course I can become pregnant any time I want as long as I take care of all the procedures myself. I'm not entitled to receive any help from the state, you know, I can't have assisted fertilisation, I can't you know, if I'd get pregnant my wife would probably not get any paternity leave, most certainly not, I myself would get maternity leave, it's not like that, but I would be like a single mother and conception is then just a some sort of a, I would turn to a friend or, you know, girls are going to Copenhagen to a sperm bank there. In some ways it seems that the state is just encouraging people to take care of it themselves, which I think is bad, especially because I don't doubt that there are some people within the state apparatus who think that the only way is to go and have sex with some man, and it's really strange saying to people that they can get married, that's alright, but one of you has to cheat on the other to make a baby, we don't care. And I think it's written in the law that adultery is frowned upon in marriage. I think that's hypocrisy." Jórunn (IS24F)

"Rights. There are none, for having children. Of course I can have a child. It's just a matter of finding a donor. Well, I find it difficult to find a boyfriend who can have a child with me, but the thing is that the rights as such. What you're probably getting at is the lesbians who have gone and gotten sperm from Nina Stork, or assisted fertilisation. I think that's very good and all that. Nothing wrong with that. But I don't really see that there's a comparable institution for men, where I could go and donate sperm and they'd find an egg and they'd raise the child and then it would come to me after 9 months. I can't imagine that. But the question was what I thought about the rights of homosexuals. The other side of the coin is whether homosexuals

⁶² Eribon, Didier.- *Sur cet instant fragile: Carnets, janvier-août 2004.*- Paris : Fayard , 2004.- p.15.

should be banned from having children. That's the counterpoise. That's not talked about, that's not a possibility, but realistically it is that we are entitled to lead normal lives in this society and therefore they can't, then my own imagination is the limit to how close I come to having a child". Unnar (IS30M)

They mostly all reflected on having a child but very few are considering to avoid it, those in particular that already have from a previous heterosexual union. Indeed, if the homosexual couple doesn't procreate, individuals in the couple could, can and do. The age effect is perhaps to take into consideration regarding people's will of parentality. Most of the young people have been brought up in a society more progressive and more tolerant than the oldest that sometimes called on the negative perception of homosexuality for not considering it at their time when it was impossible for homosexuals to think of it. This kind of stands is almost still present in the French sample, as France seems running quite late behind Iceland in the evolution of society's tolerance.

"...Moi j'ai commencé à vivre homosexuel en me disant que ça ne serait pas possible d'avoir des enfants, quoi. Et on se rend compte quand même là entre...dans notre trentaine, que les choses ont changé. On entend parler de plein de choses et on se rend compte que c'est possible, en fait. Donc je pense que les désirs de parentalité sont...si on les avait mis sous couvert un certain temps mais on était encore jeune à la limite à l'époque, ben, là, on les exprime plus parce que c'est encore plus l'âge." Claude (FR4M)

But the concerns for the lack of rights towards the protection of the children are at their peak in the families they are raised.

"...Ensuite il y a le problème des enfants heu, c'est-à-dire que, pour adopter des enfants, il faut être un couple marié ou être célibataire, donc si on est concubin ou pacsé, on peut pas adopter des enfants, selon la loi actuelle et c'est absurde, il faudrait bien sûr que les couples pacsés puissent adopter des enfants, au même titre que les couples mariés, ensuite, quand l'un des deux partenaires a des enfants et qu'il décède, l'autre partenaire pacsé n'a aucun droit vis-à-vis des enfants, enfin tout, tout, toutes ces choses là sont à revoir, selon moi." Yves (FR16M)

"Mais je pense qu'il faut ouvrir cette possibilité là parce que je pense qu'aussi qu'en tant qu'homo on a aussi des choses à apporter à cette génération-là et que s'il n'y a pas d'enfants qui sont élevés avec des homos, ben, on retombera dans ce que, je dirais, nos parents, nos grands-parents ont connu parce que, eux, se retrouveront confrontés à quelque chose qu'ils n'auront jamais vu. Si, chez les autres." Anne (FR18F)

Materiality

"...It would just be like marriage for us. It would be because it's the only thing we're allowed to do and we're taking everything we can get and if we were going to get married we would". Rúnar (IS25M)

"Donc pour le pacs, je ne sais vraiment pas si je l'aurais fait, s'il n'y avait pas eu des, des avantages, réglementaires, disons, alors que le mariage je pense que je le ferai, parce que, moi ça me, ça me plait bien comme acte social." Damien (FR11M)

Laws are as well existing to organise one's life in common. This is the main characteristic of the marriage law since its disconnection with procreation during the seventies. One of the incentives to register might be the material consequences attached to the status of legal union. As in the other domains of the laws, France and Iceland are not at the same level though it's perhaps the area where they are the closest. However, the connection to family law brings to the Icelanders all the rights attached in marriage such as property, insurance, inheritance, taxes, widow pensions, etc. in their full extent which are not included in pacs. Indeed these rights are often mentioned by the "married partners" as a reason to register. Discourses are always coupled with complains about the legal provisions attached to marriage they don't have but, one of the most important idea is to "secure" their partnership.

Security is material but also symbolic in a sense that it's also a feeling of having something recognised in common by the others. It gives self-confidence as regard to the outside world and to the future.

Financial motives

Tax regimes are of different nature depending countries but France and Iceland are not that far in the spirit of their systems. Contrary to most of the other Nordic countries, individual taxation has not the primacy in Iceland and couples can enjoy some benefits, through registered cohabitation, confirmed partnership and marriage.

Björn Björnsson has carefully studied in the sixties the effect of the changes in taxation (1958) between marriage and cohabitation as a determinant to marry or not⁶³ and noted that the wedding rate increased when tax system favoured the married couple⁶⁴. It is not surprising in the case of Iceland, where the financial independence had been one of the historical reasons to increase cohabitation, that financial advantages might be so well took into account.

Also, in a context where the law on confirmed partnership is deprived of the symbolic aspects attached to marriage, it is not impossible that all the material aspects should be put forward to make up for it.

But financial questions can also be taken on the reverse side and pushed forward as a reason not to register. Situations are diverse and have to be considered case by case, but overall, couples with children, which in case of same-sex couples are only legally connected to one member of the couple, are mostly penalized by the registration of their union, as well for example when one of the members of the couple gets some social benefits for one reason or another. As little as these rights are given to French people, it can also have a preventive effect to registration as well.

⁶³ Björn Björnsson.- *The Lutheran Doctrine of Marriage...*, p.137.

⁶⁴ *idem*, p.142.

Security

"It means security, primarily. One word. Security. If anything were to happen to either of us, then a registered partnership would mean security. In terms of property, money, the future, and other things, even though ... though we don't have to register a partnership to confirm anything personal to ourselves. It's just a kind of personal security, both personally and socially". Ámundi (IS38M)

"Well, it hasn't been that long since we registered our partnerships, see, but it's obviously to have these legal rights that come with the registered partnership. Then its also signals that you want to be with that person for a long time, but that is, of course, you know, well, maybe first and foremost one is thinking about the legal framework which, you know, the security it gives you. When something happens, that is, and inheritance and taxes and such." Drifa (IS5F)

"I never want to find myself on the street because his family hates gays or like my parents say, like my father says, always, if you start living with someone or doing something, just have everything registered in your name and of course the spouse thinks the same thing, just play it safe so, you may love him a lot but when you hate him you really hate him." Rúnar (IS25)

"Parce que j'ai tellement de, non pas tellement, quelques amis au moment de la mortalité effrayante au niveau du sida, quelques amis qui sont morts et qui se sont retrouvés... les autres qui restaient dans des situations de dénuement où la famille intervenait de façon, qui se vengeait de ce qu'ils leur avaient fait vivre, quand je voyais ces gens qui n'avaient plus rien, les appartements avaient été vidés par les parents et qu'ils se retrouvaient à la rue avec plus rien du tout, je trouve que c'est quelque chose qui peut protéger..." Catherine (FR10F).

Financial motives

"Well, both because of love and then we'd also bought property together, an apartment and a car and, well, we wanted to have things settled, that it was clear that we owned it all together, if something were to happen. If someone would have had an accident or like now that we are getting divorced, and you know, that it's registered to both parties, and things like that. The apartment was only registered to her name before we got married. I would have lost out a lot if we hadn't gotten married..." Hildur (IS21F)

"...we're not in a registered partnership because of the law that cuts his benefits and thereby in fact his personal freedom. Because thereby he'd be completely financially dependent on me. I think that is a personal restriction. Which I think is absurd. He'd just be without an income and financially dependent on his spouse. I think it's a particularly crude violation of human rights". Ámundi (IS38M)

"...Lui préférerait aussi garder le RMI, pour dire qu'il participait un tout petit peu au loyer, aux courses et tout ça et effectivement, je pense que ça aurait changé quelque chose si son RMI avait sauté et qu'il se soit retrouvé à ma charge ... entretenu..." Vincent (FR6M)

"Well, we really regretted having gotten married with the magistrate when we saw how much our incomes shrunk." Anna (IS2F)

Life protection

Independently from the organisation of their own properties, and as the law is also to cover the life negative events such as marriage do, Icelanders are much more covered than French people who have no family law protection although pacs law has been enacted basically to fulfil this function. In this perspective, the French law seems rather incomplete and a lot of people are complaining about the inheritance aspects. The origins of pacs are strongly linked to the Aids epidemics that struck France quite heavily. Dramatic situations lived by partners of Aids patients denied of visiting rights at the hospital, deprived of their own properties from homophobic families legally entitled to inherit when the partners deceased, thrown out of their own apartment when the lease was not at their name, etc., let Aids care associations to call on lawyers to help the surviving partners. The increase of cases raised awareness of this situation and Aides group of lawyers drafted the first proposal. As mentioned, it took time to become pacs and in 1999, if the situation was less critical than in the beginning of the nineties, that was very present in the minds of the people concerned.

However, still some respondents feel the material aspects quite degraded compared to their aspirations and some mention other legal arrangements that could fit as well. In fact, once again the pacs law is quite ambiguous on some material aspects and regarding inheritance, it is still necessary to make a will to chose

one's partner as legitimate heir, so some underline that these material questions can be solved independently from the registration. This is even pointed out by Icelanders.

"...My attitude towards registered partnerships is so negative. I think it's meaningless. Because it doesn't affect anything except maybe some formalities, okay, you know, inheritance tax, joint taxation, inheritance and I just kind of think it's humbug, you see, why not go all the way if you are doing something..." Pétur (IS22M)

"...obviously it's a step in the right direction. But I also think it's just a bit, you know ... eee ...what ... I don't know what it changes for me. I don't know if it actually changes anything. It's just some registration, of something that I don't know what is. But obviously it's a step in the right direction..." Ingvar (IS13M)

Life protection

"...I just thought it was legally important, we had this apartment and it was registered in my name on some papers, and I was just really concerned that if something came up, then I just wanted everything to be taken care of, then I also think, at the time I just felt it was the right thing to do in those circumstances..." Jórunn (IS24F)

"...mais qu'il y ait des engagements de... par exemple, oui, la protection sociale, la protection du décès, l'assurance vie, voilà, je veux dire, des choses sur lesquelles...qui me posent aujourd'hui problème, on va parler aussi ne serait-ce que de la retraite. Hein, vous vivez 40 ans avec quelqu'un, ben, vous ne touchez rien. Et lui s'il décède à 60 ans, il aura payé pendant 40 ans, il n'en touchera pas la queue d'une et merci pour l'Etat..." Anne (FR18F)

"...Et ensuite, naturellement est venu le pacs, puisque on a vu que ça marchait bien, qu'on était bien ensemble et surtout on pensait à tous les problèmes si jamais il arrivait quelque chose à l'un ou à l'autre. On a eu le cas dans notre entourage, pas très proche mais dans notre entourage, des amis à qui c'est arrivé, où l'un des deux partenaires est décédé et l'autre s'est retrouvé très, très, très embêté par la belle-famille entre guillemets, qu'était pas vraiment belle, mais....par la belle-famille et pour pleins de raisons comme ça. Donc, on n'a pas du tout ce cas chez nous, puisque nos familles l'un comme l'autre, savent quasiment tout de nous, je dirais et ça se passe très bien, mais on ne sait jamais. Et donc on a préféré, par l'intermédiaire du pacs, prendre ce genre de précaution. Voilà. C'est aussi une des raisons qui a fait qu'on a voulu se pacser." Ludovic (FR1M)

"...One may have had them in mind. But they are a part of the deal and with regards to me personally, as I am HIV positive, to secure my husband's rights, to be in a registered partnership. But that was not a part of it, not the reason why we chose this particular arrangement..." Arnar (IS31M)

"Et il y a eu des petits acquis, c'est vrai, hein, je veux dire, ne serait-ce que par rapport aux impôts. Mais je crois que c'est le seul acquis réel qu'on ait. C'est-à-dire qu'aujourd'hui, même si vous êtes pacsé et qu'il vous arrive quelque chose, ce n'est pas pour autant que votre compagne ou votre compagnon héritera de ce que vous avez." Catherine (FR10F)

"Primarily to gain these rights, to insure each other, so to speak. The man I'm living with has a child. So we have to be prepared if things go wrong. We have a lot of things together, the apartment and such". Þór (IS36M)

Integrating society

“...s’il y a une manif pour le mariage gai j’irai, pour montrer que, pour me mettre en opposition à ceux qui pourraient être contre, pour affirmer cette possibilité de droit, c’est un droit quoi ! Et, c’est un droit et, disons, voilà, c’est un droit qu’ont les couples, je les appelle.. on pourrait dire les couples non homos puisqu’on dit les couples hétéros mais..., si on est dans la même République, on doit avoir les mêmes droits, donc cette possibilité”. Béatrice (FR2F)

When calling a report on “the situation of homosexuals” and then on “the rights of homosexuals” ten years after, Iceland aimed to first gather information that would lead to reforms and thereafter assess the results. Anti discrimination concerns had led their purpose, coming from a reflection on the integration of individuals in the welfare state. The attention to the equality of rights have been long in the forefront of the states’ preoccupations in the Nordic countries, and the development of the individual, the integration of minorities have been part of a the politics conducted. It has been put into practice in the politics of gender that first Sweden and Denmark led in the beginning of the 20th century by first reforming their marriage and divorce laws, giving to women equal civil rights then in all the area of social rights, introducing reforms that would lead the politics of the individual rights at the basis of equality. They soon have been followed by the other Nordic countries in the Norden agreement of joint policies.

The stigmatisation of homosexuality that comes from the most part of a social fear in the 19th century has been progressively de-demonized but still remains among the general population traditional cliché that will take times to get rid of. Policies are needed to support the progresses of social tolerance of the difference and that’s the way taken by the welfare states. Education and laws are backing up this general will to integrate to reach a point where the same possibility to live according to the norm will be given, in taking into account differences. To recognise intrinsic value of individuals and giving them the same opportunity to live like any other in the society they are a part of. Some may have pointed out that this will of integration through normalisation is also an expression of the fear of the other, a determination to control and to force into certain norms of behaviours according to the appreciation of the state⁶⁵. Some may see there a particularity of the Nordic states and their relationship to the population⁶⁶.

It has not yet really been investigated how Iceland is integrating these models of politics, for its welfare regime is different of the other Nordic countries, but the spirit of its laws is quite well in line. This could also have been a characteristic of France which has put high above the values of the republican regime. However, one is obliged to notice that it rather led to political inertia than anything else. Pressure had to be put in the context of the Aids epidemic to force the state to reflect on the dramatic situation of people that were elsewhere already considered as deserving the equal treatment, the question of minorities being thus treated for long on the mode of the negation⁶⁷. Indeed, the road to the social recognition reached with pacs was essentially the work of associations and individuals that raised awareness of the necessity through long fights, at the end, the law adopted being drafted by two MPs. Five years later, the French state once again failed to adopt a law proposal against homophobia.

⁶⁵ Bech, Henning.- “Report from a rotten state...”, p. 134-147.

⁶⁶ Rydström, Jens.- “From outlaw to in-law. On registered partnerships for homosexuals in Scandinavia, its history and cultural implications”.- Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships and homosexual marriages: a focus on cross-national differentials*.- Paris: Ined, 2004, p.175.

⁶⁷ Chambon, Laurent.- “Le placard universaliste: quand la République se fait particulariste contre les gays”.- *Mouvements*, n°38, mars-avril 2005, p. 34-40.

Recognition

"...Well, obviously, apart from what I said before, regarding the legal side of things, it gives you an incredible array of rights, which I think is important, you know, both inheritance, taxes, and so on and so forth. Obviously it's also a token of recognition from society that it accepts this way of life. You know, a certain acceptance and I think that this is maybe the best thing about registered partnership, that there is a now a form that is accepted by society in one way or another. And well, which is tangible, if someone refuses to accept it, well that's just lame, you know. It's, you know, you have certain rights, you have certain papers to show, you know, if you are taking advantage of some, whether it's special offers on airline tickets and one of the parties has a student's discount, or just something, which I can use as an example or, if, just all this if there is something you have to show that you are living together and you just have certain papers to verify it and also just, you know, and society accepts this way of life and then it must be recognised..." Drifa (IS5F)

"The things are that it's just a paper, but something has to be said for getting societies approval, having the same rights as other people..." Rúnar (IS25M)

Well-being

"...ce désir d'enfant qui est très fort, dans les nouveaux couples, ce que j'ai eu beaucoup de mal à comprendre, mais je commence à m'y faire, mais heu, donc, ils revendiquent une place comme tout le monde, moi cette place je l'ai. Moi je crois que c'est aussi pour ça, le fait de vivre avec une femme et de pouvoir le dire, dans mon boulot, à l'extérieur, j'ai pas de problème, parce que moi j'ai des enfants et j'ai fait ce que j'avais à faire, j'ai eu la chance de pas avoir à me poser de questions pour faire ces enfants là, c'était comme ça."

"Ben les homos, à un moment donné, se sont beaucoup battus, pour heu, enfin les associations, les, se sont battus pour avoir, je vais dire un simulacre de mariage, c'est un peu ça, mais c'est seulement un contrat, un contrat civil, pour la protection des biens, je crois que c'est pour ça aussi qu'ils se battaient et peut-être pour avoir une reconnaissance, j'en sais rien et chacun à sa place fait ce qu'il a envie de faire et les associations ont des choses à défendre, heu, ça va aussi peut-être avec le désir de vie comme tout le monde, que les homos ont, parce qu'ils ont été rejetés, je crois que ça vient de là en fait. Mais pourquoi pas ma foi, ça peut exister, il peut y avoir une possibilité d'existence et puis ma foi, chacun en fait ce qu'il veut. Le prend le prend pas, selon ses besoins. Justement, d'entrer dans quelque chose de symbolique, de faire face à l'institution, comme un à deux et non pas comme un individu. Peut-être ça. Moi ça va, j'ai déjà donné, dans le à deux, ça va. Le à deux institutionnel je veux dire... Donc, j'en ai pas besoin face aux autres. Mais pour les associations homosexuelles, je crois que ça a été de grandes avancées, de la reconnaissance de la différence. Moi j'ai une position différente, parce que j'ai été mariée, j'ai fait des enfants, donc, même quand je travaillais je pouvais en parler et j'en parlais. comme tout le monde, ah ben tiens, j'ai fait ça avec mon mari et ben moi j'ai fait ça avec ma compagne et ça passait très bien. Je crois que c'est parce que j'avais prouvé à la société, que j'avais fait pour la société, j'avais été une femme à part entière..." Catherine (FR10F)

"Talk to your grandmother and ask her if she knows anyone who's been homosexual and she can name a lot of people that she grew up with. And just talk to your mother and she can also tell you about a lot of people who, old school mates who had children and who later on moved to other countries and something like that, and even who died from the plague, as they call it, HIV happened. So, you know, everyone knows someone, consciously or unconsciously, and if you just give them time and get them to open up to it, then everyone can name someone and usually a few, and most of the, before it were often people who had settled and had a child and then they just got off the bandwagon. Became single and had a child. They'd proven themselves, reproduces and done their bit for society, so its ready, I think society is ready, society isn't mean or cruel towards us". Unnar (IS30M)

"But children are positive and that's why I think we should start educating them immediately. Because they can form opinions at home, something like queer this and that. But if they are told early on that its alright and that not everyone is the same, then they form their own opinions, not necessarily something that they hear at home. So I think ... there should be more of that. The children of all my friends, they just think its very interesting and engrossing. A daughter of a friend of mine asked: Are they together? Are they lesbians then? And thought it was just ordinary, like, sure, just great, didn't really make anything of it. No problem. I mean, we are born without prejudice and in order to eradicate the few prejudices people have who don't know any better or think something, then I think that this is lacking. And I think we can start as early as in pre-school. Talking about it ... so they don't have to carry this burden. I mean, we're different, I always say what I think but my girlfriend doesn't necessarily do that. That's also the way its with small children. They may not tell and then start to become ashamed of something that they don't have to be ashamed of. I think that this is something that must be done. But I won't do it, there are others who could." Stefania (IS30F)

State's normalisation or welfare progresses process, individual well being and society recognition is an important element of the life course of an individual. From an individual point of view, all that matters is not being like the other but of feeling like the other. Homosexuals need to feel the back up of society in everyday life as to disappear in the mass, for one day, the coming-out will be one word obsolete. Until then, it is still a tricky step at the family level, and a difficult one at the life level, for coming out is never-ending process⁶⁸. Thus, the society still puts pressure on homosexuals self by imposing a silence. The impact of society's reception in the teenage years when one's discovers sexuality is of prime importance for the future of individuals⁶⁹. In this context, every measures taken in order to reaffirm the non discrimination on sexual orientation grounds sustain social policies. The suicide rates among teenagers with a non heterosexual orientation is quite high and researchers have underlined the importance of the social intolerance as well as the lack of information provided by the educational system⁷⁰. Supported by the laws, increasing progresses have been noticed among the population reception, and the more favourable atmosphere is also sustained by an everyday life confrontation with homosexuality but also by an individualisation of the society, ready to acknowledge more differences as multiple of models are existing⁷¹. Everything leads to conclude that one is witnessing a period of change and the teenagers of the new century won't bear the same heavy stigma as the previous generations. This step goes through the equality of rights as a legal mechanism of release of both the society's reception and the actors' behaviours⁷².

In search for equality

"I think that the most important thing is that homosexuals have the same rights as heterosexuals". Bryndís (IS3F)

"It matters a great deal having the same rights and all that". Lúðvík (IS17M)

"...vous me demanderiez de vous faire un comparatif entre le mariage et le Pacs en termes législatifs, d'engagement, j'aurais du mal à vous en faire le comparatif. Je reviendrais juste sur le fait de vous dire que l'égalité doit être la même pour...les droits doivent être les mêmes pour tous et j'en resterais là sur cet aspect là." Daniel (FR8M)

"...il n'y pas de raisons qu'effectivement deux mecs ou deux nanas ne puissent pas officialiser quelque chose juridiquement ou l'officialiser pour eux-mêmes, enfin...donc pour plus s'approcher plus du mariage, il n'y a pas de raison qu'ils ne puissent pas le faire. Tout comme les hétéros peuvent vivre ensemble, ne pas vivre ensemble, se marier, ne pas se marier, enfin selon le cas de chacun. Chacun s'adapte. Donc les homos, ça devrait se passer de la même manière aujourd'hui. Marc (FR13M)

In Iceland, discrimination is prohibited by law as to insure all the citizens' equality and to secure homosexuals the feeling of this equality⁷³. Discrimination is clearly expressed at the legal level but it opens a broad field of inequalities that can be visible but also hidden. This is about the feeling of the difference with others in everyday life, that might be seen or not and also perceived or not. It is important to recognise it at the legal level as to soften the incontrollable elements that are invariably linked to it in social behaviours. It always takes time between the enactment of the law and its complete assimilation by the population.

⁶⁸ As mentioned note 41, the coming out will be developed in further research.

⁶⁹ Lhomond, Brigitte.- "Attirances et pratiques homosexuelles".- Lagrange, Hughes & Lhomond Brigitte (eds).- *L'entrée dans la sexualité : les comportements des jeunes dans le contexte du sida*.- Paris: La Découverte, (Recherches), 1997, p. 184-186.

⁷⁰ Verdier, Eric & Firdion, Jean-Marie.- *Homosexualités et suicide : Etudes, témoignages et analyse*.- Montblanc : H&O éditions, 2003.- 230 p.

⁷¹ Digoix, Marie & Festy, Patrick.- *Registered same-sex partnership...* , p.6-7.

⁷² Erbon, Didier.- *Réflexions sur la question gay*.- Paris: Fayard , 1999.- p. 81.

⁷³ *Lög nr. 135 13. desember 1996 um breyting á almennum hegningarlögum*, nr. 19 12. febrúar 1940, með síðari breytingum (vernd gegn mismunun).

