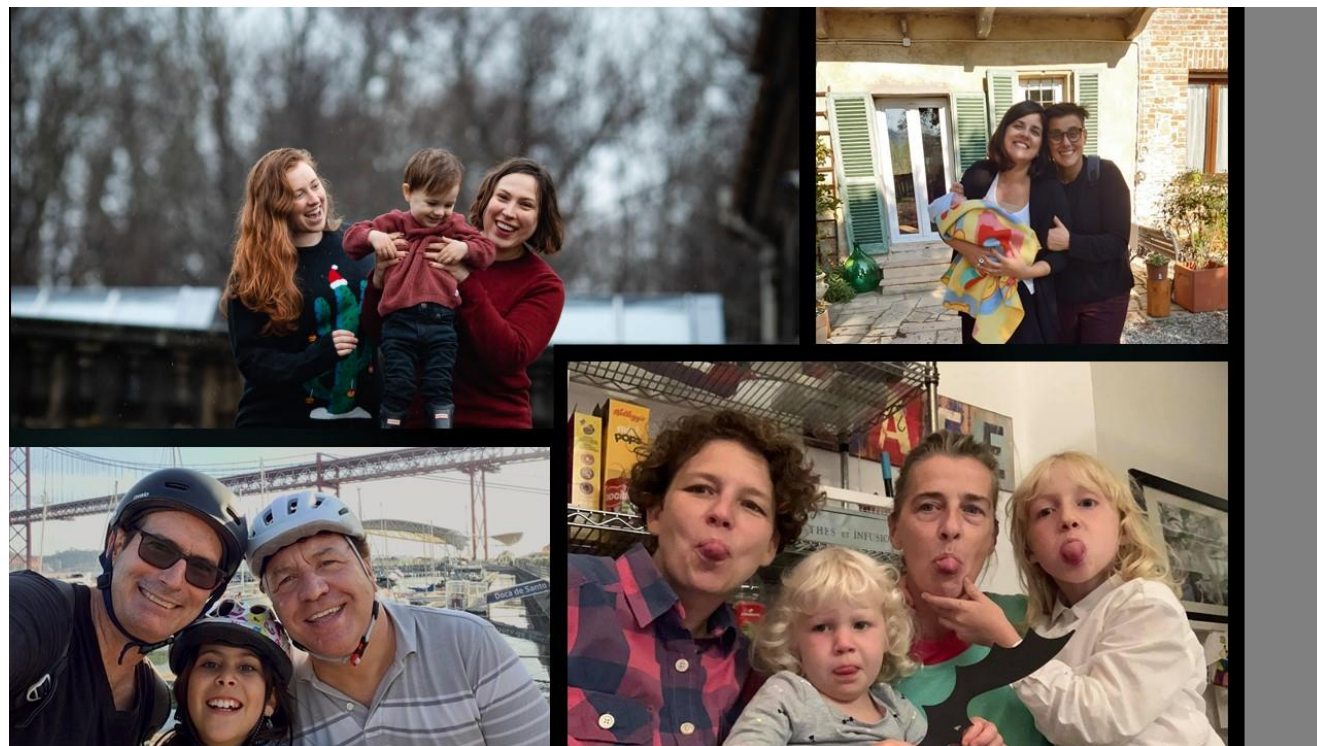




Rainbow Families in Europe

Children's Rights at Stake



WHAT IS NELFA?

SON NUESTROS HIJOS

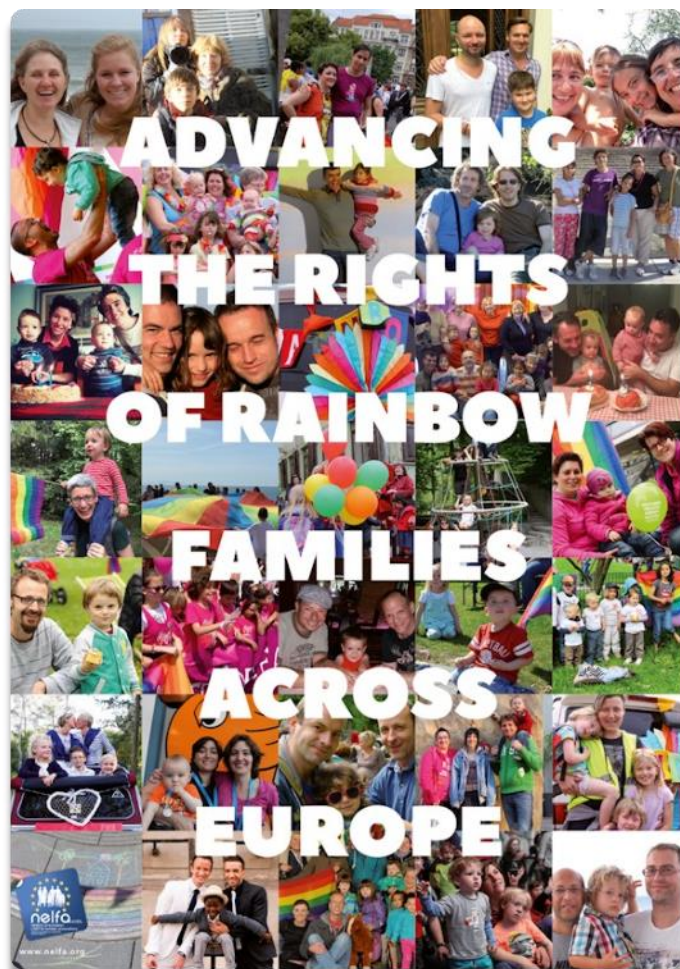
NELFA is...

THE NETWORK OF EUROPEAN LGBTIQ*
FAMILIES ASSOCIATIONS (BRUSSELS)
WAS **FOUNDED** in 2009 (2012).

CURRENTLY **41 ORGANISATIONS**
REPRESENTING 33 EUROPEAN
COUNTRIES (20.000+ MEMBERS).
APPROXIMATELY 10.000 CHILDREN!

MAIN GOALS: VISIBILITY, EXCHANGE
(BEST PRACTICES, NEWS, MONITORING
THE LEGAL SITUATION), **ADVOCACY**
WORK (ON THE EUROPEAN LEVEL) FOR
MORE RECOGNITION, PROTECTION,
EQUAL TREATMENT AND ACCEPTANCE,
CAPACITY BUILDING (ERASMUS*, REC-
PROJECT) AND **LEGAL SUPPORT**





NELFA's mission

ENSURING THAT **CHILDREN** IN LGBTIQ* FAMILIES ENJOY THE **SAME RIGHTS** AS THOSE OF CHILDREN IN FAMILIES CURRENTLY RECOGNISED BY THE LAW.

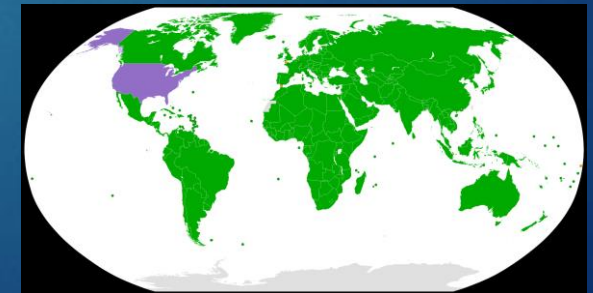


WHAT ARE CHILDREN'S RIGHTS?



