



# NELFA's position on...

THE LEGISLATIVE PROPOSAL ON MUTUAL RECOGNITION OF PARENTHOOD IN THE EU

FOR THE COFACE WEBINAR ON 28 JUNE 2023

# The facts...

On 7th of December 2022, the EU Commission published its legislative proposal on mutual recognition of parenthood. It's focused on the best interests and the rights of the child. It promises to provide legal clarity for all types of families, who find themselves in a cross-border situation in the EU. Parenthood established in one Member State should be recognised in all the other Member States, without any special procedure.







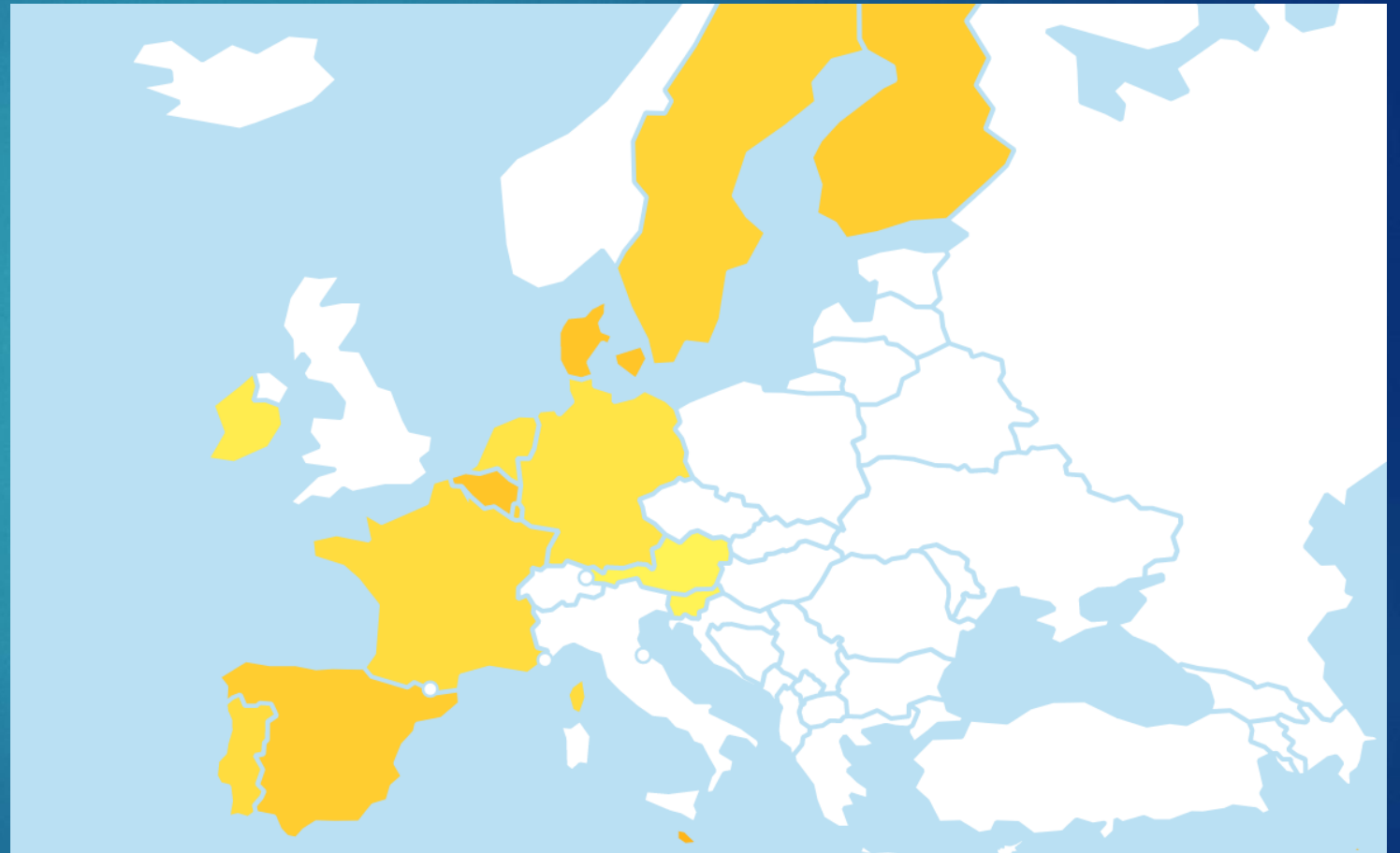
# Why we need such an instrument?

