

ILGA-EUROPE SOFIA 2022// SHAPING THE WORLD TO COME



If you are a parent
in one country,
**you are a parent
in every country.**



Parenthood
recognition in
Europe – today's
trends and
tomorrow's tasks

NELFA WORKSHOP AT THE ILGA-
CONFERENCE IN SOFIA/ BULGARIA
ON 20TH OF OCTOBER 2022.



Legal parenthood –

the state of being a parent and the responsibilities involved

APPROACH OF (LEGAL PARENTHOOD):
BIOLOGICAL REALITY VERSUS FUNCTIONAL REALITY
WHO IS THE LEGAL "PARENT"?

IN MOST OF THE
CASES THE PERSON
WHO GIVES BIRTH
(BIOLOGICAL
REALITY) – THE
"**MOTHER**" ("*MATER
SEMPER CERTA EST*")

THE "**FATHER**" WHO
IS MARRIED TO THE
"MOTHER"
(BIOLOGICAL
PRESUMPTION)

THE "**FATHER**" WHO
ACKNOWLEDGES
PARENTHOOD
(BIOLOGICAL
PRESUMPTION)

THE "**FATHER**"
THROUGH A
COURT DECISION
(FUNCTIONAL/BIOLOGICAL
PROOF)

(**JOINT**)/STEP-
CHILD
ADOPTION
(FUNCTIONAL
REALITY)

DIFFERENT PROVISIONS...

CONCERNING LEGAL PARENTHOOD



THE TERMS „**MOTHER**“ AND „**FATHER**“ ARE SOMETIMES LINKED TO A SPECIFIC GENDER ASSIGNMENT („**MOTHER**“ IS A WOMAN, „**FATHER**“ IS A MAN)



SOME COUNTRIES KNOW **CO-MOTHERHOOD** (THE FEMALE PARTNER OF THE BIOLOGICAL MOTHER HAS THE POSSIBILITY TO BE (AUTOMATICALLY) A LEGAL PARENT (THROUGH **MARRIAGE** [PARENTAL PRESUMPTION], **ACKNOWLEDGEMENT** [MEDICAL TREATMENT IN A CLINIC, HOME INSEMINATION], **STEP-CHILD ADOPTION**)



SOME COUNTRIES PROVIDE FOR (JOINT) SAME-SEX ADOPTION (POSSIBILITIES FOR CO-MOTHERHOOD OR CO-FATHERHOOD), ONE **PRE-CONDITION** IS OFTEN THAT THE INTENDED PARENTS ARE **MARRIED TO EACH OTHER**



IN ALL EU MEMBER STATES, LEGAL PARENTHOOD IS **RESERVED FOR TWO PEOPLE**. THIS MIGHT CHANGE IN THE FUTURE (**GERMANY?, FRANCE?**)





Birth certificates –

include: being the child of a particular parent or parents (filiation)

BIRTH CERTIFICATES...

FROM THE PERSPECTIVE OF A CHILD



An official document issued to record a person's birth and identify them by name, place, date of birth, and **parentage** (identity and origins of the [legal] parents). It proves that birth registration has occurred (legal identity).

It provides for **general protection** (from violence, trafficking etc.), access to social services, health care, justice.

It is an **official identification for basic transactions**: opening a bank account, registering to vote, getting a passport, entering the formal job market etc.

It helps to ensure that **children's rights are upheld** (identity, name, registration, maintaining contacts to both of its "parents" etc.)



How this works in practice...

(CROSS-BORDER) HURDLES (IN THEORY AND PRAXIS)



FATHER – MOTHER

In most of the cases, such a birth certificate will be accepted because it simply reflects the basic (inter)national (joint) conditions



MOTHER – MOTHER PARENT ONE - TWO

In a lot of countries, such a birth certificate will be an invalid document because of national provisions (public order...)



MOTHER – MOTHER PARENT ONE - TWO

Even in countries, where co-motherhood is known, the pre-conditions might not match (specific rules on ART, laws of descent)