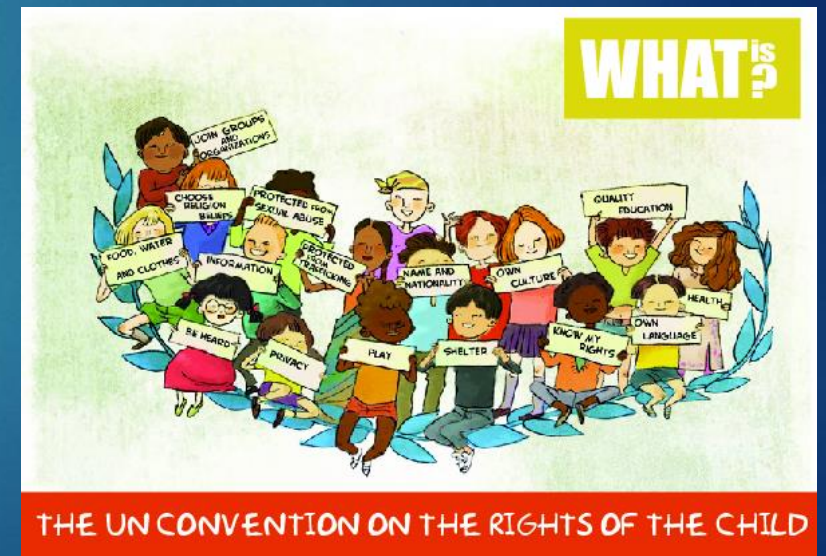
The United Nation's Convention on the Rights of the Child (UNCRC)

- Human rights treaty (30/11/1989 signed, 02/09/1990 effective)
- Nations that ratify this convention (196 UN countries – except the USA) are bound to it by international law
- Compliance is monitored by the UN Committee on the Rights of the Child (CRC, seated in Geneva since 1991)



UNCRC content (54 articles)

- **Article 2: non-discrimination** (and non-punishment) also **by association to the child's parents'** status, activities...
- **Article 3:** primary consideration are the **child's best interests**
- **Article 7:** immediate registration, **right to a name, nationality** and "as far as possible, **the right to know and be cared for by his/her parents** (protection against statelessness)
- **Article 9:** **no separation from parents against the child's will** [...] personal relations and **direct contact with both parents** on a regular basis [...]
- **Article 10:** [...] applications for the purpose of **family reunification** shall be dealt with in a positive, humane and expeditious manner
- **Article 12:** [...] the **child shall be provided the opportunity to be heard** in any judicial and administrative proceedings



UNCRC content...

- **ART 18:** best efforts to ensure recognition of the principle that **both parents have common responsibilities** for the upbringing and development of the child (assistance) [...] children of working parents have the **right to benefit from child-care** services and facilities for which they are eligible.
- **ART 20:** A child [...] shall be entitled to **special protection** and assistance [...] alternative care [...] could include **foster placement** [...] **adoption** [...]
- **ART 28:** the right of the child to education [...] **and ART 29:** [...] shall be directed to [...] the development of the child's personality [...] **respect for human rights and fundamental freedoms** [...] respect for the child's parents [...] in the **spirit of understanding, peace, tolerance, equality of sexes** [...]



UNCRC limitations

Definition of “parents”: Biological parents or functional caregivers? Only “legal” parents? More than two persons?

Who determines the “best interests” of the child?

No direct reference to gender identity/sexual orientation (...)



UNCRC best practice

In February 2021, the UNCRC found that Finland failed to consider the best interests of the child of a lesbian couple from Russia when assessing his asylum request. Now the country is under an obligation to provide reparation. It was the first time that the UNCRC made a decision on sexual orientation issues and on a child of same-sex parents.

NELFA was involved in a so-called third-party intervention, together with the Child Rights International Network (CRIN), ILGA and the International Commission of Jurists (ICJ).

Read more about the case in this [press release](#).





WHAT ARE LGBTIQ* (FAMILY) RIGHTS?



European Convention of Human Rights (ECHR)

Council of Europe (47 Members, 1949) – guidance through the Parliamentary Assembly, binding judgments through the European Court of Human Rights in Strasbourg (ECtHR, 1953)

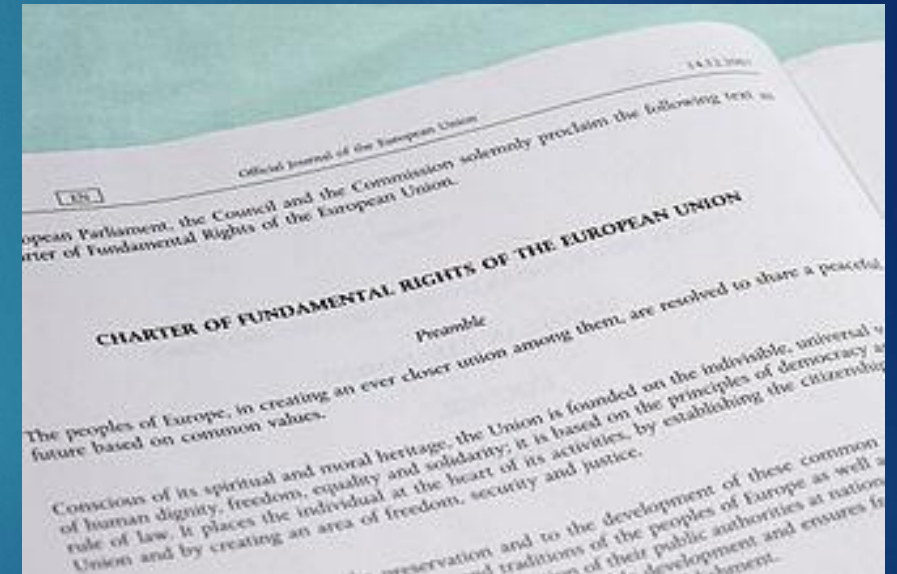
- **Article 8:** respect for one's **private and family life** => not to separate a family, enforce access for a divorced parent to his/her child
- **Article 12:** **right to marry and to establish a family** => same-sex marriage NOT yet included, but positive obligation to ensure a specific legal framework for the recognition and protection of same-sex couples (Oliari and Others vs. Italy)
- **Article 14:** **prohibition of discrimination** => settled case law implies "sexual orientation" ("or based on other status")



Charter of Fundamental Rights (CFR, 2009)

European Parliament (legislative initiatives, co-decisions with the Council), **EU Commission** (legislative proposals, implementation), **Council of the EU** (general direction, co-decisions [unanimity])

- **Article 7:** Respect for private and family life
- **Article 9:** Right to marry and to found a family
- **Article 21:** Any discrimination shall be prohibited (**explicitly: sexual orientation**)
- **Article 24: *Rights of the child*** => protection and care, they may express their views freely, primary consideration of the child's best interest, maintain a personal relationship and direct contact to both of its parents (see UNCRC!)
- **Article 33:** Family and professional life => legal, social and economic protection, **paid maternity leave and paternal leave**
- **Article 44:** Right to petition
- **Article 45:** **Freedom of movement/residence**