The persistent feeling of discrimination

Under rated marriage

"...it's just a ... a bit of a token thing. Registered partnerships, okay. Let's give gays and lesbians something called registered partnerships but not marriage. It's called registered partnership. It's just this term that was coined. I think it's a bit of a formality". Kristján (IS16M)

"...Je vois pas bien qu'est-ce qui, qu'est-ce que le pacs peut combler que ne comble pas le mariage et un couple qui veut se marier, je vois pas pourquoi il choisit de se pacser, parce que le mariage, on a les deux aspects, symbolique et légal et dans le pacs je le vois moins, donc, un couple hétérosexuel par exemple, j'imagine moins pourquoi il se pacserait et ou est-ce que ça veut dire que, ils le prennent moins au sérieux que le mariage. Donc pour eux c'est un engagement moins important et donc ils vont choisir ça pour avoir des, des avantages et pas les inconvénients, mais si c'est ça, ça veut vraiment dire que même dans leur tête, le pacs est un sous-mariage, moins important que le mariage etc" Damien (FR11M)

"Le Pacs c'est un premier pas dans la reconnaissance des couples homosexuels mais un peu de sous-couples, quoi. Enfin, à des conditions un petit peu...ben ce n'est pas une vraie, quoi. Ça n'a pas le même poids, ça n'a pas la même importance" Claude (FR4M)

On the feeling of exclusion

"...as a matter of fact, well, as a matter of fact I think that there should just be one law for everyone. I feel that it should just be the same for everyone. You know. Marriage is the relationship of two individuals... I think that registered partnerships are somehow, it's the product of its time. I think it's ... now next year will be the 10 year anniversary of these laws, and you know, it's just like wow, we shouldn't let them exist. I think we should abolish registered partnerships. I think it's like ... I think it's a bit like segregationists in the United States, when blacks entered through the back door and paid up front where the driver was and then entered through another door. You know, I am going through the same thing and I'm like I'm not going into a registered partnership, I'm getting married. So I would rather want ... I just don't think it's feasible. Registered partnership. I would rather... establish some sort of ... just well. I think it's just an insult, registered partnership..." Garðar (IS11M)

On the fight still to conduct

"...it basically just means that we don't have the same rightsThe things is that it's just a paper, but something has to be said for getting societies approval, having the same rights as other people". Rúnar (IS25M)

"...même si le pacs est au même niveau que le mariage, il faut ... que, que les couples de même sexe aient accès au mariage et qu'après on puisse choisir ce qui correspond à, à, à son désir, et qu'on nomme mariage, l'union libre et tout ça. Mais tant qu'on a pas... l'ensemble des, des choix possibles... on n'est pas, on n'a pas d'égalité, c'est justement cet... cet accès au mariage et cet accès à l'adoption... et à l'éducation des enfants qui permet, et enfin à l'adoption pour les couples... d'hommes, et à l'insémination artificielle pour les couples femmes, qui ne donne pas... qui, qui, qui montre qu'il y a bien une hiérarchie des sexualités et que, et que certaines personnes sont moins égales que d'autres, donc il faut... il faut changer tout ça et de toutes façons ..." Vincent (FR6M)

Human rights

"...No, more rights, this has to be integrated in the constitution as just a human right, I mean, those of other nationalities or religions, it's not permitted to discriminate on grounds of religion and it has to be taken up, that it is forbidden to discriminate on the grounds of homosexuality or because of sexuality. I believe that god loves us all, no matter how we are and who we love and in fact it's sort of enough for me because I am that, but it wouldn't be inconceivable to have one's marriage blessed by a church..." Sigurður (IS27M)

Recent developments on the history of the law have meant to acknowledge the lack of recognition of homosexuals and to improve the situation.

In Iceland, this concern has been at the top of the decision to conduct reports on the social situation of homosexuals, both in 1994, prior to the passing of the law on Confirmed partnership⁷⁴ and the one ten years later on the reflection on homosexual families that aimed to prepare a new law⁷⁵.

Iceland legal progresses towards the improvement of the situation are acknowledged to be fast. The dynamic answer of a small population might also be of importance towards a normalisation of homosexuality. New generations of homosexuals have now claims on the effectiveness of this equality that is secured in words through law and have a critical regard on the ones that still persist.

As well as Bryndís and Lúðvík, Þór explains as clearly the way the legal situation is perceived by most of people in Iceland.

“The most important thing is that we get all the same rights as everyone else. That they don't always pick out specific things. So it isn't just some one thing. I just think that it's absurd that people don't have the same rights in this society because of their sexuality. There's nothing more to say about that really. But the fact is that none of the rights that relate to me ... or the fact that I can't get married in a church, affect me personally, neither does not being able to adopt, because I don't want to adopt a child myself. So, it doesn't concern me personally in that way. But, but, nevertheless, these are prejudices that are directed towards me and I'm being belittled, so...” Þór (IS36M)

It's going far beyond complaining about the legal situation, and individuals are purely remembered a difference that has nothing to do with their relationship with the state as citizens. From one hand, the discourse of the state being to equate and on the other hand, the denial of full rights makes people feel the aim not fulfilled. This paradoxical situation is greatly noticed by people.

At this level, it is as striking in Iceland where more rights are granted, as in France which is lagging far behind.

“Isn't that like a partial marriage⁷⁶?”

One of the main conclusions of the demographic part of our study and also, one of the main remarks heard in the countries where homosexuals access to marriage has been granted is that once they got the right, they don't use it.

Why not? Heterosexuals don't marry, why would homosexuals do?

Nearly ten years after the law has been adopted in Iceland and six in France, views are divided on their meanings and on their properties. The laws have their pure strict legal contents but it extends to various uncontrollable effects. In priority, the way people understand and use them.

To register a partnership calls on different issues. Given that it concerns a particular population that has certain properties, in first place the one of having come out with a control of all the negative specificities, it appears among those who are likely to register that other major features enter into consideration that are still strictly linked by the pure legal side of the law.

Despite the strong complains about the lack of symbolic meaning of the law, in France as in Iceland, the material aspects attached to the law as an incentive to registration are very important.

One might explain this fact as a societal characteristic, the decrease of the necessity of a legal union to live openly as a couple, both for heterosexuals and homosexuals, has lead to rethink the registration as either a material act, either a symbolic one.

In this case, the materiality, especially the financial, of the registration is of importance as much as the protection of primacy of the relationship between the two individuals towards their families.

The symbolic aspect of the registration, confirming to the society one's relationship and also one's cultural integration is more in the sphere of the well being but nonetheless a key element of integration in society, as the origin of all the behaviours.

It is a matter of well being in the society to feel like the others, to have the same rights and to share the same laws. Nowadays, the word marriage has nearly only a symbolic interest. In the Icelandic case, it is specially linked to the church ceremony as a traditional custom. In France, the marriage is claimed in the name of equality, as its symbolic aspect of the ceremony is less strong because mostly less anchored in the population identity. The freedom from compulsory marriage has been conquered with more difficulties and is more recent to be forgotten as a painful event. Besides the image of a catholic church, strongly embedded in a traditional strict vision of marriage associated to procreation is still strong enough to give also a place of choice to the republican marriage, dividing the strength of the symbolic aspect of the ceremony. It is consequently more attached to an ideological claim.

⁷⁴ *Skýrsla nefndar um málefni samkynhneigðra.*- Reykjavík: október, 1994.- 112 p.

⁷⁵ *Nefnd sem forsætisráðherra skipaði til að kanna réttarstöðu samkynhneigðs fólks.- Skýrsla nefndar um réttarstöðu samkynhneigðra.*- Reykjavík: Ágúst, 2004.- 133 p.

⁷⁶ Elin (IS7F) on confirmed partnership.

Filiation and parenting rights that have been also ruled out the laws are paradoxically the more practically needed but also the easier to bypass as people are ready to take the risk to live a little bit longer without legal coverage. Same-sex parents families are existing and more and more are forming, the feelings are stronger than any legal possibilities. It's just then a matter for the States to wish them outside the law or not.

With access to these rights denied, it's direct symbolic feature and practical needs that brings next to nothing the legal step made by the creation of confirmed partnership in people's mind and makes it look more like registered cohabitation for heterosexuals, which of cause it didn't mean to be. For in the near future, the registered cohabitation will be opened to homosexual couples, the gap between what is offered to heterosexuals and homosexuals in the symbolic domain should appear wider and the feeling of well being and society acceptance by homosexuals could decrease, just as like in France, the fact that pacs is opened to heterosexuals makes them facing an incredible lavish legal choice compared to homosexuals.

As we may have concluded from the legal comparative analysis of the rights and duties granted by the laws in the different countries that allow same-sex couples to register their partnership when linked to registration, the feeling of discrimination and perhaps its effect is not completely related to the legal details of the rights granted but more to the norm of living that set a model and subsequently an aim or a desire to the couples. From an overall point of view, rights are important to secure the possible but they are rarely known in their full extent. The image of the rights, the collective belief of what they are can sometimes bear more significance than the real consequences of the law. However, it is acknowledged that populations which are deprived of rights, and homosexuals have been long and still are, know more about the law than others, precisely because they are constantly reminded what they don't have access to, and that's why in this case, both the symbolic and the material aspect of the law are important.

If the goal of enacting the law was to ease the society acceptance of homosexuality and favour the well being of homosexuals, considering that it only reached the material aspect of it, this is not fulfilled. It is neither by pacs nor by confirmed partnership.

In all our interviews, the evaluation of the distance between what is accessible to heterosexuals and to homosexuals is always much present, people evaluating themselves and their aspiration towards a norm, whatever accessible or not.

But it's not done blindly as a political claim. This is definitely clear in the case of the evaluation of the access to marriage in the Icelandic case where confirmed partnership is somewhat close to marriage. The homosexual circles if they do exist are still somewhat divided on the framework which might be used by both configurations of couple but they do agree on the necessity of the equivalence of rights with heterosexuals. What is important in the elaboration of their reflections is the difference in the rights granted. One might consider there the very practical way in which the question is tackled. If individuals request their equality in rights, they recognise their difference in sexuality and they could have been ready at a time to accept the different name for their union even if fundamentally, they didn't see why and for the same reason, at the light of what is happening elsewhere (The Netherlands, Canada and Spain), this is not possible anymore. This also could be an effect of cultural bias, the conditions of possibility of homosexual unions being so new that people had no time to incorporate the shift between the pre-existence and the creation of confirmed partnership, the marriage having been for most of them something clearly linked while they grew up to heterosexuals only.

All and all, the fact that confirmed partnership has been presented to the people as an equivalent to marriage, which is in practice far from being true, is a major ground for dissatisfaction. In fact, it underlines the difference with marriage and appears as a second best as it allows people to compare with in a legitimate way. Only the fact that progresses towards the rights for homosexuals have been quite fast in Iceland is highlighted by respondents as a reason to have some patience towards the politics and gives them some hope towards the future.

That's perhaps why, in one sense, it seems like Icelanders are not that reactive towards the fact that they don't have access to marriage and in a more practical way, found clearly that confirmed partnership could be an equivalent to marriage if...

With the example of the church blessing, the fact that marriage brings with it the church side is paramount in their aspiration to have access to it. On a practical side, everything goes as if it was possible that confirmed partnership was performed by a church minister, this would be as good as marriage. Few are rising what they could see in this difference of institution to legalize their unions and most of them are widely accepting the fact that two different frameworks could exist despite the constant affirmation of likeness of relationship with heterosexuals. The discrimination is seen in the difference of rights granted and not in the special access to marriage that is mostly considered as outdated at best, to be reformed or to be suppressed at worse.

On the other side, one can think that Icelanders, by appropriating marriage by the words already got a grip on the institution, without however forgetting that they do not have the legal use of it and that result from this situation the more uncontrollable inequalities. This stage in the well being of the individual is enough significant to be underlined, as it requires such a symbolic violence which can only be put in connection with the acceptance of the society.

The failure of confirmed partnership independently from its missing legal properties to equate with marriage is on its lack of symbolic features. With constant reference to marriage, it has no representative entity that would encourage people to identify to.

On the symbolic ground, because in France, pacs is far from marriage, it's not considered as well as a valid option for the ultimate consecration of an union. Perhaps French people are socially and politically more demanding than Icelanders, that the fraction of people that are claiming for the opening of marriage puts the claim at another level. Having created the pacs, with access both to heterosexuals and homosexuals, it would seem silly to have another framework opened for homosexuals only. It's not even in the agenda, mainly because French political way of republicanism has dismissed the possibility of creating a communitarian institution, however while not acknowledging marriage was one.

Specific legal frameworks also generate different behaviours, if the offers are different, what is not offered is also of importance: from one side, registered cohabitation, on the other side marriage characteristics are not part of the offer. Because registered cohabitation exists in Iceland, it can be identified with a step towards marriage that has not been reached with *staðfest samvist*. Moreover, it's often mixed, as a law presented as the equivalent to marriage is perceived by the population as an equivalent to register cohabitation.

In terms of discrimination, both legal systems are failing to reach equality between heterosexuals and homosexuals creating as such a hierarchy of sexuality. Discrimination on grounds of sexual orientation is prohibited at the European level and legislations have extended to Iceland, barely to France. Political discourses put forward that law should protect equally all individuals. France as a motto "Liberty, equality, fraternity" which is dubiously enforced.

To equate rights through the opening of marriage comes up against the grant of full parenting rights. It has still to be fully discussed in Iceland but at the light of what happened recently in few other countries, and among them Norden member Sweden which now offers the perfect equality but marriage, the next Parliament discussions should consider the topic. Still, Iceland was the first country to grant custody rights in 1996, then authorized step-adoption in 2000. If Iceland is close, France is far. Nearly everything has to be done, at the level of marriage and at the level of parenting.

Heterosexuals have use of marriage. No laws are equal to marriage in terms of rights. In a system where Confirmed partnership exists then to erase all discriminations, it should be upgraded to grant the same rights. In a system where nothing that close to marriage exists, then marriage should be necessarily opened up if the governments don't want to create other law. But *in fine*, one would wonder why the marriage should not simply opened if we recognize that there is no social difference between heterosexuals and homosexuals as our welfare states tend to? However, certain reluctances are remaining and there and it's proven still quite tricky as if The Netherlands had opened first marriage in 2001 with nearly equal rights and now Spain did with full equal rights, Belgium has deprived same-sex couples from parenting rights, creating thus an homosexual marriage instead of simply opening up marriage.

If we compared both countries at the macro level, although the differences in accessible rights, the situation is not so different from the people points of view. Deprived of their contextual characteristics, homosexuals in both countries are claiming the same: the equality with heterosexuals.

References

- Adam, Philippe.- "Bonheur dans le ghetto ou bonheur domestique. Enquête sur l'évolution des expériences homosexuelles".- *Actes de la recherche en sciences sociales*, n° 128, "Sur la Sexualité", 1999, p. 56-72.
- Bech, Henning.- "Report from a rotten state".- Plummer, Ken (ed).- *Modern Homosexualities*.- London: Routledge, 1992, p. 134-147.
- Bech, Henning.- *When men meet: Homosexuality and modernity [Når mænd møtes]*.- Cambridge/Oxford : Polity Press/Blackwell , 1997.- 314 p.
- Björn Björnsson.- *The Lutheran Doctrine of Marriage in Modern Icelandic Society*.- Oslo: Universitetsforlaget, 1971.- 250 p.
- Borrillo, Daniel & Waaldijk, Kees.- "France" .-Waaldijk, Kees (ed.).- *More Or Less Together: Levels of legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners: A comparative study of nine European countries*.- Paris: Ined [Documents de travail n°125], 2005. p.93-106.
- Bourdieu, Pierre.- "A propos de la famille comme catégorie sociale réalisée".- *Actes de la recherche en sciences sociales*, n° 100, décembre, 1993, p. 32-36.
- Bourdieu, Pierre.- "Des familles sans nom".- *Actes de la recherche en sciences sociales*, n° 113, juin, 1996, p. 3-5.
- Chambon, Laurent.- "Le placard universaliste: quand la République se fait particulariste contre les gays".- *Mouvements*, n°38, mars-avril 2005, p. 34-40.
- Charrier, Gilda & Deroff, Marie-Laure.- "La non cohabitation : moment ou condition de la vie conjugale?".- Le Gall, Didier (ed).- *Genres de vie et intimités: chroniques d'une autre France*.- Paris: L'harmattan, 2005, p. 101-120.
- Digoix, Marie & Festy Patrick.- *L'Etat, la loi et le couple homosexuel: l'esprit nordique*.- Paper presented at the XVIIe Congrès de l'association internationale des sociologues de langue française, Tours, July 5-9, 2004, CR 03, sociologie du droit.-17 p.
- Digoix, Marie & Festy, Patrick.- *Registered same-sex partnership: a multidisciplinary approach*.- Paper presented at the 37th World Congress of the International Congress of Sociology "Frontiers of sociology", *Sociology and Demography session*, Stockholm, July 4-9, 2005, 23 p.
- Digoix, Marie ; Festy, Patrick & Garnier, Bénédicte.- "What if same-sex couples exist after all?".- Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships and homosexual marriages: a focus on cross-national differentials*.- Paris: Ined, 2004, p. 193-210.
- Digoix, Marie ; Festy, Patrick & Waaldijk, Kees.- "Same-sex couples and heteronormativity".- *Paper presented at the Population Association of America 2004 annual meeting, Boston, April 1-3, 2004*.- 2004.- 23 p.
- Dittgen, Alfred.- "Les mariages civils en Europe: histoires, contextes, chiffres".- *Droit et société*, n°36-37, 1997, p.309-329.
- Eribon, Didier.- *Réflexions sur la question gay*.- Paris : Fayard , 1999.- 526 p.
- Eribon, Didier.- *Sur cet instant fragile : Carnets, janvier-août 2004*.- Paris : Fayard, 2004.- 257 p.
- Fassin, Eric.- "L'illusion anthropologique : homosexualité et filiation".- *Témoin*, n° 12, mai-juin, 1998, p. 43-56.
- Fassin, Eric & Feher, Michel.- "Parité et Pacs: anatomie politique d'un rapport".- Borrillo, Daniel & Fassin Eric (eds).- *Au-delà du Pacs*.- Paris: PUF, 1999, p. 13-43.
- Godelier, Maurice.- *Métamorphoses de la parenté*.- Paris : Fayard, 2004.- 678 p.
- Guðný Björk Eydal & Stefán Ólafsson.- *Social and Family Policy The case of Iceland*.- Third report for the project Welfare Policy and Employment in the Context of Family Change , 2003.- 34 p.
- Hagstofa Ístands.- "Hjúskapur, stofnun sambúðar, skilnaðir og sambúðarslit 2003".- *Hagstiðindi, Mannfjöldi*, 16, júní 2004, 24 p.
- Halvorsen, Rune.- "The Ambiguity of Lesbian and Gay Marriages. Change and Continuity in the Symbolic Order".- *Journal of Homosexuality*, n°35, 3/4, 1998, p. 207-231.
- Héðinn Halldórsson.- "Barneignir saækynhneigðra í Danmörku".- *Stúdentablaðið*, nr. 81.árgangur, 03; tölublað, 2005.

- Hrefna Friðriksdóttir.- *The Nordic gay and lesbian «marriage»: No children allowed.*- Harvard Law School LLM paper, 1996, mimeo.- 144 p.
- Hrefna Friðriksdóttir & Waaldijk, Kees.- "Iceland".- Waaldijk, Kees (ed.).- *More Or Less Together: Levels of legal consequences of marriage, cohabitation and registered partnerships for different-sex and same-sex partners: A comparative study of nine European countries.*- Paris: Ined [Documents de travail n°125], 2005. p.121-136.
- Kolbeinn Stefánsson & Guðný Björk Eydal.- "Restrained reform - Securing equality for same sex couples in Iceland".- Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials.*- Documents de travail n°124, Ined, 2004, p. 129-146.
- Lewin, Ellen.- *Recognising ourselves: Ceremonies of Lesbian and Gay commitment.*- New York: Columbia University Press.- 288 p.
- Lhomond, Brigitte.- "Attirances et pratiques homosexuelles".- Lagrange, Hughes & Lhomond Brigitte (eds).- *L'entrée dans la sexualité : les comportements des jeunes dans le contexte du sida.*- Paris: La Découverte, (Recherches), 1997, p. 183-226.
- Lund, Anna.- "Les partisans du mariage religieux des homos sont de plus en plus nombreux au sein de l'Église".- *Le quotidien de Têtu*, 8 septembre 2005. <http://www.tetu.com/rubrique/infos> accessed in September 2005.
- Lund, Anna.- "Le mariage religieux des homos sur la bonne voie".- *Le quotidien de Têtu*, 20 septembre 2005. <http://www.tetu.com/rubrique/infos> accessed in September 2005.
- Lundh, Christer.- "Swedish marriages".- *Lund papers in economic history*, n° 88, 2003.- 63 p.
- Landshagir* [Statistical yearbook of Iceland].- Reykjavík: Hagstofa Íslands, 2004, 361 p.
- Matovic, Margareta.- "Illegitimacy and marriage in Stockholm in the nineteenth century".- Laslett, Peter; Oosterveen, Karla & Smith, Richard (eds).- *Bastardy and its comparative history.*- London: E. Arnold, 1980, p. 336-48.
- Nefnd sem forsætisráðherra skipaði til að kanna réttarstöðu samkynhneigðs fólks.- *Skýrsla nefndar um réttarstöðu samkynhneigðra.*- Reykjavík: Ágúst, 2004.- 133 p.
- Ólöf Garðarsdóttir.- *Marriage patterns in Iceland over 150 years: Extra marital births and the transition into adulthood 1850-2000.*- paper presented at the 3rd conference of European Social science history association, 23-26 March, 2004.- 18 p
- Pétur Pétursson.- *Church and Social Change. A Study of the Secularization Process in Iceland 1830-1930.* Reykjavík: University of Iceland Press.- 1990.- 221 p.
- Pichardo Galán, José Ignacio.- "Same-sex couples in Spain. Historical, contextual and symbolic factors".- Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials.*- Documents de travail n° 124, Ined, 2004, p. 159-173.
- Plummer, Ken.- "Men in love: Observations on male homosexual couples".- Corbin, Marie.- *The Couple.*- Harmondsworth: Penguin, 1978, p. 173-200.
- Pollak, Michael.- "L'homosexualité masculine, ou : le bonheur dans le ghetto?".- Pollak, Michael.- *Une identité blessée.*- Paris: Métailié, 1982, p. 184-201.
- Rault, Wilfried.- "The best way to court. The French mode of registration and its impact on the social significance of partnerships".- Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials.*- Documents de travail n°124, Ined, 2004, p 27-33.
- Rault, Wilfried.- *Donner sens au Pacs. Approche sociologique du Pacte civil de solidarité par son enregistrement.*- Thèse sous la direction de F. de Singly. Université Paris 5- René Descartes.- 2005.
- Registreret partnerskab, samliv og velsignelse: rapport fra et af biskopperne nedsat udvalg vedrørende kirkelig velsignelse af registreret partnerskab, Århus, 1997, <http://www.folkekirken.dk/udvalg/partnerskab> accessed in February 2004.
- Rich, George W.- "The Domestic Cycle in Modern Iceland".- *Journal of marriage and the family*, February, 1978, p. 173-183.
- Rydström, Jens.- "From outlaw to in-law. On registered partnerships for homosexuals in Scandinavia, its history and cultural implications".- Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships and homosexual marriages: a focus on cross-national differentials.*- Paris: Ined, 2004, p.175-181.
- Schiltz, Marie-Ange.- *Les homosexuels face au Sida: enquête 1995. Regards sur une décennie d'enquêtes.*- Paris : CAMS/CERMES, 1998.- 116 + 50 p.

Schiltz, Marie.-Ange.- "Young homosexual itineraries in the context of HIV: Establishing lifestyles".- *Population: An English selection*, 10 (2), 1998, p.417-446.

Skýrsla nefndar um málefni samkynhneigðra.- Reykjavík: október, 1994.- 112 p.

SOU 2001:10.- *Barn i homosexuella familjer: Betänkande från kommittén i homosexuella familjer*.- Stockholm: Justitiedepartementet, 2001.- 554 p. + 194 p.

Verdier, Eric & Firdion, Jean-Marie.- *Homosexualités et suicide : Etudes, témoignages et analyse*.- Montblanc : H&O éditions , 2003.- 230 p.

Weeks, Jeffrey.- *Same-sex intimacies: families of choice and other life experiments*.- London: Routledge & Kegan Paul ltd, 2001.- 245 p

Weeks, Jeffrey.- "Same-Sex Partnerships".- *Feminism Psychology*, vol. 14, n° 1, 2004, p. 158-164.

Weston, Kath.- *Families we choose*.- New York: Columbia University Press, 1991.- 261 p.

Appendix 1: The French Icelandic survey in practice

The French Icelandic survey in practice

Methodological approach

The interviews have been performed by one team of four people in each country in the first semester of 2005. The project is still running and interviews have still to be performed, especially with heterosexuals.

Sample has been gathered by snowballing with different entries and aimed at diversifying the population. Four categories of living arrangements have been searched for. Confirmed partners in Iceland or pacsed partners in France, cohabiting partners, living apart together partners and living alone singles .

Age and social background have been diversified as well as to cover the widest range of population. Until now, geographical coverage has not been extended to countryside and the interviews have all been performed with people living in the capital areas but one (in France). An Icelander is studying in Denmark, some French and Icelanders have lived abroad for short or long periods, for their studies or for job purpose. However, Paris and Reykjavík are attractive and well-known places with a national primacy both for study, work convenience as well as for social tolerance and gay scene. Most of our interviewees are thus coming from countryside while living in the capital for the above-mentioned reasons.

In this first analysis, 56 interviews have been taken into account, 38 in Iceland, 18 in France. Interviews were in depth and semi-directive.

Names of interviewees have been changed and a serial number being assigned as given in the following listing of the sample.

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Icelandic interviews have been translated from the Icelandic by Kolbeinn Stefánsson.

