

Rainbow Families in Europe

PRESENTATION IN TOULOUSE
ON 6TH OF SEPTEMBER 2019



nelfa AISBL

network of european LGBTIQ* families associations



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



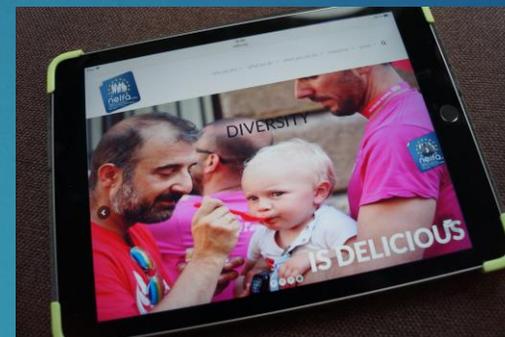
The steady fight against discrimination...

LGBTIQ* parents and their children are often deprived of their rights: CIVIL STATUS, PARENTING... 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





LEGAL SITUATION OF RAINBOW FAMILIES IN EUROPE

Lesbian, gay, bisexual, trans*, intersex, queer couples and parents (to-be)



LGBTIQ* family rights

Registered Partnership: 24 European countries

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

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

THE NETHERLANDS, BELGIUM, SPAIN, NORWAY, SWEDEN, PORTUGAL, ICELAND, DENMARK, FRANCE, UK (Northern Ireland 2020), LUXEMBOURG, IRELAND, FINLAND, GERMANY, MALTA, 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: 11 countries

(**10 EU**) most recently: FINLAND (soon 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

CONCLUSIONS

A patchwork situation in Europe

A lot of achievements within the last decades, with more speed in Western Europe: cultural, historical, social reasons, progressive governments, general acceptance, strategic litigation...

Hardly any recognition of rainbow families in Bulgaria, Latvia, Lithuania, Poland, Romania and Slovakia (EU) [0 % in Turkey, Serbia, Azerbaijan]

FRANCE in the section "family": position 15 in Europe (score: 57,50 % as Germany) – "**Best conditions**" in Malta, Sweden, Belgium, The Netherlands, Spain, Portugal and Denmark

Deficits in the MAP: Marriage equality was highlighted (+joint adoption). Not yet included: Foster care, surrogacy, multi-parenting...



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:l33152>

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 ... also **RAINBOW FAMILIES**? In June 2018: a clarification through the **Coman case**.



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 to have lesbian moms")

(CONVERTED) MARRIAGES: UK-FRANCE, FINLAND-FRANCE => incompatible regulations (marriage can't be just a conversion of a civil union), then a positive decision in hurdles and couples (with children) remain in legal limbo: an adoption isn't recognised when it was established before the conversion date of the marriage (...)

In **AUSTRIA**, same-sex marriages that were contracted before 2019 abroad (i.e. Portugal) are not accepted, couples have to remarry.

Officials in **HUNGARY** didn't accept a German same-sex marriage. At the same time, they denied access to a civil union because the couple concerned could not proof that they are not yet in a registered relationship (...)



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!





SPECIFIC RIGHTS OF RAINBOW FAMILIES IN EUROPE

Lesbian, gay, bisexual, trans*, intersex, queer couples and parents (to-be)



Medically assisted insemination 2019

- MAR for singles & couples
- MAR for lesbian couples
- MAR for single women
- MAR recent discussions

LA PMA POUR TOUTES

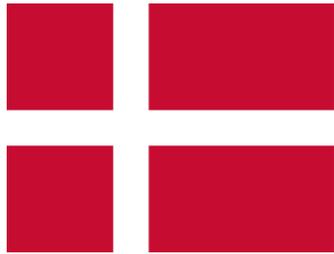


Co-parent recognition 2019

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



Co-parent recognition examples



Children's Act 2013

Lesbian singles or couples are parents when they had an anonymous donor (treatment in a clinic), known donor: then, maternity or paternity statement (+ care and responsibility statement to be legal parents). Not recognised: home insemination, multi-parenting



New Law 2014

The birth mother's partner is automatically „legal mother“ when the donor's identity is unknown and they are married or registered partners. Known donor: the partner (or donor) can acknowledge the child. Unmarried couples: court decision is necessary). Recognition of foreign birth certificates.



New Law 2015

Married lesbian couples can register both their names on their child(ren)'s certificates (since 2018: also through home insemination). Cohabiting or couples in de facto unions: the non-biological mother must normally go through an adoption process. Since 2019: MAR for couples in public clinics possible.

