

Rainbow Couples and Families in Europe. Laws, Norms and Attitudes.

RESEARCH PRESENTATION IN BRUSSELS ON 20TH OF JUNE 2019

PROGRAM

16:00 – Rainbow Families in Europe (Björn Sieverding, NELFA)

16:45 – Attitudes towards Rainbow Couples and Families Across Seven European Countries (Salvatore d'Amore, ULB)

17:30 – Transformation of Family Norms in a Transnational World [TransNorm] (Tanja Vuckovic Juros (UC Louvain))

18:15 – Cocktail

19:00 VIDEO #OurChildrenareAlright (MFWS, Malta)

19:15 – **PANEL:** Framing the Issues of Families of Same-Sex Partners and LGBTIQ* Individuals. Searching for Wider Resonance beyond the Human Rights Framework?

PANELISTS: Liz Gosme (COFACE Families Europe), Slaven Klobučar (Égalité – LGBTI+ staff of EU institutions), Veneta Limberova (Deystvie, Bulgaria), Daniel Martinović (Dugine obitelji, Croatia), Inga Rosinska (Homoparentalités, Belgium), Ruta Simelyte (EU Commission, DG Justice)

MODERATION: David Kootz (Homoparentalités)

Rainbow Couples and Families in Europe.

Laws, Norms and Attitudes

20 JUNE 2019

Rainbow House (Salle Lollepot)
Bruxelles



16:00 - Speakers:

Björn Sieverding (NELFA)
Salvatore d'Amore (Université Libre de Bruxelles)
Tanja Vuckovic Juros (Université Catholique de Louvain)

19:00 - Panel:

Framing the Issues of Families of Same-Sex Partners and LGBTIQ* Individuals. Searching for Wider Resonance beyond the Human Rights Framework?

Free and open to the public, but registration is mandatory.
For information and registration, visit <https://sites.udouvain.be/TransNormFinal>

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WHAT IS NELFA?

NELFA

NETWORK OF EUROPEAN LGBTIQ*
FAMILIES ASSOCIATIONS (BRUSSELS)

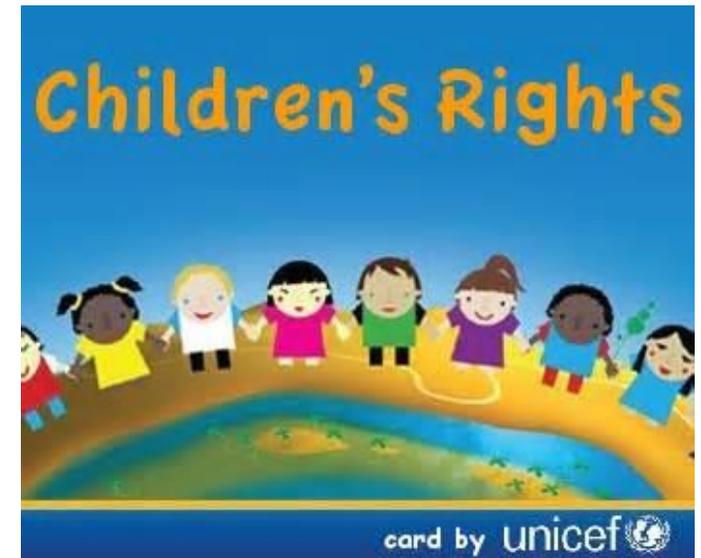
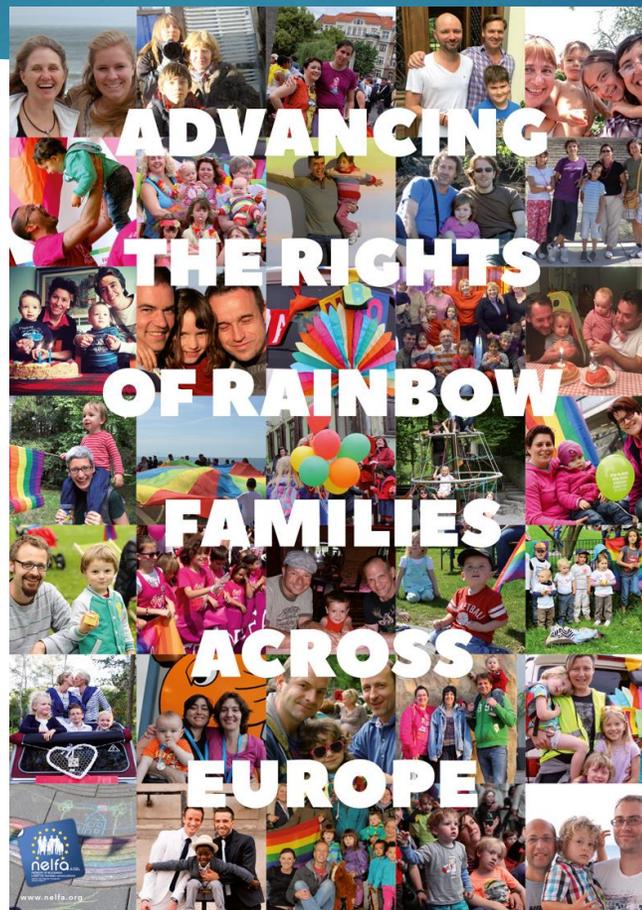
FOUNDED IN 2009, REGISTERED AS NON-
PROFIT ORGANISATION IN 2012