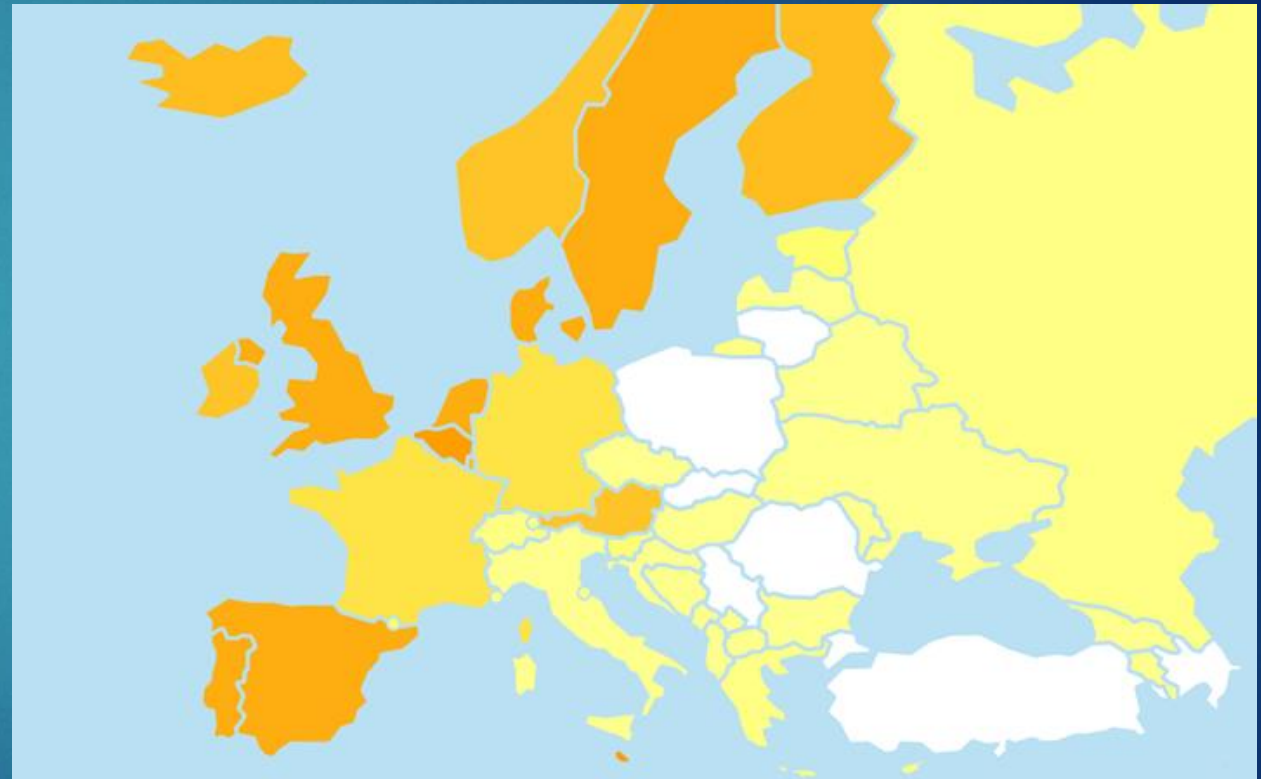
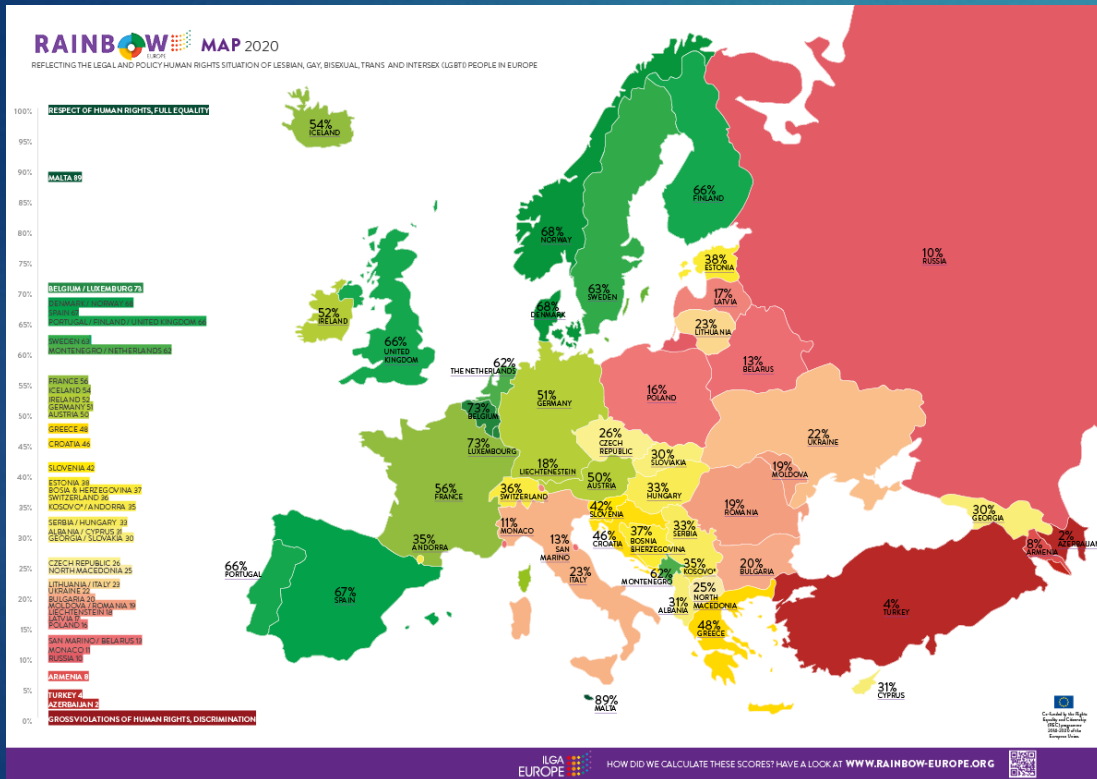


