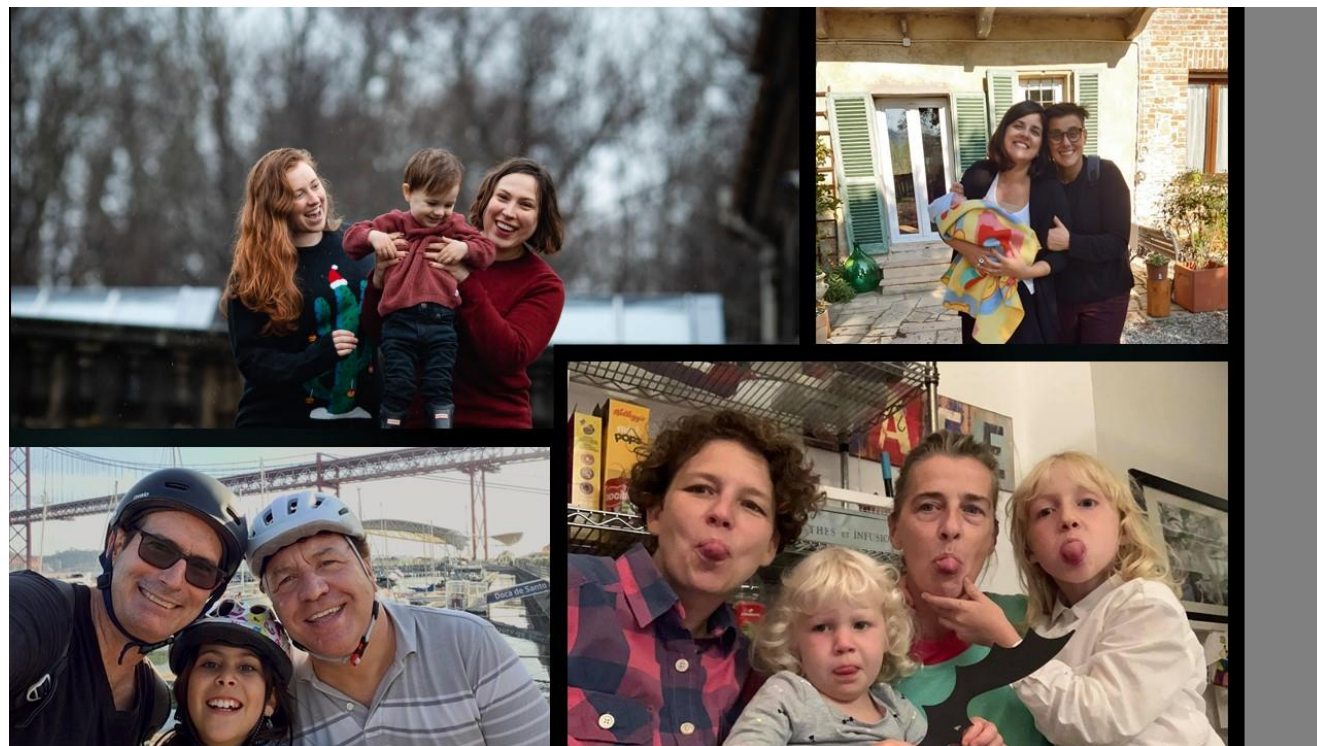




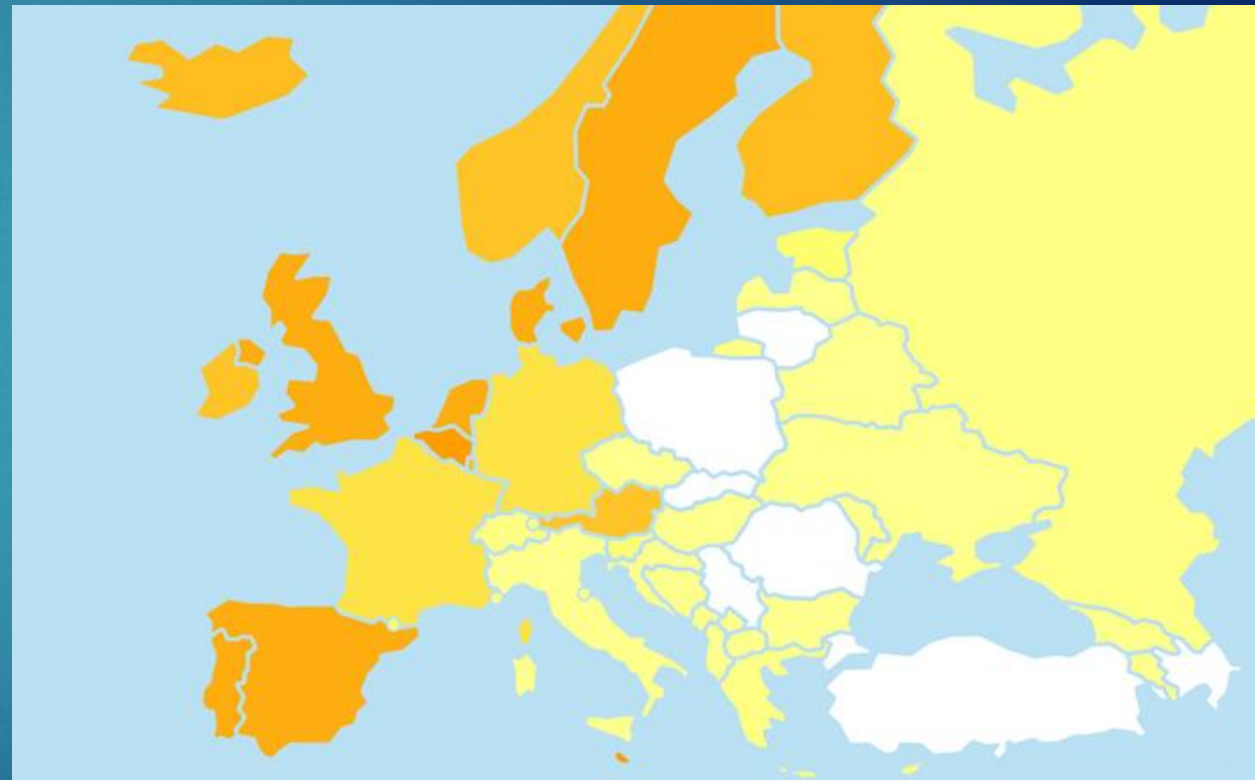