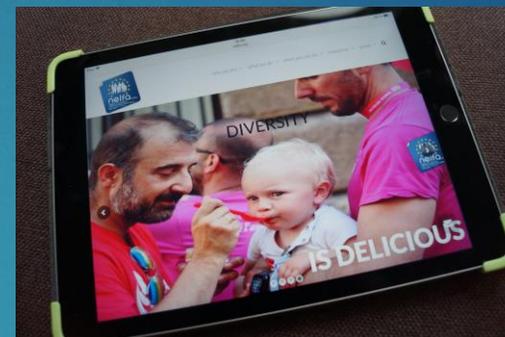
CURRENTLY 37 ORGANISATIONS
REPRESENTING 30 EUROPEAN
COUNTRIES (~ 20.000 MEMBERS)

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



NELFA's major aims...

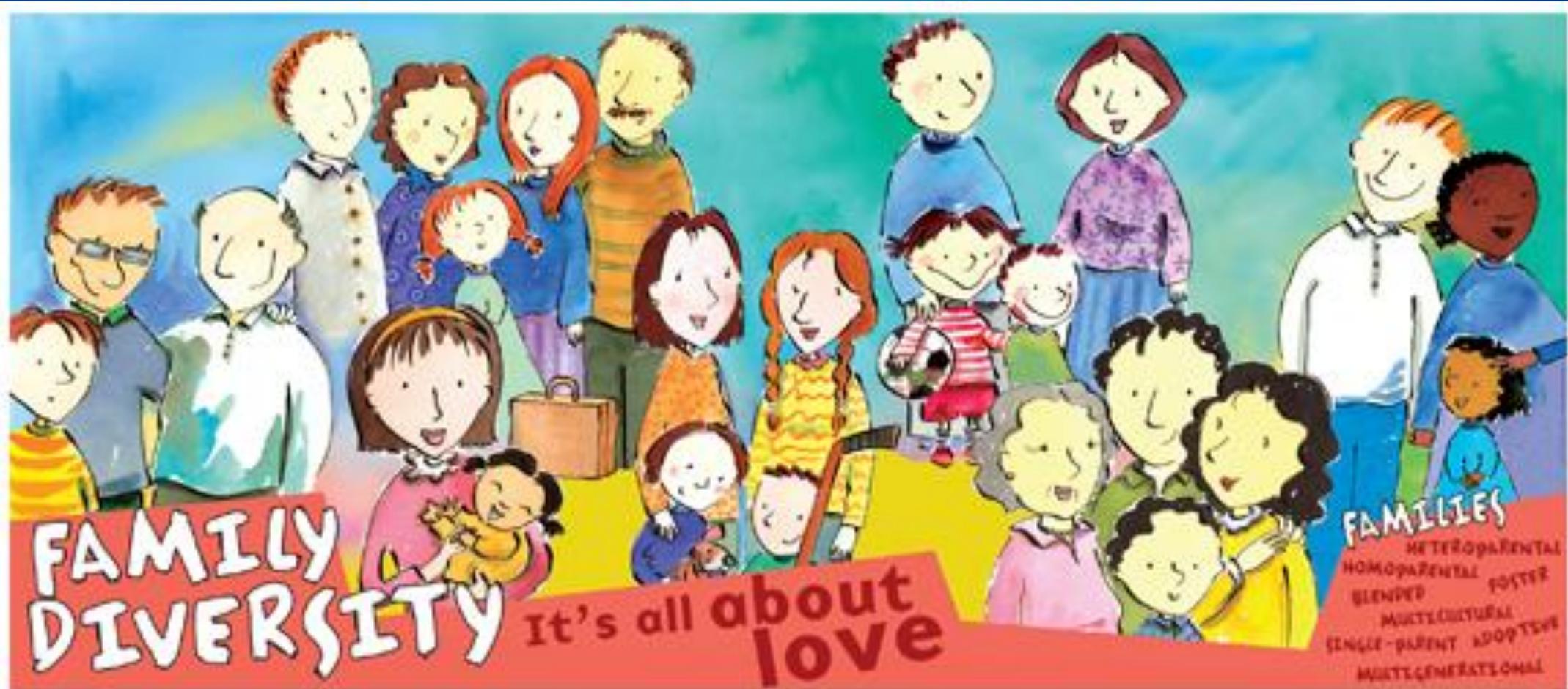




CURRENT STATUS OF RAINBOW FAMILIES IN EUROPE



TRANSFORMATION: BIOLOGICAL FAMILY => FUNCTIONAL FAMILY



Living between backlash and progress...



Hostility...

Many rainbow families in Europe still live in the hide. Open LGBTIQ* parents (to-be) and children may suffer from open hatred and contempt.

The political backlash is really noticeable: i.e. in Italy, Poland or Hungary – but even in the Netherlands, France and Spain.



Hostility...

Rainbow families and LGBTIQ* rights – a „threat“ (Kaczynski)? Gay marriage the reason for earthquakes or a nuclear war (Robertson)?