# Why?

Member States have different rules on parenthood recognition. Especially children with LGBTIQ\* parents might face problems at national level:

EXAMPLE:

- **No access to marriage (currently 12 EU countries)...**
  - ⇒ no presumption of parenthood
  - ⇒ no (joint) adoption rights
  - ⇒ no possibilities for ART

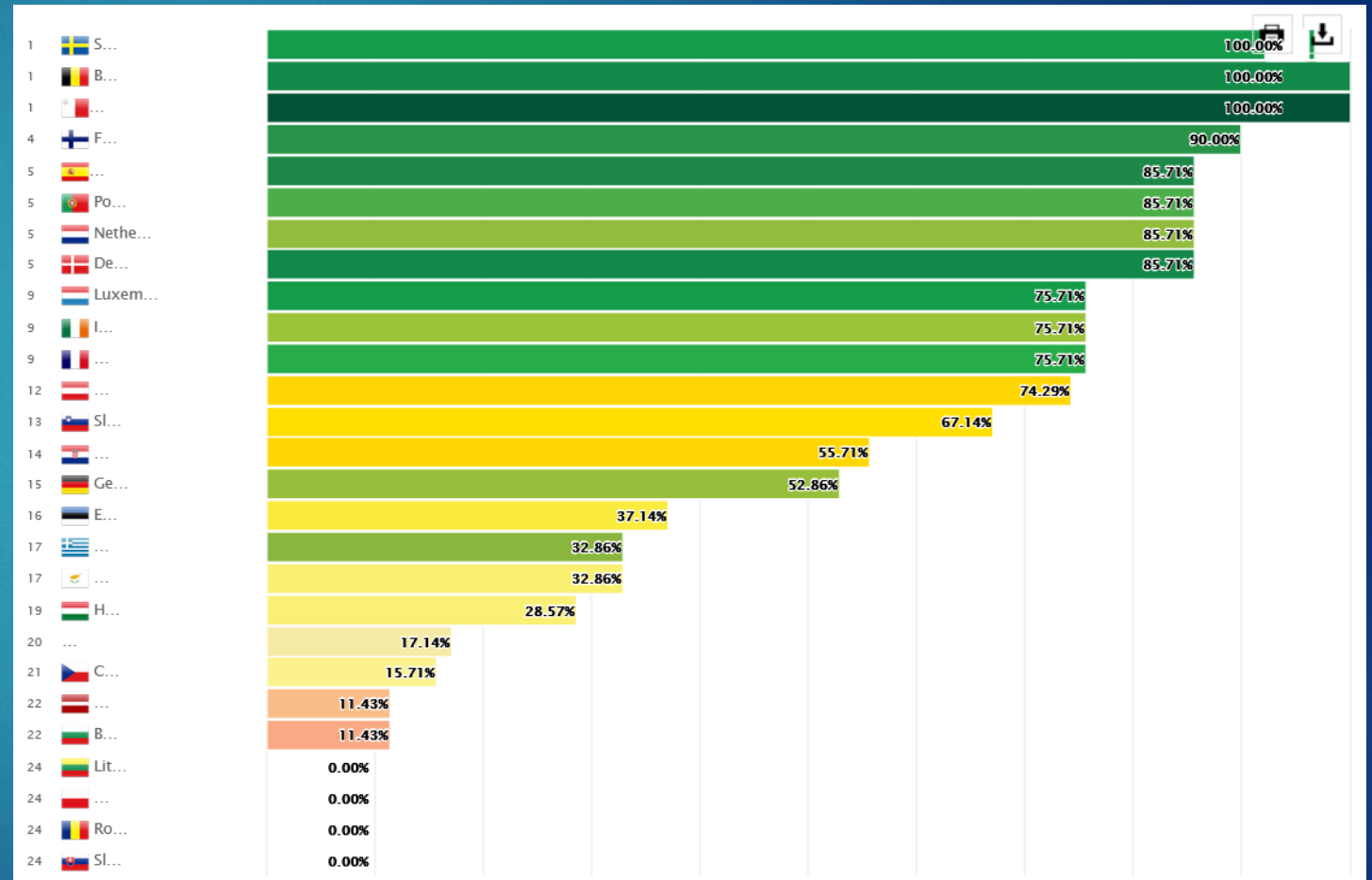


# Why?

Currently, **eleven EU countries don't provide any possibility to establish a legal relationship of a child to both of its same-sex parents**. While the biological parent will be recognised (in most of the cases), the non-biological parent has no specific means (except of individual [court] decisions)

## THESE ARE:

Bulgaria, Czech Republic, Cyprus, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Romania and Slovakia.





# Why?

Member States have **different rules on ART** – with certain questions concerning parenthood recognition.