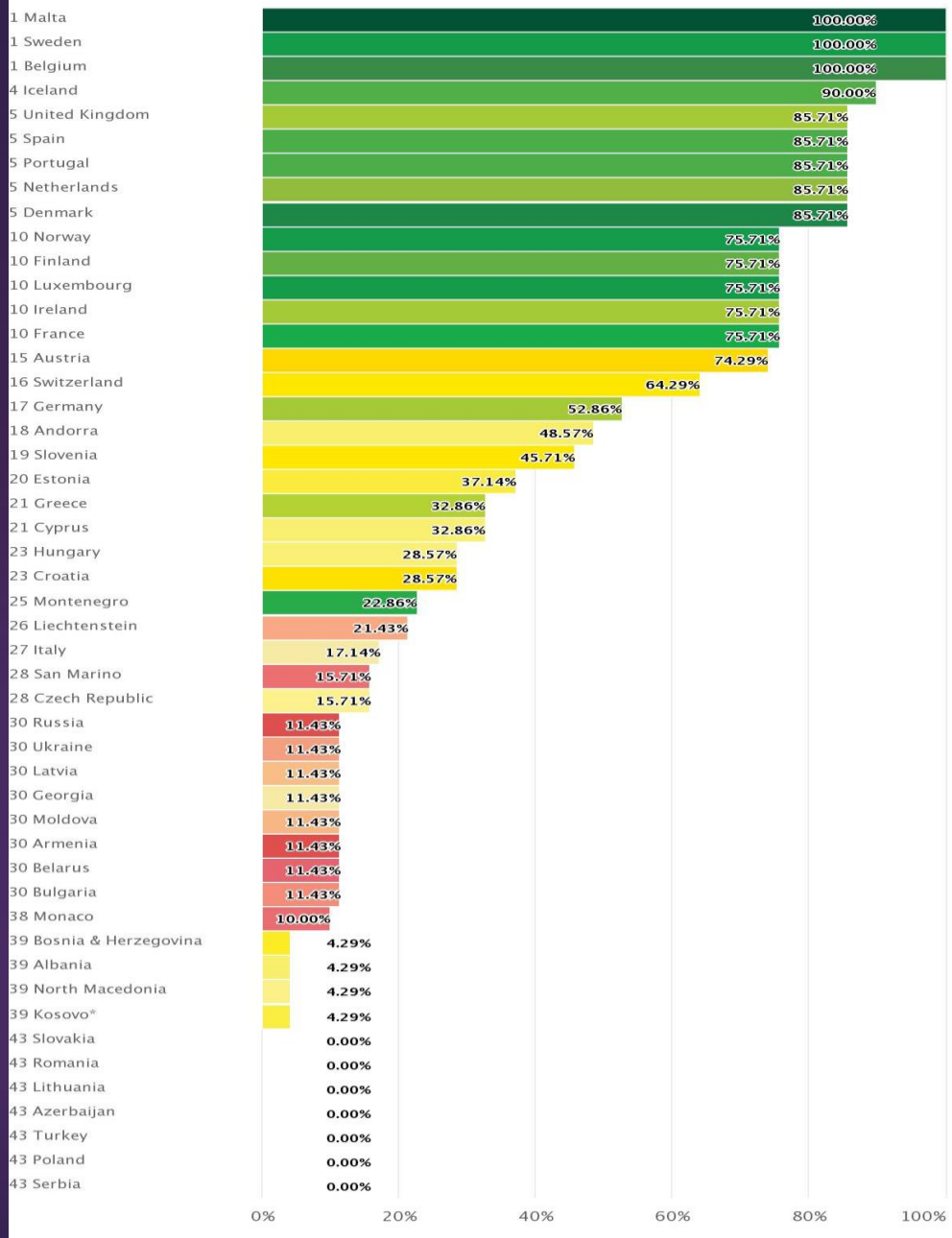
FATHER – FATHER PARENT ONE - TWO

In a lot of countries, such a birth certificate can't be recognised (legal adoption provisions, prohibition of surrogacy)





Today's trends...



KEY FACTS

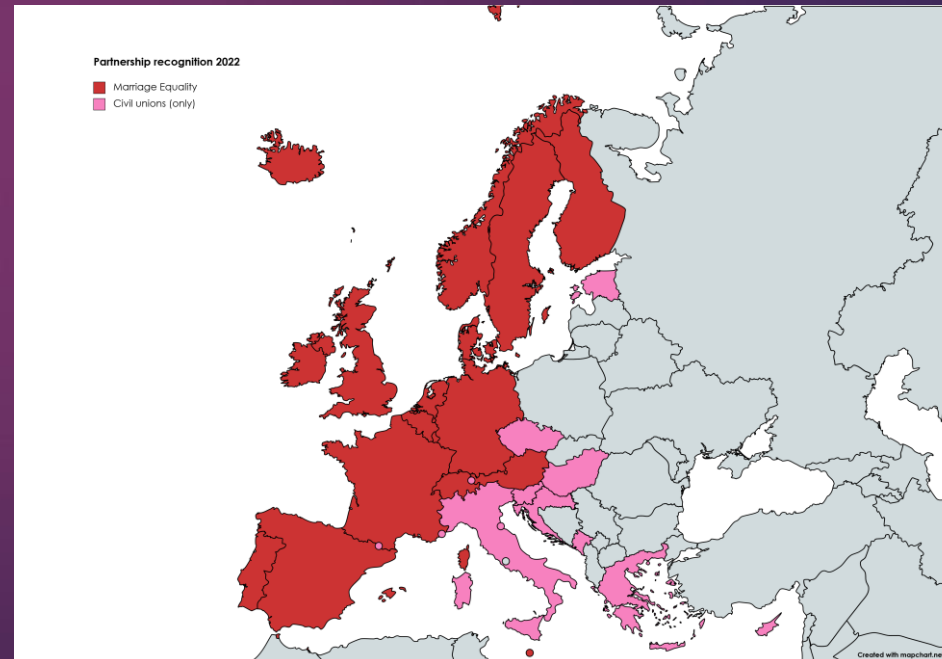
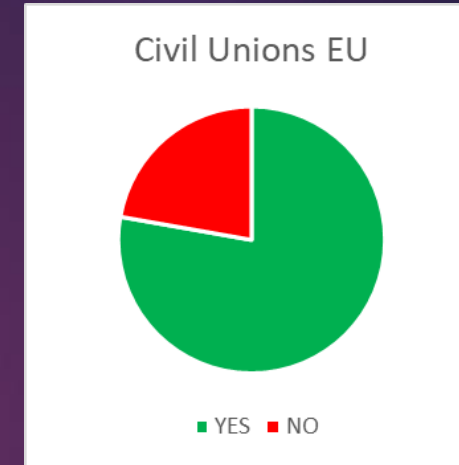
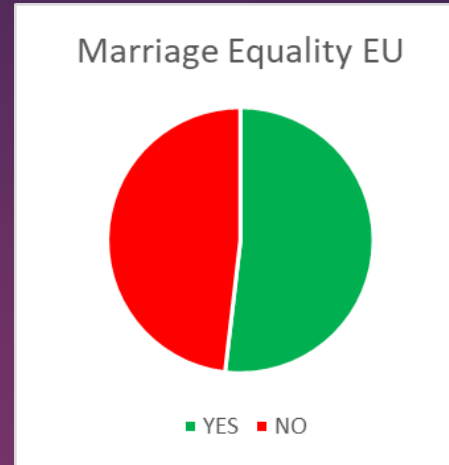
Rainbow Europe 2022 (ILGA),
Family Rights Country Ranking

CURRENT KEY FACTS

ILGA-Europe – Rainbow Map 2022*:

LGBTIQ* PARTNERSHIP RIGHTS...

