



Chances and Challenges for Rainbow Families

PRESENTATION IN BRUSSELS ON 12TH OF NOVEMBER 2019





WHAT IS NELFA?



NELFA

THE NETWORK OF EUROPEAN LGBTIQ*
FAMILIES ASSOCIATIONS (BRUSSELS)
TURNED 10 YEARS OLD IN 2019.

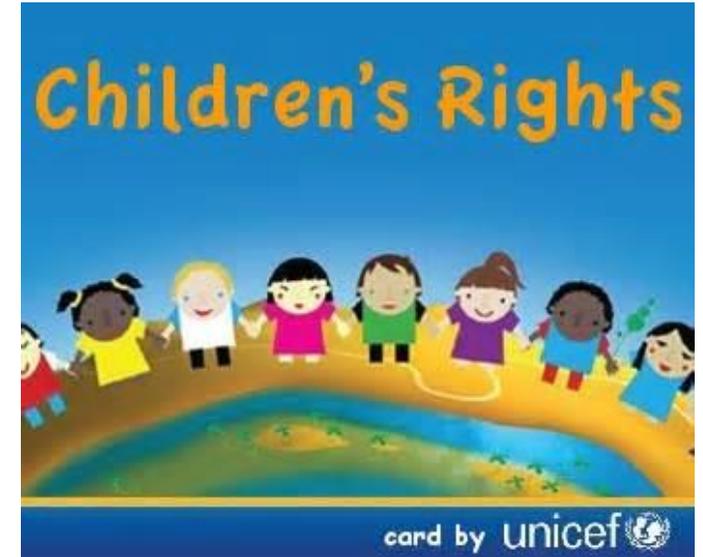
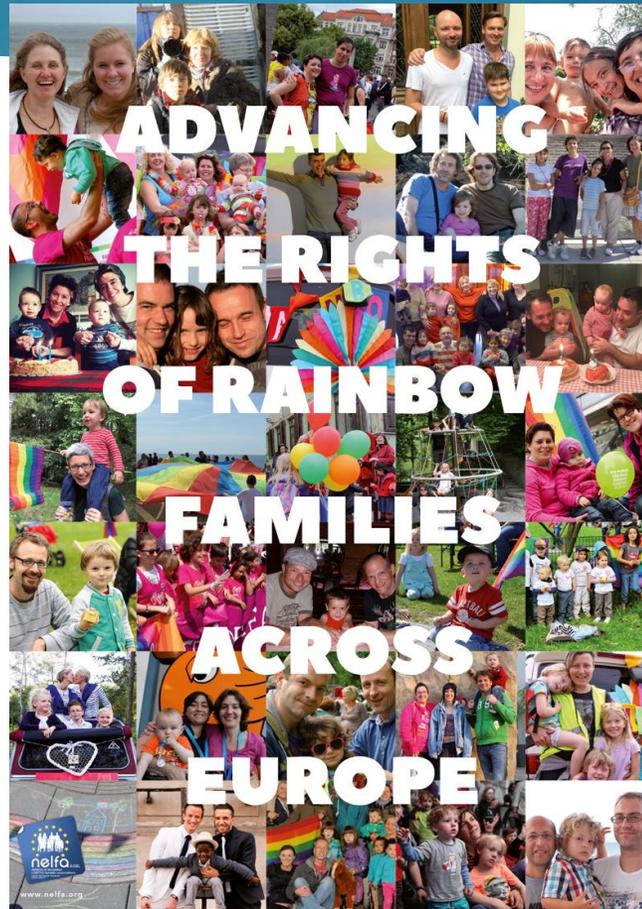
CURRENTLY **38 ORGANISATIONS**
REPRESENTING 31 EUROPEAN
COUNTRIES (20.000+ MEMBERS).

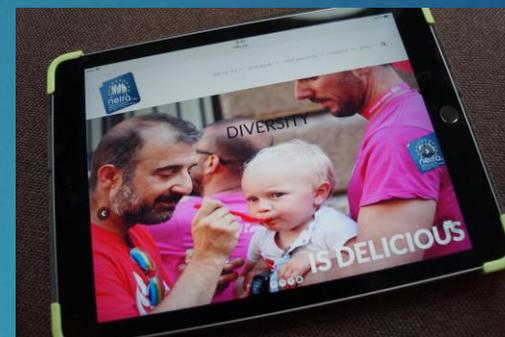
APPROXIMATELY 10.000 CHILDREN!

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 major aims...