- Prohibition or at least limited access to surrogacy or specific ART procedures (egg donation, ROPA)
- Limitations for non-married couples, single persons and LGBTIQ\* persons/couples (reimbursement)
- Anonymous donation or known-donor concept (provision of an access to the origins of the child)
- **Who is “mother” and “father”?**
- **What is (more) relevant? The biological or the functional reality?**



# Why?

The **legal patchwork situation** in the EU concerning parenthood creates a lot of cross-border problems.

- Citizenship: who are the biological parents (ius sanguinis)? Do birth certificates provide the necessary information? In case of “invalid” documents... **statelessness**?
- Legal parenthood: who can be recognised and under which circumstances? If national rules [public order] are not complied with... **loss of legal ties...re-establishment**?
- The obviousness of non-biological parenthood in rainbow families lead to legal obstacles - where different-sex families are just recognised (by presumption)







# What is promised?



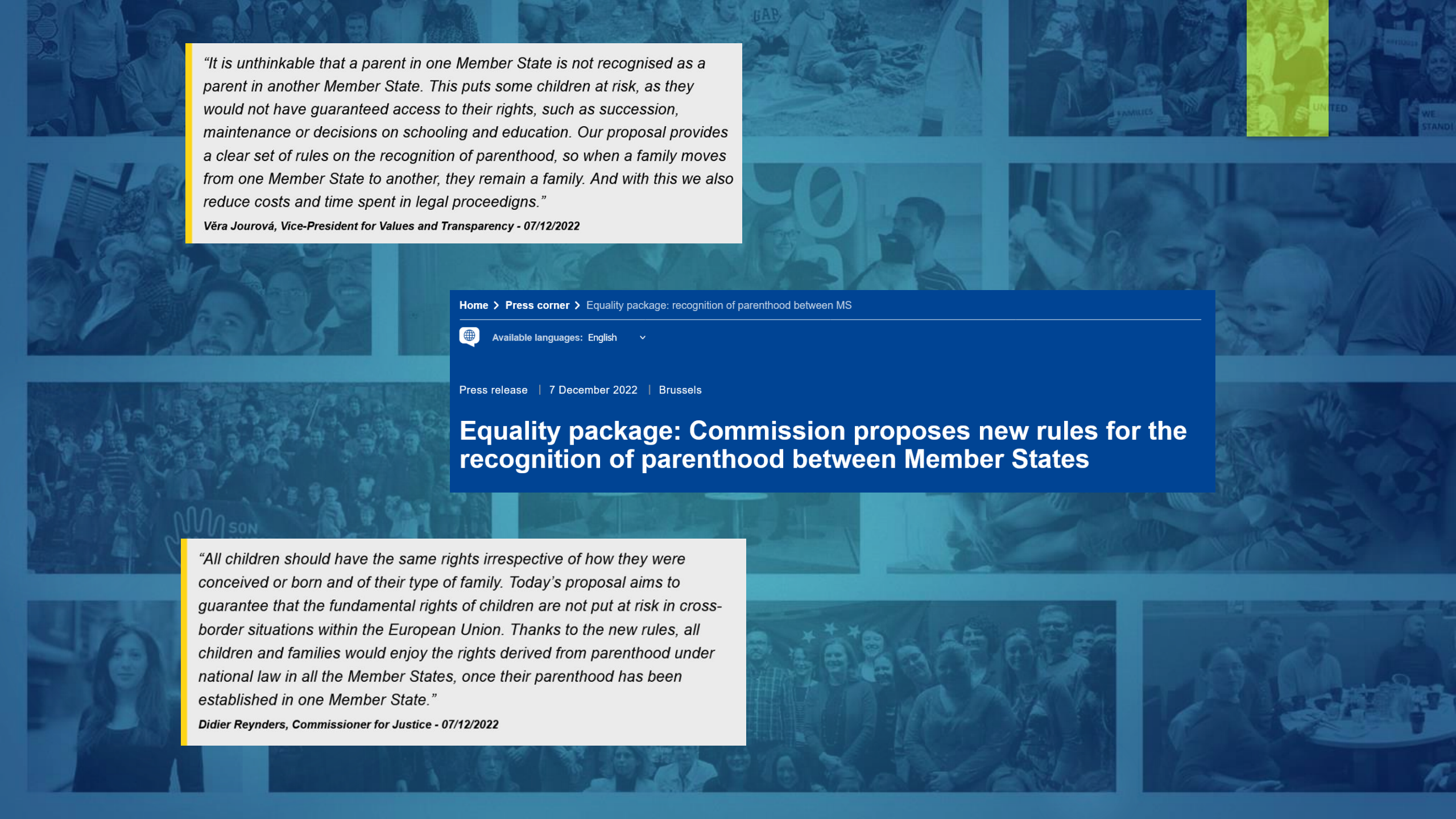
“

*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](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2068)