Wrong accusations, untruths and rumours about LGBTIQ* parenting are still „normal“ in the public discourse. These verbal attacks cause new violence... and stress.



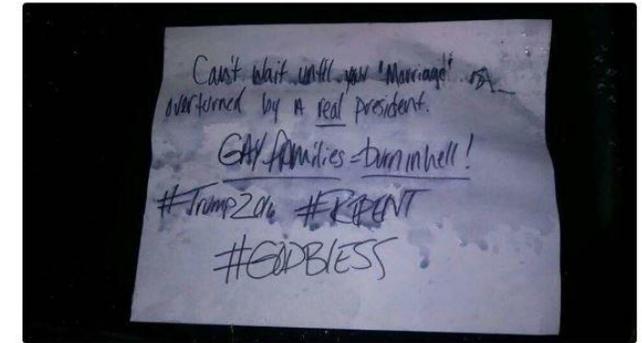
Shaun King
@ShaunKing



Follow

Placed on their car in NC.

"Can't wait until your 'marriage' is overturned by a real president. Gay families = burn in hell. Trump 2016"



Discrimination...

LGBTIQ* parents and their children are often deprived of their rights. This means less benefits, less protection: **tax credits**, **inheritance**, **access to health care**.

Children can't get a common **family name**, sometimes they even remain stateless (no **passport**, no nationality)

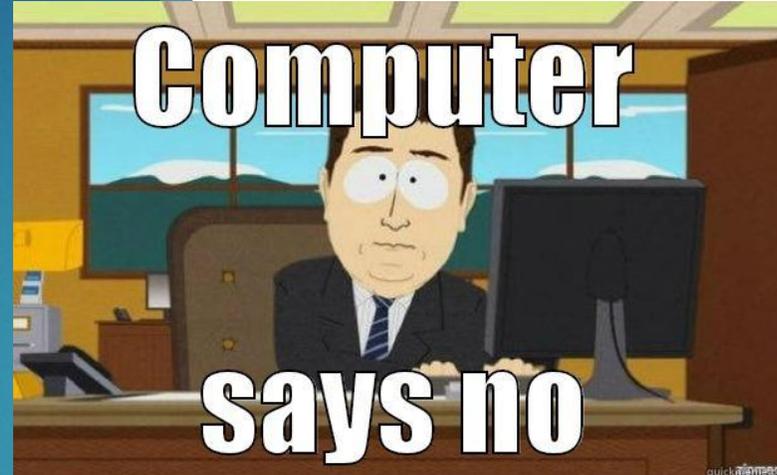
LGBTIQ* parents face difficulties to travel or to sign docs for the school or other activities. They have problems to get **reduction** for zoo, theatre or public pools