- **Marriage equality in 18 European countries (14 EU), most recently in Switzerland (2021/22), Andorra and Slovenia (2022).** Campaigns i.e. in Czechia and Estonia
- **24 (26) countries with registered partnerships.** Monaco is mentioned with “cohabitation” (December 2019), most recently Montenegro (2020), new efforts i.e. in Lithuania, Romanian couples at the ECtHR
- **Constitutional Limitations in 18 (19) European countries (9 EU).** In Russia since July 2020.
- **NO RECOGNITION IN...** Latvia, Lithuania, Poland, Bulgaria, Romania, Slovakia



CURRENT KEY FACTS

ILGA-Europe – Rainbow Map 2022*:

LGBTIQ* PARENTHOOD RIGHTS...

- **Joint adoption in 19 countries (15 EU)** (marriage equality countries). Croatia de facto since May 2022, Switzerland since 1st of July 2022, Slovenia most recently since October 2022.
- **Second-parent adoption in 20 (21 countries (14 [15] EU))**. New are Estonia, Liechtenstein (2022), 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

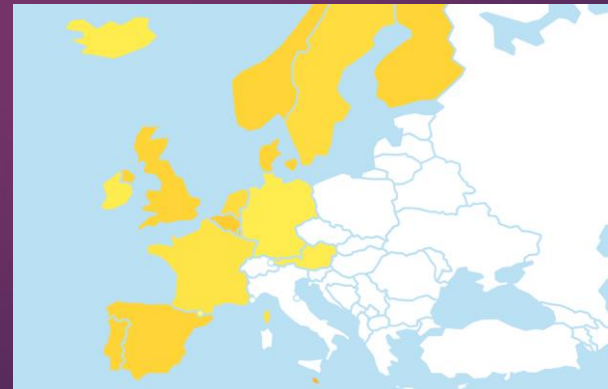


■ YES ■ NO

2nd-P. Adoption EU



■ YES ■ NO ■ OTHER

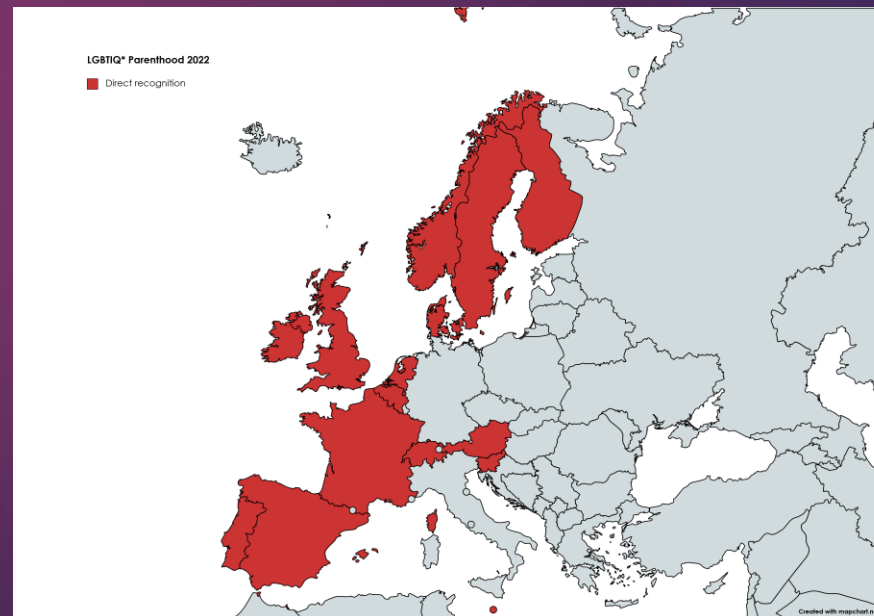
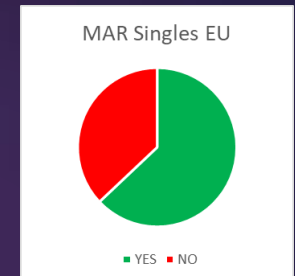
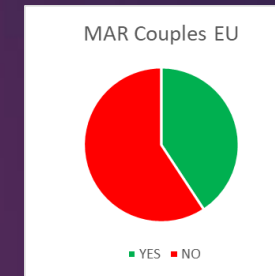
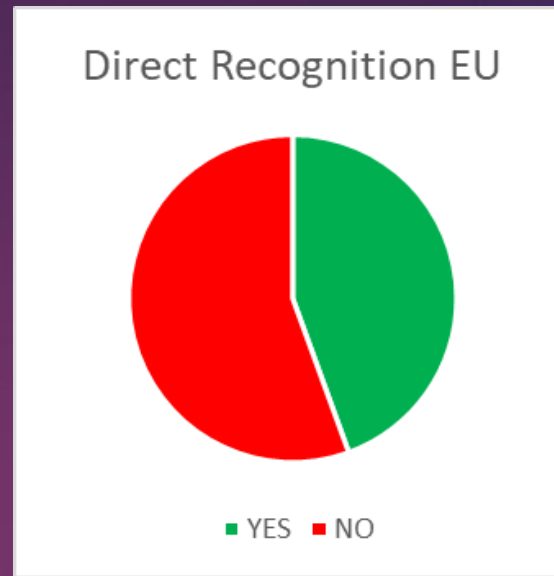


CURRENT KEY FACTS

ILGA-Europe – Rainbow Map 2022*:

LGBTIQ* PARENTHOOD RIGHTS...