*“It is unthinkable that a parent in one Member State is not recognised as a parent in another Member State. This puts some children at risk, as they would not have guaranteed access to their rights, such as succession, maintenance or decisions on schooling and education. Our proposal provides a clear set of rules on the recognition of parenthood, so when a family moves from one Member State to another, they remain a family. And with this we also reduce costs and time spent in legal proceedings.”*

*Věra Jourová, Vice-President for Values and Transparency - 07/12/2022*

[Home](#) > [Press corner](#) > Equality package: recognition of parenthood between MS

 Available languages: English ▾

Press release | 7 December 2022 | Brussels

## Equality package: Commission proposes new rules for the recognition of parenthood between Member States

*“All children should have the same rights irrespective of how they were conceived or born and of their type of family. Today’s proposal aims to guarantee that the fundamental rights of children are not put at risk in cross-border situations within the European Union. Thanks to the new rules, all children and families would enjoy the rights derived from parenthood under national law in all the Member States, once their parenthood has been established in one Member State.”*

*Didier Reynders, Commissioner for Justice - 07/12/2022*



# What NELFA thinks...



# General reflection...

- NELFA is **very pleased** with the proposal
- 47 pages with **comprehensive information** on the matter and **good solutions**
- We fully agree with the focus: **protection of children**, their identity AND their relationships to their primary carers
- We agree with **Art 81.3 as legal basis**, because the problem goes beyond “freedom of movement” (Art. 21), even though Denmark won’t be part of the regulation and Ireland might opt-out





# General reflection...


- **NELFA is aware of the limitations:** the cross-border problems of same-sex couples (concerning registered partnerships and marriages) and trans\* parents are not covered – but we see the restricted political scope (*unanimity in the EU Council*)
- The proposal touches **controversial topics** (surrogacy, same-sex parenthood). There is a need to reassure that **the regulation doesn't change national family laws!**
- Civil servants will need **guidance**, the “Certificate of Parenthood” might help