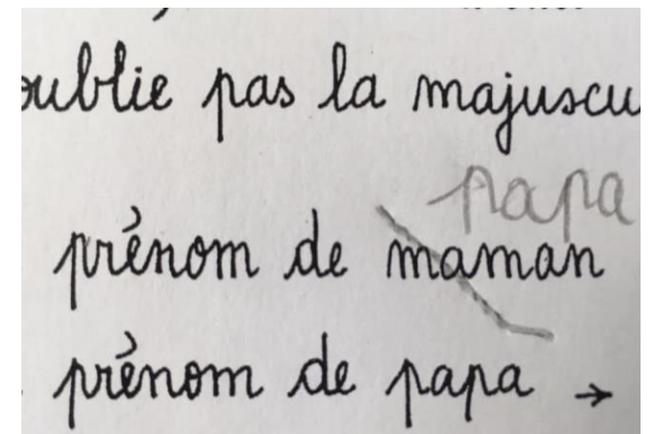
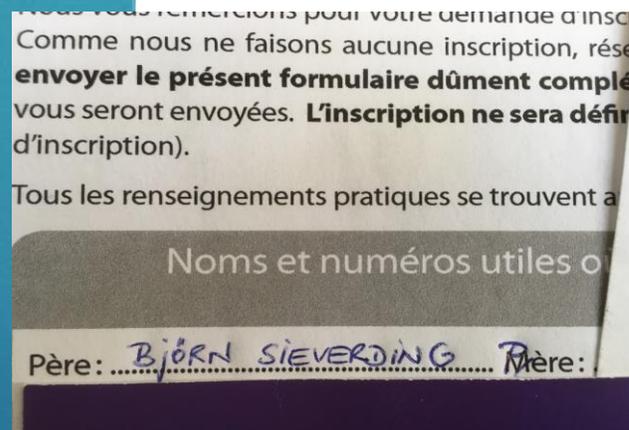
Daily challenges...

ignorance + inexperience

- IT systems and administrative documents sometimes don't recognise rainbow families: „Computer says NO!“
- Carers and teachers are often unaware of the rainbow family situation, school curricula are ignorant. This creates i.e. problems when children prepare their presents (Mother's/Father's Day)
- Rainbow families must accept regular Coming Out's and to disclose sensitive information



"I have two mommies. I know where the apostrophe goes."

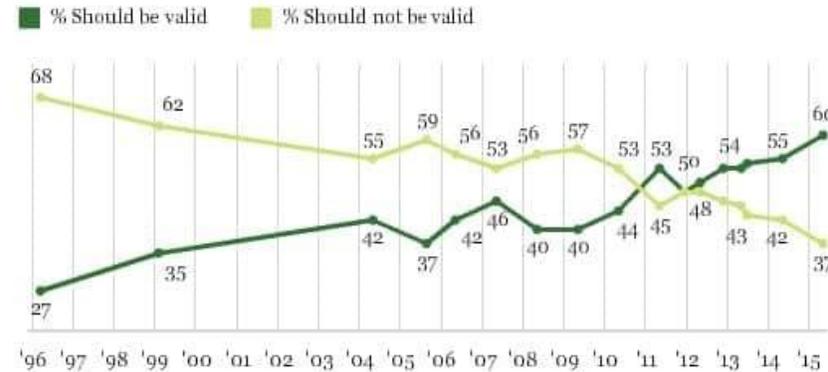


Steady progress...

- **Public opinion** shows generally an increasing support for LGBTIQ* parenting within the last two decades. Courageous political decisions are often granted with positive reactions afterwards.
- **Scientific research** gives more and more backing: LGBTIQ* parents are as good as others, children grow up as „normal“ as others