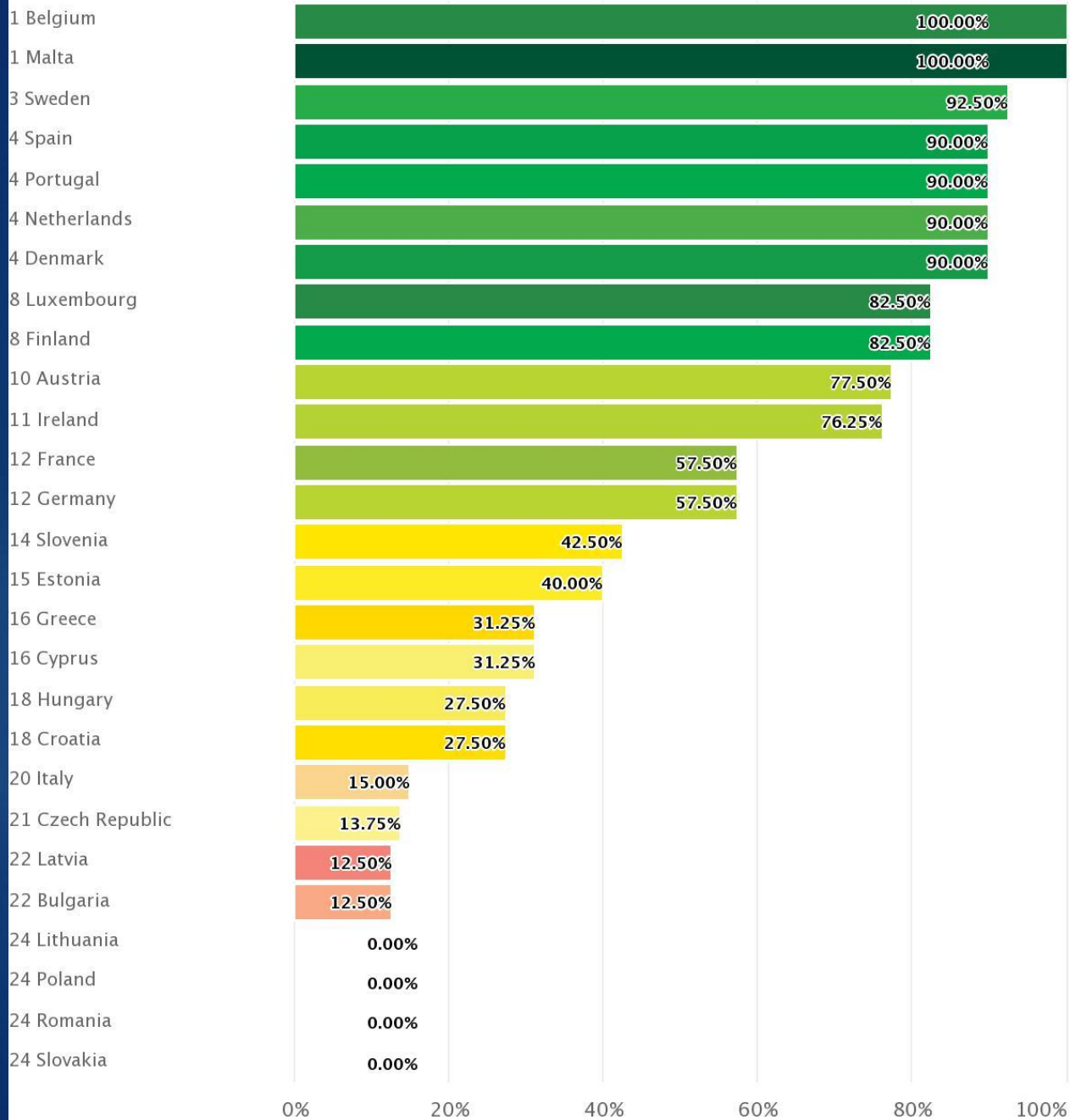


WHAT IS THE LEGAL SITUATION?



11





KEY FACTS

Rainbow Map 2020 (ILGA) –
Family Rights Country Ranking

CURRENT KEY FACTS

ILGA-Europe – Rainbow Map 2020:

LGBTIQ* PARTNERSHIP RIGHTS...

- **Marriage equality in 16 European countries (13 EU)**, most recently in Northern Ireland. Soon in Andorra and Switzerland?, campaigns in Czechia and Estonia
- **24 (26) countries with registered partnerships**. Monaco is not yet mentioned (December 2019), most recently Montenegro, new efforts i.e. in Lithuania, Romanian couples at the ECtHR
- **Constitutional limitations in 18 (19) European countries (9 EU)**. Most recently: Russia
- **NO RECOGNITION IN...** Latvia, Lithuania, Poland, Bulgaria, Romania, Slovakia

Marriage Equality EU

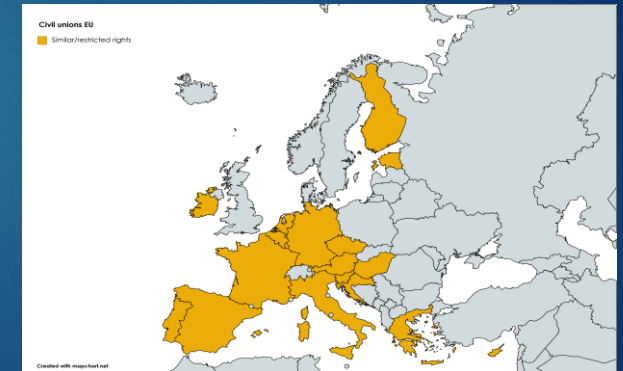


■ YES ■ NO ■ ■

Civil Unions EU



■ YES ■ NO





WHAT DOES IT MEAN FOR THE CHILD?



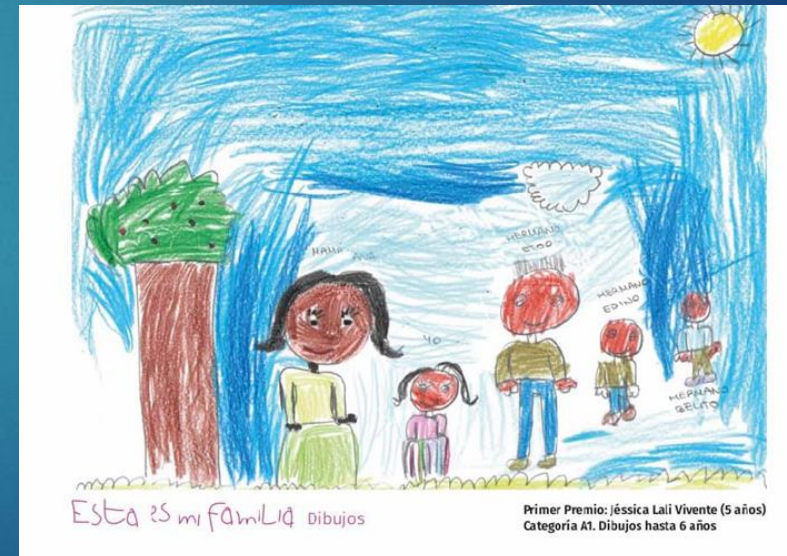
ARGUMENTATION

Children are deprived of their rights [best interests, non-discrimination by association to their parent's gender identity or sexual orientation] **whenever their LGBTIQ* parents can't get married** (or enter at least a civil union)

Marriage means more obligations and benefits: access to tax credits, health care, inheritance rights etc.

- (JOINT) Adoption Rights
- Parenthood Presumption
- Access to ART (funding)

Example Czech Republic: differences between marriage and registered partnerships in 105 legal provisions (for example parenting and property rights)