- **More and more direct co-parent recognition - in 15 countries (12 EU)** [ILGA still says 10 countries (8 EU)].
- New in **France** (2021), **Ireland** with new possibilities since May 2020. **Sweden** with parenthood (marital) presumption since 2021. Outside of the EU: **Switzerland** since 1 July 2022 (but not after treatment abroad).
- Mostly after (IVF) treatment in a clinic (i.e. Austria), or through marital presumption (i.e. Malta, Slovenia), incl. home insemination in **Spain**, **Denmark**, decided in February 2022, **Austria** since August 2022).

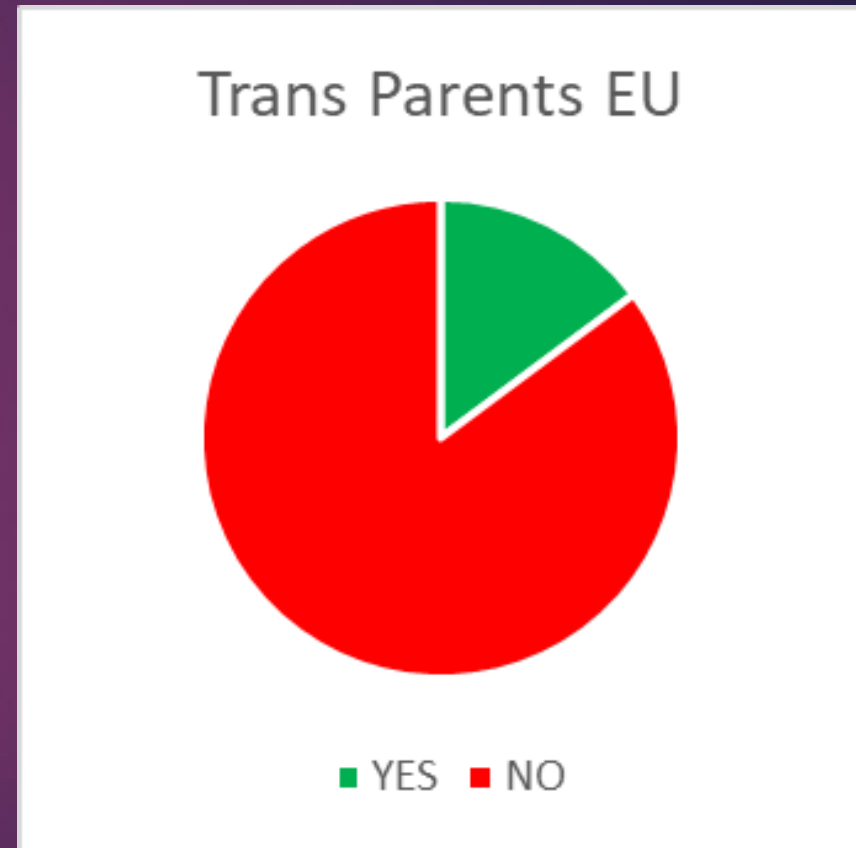


CURRENT KEY FACTS

TGEU - Transgender Rights Map 2022 (and ILGA):

LGBTIQ* PARENTHOOD RIGHTS...

- Trans parenthood: 5 (4 EU) countries recognise the gender identity of trans parents within binary options. **Belgium, Sweden, Malta, Slovenia, Iceland**
- **Malta** and – new – (non-EU) **Iceland** recognise non-binary parents as well

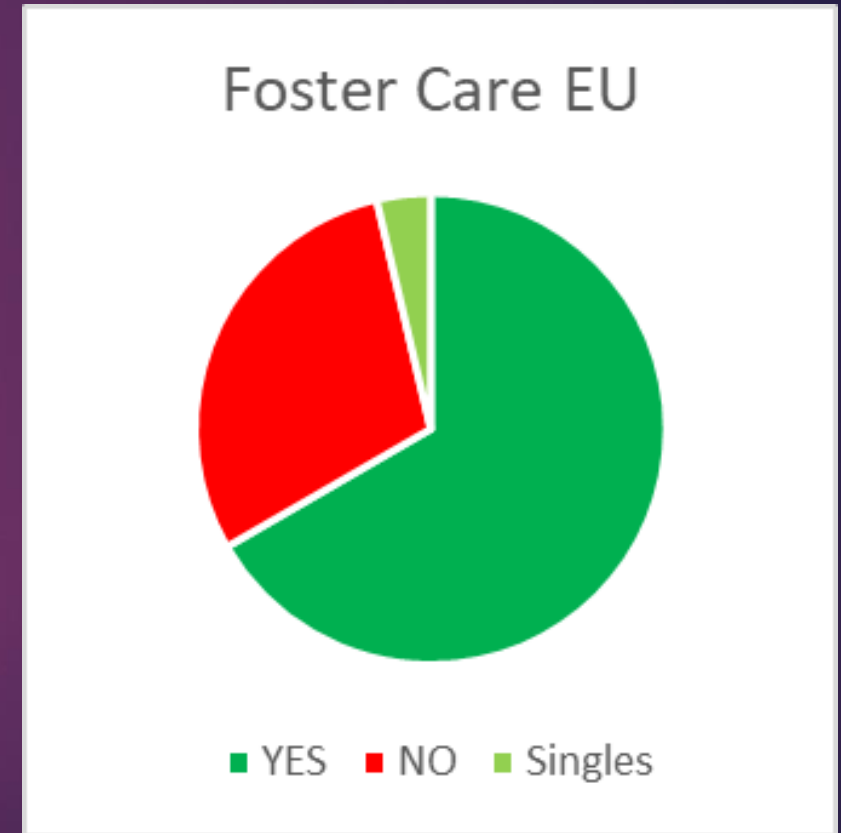


CURRENT KEY FACTS

ADDITIONAL FAMILY COMPOSITIONS

LGBTIQ* PARENTHOOD RIGHTS (not covered by ILGA)

- **Foster care: 18 EU countries allow** same-sex couples to become foster parents, **prohibition/limitation in 8 Member States**, **Slovenia allows single LGBTIQ*** people to foster. In **Hungary**, a new law requires a political decision (2021). In **Poland**, it is de facto not allowed (personal relationships will be examined). **Austria**: no possibilities in Niederösterreich, **Italy**: partly allowed.