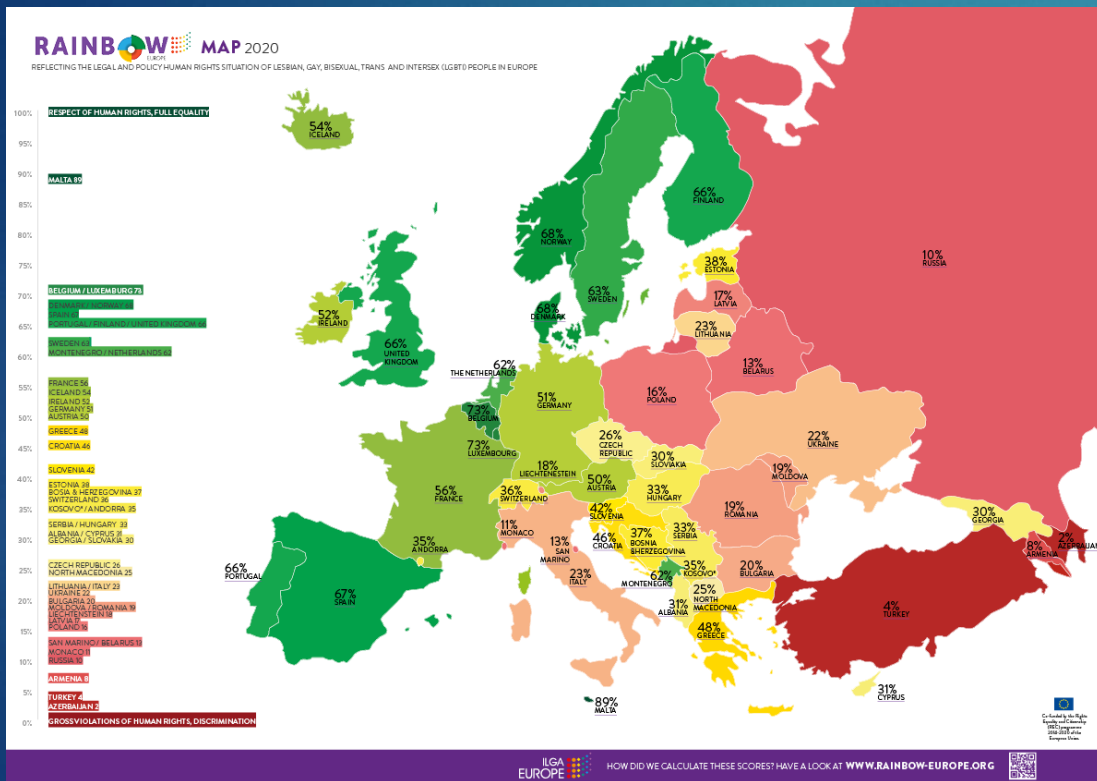
Rainbow Families and their freedom of movement within the EU