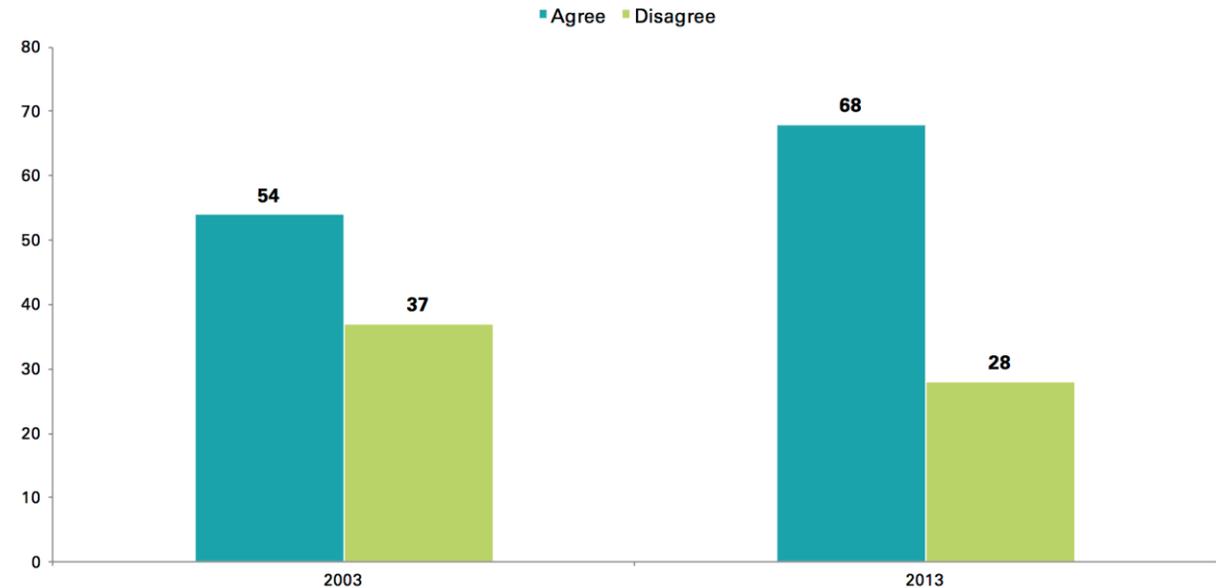


Do you think marriages between same-sex couples should or should not be recognized by the law as valid, with the same rights as traditional marriages?



Evaluations of Gay and Lesbian People as Parents (2003-2013)

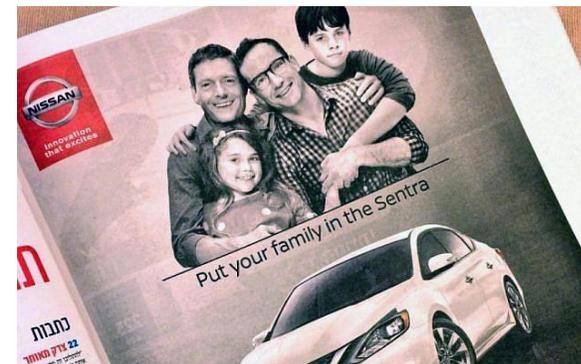
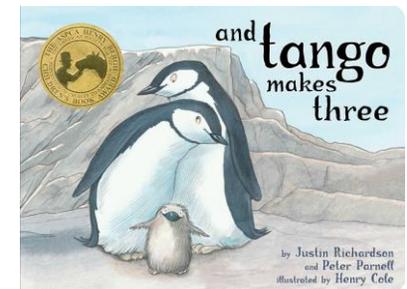
Gay and lesbian couples can be as good parents as heterosexual couples