CHANCES FOR RAINBOW FAMILIES IN EUROPE

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

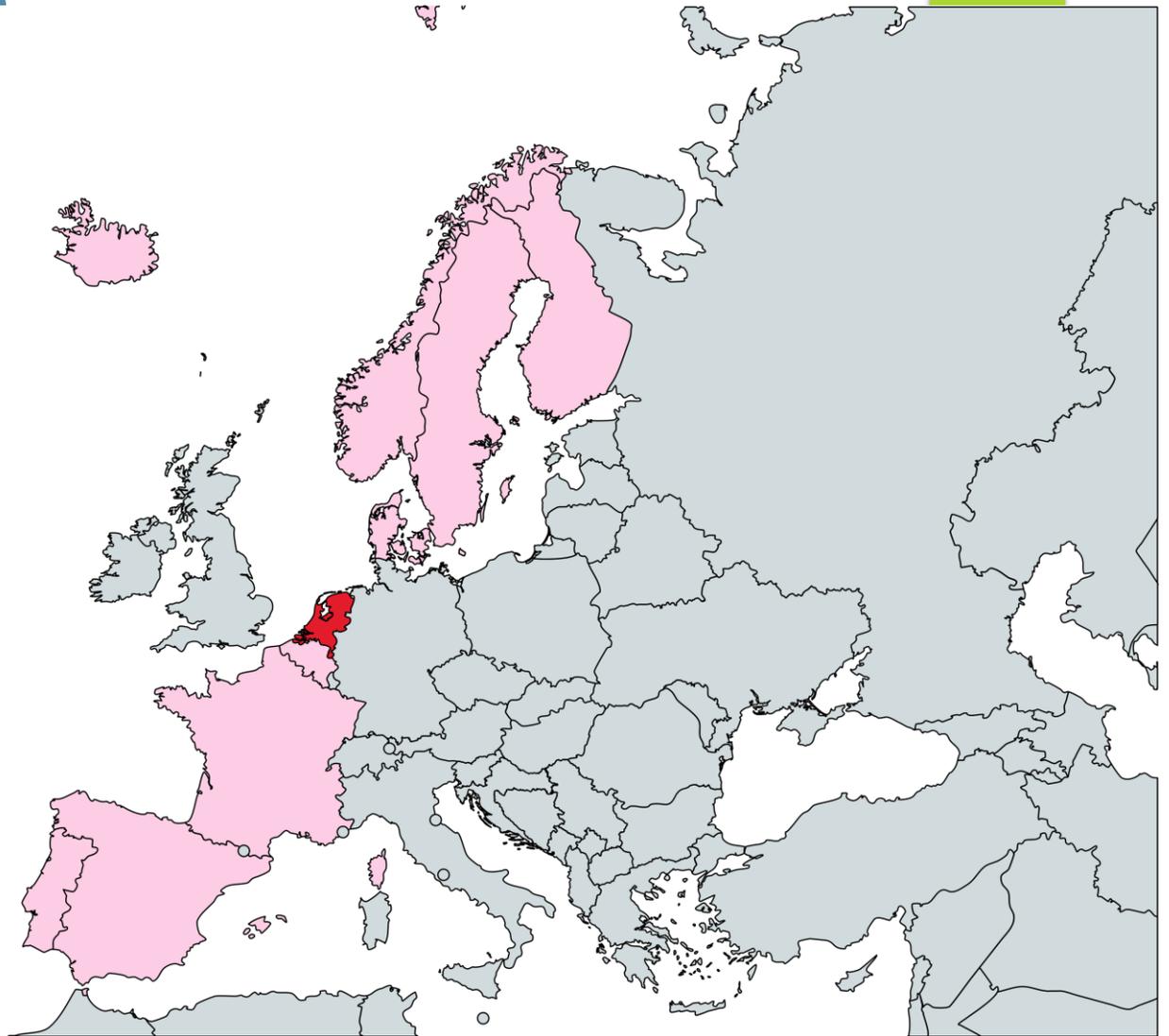


Legal progress

The recognition of same-sex partnerships began in 1989 – 30 years ago – in Denmark. The first same-sex marriages were possible in the Netherlands from 2001... and have a look at the development!

Civil unions/marriage 2001

- Marriage equality
- Civil unions



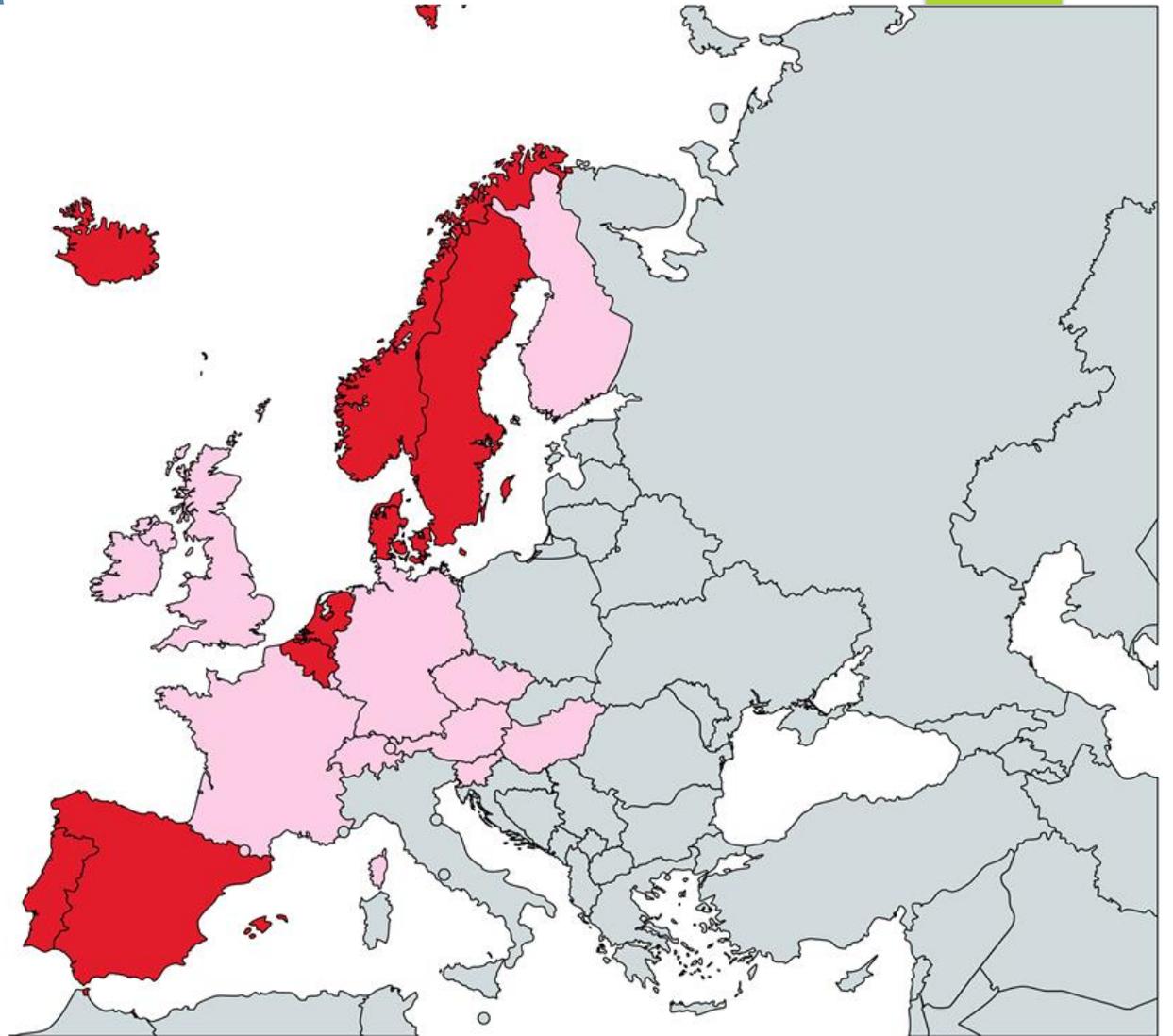
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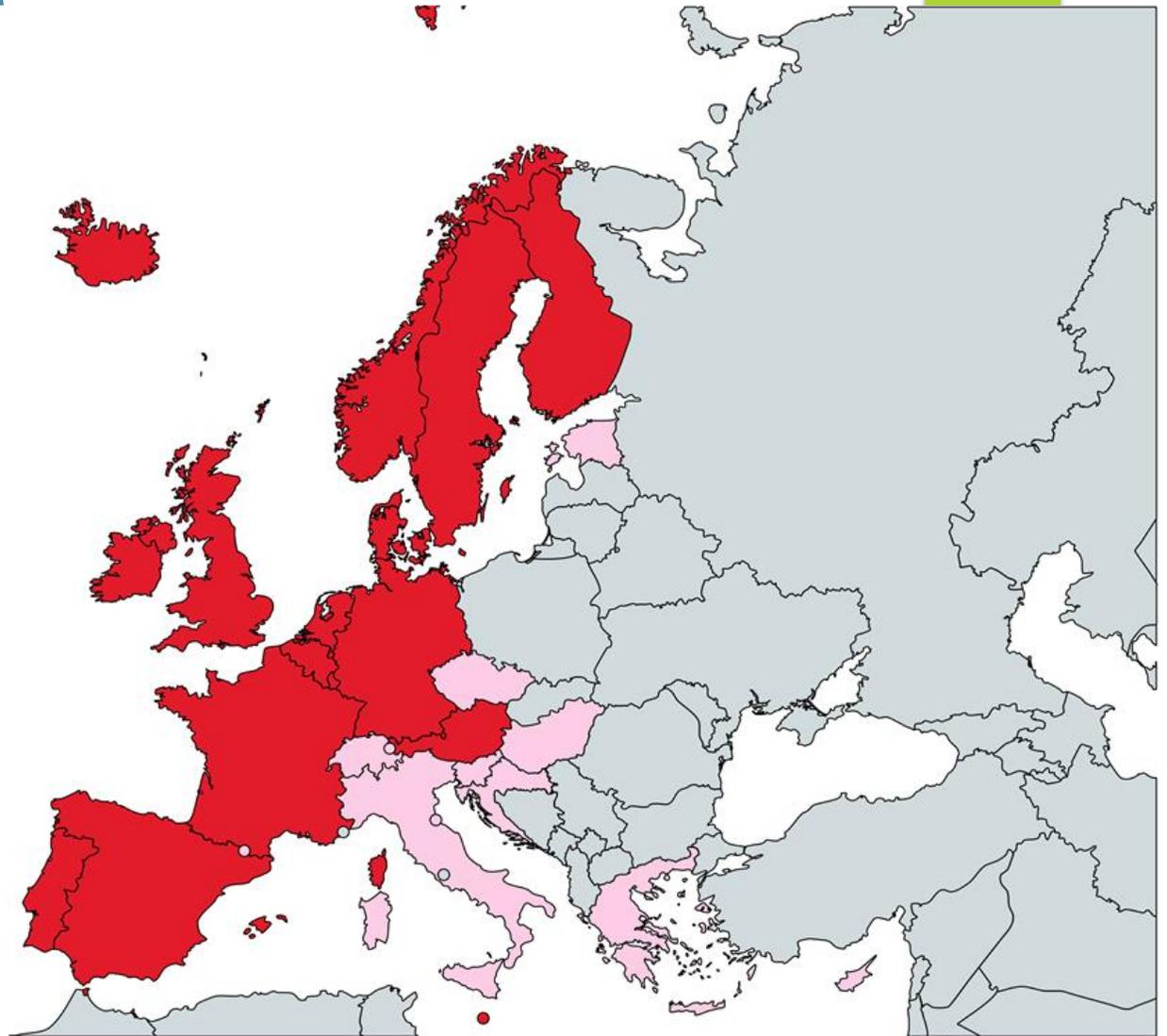