# The main concerns...





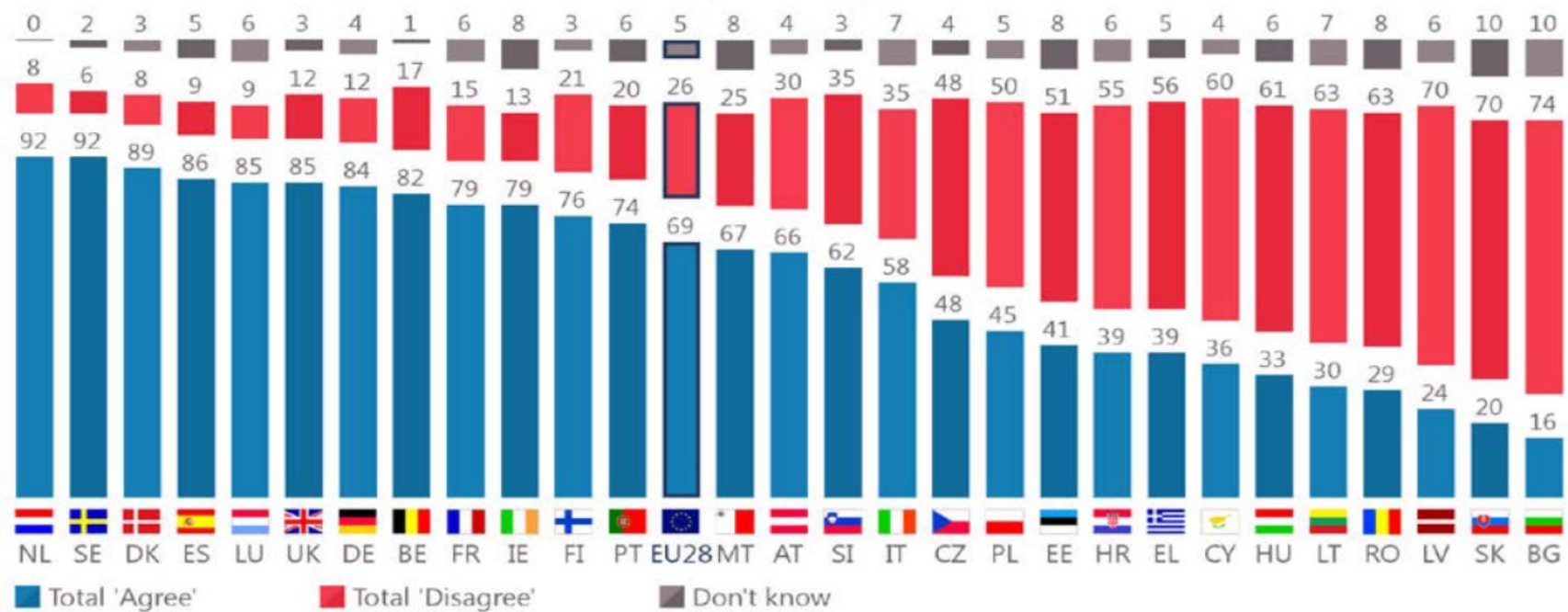


“ Given that in international law, Union law and Member States’ laws, all children have the same rights without discrimination, the proposal covers the **recognition of parenthood irrespective of how the child was conceived or born an irrespective of the type of family of the child** ”

EU COMMISSION: PROPOSAL FOR A COUNCIL REGULATION ON PARENTHOOD RECOGNITION, P. 3

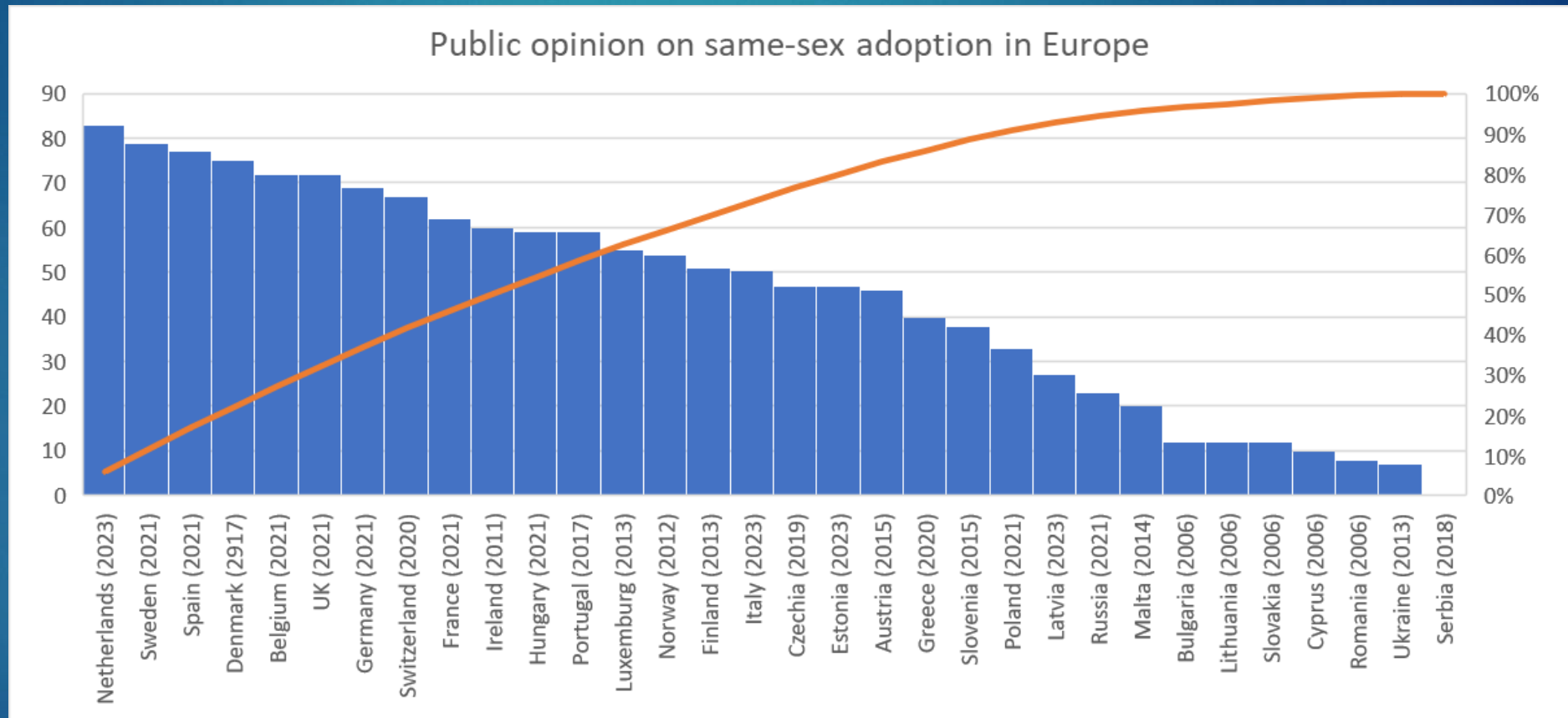
# Traditional values, national identity...

