

Equality of Rainbow Families : Need for action and solution approaches in Germany as well as insights from other European countries

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2022

<https://doi.org/10.25595/2250>

Veröffentlichungsversion / published version
Working Paper

Empfohlene Zitierung / Suggested Citation:

Lange, Katrin: *Equality of Rainbow Families : Need for action and solution approaches in Germany as well as insights from other European countries*. Observatory for Sociopolitical Developments in Europe, 2022. DOI: <https://doi.org/10.25595/2250>.

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**Observatory for
Sociopolitical Developments
in Europe**

Equality of Rainbow Families

Need for action and solution approaches in
Germany as well as insights from other
European countries

Katrin Lange

September 2022

Content

1	Introduction	1
2	Background	3
3	Research on rainbow families	17
4	Automatic co-parent recognition	19
5	Legal recognition of trans* and inter* parents	23
6	Assisted reproduction	26
7	Recognition of legal parenthood in assisted reproduction	30
8	Multi-parenthood	32
9	Joint adoption for unmarried same-sex couples	34
10	Righting wrongs and compensation	36
11	Counselling services	39
12	Conclusion	41
13	References	45
	Current Publications	56
	Publishing Information	57

1 Introduction

In recent years, rainbow families have become more prevalent in Germany as well as in Europe. This goes hand in hand with processes of social change, ground-breaking legal rulings by various national and European courts as well as increased political efforts to enable the founding of rainbow families and to put them on an equal footing with other family forms. Nevertheless, there is still a need for political and legal action to advance equality.

Against the background of the manifold and diverse problem situations of lesbian, gay, inter*, trans* and queer parents in relation to their biological and adopted children, the Working Paper (Lange 2022) and this abridged version identifies necessary further steps for the equality of rainbow families in Germany (Chapters 3 to 11). To this end, demands from civil society organisations and political parties as well as recommendations for action from experts in Germany over the past five years were compiled and systematically reviewed.¹ These can be seen as solution approaches aiming at equality of rainbow families in Germany.

Equality for rainbow families is not only being discussed and promoted nationally, but across Europe. Thus, another aim of this working paper is to present projects and measures already implemented by the European Union, the Council of Europe and especially the governments of the Member States. These can be considered as solution approaches as well.

This Working Paper deals with legal and social parenthood, adoption rights, the legal facilitation of multiple parenthood, the use of assisted reproduction and its legal consequences for parenthood, research and counselling needs for rainbow families, and the need to address, redress and compensate for past injustices that made parenthood difficult, if not impossible.

In a conclusion (Chapter 12), the needs for regulation and for action for the equality of rainbow families in Germany identified in the Working Paper are structured. For political implementation, a two-part proposal is made. This proposal, on the one hand, focuses on the various legal amendment needs and, on the other hand, on an accompaniment to these legal amendments and extensions as well as other non-legislative measures in the form of a National Action Plan – in particular in view of the large number of issue areas and responsible federal ministries/departments.

The Working Paper is part of a publication series by the **Observatory for Sociopolitical Developments in Europe** on equality of LGBTIQ* persons in Germany and in Europe.² The work of the Observatory is intended to contribute to the preparation of a **National Action Plan regarding the rights of LGBTIQ* persons in Germany**. In addition to legal provisions, National Action Plans are considered an important measure for securing the rights and opportunities of LGBTIQ* persons (Wittenius 2022), also explicitly to protect them against violence and hate (Molter 2022). A large number of EU Member States already have National Action Plans. In

¹ The exact wording of all demands can be found in the annex of the German version of this Working Paper (Lange 2022).

² Find all publications by the Observatory on equality and the rights of LGBTIQ* persons here: <https://sociopolitical-observatory.eu/en/keytopics/equality>

addition, as part of its first LGBTIQ Equality Strategy 2020-2025, the European Commission has called on the EU Member States to draw up National Action Plans, and supports them in doing so (Chapter 2.3). The demand for such an action plan in Germany has repeatedly been put forward by political and civil society actors for several years.³ Its drafting has now been embraced as a project of the new federal government under chancellor Olaf Scholz in the coalition agreement 2021–2025: “In order to counter queer hostility, we are developing a cross-departmental National Action Plan for the acceptance and protection of sexual and gender diversity and are implementing it with financial support. [...] We want to anchor rainbow families more firmly in our family policy” (SPD/BÜNDNIS 90/DIE GRÜNEN/FDP 2021: 119; own translation). In addition, the agreement contains several other concrete projects for the equality of rainbow families, which are presented in the respective chapters 3 to 11.

³ There are action plans on regional level (Bundesländer) in Germany: <https://www.lsvd.de/de/ct/424-Welche-Bundeslaender-haben-Aktionsplaene-gegen-LSBTI-Feindlichkeit>. However, these are not considered in this Working Paper.

2 Background

2.1 Definitions

Table 1: Definitions

Term	Definition
Cis	Cis is Latin and means “on this side” and, in the context of the term “cisgender”, refers to persons whose gender orientation corresponds to the gender/sex they were assigned at birth” (Dionisius 2021: 80, own translation).
Gender expression	Gender expression is understood “as each person’s presentation of the person’s gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references” (Yogyakarta Principles 2017: 6; Preamble). This presentation “may or may not conform to a person’s gender identity” (ibid.). Gender expression is thus part of the definition of gender identity.
Gender identity	Gender identity refers to “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth [...]” (Yogyakarta Principles 2007: 8).
Heteronormativity	Heteronormativity refers to “[...] the norms of heterosexuality and binary sexuality and understands them as a social power relationship [...]. Cisnormativity is part of this heteronormative power relationship and refers to the norm of locating oneself within the gender/sex assigned at birth” (Dionisius 2021: 78; own translation).
Inter*	Inter* refers to persons with variations in sexual characteristics. Since their body “deviates in some way from social and medical notions of binary sexuality” (Queerulant_in 2019: 29; own translation), inter* is and has often been pathologised. As a result, inter* persons were and are subjected to medical interventions as infants or children aiming to establish an unambiguous gender (ibid.). These interventions, often experienced as violent by those affected, constitute human rights violations of the right to self-determination, the right to reproduce and the right to physical integrity (ibid.: 30). Inter* persons can be cis or trans* and feel belonging to any gender (ibid.: 29).
LGBTIQ*	LGBTIQ* is an abbreviation for the terms lesbian, gay, bisexual, trans*, inter* and queer and thus an abbreviation for diverse sexual orientations and gender identities. Queer is a collective term for all non-heteronormative and non-cisgender lifestyles and identities and is representative of all of them here. The asterisk * represents the diversity of gender and sexual orientations as well as

	the processuality and incompleteness of gender orientation and positioning (Fütty 2019: 17 quoted after Dionisius 2020: 78). ⁴
Non-binary	Non-binary is “an umbrella term for all genders that are not purely male or purely female. [...] However, only one’s own perception is decisive for the identification as non-binary” (Queerulant_in 2019: 37; own translation).
Rainbow families	Rainbow families are defined as families in which children live with at least one LGBTIQ* parent: “These can be patchwork families with children from a previous heterosexual relationship, lesbian or gay couples who decide to have children together, transgender or intersex parents who bear responsibility for children in a wide variety of constellations. Rainbow families are families with biological, adopted or foster children, with one, two, three or [...] [several] parents” (own translation). ⁵
Sexual characteristics	Sexual characteristics are “each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty” (Yogyakarta Principles 2017: 6).
Sexual orientation	Sexual orientation refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender” (Yogyakarta Principles 2007: 8).
Trans*	Trans* refers to persons who feel that they do not or do not exclusively correspond to the gender they were assigned at birth. However, only one’s own perception is decisive for the identification as trans* woman or trans* man (Queerulant_in 2019: 54f.). There are binary and non-binary trans* persons. Some trans* persons decide to take hormones, undergo gender reassignment surgery or change their legal gender by altering their first name or marital/personal status ⁶ . However, these are “long, time-consuming and cost-intensive processes, under which many trans* persons also suffer” (ibid.: 51; own translation).