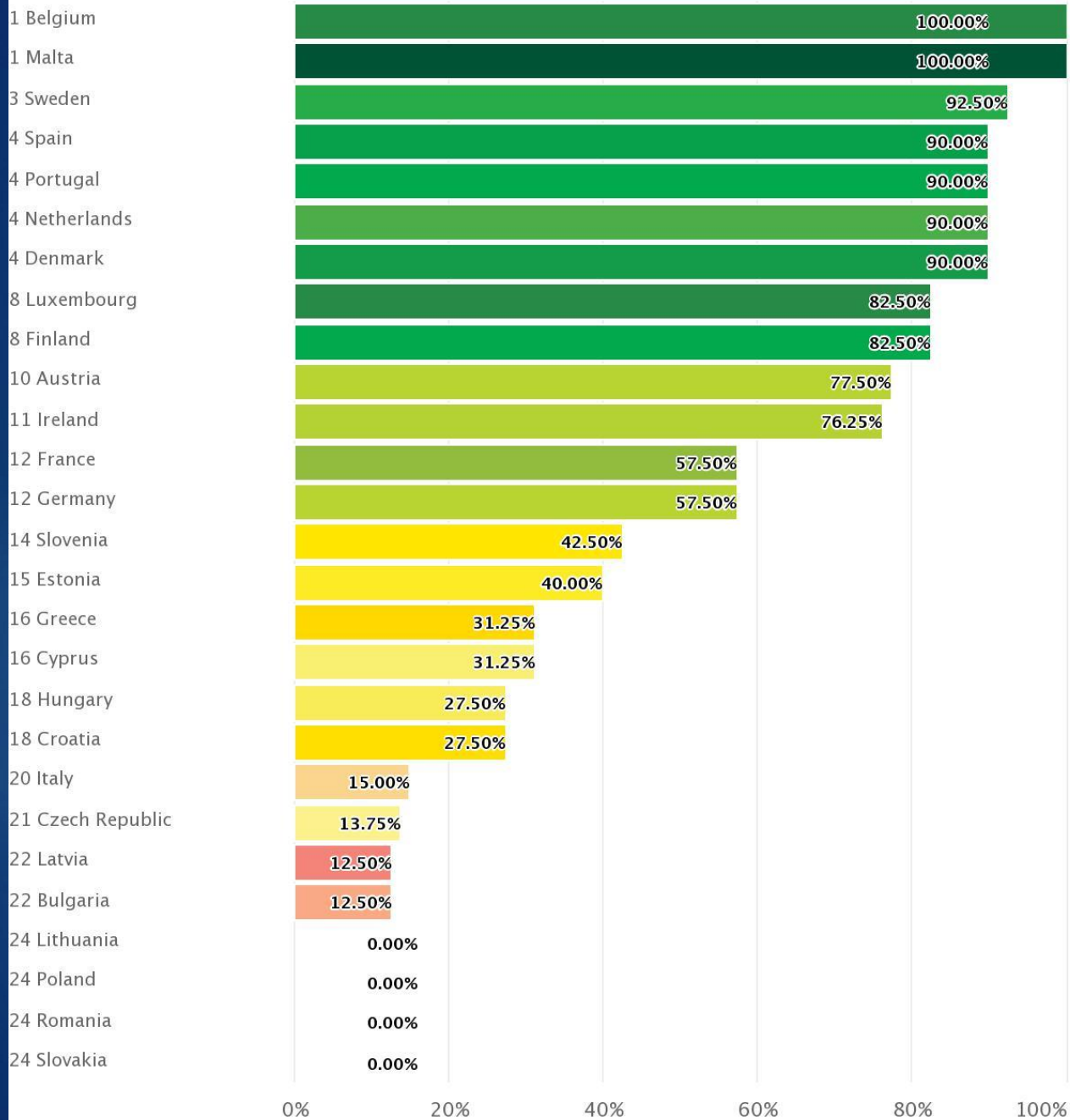


WHAT ARE THE PROBLEMS?



100





KEY FACTS

Rainbow Map 2020 (ILGA) –
Family Rights Country Ranking

STATELESSNESS...

Children are at risk to remain stateless in EU cross-border situations because of the non-recognition of their parent's legal relationships

Two cases are currently discussed at the European Court of Justice.

Both same-sex couples (Bulgarian/Gibraltese [UK] and Irish/Polish) became parents in Spain. To obtain citizenship for their child they need to register abroad. But, their home countries don't accept birth certificates stating two mothers (like the Spanish one does...)

The General Advocate's opinion was issued on 15th of April 2021...



“

She notes that the right to freedom of movement in the European Union includes the right to lead a normal family life in both the host Member State and the Member State of origin of an EU citizen. In the present case, V.M.A. and her wife validly acquired the status of parents of the child pursuant to Spanish law and they lead an effective family life with their daughter in Spain. The absence of recognition of those family relationships would, however, create serious obstacles to a family life in Bulgaria, even to the point of deterring V.M.A. from returning to her country of origin.

”

EUROPEAN COURT OF JUSTICE, ADVOCATE GENERAL JULIA KOKOTT

Bulgaria must issue the child (if a Bulgarian national) with an identity or travel document referring to both parents (on order to travel with both parents)...



“ By contrast, Bulgaria may, by invoking national identity, justify the refusal to recognise the parentage of the child, as established in the Spanish birth certificate, for the purpose of drawing up a birth certificate determining the parentage of that child within the meaning of domestic family law. ”

EUROPEAN COURT OF JUSTICE, ADVOCATE GENERAL JULIA KOKOTT

LOSS OF LEGAL TIES...

The non-recognition of birth certificates means that children can lose a parent, at least on the paper and with all legal consequences.

A Danish (non-biological) mother lost her son for ever. Recognised as a mother in Denmark, she pays alimony for her son. But, she can't see him anymore, because in Bulgaria, she was erased from the relevant documents. Co-motherhood would contradict the „public order“ of the country...

A lot of countries don't accept existing legal ties, but try to re-establish them in their own systems, for example via stepchild adoption. However, the indirect recognition takes time and put families in legal limbo. Also between countries like Sweden-Spain or Belgium-Germany.



NON-RECOGNITION OF CIVIL STATUS OR DOWNGRADE...

