

February 2010

ILGA-Europe's contribution to the *Stakeholder consultation on possible EU measures in the area of paternity leave*¹

ILGA-Europe greatly appreciates this opportunity to contribute towards this stakeholder consultation as we are firmly committed to support EU legislative and policy developments towards the promotion of equality for all, including measures relating to reconciliation of work, private and family life.

ILGA-Europe's Key Recommendations:

1. The language of all measures on 'paternity leave' should be inclusive so as to ensure that they do not directly or indirectly discriminate against same-sex parents and second-parents
2. The scope of all measures in the area of paternity and second-parent leave should include same-sex parents
3. Adopt new EU legislation on paternity and second-parent leave
4. Address the specific situations of same-sex partners and second-parents
5. Ban discrimination in access and take-up of paternity and second-parent leave
6. Make Regulation (EC) No 883/2004 applicable to same-sex partners

INTRODUCTION

***Rights of the Children of Same-sex Parents and Second Parents*²**

This paper starts with the simple premise that it cannot be in the best interest of children to leave their important relationships of care outside of the legal framework of rights and responsibilities that are specifically designed to protect their interests, simply on the basis of their birth status, or their parents' sexual orientation. This is especially the case,

¹ The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) is a European NGO with 294 national and local lesbian, gay, bisexual, transgender and intersex (LGBTI) member organisations in 40 European countries, and works for human rights and equality for lesbian, gay, bisexual, transgender and intersex people at European level. ILGA-Europe enjoys consultative status at the Economic and Social Council of the United Nations (ECOSOC), participative status at the Council of Europe and receives financial support from the European Commission and other funders. It is also a member of the Platform of European Social NGOs. ILGA-Europe was established as a separate region of the ILGA in 1996. www.ilga-europe.org.

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² Second-parent in this paper is taken to refer to all those parents, whether gay, lesbian or heterosexual, who are not automatically presumed to be the 'father' or 'mother' at the birth of their child/ren and may have to undergo a legal or administrative procedure to adopt or be recognised as the co-parent raising their partner's biological or adopted child/ren.

during the immediate period following the birth or adoption of a child, which is the primary concern in this consultation. ILGA-Europe therefore believes that the question of the rights of children raised in same-sex families should form part of the wider dialogue about children raised in relationships based on love and care that fall within 'the increasing diversity of family structures'³ in the European Union.

While segregated statistics on the number of children that are currently growing in lesbian, gay, bisexual and trans families (LGBT-families) are difficult to compile and rarely available, the figures that exist show that they constitute a sizable group. According to a 2009 research carried out on behalf of the German Ministry of Justice (BMJ), at least 7,000 children are growing up in LGBT-families in Germany.⁴ If these figures are then extrapolated to the EU population at the same rate of incidence, the number of children growing in same-sex families must be at least around 43,000. The challenge for EU policymakers is thus to ensure that all of these children and others in a similar situation enjoy their human rights and legal protection equally.⁵

The Focus of ILGA-Europe's Contribution to this Stakeholder Consultation⁶

ILGA-Europe's contribution to this Stakeholder consultation is formulated from the specific perspective of same-sex parents and second-parents, and the likely impact that any measures undertaken by the EU may have on them and their children. In the first section, we focus on the language and the scope that we deem to be appropriate for these measures. Subsequently, we explore possible measures that the EU could adopt in the area of paternity and second-parent leave.

Same-sex Parenting – Overview of the current situation

At the moment, the Member States' domestic norms regulating gay, lesbian and bisexual parenting vary greatly. On the one hand, Belgium, Denmark, the Netherlands, Spain, Sweden and the United Kingdom (as well as Iceland and Norway) provide same-sex couples with full parental rights. These rights include the ability to adoption jointly; the right of second-parents to adopt the children of their spouse; and the availability of fertility treatment for lesbian couples. In addition, to this group of countries, Finland provides same-sex couples with access to second-parent adoption and fertility treatment, while Germany only provides access to second-parent adoption. On the other hand, in the other Member States there are either no legal/administrative provisions regulating same-sex parenting, or national laws clearly prohibit same-sex parenting, through a: (i) prohibition of joint adoption by unmarried couples and/or same-sex married