Source: Author’s illustration

⁴ If in the following sections the spelling of LGBTIQ*, trans*, inter* and non-binary differs; this different spelling was adopted from the original source and used depending on the respective context.

⁵ Glossary on rainbow families at the Regenbogenportal of the BMFSFJ: https://www.regenbogenportal.de/glossar?tx_dpnglossary_glossary%5Baction%5D=show&tx_dpnglossary_glossary%5Bcontroller%5D=Term&tx_dpnglossary_glossary%5Bterm%5D=28&cHash=dc85fcab881f9a7b25fb051f0811b1e6#c28

⁶ “Personal marital status is the legal position/status of a person within the family law system. This status includes data on birth, marriage, the establishment of a civil partnership and death as well as all related facts under family and naming law” (own translation), <https://www.bmi.bund.de/DE/themen/moderne-verwaltung/verwaltungsrecht/personenstandsrecht/personenstandsrecht-node.html>

2.2 Rainbow families

The concept of **family** is subject to temporal and social developments and processes of change (see in more detail: Sagert 2021: 20f.). As a social phenomenon, the concept “interacts with social framework conditions and normative models” (ibid.: 25; own translation). Processes of social change such as the pluralisation of lifestyles, individualisation, the change in gender relations, but also the ongoing development of technologies as well as digitalisation and its effects on people and their family and social relationships have an impact on the understanding of family and parenthood – and thus also on the diversity of family forms. While the heterosexual nuclear family (father, mother, child(ren)) was considered the most important family form in the 20th century and continues to be a dominant guiding principle in society today, rainbow families have gained in importance alongside other family forms (ibid.: 25f.).

Rainbow families are defined as families in which children live with at least one LGBTIQ* parent: “These can be patchwork families with children from a previous heterosexual relationship, lesbian or gay couples who decide to have children together, transgender or intersex parents who bear responsibility for children in a wide variety of constellations. Rainbow families are families with biological, adopted or foster children, with one, two, three or [...] [several] parents” (own translation).⁷

It thus becomes clear that rainbow families are not uniform, but diverse family forms. In the context of their legal embedding and social acceptance this has the consequence that there are “hierarchies in recognition and unequal possibilities of parenthood even within non-heteronormative lifestyles” (Riegel 2021: 97; own translation). For example, the differing problem situations for lesbian two-mother families on the one and trans* parents on the other hand, as will become clear in this working paper}.

As parenthood in rainbow families does not necessarily have to be based on biological factors, and as trans* men giving birth, procreative trans* women or more than two parents can be part of these families, their mere existence irritates socially widespread ideas of an assumed normality and ascribed traditional, binary gender roles (e.g. Krüger-Kirn/Tichy 2021; Peukert et al. 2020; Riegel 2021). Even more, the social, political and legal facilitation of rainbow families in Europe (Chapter 2.3) and Germany (Chapter 2.4) is seen in parts of society as an attack on a supposed “natural order” in the form of a binary gender order of “women” and “men” and a heterosexual nuclear family. In the past ten years, this has led to the mobilisation of many people across Europe in the so-called **anti-gender movement**, in which right-wing populist, ultra-conservative and/or Christian fundamentalist groups instrumentalise people’s fears and anger (Wittenius 2021). Thus, equality policy achievements for rainbow families have often been the trigger for mass protests and go hand in hand with emotionally charged discussions about adoption rights, surrogate parenthood, reproductive medicine, assisted reproduction and access to it for LGBTIQ* persons and LGBTIQ* couples.

⁷ Glossary on rainbow families at the Regenbogenportal of the BMFSFJ [in German]: https://www.regenbogenportal.de/glossar?tx_dpnglossary_glossary%5Baction%5D=show&tx_dpnglossary_glossary%5Bcontroller%5D=Term&tx_dpnglossary_glossary%5Bterm%5D=28&cHash=dc85fcab881f9a7b25fb051f0811b1e6#c28

Starting a family and parenthood always touch on emotional, financial, social, normative and legal issues. In addition to the abundance of tasks and challenges – responsibility for care, allocation and distribution of paid work and (unpaid) care work, income security, reconciliation of family and employment, etc. – that all parents face, rainbow families are also confronted with further specific problems. These result from the legal, social, but also medical unequal treatment of homosexual and heterosexual parents. With regard to prevailing social norms and values, these problems include the following aspects in particular (cf. Jansen/Jansen 2018: 7; Sagert 2021: 25):

- daily coming-out as a rainbow family.
- ever-present pressure to succeed, i.e. to prove oneself as an (at least) equally valid family form, struggle for tolerance and acceptance,
- justification for the wish for children vis-a-vis the own social environment and the own family of origin,
- efforts to strengthen one's children in the face of potential discrimination.⁸

⁸ In this regard, rainbow families as well as sexual and gender diversity in educational contexts should be taken into account as well. However, this is not addressed in this Working Paper, nor does the Working Paper address the right of the child to know his or her own genealogy and origins. Further problem situations are described more explicitly in chapters 3 to 12.

2.3 Europe

At international and European level, different political and legal instruments exist that are also relevant for the protection against discrimination of rainbow families. These are briefly presented below:

2.3.1 Yogyakarta Principles

On **international level**, human rights experts have in 2007 developed the so-called **Yogyakarta Principles** that interpret and specify the existing international human rights conventions on sexual orientation and gender identity on the basis of 29 principles. Although these principles are not legally binding, they may be taken into account in the interpretation of binding human rights norms. In 2017, nine additional principles on gender expression and sexual characteristics were added (“Yogyakarta Principles plus 10”). The 38 principles are seen as the first systematic overview for guaranteeing human rights for LGBTI persons (HES 2020: 8; HES 2008: 7).

Principle 24 includes the right to found a family. At its core, this is about ensuring that states and governments shall recognise their responsibilities towards “diversity of family forms, including those not defined by descent or marriage” (Yogyakarta Principles 2007: Point B). This also includes “access to adoption or assisted procreation (including donor insemination)” (ibid.: Point A; [Chapters 9 and 6](#)). States shall do this by taking “all necessary legislative, administrative and other measures to ensure the right to found a family, [...] without discrimination on the basis of sexual orientation or gender identity” (ibid.: Point B). In doing this, “the best interests of the child shall [always] be a primary consideration” (ibid.: Point C).

In 2017, principle 24 was amended by four additional points: This includes issuing “birth certificates for children upon birth that reflect the self-defined gender identity of the parents” (HES 2020: 38; Point I; [Chapter 5](#)). The other three points deal with the protection of children in rainbow families against possible discrimination (ibid.: Point H) as well as with access to methods to preserve fertility (ibid.: Point J; [Chapter 6](#)) and surrogacy (ibid.: Point K; [Chapter 6 and 7](#)).

2.3.2 Council of Europe

A legally binding instrument at **European level** is the **European Convention on Human Rights** (ECHR)⁹, in force since 1953. In addition to the general ban on discrimination (Article 14 ECHR)¹⁰, Article 8 contains a right to respect for private and family life and Article 12 a right to marry and found a family. In recent case law on sexual orientation and gender identity, these areas of protection also include same-sex partnerships and rainbow families (see: LSVD n.

⁹ The European Convention on Human Rights as amended by Protocols Nos. 11, 14 and 15, together with the Additional Protocol and Protocols Nos. 1, 4, 6, 7, 12, 13 and 16: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

¹⁰ According to established case law, sexual orientation and gender identity are covered by the ban on discrimination, even though they are not explicitly mentioned.

d.). In particular, the **European Court of Human Rights** has – based on the Council of Europe’s European Convention on Human Rights – established “a human rights protection for LGBTQ* persons¹¹ which, while not exhaustive, is thematically relatively broad and can be invoked by them” (SKMR 2021: 2; own translation).¹²

Another political instrument by the Council of Europe is **Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity**¹³, which was adopted unanimously in March 2010. Being the first international instrument on this issue, the Recommendation is a milestone in the fight for LGBT rights worldwide and the basis for work on sexual orientation and gender identity issues throughout Europe. **Chapter IV** contains a total of eleven points on the right to respect for private and family life. With regard to rainbow families, the three points on parental responsibility or guardianship of a child (Point 26)¹⁴, adoption of a child by individuals (Point 27)¹⁵ and assisted reproductive treatment for single women (Point 28; **Chapter 6**) are of particular importance.