Same sex marriages should be allowed throughout Europe (%)





# Traditional values, national identity...



# Traditional values, national identity...

- ▶ Concerns and narratives that the proposal could be the first step towards...
- ▶ Marriage equality
- ▶ Same-sex adoption
- ▶ Multi-parenting ... at national level.
  
- ▶ Concerns that foreigners would be in a different situation than nationals





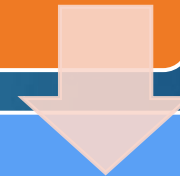
# Traditional values, national identity...



The proposal is not about introducing new LGBTIQ\* rights at national level.



The proposal does not interfere with national substantive family law.



The proposal wants to ensure that legal familial ties which were established in another EU Member State continue to exist.



“

*It would be incompatible with the underlying values of the Convention, as an instrument of the public order, if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority*

”

FEDOTOVA AND OTHERS VS. RUSSIA – ECtHR JUDGMENT 13 JULY 2021, § 52

NELFA endorses the recommendation (see Alina Tryfonidou’s analysis, p. 9) to interpret the public policy exception in the proposal restrictively!





“

*There was no basis in the Court’s view for considering that affording legal recognition and protection to same-sex couples in a stable and committed relationship could in itself harm families constituted in the traditional way or compromise their future or integrity. Indeed, the recognition of same-sex couples did not in any way prevent different-sex couples from marrying or founding a family corresponding to their conception of that term. More broadly, securing rights to same-sex couples did not in itself entail weakening the rights secured to other people or other couples.*

”

FEDOTOVA AND OTHERS VS. RUSSIA – ECtHR JUDGMENT 17 JANUARY 2023, § 212

NELFA endorses the recommendation (see Alina Tryfonidou’s analysis, p. 9) to interpret the public policy exception in the proposal restrictively!



“

*Allowing same-sex couples to be granted legal recognition and protection undeniably [...] promotes their inclusion in society, regardless of sexual orientation. The Court emphasises that a democratic society within the meaning of the Convention rejects any stigmatisation based on sexual orientation [...]. It is built on the equal dignity of individuals and is sustained by diversity, which it perceives not as a threat but as a source of enrichment*”

FEDOTOVA AND OTHERS VS. RUSSIA – ECtHR JUDGMENT 17 JANUARY 2023, § 180

NELFA endorses the recommendation (see Alina Tryfonidou’s analysis, p. 9) to interpret the public policy exception in the proposal restrictively!



# SURROGACY...

- ▶ Concerns and narratives that the proposal will favour the recognition of children born through surrogacy
- ▶ Concerns that it will create a surrogacy market in the EU and that it will encourage couples to go abroad to become parents
- ▶ **FEMM Committee**
- ▶ could lead to the regulation of practices considered unlawful in some Member States, thus giving rise to a legal conflict
- ▶ “Opening up new ways of registering parentage exposes people to serious threats”
- ▶ Threat to the child's right on identity (possible loss of information on data...)



# Surrogacy...

The proposal is not promoting for surrogacy and doesn't create a new EU market.



The proposal explicitly does not cover parenthood established in third countries.



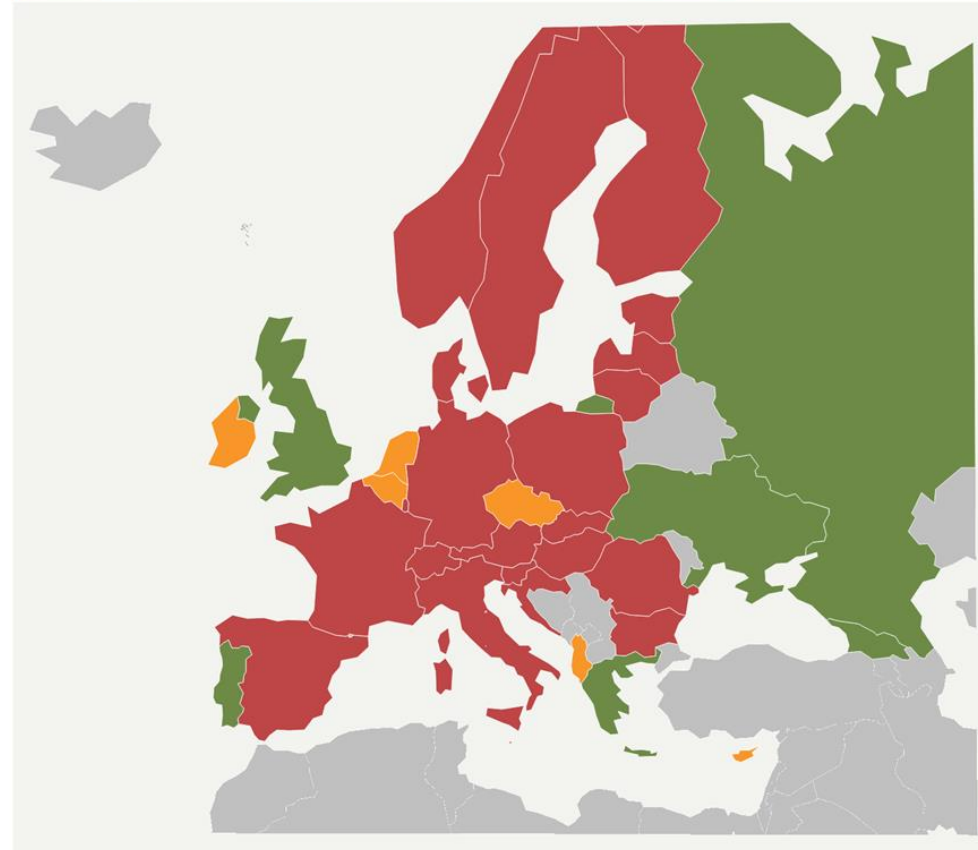
The proposal wants to ensure that legal familial ties which were established in another EU Member State continue to exist.