Legal progress

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Civil unions/marriage 2020

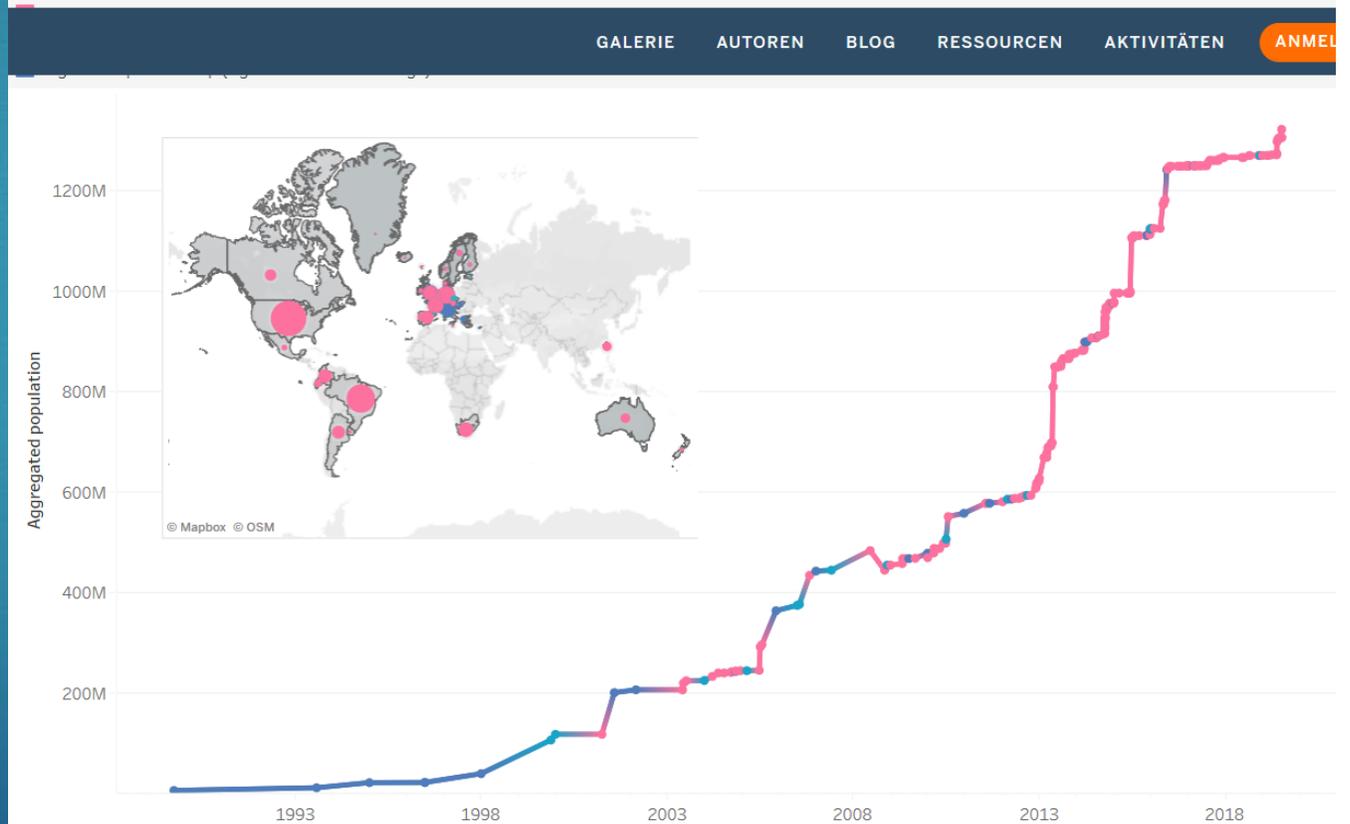
- Marriage equality
- Civil unions



Legal progress

LGBT komiteen in Denmark just published a fact sheet: The recognition of same-sex relations means **already equality for 1.3 billion people**. And we can add 1.8 million in Northern Ireland (21 October 2019)

30 years of legal recognition of same-sex relations
Equality for 1.3 billion people



Legal progress

In the meantime, **joint parenthood** (second-parent adoption or co-parent recognition from birth or even before) is available in **18 EU Member States** (plus Andorra, Iceland, Norway, San Marino*, Switzerland).