³ 'The increasing diversity of family structures' is acknowledged in the text of the Parental Leave Directive (Dir 2010/18/EU)

⁴ Jansen, E., *Gay and lesbian family planning in Germany: Options and constraints* (2009)

http://www.nelfa.org/documents/DocumentStore/Jansen_Elke_Germany_conference_Slovenia_2009.pps

⁵ Hodson, L., *The Rights of Children Raised in Lesbian, Gay, Bisexual or Transgender Families: A European*

Perspective (2008) ILGA-Europe <http://www.ilga->

[europe.org/home/publications/reports_and_other_materials/the_rights_of_children_raised_in_lesbian_gay_bisexual_or_transgender_families_a_european_perspective_december_2008](http://www.ilga-europe.org/home/publications/reports_and_other_materials/the_rights_of_children_raised_in_lesbian_gay_bisexual_or_transgender_families_a_european_perspective_december_2008)

⁶ In addition to this paper, ILGA-Europe has also provided input to the Social Platform's consolidated contribution.

couples; and/or (ii) prohibition of access to fertility treatment for unmarried women, or women in same-sex relationships.

The actual situation in the Member States, however, does not neatly reflect the applicable domestic legal framework. While law and policy may indeed have an important impact on the prevalence of certain family formations, it is also true that families beget children independently of domestic legislation/regulations on parenting, and this equally applies to same-sex families. Women in lesbian relationships, for example, are equally able to be impregnated and have their own children as women in heterosexual relationships. This can happen for instance either through access of fertility treatment in a Member State that allows it or through home insemination. The impact of the domestic legal framework then relates to whether recognition will be granted to both parents or only to one of the child's parental ties (the birth mother or the adoptive parent).

In instances where domestic legislation does not recognise the second-parent with full legal rights, EU measures on paternity and second-parent leave need to take the best interest of the child as the primary consideration and provide that parent with access to leave on the basis of his/her role as a primary caregiver.

Another issue that EU policymakers need to be aware of and address while formulating the proposed measures is the impact of heteronormativity⁷ in legal parent recognition. Indeed, fathers in wedlock or other forms of legally recognised heterosexual relationship have their 'paternity' presumed upon the birth of their child and are immediately declared a parent irrespective of whether they are the biological fathers or not. This presumption is, however, not extended to lesbian co-mothers even when they are married (or in a registered partnership) to the birth mother. In most countries that opened marriage to same-sex partners and recognise same-sex parenting, the lesbian co-mother still has to undergo a second-parent adoption prior to her being legally recognised as a parent. The application of EU measures on paternity and second-parent leave have to therefore take this important distinction into consideration in order not to discriminate against second-mothers on the grounds of their sex and sexual orientation.

In a nutshell, given the disparate levels of protection and recognition afforded to different family models in domestic legislation in the EU Member States, it is important for all EU measures on paternity and second-parent leave to look into the specific situations of different family models and ensure that the impact that the measures will have in each circumstances are impartial and proportional, and in accordance with Art. 19 TFEU.

In this call, ILGA-Europe is not asking the European Commission to overstep its competence. Instead we are asking for the inscription of the principle of equal treatment and non-discrimination into the measures to be adopted which is then set in motion at

⁷ Heteronormativity is a social norm that takes heterosexuality as the stand, and as what is normal and socially expected. On the contrary, it places same-sex relations as an abnormality and as incongruent with the 'natural' and 'biological' roles of the two distinct and socially recognised sexes (men and women). Heteronormativity builds models of social recognition (e.g. marriage), social security (e.g. pensions, paternity leave etc) or other legal/social entitlements as suitable from the point of view of the heterosexual couples and families without taking into consideration other family forms.

the moment that the relevant considerations are met at Member State level (See Annex A for an overview of the legal standing of same sex partners in from of domestic law).