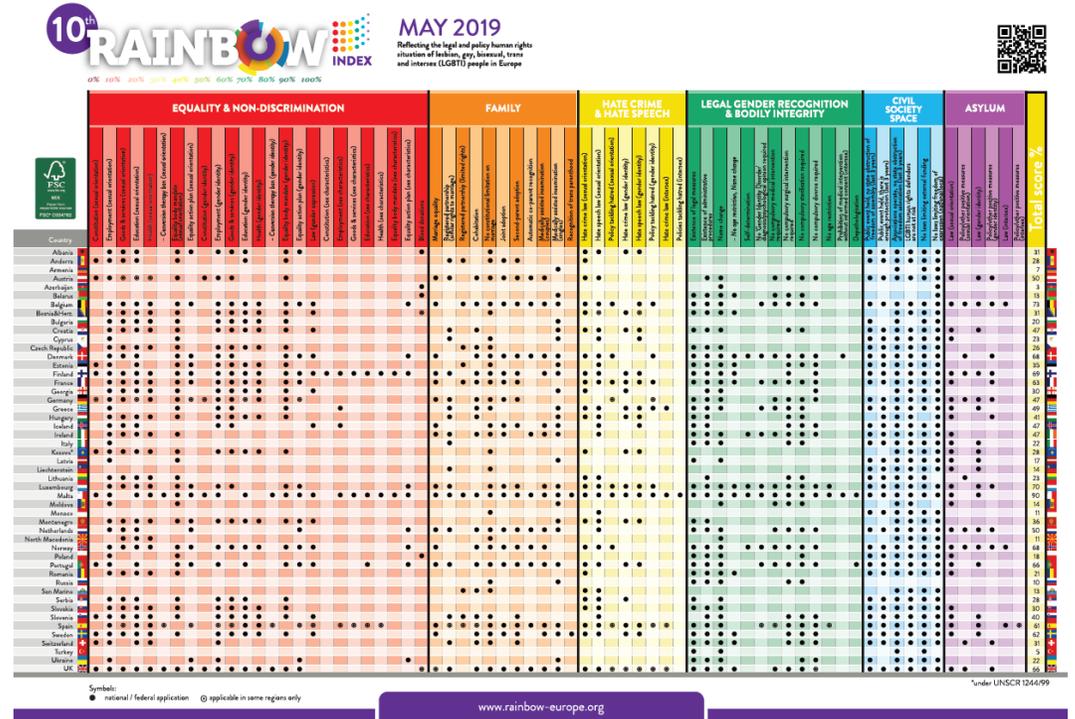
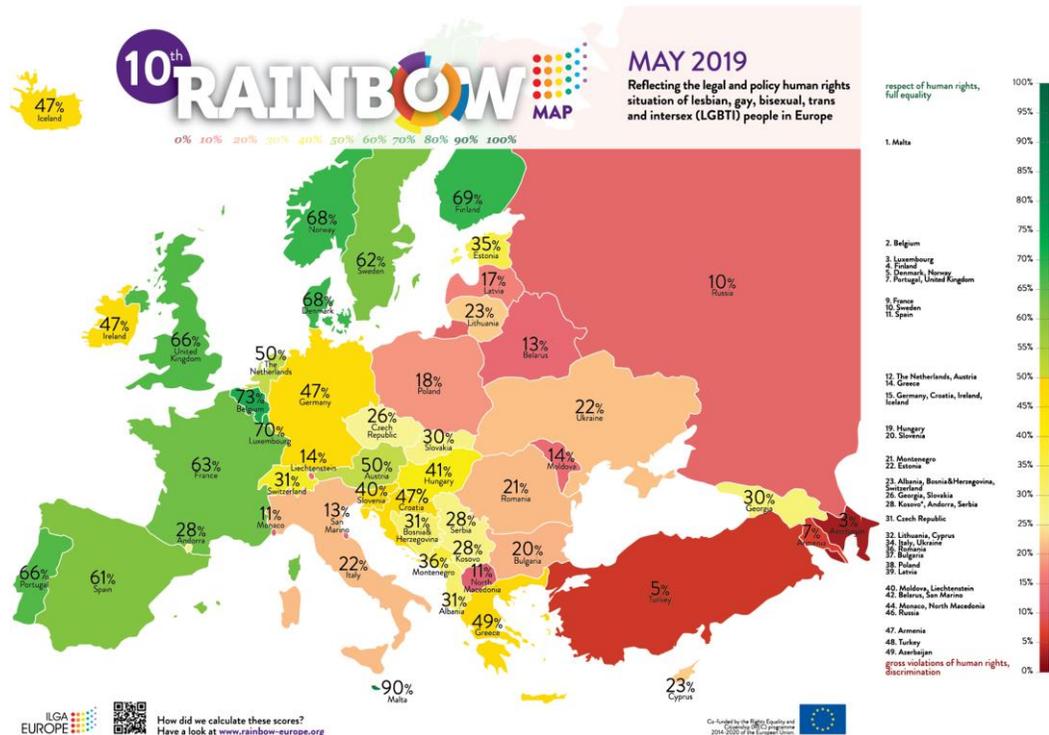
Sources: PRRI, LGBT Issues & Trends Survey, February 2014; Pew Research Center for the People & the Press, Pew Forum on Religion & Public Life, News Interest Index/Homosexuality Study, October 2003.

Steady progress...

- Nowadays, **media coverage** (uncensored) is mostly friendly and supports the diversity of families. **Advertising** chooses more and more LGBTIQ* parents with children.
- In the meantime, stories of rainbow families and thematic children's **books** „flood“ the market



ILGA's Rainbow Europe 2019



LGBTIQ* family rights

Registered Partnership: 24 European countries

(**20 EU**) recently: SAN MARINO (2018), soon Montenegro?