=> **23 European countries**

JOINT PARENTHOOD 2019

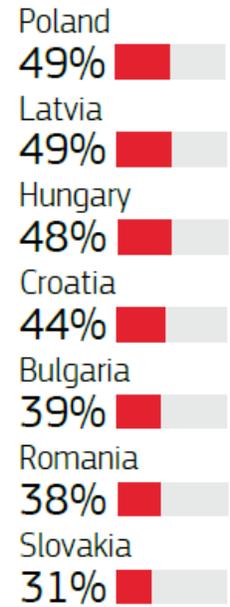
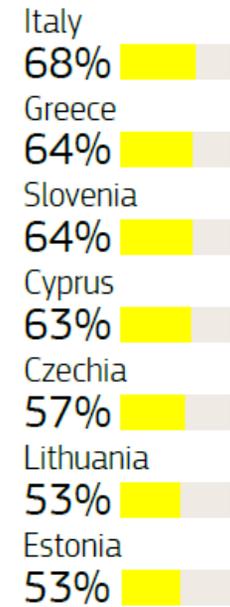
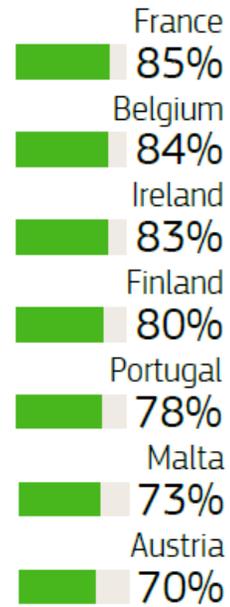
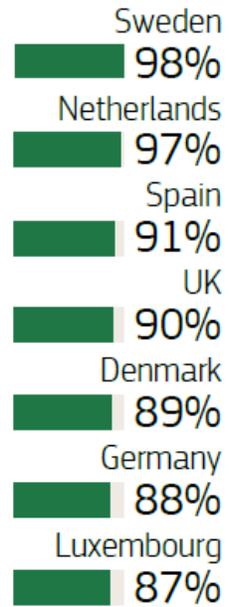
- 1st class filiation
- 2nd class filiation
- 3rd class filiation
- No LGBTIQ* filiation



Public opinion

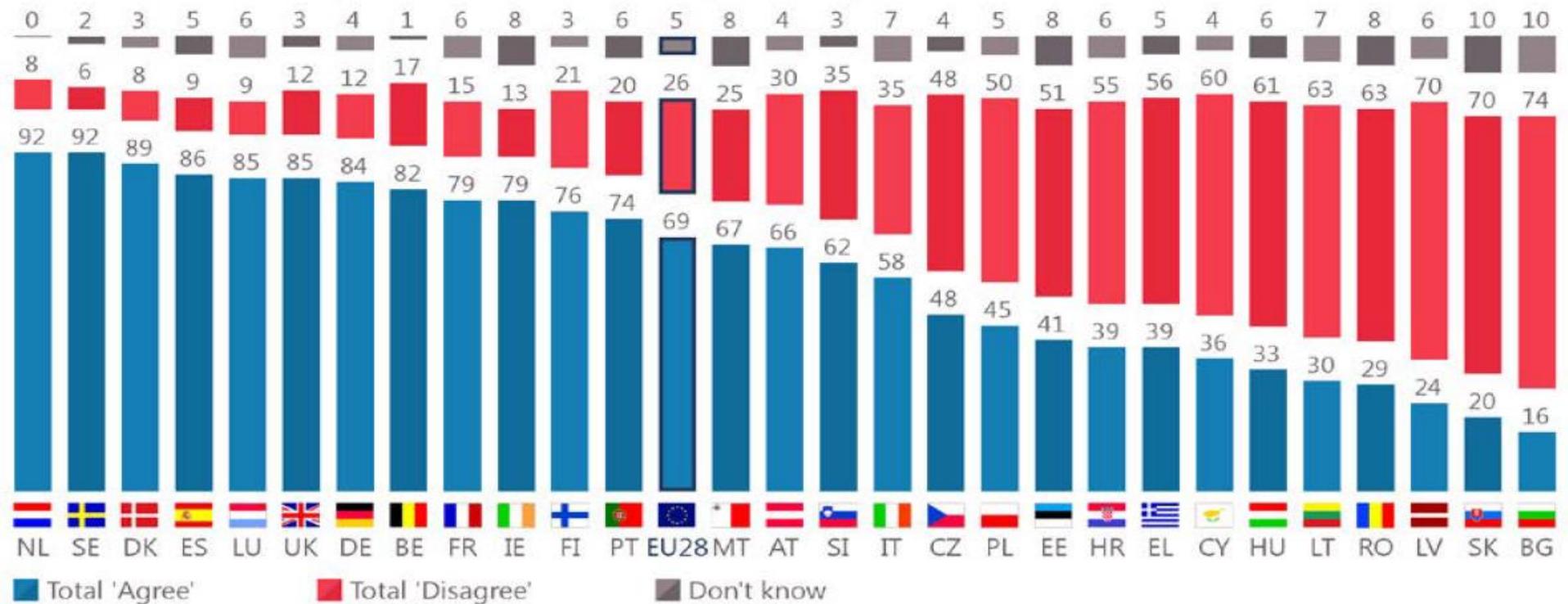
Eurobarometer 2019

AGREEMENT THAT GAY, LESBIAN OR BISEXUAL PEOPLE SHOULD HAVE THE SAME RIGHTS AS HETEROSEXUAL PEOPLE **VARIES WIDELY BETWEEN THE MEMBER STATES***