# SURROGACY...

- ▶ Article 3: **“The proposal does not cover the recognition or, as the case may be acceptance, of court decisions and authentic instruments establishing or proving parenthood drawn up or registered in a third State.** In these cases, recognition or acceptance remain subject to the national law of each Member State. However, the proposal applies to the recognition of the parenthood of all children [...] provided their parenthood has been established in a Member State and not in a third State.”

Where in Europe is surrogacy legal?



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

Source: Families Through Surrogacy (September 2017)

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euronews.



“

*From the standpoint of the Convention, the potentially objectionable conduct of the parents had to be put to one side so as to enable the pursuit of the best interests of the child. [...] The child should not be made to bear the adverse consequences of his parents' choice, regrettable though it had been.*

”

D.B. AND OTHERS VS. SWITZERLAND – ECtHR JUDGMENT 22 NOVEMBER 2022, § 52

NELFA is in line with the recommendations Prof. Alina Tryfonidou has made in her analysis concerning the non-exclusion of surrogate-born children. We think every child need to be protected with regard to legal parenthood.





“

*In view of the [...] fact that the child's best interests also entail the legal identification of the persons responsible for raising him or her, meeting his or her needs and ensuring his or her welfare, as well as the possibility for the child to live and develop in a stable environment, the Court considers that the general and absolute impossibility of obtaining recognition of the relationship between a child born through surrogacy arrangement entered into abroad and the intended mother is incompatible with the child's best interests.*

”

ADVISORY OPINION OF THE ECtHR, APRIL 2019, § 42

NELFA is in line with the recommendations Prof. Alina Tryfonidou has made in her analysis concerning the non-exclusion of surrogate-born children. We think every child need to be protected with regard to legal parenthood.



“*Accordingly, as pointed out by the applicants, when they were refused adoption, they were de facto refused being recognised as having a legal parent-child relationship. Such lack of recognition per se had a negative impact on the children’s right to respect for their private life*”

K.K. vs. DENMARK, ECTHR JUDGMENT MARCH 2023, § 72

NELFA is in line with the recommendations Prof. Alina Tryfonidou has made in her analysis concerning the non-exclusion of surrogate-born children. We think every child need to be protected with regard to legal parenthood.



# Certificate on Parenthood...

- ▶ The FEMM Committee urges to erase the “Certificate on Parenthood” from the proposal and arguments as follows...
- ▶ “Excessively facilitating the recognition of foreign documents certifying parentage may lead to the **irretrievable loss of some of the child's fundamental rights**, such as the right to know about his biological parents”
- ▶ Marburg group: “The Certificate has marginal advantages over the acceptance of authentic documents [...]. An authority should be able to refuse to register parenthood in its relevant register (if it would conflict with the legal situation...)”





“ *The issuance of such a Certificate will, thus, be able to save children and their parents time and money, in that it will need to be automatically recognised in every other Member State, without requiring legal translation or legislation.* ”

ALINA TRYFONIDOU, PROPOSAL ANALYSIS FOR THE PETI COMMITTEE, P. 92

NELFA is in line with the summary of Prof. Alina Tryfonidou. We think that the European Certificate of Parenthood will enable civil servants (easier) to register/recognise legal parenthood established in another Member State.



# Best interests of a child...!?





“ States parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members. ”

CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 2.2

NELFA welcomes that the proposal is a child-focused instrument. The main aim is to protect children, their identity, **and** their relationships to their primary carers. Legal parenthood must be an own category besides the identity.





