



Helsinki, 24 September 2013

NELFA PUBLIC PETITION TO E.U. COMMISSIONER VIVIANE REDING

SAME-SEX PARENTS AND THEIR CHILDREN DEMAND TRUE FREEDOM OF MOVEMENT IN THE EUROPEAN UNION

- ***Children of LGBT parents should not lose their parents when they cross a border!***

Dear Commissioner Reding,

As the association of LGBT Parents and their Children across Europe, we address you on a very important matter in your capacity as a Guarantor of Human Rights in the EU.

Did you know that some children in the European Union risk losing their parents when their families cross the border from one E.U. Member State where marriage and family equality are legally protected, to another E.U. Member State where this is not the case?

How is it possible that some children are subject to such levels of legal uncertainty as to have two legal parents in one Member State but either just one or none in another?

We are concerned that the current state of affairs has created a category of second-class children in the European Union, simply because these children happen to have two parents of the same sex.

As LGBT parents we are concerned, and this is why we ask you to introduce a legislative proposal to ensure that our children's family and their dignity are not threatened by crossing a border.

As the Guarantor of Human Rights in the EU, you can promote change.

We ask that you formally request E.U. Member States to recognise our families when we cross a border. This can be achieved by E.U. Member States automatically recognising the effects of those acts that have been validly performed by a Member State, such as registrations of births, adoption orders, marriage certificates, etc. confirming our family status.

This would make it possible for a child with two legal fathers in Belgium, to continue "having" them in Poland; and for a child with two legal mothers in Spain, to "still have" their mothers in Italy. This simple act will make true freedom of movement possible for LGBT families.

NELFA aisbl

La Maison Arc-en-ciel asbl - Rue du Marché au Charbon 42 - 1000 Brussels – BELGIUM

E-mail : info@nelfa.org - Website: www.nelfa.org



We have attached to our petition four real-life cases that illustrate what thousands of families are experiencing nowadays within the E.U.. You have the power to change that by leading the way and proposing to Member States a **Regulation** that puts a stop to these situations. **We invite you to take a strong stand on behalf of our children and their right to their family, wherever they move around the EU.**

Thank you!

A handwritten signature in blue ink, appearing to read 'Catalina Pallàs', written over a light blue grid background.

President of NELFA
Ms Catalina Pallàs

A handwritten signature in blue ink, appearing to read 'Juha Jämsä', written over a light blue grid background.

Vice-President of NELFA
Mr Juha Jämsä

Enclosures:

- (1) Four real-life cases involving LGBT families with children in the E.U.*
- (2) About the Petitioners: Network of European LGBT Families Associations (NELFA)*
- (3) Signatures by all members of NELFA*



Enclosure 1

REAL LIVES – REAL FAMILIES – REAL CHILDREN

Case 1

Current country: **Germany**
Civil status: Civil partnership
Children: Yes

J. and H. are two women in a civil partnership from the **UNITED KINGDOM**. They are both **UK** nationals. J. is employed by the British Army and currently posted in **GERMANY**. She is the biological mother of W., born in 2011 in Germany, and H. is named on their son's birth certificate as his other legal parent.

Months after W's birth, J. and H. applied for kindergarten - something all couples with children in the British Army obtain from the German administration. The application was made in H's name, since J cannot claim the benefit being in the army.

Their application was refused on the grounds that J. and H. are not married, and the administration do not recognise J. and H. as spouses (same-sex marriage is not possible in Germany).

When motivating their refusal, the German authorities stated that "W. is neither H's biological child nor can he be considered a stepchild". In effect, this means W. is in a legal limbo, which prevents him from going to kindergarten.

Case 2

Current country: **France**
Civil status: Civil partnership
Children: Yes

T. is a **FINNISH** national. She lives in **FRANCE** with her female partner, a **FRENCH** national. T. and her partner are in a **FRENCH** civil partnership (PACS) since 2004. They have two children, born in 2000 and 2006 in **FRANCE**.

Since T. is their biological mother and France doesn't recognise her partner as the other parent, the two children are Finnish nationals.