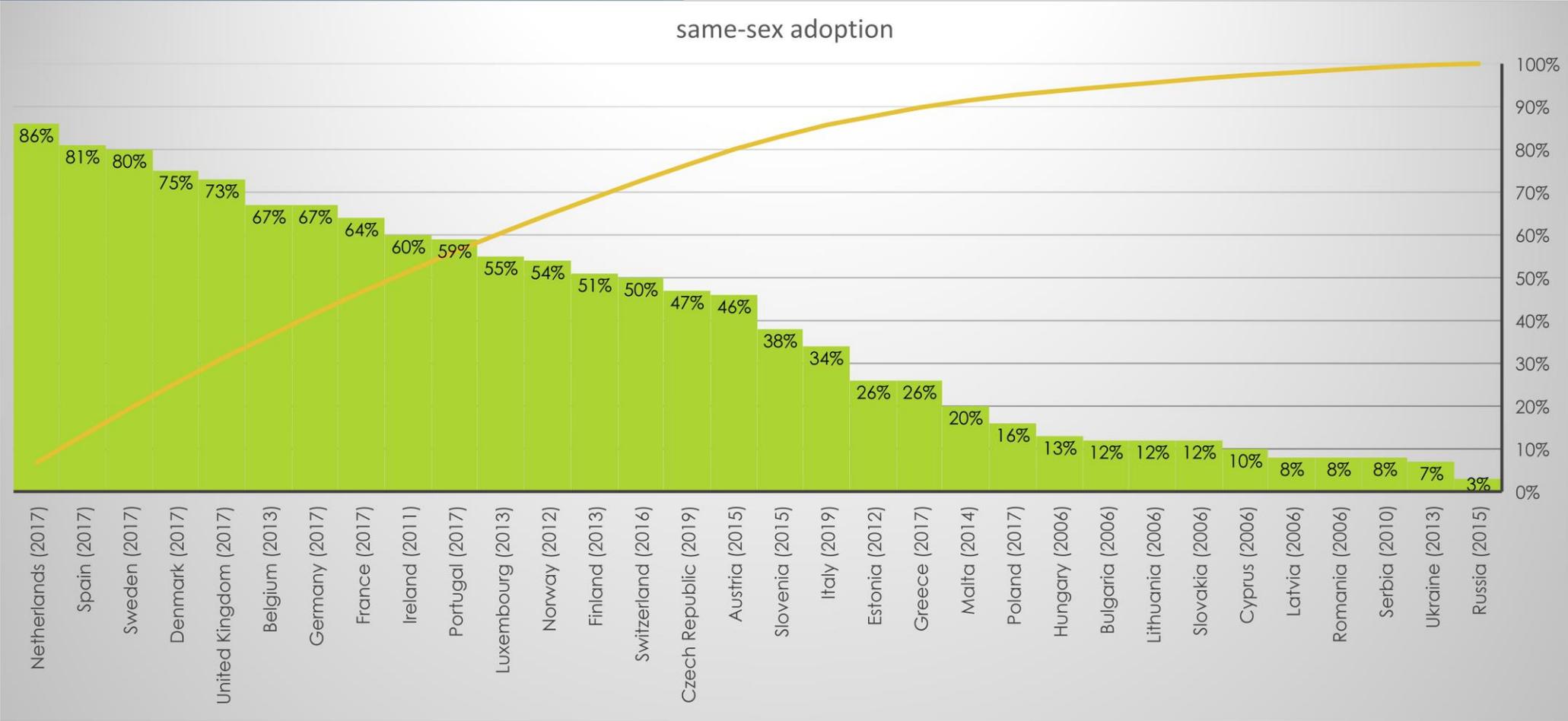


Public opinion

Same sex marriages should be allowed throughout Europe (%)



Public opinion (Wikipedia 2019)

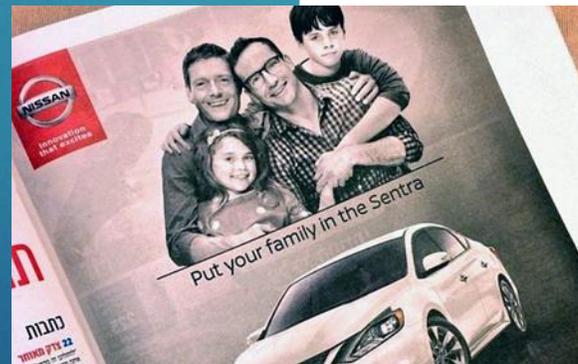
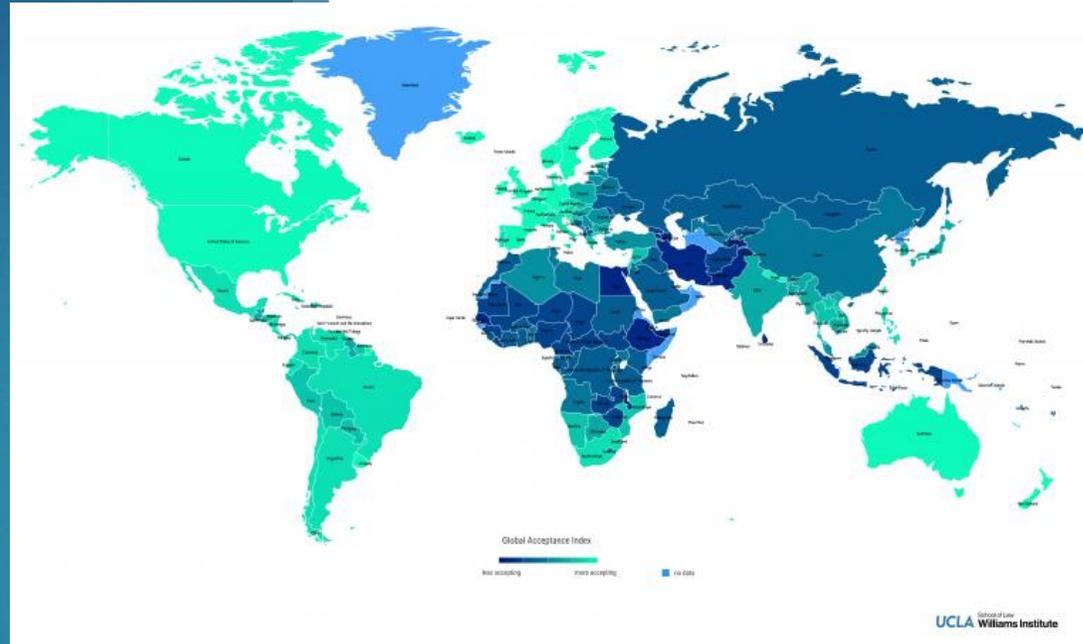