“

*The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, **the right to know and be cared for by his or her parents***

”

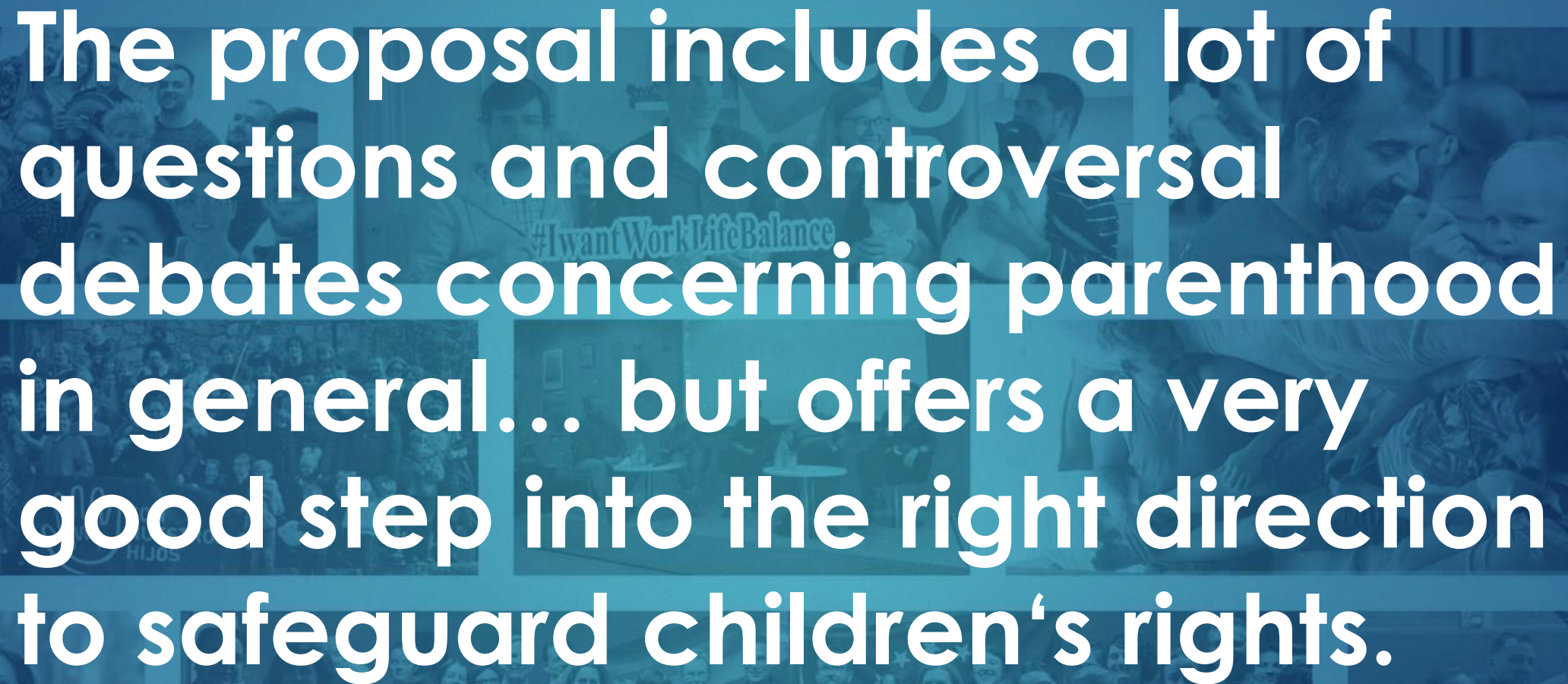
CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 7.1

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# Best interests...

- ▶ The Convention on the Rights of the Child doesn't specify if "parents" are "biological", "social", "legal" etc. However, it states clearly that it's important to "know" and to "be cared" by these parents.
- ▶ NELFA thinks that the right of the child to know its origins is strongly recommended, but it can't be a pre-condition for the establishment of legal parenthood.
- ▶ If the identity can't be retraced for any reason (anonymous gamete donation), this should not mean – for the well-being of the child – to deny parenthood recognition as it would be a second breach of a child's right.
- ▶ If citizenship (*ius sanguinis*) and/or legal parenthood derives from (biological) presumption, this shouldn't be a disadvantage for children of parents with an obviousness of non-biological ties.
- ▶ If the "mother" always the "mother"? What is about surrogates and trans parents?





The proposal includes a lot of questions and controversial debates concerning parenthood in general... but offers a very good step into the right direction to safeguard children's rights.



# 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 47 ORGANISATIONS IN 34 EUROPEAN COUNTRIES WITH MORE THAN 25,000 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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