Other countries

UK (2009): Same-sex parents can both be named on a birth certificate. Unmarried/unregistered partners need a parenthood agreement and a UK clinic document. Male couples must get a parental order (after surrogacy)

Malta (2014): Civil unions are recognised with the same rights as different-sex spouses. This included the automatic co-parent recognition (2017: marriage equality). Since 2018, IVF is possible for single women and lesbian couples

Belgium (2015): Co-motherhood is possible from birth for married female couples, unmarried couples can recognise the child. Exception for foreign women with MAR prohibition.

Austria (2016): Same-sex couples have the same rights in parenting. Lesbian couples (married or registered) can become legal mothers when their child was born through MAR in a clinic.

Portugal (2016): Automatic parenthood for both spouses after birth (same year: marriage, MAR and [step-child] adoption)

Slovenia (2017): Same-sex couples can register their partnership. Automatic co-parenting comes in effect, when a mother, who is in a civil union, gives birth to a child (no connection to the technique of the conception. MAR is forbidden, so couples must go abroad)

Finland (2019): Co-parent recognition is possible for lesbian couples (married or unmarried). Conditions: fertility treatment in a clinic and the father can't be confirmed



SURROGACY in Europe

Red: banned, Denmark: traditional surrogacy

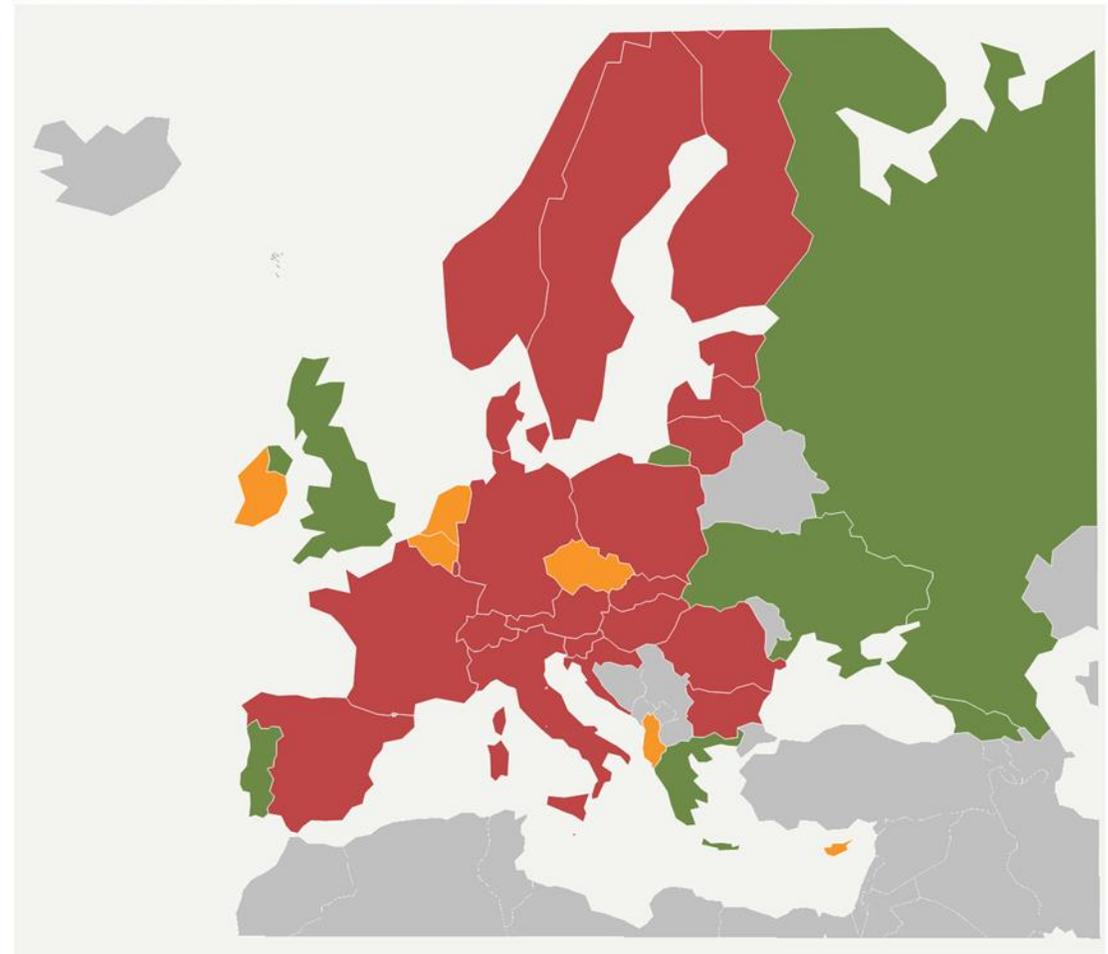
Orange: arrangements void and unenforceable => The Netherlands [under review], Czech Republic, Belgium, Ireland [under review]; no definitive laws: Albania (compensated), Cyprus

Green: UK (altruistic for UK citizens), **Greece** (altruistic for heterosexual couples and single women), **Georgia** (heterosexual couples, compensated), **Portugal** (altruistic for heterosexual couples with medical need), **Ukraine** (heterosexual married couples), **Russia** (allowed)

Foreigners engaged: Albania, Georgia, Greece, Portugal, Ukraine, Russia, (Northern Cyprus) – but more in the US, Canada... Mexico, Kenya, Laos...