Current Access to Paternity and Second-Parent Leave in a Number of EU Member States and one EEA country that recognise Same-Sex Relationships

Country	Form of recognition of same-sex couples	Are parental leave entitlements open to same-sex couples?	Are there any paternity leave entitlements?	If yes, are they open to the second-parent, including the second-mother?
Belgium	Marriage & Registered Partnership	Yes* However, a complete second-parent adoption is needed first.	Yes 10 days paternity leave	No* No legal obligation applies. May be provided on employer's goodwill.
Finland	Registered Partnership	Yes⁸ Partners need to be in a registered partnership prior birth/adoption.	Yes	Yes⁹ (since Sept 2010) Second-parent adoption needed first. Process takes a minimum of 2 months
France	Registered Partnership	No A court decision stated that the law does not concern same-sex couples ¹⁰	Yes¹¹ (since 2002) Fathers have the right to 11 paternity leave days	No
Hungary	Registered Partnership	No	Yes	No
The Netherlands	Marriage & Registered Partnership	Yes A second-parent adoption is necessary	Yes	No¹²
Norway	Marriage	Yes A second-parent adoption may be necessary	Yes	Yes Provided minimum requirement laid down in law are met
Portugal	Marriage	No¹³ Marriage does not extend to parental rights	Yes	No Marriage does not extend to parental rights
Slovenia	Registered Partnership	No* Such leave can only be availed of by one of the parents as same-sex second-parents are not recognised	Yes	No

⁸ See <http://kela.fi/in/internet/english.nsf/NET/210708130019HS?OpenDocument>

⁹ See <http://www.stm.fi/tiedotteet/tiedote/view/1508606>

¹⁰ See (Cour de cassation, 17.03.2010)

¹¹ See <http://vosdroits.service-public.fr/F3156.xhtml>

¹² See (Arnhem Court, 17.08.2010)

¹³ See <http://dre.pt/pdf1sdip/2009/02/03000/0092601029.pdf> (Art. 33-65)

A PROPOSED LANGUAGE USE AND SCOPE OF THE MEASURES

1. The language of all measures on ‘paternity leave’ should be inclusive so as to ensure that they do not directly or indirectly discriminate against same-sex parents and second-parents

ILGA-Europe places great importance on language use in legislation and policy measures, as in the same way that language can be used pro-actively to include different categories of people, it can also be used to exclude them. Lesbian, gay, bisexual, trans and intersex people have time and time again been denied their rights in courts or in society at large due to narrow interpretation of legal texts that did not expressly refer to them.

In view of this, ILGA-Europe sees the use of the term 'paternity' as potentially problematic. This is especially so, because the term is immediately linked to fathers and fatherhood to the exclusion of all others through a process that is called heteronormativity¹⁴. ILGA-Europe would hence favour a more gender neutral formulation since the persons who the measures will refer to are not necessarily the biological fathers, but potentially the second-fathers or the second-mothers.

It is important to note here, that ILGA-Europe's position is congruent with the position that the drafters of the current EU legislation on maternity leave had taken. Indeed, they had gone to great lengths to ensure that Directive 92/85/EEC is framed in a gender neutral manner and referred to "pregnant workers and workers who have recently given birth or are breastfeeding" even though men cannot biologically conceive children. The European Parliament's legislative resolution on the proposal to amend Directive 92/85/EEC call for this directive to address paternity leave through a new Article 8a that follows the same gender neutral approach and states:

“Member States shall take the necessary measures to ensure that workers whose life partner has already given birth are entitled to a continuous period of non-transferable paid paternity leave of at least two weeks [...]”¹⁵ (*emphasis added*)

The intention of the European Parliament in its use of this gender neutral formulation to refer to co-parents irrespective of gender is fairly clear and much appreciated. However, while the intentions are good, ILGA-Europe would still prefer the term ‘paternity leave’ to be extended to read ‘paternity and second-parent leave’, which would make it crystal clear that the scope of the measures also includes all second-parents, including same-sex second-parents.