Many EU countries don't recognise civil unions contracted abroad and even for same-sex marriages, the recognition remains difficult (after the Coman judgment in June 2018).

Even if countries grant residence rights, this doesn't mean automatically to be treated as „married“ or in a „registered partnership“. Couples might lose benefits (tax, health insurance etc.).

A lot of EU countries just „downgrade“ same-sex marriages into civil unions. In the case of Czechia this means the loss of 105 legal provision – incl. parenting rights!



BUREAUCRACY...

Rainbow families need time to be recognised in (possible) host Member States... These two gay couples and their children from UK/Scotland struggle to get their documents in France since a couple of years.

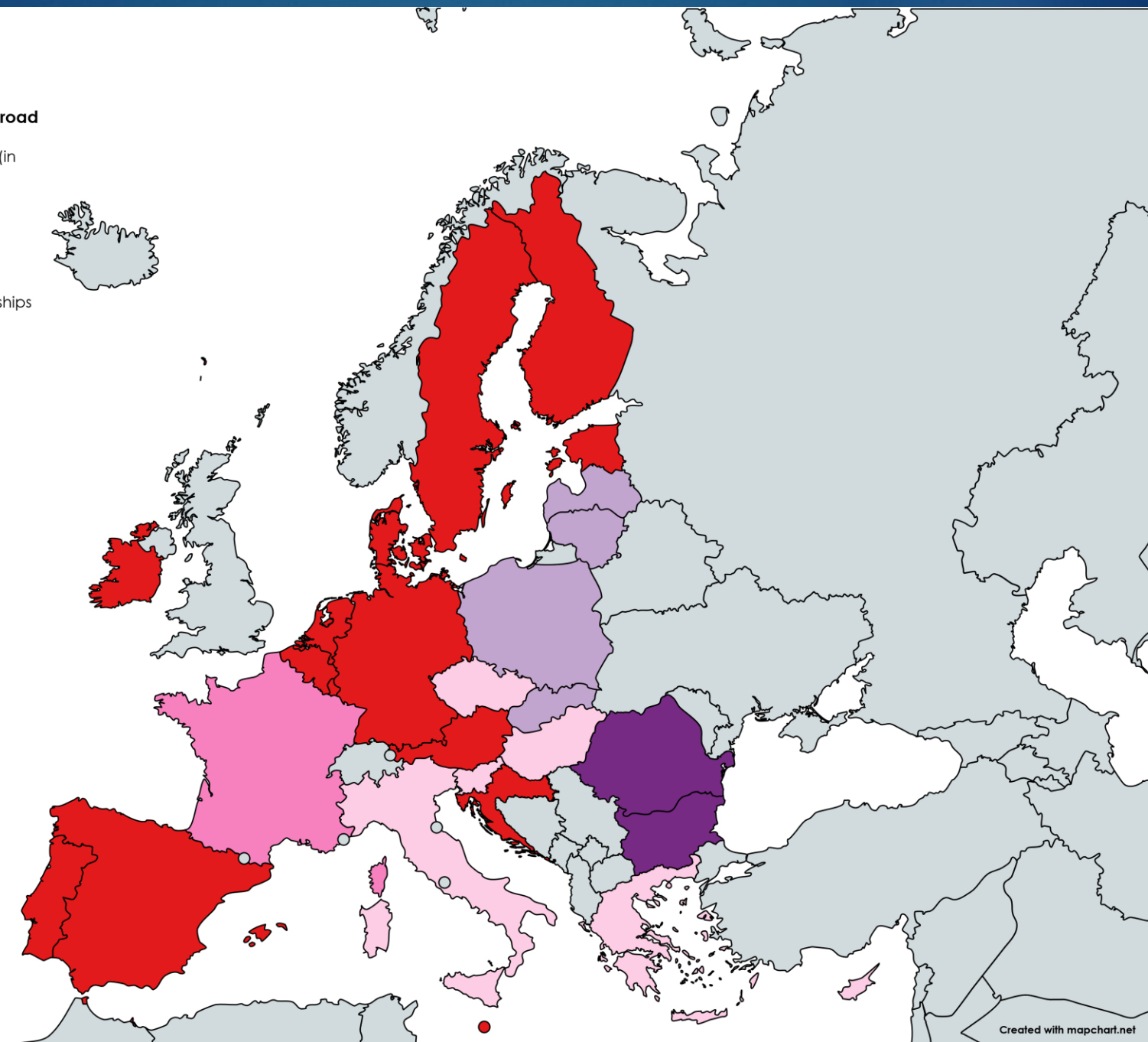
At first, their UK marriages were not accepted due to wedding provisions (they were told to get divorced and to remarry again). This is now solved, but cost (money for the lawyer).