2.3.3 European Union

At **European Union level**, the **Charter of Fundamental Rights of the European Union**¹⁶ is legally relevant for rainbow families. Article 21 contains a general ban on discrimination with regard to sexual orientation (based on Article 14 ECHR); Article 7 on respect for private and family life corresponds to Article 8 ECHR; and Article 9 on the right to marry and to found a family corresponds to Article 14 ECHR.

Against the backdrop of the worsening political situation regarding LGBTIQ rights in some EU Member States, the European institutions have made it clear that the European Union will promote equality for LGBTIQ persons in all policy areas.¹⁷ Under the motto of a “Union of Equality”, the European Commission in 2020 adopted for the first time an **LGBTIQ Equality Strategy 2020–2025** (EU COM 2020). This strategy aims to strengthen the rights of LGBTIQ persons and to promote cooperation with other institutions like the Council of Europe, as well

¹¹ To date, there is no case law on the protection of inter* persons (SKMR 2021: 2).

¹² See factsheets „Gender Identity“, „Sexual orientation issues“, „Parental rights“ or „Reproductive rights“ on the Court’s case-law and pending cases: https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c=#n134789085564_pointer.

See also: <https://www.coe.int/en/web/impact-convention-human-rights/right-to-family-life>

¹³ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a

¹⁴ Point 26 of the Comments section of Recommendation CM/Rec(2010)5 (CM(2010)4 add3 rev2) adds: “[...] parental responsibility or guardianship, i.e. care and protection, the provision of education, maintenance of personal relations, the child’s place of residence, administration of the child’s assets, legal representation [...]” https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf450

¹⁵ This issue will not be tackled in this Working Paper. On joint adoption, see **Chapter 9**.

¹⁶ Charter of Fundamental Rights of the European Union – GFR – of 7 December 2000, ABl.EU of 30 March 2010, C 83/389: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>.

¹⁷ For example: State of the Union Address 2020, https://ec.europa.eu/info/sites/info/files/soteu_2020_en.pdf; European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones (2019/2933(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101_EN.html.

as to improve networking between the Member States. Despite its legally non-binding nature, the adoption of the strategy has a signalling function and increases the political pressure on the Member States to become (more) active in this area.

The strategy is based on four main pillars,¹⁸ in which “building LGBTIQ inclusive societies” is one pillar which includes “ensuring rights for LGBTIQ persons in cross border situations” (ibid.: 16f.). In fact, there are often problems when rainbow families cross the internal EU borders, as family unions may not be recognised due to national differences in family law or the lack of recognition of trans*, non-binary and inter* persons. For implementation, the strategy formulates various measures by the European Commission as well as measures to support the EU Member States (ibid.: 19).

To implement the strategy, Member States are invited to develop **National Action Plans on LGBTIQ Equality** (ibid.: 23). The aim of these National Action Plans is to “step up protection against anti LGBTIQ discrimination, to ensure follow-up at the national level of the objectives and actions set out in this strategy and to complement them with measures to advance LGBTIQ equality in areas of Member State competence” (ibid.). To support and monitor the EU Member States in this regard, the Commission has established an LGBTIQ equality subgroup under the High-Level Group on non-discrimination, equality and diversity in 2021 (ibid.).

With the **European Union Agency for Fundamental Rights** (FRA) established in 2007, independent expert advice and analysis on fundamental rights is always available to EU institutions and EU Member State governments via ongoing cooperation. In 2012, the European Union Agency for Fundamental Rights conducted a **first EU-wide survey on LGBT** persons, which was continued and expanded with a second survey in 2019. In total, almost 140,000 people from 30 countries were surveyed in 2019, including for the first time inter* persons and people aged 15-17.¹⁹ This made it the largest collection of empirical evidence on discrimination and hate crime against LGBTI people worldwide and “the world’s most comprehensive collection of empirical data on discrimination” (FRA 2020b: 2).

According to the study, most rainbow families (dubbed “raising children with a partner” in this study) live in Denmark, Ireland, the Netherlands and Sweden (FRA 2020a: 30). Of those surveyed, 14 percent said they were raising at least one child. Of these, 15 percent were lesbian couples, three percent gay couples, 17 percent bisexual women, 29 percent bisexual men, 17 percent trans* and 14 percent inter* persons. 66 percent of the parents are also both the legal parents of their child or children, including 48 percent lesbian and 35 percent gay couples (ibid.).

¹⁸ The other three pillars are: Tackling discrimination against LGBTIQ people, Ensuring LGBTIQ people’s safety, and Leading the call for LGBTIQ equality around the world.

¹⁹ The survey was conducted between May and July 2019 in the 27 EU Member States, the United Kingdom, North Macedonia and Serbia. Of the total 139,799 respondents, 137,508 were from the EU-28, of whom 42 percent were gay men, 20 percent bisexual women, 16 percent lesbian women, 14 percent trans* persons, seven percent bisexual men and one percent inter* persons (FRA 2020a: 57, Annex). The countries with the most participants were Spain (14 percent), Germany (12 percent), Poland and France (both 10 percent) (FRA 2020b: 2).

2.3.4 Rainbow Index

With the **Rainbow Index**²⁰, the civil society organisation **European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association** has built a constantly updatable comparative tool that rates 49 states in terms of their equality laws and policies for LGBTIQ* persons on a scale between zero percent (serious human rights violations, discrimination) and 100 percent (respect for human rights, full equality).

One of the six categories considered in the Rainbow Index explicitly refers to rainbow families. In the family category, the following five main criteria can be taken into account:²¹

1. Marriage, Registered partnership, Cohabitation,²²
2. Adoption (Joint and Secondparent adoption),
3. Automatic co-parent recognition,
4. Medically assisted insemination for singles and couples,
5. Recognition of trans parenthood.

According to the Rainbow Index 2021, the following status on equality of rainbow families existed in the Member States of the European Union (EU-27) in 2020, taking into account the above categories 2 to 5:

²⁰ <https://rainbow-europe.org/>

²¹ Comprehensive criteria including definitions: <https://rainbow-europe.org/about>

²² This main criterion will not be addressed in this Working Paper.

Table 2: Overview Rainbow Index 2021 on the Family category

EU Member States	Joint Adoption	Second Adoption	parent	Automatic co-par-ent recognition	Medically assisted insemination (couples)	Medically assisted insemination (singles)	Recognition of trans parenthood	Rainbow Index on the Family category (total)
Austria	O	O		O	O			
Belgium	O	O		O	O	O	O	100 %
Bulgaria						O		
Croatia						O		
Cyprus						O		
Czech Republic								
Denmark	O	O		O	O	O		90 %
Estonia		O				O		
Finland	O	O			O	O		83 %
France	O	O						
Germany	O	O						57 %
Greece						O		
Hungary						O		
Ireland	O			O	O	O		
Italy								
Latvia						O		
Lithuania								
Luxembourg	O	O			O	O		83 %
Malta	O	O		O	O	O	O	100 %
Netherlands	O	O		O	O	O		90 %
Poland								
Portugal	O	O		O	O	O		90 %
Romania								
Slovakia								
Slovenia		O					O	
Spain	O	O		O	O	O		90 %
Sweden	O	O			O	O	O	93 %

Source: <https://rainbow-europe.org/#1/8682/0> (as of 31 December 2021; author's illustration)

The table highlights that **Belgium**²³ and **Malta**²⁴ have regulations and instruments on rainbow families for all criteria and scored 100 percent overall in the family category. **Sweden** trails these two with 93 percent. **Denmark, the Netherlands, Portugal and Spain** were each at 90 percent. With 57 percent, **Germany** ranks in the middle.²⁵

On the other end of the scale, it is evident that due to a lack of regulations and instruments, there are no legal foundations for rainbow families in the four EU Member States **Lithuania, Poland, Romania and Slovakia**. In **Bulgaria, Greece, Italy, Croatia, Latvia, Slovakia, the Czech Republic, Hungary and Cyprus**, there is also insufficient protection against discrimination towards rainbow families (only regulations in one to four categories).