CURRENT KEY FACTS

ADDITIONAL FAMILY COMPOSITIONS

LGBTIQ* PARENTHOOD RIGHTS (not covered by ILGA)

- **(Legal) multi-parenting** is not possible in Europe so far. **England and Wales** offer „parental responsibility“ for co-partners. In the **Netherlands**, a new law is expected, in **Germany** the coalition plans a legislative proposal. In **Sweden and Finland**, multiparenting was at least discussed. In **France**, a court just decided on parental responsibility for four persons (Jan. 22). In **Denmark**, parental leave will be possible for non-legal parents (2022).

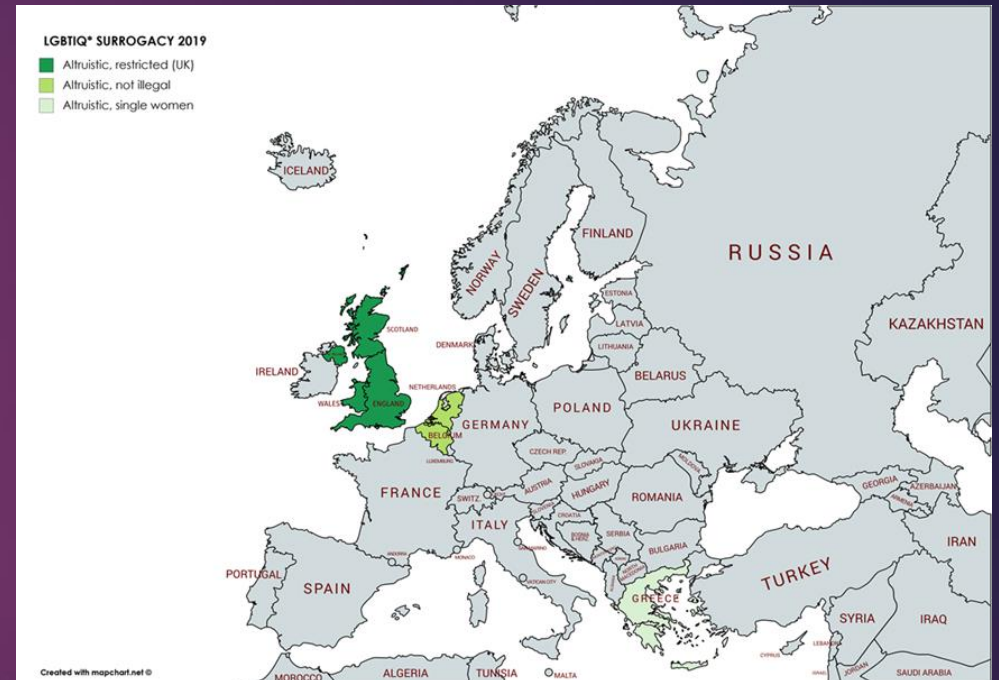


CURRENT KEY FACTS

ADDITIONAL FAMILY COMPOSITIONS

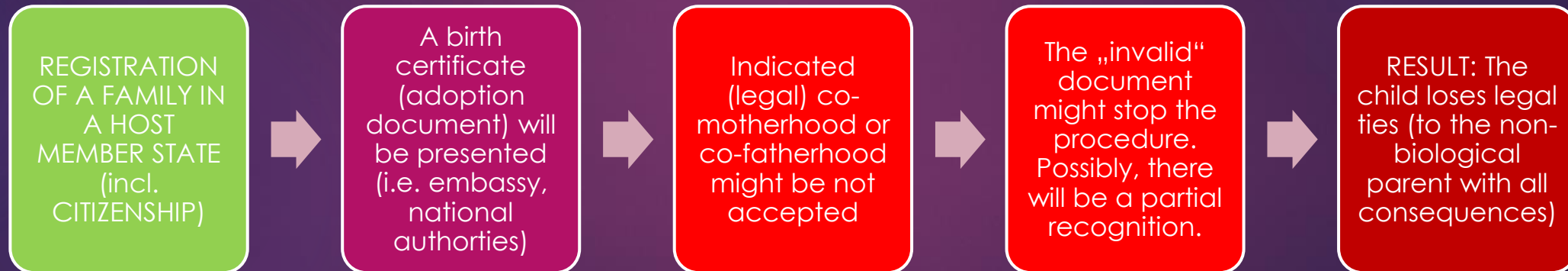
LGBTIQ* PARENTHOOD RIGHTS (not covered by ILGA)

- **Altruistic surrogacy** (for same-sex couples) is **regulated in UK**, not forbidden in **Belgium** and the **Netherlands** (law expected in 2022), in **Greece** theoretically open to single (LGBTIQ*) women. **Recognition of intended parents** (arrangements abroad, i.e. USA, Canada) advised by **ECtHR 2019** (direct recognition of birth certificates, court decisions or adoption).



