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## Overview of Forms of Joint Legal Parenting Available to Same-Sex Couples in European Countries

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# Overview of Forms of Joint Legal Parenting Available to Same-Sex Couples in European Countries

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In the advancing legal recognition of same-sex partnership, access to forms of parenting are often among the most controversial ones. This overview concerns the four main forms of *joint legal* parenting. Other forms of parenting have been left out of this overview, because of a lack of information regarding many countries.

These other forms, not covered here, include *individual* adoption plus forms of *de facto* parenting (fostering, insemination, surrogacy). The European Court of Human Rights has ruled that the French policy not to allow individual adoption by a gay or lesbian person amounts to a violation of the European Convention on Human Rights (ECHR 22 January 2008, *E.B. v. France*, Application no 43546/02). This ruling also affects other countries that do allow individual adoption. In most countries, however, individual adoption (also when a heterosexual person is involved) does not happen frequently, or is not possible at all.

European countries without any known form of joint legal parenting available to same-sex couples have not been listed in this chart. These other countries can be divided into two groups:

- Countries that do recognise same-sex partnership, but that do not extend this recognition to any form of joint legal parenting: Andorra, Croatia, Czech Republic, Hungary, Luxembourg, Portugal, Slovenia and Switzerland;
- Countries with virtually no legal recognition of same-sex partnership: Ireland, Italy, Liechtenstein, Malta, Poland, Slovakia and the remainder of Eastern and South Eastern Europe.

Depending on the country, the answers given in the chart below apply to married and/or registered and/or cohabiting couples.

This overview is based on:

- Katharina BOELE-WOELKI, Ian CURRY-SUMNER, Miranda JANSEN and Wendy SCHRAMA, *Huwelijk of geregistreerd partnerschap? Evaluatie van de wet openstelling huwelijk en de wet geregistreerd partnerschap* (Deventer: Kluwer, 2007);
- Kees WAALDIJK, *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European Countries* (Paris: INED, 2005; online at <http://hdl.handle.net/1887/12585>);
- Kees WAALDIJK, *Legal recognition of homosexual orientation in the countries of the world. A chronological overview with footnotes* (paper presented at the conference 'The Global Arc of Justice – Sexual Orientation Law Around the World', Los Angeles, 11-14 March 2009; revised version to be published at [www.emmeijers.nl/waaldijk](http://www.emmeijers.nl/waaldijk));
- Various press reports, internet sources, and information from legal experts in several countries.

	When only one partner is the parent of a child, can both same-sex partners have some parental authority or responsibilities during their relationship?	When only one partner is the parent of a child, can the other same-sex partner adopt it and thus become its second parent?	Can same-sex partners jointly adopt a child?	When one partner in a female couple gives birth, can both women become legal parents without having to go through an adoption procedure?
Austria	Yes, but <sup>1</sup>	No	No	No
Belgium	No	Yes	Yes	No
Denmark	No	Yes, but <sup>2</sup>	No <sup>3</sup>	No
Finland	Yes	Yes <sup>4</sup>	No	No
France	Yes	No	No	No
Germany	Yes <sup>5</sup>	Yes	No	No
Iceland	Yes	Yes, but <sup>6</sup>	Yes	Yes <sup>7</sup>
Netherlands	Yes <sup>8</sup>	Yes	Yes <sup>9</sup>	No, but <sup>10</sup>
Norway	Yes, but <sup>11</sup>	Yes, but <sup>12</sup>	Yes <sup>13</sup>	Yes <sup>14</sup>
Spain	No	Yes	Yes	Yes <sup>15</sup>
Sweden	Yes <sup>16</sup>	Yes	Yes	Yes <sup>17</sup>
United Kingdom	Yes	Yes <sup>18</sup>	Yes <sup>19</sup>	Yes <sup>20</sup>

## Notes

1. In Austria, this is only possible if the other parent is dead. However, not only married different-sex stepparents but also unmarried and same-sex stepparents automatically have some social security and employment rights with respect to the child of his or her partner (including health insurance cover, and care leave if the child is sick). Furthermore, under pending legislation they will receive a few more rights (including representation in school matters and concerning day-to-day medical care).
2. In Denmark, second-parent adoption by a same-sex partner is not possible if the first parent has adopted the child from a foreign country.
3. In Denmark, legislation is being prepared to allow same-sex couples to jointly adopt a child.
4. In Finland, the relevant legislation enters into force on 1 September 2009.
5. In Germany, the other (registered) partner has only limited responsibilities (*kleines Sorgerecht*).
6. In Iceland, second-parent adoption by a same-sex partner is not possible if the first parent has adopted the child from a foreign country.
7. In Iceland, since 2006, if the child is the result of medically assisted fertilisation performed within the public health services, and the mother's female (cohabiting or registered) partner has agreed to the treatment, the latter will automatically receive the status of *adoptive* (second) mother of the child.
8. In the Netherlands, any (married, registered or cohabiting) same-sex couple can petition the court to be given joint parental authority and responsibilities over any child of one of them; this is so since 1 January 1998. Furthermore, since 1 January 2002, if two women are married or registered as partners, and a child is born to one of them during their marriage or registered partnership, they automatically obtain joint parental authority and responsibilities.
9. In the Netherlands, the exclusion of same-sex couples from intercountry adoption was lifted on 1 January 2009.
10. In the Netherlands, if the two women are married or registered as partners, they will automatically obtain joint parental authority and responsibilities over the child that is born during their marriage or registered partnership; this is so since 1 January 2002. Currently the government is working out plans to allow the female spouse to become the second parent without having to go to court for an adoption.
11. In Norway, this is only possible if the other parent is dead.
12. In Norway, second-parent adoption by a same-sex partner is not possible if the first parent has adopted the child from a foreign country which does not allow same-sex couples to adopt.
13. In Norway, joint adoption by a same-sex couple is possible since 1 January 2009.
14. In Norway, since 1 January 2009, the mother's female (married, registered or cohabiting) partner will become the second mother of the child, but only if fertilisation has taken place in an approved health-care facility in Norway or abroad, and the female partner has consented to the treatment, and the semen donor's identity is known.
15. In Spain, if the child is the result of medically assisted fertilisation, the female spouse of the mother will become the legal parent, if that spouse has consented to becoming the legal parent.
16. In Sweden, the other partner has only very limited responsibilities.
17. In Sweden, if the child is the result of medically assisted fertilisation performed within the public health services, the female spouse of the mother will become the legal parent.
18. In Scotland, legislation allowing such adoption is expected to enter into force in September 2009. In England and Wales such legislation is in force since 30 December 2005. In Northern Ireland, there is no such legislation yet, but it may be possible under case law.
19. *Idem*.
20. In the United Kingdom (except Northern Ireland), since 6 April 2009, if the child is the result of medically assisted fertilisation, the female partner of the mother will become the second legal parent.

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