To obtain joint parental authority until their majority, T. and her partner had to go through a court decision. But this legal guardianship prevents their children from inheriting from T's partner, using her surname, and obtaining her French citizenship.



Should T. die while the children are minors, her partner's guardianship will end automatically, the children would be considered orphans and a judge would decide whether or not her partner may adopt them.

The guardianship may also end before their majority on either T. or her partner's unilateral request, and possibly counter to the children's best interests. The children are thus not guaranteed to keep contact with both their parents, nor to receive financial assistance from them both before they turn 18.

While second-parent adoption is possible under Finnish law, Finnish courts refuse recognising T.'s partnership because French partnerships differ substantially from Finland's.

Case 3

Current country: **Belgium**
Civil status: Married
Children: Yes

L. and J. are two married men; L. is a **PORTUGUESE** national, J. a **SWEDISH** national. They live together in **BELGIUM**. They adopted their daughter G., born in the **UNITED STATES** in 2005. Both men are recognised as the legal fathers of their daughter by both Belgian and Swedish authorities. Their daughter has a Swedish passport, as well as a Belgian ID card.

When L. inquired in 2007 about the possibility for their daughter to obtain Portuguese nationality, the Portuguese consulate in Belgium stated that since G. had two legal fathers, it would not be possible for them to recognise the adoption.

Consulate officials were not able to clarify what would be G.'s legal status while in Portugal. The family spends holidays in Portugal on a regular basis and the lack of certainty as to the legal status is of particular concern to G.'s parents.

G. has thus two legal fathers in her country of residence (Belgium) and in one of her legal fathers' country of origin (Sweden). However, her legal status is unclear in her other legal father's country (Portugal).



Case 4

Current country: **Spain**
Civil status: Married
Children: Yes

R. is a **SPANISH** national and L. is an **ITALIAN** national. The two women live together in **SPAIN** with one son, T., born in Spain in 2011 via medically assisted reproduction (MAR) techniques. L. provided the egg and R. carried the baby. The two women used an anonymous donor. Their son was automatically given Spanish nationality and recognised by Spanish authorities as having two legal mothers.

Following T's birth, his mothers requested Italian nationality for him via the Italian consulate in Spain. In September 2012, after several documents being requested and provided, the Italian consulate informed R. and L. that their request had been refused by Turin's Registrar of Births, based on the legal opinion of the Italian Public Prosecutor's Office. They argued that (a) MAR techniques can only be used by heterosexual couples; (b) only the woman who gave birth to the child can be considered his mother, and (c) the fact that T. has two mothers goes against Italian public policy.

Therefore while in Spain, T. has two legal mothers, but only one legal mother in Italy (his Spanish mother). Moreover, T. is not eligible to obtain Italian nationality, despite one of his two legal mothers being an Italian national herself.



Enclosure 2

About the petitioners:

The **Network of European LGBT Families Associations (NELFA)** is the only European platform bringing together LGBT parents and their families.

NELFA represents 14 European countries (13 E.U. Member States + Switzerland).

Our members are present in the following countries: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, Switzerland, United Kingdom.

NELFA represents at European level 21 national organisations, together representing more than 10.000 individuals, of which 3.500 are LGBT families with children. NELFA is a member of ILGA-EUROPE.

The Board of NELFA is composed of:

President: *Catalina PALLÁS* – member of *FLG-Associació de Famílies Lesbianes i Gais* (Spain)

Vice-president: *Juha JÄMSÄ* – member of *Sateenkaariperheet* (Finland)

Secretary: *Angelo BERBOTTO* – member of *Famiglie Arcobaleno* (Italy)

Treasurer: *Luís AMORIM* – member of *Associação ILGA Portugal* (Portugal)

Board Member: *Anne-Marie THUS* – member of *Stichting Meer Dan Gewenst* (Netherlands)

Board Member: *Konstantina KOSMIDOU* – member of *Omofolofiliki kai Lesviaki Koinotita Elladas – OLKE* (Greece)

Board Member: *Lisa GREEN* – member of *Lesben- und Schwulenverband in Deutschland (LSVD) e.V.* (Germany)