IS=Iceland

FR=France

M=Male

F=Female

Icelandic sample

- IS1M Aron, 39 years old, single. Doesn't assign genders to people and feels at odd with homosexual fights based on sexuality.
- IS2F Anna, 37 years old, divorced from a confirmed partnership and now in cohabitation. She doesn't fancy homosexual circles.
- IS3F Bryndís, 25 years old, in cohabitation, he had taken close interest in the passing of the law.
- IS4M Brjánn, 24 years old, in cohabitation. Had been living with his partner the last 4 years but doesn't not consider partnership though they want children
- IS5F Drífa, 34 years old, in confirmed partnership but would have preferred registered cohabitation. She is rather more attracted by women than men but not systematically.
- IS6M Dagur, 21 years old, in cohabitation, might consider registration after more time with his present partner
- IS7F Elín, 23 years old, single with a young daughter from an heterosexual relationship
- IS8M Einar, 47 years old, in cohabitation and divorced from an heterosexual union
- IS9F Fjóla, 45 years old, in confirmed partnership, lives with her partner since the 80s
- IS10M Friðrik, 46 years old, in confirmed partnership, lives with his partner since the mid 80s, divorced from an heterosexual union
- IS11M Garðar, 24 years old, single. Doesn't think he will ever register as he considers confirmed partnership as segregation
- IS12M Haraldur, 31 years old, single, had one previous steady relationship with no cohabitation
- IS13M Ingvar, 34 years old, in cohabitation

- IS14F Guðrún, 31 years old, in cohabitation
- IS15M Jóhann, 25 years old, steady relationship with no cohabitation, doesn't fancy homosexual circles
- IS16M Kristján, 28 years old, single, has only short-term relationships, thinks confirmed partnership is irrelevant for them
- IS17M Lúðvík, 41 years old, single, has cohabited few times
- IS18M Markús, 23 years old, in cohabitation abroad. Confirmed cohabitation is too much a commitment for him at the present time.
- IS19M Njörður, 27 years old, steady relationship with no cohabitation
- IS20M Ómar, 27 years old, in cohabitation He's associating confirmed partnership with long term commitment
- IS21F Hildur, 29 years old, in cohabitation, divorced from a previous confirmed partnership, she thinks it's important the State recognizes the cohabitation
- IS22M Pétur, 29 years old, in cohabitation, thinks Confirmed partnership is material and that things can be either dealt with a lawyer independently
- IS23F Íris, 25 years old, in cohabitation, is waiting for a proper law to register
- IS24F Jórunn, 32 years old, in cohabitation, divorced from a partner, is associating marriage with the church
- IS25M Rúnar, 21 years old, single, had lived abroad in cohabitation where he suffered homophobia and discrimination
- IS26F Katrín, 24 years old, in cohabitation, she depicts confirmed partnership is love showing to all
- IS27M Sigurður, 23 years old, in cohabitation, has strong claim for equality with heterosexuals
- IS28F Lena, 23 years old, single
- IS29M Tryggvi, 21 years old, in cohabitation abroad, is associating marriage with church
- IS30M Unnar, 33 years old, single living abroad. Would eventually register for tax reduction and associates confirmed partnership with long term commitment and as a step towards marriage
- IS31M Arnar, 49 years old, in confirmed partnership, divorced from an heterosexual union
- IS32F Magnea, 47 years old, in confirmed partnership, divorced from a previous heterosexual union. Thinks confirmed partnership is a confirmation of feeling and an insurance
- IS33F Nína, 27 years old, in confirmed partnership, would like parenting rights and registered cohabitation to be granted
- IS34F Oddný, 29 years old, in cohabitation with plans to register
- IS35F Pálína, 24 years old. In cohabitation and has planned the registration of her union this year and to have a church blessing. Has lived abroad where intolerance is everyday life.
- IS36M Þór, 39 years old, in confirmed partnership but would have preferred first registered cohabitation. Register do secure his material rights
- IS37M Ragnhildur, 21 years old, in cohabitation. Is not interested by registering
- IS38M Ámundi, 41 years old, in cohabitation, is optimistic about the future progresses towards the law. He regards confirmed partnership and registered cohabitation as the same
- IS39F Stefanía, 28 years old in cohabitation, complains about the non-possibility to register the cohabitation
- IS40M Baldur, 55 years old, in confirmed partnership after a long life with his partner. He's divorced from an heterosexual union.

French sample

- FR1M Ludovic-, 25 years old, pacsed. Thinks the law is too restricted but admits progresses have been fast
- FR2F Béatrice, 39 years old, in cohabitation. Is not interested by a minor law but would eventually do it to protect her partner rights
- FR3M Jacques, 39 years old, has pacs project with Claude (FR4M). Thinks about adopting.
- FR4M Claude, 40 years old, has pacs' project with Jacques (FR3M). Thinks about adopting.

- FR5F Annie 40 years old, pacsed in 2000.
- FR6M Vincent, 40 years old, in cohabitation
- FR7M Thierry, 35 years old, steady relationship with no cohabitation. Has pacs project with no cohabitation either;
- FR8M Daniel, 45 years old, single
- FR9F and FR9Fbis Anne and Cécile, 45 years old and 34 years old. They have been interviewed together. They have pacsed in 2000 for the symbolic gesture.
- FR10F Catherine, 60 years old, in cohabitation. Divorced with two children. Is not interested by registration per se but would eventually do it to protect her partner's rights towards her blood family
- FR11M Damien, 30 years old, pacsed. Canadian settled in France with his French partner. Wish to marry and is very optimistic about the near possibility.
- FR12F Nathalie, 32 years old, in cohabitation, had a pacs project at the time of the interview that realised afterwards
- FR13M Marc, 39 years old, steady relationship with no cohabitation.
- FR14M Martin, 58 years old, in cohabitation. Divorced. Has one grown up child. Is living in the countryside. Would like to pacs to protect his younger partner.
- FR15F Alix, 28 years old, heterosexual, pacsed after in cohabitation. Her partner is spending a year abroad
- FR16M Yves, 37 years old, in steady relationship with no cohabitation. Would like to pacs but his partner is hesitating
- FR17F Valérie, 32 years old, steady relationship with no cohabitation. Has lived abroad. Pacs recognises the couple without recognising the equality
- FR18F Anne, 33 years old. In cohabitation but has kept her own apartment. She thinks the pacs law is dangerous in the perspective of granting more rights

Appendix 2: Iceland: background information and recent development by Kolbeinn Stefánsson

Iceland

Background Information and Recent Developments

Kolbeinn Stefánsson

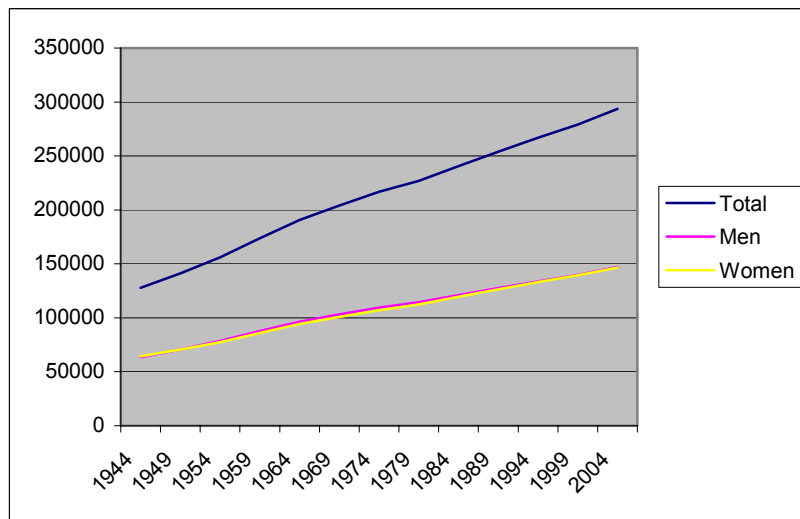
1. Societal characteristics

This paper provides background information about Iceland which serves as a context for the interpretation of interview data. The first half covers some relevant societal characteristics such as basic demographics, education and employment, and the political system. The second half describes legislative developments towards the legal recognition of same sex relationships as well as the content of the law on registered partnerships. On occasions references will be made to specific events or developments to provide context. The data is, however, purely descriptive and as such it is not sufficient for theory testing. Thus this discussion should not be regarded as conclusive in any theoretical sense, and references to events and developments are purely speculative.

1.1. Demographics

Iceland has a small population. At the end of 2004 the total population of the country was 293.577 people. Men outnumbered women by a small margin (147.170 men against 146.407 women). The Icelandic population has been growing steadily since the end of the Second World War.

Figure 1.1: Population 1944-2004:

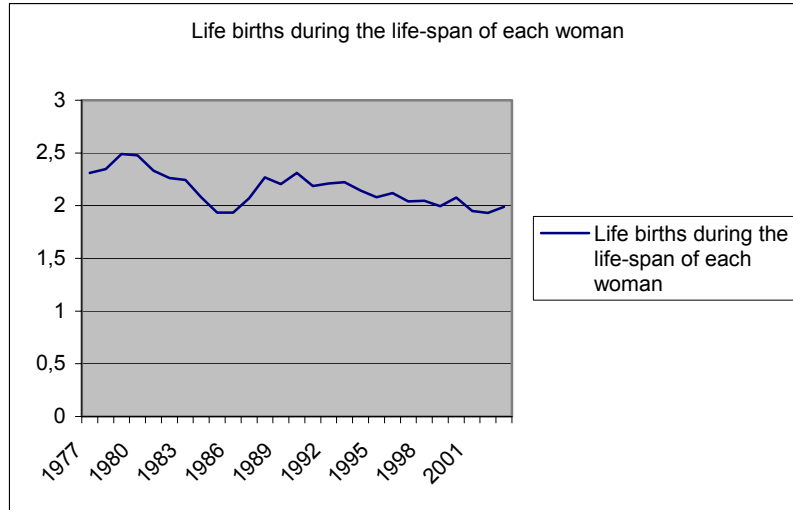


Source: Statistics Iceland 2005

Figure 1.1 shows the population of Iceland since the Second World War. The population has nearly doubled since 1951, from 146.540 people.

Birth-rates have fallen in most OECD countries in the last decades. In some cases fertility-rates have fallen below the minimum replacement rate. Figure 1.2. gives indications of fertility in Iceland since 1977.

Figure 1.2: Average life births during the life-span of each woman

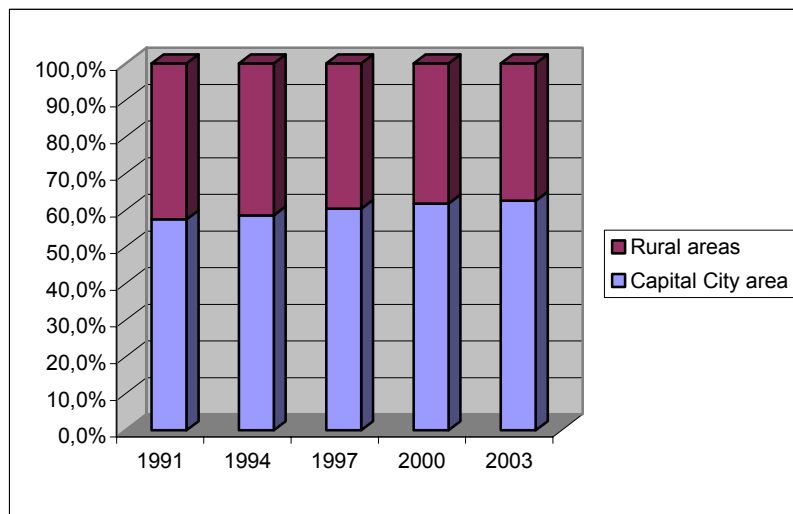


Source: Statistics Iceland 2005

The general trend is towards falling fertility over time. This development, however, took place somewhat later than it did in many other countries. It wasn't until 2001 that the fertility-rate fell below the replacement rate. It is likely that population growth will continue steadily for some time yet due to cohorts at childbearing age being somewhat larger than the oldest cohorts.

The population is unevenly distributed over the country, with most of the population concentrated in the capital city region.

Figure 1.3: Proportion of population living in the Capital City area 1991-2003

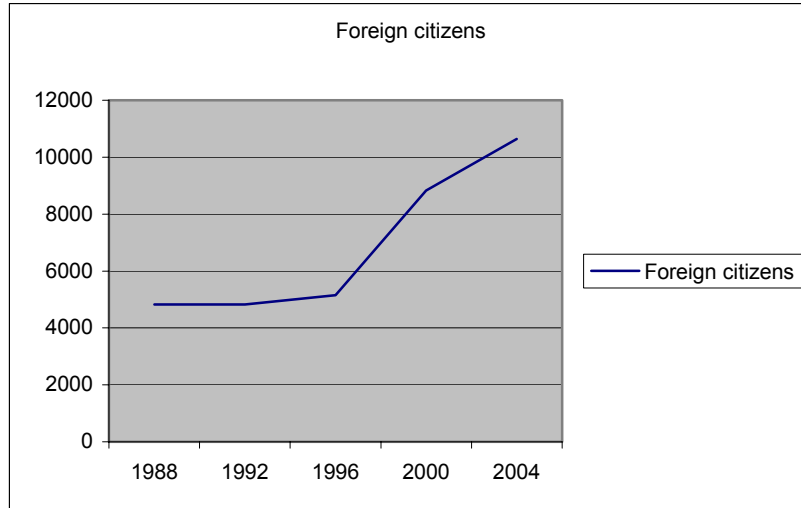


Source: Statistics Iceland 2005

In 1991 more than half the Icelandic population was living in Reykjavik and its neighbouring towns and municipalities (57,5%). This proportion has continued to grow and in 2003 it was 62,6%. There are at least two plausible reasons for this development. Firstly, restructuring of the labour market since the 1980s has favoured the urbanised Reykjavik area over the rural towns and areas. Secondly, the rural areas are very dependent on the fisheries for livelihood. The position of the fishing industry within the Icelandic economy has been weakening in recent years and many smaller communities have been hit hard by the reorganisation of that industry.

Iceland has a relatively ethnically homogenous population. Iceland has a small immigrant population, though rates of immigration have been growing in recent years. This is reflected in figure 1.4. In 1988 on 1,9% of people living in Iceland were foreign citizens. In 2004 that proportion had reached 3,6%.

Figure 1.4: Foreign citizens living in Iceland: Absolute numbers

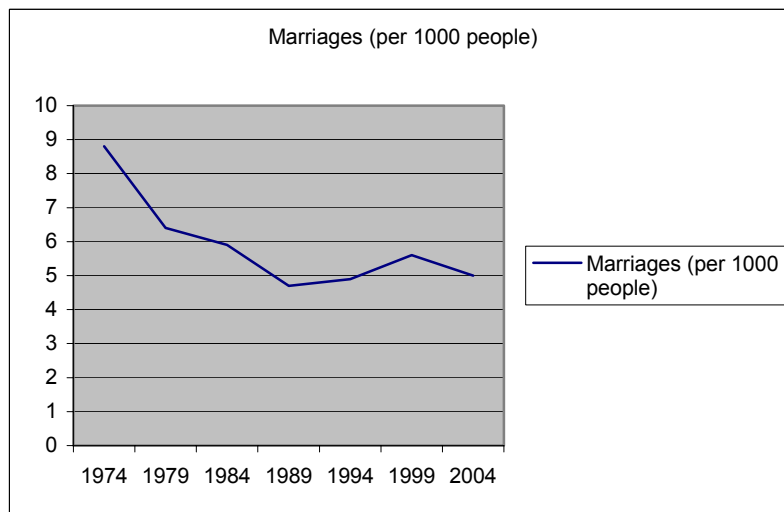


Source: Statistics Iceland 2005

The rising immigration rates are reflected by the fact that between 1988 and 1996 there was only a marginal increase in the absolute number of foreigners living in Iceland. Between 1996 and 2004 the absolute number nearly doubled.

Like many other countries Iceland has seen a proliferation of different family forms with marriage playing a smaller role as the foundation of Icelandic family life. One indication of this is the decline in marriage rates over time.

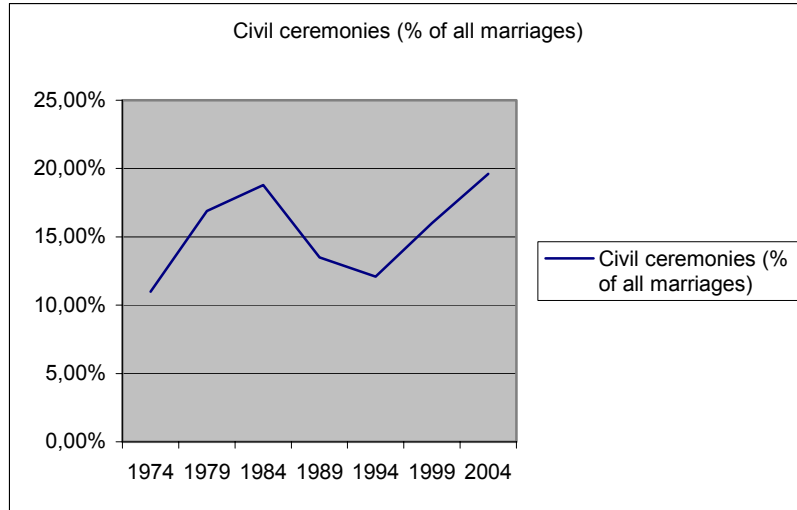
Figure 1.5: Marriage Rates and Civil Ceremonies



Source: Statistics Iceland 2005

Figure 1.5 shows a clear trend towards lower marriage rates since 1974. The numbers for 1999 and 2004 may indicate a slight rise in marriage rates, though they may also just be random fluctuations around a fairly stable mean. In any case it would be farfetched to argue that the marriage rates for 1999 and 2004 imply a return of marriage as the dominant family arrangement in Iceland.

Figure 1.6: Civil ceremonies as a proportion of all marriages

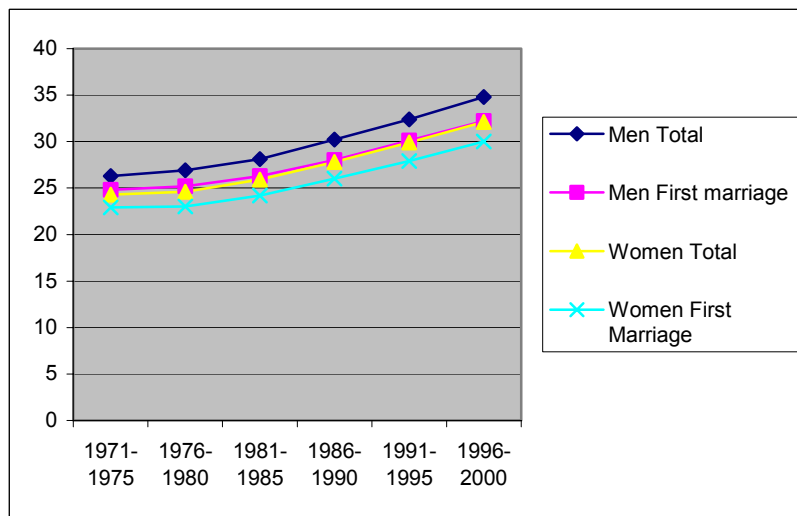


Source: Statistics Iceland 2005

The numbers for civil ceremonies as a proportion of all marriages, reported in figure 1.6, is less clear and harder to interpret. However, if we compare the year 2004 with 1974 we can assert that a smaller proportion of the population gets married in 2004, and that a larger proportion of those who marry opt for civil ceremonies.

The fact that marriage has lost some of its importance is also reflected by the fact that the marriage age has been rising steadily since the late 1970s.

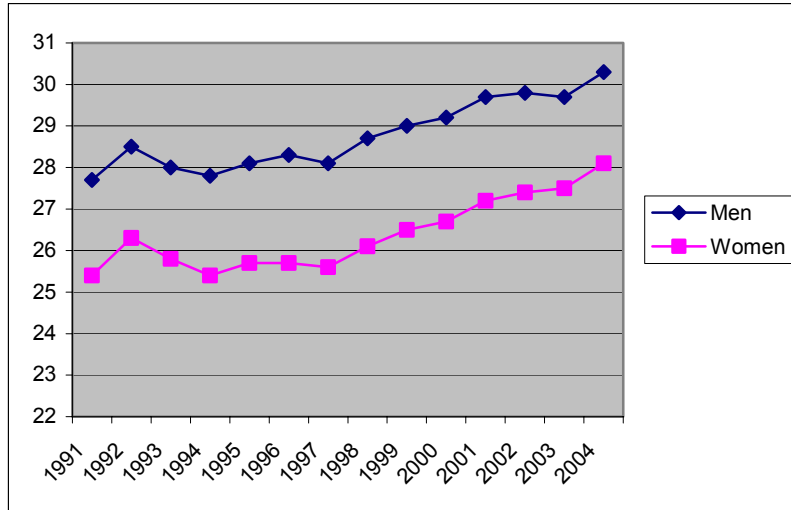
Figure 1.7: Marriage Age



Source: Statistics Iceland 2005

Women tend to marry younger than men, which reflects that the woman is in most cases the younger party in any given relationship. However, the marriage age has been rising steadily from 1980 and onwards and the average age at first marriage was 32,2 years for men in the years between 1996 and 2000, and exactly 30 years for women. One possible explanation could be that people choose to cohabit for some time before getting married.

Figure 1.8: Cohabitation age

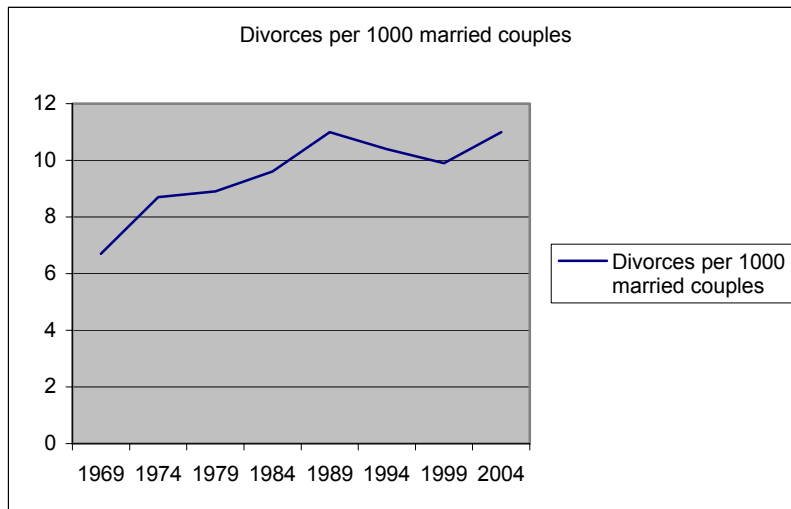


Source: Statistics Iceland 2005

Figure 1.8 shows the mean age for people registering a cohabitation. We see that people who registered cohabitations were younger, on average, than people who got married between 1991 and 2000. This lends some support to the idea that people are cohabiting for some time before they get married. However, like the marriage age, the average age of those registering cohabitation has been rising.

Divorce rates tell a similar story. Divorce rates between 1969 and 2004 are reported in figure 1.9. The general trend is towards rising divorce rates, which again points to a weakening of marriage as the foundation of Icelandic family life.

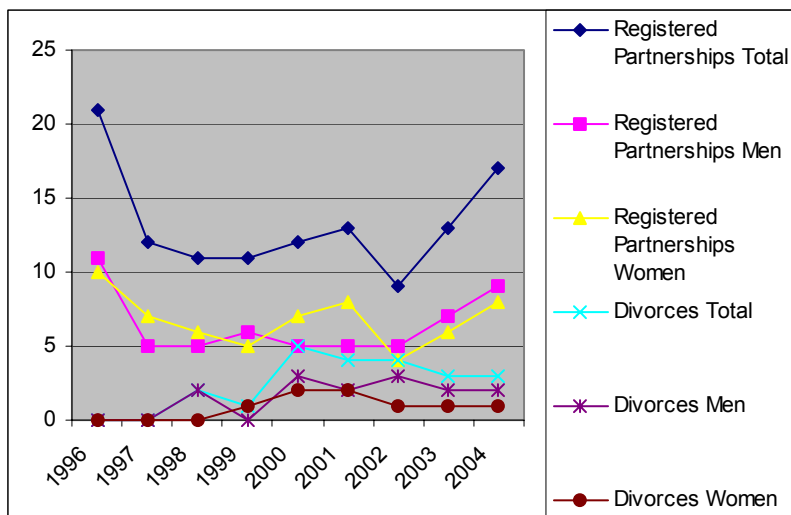
Figure 1.9: Divorces per 1000 married couples



Source: Statistics Iceland 2005

Information on registered partnerships is not included with the information about marriage rates as marriages and registered partnerships are legally distinct arrangements. Figure 1.10 reports the absolute number of registrations and terminations of partnerships from 1996 to 2004.

Figure 1.10: Registration and termination of partnerships 1996-2004

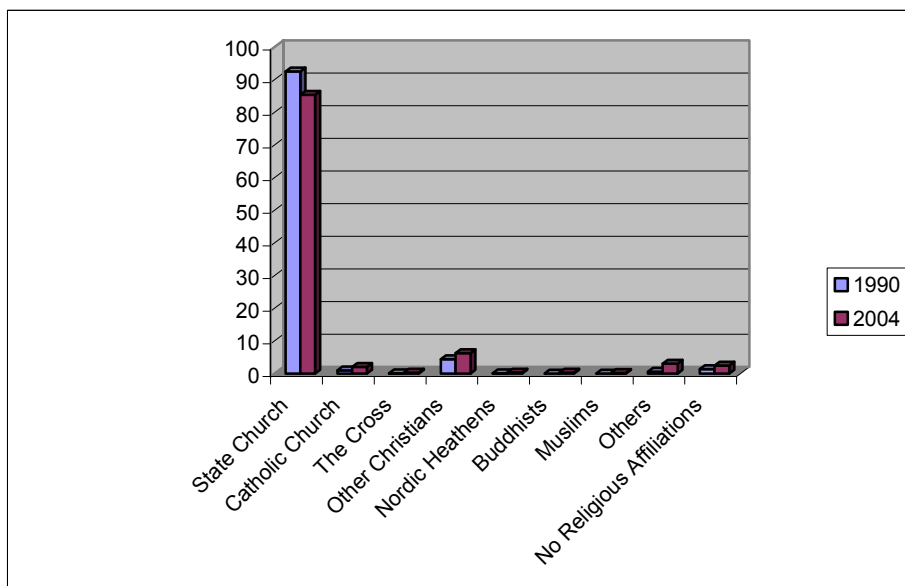


Source: Statistics Iceland 2005

The highest number of partnership registration took place in 1996. This is to be expected as this was the year that the law allowing them was passed. Otherwise there are no clearly discernible trends. In any case it is difficult to interpret the numbers as we don't have any reasonable estimates of the size of the homosexual population.

Finally, Iceland is mostly a protestant society with between 80% and 90% belonging to the Lutheran State Church. While the membership in the State Church (as proportion of population) fell slightly in the 1990s that church is unquestionably the single strongest religious organisation in the country.

Figure 1.11: Religious affiliations of the Icelandic population



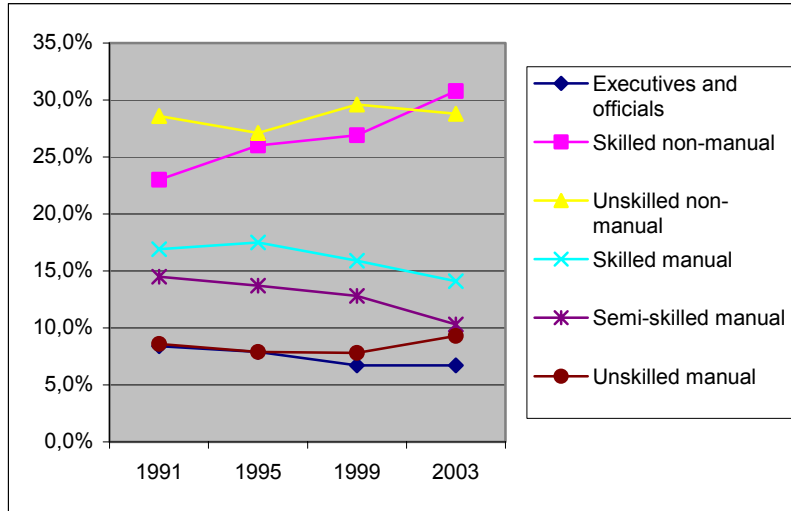
Source: Statistics Iceland 2005

It is unclear how influential religion or the State Church are in Icelandic society. For one thing the State Church tends not to get involved in political issues. However, it obviously has a say in government decisions that affect it. At the time of writing we were unable to find reliable information about church attendance. However, recent Gallup polls indicate that the State Church is one of the most trusted public institutions in the country.

