



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

Public hearing on  
the recognition of  
parenthood in the  
European Union

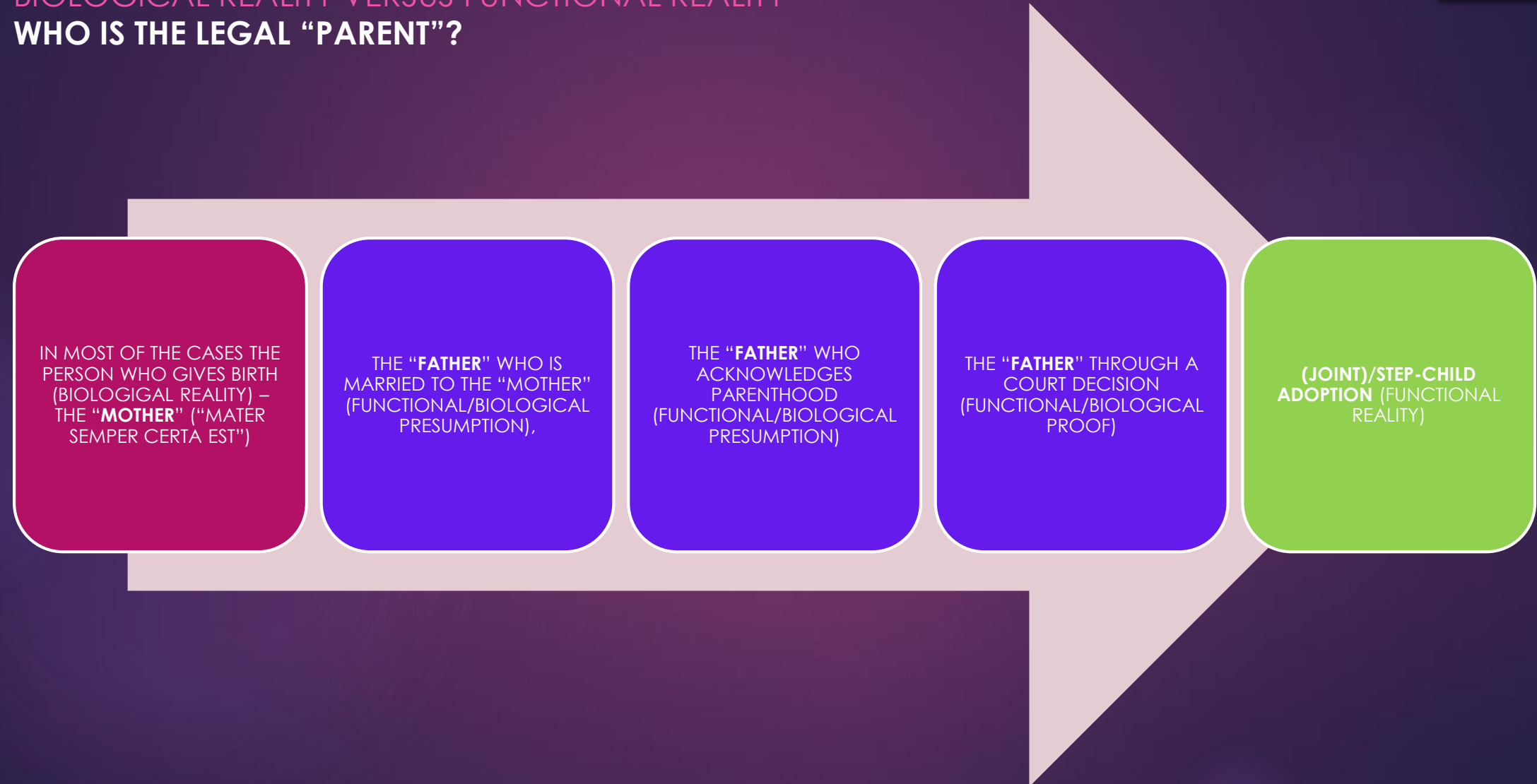
COMMITTEE ON LEGAL  
AFFAIRS, 14 JUNE 2022