The best formulation to date in our view, is found in the Social Platform *Common position for amendments on the revision of the Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave*¹⁶, where it had argued that,

¹⁴ See note 7 above

¹⁵ European Parliament legislative resolution of 20 October 2010 (P7_TA-PROV(2010)0373)
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0373>

¹⁶ The position was adopted on 15 December 2008 and is available at:
<http://cms.horus.be/files/99907/MediaArchive/Policies/Employment/Social%20Platform%20position%20on%20the%20revision%20of%20the%20parental%20leave%20directive%2096-34-EC.pdf>

"New regulations must take account of the different forms of families existing in European societies, with the clear goal to remove any form of discrimination or discriminatory treatment of, for example, same-sex, non-married, single parent families, underage mothers, tutors and other caregivers need to be covered by the minimum requirements.

Anti-discrimination measures in these cases must include the removal of any obstacles faced by partners, or other designated family members to care for the dependants on the family and to take the necessary leave for such care-work."¹⁷

In view of the above, the Social Platform proposed that qualification for paternity leave be regulated by the following article:

- 3.2 An employee qualifies for paternity leave on the birth or adoption of a child or de facto parenthood if they:
- a) Have - or expect to have - responsibility for the baby's upbringing,
 - b) Are the biological father of the baby and/or the mother's husband/ wife or partner, including same-sex partner or registered partner.

Of course, ILGA-Europe recognises that in order to make the language truly inclusive, the European Commission may need to take on board other perspectives from other stakeholders as well, and hence the language that we are proposing may need to be broadened further to accommodate for such perspectives. In this case, ILGA-Europe would appreciate if it were consulted further to ensure that the new language maintains the spirit of this contribution.

2. The scope of all measures in the area of paternity and second-parent leave should include same-sex parents

a) Scope of existing European law

- The right to found a family in the Charter of Fundamental Rights of the European Union does not refer to marriage as a contract between one man and one woman, but is instead framed in gender neutral terms and refers to "national law governing the exercise of these rights".
- Similarly, the Freedom of Movement Directive (Dir 2004/38/EC) recognises all couples, and does not distinguish between "the spouse" or "the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State" for the purpose of movement and residence within the EU.
- The Parental Leave Directive's (Dir 2010/18/EU) text recognises the "increasing diversity of family structures while respecting national law, collective agreements and/or practice". This directive is gender neutral, and should hence also cover same-sex parents and second-parents in accordance with national law.
- In *Tadao Maruko v. Versorgungsanstalt der Deutschen Bühnen* (Case C-267/06) the ECJ took the position that refusal to grant a registered same-sex partner a survivor's

¹⁷ Ibid., *Amendment Proposal for a decision New General consideration 7 bis*, p.5

pension, when such a right is provided to married partners, constitutes direct discrimination under the Employment Framework Directive (Dir 2000/78/EC) and ruled:

"58 As regards the significance of Recital 22 of the preamble to Directive 2000/78, that recital states that the Directive is without prejudice to national laws on marital status and the benefits dependant thereon.

59 Admittedly, civil status and the benefits flowing therefrom are matters which fall within the competence of the Member States and Community law does not detract from that competence. However, it must be recalled that in the exercise of that competence the Member States must comply with Community law and, in particular with the provisions relating to the principle of non-discrimination (see, by analogy, Case C-372/04 *Watts* [2006] ECR I-4325, paragraph 92, and Case C-444/05 *Stamatelaki* [2007] ECR I-3185, paragraph 23)."¹⁸ (*emphasis added*)

In view of the above legislation and case-law, ILGA-Europe would anticipate that any EU measures adopted in the area of paternity and second-parent leave should also cover same-sex parents. To meet the principles of equality and proportionality, the concept of 'paternity' should be interpreted widely and not be construed in terms of a biological filiation or refer to the sex of the parent. The coverage of same-sex parents, and other parents who would otherwise not be covered under the concept of 'paternity' should ideally be covered under the concept of 'second parent'.

b) UK Good Practice Model: Paternity leave entitlements' extension to same-sex partners

A good example of coverage of gay and lesbian parents is provided by the *UK Ordinary Paternity Leave* entitlement which is provided to any of the following:

- biological father of the child
- mother's husband or partner (including same-sex relationships)
- child's adopter
- husband or partner (including same-sex relationships) of the child's adopter.¹⁹

¹⁸ Case C-267/06 *Maruko* [2008] ECR I-1757, paragraphs 58-59

¹⁹ For further details about the UK Ordinary Paternity Leave see:

http://www.direct.gov.uk/en/parents/moneyandworkentitlements/parentalleaveandpay/dg_10029398

B. POSSIBLE EU INITIATIVES ON PATERNITY AND SECOND-PARENT LEAVE

ILGA-Europe supports the adoption of EU measures in the area of paternity and second-parent leave. We believe that they are needed as they are the only way to ensure that grey areas are addressed, and that certain minimum standard are met in all EU member states. We thus propose four specific initiatives:

- Adopt new EU legislation on paternity and second-parent leave
- Address the specific situations of same-sex partners and second-parents
- Ban discrimination in access and take-up of paternity and second-parent leave
- Make Regulation (EC) No 883/2004 applicable to same-sex partners

1. Adopt new EU legislation on paternity and second-parent leave

Provided that this stakeholder consultation on 'paternity leave' is being carried out in parallel to an ongoing ordinary legislative procedure amending Directive 92/85/EEC, ILGA-Europe calls on the European Commission to back the European Parliament's position in which it adopted 2 weeks of 'paternity leave' at the same conditions that are applicable to 'maternity leave'. ILGA-Europe, of course, encourages the European Union to take on board our suggestion towards gender neutral language formulation thus including all second parents, including same-sex parents.

In the event that the proposed 'paternity leave' amendment proposed by the European Parliament does not make it into the future approved Recast of Directive 92/85/EEC, ILGA-Europe would support the adoption of a *new Framework Directive on paternity and second-parent leave* as this would complement the existing parental and maternity leave legislation.

In our view, a Framework Directive is needed as it is the only way to guarantee minimum common criteria across the EU on matters such as pay and duration of the leave.

2. Address the specific situations of same-sex partners and second-parents

The adopted legislation needs to refer to the parent/caregiver and not the spouse so as to ensure immediate recognition of all second parents. The legislation should specifically look at the circumstances of all parents who are not automatically presumed to be the 'father' and may hence lose their 'paternity and second parent leave' entitlement due to administrative burdens.

Proposal towards an inclusive model of coverage of second parents

In this submission, 'second-parent' refers to all those parents, whether gay, lesbian or heterosexual, who are not automatically presumed to be the 'father' or 'mother' at the birth of their child/ren and may have to undergo a legal or administrative procedure to adopt or be recognised as the co-parent raising their partner's biological or adopted child/ren.

In this section we provide different scenarios and clarify how we envision the provision of paternity and second-parent leave entitlements:

Symbol reference table:	
	A <i>circle</i> represents a female
	A <i>dotted circle</i> represents the birth mother
	A <i>triangle</i> represents a male
	A <i>square</i> represents a child
	An <i>equal sign</i> represents a marriage or registered partnership ²⁰
	A <i>hyphen</i> represents a <i>de facto</i> relationship ²¹
	An <i>equal sign connected to a vertical line</i> represents a couple that is married or in a registered partnership and their bond with a child ²²
	A <i>hyphen connected to a vertical line</i> represents a couple that is in a <i>de facto</i> relationship and their bond with a child ²³

Scenario 1: *Birth of a child within the family*

Children may be born within the family both to different-sex and same-sex parents. Such births may or may not have a biological link to the father or the second mother, and may happen irrespective of the legal standing of the family (i.e. marriage, registered partnerships, and *de facto* relationships).

There are therefore four models that may represent such births:

	A child born to a heterosexual couple that is either married or in a registered partnership is usually automatically recognised as the child of both parents due to the principle of ‘presumption of paternity’.
	A child born to a lesbian married or registered couple is usually not provided with automatic recognition. The second-mother has to undergo a formal procedure to adopt her child prior to her being formally recognised as the co-mother. Not all countries that allow same-sex partners to marry or enter into registered partnerships have instituted such a co-mother procedure and thus the second-mother may not be able to establish a legal bond with the child.
	A child born to an unmarried heterosexual couple may not be able to enjoy a legal link to both parents until the mother and the father undergo an administrative procedure to establish the father’s ‘paternity’.
	A child born to a lesbian unmarried couple is usually not able to establish a legal link to the second-mother.