1.2. Education and Employment

During the most part of the 20th century Iceland relied heavily on the fisheries and the fishing industry for employment and foreign exchange. While the fisheries are still one of the foundations of the national economy other sectors, e.g. the service and the financial sectors, have become increasingly important. These developments are accompanied by a corresponding change in occupational structure. Overall there has been a considerable increase in the number of skilled non-manual jobs relative to other kinds of jobs.

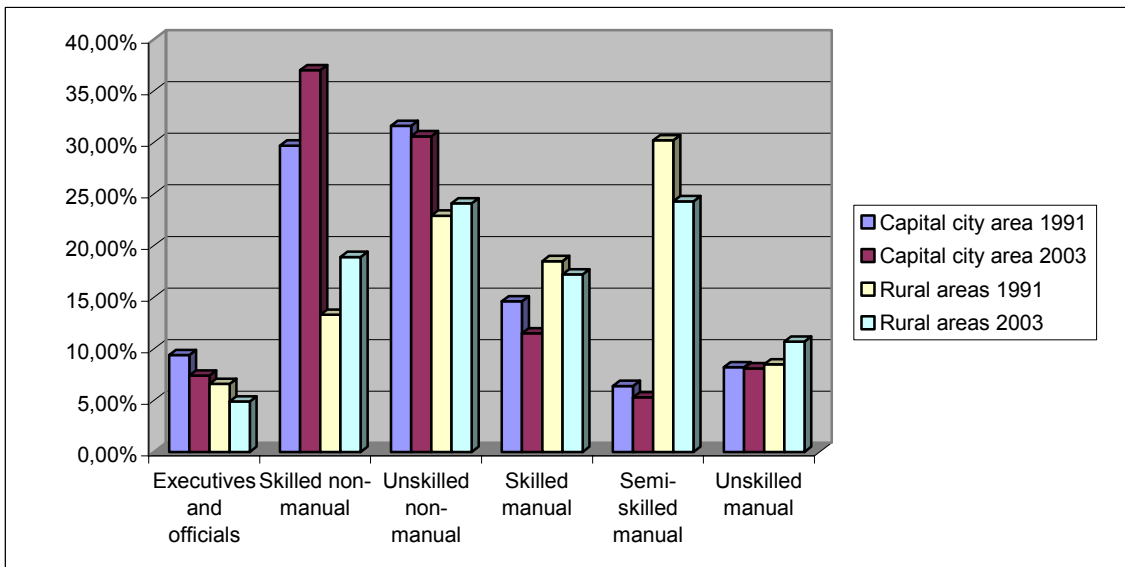
Figure 2.2: Changes in Occupations 1991-2003: Iceland as a whole.



Source: Statistics Iceland 2005

Figure 2.2. reports the proportional division of occupations for Iceland for the years 1991, 1995, 1999, and 2003. As can be seen from the table an ever growing proportion of jobs in the Icelandic labour market can be characterised as skilled non-manual jobs. In 2003 these jobs accounted for 30,8% of all employment in Iceland (up from 23% in 1991). This change is accounted for by an absolute increase in the number of such jobs (from approximately 31500 such jobs in 1991 to approximately 48400 jobs in 2003, or an 53,7% increase in the absolute number of skilled non-manual jobs). The number of unskilled non-manual jobs grew from 39.100 to 45.200, and that of unskilled manual jobs 11.800 to 14.600. Other occupations lost some jobs.

Figure 2.3: Occupational change: Capital city area vs. rural areas



Source: Statistics Iceland 2005

Figure 2.3. shows the trends reported in table 2.2 separately for the Capital City area and the rest of the country. There are many differences and some similarities. The first thing to note is that the proportion of jobs that are skilled non-manual has increased considerably in both areas, though the increase is considerably larger in the Capital City area (from 29,7% to 37% as compared to 13,3% to 18,9%). The proportion of skilled manual jobs is shrinking faster in the Capital City area than in the rural areas, but the proportion of semi-skilled

manual jobs is shrinking much faster in the latter. There is also a small increase in unskilled jobs in the rural areas. What is most striking, however, is how different these occupational structures are. Non-manual jobs account for 61,3% of all jobs in the Capital City area labour market, whereas manual jobs (especially semi-skilled jobs) account for the majority of occupation in the rest of the country (or 57,2%). The final thing to note is that the absolute number of jobs in the Capital City area rose from approximately 77.900 in 1991 to approximately 99.800 in 2003, whereas the absolute number of jobs fell slightly in the rest of the country, from approximately 59.000 in 1991 to approximately 57.200 in 2003.

Iceland has relatively low levels of unemployment when compared to many European countries and high rates of employment participation.

Table 2.1: Employment participation and unemployment: 16-74 years old (year 2004)

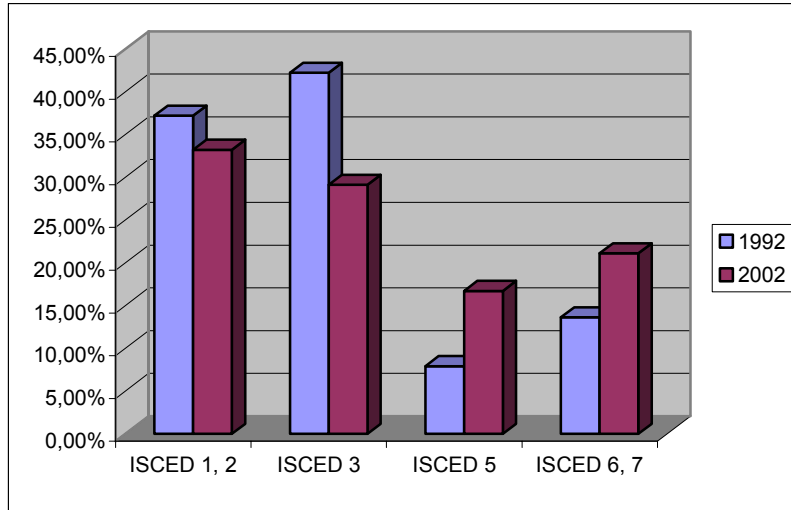
Country as a whole	Employment		Average working hours per week
	participation	Unemployment	
Total	80,7	3,1	42
Men	85	3,2	47,1
Women	76,3	2,9	35,9
Capital City area			
Total	80,4	3,1	41
Men	84,1	3,3	45,7
Woman	76,8	3	35,8
Rural areas			
Total	81,2	2,9	43,6
Men	86,6	3	49,5
Women	75,3	2,8	36

Source: Statistics Iceland 2005

Table 2.1. shows a snapshot of the proportion of the population aged between 16 and 74 that were active in the labour market in the year 2004, as well as the proportion of those people who were unemployed (averaged for the year). In addition the average working hours per week are reported in column 4. A higher proportion of men than women were active in the labour market. Otherwise differences are rather small. Men tend to work more hours than women, and people in the Capital City region work fewer hours per week on average.

Corresponding with changes in the labour market, the education level of the Icelandic labour force has been growing steadily in recent years. Figure 2.4 reports this development by comparing the year 2002 with 1992. Education attainment is reported according the ISCED scale for comparability. Levels 1 and 2 correspond to primary education and level 3 to secondary education. Level five includes professional qualifications and non-degree tertiary education. Levels 6 and above reflect university education at various levels.

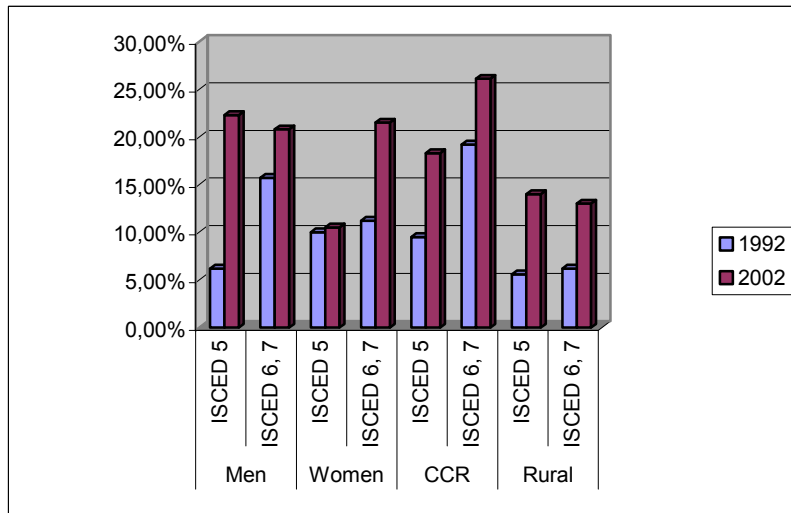
Figure 2.4: Labour force 25-64 years by education levels 1992 and 2002



Source: Statistics Iceland 2005

The proportion of the labour force with only primary or secondary education has shrunk considerably (from a combined total of 79,4% to 62,3%). At the same time the proportion of the labour force with professional qualifications and non-degree tertiary education has more than doubled. There was also a considerable increase in the proportion of the labour force that held university degree of some kind or another. These trends differ somewhat when we compare the sexes and the Capital City area to the rural areas (figure 2.5).

Figure 2.5: Labour force 25-64 years by education level 1992 and 2002 (contrasting sex and regions)



Source: Statistics Iceland 2005

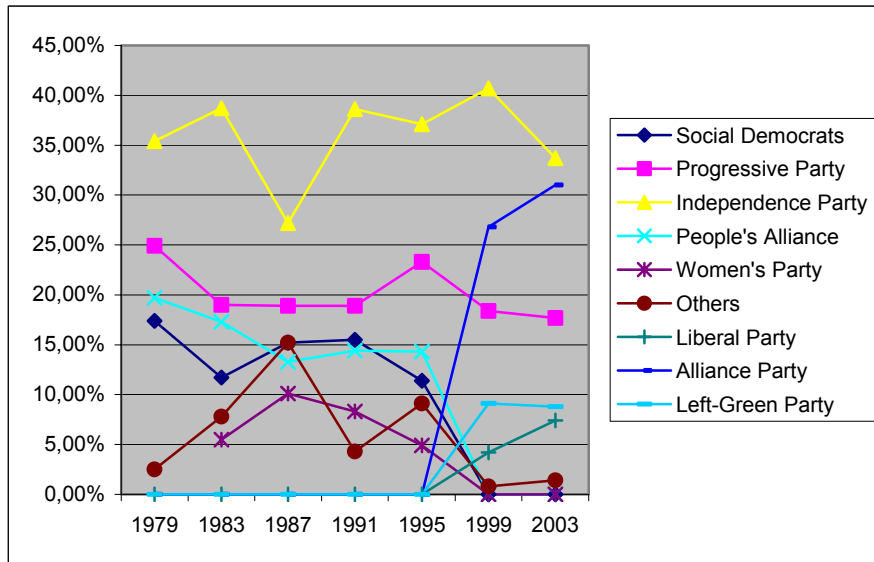
When comparing the sexes we see that the proportion of the female labour force that attains ISCED 5 qualifications remains constant between 1992 and 2002. At the same time the proportion of the male labour force with such qualifications nearly quadruples during this period (from 6,2% to 22,3%). On the other hand, while the proportion of both sexes attaining university education has grown rapidly the growth is somewhat spectacular for women. In 1992 a higher proportion of the male labour force had university degrees (15,7% compared to 11,2% of the female labour force). In 2002 a slightly higher proportion of the female labour force had university degrees (21,5% compared to 20,8% of the male labour force). In sum, a large part of the rising education level of the male labour force has come from ISCED 5 type qualifications while the rising education level of the female labour force has come almost exclusively in the form of university degrees.

When we compare geographical areas we see that the education level of the Capital City area labour force is noticeably higher. However, the education level has been rising fast on both sides. The increase has been similar when considered in absolute proportions.

1.3. Politics

Iceland differs from the other Nordic countries in that right wing political parties have enjoyed considerably more popular support than their sister parties in Norway, Denmark and Sweden. Also, Icelandic Social Democrats have, until recently, only enjoyed limited support. One plausible explanation for this is that the left-wing of Icelandic politics has been bruised by infighting, resulting in frequent splits within the Social Democratic Party. For instance, the People’s Alliance was formed out of the Socialist Party and a split from the Social Democratic Party, which in turn was formed from the Communist Party and a prior split from the Social Democrats. Also, the Icelandic Social Democrats have not enjoyed the institutional ties with the Labour Movement that benefited the other Nordic social democratic parties since long. Figure 3.1 gives an overview of the number of MPs parties have obtained in general elections from 1979 to 2003 (with their proportion of the vote in the brackets).

Figure 3.1: Electoral support of political parties (1979-2003)



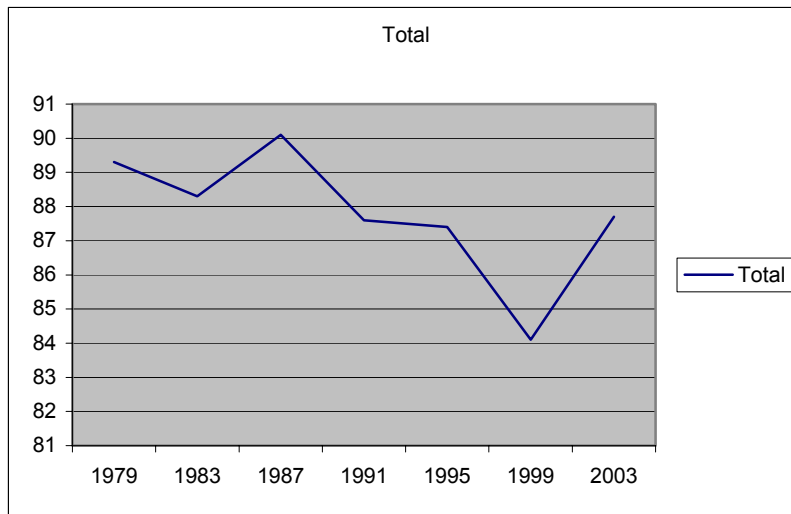
Source: Statistics Iceland 2005

The Icelandic party system is essentially a four party system. The four main parties until 1999 were the right wing Independence Party, the Progressive Party (a centre/farmers party), the Social Democratic Party, and the People Alliance (a more radical social democratic party). A notable anomaly in this four party structure is the Women’s Party, an all female political party which enjoyed considerable support for awhile. Other parties have mostly been formed from splits from the established parties. In 1987 there was a significant split in the Independence Party (which explains their low proportion of the vote, 27,2%) and in 1995 there was a split in the Social Democratic Party (the splinter group managed to gain 4 MPs).

Before the general elections in 1999 the left wing parties (Social Democrats, People’s Alliance, Women’s Party, and a splinter group from the Social Democrats) decided to join forces and formed the Alliance Party (predominantly social democratic). Some disgruntled members of those parties split off and former the Left-Green Party. The consequence was that the four party system was preserved though the centre-left managed to establish a strong presence through the Alliance Party. Furthermore, there was a small split from the Independence Party (the Liberal Party) which has managed to establish a foothold in Icelandic Politics.

Figure 3.2. shows the proportion of those eligible to vote that actually voted from 1979 to 2003.

Figure 3.2: Voter turnout

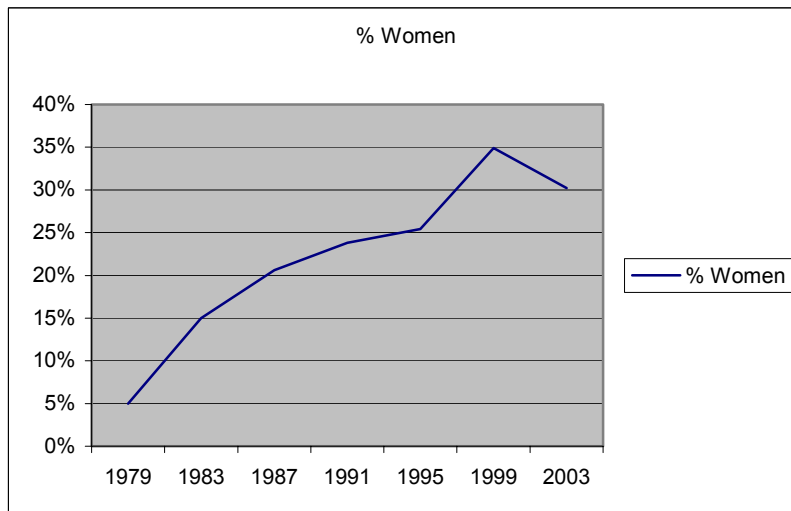


Source: Statistics Iceland 2005

There is little to be said about this figure except Iceland enjoys a relatively high voter turnout during this period. Note, however, the bump in voter turnout in 1999. One possible explanation is that the realignment on the left, left many of left-wing voters disgruntled and consequently they decided to stay home. This coincides with the biggest election victory of the Independence Party during this period (40,7%). This is consistent with the "disgruntled left-wing voters" hypothesis a higher proportion of undecided voters tend to be on the left. Note also that the electoral gains of the Alliance Party in 2003 coincide with voter turnout rising to approximately the same proportion as it was in 1995.

Final thing to note is that women have been improving their position in Icelandic politics. Figure 3.3 shows that the proportion of MPs who are women has risen gradually from 1979 to 2003.

Figure 3.3.: Percentage of MPs that are female



Source: Statistics Iceland 2005

Though women have generally improved their position from election to election the figure clearly shows that the gains are diminishing over time. If that trend had continued after 1995 the gains would have been meagre indeed. However, in that election there is a sharp increase in the proportion of MPs that are female. However, the proportion of female MPs fell again in 2003.

2. Legal Recognition of Same-sex Relationships

In this section we outline the development of the legal recognition of same-sex relationships in Iceland and outline what each step has entailed. The latter half of the '90s saw significant steps taken by the Icelandic legislature towards legal equality for same-sex couples compared to heterosexual couples. These changes took place against the backdrop of international pressure and a growing visibility of homosexuality in Iceland in the 1980s.

Table 4.1: Alþingi: types of proposals, subject and results from 1985-2003

Year and type of proposal	Subject of the proposals	Result
1985 Resolution	<i>That the government should appoint a committee to investigate the situation of homosexuals in Iceland and propose legislative amendments</i>	Not fully discussed
1992 Resolution	Same as in 1985	Accepted
1993 An inquiry	Asks the Prime Minister if the committee has been appointed- He explains why there has been some delays in appointing the committee	--
1995-1996 Bill	Laws on Registered Partnership	Accepted
1996-1997 Bill	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	Not fully discussed
1997-1998 Bill	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	Not fully discussed
1998-1999 Bill	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	Not fully discussed
1999-2000 Bill	Revision on the Adoption Act- rights of same sex couples not addressed in the Bill Debated- but an agreement is reached: the issue is to be addressed when the Act on Registered Partnership is revised	Accepted
1999-2000 Bill	Same sex couples in registered partnership gain right to adopt their stepchildren. Restrictions on nationality and residence are somewhat reduced.	Accepted
2003-2003 Resolution	A committee shall investigate the situation of same sex families and suggest amendments of the law-	Accepted

1980s

The issues of homosexuals and same-sex relationships remained absent from the legislatures agenda until 1985 when a group of MPs⁷⁷ proposed a parliamentary resolution to the effect that the government should appoint a committee to investigate the situation of homosexuals in Iceland and propose legislative amendments based on their findings (*Alþingistiðindi 1985A: 138*). This group included members of various political parties, but since it was the initiative of these particular MPs rather than their parties, the party-political composition of the group is of limited relevance. For the record, however, it should be noted that two parties were not represented in the group, the center-right Independence Party and the social democratic People's Party.⁷⁸

The timing of the proposal coincided with the growing visibility of homosexuals in Iceland following the founding of an official lesbian and gay movement called *Samtökin 78*, on May 2nd 1978 and resolutions from the European Council in 1981 and the Nordic Council in 1984 urging the governments of their member states to abolish discrimination against their homosexual citizens⁷⁹.

⁷⁷ Kristín S. Kvaran, Guðrún Agnarsdóttir, Helgi Seljan and Ólafur Þ. Þórðarson

⁷⁸ Sjálfstæðisflokkur og Alþýðuflokkur

⁷⁹ European Council resolution 924/1981 and Nordic Council resolution 17/1984

The proposal was referred to the parliament's General Committee⁸⁰ from where it failed to remerge for a second round of parliamentary debate necessary for passing such a resolution. The fact that the General Committee buried the resolution suggests that there was not sufficient political will to engage this issue at the time.

1990s

After the proposal of the 1985 resolution the rights of homosexuals remained absent from the legislative agenda until 1992 when a group of MPs, lead by a member of the Women's Alliance⁸¹ and comprised of members of all the parties represented in parliament at the time, proposed a resolution similar to that of 1985 (*Alþingistiðindi* 1991-2A: 213). This time the resolution was passed by the parliament (*Alþingistiðindi* 1991-2A: 1050). The same year the parliament passed an amendment to the General Penal Code of 1940, fixing the age of consent for both homosexual and heterosexual intercourse at the age of fourteen (General Penal Code no. 19/1940 with subsequent amendments).

In 1993 the Prime Minister appointed a committee in accordance with the resolution from 1992. The committee was made up of representatives from the ministries of Justice, Education and Social Affairs, as well as a representative of *Samtökin '78*. The committee gave its report in 1994. The report was based on a thorough investigation into the legal, the social and the cultural situation of homosexuals in Iceland. The report suggested that information about homosexuality should be incorporated into the curriculum at all levels of the education system in order to combat ignorance as a source of prejudice. The committee also emphasized that the legislature should play a part in fighting prejudice by abolishing legal discrimination, and that such reform should reflect the legislatures unequivocal will to extend equal rights to homosexuals. Furthermore, the report urged that legal reform should correspond to similar reforms in the other Nordic countries (Friðriksdóttir 2003)

It is important to note that there is a historical tradition of formal Nordic co-operation in the field of family law. Family law committees were appointed in 1909, in Denmark, Norway and Sweden, and their role was to revise and to co-ordinate the Scandinavian marital legislation. (Snævarr 1983). Iceland was not formal participant in the co-operation at that time, but revised its family law in accordance with the Nordic proposals. Today the Icelandic family law committee⁸² is a full member of the Nordic co-operation (Friðriksdóttir 1994). Historically the Nordic countries have been forerunners regarding liberalization of family law; in the 1920s all the countries revised the marital law and equality between husband and wife was gained and no-fault divorce became possible (Melby, Pylkkänen and Rosenbeck 1999; Millar and Warman, 1996). The Nordic nations have also been forerunners in regards to increased legal rights of children (Björgvinsson 1997; Therborn 1993). The issue here is not that these legislative developments occurred in a Nordic cooperative context but rather that Iceland's approach to Nordic cooperation on same-sex relationships has had an effect on how the reform has developed.

When addressing the rights of homosexuals the parliament places a considerable emphasis on unity and consensus, which corresponds with the committee's recommendation that the parliaments stand, should be clear in these matters. Yet, Nordic cooperation and the consensus approach have to some extent de-politicized this issue, allowing for a more reactive stance on the rights of homosexuals which is to be decided through Nordic cooperation and limited by the possibility of consensus at any given time.

2.1. Comparing registered partnerships to marriage

The primary distinction between marriage and registered partnership can be found in article 1 of their respective laws. Marriage is the union of two people of different gender; registered partnership is the union of two people of a same gender (Law in Respect of Marriage no. 31/1993; Act on Registered Partnership no. 87/1996). These definitions are mutually exclusive and serve to preserve the integrity of one vis-à-vis the other. As was stated above the Act on Registered Partnership marks the legal recognition of same-sex relationships while falling short of granting them equal status. What the law in fact does is to grant same-sex couples the possibility of conforming to the institutional arrangements of heterosexual matrimony while effectively excluding them from it.

This being said it must nevertheless be kept in mind that the Registered Partnerships Act is not merely a token of recognition for it does grant rights and responsibilities associated with marriage. It is important to note, however, that these rights are mostly defined in the Law in Respect of Marriage rather than in the Registered Partnerships act itself. Currently a registered partnership is equal to a marriage when it comes to financial responsibilities, insurance entitlements, pension entitlements, property rights and inheritance. This list is not exhaustive but we can conclude that the financial aspects of registered partnerships are the same as those of marriage (*op cit.*). We therefore turn our attention to those aspects that differentiate registered partnerships from marriage.

Nationality

⁸⁰ Alsherjarnefnd.

⁸¹ Ingibjörg Sólrún Gísladóttir, later mayor of the capital city Reykjavik. Other members of the group were Össur Skarphéðinsson, now chairman of the Social Democratic Alliance, Ólafur Þ. Þórðarson the Progressive Party, Guðrún Helgadóttir from the Peoples Alliance and Einar K. Guðfinnsson from the Independence Party.

⁸² Appointed by the Ministry of Justice.

All the conditions set for people to enter into marriage apply to registered partnerships. In addition to the requirements defined by the Act in Respect of Marriage (no. 31/1993) there are further requirements defined in the registered partnerships act which relate to nationality and country of residence (Act on Registered Partnership no 87/1996, 2. art.).⁸³ For a same-sex couple to enter into a registered partnership in Iceland, one or both partners must be Icelandic nationals and have a permanent residence in Iceland. Foreign nationals can register a partnership if both have had permanent residence in Iceland during the 2 years prior to the registration. Citizens of Denmark, Sweden and Norway are regarded as Icelandic citizens for these purposes and the Minister of Justice can also grant such status for citizens of countries where registered partnership acts are in effect. Another provision is that articles in international treaties and agreements to which Iceland is a signatory do not apply to registered partnerships (*Alþingistiðindi* 1999-00A: 860).