# 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"?





# 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...)



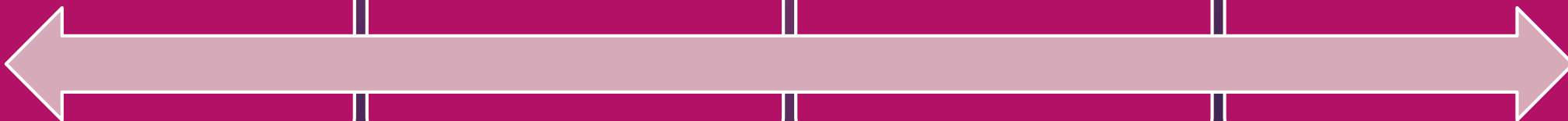
### MOTHER – MOTHER PARENT ONE - TWO

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

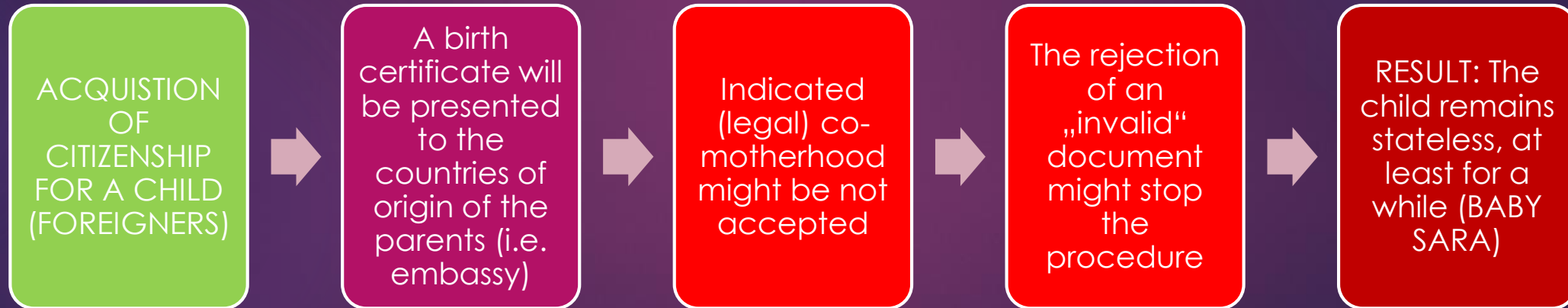
In a lot of countries, such a birth certificate can't be recognised (legal adoption provisions, prohibition of surrogacy)





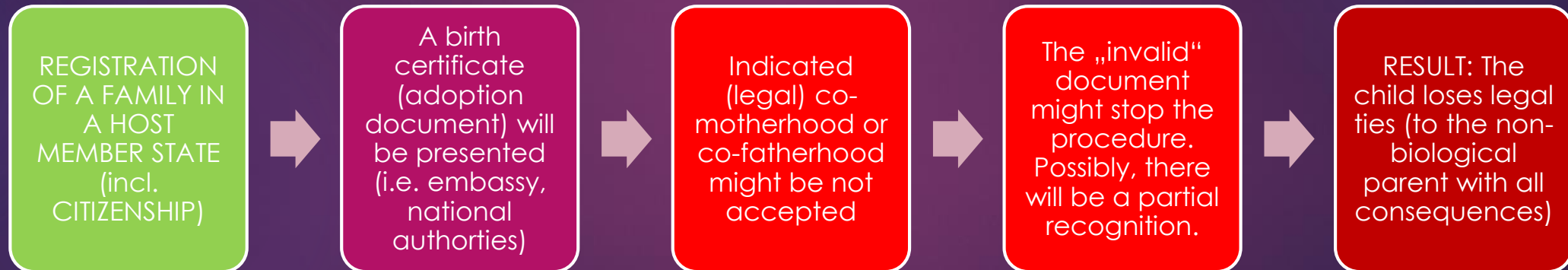
# COMMON SCENARIOS...

## CASE ONE



## COMMON SCENARIOS...

### CASE TWO



## 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

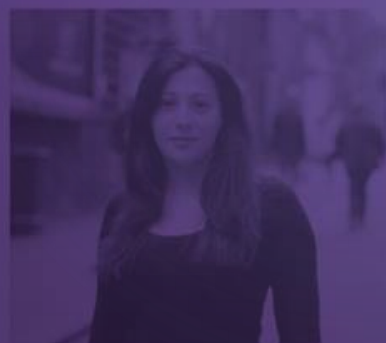
LEGAL PARENTS  
PAY ALIMONY  
BUT CAN'T SEE  
THEIR CHILDREN  
(COUNTRIES  
ISSUE BIRTH  
CERTIFICATES  
WITH DIFFERENT  
CONTENT)

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)





# Where we stand?

“

*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)

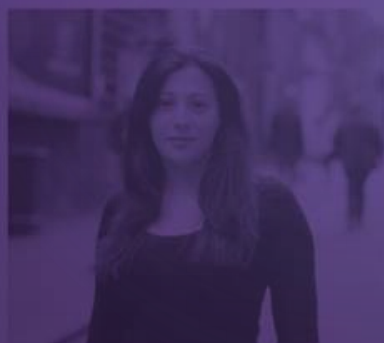
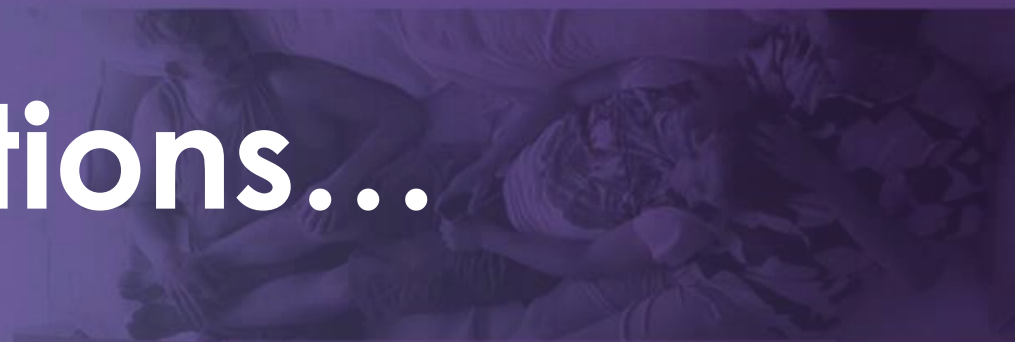
“If you **have** a parent in one country, you should **have** a parent in every country...”

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...

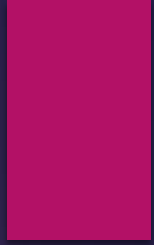
THE EU elaborates an instrument to enable the mutual recognition of parenthood/filiation... without changing national provisions!





# 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!)



# 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 43 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).

## MAKE A DONATION

SUPPORT NELFA AND LGBTIQ\* FAMILIES IN EUROPE BY MAKING A DONATION.  
**BANK:** CRELAN, BELGIUM **IBAN:** BE18 8601 1595 2465 **BIC:** NICABEBB