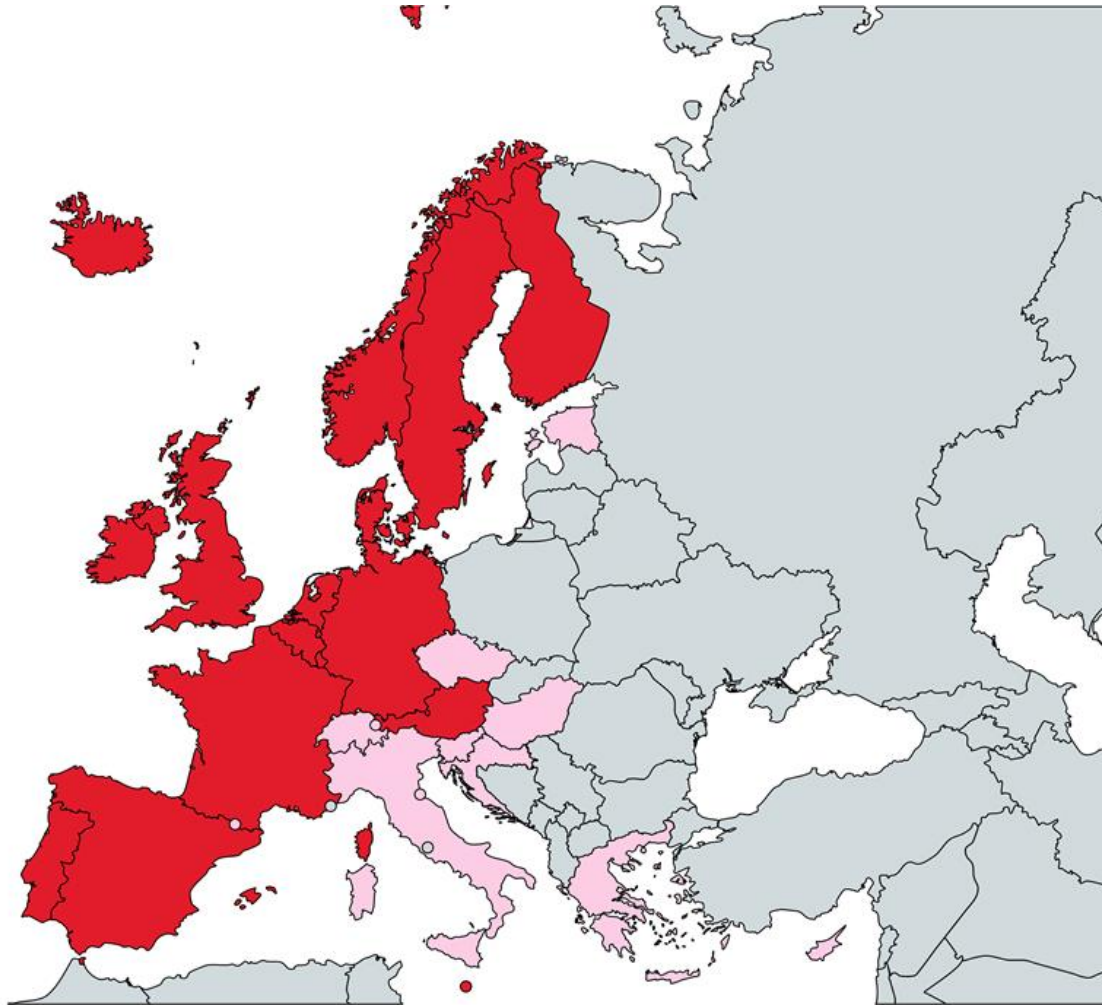
Marriage Equality...

CHILDREN IN 14 EU COUNTRIES MIGHT SUFFER DISADVANTAGES BECAUSE THEIR LGBTIQ* PARENTS CAN'T GET MARRIED

IN 6 EU COUNTRIES THEIR PARENTS' RELATIONSHIP CAN'T EVEN BE RECOGNISED AT ALL –
IN BULGARIA, LATVIA, LITHUANIA, POLAND, ROMANIA AND SLOVAKIA

Civil unions/marriage 2020

■ Marriage equality
■ Civil unions



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CURRENT KEY FACTS

ILGA-Europe – Rainbow Map 2020:

LGBTIQ* PARENTHOOD RIGHTS...

- **Joint adoption in 17 countries** (marriage equality countries + Andorra) **(13 EU)**
- **Second-parent adoption in 19 (20) countries (14 [15] EU)**. New is Estonia, not mentioned is Croatia (Life Partnership Act). Possibilities in Italy (single court decisions) and Ireland (guardianship).
- **NO RECOGNITION in 10 EU countries:** Bulgaria, Cyprus, Czech Republic, Greece, **Hungary**, Latvia, Lithuania, Romania, **Poland**, Slovakia.

Joint Adoption EU

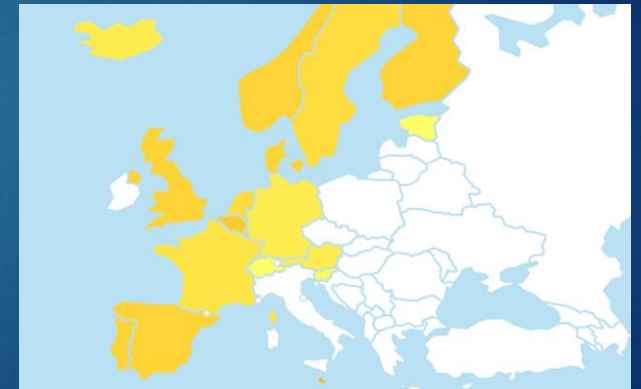


■ YES ■ NO

2nd-P. Adoption EU



■ YES ■ NO ■ OTHER



CURRENT KEY FACTS

ILGA-Europe – Rainbow Map 2020:

LGBTIQ* PARENTHOOD RIGHTS...

- **(Automatic) co-parent recognition in 10 countries (8 EU).** Ireland with new (known-donor) possibilities in May 2020. We have to add: **Sweden, Finland and Slovenia.**
- Strong debates in France, Switzerland and Germany. Mostly after (IVF) treatment in a clinic (i.e. Austria, Sweden), or through marital presumption (i.e. Malta)

Direct Recognition EU



■ YES ■ NO





WHAT DOES IT MEAN FOR THE CHILD?



ARGUMENTATION

Children are deprived of their rights [best interests, non-discrimination by association to their parent's gender identity or sexual orientation, relationship to both parents] **whenever their LGBTIQ* primary caregivers can't become legal parents** (two or even more persons involved!)

Joint parenthood means more protection and benefits: remaining legal ties in case of death or illness of the biological parent, parental leave, access to health care, travelling, decision-making for schools, reductions etc.

Example European Union: The Gender Equality Index 2019 has revealed that rainbow families have only a restricted access to parental leave. 11 countries don't provide this possibility to non-biological parents.



JOINT PARENTHOOD 2019

- 1st class filiation
- 2nd class filiation
- 3rd class filiation
- No LGBTIQ* filiation



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Joint parenthood...

CHILDREN CAN HAVE TWO LGBTIQ* PARENTS IN 17 EU MEMBER STATES (MEANWHILE WITHOUT UK...)

10 (11 – IRELAND MAY 2020) COUNTRIES OFFER FORMS OF **CO-PARENT RECOGNITION FROM BIRTH.**

5 ADDITIONAL COUNTRIES GRANT AT LEAST FORMS OF **SECOND-PARENT ADOPTION** (INCL. CROATIA)

2 ADDITIONAL COUNTRIES HAVE **LIMITED FORMS OF JOINT PARENTHOOD OPTIONS** (ITALY: THROUGH LITIGATION, IRELAND: GUARDIANSHIP AFTER TWO YEARS)

IN 10 EU MEMBER STATES, CHILDREN ARE DEPRIVED OF THE RIGHT/POSSIBILITY TO HAVE TWO LEGAL LGBTIQ* PARENTS...

ARGUMENTATION

Children are deprived of their rights [best interests, access to special protection and assistance] concerning foster care and adoption **whenever they don't have the full choice to find adequate new caregivers – possibly LGBTIQ* people/couples.**

- Eurochild (Opening Doors Campaign from 2013-2019): family-based foster care better than institutional care. Despite the efforts made, **there are still between 345,000 - 360,000 children living in institutions.**
- At the same time, there are a lot of LGBTIQ* people who would be ready to take over the responsibility for a child

Example Croatia: A new law (late 2018) excluded registered same-sex couples to provide foster care. A gay couple from Zagreb (Ivo&Mladen) sued the State and the Courts decided in favour of the couple in late 2019 and early 2020. Update: In the meantime, the couple became foster parents!!



100

IN 2 ADDITIONAL EU STATES SINGLE PERSONS MAY APPLY (UPDATE 2020: CROATIA NOW ALSO FOR COUPLES!)