These provisions were added to the Act on Registered Partnership in recognition that the legislative developments in this policy area are highly uneven on the international level (*Alþingistiðindi* 1996A: 564) and their application supposedly minimizes any potential friction between rights recognized in Iceland and elsewhere. As a result a same-sex couple from a country that offers no legal recognition of their relationship cannot come to Iceland to gain such recognition. This is interesting in the light of there being no provisions in the Law in Respect of Marriage (no. 31/1993) that prevents a heterosexual couple of a foreign nationality that cannot gain legal recognition of their relationship in their country of origin or residence from gaining such recognition from the Icelandic state. Another side to this is that Icelandic citizens who have a permanent residence in other countries cannot gain legal recognition of a same-sex relationship from their home country unless their country of residence also offers such recognition.

A Civil Arrangement

In Iceland marriage is regarded as both a civil and a religious institution, and as such it can be ratified by ministers of the official State Church⁸⁴, by leaders of recognized religious organizations, as well as by certain state officials so empowered. Only state officials, however, can ratify registered partnerships.

Technically it would have been possible for the legislature to use the State Church's institutional ties to the state to force it to accept same-sex relationships. In the same way it would have been possible to make the legal recognition of other religious organizations dependent on them doing the same. Nevertheless, it is unrealistic to assume that the state would attempt to achieve the consent of the religious community by coercion as the autonomy of religious organizations in relation to the state is held to be an important constitutional principle. The curiosity here is that the legislature did not leave it up to each religious organizations to decide for itself (*Alþingistiðindi* 1995-6A: 564). This was largely due to pressure from the State Church (*Alþingistiðindi* 1995-6A: 564), for by being barred from ratifying registered partnerships the religious community was relieved of having to resolve this internally divisive issue.

Parenting

The Act on Registered Partnerships (no. 87/1996) went a step further than comparable laws in the other Nordic countries in that it granted registered partners shared custody in cases where either party had custody over a child upon entering into the partnership. Thus the other partner becomes the stepparent of that child with same rights and duties as stepparents in married and cohabiting heterosexual families (Law in Respect of Children no. 76/2003). A stepparent shares parental responsibility with the parent, which is defined in law as the authority to determine and act on the child's interest and represent the child in pursuit of these interests.

The 1996 Act on Registered Partnership prevented registered partners from all forms of legal adoption of children. The 2000 amendments to the Act on Registered Partnership enabled registered partners to adopt their stepchildren, a practice here referred to as "secondary adoption". In the original proposal secondary adoption was extended to include all stepchildren, but the Parliament's General Committee proposed an amendment to the bill further limiting the right to secondary adoption to that of stepchildren who were either born to the custody holding partner or had been adopted from within Iceland. Thus, the amendment did not enable registered partners to adopt stepchildren that had been previously adopted from abroad nor were they primary adoption, that is the joint adoption of a child which has no prior legal relationship to either partner (*Alþingistiðindi* 2000-2001A: 860; 1032; 1240). When the parliament's General Committee added this provision the bill of amendment proposed by the Minister of Justice it emphasized that this article should always be exercised according to the child's best interest and that children's consent should be regarded of high relevance which is in line with the law in Respect of Children (no. 23/1995) and the Adoption Act (no.130/1999) (op. cit; 1032).

The legal difference between parents and stepparents is important. Though a stepparent shares full parental responsibility the stepparent has neither legal rights nor obligations to maintain a relationship with the child should the marriage/cohabitation/registered partnership end in divorce. This is contradictory for should a biological parent that holds custody of the child die, custody is as a rule transferred to the stepparent rather than the non-custodial biological parent. If the question arises who shall hold the custody the decision shall always be made with the child's best interest in mind (Law in Respect of Children no. 23/1995). Another important difference between the relationship of stepparents and biological/adoptive parents is that a stepchild is not entitled to inheritance should the stepparent die (Inheritance Act no.48/1989).

⁸³ There are no such provisions in the Law in Respect of Marriage.

⁸⁴ Note that ninety percent of the Icelandic population is registered members of the State Lutheran Church (Landshagir, 1999).

In addition to being barred from primary adoption, registered partners are not eligible for assisted fertilization. One would be tempted to conclude that the provision against granting registered partners access to primary adoption or secondary adoption of a spouse's foreign-adopted child was grounded in fear that this would cause some countries to disallow adoptions to Icelandic parents. Yet this makes no sense for in the latter case the child would still be living in a same-sex household, albeit with limited legal relationship with their stepparent. Furthermore, such concerns should not bar women in a same-sex relationship from receiving assisted fertilization. The fact is that by limiting the access of same-sex couples to adoption and assisted fertilization the legislature has created a number of contradictions.

For example: By granting a homosexual stepparent the right to adopt the other partner's child signals the recognition that this is in the child's best interest. At the same time same-sex couples are barred from primary adoption, which indicates ambivalence towards whether it would be in that child's best interest to be raised in a same-sex household. Furthermore the laws on adoption make special provisions that an individual can, in special circumstances, adopt a child. It must be recognized that this is a very limited provision, yet it opens up the possibility that an unmarried homosexual could adopt a child as denying such an adoption to an individual on the grounds of his or her sexual orientation would be in breach of article 65 of the Icelandic Constitution. Seeing that one of the concerns about adoption is that the child must be provided with a stable two-parent home, it seems contradictory that unmarried homosexuals have greater chance of adopting a child than do same-sex couples that have signalled their commitment by registering their partnership. Lastly, same-sex couples are considered as eligible as heterosexual couples as foster parents when children are placed in either temporary or permanent foster care (Friðriksdóttir 2003). In light of that such children often come from troubled backgrounds it seems contradictory that same-sex couples are seen as equally capable as heterosexual couples of providing nurture and support in such difficult circumstances but at the same time are not considered as capable of parenting in other less demanding contexts.

2.3. Cohabitation

It should be noted that there exists no single law defining forms of heterosexual cohabitation as recognized by the state. The Icelandic legislature has chosen to recognize legal rights of heterosexual cohabiting couples through provisions in different laws (Eydal and Ólafsson 2003). The result has been a fragmented recognition of rights⁸⁵ dependent on preconditions that vary between different areas of the law. As a result conditions, such as length of cohabitation, differ somewhat depending on the particular context and the very definition of cohabitation varies considerably between different acts of law (op cit; Eydal, forthcoming). The most common measure used to determine cohabitation is whether it has been registered with Statistics Iceland (*Act on Legal Resident no. 21/1990*). As a result there exists a distinction between registered and unregistered cohabitation where registered cohabitation entails certain rights and responsibilities whereas unregistered cohabitation does not.

Though registered cohabitation is largely seen as a step between informal relationships and marriage, or an informal alternative to marriage should a couple choose to make it a permanent arrangement, the distinction between registered and unregistered cohabitation is by no means clear and decisive as various areas of law potentially recognize unregistered cohabitation if it satisfies certain preconditions concerning the length of cohabitation, a shared responsibility for a child, or a demonstrable mutual financial commitment or dependency (*Alþingistiðindi 2000-2001A: 935*). Nevertheless this distinction has considerable implications for the recognition of same sex couples as all legal situations where unregistered cohabitation is recognized it is defined as heterosexual.

The legal fragmentation of cohabitation causes a double discrimination against same-sex couples that do not choose to enter into a registered partnership. Firstly, they have no informal alternative to "matrimony" as heterosexual couples do; secondly, unregistered same-sex couples do not enjoy the same recognition as many unregistered heterosexual couples who may satisfy some of the conditions for entitlements set down in different laws.

Though this may be something of an overstatement, the fact that registered cohabitation remains closed to same-sex couples indicates that legal recognition of same-sex relationships is granted, albeit in a limited way, on the condition that the same-sex couple attempts to mimic the ideal of the heterosexual marriage. Furthermore, as cohabitation is legally fragmented this discrimination is not as apparent and as easily assailable as it would be should a single article of law define cohabitation, as is with both marriage and registered partnerships.

2.4. Recent Developments

After having engaged in unprecedented levels of reform in this policy area in 1996 the legislature lapsed into inactivity. An MP from the Progressive Party⁸⁶ made two attempts to introduce a bill of amendments to the Act on Registered Partnership during the period from 1996- 1999 (*Alþingistiðindi 1996-7A: 835; 1997-8A: 177*). Furthermore a MP from the People's Alliance made a single attempt to introduce a similar bill of amendments (*Alþingistiðindi 1998-9A: 234*). The bills proposed that a same sex stepparent in a registered partnership should

⁸⁵ Married couples and couples in registered partnership are ensured with greater legal rights than heterosexual cohabiting couples in particular in cases of divorces or death of a spouse (Friðriksdóttir, 1994; Eydal and Ólafsson, 2003).

⁸⁶ The bill was signed by MPs from all parties: Ólafur Örn Haraldsson, Einar K. Guðfinnsson, Svavar Gestsson, Össur Skarphéðinsson, Guðný Guðbjörnsdóttir.

have access to secondary adoption.⁸⁷ These amendments were referred to the General Committee in Alþingi where they suffered a fate similar to that of the aforementioned parliamentary resolution from 1985, and were not returned from the committee.

However, in the year 2000 the minister of justice spoke for a governmental bill on amendments to the Act on Registered Partnership allowing a same sex stepparent to adopt his/hers partner's biological child. Furthermore the bill suggested somewhat less requirements on nationality for entering into registered partnerships (*Alþingistiðindi* 1999-2000A: 860). The bill was accepted and the law was changed accordingly (op cit. A: 1240). The provisions for secondary adoption were added to the amendment after a heated debate in parliament in 1999 about the lack of provisions for same-sex couples in the bill on Adoption, which was passed that year.

To date there have been no further reform, but in 2002 the parliament passed a resolution establishing another special committee to investigate possible discriminations that may exist within current legislation and to propose amendments based on the its findings (*Alþingistiðindi* 2001-2002A: 132). The committee finished its report early in 2005. It located different sources of discrimination and proposed that various laws should be updated to correct this. The committee was split on the subject of adoptions and assisted fertilization. Originally the government intended to propose a bill correcting every discrimination except for allowing homosexuals to adopt children and get assisted fertilization. However, after some political maneuvering the government pledged to propose a bill that:

1. Allows homosexuals to register cohabitations.
2. Ensures that registered cohabitations of homosexuals were equal to those of heterosexuals.
3. Grants homosexual access to marriage (though it seems that the issue of homosexuals being to get married in a church will go unresolved).
4. Allows homosexuals to adopt children and have assisted fertilization.

Alþingi was in summer recess at the time of this writing. Thus the bill hasn't been proposed yet so this discussion of its content is by necessity speculative, based on the proclamations of government ministers in the media.

References:

- Björgvinsson, Davíð Þór (1997) Iceland General Principles and Recent Developments in Icelandic Family Law in A. Bainham (Ed.) *The International Survey of Family Law 1995*, Netherlands: The International Society of Family Law pp. 215-236.
- Eydal, Guðný Björk (forthcoming) *Family Policy in Iceland 1944-84* Forthcoming PhD dissertation.
- Eydal, Guðný Björk and Ólafsson, Stefán (2003/in print) *Social and Family Policy The case of Iceland* Third report for the project Welfare Policy and Employment in the Context of Family Change (In print).
- Friðriksdóttir, Hrefna (1994) Lagaleg stada fjölskyldunnar - sífjarettur in Broddadóttir, Ingibjörg (ed) *Fjölskyldan uppspretta lífsgilda* Reykjavík: Landsnefnd um ar fjölskyldunar; Félagsmálaraduneytið
- Friðriksdóttir, Hrefna. (2003). „Leyfilegar og óleyfilega fjölskyldur - Mannréttindi og lagaleg staða samkynhneigðra fjölskyldna” in Rannveig Traustadóttir og Þorvaldur Kristinsson (Eds.) *Samkynhneigðir og fjölskyldulíf*. Reykjavík: Iceland University Press, pp. 47-74.
- Melby, Kari; Rosenbeck, Bente and Carlsson Webberger, Christina (2001) Ekteskapslovereform En forutsetning for velferdsstaten? in *Frihed, lighed og velfærd Rpporter till Det 24. Nordiske Historikermøde 2 Århus*. Jysk Selskab for Historie pp. 191-213.
- Millar, Jane and Warman, Andrea (1996) *Family Obligations in Europe* London: Family Policy Studies Centre.
- Smith, Anne Marie. (1994). *New Right Discourses on Race and Sexuality*. Cambridge University Press, Cambridge.
- Snævarr, Ármann(1983) Um sífjar og sífjarétt in *Úlfjótur* 12 (3), pp. 3-20.
- Therborn, Göran (1993) Politics of Childhood in Castle, Francis, G. (ed.) *Families of Nations-Patterns of Public Policy in Western Democracies*, Adlershot, Brookfield: Dartmouth Publishing Company

Parliamentary documents:

Alþingistiðindi (various years) Reykjavík: Alþingi
 Various laws, accessible online at <http://www.althingi.is>

⁸⁷ A primary adoption is when a couple adopts a child from a third party. Secondary adoption is when stepparents adopt a child which their spouse has custody over. In the case of the former all legal ties with the non-custodial parent are severed. This is not necessarily so in the case of secondary adoption. Furthermore, secondary adoption requires the consent of the non-custodial biological parent.

Annexes

Digoix, Marie; Festy, Patrick & Garnier, Bénédicte.- *What if same-sex couples exist in France after all?*

Festy, Patrick.- *Numbering same-sex couples in censuses and population registers.*

A N N E X E S

What if same-sex couples exist in France after all?

Marie Digoix, Patrick Festy & Bénédicte Garnier*

« En mettant en oeuvre sans examen une pensée d'État, c'est-à-dire les catégories de pensée du sens commun, inculquée par l'action de l'État, les statisticiens d'État contribuent à reproduire la pensée étatisée qui fait partie des conditions du fonctionnement de la famille, cette réalité dite privée d'origine publique. »

Pierre Bourdieu

Population censuses are meant to give a clear representation of the population of a country. They are carried out on more or less regular periods to seize permanencies and evolutions in society on policy purposes.

In France, for the most recent times, the census has been carried out at least once per decade and the last wave took place in 1999.

The census consists on asking persons to fill different forms related to their personal information (Individual form) and the place they live (Dwelling form). Some other data collections are organised around the census but we won't deal with them.

The basic idea of this study is to see whether it's possible or not to identify same-sex cohabitants as same-sex couples from the French census data¹, and specifically from the dwelling form, where people declare themselves to live at the same address.

Collecting information on sexual orientation has never been a problem when nobody ever noticed it was. For years, civil status has been asked for in the censuses and nobody ever wonder that being married for example was to reveal an heterosexual orientation. Since homosexuality has been decriminalised in most of the countries of modern world, sexual orientation is a sensible statistical data since it deals with low figures when it concerns homosexuality.

Statistical institutes, as enforcers of the law, are the best warrants of the confidentiality of sensible data.

¹ Institut national d'études démographiques, France

¹ There has been a previous attempt to make an estimation of same-sex cohabitants and couples from the survey "Etude de l'Histoire Familiale" (The Study of family history) which is linked with the census. The survey had questions on partner that hasn't been recoded (main questions were: do you live in couple? and date of birth of your partner). However, many biases (such as the sex orientation of the wording of questionnaire that doesn't not open the partner to be identify as of same-sex) make the result very uncertain as referred to the authors of the study. (Toulemon, Laurent ; Vitrac, Julie and Cassan, Francine.- *Tentative d'évaluation du nombre de couples homosexuels co-résidents d'après l'enquête EHF*.- Presentation at Ined, groupe EHF, 30 avril 2002.)The Family Survey has been coupled with the population census since 1954, making it one of Insee's oldest sample surveys. It is mainly intended to track the emergence of *new family forms*, through a *retrospective and biographical* questionnaire that reconstructs the demographic history of generations. In the March 1999 population census, 380,000 men and women over 18 (145 000 males and 235 000 females) living in private dwellings filled out an additional schedule on the subject of their "family history," including questions on their origins, children, partnerships, and social history, as well as the languages (both national and regional) customarily spoken in their families.

These data can be gathered through different statistical ways. In the censuses, it can appear in the civil status or in the cohabitation information collected at the dwelling level, for instance.

The case of marriage is irrelevant here since only two countries yet have opened it to same-sex couples. It's different for same-sex couples that chose to live together. This data should be gathered at the dwelling level.

In Canada, partners are explicitly offers the option to identify themselves as "same-sex partners" or "different-sex partners". This choice results from a detailed survey about the topics that prove it to be feasible and even more, needed, from a statistical point of view, as well as from a societal one.

In Australia, New Zealand or in the USA, the partner category is opened to both same-sex and different-sex partners, and the questions on the sex of the individuals make the distinction between the two. The quality of data depends thus from the quality of the sex variable and the will of the people to self-declare their relationship.

In France, the situation is much more ambiguous: the people are not given predefined items to put their answers, but are left free to briefly describe their situation (open-ended question). One could imagine that this intends to seize all the possible cohabiting configurations, leaving to the data-processing phase the need to code and to interpret their say. No. In the final release of the census results, there is no homosexual couples! Having some suspicions about this strange fact (France would have no same-sex couples?), especially confronted with the results of the aforementioned Family history survey conducted at the same time (see note 1), our study tries to track the process of this disappearance and to redefine a possible population from an evaluation of cohabitants.

The dwelling form

The main source of information is the A list of the dwelling form (see Annexe 1) recording all the persons living permanently in the dwelling. The bulletin is self-administered; the answers to the questions are not pre-coded, but the form gives suggestive examples to help the respondents.

The questionnaire presents itself under the form of a table. Entries are:

Family name (*Write in capitals, example: Allard, married name Maurin*)

First name

Family tie or relationship (*with the person named on the first line. Indicate for example: spouse, partner in consensual union (note here that Insee English translation of the bulletin quote "cohabitation partner"), son, daughter, father, mother, grandson, granddaughter, nephew, niece, friend, subtenant, etc.*)

Part reserved for students that are only living in the dwelling on study purposes and having another family dwelling elsewhere.

-If you lodge a student during school year, indicate (on the line referring to her/him) her/his family dwelling address

-If you are yourself a student living here for your studies, indicate below (on the line referring to you) the address of your family dwelling

Eleven lines are offered to fill in. Persons above should only be numbered in a special space. Some other details are mentioned to help the person to fill it.

The filling of the form is left to the person who will take the time to do it.

It is specified under this entry line: "*Write on the first line one of the partner of a couple (and on the second line, the other) or, by default, one of the adults living in the place*".

Thus every person in the dwelling will be related in the form to that first person, that has if possible to be a member of a couple. So, the couple will be at the heart of the coding.

The Individual form

The individual form contains regular information of the respondent. Variables sex, marital status, place, year, month, day of birth, nationality, address, level of education, last

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graduation, situation towards labour, profession, detail information on activities, etc. will be used in this analysis.

I. How Insee deals with sex in census data

We have used the "exploitation au 20e" which corresponds to 5% of the census forms and consists of all the questions ("heavy version").

The sampled data are added to those already captured in the "light version" on a selection of questions and pass through different steps of data capture, coding and rectifications. Different programs are used on all the data to eliminate as much as possible the complex cases at each step. The classification and selection are progressively less and less restrictive so that from a basic file centred exclusively on the married couple and family, one can add more and more individuals to the final base.

Sex variable

Few words on the files already captured in the "light" version are needed to understand the different aspects of the process.

The variable sex is a problem in itself in the census which is very important to be aware of as a lot of corrections made by Insee on other variables are based on the sex variable.

The first data capture from the forms is optically done. When the sex doesn't show on the file, Insee is coding the opposite sex of the previous form. Then it is "redressed" when possible (when married partner is of same sex by example). It is however acknowledged that a percentage of errors remains even after all "rectifications".

From the dwelling form to LPRM (link to the reference person)

From the dwelling form as such that lists all the persons living at the same address to the variables that will identify the links between these persons or more exactly to a person of reference, Insee intervenes few times.

Indications given to the household to rank the persons in the A list do not fulfil all the conditions Insee will put later on the designation of the reference person (PRM) that will be used in the census procedures. Moreover all persons do not actually do what they are prescribed. Thus, Insee will have to modify and interpret list A to define households such as they want to.

What does Insee want? To elaborate a variable that corresponds to the traditional vision of the household such as analysed in the past versions of the census, for the sake of "statistical continuity". It must meet clear and well-known criteria.

Traditionally, the self-declared "head of the household" was the man of the couple but it changed with woman emancipation, participation in labour force, etc. and in 1982, Insee chose to replace the self-declared "head" by "the reference person", chosen by Insee itself out of all the persons in the form, mainly on "comparison purposes"². The so called necessity of change was that characteristics of the reference person are thereafter used to qualify the socio-economics levels of the household, and that it was too important for further analyses to let it choose by the persons themselves.

The composition of the Household: In what case Insee interpret what is written?

The reference person of the dwelling (PRM)

Our analysis will be performed from the relationship in between the dwelling. As previously mentioned, Insee is relating all the persons in the dwelling to a reference person which is not necessarily? the first person self-declared in the list A of the dwelling form. To identify this person is one of the first selection phases of the codification.

² Courson, Jean-Pierre.- "Les ménages n'auront plus de chef".- *Economie et statistiques*, n° 149, novembre 1982, p.47-55.

The household is the whole of individual forms of the same dwelling. The reference person is the oldest active man in a couple (The couple is deducted if the two partners are of different sex and their age gap under 15 years), or in lack of, the oldest active man, the oldest man, and so on.

The first codification from optic capture leads to some Insee interpretations of the dwelling form filled by the respondent, directly from the first treatment. This first step of the dwelling treatment is called the household-family analysis.

In the righting that is performed thereafter, the definitive profile of the reference person is defined as such: *"The reference person is chosen among the whole of men in couples in the household; if there is none, among the adults of single parent family, if there is none, among the persons who are not sub-tenant or accommodated employee. The criteria is to choose the oldest active or, if no active in the dwelling, the oldest."*³

This choice is made out of a codification called L1 and L2.

Household-Family analysis

To choose the reference person, one needs to already know the links between the persons in the dwelling.

The household is the whole of the people who share the same dwelling. They are not necessarily family related.

Three codes (ICM, L1 and L2) are necessary to do the Household-Family analysis which will transform information from the optic data capture (IMAGE) to a data file which will meet the criteria defined by Insee to become a household from the rough self definition from the person in the List A.

To find out where to intervene, Insee has created an ICM code (Indicator of household complexity) similar to the ICME coded in the whole of the census⁴.

Indicator of complexity of the households ICM

Six categories are used. The first five are out of problems. Insee evaluates the dwelling left for coding at this step to 30 %. At the end of the codification, only 5% will remain complex household (code 5). This 5 % should be coded 5 and the links L1 and L2 must be coded.

ICM Codification

0	Empty dwelling
1	Single person
2	Couple without children
3	Couple with children
4	Single parent family
5	Other (more complex dwelling)

A single individual form present in the dwelling is coded 1

The family has three item possibilities

- A couple without children
- A couple with one or more children
- An adult without partner with one or more children (single parent family)

³ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6, Description des traitements de l'exploitation lourde / Insee Description des traitements de l'exploitation lourde.*- Paris : Insee, p.137, our translation.

⁴ From the light version of the census, it already exists an index of complexity code (ICME) that only left complex cases to the new codification process, i.e. non-married families or families different than parent-child families *"Family for ICME is restricted to: A couple is 2 persons with married as marital status, man 18 or more than 18 and woman 15 or over, with a age gap strictly below 14 years The adult of a single-parent family should be 18 or over. A child has strictly less than 18, should be single or undeclared..."*

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"Here, the couples are de facto couples: the partners can be married or live in consensual union. The family tie indicated in the list can be husband, wife, partner but also friend. In this last case, if the context suggests a consensual union, one will retain the existence of a couple (and the L1 link, if must be coded, will be "partner" and not friend). The child of the family core should not have in the household of spouse or a child (it is with him then that it would form another family, of which he would be one of the adult or the adult). The child of a couple can be either the child of one or the other of the two partners. The household can have 0, 1 or more families. Members of the household that are not part of a family are the isolated of the household. When there are several families or at least one isolated in the household, it is necessary to code ICM=5 (complex household) and in this only case, it is also necessary to code L1 and L2 for each Individual form⁵".

The use of ICM is dealing only with complex households. Simple household is from now on composed of either single, either couple with or without child/children and are not concerned by this codification.

The complex household

L1 and L2 are used to identify the links between persons in the complex household (several non related persons, several families or a family and non related persons. Since cohabiting same-sex partners were not classified as a couple, they are rejected in the complex household category).

L1 Link to the first person of A list

"The first person to be coded is the first person in list A. If no Individual form corresponds to this person, another person is chosen, a person more than 15 years old and one should reinterpret the ties of list A and B at the best, following this choice. If A list is not filled, one must chose an adult".

The partner of the first person must be unique and of opposite sex. One should use this item also for obvious consensual union that haven't been declared, the second person on the bulletin having for example quoted "concubine", "marital life", "friend".

For the child (code 3) and grand child (code 4), take only into account the filiation tie with no care for the age, matrimonial status or family situation. The spouse, legal or not, of the child will also be coded child (son in law, daughter in law, stepdaughter, stepson of the first person or of her/his partner, concubine of the child). The partner of the grand child will be coded just the same.

Ascendant (code 5) can be father, mother, stepfather, stepmother, grandfather, grandmother, etc.

Other relative (code 6) can be brother and sister, nephew, niece, brother in law, sister in law, cousin, uncle, aunt, etc.

The child (3), the grand child (4), the ascendant (5) and the other relative (6) can have this tie with the first person or only with his partner.

The friend has no family tie with the first person. One must code 2 (partner). If the context suggests consensual union with the first person and take into account this couple in the ICM.

The lodger or subtenant (code 8) has no family tie with the first person. If it is the case, this tie is prevalent. For example, the nephew paying to live with his uncle will be coded 6.⁶

Here (as in the ICM), the coder must reinterpret "at best". It means that disconnected from the persons, the coder will have to look into the individual forms to establish

⁵ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6, Description des traitements de l'exploitation lourde / Insee Description des traitements de l'exploitation lourde.*- Paris : Insee, p.33, our translation.

⁶ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p 34-35, our translation.

family/relationship ties that are not anymore clearly referring to the person chosen to be the person who filled the original form.