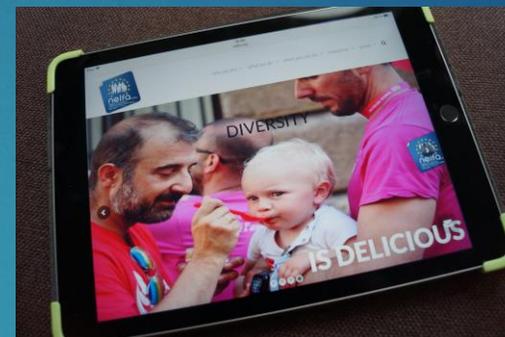
Public opinion

(Williams Institute 2019)

A new study from California measures **LGBTIQ*** acceptance in 174 countries (data from 1981 to 2017)

Iceland, the Netherlands, Norway, Canada, and Spain are the top five most accepting countries, and all have increased in LGBT acceptance over time



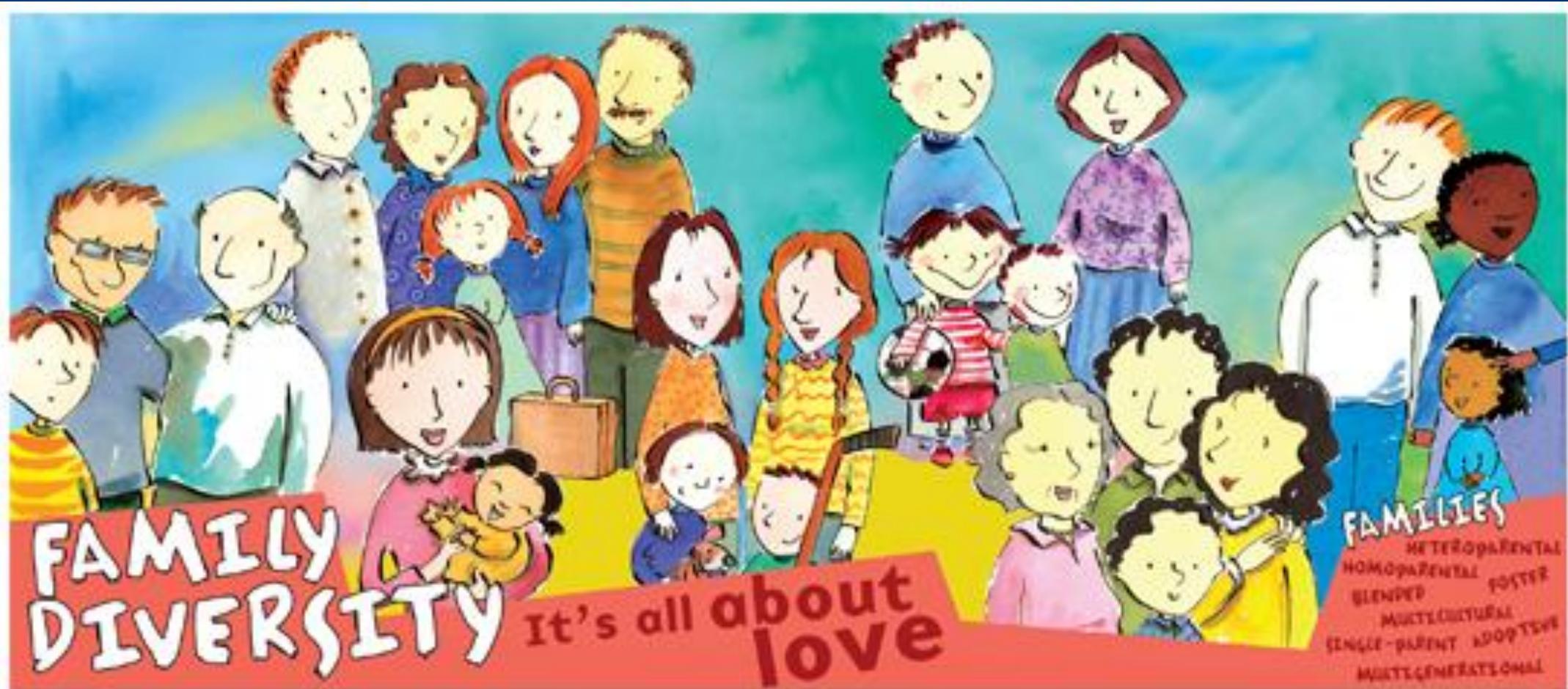


CHALLENGES FOR RAINBOW FAMILIES IN EUROPE

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



TRANSFORMATION: BIOLOGICAL FAMILY => FUNCTIONAL FAMILY



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 to society“ (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.



Mit kreativem Straßen-Protest direkt vor dem Familienministerium machen wir aufmerksam auf den Frontalangriff gegen die natürliche Familie durch das „Regenbogenportal“ des Ministeriums.



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, parental leave** (the latter: not available for many LGBTIQ* parents in 11 EU countries)

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

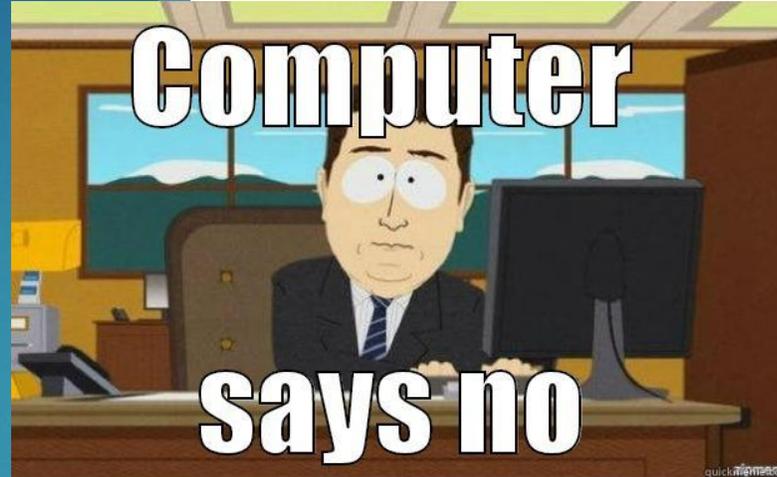
LGBTIQ* parents face difficulties to travel or to sign docs for the school or other activities. They have problems to get **reduction** for zoo, theatre or public pools