Focusing on the four aspects in the family category, the table shows the following:

- **Adoption:** In **13 EU Member States** (including Germany) there are legal provisions for joint adoption by same-sex couples. In **14 EU Member States** (including Germany) it is possible to adopt the child of a partner (stepchild and successive adoption, second parent adoption) ([Chapter 9](#)).
- **Automatic co-parent recognition:** **Eight EU Member States** (excluding Germany) have automatic co-parent recognition ([Chapter 4](#)).
- **Access to assisted reproduction/medically assisted insemination:** In **17 EU Member States** (excluding Germany), single persons have access to medically assisted insemination, and in **11 EU Member States** (excluding Germany), same-sex couples have access to medically assisted insemination ([Chapter 6](#)).
- **Recognition of trans* parenthood:** **Four EU Member States** (excluding Germany) have regulations on the recognition of trans* parenthood ([Chapter 5](#)).

The Rainbow Index is an important comparative tool for the state of equality of rainbow families in the European Union. It covers relevant aspects that are addressed in more detail in this working paper. However, it also lacks important criteria for the equality of rainbow families, such as the recognition of inter* parenthood ([Chapter 5](#)), the recognition of legal parenthood in assisted reproduction ([Chapter 7](#)), the enabling of multi-parenthood ([Chapter 8](#)) or the redress and/or compensation of injustice ([Chapter 10](#)), which are additionally considered in this working paper.

²³ <https://rainbow-europe.org/#8624/8682/0>

²⁴ <https://rainbow-europe.org/#8647/8682/0>

²⁵ <https://rainbow-europe.org/#8635/8682/0>

2.4 Germany

Family in the sense of Article 6 of the Grundgesetz (Basic Law, in force since 1949) is the “community of parents and children. It is not decisive whether the children are descendants of the parents and whether they were born in or out of marriage [...]. Family is the actual community and relationship of living and upbringing between children and parents who bear responsibility for them” (own translation).²⁶

However, it was not until 1984 that the Bundesgerichtshof (Federal Supreme Court) ruled that “homosexual partnerships were no longer unethical. On the contrary, they were protected by Articles 1 and 2 of the Grundgesetz. Nonetheless, manifold legal disadvantages remained [...]. Also, regulations for marriage-like partnerships were not applied to same-sex couples by most courts. The legal situation thus remained strongly dependent on the discretion of individual judges” (Plötz 2021b: 93; own translation).

The Bundesverfassungsgericht (Federal Constitutional Court) clarified in 2013 that same-sex families are also explicitly subject to “the special protection of the state” under Article 6 (2) of the Grundgesetz. In a unanimous decision on 19 February 2013, the court stated that within the scope and meaning of the Grundgesetz, people in registered civil partnerships who live in community with the civil partner’s biological or adopted child constitute a family that has to be protected.²⁷

The table below lists further **milestones towards equality for rainbow families in Germany**:

Table 3: Milestones towards equality for rainbow families in Germany

Year	Milestones
1969	Impunity of homosexuality among adults by decision of the Bundesverfassungsgericht (Federal Constitutional Court)
1984	Decision of the Bundesgerichtshof (Federal Supreme Court) that homosexual partnerships are no longer unethical
1986	Legalisation of sperm donation in Germany: this makes parenthood possible for all people who are able and willing to bear a child
1996	Legalisation of homosexuality via the deletion of Article 175 of the Strafgesetzbuch (Criminal Code, old version)

²⁶ Bundesverfassungsgericht, Judgment of the First Senate of 9 April 2003 – 1 BvR 1493/96 –, Rn. 1-126, http://www.bverfg.de/e/rs20030409_1bvr149396.html. See also <https://www.familienhandbuch.de/familie-leben/recht/ehe-familie/ElterlicheSorgeRechtlicheDefinition.php>.

²⁷ Bundesverfassungsgericht, Judgment of the First Senate of 19 February 2013 – 1 BvL 1/11 –, Rn. 1-110, http://www.bverfg.de/e/rs20130219_1bvl000111.html.

2001	Lebenspartnerschaftsgesetz: ²⁸ same-sex couples can establish a registered civil partnership with rights and obligations similar to marriage
2004	Introduction of stepchild adoption for same-sex couples through amendment of the Lebenspartnerschaftsgesetz; enables the partner of the biological parent to adopt the child
2011	Enabling trans* parenthood by abolishing the medically induced inability to reproduce in the case of a legal change of gender by decision of the Bundesverfassungsgericht
2013	Successive adoption, i.e. stepchild adoption of adopted children, by a ruling of the Bundesverfassungsgericht
2017	Marriage for all, including the option of joint adoption
	Recognition of the third option by decision of the Bundesverfassungsgericht
2018	In the case of inter* persons, the civil status can remain open or be changed to male, female or diverse – depending on the person's gender identity – by means of a declaration. With such a declaration, the first name can also be changed.

Source: Author's illustration

In addition, according to the coalition agreement between the Sozialdemokratische Partei Deutschlands (SPD, Social Democratic Party of Germany), the green party BÜNDNIS 90/DIE GRÜNEN and the Freie Demokratische Partei (FDP, Free Democratic Party), the **federal government under Olaf Scholz (2021-2025)** furthermore plans to “anchor rainbow families more firmly in family policy” within the framework of a “cross-departmental National Action Plan for Acceptance and Protection of Sexual and Gender Diversity” (SPD/Bündnis 90/Die Grünen/FDP 2021: 119; own translation). In addition, there are several other concrete projects for the equality of rainbow families, which are presented in the respective chapters 3 to 11.

According to a census, there were 15,000 same-sex couples with children living in their household in Germany in 2019.²⁹ Of these, 89 percent were women in same-sex partnerships. A total of 22,000 children lived with a same-sex parent couple. Of these, 19,000 were children under the age of 18 (Destatis/WZB 2021: 54).

However, in her expert opinion for the Ninth Family Report of the Bundesregierung (German Federal Government) on the current situation of rainbow families in Germany, De Vries concludes: “Even though the **microcensus** is a comparatively good source of data for registering

²⁸ Lebenspartnerschaftsgesetz (LpartG; Civil Partnership Act): <https://www.gesetze-im-internet.de/lpartg/BJNR026610001.html>

²⁹ Given the total of around 11.6 million families in Germany, this is a very low share. Cf.: https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Haushalte-Familien/_inhalt.html.

same-sex couples living together in one household due to the high number of cases, other forms of rainbow families cannot be identified” (Vries 2021: 7; own translation). This includes, for example, LGBTIQ* parents who do not live together in one household. In addition, the children’s genealogy (e.g. biological or adopted child) remains unclear.

De Vries provides further insights into the data situation of rainbow families via a preliminary evaluation of the data of the **LGBielefeld survey** of 2019 (ibid.: 9ff.).³⁰ In this study, “rainbow families are homosexual or bisexual persons who state that they live in a household with underage children” (ibid.: 10; own translation). Of the 599 parents from rainbow families identified in the LGBielefeld data set, “a total of 82 percent stated that they had at least one biological child. Here, the proportion differs considerably between men (92 %) and women (72 %). Far fewer homosexual and bisexual people, on the other hand, have adopted children (19 %) or foster children (5 %). Here, too, there are differences between the sexes: Women have adopted children much more often (29 %) than men (8 %). This holds also true for foster children (6 % for women and 4 % for homo- and bisexual men)” (ibid.: 11; own translation).