Thus one should note that a couple is only heterosexual, same-sex couples are suppressed but different sex couples that are not declaring themselves as couple are automatically, if identified, coded as a couple. There is no mention of people declaring themselves as partners when of same-sex. If one would in a certainly perverse way point out that some partners, not aware that they couldn't exist as a couple, had filled the form according to their real situation of same-sex couples, what Insee has done? No instruction is given at this stage. We're currently in search of this information⁷. One will however see after, that at the last control before the final product, the remaining couples with the reference person still in this case are coded, "reference person" and "other relative". Nothing can be done at that point to identify the real same sex couples that disappeared in this first codification

L1 codification

1	Reference person of the household;
2	Partner of the reference person;
3	Son, daughter, son-in-law, daughter-in-law, stepdaughter, stepson of the reference person or his partner;
4	Grandson, grand-daughter of the reference person or his partner;
5	Ascendant of reference person or his partner;
6	Other relative of reference person or of his partner;
7	Friend;
8	Lodger or subtenant;
9	Accommodated employee

L2 Family tie

"Blank for isolated individuals in the household

First core family

- 1- *father*
- 2- *mother*
- 3- *child*

Second core family

- 4- *father*
- 5- *mother*
- 6- *child*

Persons coded L2=1 or 4 are not women

Persons coded L2=2 or 5 are not men

Family is couple, couple with child or single parent family

Only two families are coded, the others are blank"⁸.

The codification of family ties is trivial for our purpose as a family is strictly defined by Insee as heterosexual. However, one can observe the same homophobic spirit in the treatment of this variable.

Reference to the sex is strangely evoked when it's mentioned in the instructions for coding that the persons coded fathers should not be women, and that the persons coded mothers should not be men! One wonders exactly what it means? A way of control or just

⁷ It appeared that the only possibility to identify clearly the manipulations done should direct us towards the examination of the Image file in order to access to the non-coded files. This is highly difficult and probability that the authorization will be given very low.

⁸ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p .35.

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precautions? Probably a precaution because the couple without children is transformed into a mother and a father! There anyway, same-sex partners who already couldn't be a couple, have no access to filiation!

In the explanation books produced by Insee, a table designed to help the coding by models is describing the different situation and the codes to impute, among the 10 examples, the one of same-sex partners is not present⁹.

The righting and final control of LPRM (link to the reference person of the household)

A final control is done on variables L1 and L2 before issuing the final variable although already reinterpreted by Insee while coding for the first time.

Though it is particularly difficult to imagine who could have remained classified as same-sex partner of the reference after L1 codification, instructions lead to recode if the partner of reference person is of the same-sex, then the partner is coded "blank". The blank code previously "partner of the reference person" is coded 6, "other relative"¹⁰.

Thus, partners of same-sex are merged to relatives with no possibility to distinguish them. Strangely enough, same-sex partner is not indicated in the codification of L1 as a possible "other relative".

Thus everything is done to control the persons in the couple and makes disappear the self-declared couples of same-sex. Though it was easy to do as such, we assumed that is was not common and that people of the same-sex living as a couple in the same dwelling may have preferred not declaring their relationship. In the second part, we assume that they have declared themselves as friends and we check whether same-sex "friends" look like same-sex partners.

Table 1. Composition of the dwellings in our study

Type	Number of dwellings	Number of persons
1/20 ^e Census	1468748	3179274
People living in « ordinary household »	1445494	3105816
Different sex couple type (lprm=1,2 and 1,2,3+)		
Without students and up to 8 children	668886	1714368
Adults (lprm=1+ lprm=2)		1337772
Children (lprm=3)		376596
Same-sex cohabitation type (sase)		
Friend with or without children (lprm=1,7 and 1,7,3+)		
Sase=Males	2190	4380 (1,7) + 22(3)
Sase=Females	1598	3196 (1,7)+ 150(3)
Friends (lprm=1,7)		
Sase=Males	2172	4344 (1,7)
Sase=Females	1495	2990 (1,7)
Friends and children (lprm=1,7,3+)		
Sase=Males	18	36 (1,7)+ 22(3)
Sase=Females	103	206 (1,7) +150(3)

⁹ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p .36.

¹⁰ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p .135.

Treatments

We are only dealing with the “ordinary” dwellings (persons living in collective households have been withdrawn). The variable used is LPRM.

From both forms, we are working on households composed of the reference person of the household (coded 1) and friend (coded 7). Accessorily, we use child (coded 3) of the reference person.

7 can be either “friend” or “child’s friend” if “friend” is present in the dwelling.

By comparison, we use households composed of a couple, “reference person” and “different-sex partner” of the reference person (coded 2), accessorily child(ren) of the couple (coded 3)

We eliminated: Households composed of 2 students, household of more than 10 persons.

The relationship links such as written by the person who filled the form are recoded to correspond to the reference person which becomes the main person of the dwelling for Insee. Everything is by then coded in function of this person. The reference person is the oldest man, active in the dwelling, etc.

II. Numbering and characterising same-sex cohabitants

In the previously cited Family History Survey (FHS) attached to the French 1999 population census, Francine Cassan, Laurent Toulemon and Julie Vitrac, have concluded after various strict controls that 62 respondents have declared they resided with a person of the same sex in a couple relationship. Given the sampling procedure, it is estimated that the number of same-sex co-resident couples in the total population is about 3000 for men and 2000 for women¹¹.

Such results are small compared to the best source directly dedicated to the topic, the 1992 survey on sexual behaviours in the French population (ACSF)¹². With large margins of uncertainty due to the small size of the sample, it was estimated that the number of co-resident male couples was probably included in the 20000-45000 bracket and that the number of co-resident female couples was between 0 and 9000. It was considered by the persons in charge of the survey that these were minimal estimates, especially for women, due to a likely under-declaration of this type of situation, whatever the precautions taken during fieldwork. Nevertheless, the FHS-based statistics are far below and same-sex couples need to be identified by other procedures.

In the census itself, a number of same-sex couples probably declared themselves as such but they were not retained by Insee. From the previous developments it seems that they were reclassified as duets associating a “reference person” and an “other relative” of the same sex. We are unable to trace them. We can only make an assumption: for instance, that their number and characteristics are close to those of couples who declared themselves as same-sex couples in FHS. That would mean small numbers, far below the ACSF estimate, at least for men.

It also makes likely that a number of same-sex couples dared not declare themselves as partners and preferred to term themselves differently. In Insee categories, it could have been “other relatives” (just like Insee decided for those who had chosen “partners”) or “friends”, or “owner-subtenant” or “employer-servant”. We have various reasons to believe that “friends” was the most frequent choice:

- The last two categories are numerically very small and leave almost no room for hidden partners (there are only some 10,000 same-sex pairs of owners-subtenants in the total population and 2,000 same-sex pairs of employers-servants).

¹¹ Vitrac, Julie.- *Évaluation du nombre de couples homosexuels co-résidents dans EHF [: rapport de vacations]*.- Paris : Ined, janvier 2001, *mimeo.* p.1.

¹² see: Bajos, Nathalie ; Bozon, Michel ; Ferrand, Alexis ; Giami, Alain & Spira, Alfred (eds).- *La sexualité au temps du SIDA*.- Paris : Presses Universitaires de France (Sociologie d'aujourd'hui), 1998.- 494 p.

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- In two-“other relatives” households the proportion of different-sex (36%) is much higher than among two-“friends” households (13%), which looks reasonable if different-sex “other relatives” actually are for instance sister-brother while same-sex are sister-sister or brother-brother, i.e. equally acceptable types of cohabitation for the French society. The hidden same-sex partners should be searched in the excess of same-sex over different-sex households, besides those already reclassified there by Insee. Again, that would leave little room for them.
- By anticipation on the following paragraphs, same-sex “other relatives” are much less in line than same-sex “friends” with what we know on homosexual couples from other sources. That is the case for their over representation in Paris region or at University level of education, clearly evidenced for same-sex “friends” but totally absent for “other relatives”.

Identification of same-sex households

For the rest, we wonder whether adult co-residents of the same sex linked by “friendship” according to census terminology could be the undeclared same-sex couples. To avoid complex cases difficult to understand, we have concentrated on simple households, where two adults lived together, without any extra person other than their children, if any. We also have excluded from the group households where both members were students, as cases of unlikely same-sex couples.

In a first stage, we have identified two-person households including a reference person and a friend of the same sex. We have denominated them same-sex cohabitants without children. In a second stage, we have extended our numbering to adult same-sex cohabitants with children. It was easy to identify such households when the children were those of the reference person; we have numbered them. It was much more difficult to identify households where the children were those of the “friend”, because they were themselves denominated as friends of the reference person, with the same code as their postulated father or mother; we have preferred not to number them. Our guess is that the two types of households with children are approximately in equal numbers and that we have missed half of them.

Since we are not fully convinced that these adults are “couples”, we avoid the word and call them same-sex “cohabitants” (or “co-residents”) and their situation same-sex “co-residence” (or “cohabitation” or even “household”).

Enumeration of same-sex households

Same-sex cohabitations as previously defined in a 1/20 sample extracted from the 1999 French census are 3788. Inflated to the total population size, they would be some 76000.

The number of households with male cohabitants is 44000; that of female cohabitants is 32000. These numbers exclude the self-declared same-sex couples, but we have assumed, right or wrong, that these couples were few at the census. The number of two-male-friends households is as high as the higher estimate of gay couples derived from ACSF; the number of two-female-friends households is much higher than any estimate of lesbian couples from the same source. In the rest of the text, we will refer to the 76000, giving some details on the characteristics of the household or those of the individuals. In most cases, we will contrast the results with those we can gain for the different-sex couples and their children. Basic results on the numbering of households and individuals in the 1/20 sample of the French 1999 results are in table 1.

The objective of the analysis is double: first, to offer a profile of the same-sex cohabitants and measure its specificity; second, to guess from these data whether the same-sex cohabitants fit the ideas or, better, the actual data we may have on same-sex couples, so that we can accept or reject the assumption that a majority of these households are same-sex couples living together in France in 1999.

Some results in a cross-national perspective

Dutch statisticians from Statistics Netherlands (CBS) have used the population registers to identify same-sex couples in the Netherlands. They have constituted a time-series of

estimated numbers and characteristics. We mostly refer to their 2002 results¹³. There are also results to be gained from large surveys: we rely here on the 2000 wave of the Socio-economic Dutch panel. Other countries have also used the census as a basis for the evaluation of the number of same-sex couples, like Canada and the US, but they have relied on much more direct and explicit questions than the attempt we are making for the French census¹⁴.

Compared to different-sex couples, the number of same-sex households in France is 0.6%. It is much higher in the Netherlands: 1.5% according to the registers and 1.2% in the panel survey. It is also higher in the US census (1.0%), but not in the Canadian one (0.5%), where the accuracy of the questionnaire used is probably the best. France is in the lower part of the range.

In France, 15% of the heterosexual couples live in Paris urban unit and 37% in all urban units above 200,000 inhabitants (including Paris); for the same sex households, the proportions are much higher, respectively 30% (Paris) and 57% (>200,000 inhab.) (Table 2). The latter proportions are 1.5 to twice higher than the former. In the Netherlands, 10% of all heterosexual couples live in one of the four biggest towns (Amsterdam, Rotterdam, the Hague and Utrecht), as against some 25% for same-sex couples: 2.5 times as much. In Canada, the proportion of same-sex couples was three times higher in the Census Metropolitan Areas than in the rest of the country. The higher concentration of same-sex cohabitants in the largest towns is marked in the three countries; it is a bit less so in France¹⁵, although the precise comparison is difficult to make.

Table 2. France 1999. Distribution of same-sex and different-sex households by size of urban unit

Size of urban unit	Same sex-households				Different-sex households
	Total	Men	Women	<i>Incl .with children</i>	
Rural commune	16.4	16.0	16.9	16.5	26.8
Urban unit <50,000	14.9	14.3	15.8	25.2	24.3
Urban unit 50,000<100,000	11.5	11.5	11.4	13.6	12.3
Urban unit 200,000<2,000,000	26.9	26.3	27.7	24.3	21.6
Urban unit, Paris	30.3	31.9	28.2	20.4	15.0
Total	100.0	100.0	100.0	100.0	100.0

In France, a majority of same-sex cohabitants are men (58%), a minority women (42%). The sex-ratio is 54 versus 46% in the Netherlands, 51 versus 49% in the US and 55 versus 45% in Canada. Men are always a majority, more clearly in France than elsewhere.

The proportion of households with children is 6% for women and less than 1% for men. If we admit, as suggested above, that we have missed half of the co-residences with

¹³ The sources differ since registers are used instead of census, but the method is not radically different: people living in same-sex households are considered after the persons associated by blood have been put aside (brother-brother, sister-sister, father-son, mother daughter) Steenhof, Liesbeth & Harmsen, Carel .- *Same-sex couples in the Netherlands?*- [Paris : Ined] *Paper presented at the workshop. "Milestones for a cross-national survey research on population, Rome June 30-July 2, 2003"*. 2003.- 11 p.

¹⁴ Turcotte, Pierre; Renaud, Viviane & Cunningham, Ron.- *Same-sex relationships and sexual orientation in Canada : Data, concepts and methodological issues- Paper presented at the 2003 PAA Meeting, Minneapolis, May 2003.*- 32 p.

¹⁵ Results from the very small sample of gay couples in ACSF (compared to different-sex couples) are in line with those of the census, though still less contrasted.

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children, the results are to be doubled, so reaching 12% for women¹⁶. It is below, but not radically so, when compared to the Dutch results (18 percent for the female couples and 1 percent for the male couples) and the Canadian ones (15% and 3%, respectively).

Compared to heterosexual couples, same-sex cohabitants have a higher level of education, which is well in line with other observations in France¹⁷. In heterosexual couples, men and women with university level are 21%; in same-sex households, 36 and 38% respectively (Table 3). In Canada, 19% of men and 16% of women in heterosexual couples had a University degree, as against 33% of men and 35% of women in same-sex couples. Results in the two countries are quite similar.

Table 3. France 1999. Distribution of same-sex cohabitants and different-sex couples by educational level

Educational level	Same sex-households				Different-sex households	
	Total	Men	Women	<i>Incl. with children</i>	Men	Women
Primary school	15.6	15.7	15.4	19.4	24.2	25.4
Secondary school (1 st cycle)	29.7	31.2	27.6	37.4	40.6	36.5
Secondary school (2 nd cycle)	17.6	16.9	18.6	20.4	14.1	17.6
University	37.1	36.2	38.4	22.8	21.1	20.6
Total	100.0	100.0	100.0	100.0	100.0	100.0

Some more results

People in same-sex cohabitation are notably younger than men or women in heterosexual couples. On figure 1, the age pyramids of same-sex cohabitants and different-sex couples are compared. Among men in same-sex co-residence, 27% are younger than 30 years and 43% are older than 40¹⁸; in different-sex couples, the youngest are much less (8%) and the oldest much more (70%). For women, 25% are below 30 years and 52% are above 40 in same-sex co-residence¹⁹, as against 12 and 65% in different-sex couples. Various reasons could be given for the difference: persons of the same sex get earlier in co-residence than heterosexual couples do, or they stay together for a shorter time than couples do, or they represent different forms of living together, which were not popular in the past among now older persons. None of these assumptions, specially the last two ones, sounds totally irrelevant.

¹⁶ Among the couples that declared themselves in the Family History Survey, 16% of the women have children and none of the men.

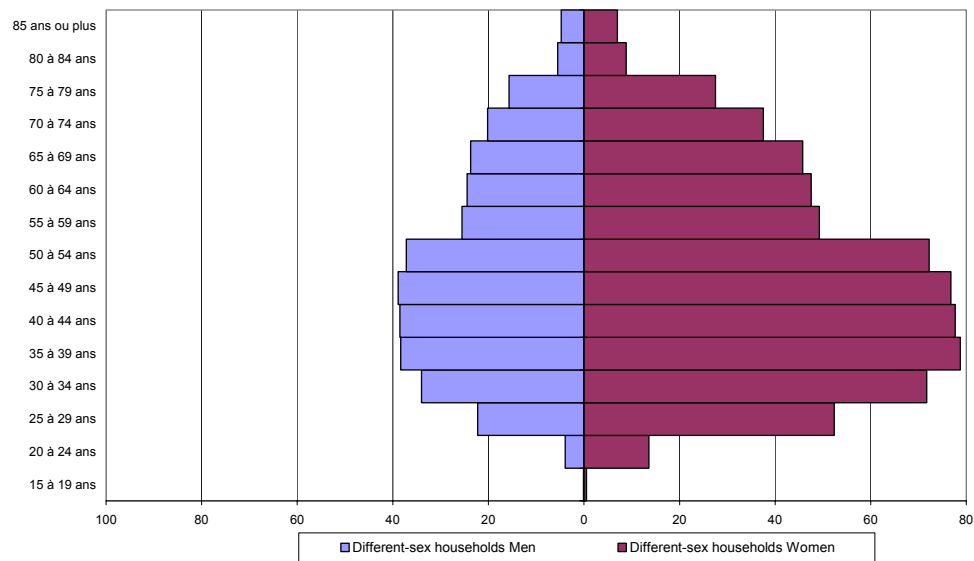
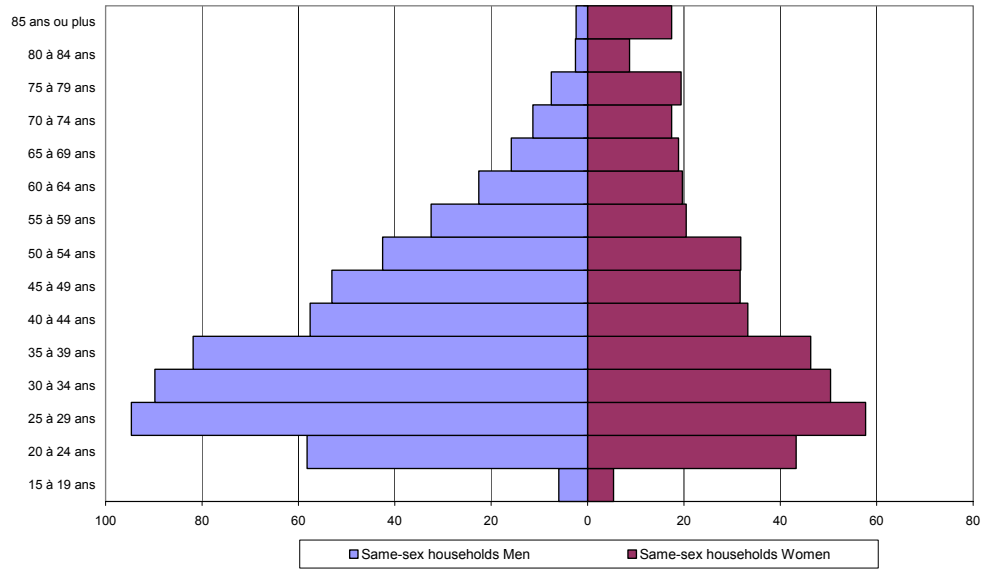
¹⁷ From Press gay surveys, see Pollak, Michael & Schiltz, Marie-Ange.- *Six années d'enquête sur les homo-et bisexuels masculins face au Sida 1985-1990 : livre des données*.- Paris : Groupe de sociologie morale et politique, 1991.- 74 p. ; Schiltz, Marie-Ange.- "Young homosexual itineraries in the context of HIV: Establishing lifestyles".- *Population: An English Selection* vol.10, n°2, 1988, p. 417-446. and Adam, Philippe ; Hauet, Eric & Caron, Caroline.- *Recrudescence des prises de risque et des MST parmi les gays: résultats de l'enquête Presse gay 2000*.- Paris : Ministère de l'emploi et de la solidarité, ANRS, INVS, 2001.- 56 p.

Results from the very small sample of gay couples in ACSF (compared to different-sex couples) are well in line with those of the census.

¹⁸ In the Family History Survey, 36% of men in same-sex couples are below 30 years and 32% above 40.

¹⁹ In the Family History Survey, 25% of women in same-sex couples are below 30 years and 32% above 40.

Figure 1. Age pyramids of same-sex cohabitants and different-sex couples for a total of 1000 persons



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Age gap between the partners in heterosexual couples is limited. In half of the cases, it is not higher than three years; couples with more than eleven years of age difference between them are only 5%. It is quite different between same-sex cohabitants: the median is five years instead of three, but still more spectacular is the fact that 25% of the co-residents have a gap over eleven years instead of 5%. More than a difference in central values - here the median - there is a strong contrast in dispersion, with many more large gaps in same-sex cohabitations than in heterosexual couples. One may question the reality of these large gaps: do they point to relationships between "friends" other than homosexual? Among couples who have registered in Norway and Sweden, substantial age differences are more common in same-sex partnerships than in opposite-sex marriages; in particular one third of male couples have an age gap of 10 years or more, which is well in line with the present French data (Table 4).

Table 4. France 1999. Distribution of age gaps between same-sex cohabitants and different-sex couples

Quantile*	Same sex-households				Different-sex households
	Total	Men	Women	<i>Incl. with children</i>	
95%	30 years	27 years	33 years	48 years	11 years
75% (3 rd quartile)	11 years	11 years	11 years	24 years	5 years
50% (median)	5 years	5 years	5 years	12 years	3 years
25% (1 st quartile)	2 years	2 years	2 years	4 years	1 year
5%	same age	same age	same age	1 year	same age

* Percentage of persons with an age gap below the indicated number of years

Other differences between male and female same-sex cohabitants

The heterosexual pattern, where women in couples are younger than men on average (here 35% of women in heterosexual couples are below 40 years, against only 30% of men) is so common, that we are stricken by the reversed situation among same-sex cohabitants (here 57% of men in same-sex co-residence are below 40, against only 48% of women). Questions similar to those previously raised can be put again: are women older than men when they enter a same-sex household, or do they stay longer in it, or have their co-residences experienced a lower increase in popularity than men's have?

In contrast with differences on age, there are none on age gaps; for men as well as women, the median age gap is relatively high (five years) and the cases of large age gaps are relatively frequent (over 11 years in a quarter of same-sex co-residences).

Table 5. France 1999. Distribution of same-sex cohabitants by marital status

Marital status	Same sex-households		
	Men	Women	<i>Incl. with children</i>
Single	81.0	74.4	51.9
Married	10.4	5.1	14.1
Widowed	1.3	9.6	11.7
Divorced	7.4	10.8	22.3
Total	100.0	100.0	100.0

A large majority of men and women in same-sex cohabitation have never been married, slightly more for men (81%) than women (74%)²⁰. Married persons are rare, though less among men (10%) than women (5%). When due consideration is taken of the age pyramid of the same-sex cohabitants (not evidenced here), a huge over-representation of the single (still more for women than men) and under-representation of the married (*idem*) is confirmed, by comparison with the total population. It is much less spectacular for the widowed and the divorced: only for the latter there is a clear over-representation (more for women than men), but not as important as among single. What we know of registered partnership in some Nordic countries confirms most of these observations, with a heavy weight given to single persons and, at a lesser degree, to the divorced²¹; in Norway and Sweden a fourth of registering lesbians had already been married (i.e. widowed or divorced) and slightly less of gays (Table 5)

Women with children are or have been married more frequently than childless women: 14% instead of 5% are presently married; 34% instead of 20% are widowed or divorced. Differences in age structure are not an explanation, since negligible. These women have been more tightly linked to the "heterosexual world" than women without children.

Conclusions

Data gathered from the census forms are considerably altered by the codification and righting when available to researchers. Traditional conception of the family oriented around the man, head of the family gives few possibility to express the reality of social life such as accepted and visible nowadays,

Insee for comparison purposes with previous census changed only the wording of the questionnaire but not the main idea behind. A lot of codifications and so-called rightings are made to force people to enter in a strictly defined scheme that doesn't include same-sex partnership. Insee even refused to add Pacs as a new category in the next version of the census under the claim that it doesn't alter the civil status that Insee records in its marital status category (this is not by chance it bears this name).

We will remark with Pierre Bourdieu that the State, here represented by Insee, in creating categories excludes people who don't fit to these categories. There is a strong contradiction between allowing same-sex partners to register their union with Pacs and prohibiting them to declare such relationship legally acknowledged in an administrative form. The State duty to at least integrate in the facts what it regulates by law isn't fulfilled and discrimination remains.

Households are complex units that can be described, numbered and characterised only if a meticulous account is taken of existing links between their members. The challenge is the more so difficult in censuses as forms are generally self-administered. Couple relationships are the most important of these links. In the last decades, efforts have been made in the French censuses to put on a par couple relationships whatever their legal status (marriage or *de facto* cohabitation), but restrictions have been maintained that limit the possibility for same-sex cohabiting couples to declare themselves or that reject them from the spouse status during data processing.

The procedures are still obscured by the fact that, for the sake of continuity with past practices, a primacy has been maintained on men as reference persons of the household and has to be restored during data processing, if declarations in the field have not followed this undisclosed rule.

Thus, it is very difficult to identify same-sex couples in the last French census (1999). Those who dared declare themselves as spouses were reclassified as "other relatives"; from the results of the study on French Family History survey, it seems that such couples were few. Others dared not and we have checked whether they could be supposed to have

²⁰ Results from the very small sample of gay couples in ACSF are in line with those of the census: 7 out of 10 are single.

²¹ Noack, Turid ; Fekjær, Harald & Seierstad, Ane.- "Skilsmisser blant lesbiske og homofile partnere - hvem er mest stabile?".- *Samfunnspeilet*, n° 3, 2002, p. 19-27.

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declared themselves and/or have been classified as "friends". Tests have been made on the composition of the group of same-sex cohabiting friends, through comparisons with data in other countries or with characteristics of different-sex couples and through internal analysis by sex and presence of children. Most of the results make sense: the profile of the group could well be that of same-sex couples.

It is much more difficult to firmly conclude that we have identified all the same-sex couples and only them. We have seen that some have been put in the group of "other relatives", while declaring themselves as couples. On the reverse, the fact that the group of same-sex cohabitants looks as if they were couples does not necessarily imply that all of them are so: a large majority is enough for their imprints to be on the group. Consequently, there is a major uncertainty on the true numbers. They could be a few thousands more or less and the hope is that, uncertainties having been guessed in both directions, they compensate for each other.

