



**Members of the European Parliament's
Intergroup on LGBTI Rights
Intergroup on Children's Rights**

To: Helena Dalli,
European Commissioner for Equality

Brussels, 20 March 2020

Subject: Protection of rainbow families and their children as regards their freedom of movement

Honorable Commissioner,

Freedom of movement is a fundamental right and needs to be guaranteed for all EU citizens, regardless of their sexual orientation or gender identity. Especially children in rainbow families must be fully protected from a situation of legal uncertainty and emotional limbo created by the interpretation and application of uneven rules across the European Union.

EU citizens and their family members have the right to move freely and live in another EU country¹. This very same right is appallingly denied to rainbow families and their children in some member states, where national and local authorities refuse to recognise their family status – as this has already legally been established in another EU Member State – and deprive them of their fundamental rights which they derive from EU law.

This legal patchwork creates a situation in which same-sex spouses and their children are less protected than different-sex spouses regarding parental rights, the citizenship of their children, tax credits, access to health care, parental leave and inheritance. Differences in legal gender recognition also negatively impact on trans parents moving to Member States without similar mechanisms, resulting in difficulties or impossibility to recognise their parenthood. In some cases, these parents and their children receive no protection and their families are not even recognised to exist.

We believe that every family should continue to exist when crossing EU borders.

In its *Coman decision*², the CJEU established that, for the purposes of the grant of family reunification rights, same sex-spouses have the right to move together across the internal boundaries of the Union, regardless of different national laws on same-sex marriage. By analogy, this right includes the freedom

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

² Judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385

to return to the country of origin and any other country in the EU, even if the law of such country does not recognise same-sex marriage.

We therefore call on the European Commission, as the guardian of the Treaties, to:

- **Put an end to the systematic violations of European citizens' fundamental rights and to ensure the implementation of the Coman case:**
 - By issuing a Communication clarifying that 1) EU free movement law also requires the extension of recognition of same-sex marriages for all legal purposes (not just for family reunification rights) and 2) that when exercising free movement rights, familial ties of Union citizens (e.g. as spouses, parents, children) are recognised, as these have been legally established in another legal system, irrespective of whether they are same-sex spouses;
- **Assist Member States in adopting laws that recognise the free movement of public documents and mutual recognition of the effects of civil status records in the European Union:**
 - In accordance with Article 21(2) TFEU, the Commission should propose a Directive or Regulation requiring recognition of marriage certificates, registered partnership certificates (if the registered partnership is substantially similar to a marriage), birth certificates (including information about legal gender or the parentage of a child), adoption certificates, and legal gender recognition certificates issued in one EU Member State as valid for all purposes of national law in all other Member States. This legislation would not change national family law or civil status law in any Member State
 - The Commission should equally ensure that children's right to maintain contact with both parents is respected in cross-border cases, as required in the Brussels IIA regulation³.
- **Ensure that the best interest of the child is always a primary consideration in all decisions concerning children across all EU Member States, and the legal ties between children and their same-sex parents – as these have already been legally established in another country – are maintained when the family moves to the host EU Member State as is the case in situations involving different-sex parents;**

European citizens and their rights cannot wait any longer.

Yours sincerely,

Heidi HAUTALA, *EP Vice-President*

Helène FRITZON, *Vice-President, Socialists & Democrats Group*

Frederick FEDERLEY, *Vice-President, Renew Europe Group*

Frédérique RIES, *Vice-President, Renew Europe Group*

Alice KUHNKE, *Vice-President, Greens/European Free Alliance Group*

Ernest URTASUN, *Vice-President, Greens/European Free Alliance Group*

Gwendoline DELBOS-CORFIELD, *Vice-President, Greens/European Free Alliance Group*

Terry REINTKE, *Vice-President, Greens/European Free Alliance Group*

Sira REGO, *Vice-President, European United Left/Nordic Green Left*

David CASA, *EP Questor*

Marc ANGEL, *Co-Chair, LGBTI Rights Intergroup*

³ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

David LEGA, *Co-Chair, Children's Rights Intergroup*
Caterina CHINNICI, *Co-Chair, Children's Rights Intergroup*
Hilde VAUTMANS, *Co-Chair, Children's Rights Intergroup*
Saskia BRICMONT, *Co-Chair, Children's Rights Intergroup*
Malin BJÖRK, *Vice-Chair, LGBTI Rights Intergroup*
Maria WALSH, *Vice-Chair, LGBTI Rights Intergroup*
Sophie INT'VELD, *Vice-Chair, LGBTI Rights Intergroup*
Alexandra GEESE, *Vice-Chair, Children's Rights Intergroup*
Dragos PÎSLARU, *Vice-Chair, Children's Rights Intergroup*
Javier MOLENO SANCHEZ, *Vice-Chair, Children's Rights Intergroup*
Laura FERRARA, *Vice-Chair, Children's Rights Intergroup*
Laurence FARRENG, *Vice-Chair, Children's Rights Intergroup*

Abir AL-SAHLANI
Alex AGIUS SALIBA
Antoni COMÍN I OLIVERES
Birgit SIPPEL
Brando BENIFEI
Dietmar KÖSTER
Eleonora EVI
Evelyn REGNER
Evin INCIR
Francisco GUERREIRO
Giuliano PISAPIA
Giuseppina PICIERNO
Grace O'SULLIVAN
Irene TOLLERET
Izaskun BILBAO BRANDICA
Jytte GUTELAND
Karen MELCHIOR
Karin KARLSBRO
Kim VAN SPARRENTAK
Kira PETER-HANSEN

Manu PINEDA
Manuel BOMPARD
Maria NOICHL
Marie TOUSSAINT
Marie-Pierre VEDRENNE
Mónica Silvana GONZÁLEZ
Olivier CHASTEL
Pernando BARRENA
Petra DE SUTTER
Pierre KARLESKIND
Radka MAXOVÁ
Rasmus ANDRESEN
Rosa D'AMATO
Rosa ESTARÀS FERRAGUT
Sirpa PIETIKÄINEN
Svenja HAHN
Sylwia SPUREK
Tanja FAJON
Tilly METZ
Vera TAX

WWW.LUMEAJURISPELRO