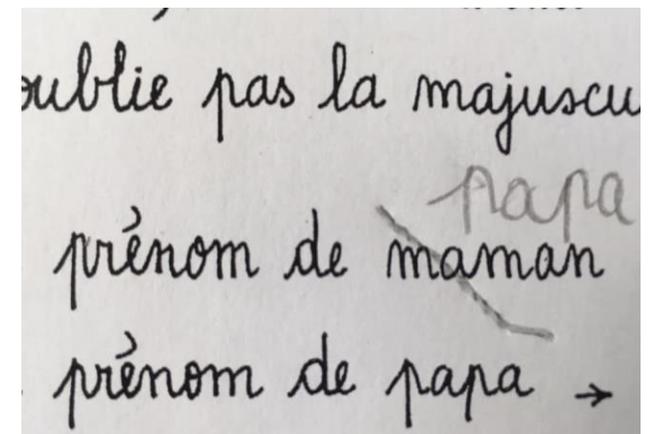
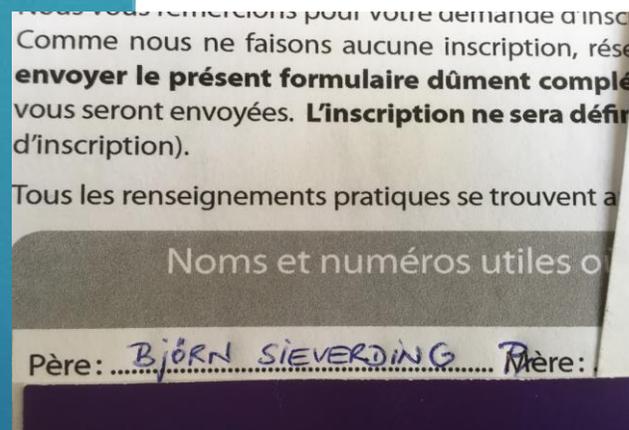
Daily challenges

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 Outs** and to disclose sensitive information



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



LGBTIQ* families rights

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



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**

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 uncertainty for **RAINBOW FAMILIES**.
Residence rights... but for other purposes?

In June 2018: important clarification through the **Coman case** (ECJ judgment: spouses of the same-sex fall under the Directive)



Sofia

Her parents are **Kashka**: Polish, **Sinead**: Irish

Residence: normally Ireland

2018 (summer): Birth of Sofia via MAR in Granada/Spain

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

Ireland and Poland didn't accept the transcription of Sofia's birth certificate (The Polish embassy employee first promised a temporary passport, but this was denied after months of non-communication. Last statement: „Search for a lawyer!“, the registry office in Krakow then issued an official rejection after permanent delays. The Irish Passport Office immediately sent a rejection)

Current status: Sofia remains stateless, without ID, without insurance. The family doesn't reside in Spain, but can't get back to Ireland. They went by car to the relatives in Poland (illegally), but will come back to Spain hoping that the authorities will grant an extraordinary citizenship for Sofia (can take one year...)





SPECIFIC RIGHTS OF RAINBOW FAMILIES IN EUROPE

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



SURROGACY in Europe

Red: completely banned, Denmark?

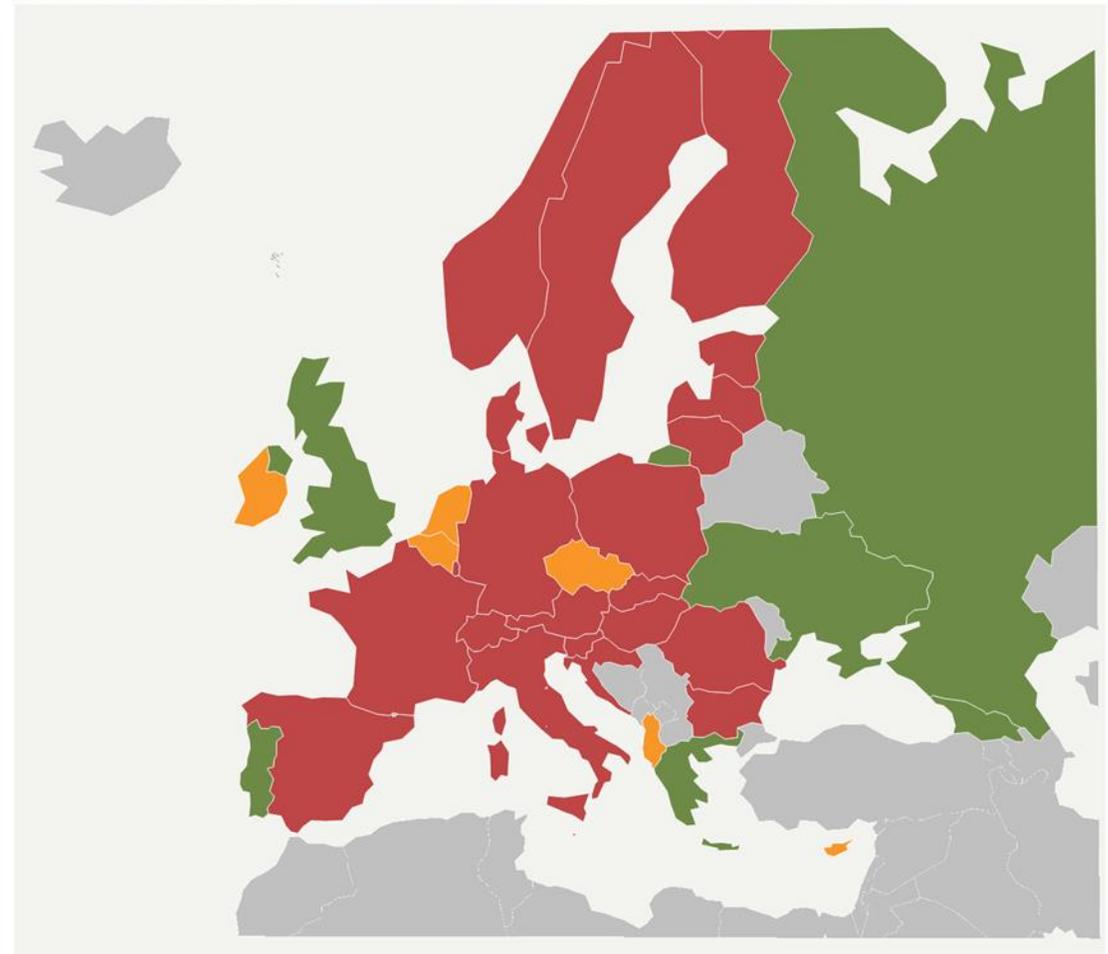
Orange: arrangements void and unenforceable => The Netherlands [under review], Czech Republic, Belgium, Ireland [under review]; no definitive laws: Albania (compensated), Cyprus

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)

LGBTIQ* SURROGACY 2019

- Altruistic, restricted (UK)
- Altruistic, not illegal
- Altruistic, single women



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(LGBTIQ*) SURROGACY IN THE EU:

IN GENERAL, SURROGACY IS BANNED IN MANY EU COUNTRIES OR AT LEAST NOT REGULATED.