Still unsolved – after years – is the status of their adopted children. The Scottish couple was just asked to provide a paper proving that the birth parents have lost guardianship (this does not exist...). The adoption document itself was not enough.



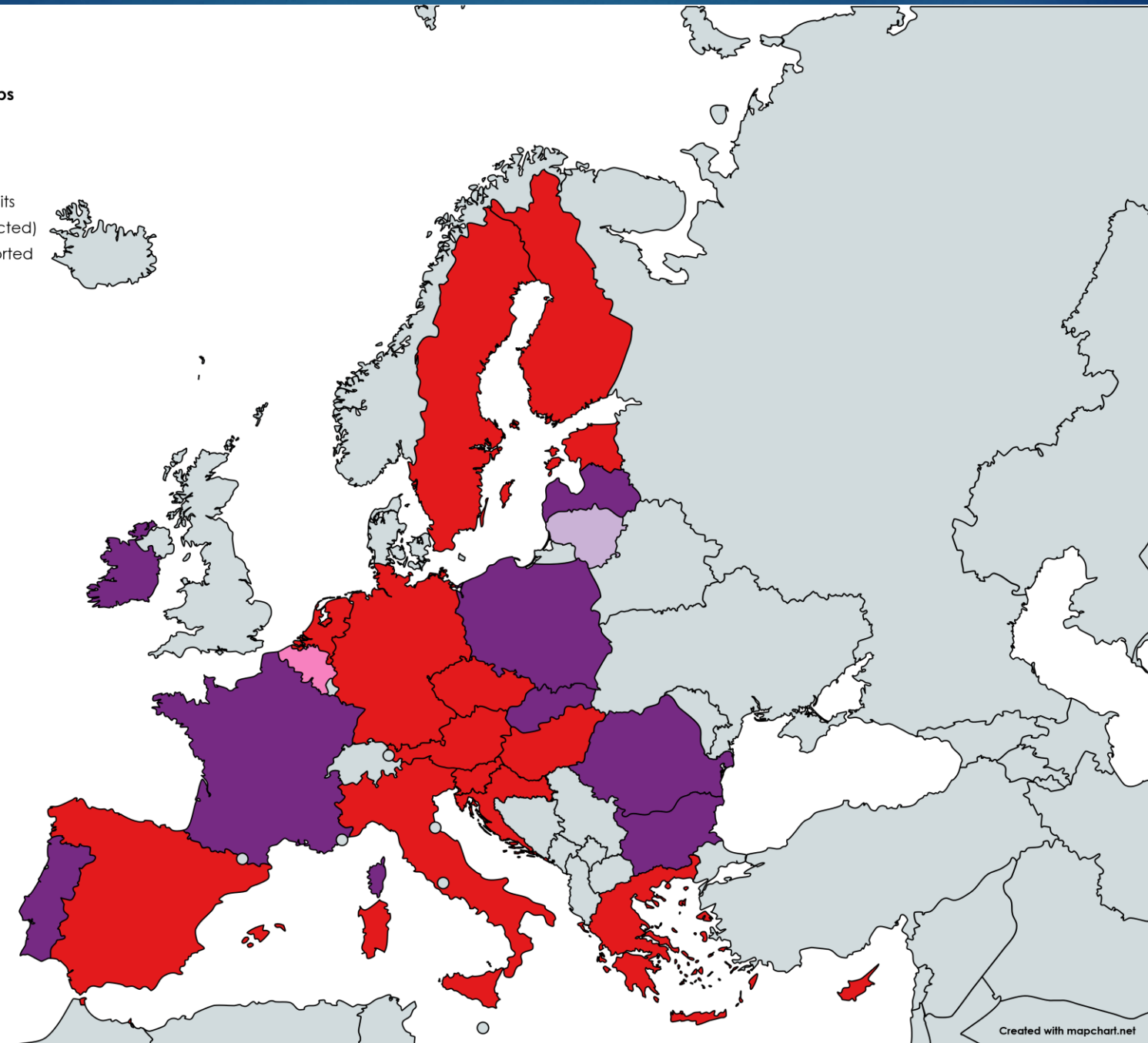
Recognition of same-sex marriages contracted abroad