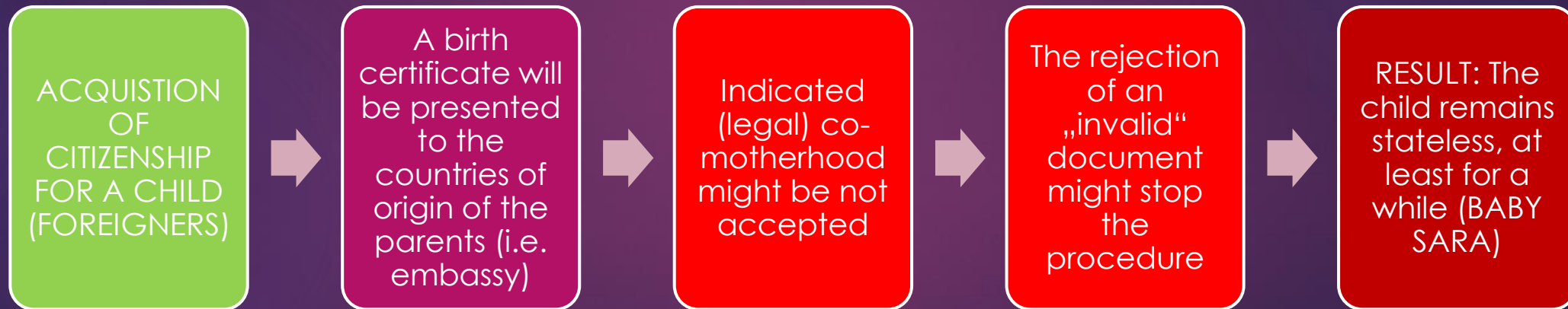
COMMON SCENARIOS...

CASE TWO



COMMON SCENARIOS...

CASE ONE



Freedom of movement?

In December 2021, the [Baby Sara case](#) clarified that Member States must ensure **free movement in the EU for children and their same-sex parents**. If a Member State recognises a filiation (here: Spain), others should (for example) issue an identity card or passport on the basis of the foreign birth certificate (here: Bulgaria). The decision also clarified that children in rainbow families are indeed “**direct descendants**”. However, a range of questions remain. Read [more](#).



FURTHER EXPERIENCES...

LEGAL PARENTS OF CHILDREN ARE FORCED TO SIGN DOCUMENTS TO ACCEPT THE LOSS OF FAMILIAL TIES

LEGAL PARENTS NEED TO ADOPT THEIR OWN CHILDREN AGAIN (IF POSSIBLE) – EVEN IF THEY WERE ALREADY A FAMILY FOR YEARS

LEGAL PARENTS PAY ALIMONY BUT CAN'T SEE THEIR CHILDREN (COUNTRIES ISSUE BIRTH CERTIFICATES WITH DIFFERENT CONTENT)

LEGAL PARENTS DON'T HAVE ACCESS TO PARENTAL LEAVE, TAX CREDITS... BUT MIGHT LOSE AT THE SAME TIME LEGAL OBLIGATIONS

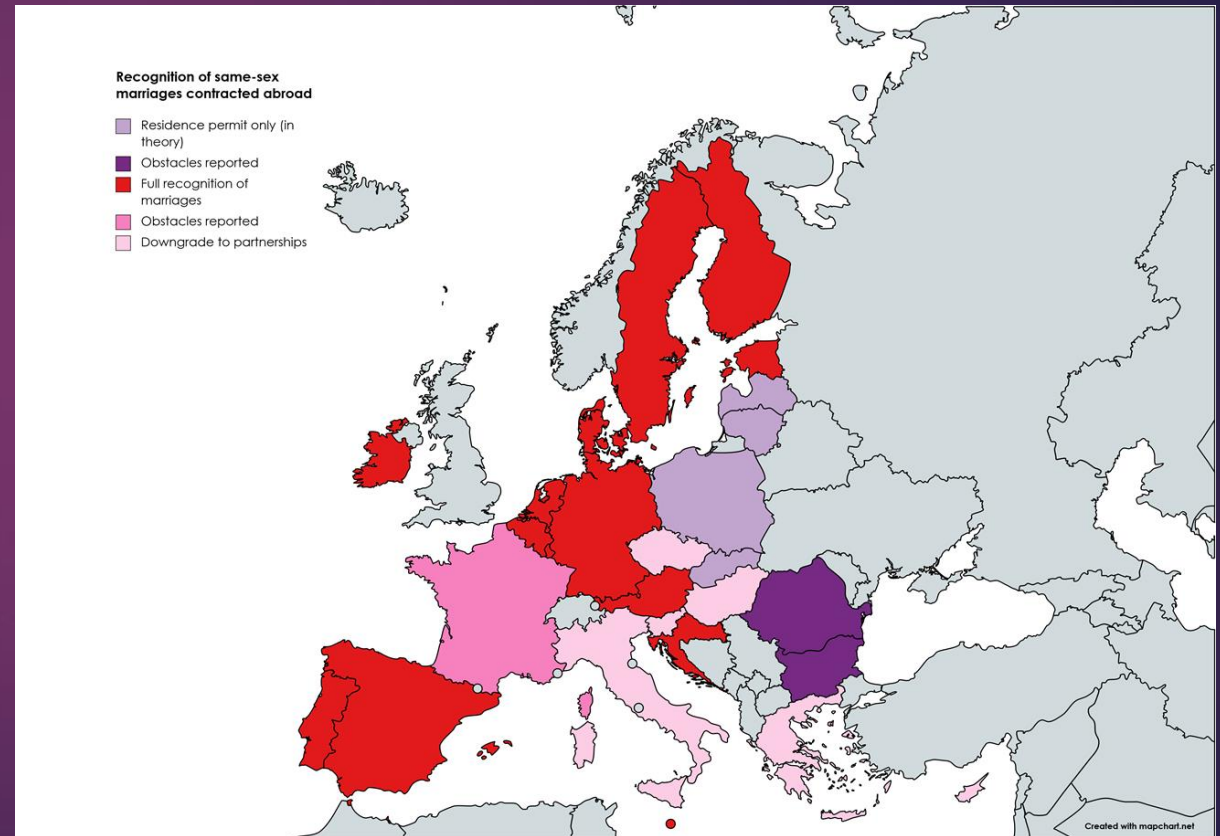
LEGAL PARENTS CAN'T ACT ANYMORE AS PARENTS IN DAILY LIFE (Signatures for SCHOOL, DOCTOR)

CHILDREN'S RIGHTS AND BENEFITS ARE AT RISK (RELATED TO THE STATUS OF THEIR PARENTS)

Obstacles to the free movement

For **same-sex marriages**, the study by Tryfonidou/Wintemute in 2021 revealed that...