The majority of biological children in rainbow families “probably still come from previous heterosexual relationships. However, lesbians and gays are increasingly founding families confidently and as a matter of course after coming out” (Jansen/Jansen n. d.; own translation). For example, sperm donation, which has been legalised in Germany since 1986, enables people who can and want to bear a child themselves to become parents (detailed in Federal Government 2021: 80ff.). Mostly, lesbian couples use this option, but trans* men, inter* or non-binary people can also make use of it if they have the necessary biological prerequisites.

Other options for founding a family are foster care or adoption of children. In foster care, the children remain in the foster family until they are adults. Contact with the biological family can be maintained. “The foster parents receive a financial allowance to support the child” (own translation)³¹ Adoption of children is possible for LGBTIQ* persons (Chapter 9). For example, a minor foster child can be adopted when they are given up for adoption by their parents, or as soon as they reach the legal age of adulthood. In principle, however, “adopted children [...] have only in isolated cases found a new home in families of purely mothers or fathers. Most of them are either adopted abroad or have already lived in a foster relationship with a couple of two mothers or two fathers within Germany.” (own translation)³²

Rainbow families also increasingly include constellations with several parents, for example, when “people come together to realise a desire to have children without being in a love relationship” (Jansen/Jansen n. d.; own translation, Chapter 8).

As much as the family forms differ among rainbow families, the paths to parenthood also differ: for example, father families have fewer opportunities to become parents than mother families,

³⁰ This was an online survey of LGBTIQ* persons conducted by the University of Bielefeld. Gender-differentiated results of the LGBielefeld survey on rainbow families are set to be published in 2022.

³¹ <https://www.regenbogenportal.de/informationen/regenbogenfamilien-rechtliche-rahmenbedingungen>

³² See footnote 29.

for instance through adoption, taking in foster children, surrogacy or co-parenting with a (lesbian) woman or couple, while mother families can also become parents by means of sperm donation. The availability of economic resources also plays a role in parenthood in rainbow families, as the use of assisted reproduction, for example, is associated with high costs ([Chapter 6](#)).

In the following chapters 3 to 11, a summary overview is given of the identified problem situations, needs for action, demands and solution approaches in Germany as well as further solutions approaches from other countries on the topics of research, legal and social parenthood, trans* and inter* parenthood, use of assisted reproduction, multiple parenthood, joint adoption for unmarried same-sex couples, redress of past injustice and counselling services for rainbow families.

3 Research on rainbow families

Table 4: Chapter 3

Problem situations	Overall, there is an enormous need for further research and statistical recording of rainbow families in German-speaking research. There is an imbalance in the research on the different family forms: • Broad research exists on the desire and realisation to have children in lesbian couples and on their parenthood (Teschlade et al. 2020: 17) – in contrast to research on fathers' families (Sagert 2021: 14), trans* and inter* parenthood (Teschlade et al. 2020: 17; Stoll 2020: 93) as well as other family forms such as asexual, bisexual, friendship-based, polyamorous families and LGBTIQ* single-parent or multi-parent families (Rezek 2020 quoted after Teschlade et al. 2020: 18f.); Research on rainbow families focuses too much on white, socio-economically privileged families from the middle classes: • Lack of intersectional research on other socio-structural categories such as class and ethnicity/race, on income, education or background/descent (ibid.: 19); • lack of research on rainbow families from a life course approach (ibid.) as well as a lack of socio-comparative studies (ibid.).
Need for action	Research on rainbow families should be expanded and differentiated. This also requires respective financial support and funding.
Demands & solution approaches	Provision of research funds (Boulila 2020: 59) and/or grants for relevant projects (Bündnis 90/Die Grünen 2019a) as well as commissioning of expert opinions or studies (Land Berlin 2021: 3), also for strengthening commemorative work (BVT* 2019a; Bündnis 90/Die Grünen 2019a). Examples for (further) research proposals: • Trans* and inter* history, whereby the differences between sexuality and gender identity are tackled in a differentiated manner and placed in historical context (BVT* 2019a); • repressions and experiences of discrimination of lesbian women in the FRG and the GDR (Plötz 2021b: 186; Bündnis 90/Die Grünen 2021d); • gay parenthood (Land Berlin 2021: 3); • multiple parenthood (Bundesregierung 2021: 508);

	• trans* people who became biological parents after coming out (Dionisius 2020: 80); • trans* parenthood, especially before 2011 (Weber 2018: 76); • LBTI mothers (families) (Boulila 2020: 24, 59).
Insights from other European countries	An overview of existing research on rainbow families is neither part of the Rainbow Index nor could a Europe-wide overview be found in this regard. Therefore, individual research projects are presented below: • “Lesbian and gay parents, couples and their children’s socialisation process” (Belgium, Italy, Israel, Netherlands, Spain and United Kingdom; 2019–2022);³³ • “Ambivalent system of recognition. Doing reproduction und doing family beyond the ‘normal family’” (Germany, 2018–2021);³⁴ • “Capacity Building for Rainbow Families in Switzerland and Beyond” (Switzerland, 2020);³⁵ • “Trans Pregnancy” (Great Britain, Italy, USA and Australia, 2017–2020).³⁶
The German Federal Government’s plans	There is no explicit project or programme in the coalition agreement.

Source: author’s illustration

³³ <https://www.facebook.com/profile.php?id=100057798192057>

³⁴ Further information: <https://www.projekte.hu-berlin.de/de/ambivalente-anerkennung/informationen-zum-projekt>. See also Teschlade et al. 2021.

³⁵ <http://www.rainbowfamiliesvs.ch/>

³⁶ <https://transpregnancy.leeds.ac.uk/>

4 Automatic co-parent recognition

Table 5: Chapter 4

Problem situations	Parenthood, or more precisely the legal parent-child assignment, is regulated by the German law of descent, the basic definitions of which are anchored in the Bürgerliches Gesetzbuch (BGB; German Civil Code). Particularly problematic for rainbow families are the regulations on second parental status, which relates solely to men³⁷, specifically with male marital status. • If a man is married to the mother at the time of birth, he automatically becomes the legal father of the child (article 1592 (1) BGB). This also applies, for example, if the child was conceived with the help of a sperm donation from a sperm bank. • If a man is not married to the mother at the time of birth, there is the possibility of legally acknowledging his paternity (article 1592 (2) BGB). There is no comparable regulation for women – but also not for trans*, inter* or non-binary persons – which allows for automatic recognition as a non-bearing parent. This leads to the following unequal treatments with regard to the legal recognition of parenthood in rainbow families: • unequal treatment of married same-sex and mixed-sex parent couples in the law of descent. This also includes the resulting detours and time delays in the legal protection of the child by the non-bearing parent through stepchild adoption³⁸; also pressure and uncertainties due to the associated examinations/audits by the Youth Welfare Office and the competent court; • unequal treatment of non-married same-sex and mixed-sex parent couples in the law of descent, as the latter have the opportunity to have a child recognised as their legal child (article 1592 (2) BGB) already before birth.
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³⁷ With regard to emerging problems in the regulation of first parenthood (i.e. “the mother of a child is the woman who gave birth to it”, article 1591 BGB), see trans* men giving birth in [Chapter 5](#) and the division/allocation of motherhood via modern reproductive medicine (e.g. ROPA method) in [Chapter 6](#).

³⁸ Even if the joint child was born in the partnership and already lives in their own household, an elaborate and lengthy adoption procedure must be gone through. It means a burden and test for the family combined with legal and social uncertainties and possibly even discrimination. In the event of the death of the birth mother before the adoption decision becomes final, the second mother and the child are left legally unprotected (djb 2020a; Mangold/Schröder 2020).