(AT LEAST) 7 EU COUNTRIES DON'T PROVIDE FOSTER PARENTING FOR LGBTIQ*. MANY CHILDREN TO BE FOSTERED ARE DEPRIVED OF THEIR BEST INTEREST TO FIND A NEW FAMILY.

UNCERTAINTY: HOW GOOD IS THE FOSTER SYSTEM? HOW EQUAL IS THE APPLICATION PROCEDURE? NON-REGULATION MEANS POSSIBILITY?



LGBTIQ* COUPLES ELIGIBLE

SINGLE PERSONS ELIGIBLE

 ONLY IN SOME CITIES/REGIONS

NO FOSTERING FOR LGBTIQ*

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NELFA's mission

ENSURING THAT LGBTIQ*
FAMILIES CAN ENJOY
FULLY THE EUROPEAN
UNION'S **RIGHT TO
FREEDOM OF MOVEMENT**
BETWEEN MEMBER STATES.



Freedom of movement!

DIRECTIVE 2004/38/EC regulates that “EU citizens **and their family members** have the right to move freely and live in another EU country, subject to any conditions set out in the EU’s treaties. The Fundamental Rights Charter of the European Union (CFR 2009) mentions the free movement in Art. 45.

The terms for “family members” are gender-neutral. The Directive covers the **spouse**, a **partner** in a registered partnership with an EU citizen (however, Member States must have similar systems) and **direct descendants** under the age of 21. **And rainbow families?**



Freedom of movement?

Unfortunately, many countries within the EU still don't recognise legal ties between LGBTIQ* partners (and their children). Therefore, **many rainbow families in cross-border situations are put in legal limbo.**

Until summer 2018, it was unclear if the term “spouse” also covers “**same-sex** spouse”. The so-called **Coman case** finally clarified this: Member States need to recognise same-sex marriages, contracted in another EU country, at least for the purpose of residence.

In the picture: Adrian Coman (right) and his husband Claibourn Robert Hamilton (left).



Freedom of movement?

The content of civil status documents like marriage or birth certificates is not automatically recognised within the EU. Countries who don't offer for example joint motherhood, won't transcribe or register those documents established abroad.

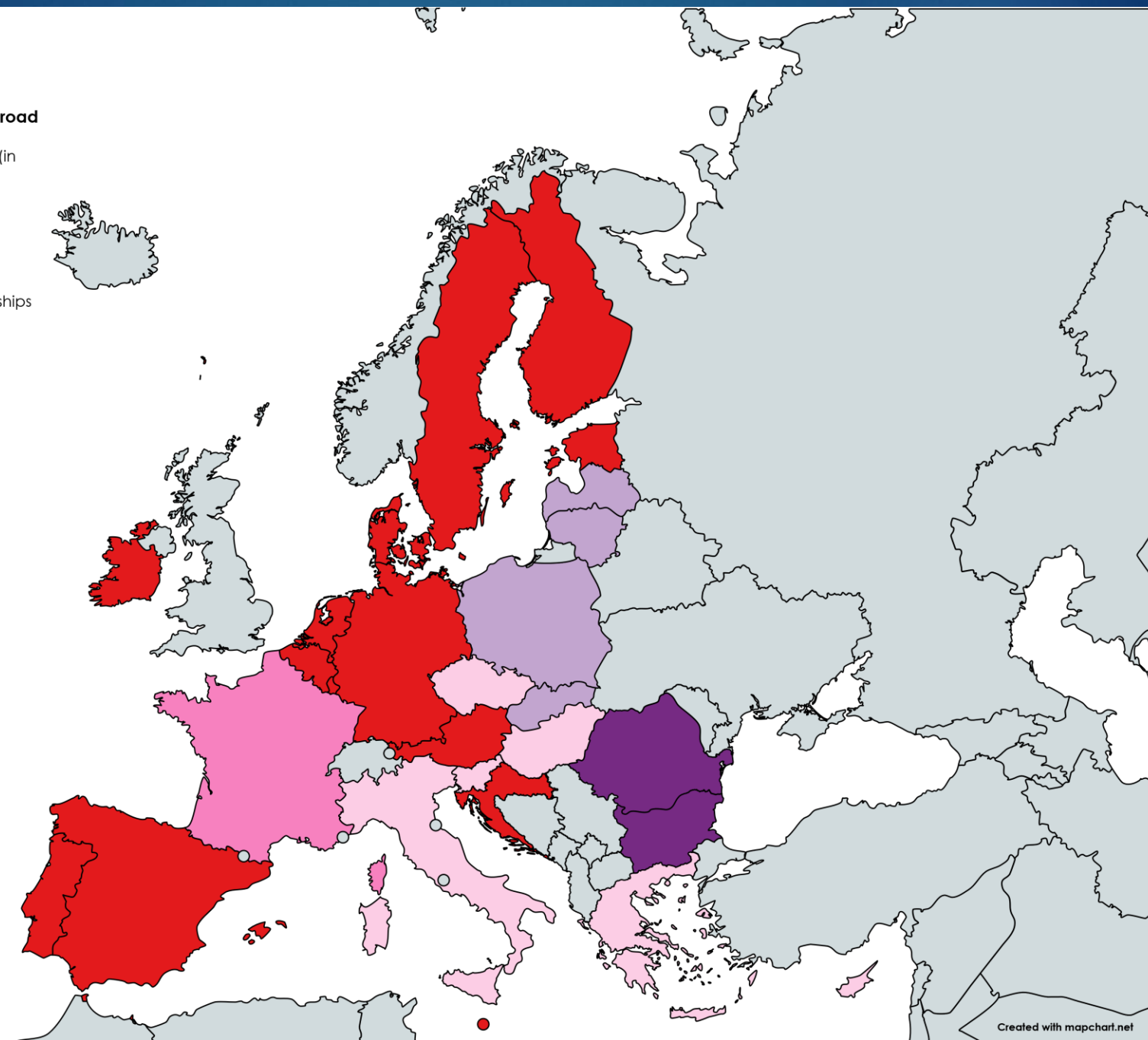
An LGBTIQ* meeting with EU Member State representatives in Nov 2019 in Brussels showed that only a handful of countries would recognise all those documents (legally issued in another EU country) for all legal purposes. Residence itself is not the only problem...

Case studies show the consequences – for LGBTIQ* families (and their children!!). And there is a new study... **“Obstacles to the Free Movement of Rainbow Families in the EU”**