Whatever the robustness of the conclusion, the best way out of these guesses is the introduction, in census forms and in further data processing, of questions and procedures that open the definition of couples to non-heterosexuals, that respect the declaration of the enumerated persons and that offer them enough guarantees on the confidentiality of their answers for these to be reliable.

References

Adam, Philippe ; Hauet, Eric & Caron, Caroline.- *Recrudescence des prises de risque et des MST parmi les gays : résultats de l'enquête Presse gay 2000*.- Paris : Ministère de l'emploi et de la solidarité, ANRS, INVS, 2001.- 56 p.

Bajos, Nathalie ; Bozon, Michel ; Ferrand, Alexis ; Giami, Alain & Spira, Alfred (Eds).- *La sexualité au temps du SIDA*.- Paris : Presses Universitaires de France (Sociologie d'aujourd'hui), 1998.- 494 p

Bourdieu, Pierre.- "A propos de la famille comme catégorie sociale réalisée".- *Actes de la recherche en sciences sociales*, n° 100, décembre, 1993, p. 32-36.

Bourdieu, Pierre.- "Les rites d'institution".- *Actes de la recherche en sciences sociales*, n° 43, 1982, p. 58-63.

Courson, Jean-Pierre.- "Les ménages n'auront plus de chef".- *Economie et statistiques*, n° 149, novembre 1982, p.47-55.

Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 4, Description des traitements de l'exploitation légère* / Insee Guide d'utilisation du recensement de la population de 1999. Paris : Insee.- 364 p .

Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6, Description des traitements de l'exploitation lourde* / Insee Description des traitements de l'exploitation lourde.- Paris : Insee.- 234 p.

Noack, Turid ; Fekjær, Harald & Seierstad, Ane.- "Skilsmisser blant lesbiske og homofile partnere - hvem er mest stabile?".- *Samfunnsspeilet*, n° 3, 2002, p. 19-27.

Pollak, Michael & Schiltz, Marie-Ange.- *Six années d'enquête sur les homo-et bisexuels masculins face au Sida 1985-1990 : livre des données*.- Paris : Groupe de sociologie morale et politique, 1991.- 74 p.

Schiltz, Marie-Ange. "Young homosexual itineraries in the context of HIV: Establishing lifestyles". *Population: An English Selection* vol.10, n°2, 1988, p. 417-446.

Steenhof, Liesbeth & Harmsen, Carel.- *Same-sex couples in the Netherlands?*- [Paris : Ined], *Paper presented at the workshop. "Milestones for a cross-national survey research on population, Rome June 30-July 2, 2003"*. 2003.- 11 p.

Toulemon, Laurent ; Vitrac, Julie & Cassan, Francine.- *Tentative d'évaluation du nombre de couples homosexuels co-résidents d'après l'enquête EHF*.- Presentation at Ined, groupe EHF, 30 April 2002.

Turcotte, Pierre; Renaud, Viviane & Cunningham, Ron.- *Same-sex relationships and sexual orientation in Canada: Data, concepts and methodological issues*- *Paper presented at the 2003 PAA Meeting, Minneapolis, May 2003*.- 32 p.

Vitrac, Julie.- *Evaluation du nombre de couples homosexuels co-résidents dans EHF [: rapport de vacances]*.- Paris : Ined, janvier 2001, *mimeo*. [22 p.]

Annexe 1

PERSONS LIVING IN THE DWELLING

Each person normally living in the dwelling, even if absent at the time of the census, must be written down either in List A or in List B (see example at the bottom of the page).

Do not forget young children

List A PERMANENT OCCUPANTS OF THE DWELLING	FAMILY NAME Block letters example: ALLARD, married name MAURIN	FIRST NAME	RELATIONSHIP with the person named in the first line. Indicate, for example: spouse, cohabitation partner, son, daughter, father, mother, grandson, daughter in law, nephew, friend, sub-tenant, etc	PART RESERVED FOR STUDENTS LIVING IN THE DWELLING ONLY FOR STUDY PURPOSES AND HAVING THEIR FAMILY RESIDENCE SOMEWHERE ELSE . If you take in a student during the academic year, note below (on the appropriate line), the address of his/her family residence. . If you are yourself a student living here for your studies, note below (on the line concerning you) the address of your family residence
<p>• Write in opposite the people living in the dwelling including yourself and the people absent at the census date</p> <p>(on business or for pleasure, patients on short stay in hospitals or clinics, etc), not including the people finding themselves in one of the situations described in List B below.</p> <p>• Special cases. Write in also: - employees, apprentices, au pair girls accommodated by you;</p> <p>- sub-tenants or paying guests occupying part of your dwelling, except if this is a completely separate part, therefore constituting a separate dwelling.</p> <p>• For each of the people in this list, complete an individual bulletin</p>	Write on the first line one of the members of a couple and on the second line the spouse or if there is no spouse, one of the adults living in the dwelling			
	1 _____			
	2 _____			
	3 _____			
	4 _____			
	5 _____			
	6 _____			
	7 _____			
	8 _____			
	9 _____			
	10 _____			
	11 _____			
				If there are more than 11 people, indicate the number of additional people. . <input type="checkbox"/> <input type="checkbox"/>

List B PERSONS FORMING PART OF YOUR HOUSEHOLD BUT CURRENTLY FINDING THEMSELVES IN ONE OF THE FOLLOWING SITUATIONS:	FAMILY NAME	FIRST NAME	RELATIONSHIP with the person on the first line in List A	DATE OF BIRTH	IS THE PERSON A STUDENT? (Higher education, post-baccalaureate)	NAME AND ADDRESS OF THE ESTABLISHMENT (OR ADDRESS OF THE DWELLING) where the person normally lives
<p>• Write in opposite the people finding themselves in the following situations:</p> <ul style="list-style-type: none"> - Children at boarding school; - Children being looked after by another parent (following a divorce, for example); - Students living elsewhere during the academic year (in a hall of residence, an independent dwelling or a room in town); - those doing compulsory military service - professional members of the Armed Forces serving outside Metropolitan France; - Workers living in a hostel; - Elderly people living in a retirement home or a hospice; - Long-stay hospital patients - People living in other types of "special quarters" but spending part of the year in your dwelling. <p>• Do not complete any individual bulletin for these people: their bulletins will be completed at their normal place of residence.</p>	1 _____				YES <input type="checkbox"/> NO <input type="checkbox"/>	
	2 _____				YES <input type="checkbox"/> NO <input type="checkbox"/>	
	3 _____				YES <input type="checkbox"/> NO <input type="checkbox"/>	

- E The Maurin family live in Saint-Malo, Mr Maurin and his wife
- X have four children only one of whom, Christophe, is present throughout the week.
- E The Maurins rent out a room in the dwelling to a student, Yves Couédec, whose family live in Roscoff.
- M One of the Maurin sons, Laurent, is performing his military service in central France.
- P One of the Maurin daughters, Sophie, lives in a student hall of residence in Paris.
- L The other daughter, Nathalie, is a student at Rennes University, where she rents a room in the town.
- E

Liste A

1 MAURIN	Michel		
2 ALLARD, married name MAURIN	Françoise	Wife	
3 MAURIN	Christophe	Son	
4 COUEDEC	Yves	Sub-tenant	18 rue du Port, ROSCOFF

Four individual bulletins

Liste B

1 MAURIN	Laurent	Son	Born 21/08/76	YES <input type="checkbox"/> NO <input type="checkbox"/>	...
2 MAURIN	Sophie	Daughter	Born 07/04/78	YES <input type="checkbox"/> NO <input type="checkbox"/>	...
3 MAURIN	Nathalie	Daughter	Born 11/12/80	YES <input type="checkbox"/> NO <input type="checkbox"/>	...

no individual bulletin

TEMPORARY INHABITANTS

People who are with you at the time of the census but who normally live elsewhere (family members, friends, etc) must not appear on either of the two lists.

Special case: if a person is absent from his/her domicile for the whole duration of the census operations and if no one can reply on his/her behalf at his/her home:

- draw up his/her individual bulletin (without writing it in one of the lists) mentioning his/her address in the box reserved for this purpose on the bulletin;
- return this bulletin separately to the census agent.

Numbering same-sex couples in censuses and population registers

Patrick Festy (National Institute for Demographic Studies, France)

The US demographers were the first to use the census material in order to number same-sex couples, from the 1990 then the 2000 data. Their experience offers a good way to put on the table different problems to be faced in such an operation.

The census is a heavy statistical procedure to gather information from the whole population. It is plagued by many constraints, but it is nevertheless a must, given the relatively small size of the group to number, even in a very large country like the USA, especially if we want not only an indication on the total number of individuals but also breakdowns on various demographic, geographical, social or economic characteristics (sex, age, location, education, occupation or income). Attempts to use survey data have strong limits due to sample size, even if a compilation is made of multiple waves of data collection.

The importance of being fairly counted by the census rapidly appeared as a challenge for the representatives of the homosexual community, as a matter of principle, but also as a practical and political issue. *"The Census will provide us with a gold mine of information. We will have a statistical picture of same-sex households by racial composition, where they live, and how many children they have,"* said Dr. Lee Badgett, Director of the Institute for Gay and Lesbian Strategic Studies (IGLSS). *"The Census tracks changes in families in the U.S. Our families deserve to be counted so that the full diversity of the American family can be reflected and presented to policy makers."* *"All public policy flows from the U.S. Census,"* explained Paula Ettelbrick, Family Policy Director of the National Gay and Lesbian Task Force Policy Institute (NGLTF). *"If we are not counted, we lose out on federal funding for research, funding for community services and passage and implementation of laws that benefit our community. We also sacrifice important opportunities for more equitable political representation of our community."*¹

The census uses a self-administered questionnaire, which cannot be too long nor too complicated and which, given the official nature of the census, must have been agreed by a large number of public bodies as relevant for our increased knowledge of the population. More simply said, the organisers of the census cannot develop a long set of questions to deal with a specific topic, especially if it is to identify and characterise a very small part of the population.

In the US, no specific question is addressed to the gay and lesbian couples and no specific item of answer is labelled so that such couples could identify themselves, and only them, through it. In fact, some sort of a two-step procedure is used: couples are identified first, then gay and lesbian couples are singled out because they appear to be same-sex couples (two men or two women).

The household form can be used on a 100% basis (the so called short form), with a question on relationship between the householder (the person in whose name the house is owned or rented) and each household member. Relatives are distinguished from non-relatives. Couple

¹ Quotations from the NGLTF website, 'News and Views' section - <http://www.nglftf.org>

relationships are labelled “husband/wife” among the former, “unmarried partner” among the latter². Information on the sex of the householder and of each household member is also needed. It is available from the next question on the same form.

No indication on the census form tells the same-sex couples which box they should check to describe their relationship, but for the US census organisers, when the householder belongs to a cohabiting gay or lesbian couple, he/she should identify the other one as his/her unmarried partner. Both should then check the same box on the sex question. No other solution can be accepted. In particular, since same-sex marriage is not legal in the US, the husband/wife answer is not legally correct nor is any other answer in the list of relatives. In 1990, the Census Bureau rejected almost systematically same-sex couples who had declared to be other than unmarried partners and published an account of homosexual couples on the basis of this unique category.

In 2000, to orientate gay and lesbian couples towards the right answer on the census form, IGLSS and NGLTF, in partnership with the US Census Bureau, promoted "Make Your Family Count", a national public education campaign aimed at encouraging same-sex couples to be counted in the U.S. Census. The campaign urged those living in the same household to mark the Unmarried Partners' option when asked to describe their relationships. The campaign also launched a website, www.WeCount.org, with information about the Census and guidance to gay and lesbian couples on answering the Census forms.

Actual practice proves to be more complex than rules because some people do check a box other than the one they should and others do it too, but not purposely. Gay and lesbian couples may misidentify themselves, if they consider themselves as husbands or wives rather than not related persons or if they choose not to declare themselves as partners and prefer to check the housemate or any other non-relative box. But heterosexual partners can also misidentify themselves, for instance if one of them checks the wrong box on the sex question (or if the information is wrongly keyed during data processing).

The evaluation of the census material relies on the detection, the interpretation and the measurement of these errors. It should result in an improved estimate of the number of same-sex couples, compared to the raw figures extracted from fieldwork before any editing, imputation and adjustment. But beyond the statistical exercise, another evaluation appears in dotted line, that of census actors and of their efforts to make the best results available.

From census to census, but still more from country to country, procedures differ. Forms to collect the information and data processing techniques vary and probably reflect an unequal concern with the numbering of same-sex couples, sometimes clearly identified as a specific category, sometimes ignored as a disturbing element in a long-established nomenclature of family forms. A comparative analysis of practices followed in western countries to number same-sex countries will be used to substantiate assumptions on differential approaches to homosexual issues in the world of statisticians. Three countries will be under scrutiny (Canada, France and the US), with an extension to the Netherlands as an example of use of population registers as a substitute for censuses in countries which no longer have one. At the present stage, technical aspects are given precedence over sociological ones

² Husband/wife is on the top of a rather long list of relatives also including natural-born or adopted son/daughter, stepson/stepdaughter, brother/sister, father/mother, grand child (plus parent-in-law, son-in-law/daughter-in-law in 2000 only) and other relative with a write-in box. Unmarried partner is amid a list of non-relatives at some distance of the previous one, also including roomer, boarder or foster child, housemate or roommate and other non-relative without a write-in box.

The 2001 Canadian census: common-law partners (same-sex)

Up to 2001, the Canadian censuses followed a procedure that was not very different from that in the US: persons in the household were listed, starting from “an adult” (person 1), and relationships were then described between each subsequent individual and person 1. Like in the US, couple relationships could be either “Husband or wife of Person 1” or “Common-law partner of Person 1”. Unlike the US, the list of possible answers was not organised around a distinction between relatives and non relatives and the two couple items were on the top of the list, one behind the other. Another difference: the write-in box was open for any kind of relationship, instead of being limited to the relatives.

In the organisers’ mind, same-sex partners should have identified themselves using a write-in response (instead of the “unmarried partner” box in the US), although the questionnaire contained no explicit instructions for doing so. This information was only available through the Census telephone help line, and through a fact sheet that was distributed to gay and lesbian organisations. Comments received on questionnaires and during the 2001 Census consultation process indicated that many persons in same-sex relationships were not clear on how to respond, or objected to being included in the “Other” category.

In both the 1991 and 1996 Censuses, assessment of data during processing showed that some persons in same-sex relationships attempted to report themselves as common-law partners. In 1996, they were approximately 11,000 couples who did so and declared to be same-sex. However, analysis of the 1991 and 1996 data revealed that many apparent same-sex relationships were actually cases of opposite-sex common-law partners who mistakenly checked the same response on the gender question. Members of the gay and lesbian community expressed dissatisfaction with the failure of censuses to collect and publish data on same-sex couples³.

Preparation of the 2001 census paid much attention to the best wording of questions to elicit unambiguous declarations from same-sex couples. Alternative solutions were envisaged⁴:

- To keep the previous situation where same-sex partners should declare to be so in the write-in box, but to specify it clearly by putting “same-sex partners” among the examples of “Other” relationships to Person 1 on the census form;
- To adopt the US solution where “same-sex partners should report themselves as common-law partners”, and to specify it clearly by putting the very sentence on the census form (which is not the case in the US);
- To insert a new explicit item in the list of possible answers to the question, i.e. “Same-sex partner of Person 1” just after the first two items “Husband or wife of Partner 1”, “Common-law partner of Person 1”.

The third solution was adopted after extensive consultation of the gay and lesbian associations and testing (including qualitative tests with gay and lesbian as well as general population participants). The final formulation for the census made a few amendments. The response items were reworded, so as to put heterosexual and homosexual partnerships in a symmetrical formulation: “Common-law partner (opposite-sex) of Person 1”, “Common-law partner (same-sex) of Person 1”. Moreover, the sequence of questions was reorganised, so that Relationship to person 1 comes after rather than before Sex, Date of birth, Marital status and Is this person living with a common-law partner? This last question, which comes now just before that on Relationship to person 1, is accompanied by the following definition on the

³ Turcotte, Pierre; Renaud, Viviane and Cunningham, Ron.- Same-sex relationships and sexual orientation in Canada: Data, concepts, and methodological issues.- Paper presented at the 2003 PAA Meeting, Minneapolis, May 2003, 32 p.

⁴ Turcotte, Pierre *et alii*, *ibidem*.

census form: “Common-law refers to two people of the opposite sex or of the same sex who live together as a couple but who are not legally married to each other.”⁵

In brief, any effort has been made in the 2001 Canadian census to give the homosexual couples the possibility to identify themselves and to be numbered⁶.

Despite clarification, risks of inconsistency always exist between information on relationship to person 1 and on sex of the two persons concerned. It may happen either because of the respondent(s) who check(s) a wrong item, or because of operators who later process the data. Out of 41,880 couples who had declared to be common-law partners (same-sex), 11,864 were not between individuals of the same sex⁷. Reciprocally, out of 1,100,000 couples who had declared to be common-law partners (opposite-sex), 6,227 were not between individuals of opposite sex.

A sample of inconsistent cases were selected to determine how many of the couples were in fact same-sex or opposite-sex. Questionnaires were examined for given names as well as comments and capture errors that might provide insight into the situation. It was found that the vast majority of cases were valid common-law couples. Of these, a substantial proportion could not be identified as clearly opposite-sex or same-sex due to unfamiliar or ambiguous names and the others turned out to be opposite-sex in an overwhelming majority.

Estimates of person 1 and person 2 in the household
having a same-sex common law relationship

Common-law relationship to 1		Sex of person 1 and 2			Reported couples	Sampled cases ¹	Identified couples among the cases ²		Estimated same-sex couples ³
Same-sex	Opposite-sex	MM or FF	MF	Blank or invalid				Of which, same-sex	
X		X			30,016				30,016
X			X		11,062	647	383	4	116
X				X	802	405	320	127	318
	X	X			6,227	623	406	44	675
X	X				533	325	171	18	56
Total					48,640	2,000	1280	193	31,181

¹ Questionnaires examined for inconsistencies

² Questionnaires where couples and the sex of the partners were identified without ambiguity

³ Inconsistent cases are allocated to same-sex common law relationships in proportion of same-sex couples among the identified cases. The results are only likely averages since the procedure is stochastic, but the confidence interval is small.

Source: 2001 Census of Canada, from

Statistics Canada.- *Families. 2001 Census Technical Report.*- Catalogue N° 92-381-XIE, Electronic publications available at www.statcan.ca, 60 p.

Among actual couples who had declared to be in a same-sex relationship on one hand and to be a male and a female on the other hand, 99% proved to be different-sex and 1% same-sex, i.e. some 11,000 versus some 100 respectively. They are to be compared with 1,100,000 heterosexual couples, 1% of which checked the wrong relationship item, and with 30,000

⁵ In 1996, the definition clearly pointed to heterosexual couples: “Common-law refers to two people who live together as husband and wife but who are not legally married to each other.”

⁶ As in the 2001 Census, the question on household relationships on the 2006 Census will include a response category for the identification of same-sex common-law partners. But same-sex couples may happen now to be married; in this case, same-sex married couples can identify their relationship by providing a written response of "same-sex married spouse" in the write-in field. This possibility is provided on the census forms among the examples illustrating cases of “Other” responses.

⁷ The study reported here is only on persons numbered 1 and 2 on the household list.

homosexual couples, 0.3% of which checked a wrong sex either for person 1 or for the other. Among actual couples who had declared to be in a different-sex relationship on one hand and to be both males or both females on the other hand, 89% proved to be different-sex and 11% same-sex, i.e. more than 5,500 versus some 600 respectively. Heterosexual couples were 0.5% to check a wrong sex; homosexual couples were 2% to check the wrong relationship.

Rates of error differ little between the two groups (0.3 to 0.5% on sex; 1 or 2% on relationship), with two consequences. First, the impact is radically asymmetrical with large numbers of different sex-couples wrongly classified as same-sex and likely to seriously inflate the accountancy of such couples, and tiny numbers of same-sex couples wrongly classified as different-sex, with a marginal influence on these. Second, methods that reallocate inconsistent cases in proportion of consistent ones, so as to correct the raw figures, prove to be efficient with huge numbers of dubious cases reclassified as heterosexual couples and small numbers as homosexual couples.

Before any editing, the number of couples that consistently declared to be same-sex and to be both males or both females was 30,016 and the number of couples with inconsistent answers amounted to 18,624. After allocation of the cases with inconsistencies between the type of common-law partnership and the sex of the partner, the estimated number of same-sex couples raised to 31,181 (+1,165). A majority of re-allocated cases result from errors on relationship to person 1, which was wrongly checked “opposite-sex”, a minority from errors on sex. The result remains much below the raw number of these couples, cited above (41,880), because a large proportion of inconsistencies are due to opposite-sex couples that misclassify themselves.

Other errors are cases of same-sex couples who did not check the right box in the Relationship to Person 1 and who provided a write-in response (“Other”) or who classified themselves as “room-mate” or “husband/wife”. When each case was examined and when all other variables pointed to it being a valid same-sex couple, the total estimated number of these couples was raised once more, but less than previously, to 31,748 (+567)⁸. The surplus is quite limited; it reveals in particular that same-sex couples who, mistakenly or deliberately, declared themselves as married couples were few at census time.

Back to the 1990 and 2000 US censuses: unmarried and married partners

Decisions taken during the process of the 1990 US data went in the same direction as those just evidenced for Canada. Same-sex couples who had checked the “Husband/wife” box were considered as erroneous. Their identification took in consideration the answers also given to the marital status question. When both members were said to be “Married”, they were reclassified as opposite-sex: i.e. sex of one of the spouses was changed. When at least one member was unmarried, the relationship to the householder was changed from “Husband/wife” to another item in proportion of fully declared similar cases. This procedure, while ensuring that no same-sex spouse response could be subsequently allocated, produced a set of allocated responses which could have included an “Unmarried partner” response as well as any other response that was consistent with the age/sex/marital status profile of the respondent. This would include being allocated as a sibling or a relative, for example, or, if the age differences were far enough apart (15 or more years), even a parent or child of the householder. Given the actual numbers of couples and non-couples among the households with two same-sex adults, the probability for declared husbands or wives to be reallocated to unmarried partners was extremely weak. In brief, the 1990 procedure excluded almost

⁸ This is lower than the published number of 34,200, since it only consists of cases where the couple reported in the first two positions on the questionnaire. In many of the cases where there are other persons in the household, the same-sex couple do not occupy the first two positions. The write-in box in the question of Relationship to Person 1 could include answers like Brother/sister’s same-sex partner, Cousin’s same-sex partner, etc.

systematically same-sex persons who had declared to be husbands or wives from the numbering of gay and lesbian couples.⁹ The decision was clearly disapproved by some gay and lesbian associations.

In 2000, the atmosphere had changed, even if an Act of the Congress in 1996 urged “the various administrative bureaus and agencies of the United States [to consider that] the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or wife”. There were several challenges in the courts concerning the legality of same-sex marriages and the Census bureau took into consideration that couples in long term same-sex relationships may consider themselves as ‘married partners’ and thus respond as such on the Census form. Declarations of same-sex couples to be husbands or wives were considered as invalid because of the law, but not as erroneous. They were systematically turned into same-sex unmarried partnerships. The fact that marital status was no longer available in 100% of the census forms, to reallocate these cases along the same lines as ten years earlier, was just a complementary technical argument.

From 1990 to 2000 the number of same-sex couples estimated from censuses jumped from 145,130 to 594,391. The increase can be partly attributed to the change in the procedure adopted by the Census bureau. It is difficult to measure it from the census itself, because it is not possible to trace the individuals back to their initial declaration when this was systematically modified on a logical basis (instead of being allocated in proportion of the “well declared” cases). However, this was possible from the Census 2000 Supplementary Survey, which collected data from 700,000 households, concurrently with the decennial census, through the use of long-form questionnaires comparable to the census ones¹⁰.

The numbered same-sex couples had, in approximately equal proportions, declared to be unmarried and married partners (some 300,000 in each category). But they were at very different risks of being contaminated by different-sex couples who had checked a wrong box on sex, since the married heterosexual couples are more than ten times more numerous than unmarried heterosexual ones (53 versus 4.5 millions). If you assume, like in Canada, that 0.3% of heterosexual couples wrongly declare their sex and appear as homosexual, they will be as many as 159,000 ($= 53,000,000 * 0.003$) among the married same-sex couples and as few as 13,500 ($= 4,500,000 * 0.003$) among the unmarried ones. Reciprocally, if you assume, like in Canada, that 0.5% of homosexual couples wrongly declare their sex and appear as heterosexual, they will be 1,500 ($= 300,000 * 0.005$) missing from the married as well as from the unmarried same-sex couples. In total, the number of homosexual couples who declared to be unmarried is slightly overestimated (4%) and those who declared to be married is outnumbered by more than half.

The 2000 census estimate of same-sex couples should probably be revised downward by 169,500 ($= 159,000 + 13,500 - 1,500 - 1,500$) to 425,000. Two thirds of them would be declared unmarried same-sex couples and one third declared married ones.

⁹ Yax, Laura K.- Technical note on same-sex unmarried partner data from the 1990 and 2000 censuses.- US Census Bureau, Population Division, Fertility & Family Statistics Branch, July 31, 2002, 2 p.

¹⁰ Black, Dan; Gates, Gary; Sanders, Seth; Taylor, Lowell.- Same-sex unmarried partner couples in census 2000: How many are gay and Lesbian.- Working paper, 2002, 21 p.

Estimated number of same-sex couples corrected for miscoding of sex

	Same-sex male couples	Same-sex female couples	Opposite-sex couples
<i>Couples declared as unmarried</i>			
Original numbers	154,750	158,600	4,486,400
Hetero couples with miscoded sex	-6,730	-6,730	+13,460
Homo couples who miscoded sex	+770	+790	-1,560
Corrected numbers	148,790	152,660	4,498,300
<i>Couples declared as married</i>			
Original numbers	179,100	128,950	53,100,000
Hetero couples with miscoded sex	-79,650	-79,650	+159,300
Homo couples who miscoded sex	+900	+640	-1,540
Corrected numbers	100,350	49,940	53,260,000
¹ Estimated as 0.3% of opposite-sex couples that appear as same sex, equally distributed among male and female couples.			
² Estimated as 0.5% of same-sex couples that appear as opposite-sex.			

Source: Census 2000 Supplementary Survey, from Black, Dan; et alii.- Same-sex unmarried partner couples in census 2000, cited.