Source: Families Through Surrogacy (Australia), September 2018

Where in Europe is surrogacy legal?



Scroll over each country to see what the law is on surrogacy

Source: Families Through Surrogacy (September 2017)

Share

euronews.

SURROGACY in Europe

Question of citizenship (European Centre for Parliamentary Research and Documentation: Normally, the gestational mother is seen as legal mother, not the genetic mother. **France**: legal relations via adoption (Belgium, Netherlands as well, UK [adoption or acquired parental order], **Luxembourg**: bill proposes parenthood certificate

Genetic motherhood: Georgia, Greece, Israel (transfer of guardianship via court order), UK, US

Legal guardian of the surrogate child are (directly) the intending parent(s) in Armenia, Georgia, Greece, Kazakhstan, Portugal, Russia (GS), South Africa, Thailand, Ukraine

 Finland	Illegal	Illegal	
 Germany	Illegal	Illegal	Surrogate
 Georgia	Legal	Legal	Intending parent(s)
 Greece	Legal - restricted	Illegal	Intending parent(s)
 Hungary	Unregulated	Illegal	
 India	Legal	Illegal	
 Iran	Unregulated	Unregulated	
 Ireland	Unregulated	Unregulated	
 Israel	Legal - restricted	Legal - restricted	Surrogate (transfer of guardianship through court order)
 Italy	Illegal	Illegal	
 Japan	Unregulated	Unregulated	Surrogate
 Kazakhstan	Legal	Legal	Intending parent(s)
 Latvia	Unregulated	Unregulated	
 Netherlands	Legal	Illegal	Surrogate (transfer of guardianship through adoption)
 Malaysia	Illegal	Illegal	Surrogate
 New Zealand	Legal	Illegal	
 Nigeria	Unregulated	Unregulated	
 Norway	Illegal	Illegal	
 Pakistan	Illegal	Illegal	Surrogate
 Peru	Unregulated	Unregulated	
 Poland	Unregulated	Unregulated	Surrogate
 Portugal	Legal	Illegal	Intending parent(s)

NELFA ART guidelines

Artificial Reproductive Techniques (<http://nelfa.org/who-we-are/documents/>)

- Equal access to ART for LGBTIQ* (donation of gametes, IVF, reciprocal IVF, surrogacy)
- Full legal protection for the children, regardless from the ART used by their parents
- All ART should be altruistic, costs reimbursed to the parties, never for purely economic reasons
 - => Ethical approach
- Regulation is the best guarantee for all involved => appropriate legislation
- Clarifying language: surrogacy – motherhood, parents – donors
- Gametes donation could be anonymous or open, child's right to access as much info as possible about conception/family history
- Surrogacy: parentage established before pregnancy, all parties are well-informed before an agreement

NELFA GUIDELINES

ON ASSISTED REPRODUCTIVE
TECHNIQUES (ART)

Proposal by the NELFA Working Group on ART:

Giuseppina La Delfa (Famiglie Arcobaleno, NELFA Board member), Didier Disenhaus (Homoparentalités), Antonio Vila-Coro (Son Nuestros Hijos), Dominique Boren (APGL, NELFA Board member) and Jordi Antón (FLG, NELFA Board member)

Drafted on: 17-12-2016 in Barcelona

Discussed and approved by the NELFA Board on: 8-2-2017

Sent to NELFA member associations on: 22-02-2017

Presented and approved by the NELFA General Assembly on: 25-03-2017 in Naples





WHAT CAN WE EXPECT FROM COURTS AND INSTITUTIONS IN THE EUROPEAN FRAMEWORK?



What's next?

- CoE and EU should continue to claim on the Member States to respect the fundamental rights of all citizens (regardless of their sexual orientation and/or gender identity) = **EQUALITY**
- Clarification of the wording in EU-Directive 2004/38/EC (i.e. direct descendants). Are familial ties of rainbow families included?
- **EU: 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)



“

[...] 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)

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 37 ORGANISATIONS IN 30 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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