	Furthermore, trans* , inter* and non-binary parents are not considered in the German law of descent (find more details in Chapter 6).
Need for action	The German Abstammungsrecht (Law of Descent) was last reformed in 1998. After 23 years and due to its normative link to biological sex and its binary gender conception, it no longer does justice to processes of societal change – for instance in the form of changing gender relations and diverse family forms as well as in relation to the ongoing development of modern reproductive medicine. The law thus needs a reform.
Demands & solution approaches	On the one hand, all actors are concerned with a reform of the Abstammungsrecht with regard to the non-bearing mother (BVT* 2019b; djb 2019; LSVD 2019; Bündnis 90/Die Grünen 2021a; DIE LINKE 2021a; FDP 2021a, SPD 2021a, Land Berlin 2021; Arbeitskreis Abstammungsrecht 2017; BIG RBFF 2018; Bundesregierung 2021; Initiative nodoption 2021). The legal situation is to be changed to the effect that the non-bearing mother, being the wife of the biological mother, is automatically recognised as a parent. This would make the currently applicable stepchild adoption regulations obsolete. Interestingly, only eight of the actors (BVT* 2019b; LSVD 2019; DIE LINKE 2021a; Land Berlin 2021; Arbeitskreis Abstammungsrecht 2017; BIG RBFF 2018; Bundesregierung 2021; Initiative nodoption 2021) call for the introduction of a comparable automatic provision for the non-bearing mother as a non-married partner of the biological mother. On the other hand, eight actors call for an extension of the right of descent to additional parental constellations beyond lesbian two-mother families (BVT* 2019b; djb 2019; djb 2020c; Land Berlin 2021: 3; Bündnis 90/Die Grünen 2021a: 42; DIE LINKE 2021a: 107; BIG RBFF 2018; Arbeitskreis Abstammungsrecht 2017; Bundesregierung 2021: 84). If the binary terms “mother” and “father” are retained in the legal allocation of parenthood, at least a third, gender-neutral term, for example “parent”, should be introduced³⁹ (BVT* 2019b: 2). Alternatively, gender-neutral terms such as “parent 1” and “parent 2” could in general replace the terms “mother” and “father” (Initiative nodoption 2021).
Insights from other European countries	Corresponding regulations on automatic recognition as a non-bearing parent exist in eleven EU Member States: Austria, Belgium, Denmark,

³⁹ Only article 42 (3) of the Verordnung zur Ausführung des Personenstandsgesetzes (PStV; Personal/Marital Status Act) already provides for this possibility of registering oneself as a “parent” (in the non-binary sense) on the birth certificate of the adopted child ([Chapter 6](#)).

	Finland, Ireland, Malta, Netherlands, Portugal, Sweden, Slovenia and Spain. Of the eight states examined here, seven refer solely to two-mother families, partly with different conditions: • Belgium (2015): Married two-mother families;⁴⁰ • Denmark (2013): Two-mother families who had a child with the help of assisted reproduction and were treated by a health professional in the process⁴¹; (2021) plan by the government to abolish this existing precondition for two-mother families;⁴² • Finland (2018): Two-mother families;⁴³ • France (2021): Two-mother families;⁴⁴ • Austria (2015): Two-mother families who had a child with the help of assisted reproduction;⁴⁵ • Sweden (2033): Two-mother families; • Spain (2007): Two-mother families who had a child with the help of assisted reproduction.⁴⁶
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⁴⁰ Wet houdende de vaststelling van de afstamming van de meemoeder [Act establishing the descent of the co-mother]: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2014050508

⁴¹ Børneloven [Children's Act]: <https://www.retsinformation.dk/eli/ta/2019/772>; <https://familieretshuset.dk/foraeldreansvar/foraeldreansvar/medmoderskab/hvis-i-vil-registrere-medmoderskab-1>

⁴² In August 2020, the Danish government launched a ten-point plan for LGBTI equality: <https://bm.dk/nyheder-presse/pressemeddelelser/2020/08/nye-initiativer-skal-sikre-plads-til-forskellighed/>

⁴³ Äitiyslaki (253/2018), § 14 [Maternity law]: <https://www.finlex.fi/fi/laki/ajantasa/2018/20180253>

Government plans: The Finnish government under Sanna Marin decided in September 2021 to introduce a Parenting Act which constitutes a comprehensive reform of regulations on parenthood. In particular, the current regulations under the Maternity and Paternity Acts will be merged. However, the government's continued adherence to the two-parent principle was controversially discussed in this context. The regulations are expected to enter into force at the beginning of 2023: Hallituksen esitys eduskunnalle vanhemmuuslaiksi ja siihen liittyviksi laeiksi [The Government's proposal to Parliament for the Parenting Act and related laws]: https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Sivut/HE_132+2021.aspx; see also: https://www.eduskunta.fi/FI/naineduskuntatoimii/kirjasto/aineistot/kotimainen_oikeus/LATI/Sivut/vanhemmuuslaki.aspx

The Finnish rainbow family organisation *Sateenkaariperheet* does not consider the reform to be an improvement of the situation of rainbow families and calls for comprehensive research to further adapt the legislation to the realities of rainbow families: <https://sateenkaariperheet.fi/uutiset/hallituksen-esitys-vanhemmuuslaiksi-ei-paranna-sateenkaariperheiden-lasten-asemaa-lapsen-oikeus-kaikkiin-vanhempiinsa-vaatii-laajan-selvitystyon-kaynnistamista-valittomasti/>; see also the organisation's respective statement: <https://sateenkaariperheet.fi/lausunnot/lausunto-vanhemmuuslaista-oikeusministeriolle/>

⁴⁴ In connection with the reform of the Bioethics Act (see more in Chapter 6). With the law now in force, a corresponding project from the National Action Plan (2020-2023) has been implemented: https://www.gouvernement.fr/sites/default/files/con-tenu/piece-jointe/2020/10/dilcrah_plan-lgbt_2020-2023_vf.pdf, p. 22.

See also: <https://www.vie-publique.fr/loi/268659-loi-bioethique-pma>

⁴⁵ Allgemeines Bürgerliches Gesetzbuch [Austrian Civil Code], article 144 (2): <https://www.jusline.at/gesetz/abgb/paragraf/144>

⁴⁶ Ley 20/2011, de 21 de julio, del Registro Civil [Civil Status Code]: <https://www.boe.es/buscar/act.php?id=BOE-A-2011-12628>

	Only Malta has regulations since 2014 that take into account different family forms by using gender-neutral terms such as “parent 1” and “parent 2”.⁴⁷ In Sweden and Spain, research revealed government plans to extend the respective regulations to other family forms: • Sweden (2022): On 1 January 2022, a change in law is to come into force, according to which married trans* men will automatically be recognised as fathers when their child is born.⁴⁸ • Spain (2021): Government plans to extend legal recognition to the non-married and non-bearing parent^{49,50}
The German Federal Government's plans	Automatic legal recognition for non-bearing wives as well as enabling parental recognition regardless of the gender of the person recognising parenthood. (SPD/Bündnis 90/Die Grünen/FDP 2021:101; see also the political demands of Bündnis90/Die Grünen, the FDP and the SPD)

Source: author's illustration

⁴⁷ Civil Unions Act, 2014: An act to regulate civil unions and to provide for matters connected therewith or ancillary thereto: <https://legislation.mt/eli/act/2014/9/eng/pdf>

This law also contains regulations on adoptions by same-sex couples (Chapter 9).

⁴⁸ Föräldrabalk [Parental Code], Faderskap och moderskap vid ändrad könstillhörighet, § 11a: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381_sfs-1949-381#K1

⁴⁹ Ley para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI (184/056732) („Ley trans“) [Draft law for equal rights for trans* persons].