ILGA-Europe calls for:

²⁰ In this example, two male partners who are either married or in a registered partnership

²¹ In this example a male and a female in a *de facto* relationship

²² in this example a birth mother and her spouse’s [the second-mother] bond to their child

²³ in this example two gay fathers’ bond to their child

Given the disparate levels of protection and recognition afforded to different family models in domestic legislation in the EU Member States, ILGA-Europe believes that it is important for all EU measures on paternity and second-parent leave to look into the specific situations of different family models highlighted above and ensure that the impact that the measures will have in each circumstances are impartial and proportional, and in accordance with the principle of anti-discrimination enshrined in Art.19 TFEU.

Clearly, the second-lesbian mother as well as the father in an unmarried relationship will not be provided with equal treatment if the measures adopted by the European Union do not specifically address their situations.

Additionally, the EU needs to look into discrimination that may be experienced by second-parents in same-sex couples due to absence of mutual recognition of same-sex couples in the receiving country in spite of their being married or in a registered partnership in their home country. The discrimination in this case, is likely to apply both to ‘paternity and second-parent leave’ and the ‘parental leave’ entitlements as well. To regulate this matter, the EU needs to look into ways of making Regulation (EC) No 883/2004 applicable to same-sex partners, perhaps through an Amended Proposal (see *point 4 below*).

Scenario 2: *Joint-adoption of a child*

	<p>Married or registered heterosexual couples can adopt children in all EU Member States provided that they meet certain minimum criteria.</p>
	<p>Within the EU, married or registered same-sex couples can only adopt children in Belgium, Denmark, the Netherlands, Spain, Sweden and the United Kingdom provided that they meet certain minimum criteria. Joint adoption is also possible in Iceland and Norway.</p>
	<p><i>De facto</i> different-sex couples may adopt children jointly in those countries national law allows it.</p>
	<p><i>De facto</i> same-sex couples cannot adopt children jointly.</p>

ILGA-Europe calls for:

ILGA-Europe recognises that adoption is entirely a competence of the Member States, and that the EU cannot legislate on such a matter. However, the EU should ensure that in those countries where same-sex couples have the right to adopt children, no discrimination on the grounds of sex or sexual orientation applies in access to ‘paternity and second-parent leave’ and ‘parental leave’.

3. Ban discrimination in access and take-up of paternity and second-parent leave

While countries like the UK, for example, provide all parents with equal access to parental and paternity and second-parent leave irrespective of the grounds of sex and sexual orientation, other countries like the Netherlands, for example restrict access to

paternity leave to second-mothers irrespective of their equal status of same-sex couples in front of national law.

ILGA-Europe sees such a restriction as intersectional discrimination on the grounds of sex and sexual orientation and not in line with Art.19 TFEU or the ECJ decision in *Maruko*. The EU should hence ban such forms of discrimination through the measures that it intends to implement in the area of parental and second-parent leave.

4. Make Regulation (EC) No 883/2004 applicable to same-sex partners

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems regulates family benefits in another member state than one's own. So far these regulations are silent on same-sex partner's equal access to social security schemes, and therefore it is highly likely that same-sex partners will be discriminated against when accessing social security in another Member State.

Since 2004, when this Regulation was adopted, the number of countries that have adopted legislation that recognises same-sex partners has jumped from 7 Member States to 16 – an increase of almost 230% in 6 years. It is thus more important than ever that the EU looks into its own regulations and extends equal protection to all couples recognised by law, irrespective of their sex or sexual orientation.