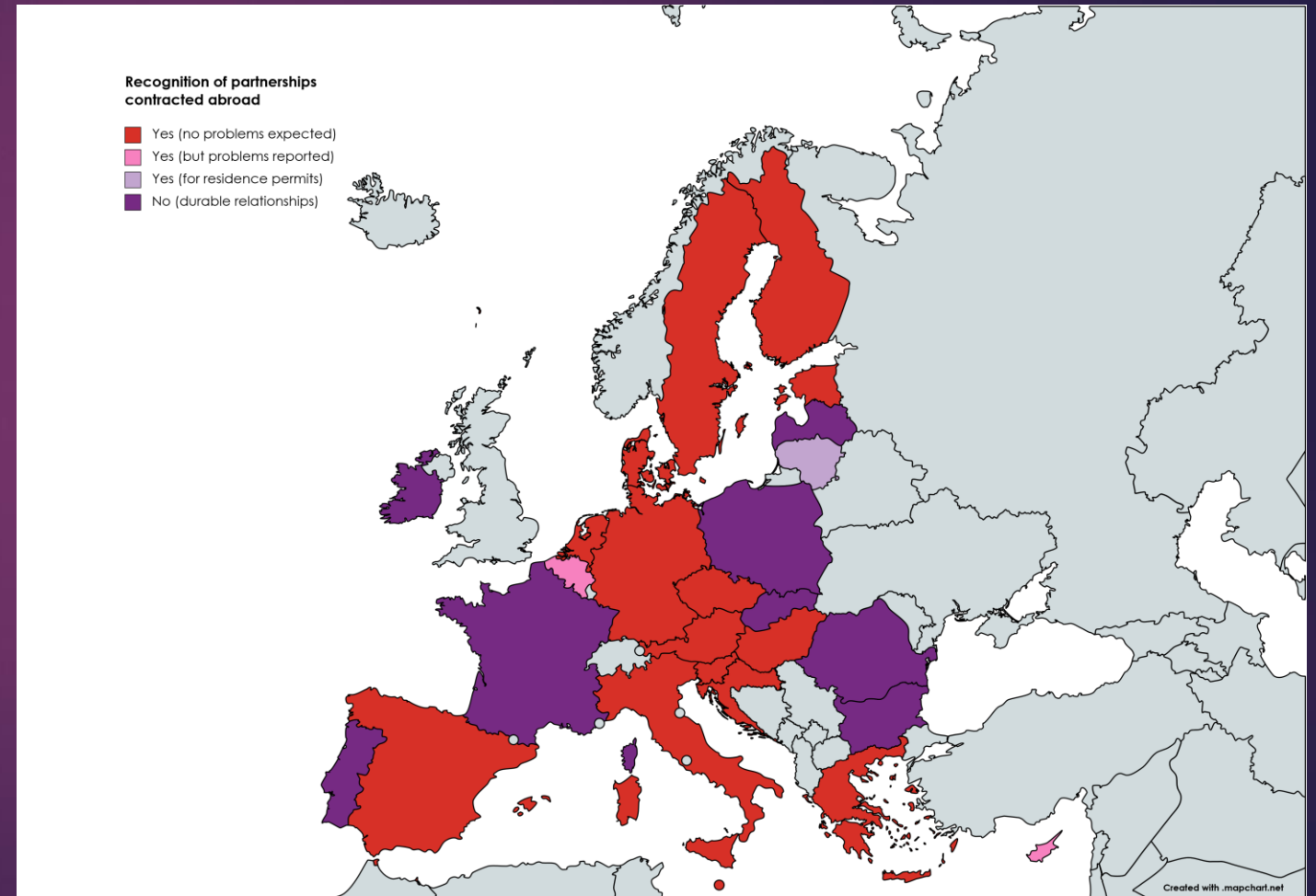
- **15 countries** would accept marriages from abroad (but at least one country doesn't)
- **6 countries** would downgrade marriages to civil partnerships
- at least **6 countries** would only give residence permits (but 2 countries do not...)



Obstacles to the free movement

For **same-sex civil unions**, the study by Tryfonidou/Wintemute in 2021 revealed that...