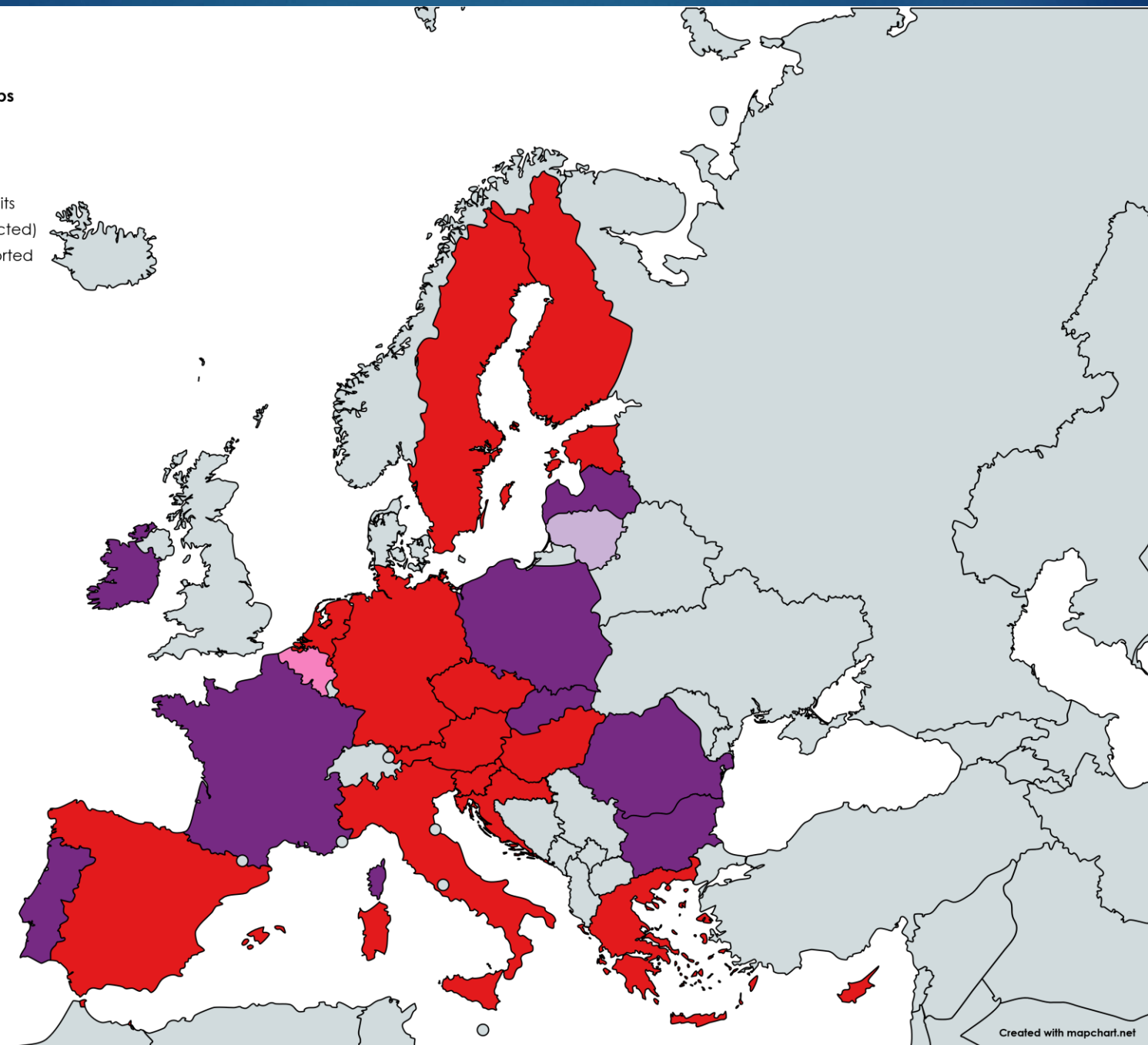
Recognition of same-sex marriages contracted abroad

- 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



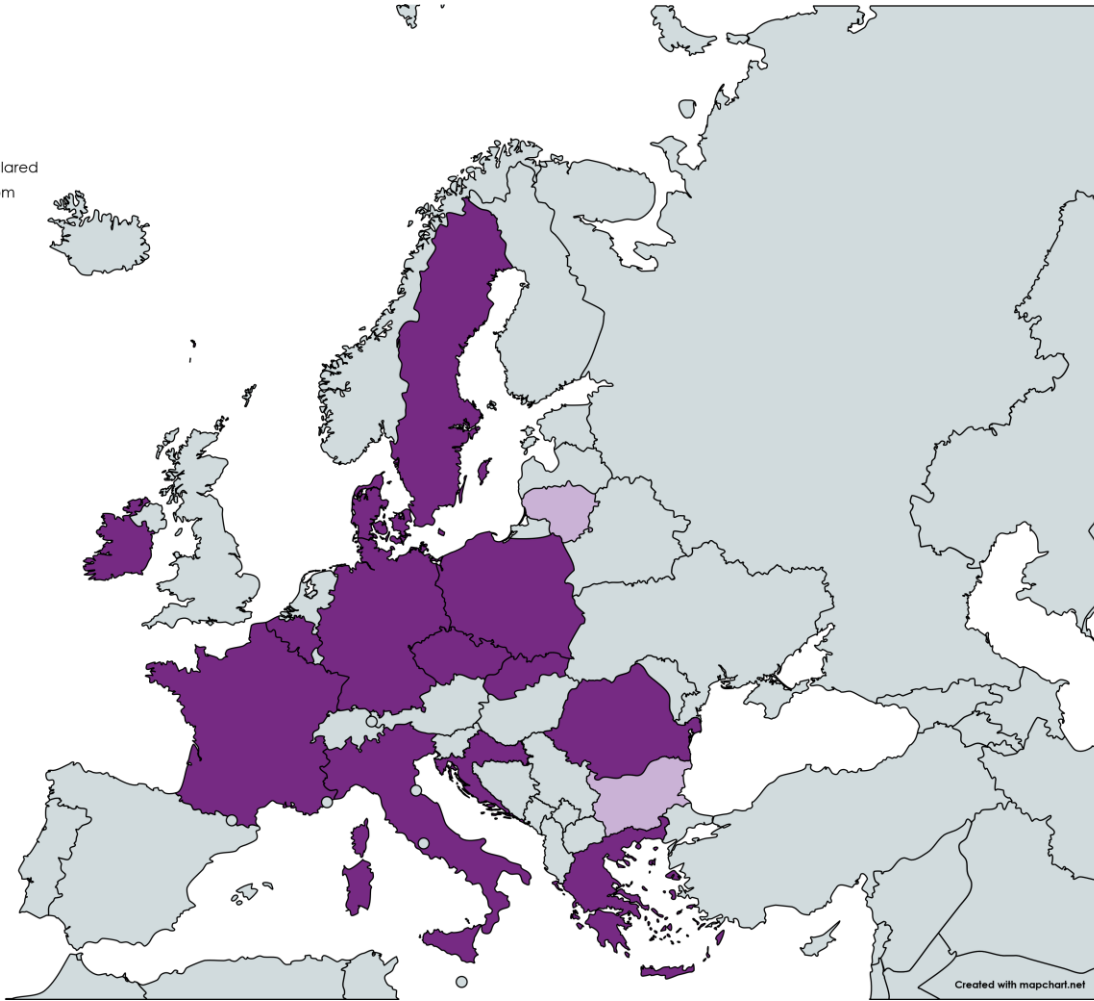
What does it mean for the children?

- Statelessness, no identity, no health insurance, no common family name (case presentation)
- Separation from at least one legal parent
- No access to citizenship, loss of familial ties – **LEGAL LIMBO**



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.



ADDITIONAL BURDENS...

Hostility, bullying, prejudice, ignorance...

Children raised by LGBTIQ* parents might suffer from **criminal incidents**, **hate speech** in the media ["threat to society"], at school etc., **wrong accusations** [pedophilia, reason for earthquakes] and **biased questions**.

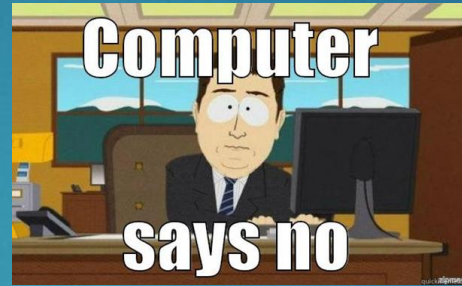
CHILDREN ARE DEPRIVED OF THEIR RIGHTS! Non-discrimination (by association to their parents), best interests, education (respect for human rights and fundamental freedoms, understanding, tolerance)



Hostility, bullying, prejudice, ignorance...

