



Name of Country and Jurisdiction:

Austria

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to Austria, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to Austria for an authority to grant a divorce/ dissolution?



1. What forms of legally recognized relationships are available?



LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	Austria	Austrian Marriage Act (<i>Ehegesetz</i>) 1938	No

The Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*), published in Austria's *Federal Law Gazette (Bundesgesetzblatt)*, Volume I, Number 135/2009, made registered partnerships available exclusively to same-sex couples as of January 1, 2010. However, the relationship provides limited rights and is legally inferior to marriage in several ways.

Also, while couples in registered partnerships have had the same adoption rights as opposite-sex couples since January 1, 2016, in accordance with the Austrian Constitutional Court's decision that the country's adoption restrictions for same-sex couples were unconstitutional, the applicable law was never changed. Instead, Austria's Justice Minister announced that the law banning adoption by same-sex couples would no longer be enforced.

Q

2. What are the requirements to be able to enter into the above relationships?

A

(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Registered partnership	Austrian law does not require a period of residence in Austria prior to the contracting of a registered partnership.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Registered partnership	<ul style="list-style-type: none"> • A minimum of two witnesses is legally required. <ul style="list-style-type: none"> - Both parties in the partnership must go before a registrar and state their wish to enter into a registered partnership. - Parties can choose to have one, two, or no witnesses present before the registrar. • Both parties must be at least 18 years of age, or if one party is at least 18 and the other is 16 or 17, each party must have parental consent.

Q

3. If both marriage and civil unions exist:

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

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(a)–(c)	Not applicable; same-sex marriage is not recognized in Austria.
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Q 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Registered partnership	Applicants for a registered partnership must be single or provide proof of the dissolution of any prior marriage or registered partnership.

Q 5. When a couple comes to Austria, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> Foreign same-sex marriages or other relationships are recognized and treated as registered partnerships in Austria.
Registered partnership	<ul style="list-style-type: none"> Couples who seek to enter into civil unions or have their foreign civil unions recognized must register their unions at the municipal office or the magistrate's office.

Q 6. How can each form of relationship be dissolved? What is the residency requirement or other link to Austria for an authority to grant a divorce/ dissolution?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Registered partnership	A registered partnership may be dissolved if the partners have been separated for more than three years.

Sources:

Primary

- Austrian Marriage Act (*Ehegesetz*), available at <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001871>.
- Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*), available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006586>.

Secondary

- Marriage Equality USA, *International Laws—Europe*: http://www.marriageequality.org/international_laws_europe.
- Austrian Embassy Canberra, *Marriage in Austria*: <http://www.bmeia.gv.at/en/embassy/canberra/practical-advice/travelling-to-austria/marriage-in-austria.html>.

continued on next page



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- Prof. Marianne Roth, *Grounds for Divorce and Maintenance Between Former Spouses—Austria* (September 2002): <http://ceflonline.net/wp-content/uploads/Austria-Divorce.pdf>.
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- DERSTANDARD.AT, *Homosexuelle dürfen künftig adoptieren—ohne Gesetzesnovelle (Homosexuals may now adopt without amendment)* (Oct. 30, 2015), <http://derstandard.at/2000024807861/Homosexuelle-duerfen-kuenftig-adoptieren-ohne-Gesetzesnovelle>.