- Residence permit only (in theory)
- Obstacles reported
- Full recognition of marriages
- Obstacles reported
- Downgrade to partnerships



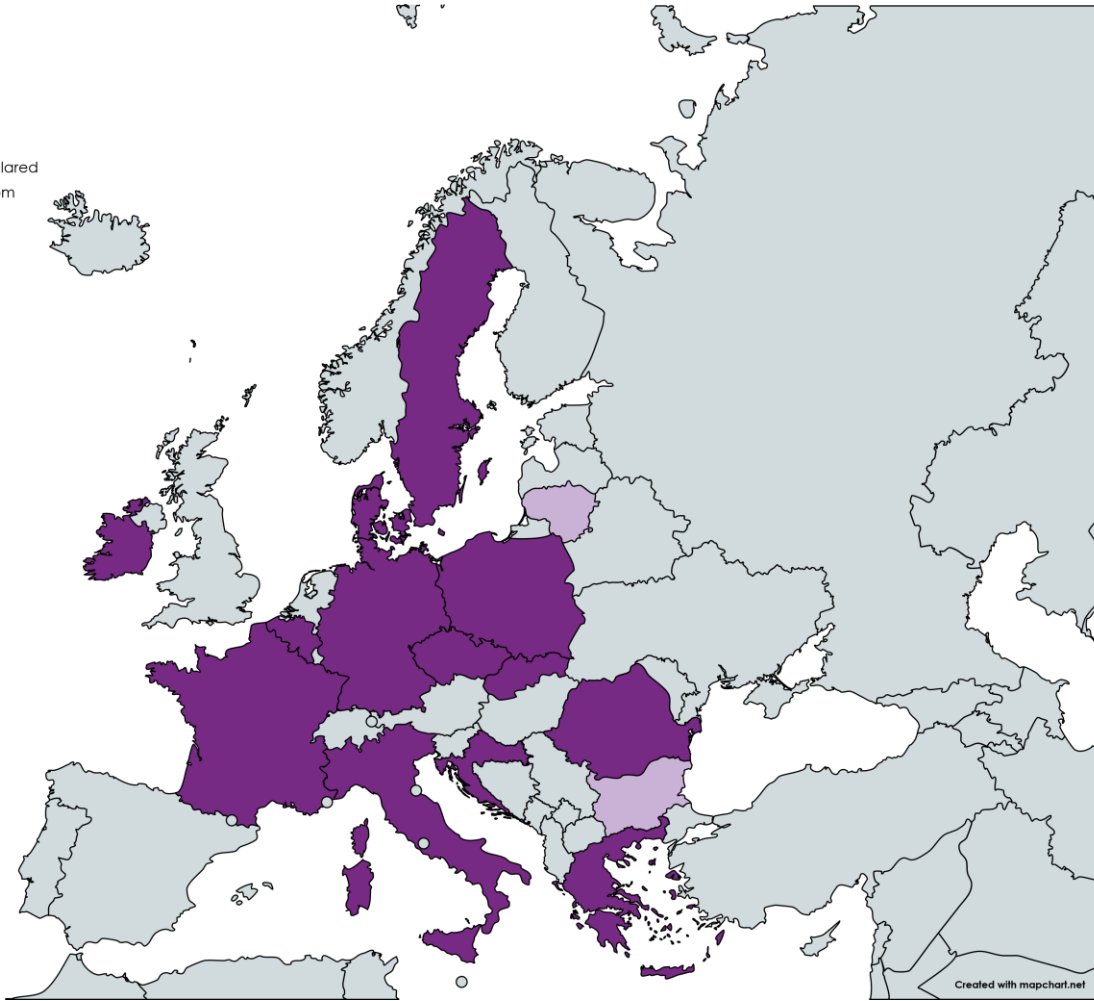
**Recognition of partnerships
contracted abroad**