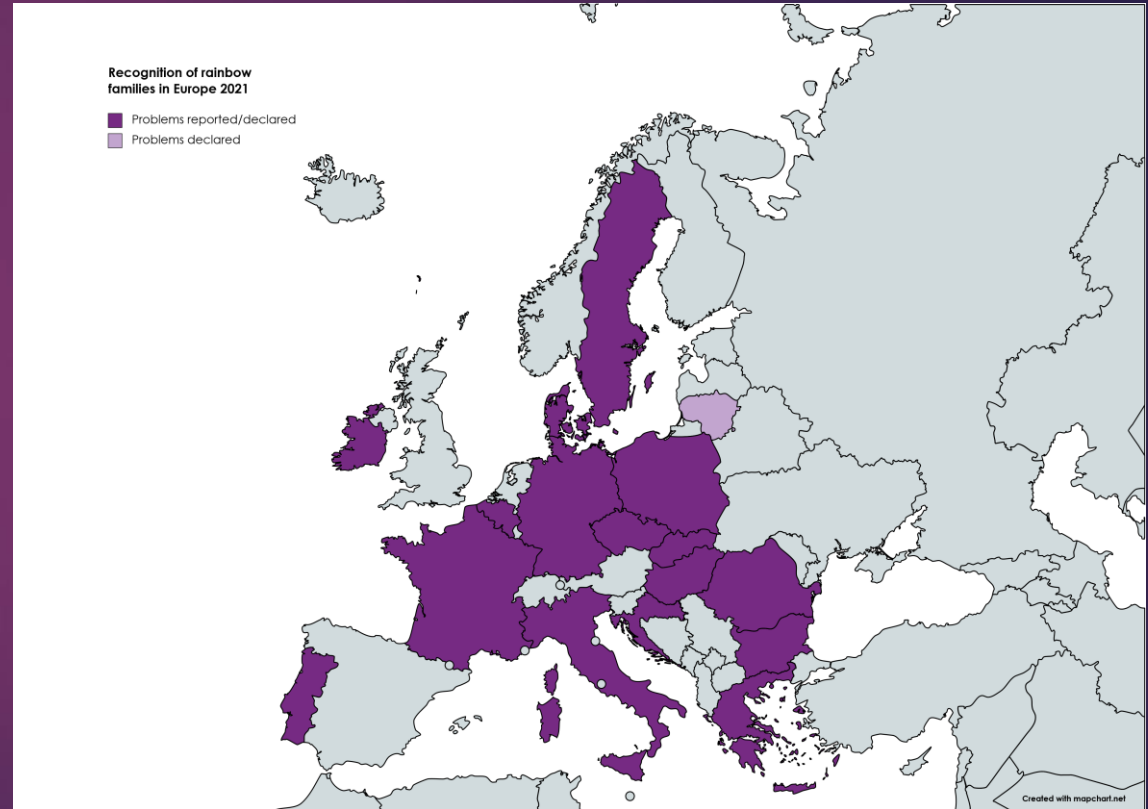
- **15 (18) countries** would accept unions from abroad (but two countries don't)
- **8 countries** would downgrade civil unions to a "durable relationship"
- **1 country** would recognise unions for residence permits



Obstacles to the free movement

For **rainbow families with children**, the study says... not too much (...)

- **8 countries** promise equal treatment for children (**Poland**, Austria, Cyprus, **Ireland**, Estonia, Finland, Slovenia and Spain)
- **2 countries** (Greece and Slovakia) would only accept one (biological) parent
- **2 countries** (Romania and Croatia) won't allow joint parenthood
- **1 country** (Sweden) admits recognition problems in cases





Tomorrow's tasks...

“

*I will [...] push for mutual recognition of family relations in the EU. **If you are a parent in one country, of course, you are a parent in every country.***

URSULA VON DER LEYEN – PRESIDENT OF THE EUROPEAN COMMISSION



State of the European Union 2020: “Building the world we want to live in: A Union of vitality in a world of fragility” (16 September 2020). Follow-up in the new LGBTIQ Equality strategy: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2068

“ If you **have** a parent in one country, you should **have** a parent in every country... ”

QUOTE FROM A DIGITAL CONFERENCE IN LAUSANNE, MAY 2022

CHANGE OF THE PERSPECTIVE...





There are two options...

OPTION ONE...

MEMBER STATES HARMONISE
THEIR LAWS CONCERNING LEGAL
PARENTHOOD, LGBTIQ* POLICIES
AND ACCESS TO ASSISTED
REPRODUCTIVE TECHNIQUES.

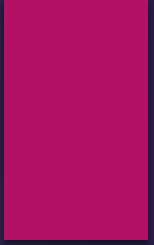
OPTION TWO...

THE EU elaborates an instrument to enable the mutual recognition of parenthood/filiation... without changing national provisions!



LGBTI Equality Strategy 2020-2025

published on 12th of November 2020



“ Due to differences in national legislations across Member States, family ties may not always be recognised when rainbow families cross the EU's internal borders. **The Commission will bring forward a legislative initiative on the mutual recognition of parenthood** and explore possible measures to support the mutual recognition of same-gender partnership between Member States ”

PILLAR THREE OF THE LGBTI EQUALITY STRATEGY:

PROTECTING RIGHTS OF RAINBOW FAMILIES

NELFA'S SUPPORT....

1. SUCH AN EU-WIDE VALID INSTRUMENT WILL HELP TO AVOID THE NON-RECOGNITION OF BIRTH CERTIFICATES (LEGAL PARENTHOOD/FILIATION) PER SE

5. WE WOULD LIKE TO SEE THAT CHILDREN'S RIGHTS AND THEIR BEST INTERESTS ALWAYS WILL BE CONSIDERED IN THE FIRST PLACE (BEFORE LGBTIQ* ISSUES AND POSSIBLE PREJUDICES...)

4. WE WOULD LIKE TO SEE THAT SUCH AN INSTRUMENT WILL BE NOT ONLY FOR „TRAVEL DOCUMENTS/RESIDENCE“ BUT FOR ALL OTHER LEGAL PURPOSES AS WELL. FOR US, FREE MOVEMENT IS ABOUT THE RECOGNITION OF A FAMILY AS SUCH.



2. IT ENABLES CIVIL SERVANTS TO REGISTER CHILDREN (I.E. FOR THE PURPOSE OF OBTAINING CITIZENSHIP OR ACCESS TO HEALTH CARE BEYOND OTHER QUESTIONS)

3. WE WOULD LIKE TO SEE AN IMPLEMENTATION OF THE ECJ JUGDMENTS (BABY SARA - BULGARIA NEEDS TO ISSUE A BIRTH CERTIFICATE WITH TWO MOTHERS. AND COMAN!)



Publication of the legislative proposal
„European Parenthood Certificate“
expected on 9th of November 2022

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 44 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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