ANNEX A LEGAL RECOGNITION OF SAME-SEX PARTNERS

It needs to be noted at this stage that a growing consensus of same-sex partners' recognition is emerging in the EU and EFTA member states. In fact, as of February 2011:

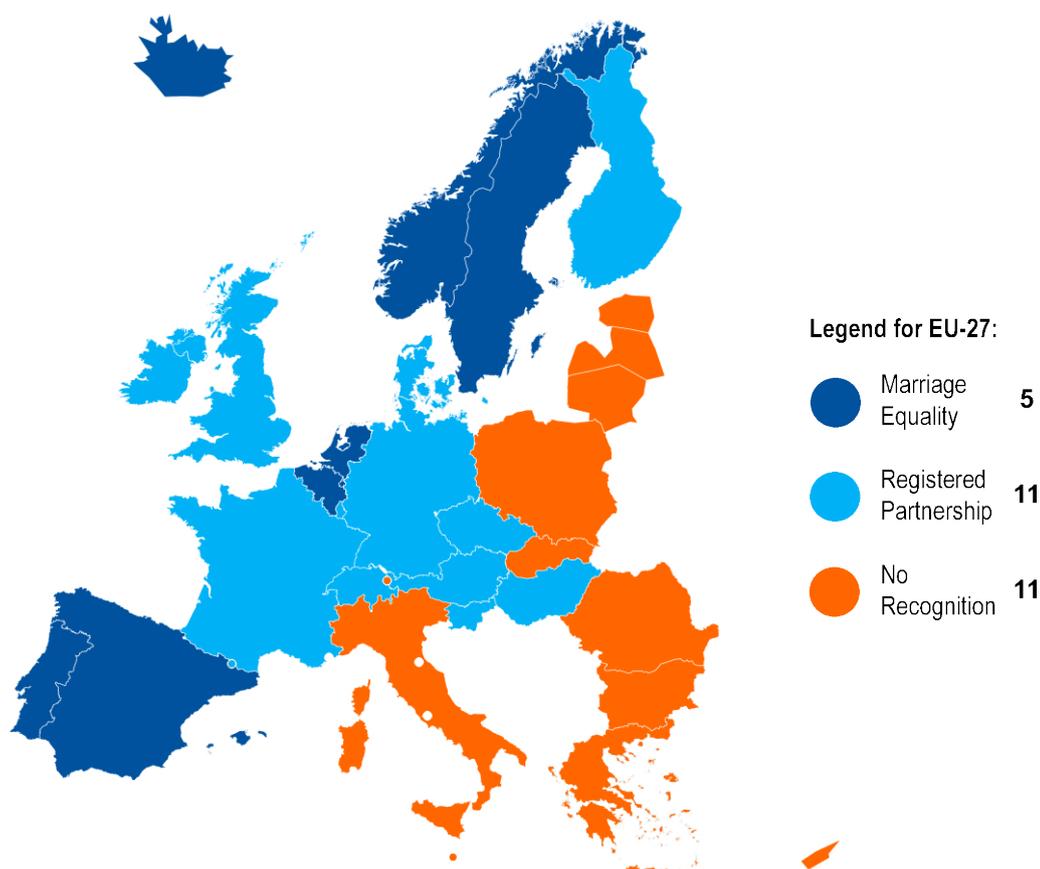


Fig. 1 Legal recognition of same-sex partners in the EU-27 and EFTA

- Marriage equality between different-sex and same-sex couples is provided for in five EU and two EFTA countries, namely - Belgium, the Netherlands, Portugal, Spain, Sweden, Iceland and Norway;
- Registered partnerships that provide most of the rights of marriage to same-sex couples are celebrated in another eleven EU countries, namely - Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Luxembourg, Slovenia and the United Kingdom. Andorra and Switzerland provide for similar recognition in domestic law;
- Only the remaining eleven EU countries and Lichtenstein provide no legal recognition to same-sex couples as yet.

No country that opened up legal recognition to same-sex couples has yet scaled down or repealed such laws. To the contrary, many countries have taken additional steps to increase the number of rights and level of protection afforded to same-sex couples, and revised discriminatory laws or practices in the areas of parenting and parental rights. This trend is likely to continue spreading in the EU and beyond, as is indicated by the number of legislative proposals that are currently being discussed at member state level.