- No (only "durable relationship")
- Yes, for residence permits
- Yes (no problems expected)
- Yes - but problems reported



Recognition of rainbow
families in cross-border
situations

- Problems reported/declared
- Problems expected (from answers)



Free movement...

CHILDREN MIGHT LOSE ESSENTIAL LEGAL TIES TO AT LEAST ONE OF THEIR PARENTS (TIES THAT WERE ALREADY ESTABLISHED ELSEWHERE...) JUST BY CROSSING A BORDER: ADOPTION AND BIRTH CERTIFICATES ARE NOT RECOGNISED – WITH ALL LEGAL CONSEQUENCES (...)

IN THE MAJORITY OF EU COUNTRIES, CHILDREN IN LGBTIQ* FAMILIES ARE DEPRIVED OF THEIR RIGHTS, BECAUSE THEIR FREE MOVEMENT IS INFRINGED.



WHAT ARE THE SOLUTIONS?



LGBTIQ* EQUALITY STRATEGY 2020-2025

- Review of the 2009 guidelines on free movement (diversity of families)
- **Horizontal legislative initiative on the mutual recognition of parenthood**
- Explore measures to support the mutual recognition of partnerships
- Make funding opportunities available

NOTE: mutual recognition of rainbow families is also mentioned in the new Commissions Strategy on the Rights of the Child, adopted in March 2021!

Recommendations in this recent [study](#)!



HARMONISATION...

- Raising awareness of the existing problems, legal hurdles and possible solutions
- Occasions for Member States to discuss those questions (best practice: Perm.Rep.-Meeting in Brussels in November 2019)
- Debates on the child's best interests (recognition of familial ties in ART: anonymous-known donor concepts, recognition of foreign surrogacy arrangements [existing approaches: Council of Europe resolutions and reports])
- A possibility for (older) children to speak up
- A general deconstruction of prejudices regarding LGBTIQ* parenthood. Rainbow families are not a "threat to society" (...)

Support of STRATEGIC LITIGATION and the IMPLEMENTATION OF COURT DECISIONS!



Thank you for your attention!

NELFA

... IS THE EUROPEAN PLATFORM OF LGBTIQ* FAMILIES ASSOCIATIONS, BRINGING TOGETHER LGBTIQ* PARENTS AND PARENTS-TO-BE FROM ALL OVER EUROPE. NELFA CURRENTLY REPRESENTS 42 ORGANISATIONS IN 33 EUROPEAN COUNTRIES WITH MORE THAN 20,000 MEMBERS. NELFA IS A MEMBER OF ILGA-EUROPE, TRANSGENDER EUROPE AND COFACE FAMILIES EUROPE. WEBSITE: [HTTP://WWW.NELFA.ORG](http://www.nelfa.org). LEAFLET: [HTTPS://BIT.LY/2PST8KP](https://bit.ly/2PST8KP). NEWSLETTER: [HTTP://BIT.LY/2FCN5C5](http://bit.ly/2FCN5C5).

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