Marriage Equality: 16 European countries (**14 EU**)

THE NETHERLANDS, BELGIUM, SPAIN, NORWAY, SWEDEN, PORTUGAL, ICELAND, DENMARK, FRANCE, UK*, LUXEMBOURG, IRELAND, FINLAND, GERMANY, MALTA, (most recently) AUSTRIA

Joint Adoption: 17 European countries (**14 EU**)

COUNTRIES above + ANDORRA

Second-Parent Adoption: 19 (21) countries (**14 EU**)

i.e. SWITZERLAND, SLOVENIA, SAN MARINO, ITALY, ESTONIA

Co-Parent Recognition: 12 countries

(**11 EU**) most recently: FINLAND + IRELAND

MAR: 14 (**12 EU**) [couples] /26 (**18 EU**) [singles]

Trans parenthood: BELGIUM, MALTA, SLOVENIA, SWEDEN

Marriage equality

Registered partnership
(similar rights to marriage)

Registered partnership (limited rights)

Cohabitation

No constitutional limitation on
marriage

Joint adoption

Second-parent adoption

Automatic co-parent recognition

Medically assisted insemination
(couples)

Medically assisted insemination
(singles)

Recognition of trans parenthood

FAMILY

LGBTIQ* families rights

- No recognition at all (0 %)
- Low recognition (0-13 %)
- Some recognition (13-50 %)
- Good recognition (50-90 %)
- "Full" recognition (90-100 %)



Co-parent recognition 2019

- From birth or before (MAI)
- Second-parent adoption
- Litigation, guardianship



NELFA case collection...

Rejected transcription of a common birth certificate (PASSPORT?): UK-IRELAND, UK-GREECE, UK-FRANCE, UK-POLAND, SPAIN-GREECE, SPAIN-ITALY, NETHERLANDS-FRANCE, DENMARK-BULGARIA... => loss of legal familial ties (even forced by authorities [France] “sign, or you won’t get a new certificate) or courts [Bulgaria] – “against the public order”)

(CONVERTED) MARRIAGES: UK-FRANCE, FINLAND-FRANCE => incompatible regulations at the beginning, then a positive decision in France, but still bureaucratic hurdles and couples (sometimes also with children) remain in legal limbo. In AUSTRIA, same-sex marriages that were contracted before 2019 abroad (i.e. Portugal) are not accepted, couples have to remarry



EU LEVEL

Freedom of movement?

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. **DIRECTIVE 2004/38/EC**

Source: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:133152>

Family members? Gender-neutral...

This covers the **spouse**, a **partner** in a registered partnership with an EU citizen and **direct descendants** under the age of 21 ... but the Directive doesn't specify if this includes rainbow families. In June 2018: a clarification through the **Coman case**.



After Coman...

EXAMPLE LITHUANIA: In January 2019, the Constitutional Court ruled that provisions regarding freedom of movement of family members also apply for same-sex couples. A refusal to issue a temporary residence permit to a spouse/partner can't be based solely on the gender identity and/or sexual orientation.

EXAMPLE BULGARIA: The marriage of a French-Australian couple (contracted in France) was finally accepted by the Sofia City Administration Court in June 2018 (residency), but the Bulgarian Migration Department blocked the decision. The Supreme Court currently discusses the case (summer 2019).



After Coman...

EXAMPLE POLAND: In October 2018, the Supreme Administrative Court (SAC) in Warsaw ruled in favour of a Polish lesbian couple (living in UK) concerning the transcription of their son's British birth certificate (with both mothers recognised) to enter the Polish birth register.

It is the first time, that a child with Polish citizenship has now officially two mothers.

Lawyer A. Mazurczak: “The best interest of a child and the principle of non-discrimination were the key elements in the SAC’s line of argumentation.”

Preliminary ruling at the ECJ (CJEU)? *“The SAC pointed out that there is no need to refer for a preliminary ruling to the CJEU, given that it had already ruled in Coman and Others that same-sex marriages need to be recognized [...]”*



Francesca and Alexandra

Eleni: Greek, Kate: British

Residence: Spain (Barcelona)

2014: Birth of Francesca via MAR in Spain by Eleni

2016: Birth of Alexandra via MAR in Spain by Eleni

Spain: birth certificates recognise both mothers. To obtain Spanish citizenship, a child with foreign parents needs to be registered abroad.

UK and Greece didn't accept the transcription of Francesca's birth certificate (UK: fertility treatment in Spain and not married at this time, Greece: same-sex couples not recognised, „**against the moral code**“). Francesca didn't receive a passport. After three months, Francesca was diagnosed with cancer.