Equality for trans* persons in Spain is part of the coalition agreement of the Sánchez II government, which has been in power since January 2020. This aim goes along with two other projects – a comprehensive law on equal treatment and non-discrimination as well as a law against discrimination against LGBTI persons. The draft law on equality for trans* people in particular caused conflicts between the ruling parties. In addition, the project has also been met with opposition from parts of the Spanish feminist movement: https://www.eldiario.es/politica/psoe-quiere-fusionar-unica-ley-derechos-lgtbi-trans-ministerio-igualdad-opone_1_7185056.html; <https://elpais.com/sociedad/2020-11-20/el-sexo-se-elige-depnde-de-a-quien-pregunte.html>

⁵⁰ <https://www.pressenza.com/de/2021/07/spanien-die-sanchez-regierung-beschliesst-das-trans-gesetz-zum-schutz-von-sexuellen-minderheiten/>; <https://elpais.com/sociedad/2021-06-29/asi-queda-la-ley-trans-en-espana-mas-alla-de-la-autodeterminacion-de-genero.html>; <https://fundaciontriangulo.org/areas/incidencia-politica/nuestras-propuestas-para-profundizar-y-mejorar-el-proyecto-de-ley-trans-y-lgbti/>

5 Legal recognition of trans* and inter* parents

Table 6: Chapter 5

Problem situations	The lack or incomplete legal recognition of trans* and inter* parents when it comes to a legal gender change leads to the explicit revelation of the trans* or inter* existence of the parents or the parenting partner and thus has a direct impact on family life with regard to the almost daily demonstration and confirmation of the parent-child relationship. Further obstacles and problems arise from the adherence to the binary concepts of “mother” and “father” in the legal attribution of parenthood, especially in the German law of descent (Chapter 4).
Need for action	Best-case scenario: legal recognition of all LGBTIQ* parents. However, at the very least: adapting existing legal regulations so that the birth certificate of the children, regardless of whether they are born or adopted, can be aligned with the newly chosen gender assignment of the parent concerned, as well as with the parent’s changed first and last names.
Demands & solution approaches	Replacing existing Transsexual Law with a regulation for gender registration in civil status law based on the principle of self-determination. This includes the legal recognition of trans* men as fathers and trans* women as mothers in the birth certificates of their children when it comes to a legal change of gender. (BVT* 2019b; LSVD 2019; Bündnis90/Die Grünen 2021c; Bündnis90/Die Grünen 2020b; FDP 2021c; FDP 2020; Adamietz/Bager 2017: 22); However, at least a deletion without replacement of articles 7 (1) and 5 (3) as well as article 11 of Transsexuellengesetz (Transsexual Law) (BVT* 2019b); Reform of article 42 (2) of the Verordnung zur Ausführung des Personenstandsgesetzes (PStV; Personal/Marital Status Act), which regulates the family law allocation in the civil status entry of inter* persons with biological children. The reform should include the possibility to enter “parent” on the birth certificates of biological children in addition to the prevalent options “mother” or “father”.⁵¹

⁵¹ In contrast to this, article 42 (3) PStV already provides for this possibility of registering oneself as a “parent” (in the non-binary sense) on the birth certificate of the adopted child.

	Legal recognition of childbearing inter* or trans* persons as mothers according to article 1591 of the BGB (Bundesregierung 2021: 84; BIG RBFF 2018)
Insights from other European countries	The majority of EU Member States designate trans* parents according to the gender assigned at birth.⁵² In six EU Member States, regulations exist for the recognition of trans* parenthood: Belgium, Denmark, France, Malta, Slovenia and Sweden. The four EU Member States examined here have the following regulations in place: • Denmark (2018): Only legal recognition of trans* men as parents;⁵³ • France (2021): Change of gender entry in the birth certificates of the children possible, but requires the consent of the child if they are of legal age, or the consent of both parents if the child is a minor;⁵⁴ • Malta (2015): Change of the gender entry in children's birth certificates possible, regardless of whether the child was born before or after the legal change of gender;⁵⁵ (2017) possibility to use the gender-neutral term "parent";⁵⁶ • Sweden (2019): Change of the gender entry in the children's birth certificates possible.⁵⁷ Regulations for inter* or non-binary persons could not be researched in some cases, or there are no corresponding provisions if only a male or female gender entry is possible, as in Sweden.

⁵² Currently, several court cases of trans* parents are pending before the European Court of Human Rights (ECHR), claiming legal recognition of their parenthood (BVT* 2021: 12). It remains to be seen what influence the pending court decisions will have on the legal situation of trans*, inter* and non-binary parents in Europe.

⁵³ <https://lgbtsundhed.dk/fertilitet-for-transmaend-og-transmaskuline-dine-muligheder-og-din-laeges-rolle/>

⁵⁴ <https://www.service-public.fr/particuliers/vosdroits/F34826>

In 2020, the recognition of the legal maternity status of a trans* mother was still refused by the Court of Cassation: <https://www.lesinrocks.com/actu/la-cour-de-cassation-refuse-le-statut-de-mere-a-une-femme-transgenre-181005-17-09-2020/>

⁵⁵ Gender Identity, Gender Expression and Sex Characteristics Act: https://tgeu.org/wp-content/uploads/2015/04/Malta_GIGESC_trans_law_2015.pdf; See also Althoff et al. 2017: 18 (Annex II). See also Chapter 2.1 for definitions.

⁵⁶ <https://rainbow-europe.org/#8647/8682/8692>

⁵⁷ Föräldrabalk [Parental Code], Faderskap och moderskap vid ändrad könstillhörighet, para 10 to14: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/foraldrabalk-1949381_sfs-1949-381#K1

According to Transgender Europe, the Swedish law is a novelty in Europe: it clearly recognises trans* parents and thus implements the request of the Parliamentary Assembly of the Council of Europe to register and document the parenthood of trans* people according to their gender identity: <https://tgeu.org/sweden-recognises-trans-parenthood/>

	Malta is the only country whose legislation legally guarantees the recognition of trans*, inter* and non-binary parents as such. In addition, corresponding government plans could be found in three EU Member States: • Denmark (2020): Government plans for legal recognition of trans* women as mothers;⁵⁸ • Finland (2022): Government plans to comprehensively regulate equality and parenthood of trans* people in a new law;⁵⁹ • Spain (2022): Government plans to comprehensively regulate equality of trans* people in a new law.⁶⁰
The German Federal Government's plans	Enabling parental recognition regardless of the gender of the person recognising parenthood. (SPD/Bündnis 90/Die Grünen/FDP 2021:101; see also the political demands of Bündnis90/Die Grünen, the FDP and the SPD); Abolition of the Transsexuellengesetz (Transsexual Law) and replacement by a self-determination law, including an extended ban on disclosure (SPD/Bündnis 90/Die Grünen/FDP 2021: 119; cf. also the political demands of Bündnis90/Die Grünen, the FDP and the SPD).

Source: author's illustration

⁵⁸ In August 2020, the Danish government launched a ten-point plan for LGBTI equality: <https://bm.dk/nyheder-presse/pressemeddelelser/2020/08/nye-initiativer-skal-sikre-plads-til-forskellighed/>

⁵⁹ The Finnish government under Sanna Marin has in its programme set out to introduce a comprehensive law on gender mainstreaming that also takes into account the right to self-determination. In Finland, preparations have been underway since April 2019 for a corresponding legislative proposal, which is to be presented by a dedicated government working group in the course of 2022. Among other things, this proposal should also contain regulations on parenthood for trans* persons and abolish the requirement of sterilisation for a legal change of gender: <https://valtioneuvosto.fi/documents/10184/13883062/Neuvottelutulos+hallitusohjelmasta+3.6.2019.pdf/e60d2023-3596-dae0-05db-d36c96e629fa/Neuvottelutulos+hallitusohjelmasta+3.6.2019.pdf?t=1559547262000>, p. 87; <https://stm.fi/hanke?tunnus=STM021:00/2021>; <https://stm.fi/hanke?tunnus=STM009:00/2021>

⁶⁰ See footnote 49 and 50.