Children raised by LGBTIQ* parents might suffer from **inexperience and ignorance** (for example in their schools, where no one is talking about LGBTIQ* issues – completely **exclusive curriculae**) and general hostility (civil servants, doctors, parents of friends, relatives...) because of lacking information i.g.

CHILDREN ARE DEPRIVED OF THEIR RIGHTS! Non-discrimination (by association to their parents), best interests, education (respect for human rights and fundamental freedoms, understanding, tolerance)



oublie pas la majuscule
prénom de ~~maman~~ ^{papa}
prénom de papa →

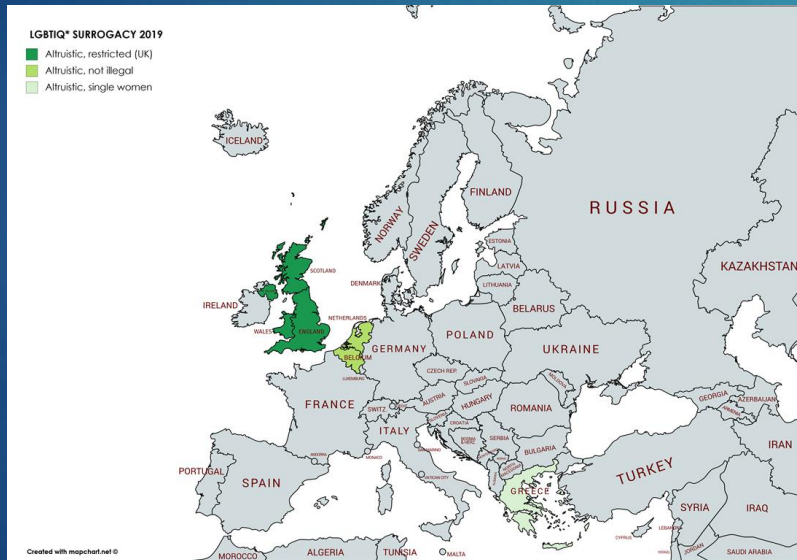


ADDITIONAL QUESTIONS...



Best interests?

Access to **Assisted Reproductive Techniques** (ART) implies general ethical questions (i.e. surrogacy). For LGBTIQ* people (singles and couples), it's about **equal rights**. And what does ART means for the children concerned? What are their rights?



MAR Couples EU

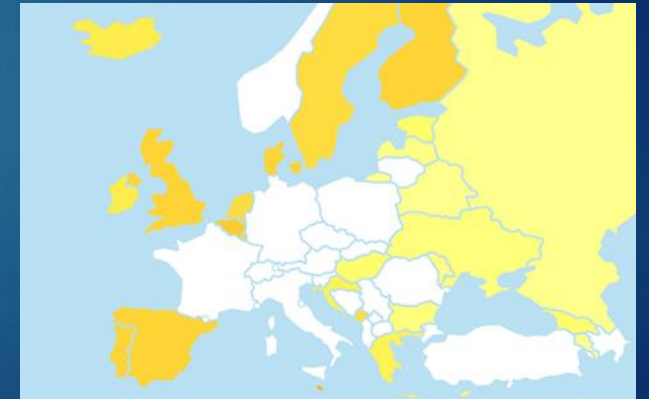


■ YES ■ NO

MAR Singles EU



■ YES ■ NO





BUT... KNOWN DONATION AS
PRECONDITION FOR A
FILIALITY (SAME-SEX COUPLES
ONLY??) FRANCE, IRELAND...

Best interests?

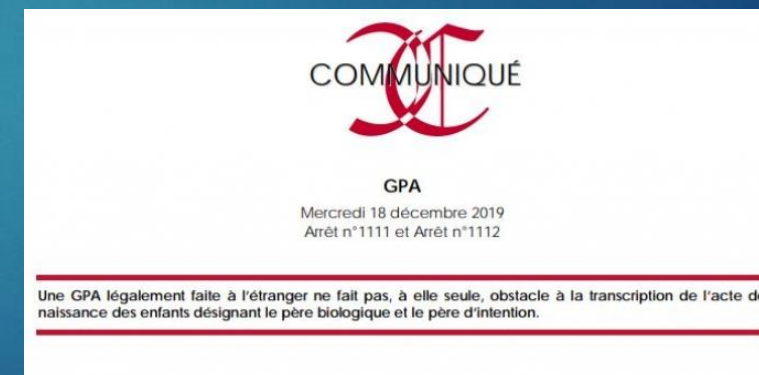
WHAT'S ABOUT CHILDREN'S RIGHTS RELATED TO SURROGACY? (De Sutter Report, CoE)

(rejected in the Parliamentary Assembly 2016)

Condemnation of “for-profit surrogacy”, but open-minded regarding altruistic gestational surrogacy, tightly regulated and for residents only. De Sutter: “The lack of a multilateral legal instrument on **parentage related to surrogacy** increases the risk of children’s rights abuses” [*mater semper certa est?*]

De Sutter: “**A child cannot be blamed for being born out of a surrogacy arrangement**”

April 2019: Advisory opinion of the ECtHR – in favour of a recognition of intended parents (after a surrogacy arrangement), **December 2019**: Court decision in France for a direct transcription of birth certificates from abroad (Switzerland, Germany...)



Multi-parenting 2020

- Legislation discussed
- Parental plans (after divorce)
- Legislative proposals
- Special donor rights



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Best interests?

WHAT IF MORE THAN TWO PERSONS ARE TAKING CARE OF A CHILD? (MULTI-PARENTING OPTIONS, "CLOVERLEAF FAMILIES", DELIBERATELY NOT MARRIED OR IN A REGISTERED PARTNERSHIP...)

NETHERLANDS: BILL (2019/20) WITH SOME ADDITIONAL RIGHTS FOR CO-PARENTS ("DEELGEZAG") I.E. TO ACT IN SCHOOL OR AT THE DOCTOR. A COMMITTEE'S PAPER IN 2016 WAS ALREADY BETTER...

CROATIA/FRANCE: RESTRICTED FORMS OF SHARED PARENTHOOD (PARENTAL PLAN AFTER A DIVORCE, LGBTIQ* ELIGIBLE).

DENMARK: SPECIAL RIGHTS FOR SPERM DONORS TO BECOME LEGAL PARENTS (TWO-STEP-PROCEDURE INCL. CARE AND RESPONSIBILITY AGREEMENT)

ADVANCED DISCUSSIONS IN **FINLAND**, PREVIOUSLY IN **SWEDEN, GERMANY...**



SUMMARY...



Some key messages...

Children in rainbow families are still very vulnerable and deprived of rights.

They are discriminated against whenever their LGBTIQ* parents can't register their relationships or get married, adopt, foster and become jointly legal parents.

They are particularly in legal limbo in cross-border situations (EU framework).

They often don't have access to adequate education and are targets of hate speech and bullying.

They suffer from hypocrisy around the access to ART (including surrogacy) and non-experience with diverse family forms.



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 41 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).

MAKE A DONATION

SUPPORT NELFA AND LGBTIQ* FAMILIES IN EUROPE BY MAKING A DONATION.
BANK: CRELAN, BELGIUM **IBAN:** BE18 8601 1595 2465 **BIC:** NICABEBB