The responsible person for the transcription turned a blind eye and made a partial registration of the birth.

The case was discussed by the Committee on Petitions in July 2018 and April 2019. Currently, Eleni's family tries to find advice for a complaint in Greece!



“

[...] What is needed, therefore, is for the EU to take a clear stance on the matter and to inform the Member States that EU law requires them to recognise, for all legal purposes, the familial ties among the members of a rainbow family coming from another Member State, as these have been established elsewhere [...]

”

PROF. ALINA TRYFONIDOU (UNIVERSITY OF READING/UK), INDIVIDUAL NELFA MEMBER



WORKING PAPER: “EU Free Movement Law and the Children of Rainbow Families: Children of a Lesser God?” (Yearbook of European Law, May 2019)

“

The recognition of civil status is currently governed by Member States' law and the Commission cannot therefore intervene in the petitioner's case. However, when Member States apply their national law, they must respect Union law – as interpreted by the Court of Justice of the European Union –, including on the free movement of citizens within the European Union.

”

EU COMMISSION (CONCLUSION IN THE PETITION 0513/2016 BY ELENI MARAVELIA [GREEK])



Committee on Petitions: Notice for Members (Petition on the non-recognition of LGBT families in the European Union), June 2019

Other recent decisions...

10 April 2019: The European Court of Human Rights issued an advisory opinion that backs children born through surrogacy and their legal ties, also to the intended parents. But CoE Member States should decide which legal way they provide

24 April 2019: The Federal Court decided that a surrogate (here: Ukraine) is the legal mother, even if the intended mother gave her ovum and is therefore genetically linked to the child

07 May 2019: The Administrative Court in Vienna decided on the necessity to transcribe common birth certificates which were established abroad. In this case, it was about a Mexican-Austrian lesbian couple and their twins to get passports

09 May 2019: Couples who seek surrogacy abroad won't be able to register themselves as co-parents to their children in Italy. This is the latest ruling of the country's highest court

28 May 2019: For the first time, a French court accepted a foreign birth certificate (Ontario/Canada) stating two dads. Their twins, born through surrogacy in 2014, obtain French nationality automatically

18 June 2019: Seven Romanian same-sex couples sue against their country because it doesn't provide at least a civil partnership. The case was issued to the EHCR



What's next?

- The EU INSTITUTIONS should continue to claim on the Member States to respect the fundamental rights of all EU citizens (regardless of their sexual orientation and/or gender identity)
- Clarification of the wording in Directive 2004/38/EC (i.e. direct descendants). Are familial ties of rainbow families included?
- **The mutual recognition of the CONTENT of civil documents (VERY IMPORTANT!!)**
- Endeavours to strengthen children's rights, (their opinions taken into account...)
- **FOR RAINBOW FAMILIES: LITIGATION...** (ILGA-blog on Coman, court interventions, legal group, Rainbow Shield, Family Map)



EU LGBTI survey: <https://lgbtisurvey.eu/lgbti/>



EU LGBTI SURVEY

www.lgbtisurvey.eu

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www.lgbtisurvey.eu

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 34 ORGANISATIONS IN 28 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: [HTTP://BIT.LY/2RjW0Us](http://bit.ly/2RjW0Us). NEWSLETTER: [HTTP://BIT.LY/2FCN5C5](http://bit.ly/2FCN5C5).

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SUPPORT NELFA AND LGBTIQ* FAMILIES IN EUROPE BY MAKING A DONATION.
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Panel discussion

FRAMING THE ISSUES OF FAMILIES OF SAME-SEX PARTNERS AND LGBTIQ* INDIVIDUALS. SEARCHING FOR WIDER RESONANCE BEYOND THE HUMAN RIGHTS FRAMEWORK?

PANELISTS: LIZ GOSME (COFACE FAMILIES EUROPE), SLAVEN KLOBUČAR (ÉGALITÉ – LGBTI+ STAFF OF EU INSTITUTIONS), VENETA LIMBEROVA (DEYSTVIE, BULGARIA), DANIEL MARTINOVIĆ (DUGINE OBITELJI, CROATIA), INGA ROSINSKA (HOMOPARENTALITÉS, BELGIUM), RUTA SIMELYTE (EU COMMISSION, DG JUSTICE), MODERATION: DAVID KOOTZ (HOMOPARENTALITÉS)