In the Census 2000 Supplementary Survey, the fraction of same-sex couples that lived with children aged 18 or less was substantially higher for those who declared to be married than unmarried: 32.9% versus 14.3% for male couples, 41.0 versus 28.4% for female couples. Any of these proportions was lower than those recorded among opposite-sex couples: 48% if married and 44% if unmarried. It is likely that these results are affected by the presence of heterosexual couples among the homosexual ones, in unequal proportions for the married and the unmarried partners.¹¹

Assume that these proportions are those displayed in the table above among the married and the unmarried (males as well as females) and that heterosexual couples mixed with homosexual ones have the same behaviour as heterosexual couples in general. A “true” fraction of same-sex couples living with a child can be estimated: it is 21% for married males versus 13 for the unmarried; 30% for married females versus 28 for the unmarried. Contrary to those in the previous paragraph, these differences are not significant, especially for women. This would tend to show that declaration at census as unmarried or married partners came from similar groups of same-sex couples.

The French approach to census data: friends of the same sex

In France, the census has adopted for long a different approach to the collection of information on relationships between the reference person and the other members in the household. Instead of a list of response items that defines the possible answers (plus an “other” category, accompanied or not by a write-in box), the question remains open-ended with a number of suggestions made to the respondent. From the questionnaire, the first person on the household roster is “one of the members of a couple” and the second “the spouse or, if there is no spouse, one of the adults living in the dwelling”; suggested relationships are “spouse, cohabitation partner, son, daughter, father, mother, grandson, daughter in law, nephew, friend, subtenant, etc.” No indication is given concerning same-sex partners but neither the spouse nor the cohabitation partner is said to be opposite-sex. The sex of each household member is given on his/her individual form.

¹¹ Data quoted from Black, Dan; et alii.- Same-sex unmarried partner couples in census 2000, cited

The apparent flexibility offered by the questionnaire is seriously counterbalanced by the coding rules. For instance the reference person of the household is not simply the first one on the list. A strong privilege is given to men, activity and age, beyond the already cited belonging to a couple (*“The reference person is chosen among the whole of men in couples in the household; if there is none, among the adults of single parent family, if there is none, among the persons who are not sub-tenant or accommodated employee. The criteria is to choose the oldest active or, if no active in the dwelling, the oldest.”*¹²) When the person on the first line does not comply with these rules and a new reference person has to be chosen, all the links with the other household members must be reinterpreted.

If the reference person is partnered – and he is likely to be so, given the priority attached to men in couples – the second person to be coded is his partner, whether married or not. However *“the partner of the first person must be unique and of opposite sex.”*¹³ If he/she happens to be of the same-sex, which may be revealed at a later stage by a control on the sex of the individuals, then the partner is re-coded blank. Ultimately, the blank code is re-re-coded “other relative”.

In brief, same-sex couples who have declared themselves as such cannot be found in any partner category (married or unmarried), which is strictly limited to opposite-sex couples. They are to be found with other relatives, together with cousins, uncles/aunts or nephews/nieces of the reference person, and they cannot be distinguished from them¹⁴.

Despite the impossibility to number same-sex couples declared as such at the 1999 census, there are reasons to believe they are few. From a large sample extracted from the census, where the interviewees were asked again their relationship status, the number of estimated same-sex couples has been as low as 10,500 (to be compared for instance with 34,200 in twice less populated Canada)¹⁵. An assumption is that couples have declared another type of relationship, the most likely one being “friends” rather than “other relatives” (just like Insee decided for those who had chosen “partners”), “owner-subtenant” or “employer-servant”. Reasons to believe that “friends” was the most frequent choice are:

- ✓ The last two categories are numerically very small and leave almost no room for hidden partners (there are only some 10,000 same-sex pairs of owners-subtenants in the total population and 2,000 same-sex pairs of employers-servants, instead of 76,000 same-sex pairs of friends).
- ✓ In households of two-“other relatives” the proportion of different-sex (36%) is much higher than among households of two-“friends” (13%), which looks reasonable if different-sex “other relatives” actually are for instance sister-brother while same-sex are sister-sister or brother-brother, i.e. equally acceptable types of cohabitation for the French society¹⁶. The hidden same-sex partners should be searched in the excess of

¹² Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6, Description des traitements de l'exploitation lourde / INSEE Description des traitements de l'exploitation lourde.*- Paris : INSEE, p.137, our translation.

¹³ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p 34, our translation.

¹⁴ Sons/daughters of the reference person or his partner are one category (with sons-in-law/daughters-in-law, stepdaughters/stepsons). Grandsons/grand-daughters of the reference person or his partner are another. So are the ascendants of reference person or his partner (parents, grand-parents). So, same-sex other relatives may be same-sex cousin-cousin, uncle-nephew, aunt-niece, as well as same-sex partners.

¹⁵ Toulemon, Laurent; Vitrac, Julie, Cassan, Francine.- Le difficile comptage des couples homosexuels d'après l'enquête EHF, In: Lefèvre, Cécile et Fillon, Alexandra (sous la direction de).- *Histoires de familles, histoires familiales. Les résultats de l'enquête Famille de 1999*, Les Cahiers de l'Ined n° 156, INED, 2005, p. 589-602.

¹⁶ Due to the weak proportion of different-sex friends, the probability that same-sex friends include persons with miscoded sex is lower than the reciprocal situation.

same-sex over different-sex households, besides those already reclassified there by Insee. Again, that would leave little room for them.

- ✓ Same-sex “other relatives” are much less in line than same-sex “friends” with what we know on homosexual couples from other sources. That is the case for their over representation in Paris region or at University level of education, clearly evidenced for same-sex “friends” but totally absent for “other relatives”.

Reason to believe that same-sex “friends” could homosexual couples is the typical way they differ from heterosexual couples on a number of key characteristics. Two examples are given based on comparisons between France and Canada.

Same-sex friends are over-represented in large urban units (200,000 inhabitants and over) and underrepresented in small urban units (below 50,000 inhabitants) and rural communes, as are same-sex couples in large census metropolitan areas in Canada (500,000 inhabitants and over) and out of census metropolitan areas:

France, 1999			Canada, 2001		
Size	Same-sex friends	Opposite-sex couples	Size	Same-sex couples	Opposite-sex couples
Urban units, 200,000+	57.2	36.6	Census metropolitan areas 500,000+	69.5	38.9
Urban units, 50,000<200,000	11.5	12.3	Census metropolitan areas <500,000	12.1	14.0
Urban units <50,000 & rural communes	31.3	51.1	Out of census metropolitan areas	18.4	47.1
Total	100.0	100.0	Total	100.0	100.0

Sources: 1999 Census for France and 2001 Census for Canada, from

Digoix, Marie; Festy, Patrick & Garnier, Bénédicte.- What if same-sex couples exist in France after all? In: Digoix, Marie & Festy, Patrick (eds).- Same-sex couples, same-sex partnerships & homosexual marriages. A focus on cross-national differentials.- Documents de travail 124, INED, 2004, p. 193-210.

Turcotte, Pierre; et alii.- Same-sex relationships and sexual orientation in Canada, cited.

Same-sex friends are over-represented at university level and underrepresented at primary school level, as are same-sex couples in Canada:

France, 1999					Canada, 2001				
Educational level	Same-sex friends		Opposite-sex couples		Educational level	Same-sex couples		Opposite-sex couples	
	M	F	M	F		M	F	M	F
University	36.2	38.4	21.1	20.6	University with degree	33.4	34.8	18.7	16.5
Secondary school	48.1	45.2	54.7	54.1	Intermediate level	55.7	54.1	53.7	57.2
Primary school	15.7	15.4	24.2	25.4	Less than high school	10.9	11.1	27.6	26.3
Total	100.0	100.0	100.0	100.0	Total	100.0	100.0	100.0	100.0

Sources: See above.

Same-sex couples in censuses: a tentative overview

Numbering same-sex couples by censuses poses two major problems well exemplified by the 1999 French, the 2000 US and the 2001 Canadian censuses. The first lies in the willingness of same-sex (unmarried) couples to declare themselves as such; the second is the unreliability of answers, which may create confusion in the identification of same-sex couples.

In France, the assumption has been made (and has been partly supported) that same-sex partners could have declared to be “friends”. There were 76,000 such cases, to be compared with some 13,400,000 couples (opposite or same-sex, married or not), i.e. 0.6%. Another assumption, also partly supported, is that couples who declared themselves as such were few, probably much fewer than same-sex friends (0.1%??).

Estimated numbers of same-sex couples, in proportion of all couples

	France, 1999	US, 2000	Canada, 2001
Declared as unmarried couple	0.1%??	0.5%	0.5%
Declared as married couple		0.25%	0.01%
Declared as other	0.6%?	??	
Total	??	0.8%+??	0.5%

Sources: see above and text

In the US, the Census Bureau has assumed that same-sex couples had not only declared to be unmarried partners, as they should have, but also husbands or wives. After correction for miscoding on sex, the latter are estimated to be 150,000 (and the former 300,000). Compared to 58,000,000 couples, they were 0.25% (and 0.5%). There is no estimate of same-sex couples who declared to be other than partners, even if signs exist that some did so¹⁷. From various national surveys in the 1990s, Black *et al.* evidence that the total ratio could be about 1.0%¹⁸. In Canada, where the response items had been carefully designed, only a few hundreds of couples had unduly declared to be husbands/wives, or room-mates, or other. Compared to a total of 7,000,000 couples, they were 0.01% (and the whole of same-sex couples, 0.5%).

Only in Canada were errors in declaration or coding carefully analysed. There are errors on sex of individuals and on their relationship. The former probably exist in any census and measurements taken in Canada can tentatively be extended to other countries. The latter may be more specific, due to various designs of the question and of the response items.

¹⁷ Badgett, M. V. Lee and Rogers, Marc A.- Left out of the count: Missing same-sex couples in census 2000.- *IGLSS by the numbers*, The Institute for Gay and Lesbian Strategic Studies, 2003, 14 p.

From (non representative) samples with persons who had filled the questionnaire form, Badgett and Rogers conclude that a large majority of same-sex couples had declared to be unmarried partners. Among those who had not, those who had declared to be roommates were more numerous than those who had chosen husbands/wives. The samples taken from an online poll (42% had read or heard of the ‘unmarried partner’ option) and among participants in the 2000 Millenium March (60%) probably over-represent persons informed by the campaign of information during the census. It may explain the high percentages of those who checked the right box.

At the Census 2000 Dress Rehearsal in 1998, the proportion of same-sex couples who had declared to be married was astonishingly diverse (figures not corrected for miscoding on sex): 3 out of 10 in Sacramento (California) and 7 out of 10 in Columbia (South Carolina). The authors suggested the possible role of the provision for persons in California to have domestic partnership and their greater familiarity with the concept of ‘unmarried partnership’. (Fields, Jason M. and Clark, Charles L.- Unbinding the ties: Edit effects of marital status on same gender couples.- *Population Division Working Paper* n° 34, US Census Bureau, April 1999, 11 p.)

¹⁸ Black, Dan ; Gates, Gary ; Sanders, Seth and Taylor, Lowell.- Demographics of the Gay and Lesbian population in the United States: Evidence from available systematic data sources.- *Demography*, volume 37, n° 2, May 2000, p. 139-154.

In the large group of heterosexual couples, 0.3% wrongly appeared as same-sex because one of the two partners made an error on sex. In the small group of homosexual couples, the frequency of error was 0.5%. The orders of magnitude are in line with measurements taken elsewhere. In Canada, these errors were inconsequential because sex was double-checked: relationship was declared as same- or opposite-sex, and errors on sex revealed inconsistencies to be corrected. It goes differently when relationship makes no distinction and the identification of same-sex and opposite-sex couples relies on sex declaration, as it is the case in the US. It is confirmed here that the consequences may be serious if the same- and opposite-sex groups are highly unbalanced, as it is the case with the married couples.

On relationship to the household reference person, the frequency of errors was higher than on sex (1% in the large group of opposite-sex couples and 2% in the small group of same-sex couples). Part of it can probably be attributed to the format of the list of response items, with “Common-law partners (opposite-sex) of Person 1” and “Common-law partners (same-sex) of Person 1” as two alternative answers very close by distance (one below the other) and very close by wording (only one word different out of eight), in a relatively long list of 13 items. No lesson can probably be inferred on the risk of confusion, say in the US census between the “Husband/wife” and “Unmarried partner” items, highly differentiated in location and wording in the questionnaire (except for the fact that the risk is probably much less than 1 or 2%).

Let us have a look at censuses in the Western world to appreciate their capacity to number same-sex couples. Modern censuses collect information at the household and at the individual level. Most often, the household form contains the information on links between persons; the individual form gets into more details on each enumerated person¹⁹. Information on the sex of the partners is available from another question on the same form in most countries²⁰.

Identifying same-sex couples by a specific response item in answer to the relationship question is replicated in no country other than Canada. The open-ended question to be coded later is equally unique to France. Everywhere, one should adopt a US-type procedure, where same-sex couples are identified by two questions: one on relationship, another one on sex.

Given the risk of error on sex and the huge prevalence of married couples among partners of opposite-sex, it is essential to keep these distinct from unmarried couples. It is not done in Luxembourg and Spain. New Zealand is the more detailed in the content of the item: “partner or de facto, boyfriend or girlfriend”. Might it help attracting answers from same-sex couples? The US are unique in classifying unmarried partnership in the not related category, an option that may orientate same-sex couples to the husband/wife box. Elsewhere in non-European countries, the unrelated category is essentially opened to flatmates. Can its very existence attract answers from same-sex couples?

Some countries have very detailed item answers for family relationships and almost nothing on unrelated household members (Italy and UK). Could these long lists be deterrent for same-sex couples, even if the partner (*convivente* in Italy) box is available for them?

Finally, note that in no country the census form gives same-sex couples any indications on the right check expected from them, despite the development of various other examples, most often attached to the write in boxes.

¹⁹ In New Zealand the information on couples was collected twice in 2001: on the household form, links between the householder and any household member were described; on the individual form, each person was questioned on other household members and links to them.

Belgium in 2001 was an exception on another point. Relatives in the household were not listed by the respondent but by the National Register; only non-relatives were asked about. We will develop later the question of population registers, in countries which, often, have no longer population censuses.

²⁰ Again with the exception of Belgium, but also of France, where the household form only includes the name and first name of the household members and their links to the householder as an open-ended question to be coded during data processing.

Relationship to the householder in the censuses of various countries around 2000

	Australia	Belgium	Canada	France	Ireland	Italy	Luxembourg	New Zealand	Spain	Switzerland	UK	US
The conjugal relationship				Open-ended question								
• Legal and de facto are separate	x	x	x		x	x		x		x	x	x
Number of specified related (other than conjugal)	3	1	7		4	11	3	3	3	3	7	8
Other relatives					x	x	x		x	x	x	x
• + write in					x							x
Number of specified unrelated	1		2					1			2	4
Other unrelated		x			x	x					x	
• + write in												
Other (unspecified)			x		x		x	x	x		x	x
• + write in	x		x					x				
<p>Australia. Unrelated: Unrelated flatmate or co-tenant / Other: e.g. son-in-law, granddaughter, uncle, boarder Belgium. Legal links are documented by the National Register. The census only collects information on de facto relationships (partner, partner's child, other non relative) Canada. Common-law partners are opposite-sex / same-sex. Unrelated: Lodger or boarder; Room-mate / Other: e.g. grandparent, cousin, niece or nephew, lodger's husband or wife, room-mate's daughter or son, employee. France. The relationship is described by the respondent; examples are given: spouse, cohabitation partner, son daughter, father, mother, grandson, daughter in law, nephew, friend, sub-tenant. Ireland. Unrelated (including foster children). Luxembourg. "The spouse of the reference person can also be the partner in a common law union". New Zealand. The household form does not distinguish between legal and de facto partners, but the individual form does (partner or de facto, boyfriend or girlfriend). Unrelated: Flatmate. / Other (e.g. grandchild, visitor on the HH form; grandmother, mother-in-law, partner's father or boarder on the individual form). Switzerland. In the case of a couple, both are household head. Unrelated: Domestic employee; Lodger / Other: e.g. foster child, boarder US. Unrelated: Roomer, boarder; Housemate, roommate; Unmarried partners; Foster child.</p>												

The Dutch population register: answers without questions

In the Netherlands, like in most Northern European countries, population censuses no longer exist and the largest bulk of demographic statistics are extracted from registers, which continuously update information concerning local population, essentially on vital events affecting individuals (birth, death, marriage²¹, registered partnership²², divorce, migration).

Although attached to the individuals, this type of information also reveals links between persons: birth establishes a link between child and parents, marriage between spouses; divorce dissolves links between spouses and so does death of married people, etc. Persons in registers may be linked directly, like parents-children, spouses or registered partners, or indirectly, like brothers/sisters who share the same parent(s). One step further, indirect links may suggest the existence of unregistered relationships between individuals: if a child lives with his/her two unrelated parents, these form an unmarried couple. More subtly, the fact that two unrelated adults moved simultaneously to their present address suggests the existence of a couple.

On the basis of this information, persons living at the same address can be shown to be related and to form a family. Persons with no identifiable family ties (“unattached” persons) need an additional input to be classified as household members²³. Their households can only be constituted after the links between the persons have been imputed: it is the case for some 11% of the Dutch households (about 700,000), which represent some 7% of the population (about 1.1 million persons). Unmarried couples without children are inevitably the group that needs the higher fraction of imputation: close to 50%.

Rules of imputation were extracted from a regression analysis on a sample of addresses where household rosters were collected for the Labour Force Survey (in 2000-2001, 230,000 persons were interviewed). For the case the most numerous (two unattached persons living at the same address), 4,000 addresses were in the sample. These records formed the basis for a logistic regression, in order to identify the variables that determine the probability for two persons living at an address to belong to the same household and to be linked by a steady relationship.

Logistic regression (probability that the two persons do not belong to the same household)

	β	S.E.	Wald	df	Sig.	Exp(β)
Age difference between the 2 persons	.139	.020	46.200	1	.000	1.149
Average age of the 2 persons	.078	.022	13.178	1	.000	1.081
Degree of urbanisation	-.360	.060	35.469	1	.000	.697
Nb of never married persons	1.924	.373	26.560	1	.000	6.849
Age difference* Same-sex	-.049	.013	15.121	1	.000	.952
Average age*Same-sex	-.054	.014	15.661	1	.000	.948
Nb never married*Same-sex	-1.209	.243	24.674	1	.000	.298
Sex of the two persons			102.409	2	.000	
Same-sex (males)	-7.390	.782	89.228	1	.000	.001
Same-sex (females)	-6.533	.799	66.872	1	.000	.001
Constant	2.268	.563	16.252	1	.000	9.662

Source: Steenhof, Liesbeth & Harmsen, Carel.- Same-sex couples in the Netherlands, In: Digoix, Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships & homosexual marriages. A focus on cross-national differentials.*- Documents de travail 124, INED, 2004, p. 233-243.

²¹ Since April 2001, same-sex couples can register their marriage in the same conditions as opposite-sex couples.

²² Since January 1998, same-sex and opposite-sex couples can legalise their union as a “registered partnership” that gives them rights similar to marriage on most points except those of parental relationships to children.

²³ Except, of course, for persons living alone in a housing, who constitute one-person households.

The variables in the regression are age, sex and marital status of the two persons and degree of urbanisation. Combination and interaction of variables are used, like age difference between the two persons, their average age, interaction of these variables by same-sex, etc.

Regression analysis shows the importance of being same-sex for the two persons to belong to the same household and to be linked by a steady relationship. The Dutch case confirms the intuition gained from the French data: that two cohabiting unrelated same-sex persons have a high likeliness to form a couple.

Parameters calculated in the sample of addresses are then applied to the whole of pairs of unattached persons in the municipal registers. They identify stochastically those who are linked and define a unique household and those who are not linked and define two one-person households.

The use of this procedure results in a yearly estimate of the number of same-sex couples. The raw calculation revealing a high number of such couples among young ages, a complementary assumption is made that same-sex students or workers below the age of 30 years who share the same household are not couples.

The number of same-sex couples was estimated as 39,000 in 1995 and 48,000 in 2002, to be compared with respective totals of 3,960,000 and 4,130,000 couples, i.e. fractions of 1.0% and 1.2%. Given the procedure used, it is no surprise that these proportions are in agreement with those observed in national surveys during the same period: e.g. in 1999, the Dutch Socio-Economic Panel conducted with some 5,000 households evidenced that 1.2% of the couples interviewed were same-sex²⁴.

The procedure is radically different from that followed by censuses. Links between cohabiting individuals are not asked though questionnaires filled by the persons themselves, they are documented externally. Documentation includes administrative information recorded in certificates of vital events, but also assumptions based on heterogeneous elements: simultaneous migration to present address or characteristics of sex, age, marital status and location. It is a mix of hard data, common sense and statistical assessment that define a population partly identified for sure, partly measured in probability.

Questions about the reliability of the results cannot be replicated from those posed about census data. The method starts from the undisputable observation that people live at the same address; it then eliminates the case of related persons, who are known for sure (including cases of registered same-sex partners since 1998 and same-sex spouses since 2001); it finally postulates links. Two of these postulates can probably be questioned as being too extensive: if two persons move to the same address on the same date, they are included in the category 'unmarried couples'; if two persons are living together in the same household, it is assumed that they have a steady relationship. They force the statistical institute to correct the data for students and young workers. That brings the total number of same-sex couples down from 60,000 to 48,000, but one may wonder whether it is enough and if other cases exist of two men or two women living together in the same household without forming a couple. It is unfortunately difficult to go further than suspicion, given the opacity of the imputing rules that interfere with the two postulates.

Population registers exist in countries other than the Netherlands and could be used to estimate the number of cohabiting same-sex couples. Belgium and the Nordic countries are examples of population registers that have partly or completely been substituted to censuses for the periodic estimates of population numbers and demographic characteristics. All these registers share with the Dutch one the capacity to link individuals, when formal relationships

²⁴ Information on the procedure and its application to the numbering of same-sex couples is extracted from Steenhof, Liesbeth & Harmsen, Carel.- Same-sex couples in the Netherlands, cited.

are evidenced by vital events that concern them directly or indirectly (child-parents, spouses or registered partners, brothers/sisters, etc.).

However, another basic condition for the register to be used in the numbering of households is that individuals are also characterised by their precise address, i.e. by their location in a well identified housing. This is the case in the Netherlands, but also in Belgium, Denmark and Finland; the list is being extended to Norway, through the insertion of information from the 2001 population and housing census in the register. It is not the case in Iceland and Sweden. None of these countries has produced so far estimates of the number of same-sex couples that challenges the Dutch method.

Conclusion

When small populations (minorities) are to be counted, surveys are not adequate tools because sampling fractions do not leave enough cases for a reliable observation. Censuses or administrative records are much more pertinent sources.

Such sources have constraints because of their very property to cover all the individuals in the population. They cannot be as detailed and flexible on any topic as a survey is. Questions must be few for the forms to be short enough, they must be termed in such a simple manner that people can understand them without external help.

Examples have been given of these technicalities from a few cases. Among a variety of western countries, Canada is the only one that decided to spend one line of its 2001 census questionnaire for a response item specially dedicated to same-sex couples. France saves still more space by leaving the question of relationship between household members “opened”, so that everybody decides of his own formulation, with nothing precoded. The US and all other countries rely on a combination of non-specific items that identify the couple relationship on one hand and the sex of the partners on the other. In no case was any additional space “lost” to explain the respondents what they should do.

In population registers, it is not even possible to put a question to the persons and one must rely on information already collected by administration to exclude people who cannot form a same-sex couple (because they are related by other links) and one must rely on various assumptions to estimate whether the others are same-sex couples.

In no cases does data collection result in a straightforward processing of the number of same-sex couples. Risks of erroneous answers are sometimes considerable, given the small size of the population to measure. Even in the most favourable situation (Canada), the number of couples who wrongly declared to be same-sex was well over the margin of acceptable uncertainty. Decisions of data editing, imputation, etc. must be taken to come closer to reality. But most of them look like black boxes for the vast majority of users and they cast some doubts on the validity of the results. A maximum of transparency is needed.

After the Canadian and the US censuses in the 1990s, gay and lesbian associations had challenged the data issued by the national offices of statistics and had demonstrated their willingness to come to a fair picture of the group of homosexual couples. Their involvement in the preparation and the conduct of the next wave of censuses clearly contributed to an improvement of the results.

In France, there is much more reservation from the homosexual community to enter a battle for an improved knowledge of the number of same-sex couples. When a legal recognition was opened to same-sex couples – together with unmarried opposite-sex couples – through the Pacs (Pacte civil de solidarité), there were voices to refuse any numbering of these acts, in the name of confidentiality and privacy regarding sexual orientation. The initial law forbade this numbering and its later modification has not yet been made effective. In these conditions, it is no surprise if the fact that the 1999 census procedures destroyed any possibility to issue statistics on same-sex couples remained unchallenged by the homosexual community.

After the question of homosexual couples comes that of homosexuals themselves. Could the census ask for sexual orientation in the near future, so as to number gays, lesbians or bisexuals, minority populations which are too roughly assessed by sample surveys? At the time of the 2000 census in the US, the question was put forward by associations. It has also been tackled by statistical offices in some countries (Canada²⁵, New Zealand²⁶).

Answers all point in the same direction and redirect the question to those who introduced it: what for? Jason Fields, from the US Census Bureau terms it this way: *“There are no federal programs tied to being gay or lesbian. That's why we don't ask about it, because the purpose of the census is to help guide how federal funds are distributed. There has to be a legislative need for the information in order for it to be asked.”*

The objection is not valid concerning the numbering of same-sex couples. In most countries up to now, no additional question was needed in the census questionnaire to do it. But the experience proves that a good measure is only obtained if some investment is made, as it was the case in Canada. Fortunately we know today what this investment is needed for. Laws in many countries have opened access to legalisation of these couples and rights attached to it. The least a modern state can do is to know how many couples are in a position to envisage legalisation and to measure the fraction of those who do it.

²⁵ Turcotte, Pierre; et alii.- Same-sex relationships and sexual orientation in Canada, cited.

²⁶ Statistics New Zealand.- Sexual orientation focus group research. A qualitative study.- UMR Research, August 2003, 68 p.