UK: SAME-SEX COUPLES (AT LEAST ONE UK CITIZEN) ARE ALLOWED TO SEARCH FOR A SURROGATE (COSTS REIMBURSED). JOINT PARENTHOOD WILL BE ESTABLISHED WITHIN 6 MONTHS (PARENTAL ORDER), THE SURROGATE HAS 6 WEEKS TO DECIDE ON HER MOTHERHOOD. UNDER REVIEW.

BELGIUM: SURROGACY IS NOT REGULATED, TWO CLINICS (GENT AND BRUSSELS) OFFER TREATMENT FOR SAME-SEX COUPLES. THE NEW GOVERNMENT (2019) HAS PROMISED TO PREPARE A LAW.

NETHERLANDS: SURROGACY IS NOT REGULATED YET (BILL 2019). TWO CLINICS READY FOR SAME-SEX CLIENTS (LEIDERDORP, ELSENDORP), CONSIDERATIONS IN AMSTERDAM + ZWOLLE.

FOREIGN BIRTH CERTIFICATES: IN GENERAL THROUGH COURT DECISION – RECOGNITION OF THE BIOLOGICAL FATHER, SOCIAL FATHER MOSTLY THROUGH SECOND-PARENT ADOPTION (SEE ALSO **NEW ADVISORY OPINION** OF THE ECJ: INTENDED PARENTS SHOULD BE RECOGNISED)

Recent court decisions...

10 April 2019: ECtHR in **Strasbourg** with advisory opinion: legal ties of children born through surrogacy with intended parents. But CoE Member States should decide which legal way they provide

24 April 2019: The **German** Federal Court decided that a surrogate (here: Ukraine) is the legal mother, even if the intended mother gave her ovum

09 May 2019: Couples who seek surrogacy abroad won't be able to register themselves as co-parents to their children in **Italy** (stepchild adoption possible)

28 May 2019: A **French** court (Paris) accepted a foreign birth certificate (Canada) stating two dads. Their twins, born through surrogacy in 2014, obtain French nationality

04 October 2019: The Court of Cassation in **Paris** finally decided that the filiation between intended parents and their children born through surrogacy (here: California) has to be recognised (Menesson case)



Segev and Matan

Parents: Mr. **Schlittner** (Israeli-Polish) and Mr. **Hay** (Israeli)

Residence: Ramat-Gan, Israel

2010: Birth of Segev and Matan after a surrogacy agreement in California, with a married woman (Kristy)

USA: Birth certificate states two dads (Father/Parent, Mother/Parent) with custody rights and legal parenthood

Poland: In 2012, the authorities (Mazowiecki Governor and then Minister of the Interior) rejected the application of Mr. Schlittner to obtain Polish citizenship for the twins. They saw Kristy as mother and due to the law – her husband as father (presumption of parenthood), even Mr. Schlittner is the confirmed biological father. In July 2013, the Warsaw Regional Administrative Court backed the authorities, in May 2015 also the Supreme Court.

Current status: Schlittner-Hay lodged their ECtHR complaint on 5 Nov 2015, in August 2019 a group of lawyers (including NELFA) sent a joint amicus-curiae-brief. to support the complaint and citizenship application.

ILGA
EUROPE

CRIN
CHILD RIGHTS
INTERNATIONAL
NETWORK



POLSKIE TOWARZYSTWO
PRAWA ANTYDYSKRYMINACYJNEGO

HR HELSINKI FOUNDATION
FOR HUMAN RIGHTS



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



CoE: De Sutter report

"Children's rights related to surrogacy", (rejected in 2016)

Condemnation of "for-profit surrogacy" (estimations reach 98-99%), but open-minded regarding altruistic gestational surrogacy, tightly regulated and available for residents only (controversial CoE debate...)

De Sutter: "The lack of a multilateral legal instrument on parentage related to surrogacy increases the risk of children's rights abuses"

Proposal: Collaboration of CoE and the Hague Conference on Private International Law (HCCH)

UN Children's Rights Convention (UNCRC):

ARTICLE 3: Best interests of the child

ARTICLE 7: Registration after birth: name, nationality, to know and to be cared for by his/her parents

ARTICLE 9: maintain personal relations/direct contact

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



“

[...] I nonetheless consider it as **beyond the scope of the present report to examine questions regarding access to medically assisted procreation and gestational surrogacy**, except in so far as any laws that already exist in member States are applied in a discriminatory way. For example, where single women are granted access to medically assisted procreation, this access should be granted equally to everyone who is able to give birth, regardless of their sexual orientation; in the few Council of Europe member States where surrogacy is possible, **equal access should again be granted to all, without discrimination** [...]

”

JONAS GUNNARSSON (PACE-RAPPORTEUR, COMMITTEE ON EQUALITY AND NON-DISCRIMINATION)

Council of Europe, Resolution 2239 (October 2018). Private and family life: achieving equality regardless of sexual orientation.

Resolution : <https://bit.ly/2FpaqqR>. Report: <https://bit.ly/2NuRdmD>.



CoE: De Sutter report II

“Anonymous donation of sperm and oocytes”, (April 2019)

More than 8 million children worldwide have been born as a result of assisted reproductive technologies – most countries favoured anonymous donation

De Sutter: “Anonymity should be waived for all future gamete donations in Council of Europe member States, and the use of anonymously donated sperm and oocytes should be prohibited.”

Tendency to waive the principle of the anonymity of gamete donations: Sweden (1984), Germany, Switzerland, the Netherlands, Austria, Finland, Iceland, UK, Portugal (2018)

Scheib 2017: The US study noted that in a sample of young American adults conceived through a sperm donation programme with the identity of the donor being accessible, 40% asked for access to the identity.

De Sutter: “No changes to legal parentage should result from the lifting of the anonymity even when the donor has agreed to it being lifted.”



What next?

- **Celebrating the full rainbow of families** – focus on the well-being of the children
- CoE and EU should continue to claim on the Member States to respect the **fundamental rights of all citizens**
- Clarification of the wording in EU-Directive 2004/38/EC (i.e. direct descendants). Are familial ties of rainbow families included?
- **EU: The recognition of the CONTENT of civil documents (VERY IMPORTANT!!)**
- Endeavours to strengthen children's rights, (their opinions taken into account...)
- **FOR RAINBOW FAMILIES: LITIGATION...**



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 38 ORGANISATIONS IN 31 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.
BANK: CRELAN, BELGIUM **IBAN:** BE18 8601 1595 2465 **BIC:** NICABEBB