6 Assisted reproduction

Table 7: Chapter 6

Problem situations	Complicated access and financial obstacles to assisted reproduction as well as grey areas in childbearing , especially in the context of non-legalised assisted reproduction techniques such as surrogacy.
Need for action	Clear regulation of access to assisted reproduction techniques regardless of marital status, sexual orientation or gender identity, as well as enabling reimbursement of costs; Review and/or expansion of assisted reproduction techniques such as egg donation, the ROPA method⁶¹ and surrogacy.
Demands & solution approaches	Reform and further development of the Embryonenschutzgesetz (Embryo Protection Act) into a Reproductive Medicine Act, including • regulation of access to assisted reproduction regardless of marital status, sexual orientation (FDP 2021a: 41) or gender identity (LSVD 2019; Bundesregierung 2021: 507); • regulation of the type and scope of counselling on assisted reproduction procedures not permitted in Germany and, in this context, on the implementation of supportive or preparatory measures (Bundesärztekammer 2017); • extension of assisted reproduction techniques to include egg donation (LSVD 2018; FDP 2021a: 41; Federal Government 2021: 507; Westermann et al. 2019; Bundesärztekammer 2020) (and ROPA method); • (review of the) legalisation of altruistic surrogacy (LSVD 2017; FDP 2021a: 41; Bundesregierung 2021: 507); • regulation of the framework conditions for the storage, fertilisation and transfer of (cryopreserved) egg and sperm cells as well as embryos (Westermann et al. 2019; Bundesärztekammer 2017); • regular scientific evaluations of existing regulations (LSVD 2017). In addition, financial support for fertility treatment should be provided regardless of marital status, sexual orientation or gender identity

⁶¹ With this technique, lesbian couples can share the bearing and motherhood of their child: A woman donates her eggs, which are fertilised with donor sperm. The embryo is then borne by the second partner (see in more detail: Peukert et al. 2020).

	(LSVD 2019; LSVD 2018; FDP 2021a: 106; Bündnis 90/Die Grünen 2021a: 42; DIE LINKE 2021a: 106; Bundesregierung 2021: 507; Westermann et al. 2019).
Insights from other European countries	Access to assisted reproduction for single persons is legally regulated in 17 EU Member States, and for same-sex couples in eleven EU Member States. The seven EU Member States examined here have the following regulations in place: • Denmark: 2006: Access to assisted reproduction for all women regardless of marital status and sexual orientation, 2015: Access to assisted reproduction regardless of gender entry,⁶² 2017: ROPA method possible upon presentation of a medical indication (LGBT komiteen 2021: 11, 18), surrogacy possible under certain conditions;⁶³ • Finland: 2007: Access to assisted reproduction for single women,⁶⁴ 2019: access to assisted reproduction for lesbian couples⁶⁵, surrogacy is banned, but there are government plans to legally allow and regulate non-commercial surrogacy;⁶⁶ • France: 2021: Access to assisted reproduction for single women and lesbian couples; explicitly not for trans* men; reimbursement of expenses possible; rejection of the ROPA method; surrogacy remains prohibited, but regulation regarding legal parenthood for children born abroad via surrogacy;

⁶² Vejledning om sundhedspersoners og vævscentres virksomhed og forpligtelser i forbindelse med assisteret reproduction [Guidance on the activities and obligations of healthcare professionals and tissue establishments in connection with assisted reproduction], VEJ nr 9351 af 26/05/2015, <https://www.retsinformation.dk/eli/retsinfo/2015/9351>: „Med en ”kvinde” forstås i denne vejledning en person med livmoder eller æggestoksvæv. Med en ”mand” forstås i denne vejledning en person med mindst en testikel.“; see also Althoff et al. 2017: 18, 71 (Annex II).

⁶³ <https://babygest.com/de/leihmutterchaft-in-danemark/>

⁶⁴ Lag om assisterad befruktning [Act on Assisted Fertility Treatments], (1237/2006): <https://www.finlex.fi/en/laki/kaan-nokset/2006/en20061237>, Section 2 Definitions: 1) couple means woman and man living together in marriage or in a relationship comparable to marriage; 2) person receiving treatment means a couple or a woman not living in marriage or in a relationship comparable to marriage.

⁶⁵ With the Maternity Act entering into force in 2019, lesbian couples can now equally be treated as couples – which requires the consent of both partners. The Act thus also enables their access to recognition as co-parents (Chapter 4).

⁶⁶ Plans according to government programme: <https://valtioneuvosto.fi/documents/10184/13883062/Neuvottelutulos+hallitusohjelmasta+3.6.2019.pdf/e60d2023-3596-dae0-05db-d36c96e629fa/Neuvottelutulos+hallitusohjelmasta+3.6.2019.pdf?t=1559547262000>, p 88. See also: <https://www.sttinfo.fi/tiedote/jarjestot-sijaissynnytysten-kotimainensaantely-on-ainoa-eettisesti-kestava-ratkaisu?publisherId=64095818&releaseId=69846770>

In this context, the Ministry of Justice commissioned a study in January 2021: <https://www.sttinfo.fi/tiedote/jarjestot-sijaissynnytysta-harkitse-yha-useampi-eettista-ja-yhdenvertaista-saantelya-tarvitaan-suomessa?publisherId=64095818&releaseId=69903115>

	• Malta: 2018: Access to assisted reproduction for all persons regardless of their sexual orientation, gender identity, gender expression or sexual characteristics; direct coverage of costs by the state; ROPA method allowed; surrogacy remains prohibited, but regulation regarding legal parenthood for children born abroad via surrogacy; • Netherlands: 2002: Access to assisted reproduction for same-sex couples and LGBTIQ* persons;⁶⁷ reimbursement/cost coverage possible under certain conditions;⁶⁸ surrogacy is not explicitly prohibited/possible within narrow limits OECD 2021: 156);⁶⁹ 2021: government plans to examine potential new regulations for surrogacy;⁷⁰ • Austria: 2015: Access to assisted reproduction for same-sex couples;⁷¹ reimbursement possible only in case of medical indication;⁷² ROPA method allowed;⁷³ surrogacy prohibited, but regulation regarding legal parenthood for children born abroad via surrogacy is possible; • Spain: 2006: Access to assisted reproduction for lesbian, bisexual and single women and couples;⁷⁴ ROPA method allowed; surrogacy is banned;⁷⁵ 2014: exclusion of lesbian, bisexual and single women and couples from assisted reproduction;⁷⁶ 2021:
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⁶⁷ Wet van 20 juni 2002, houdende regels inzake handelingen met geslachtscellen en embryo's – Embryowet [Embryo Protection Act]: <https://wetten.overheid.nl/BWBR0013797/2021-07-01>

⁶⁸ <https://www.gezondheidsplein.nl/dossiers/vruchtbaarheidsbehandelingen-bij-een-kindervens/geassisteerde-voortplanting/vergoeding-van-geassisteerde-voortplanting/item113597>

⁶⁹ Further information: <https://babygest.com/de/niederlande/>

⁷⁰ https://content1b.om-roep.nl/urishieldv2/I27m039021a908f733a50061e6c36b000000.99f1f99fef72a4f18015c1bb52f4fc37/nos/docs/15122021_coalitieakkoord.pdf, p. 25. For this purpose, the report of the Committee to Inquire into International Adoptions (Joustra Committee) shall also be included: <https://www.rijksoverheid.nl/documenten/rapporten/2021/02/08/tk-bijlage-coia-rapport>

⁷¹ Bundesgesetz, mit dem Regelungen über die medizinisch unterstützte Fortpflanzung getroffen werden (Fortpflanzungsmedizinengesetz – FMedG) [Reproductive Medicine Act], <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003046>

Bundesgesetz, mit dem das Fortpflanzungsmedizinengesetz, das Allgemeine Bürgerliche Gesetzbuch, das Gentechnikgesetz und das IVF-Fonds-Gesetz geändert wurden (Fortpflanzungsmedizinrechts-Änderungsgesetz 2015 – FMedRÄG 2015) [Reproductive Medicine Law Amendment Act], <https://www.ris.bka.gv.at/eli/bgbl/I/2015/35>

⁷² <https://www.kinderwunschzentrum.at/kinderwunschreise/fuer-frau-mann/haeufige-fragen-zur-reise/faq-fuer-regenbogenpaare#c2153>

⁷³ See footnote 71 [Reproductive Medicine Law Amendment Act].

⁷⁴ Ley 14/2006, de 26 de mayo, sobre técnicas de reproducción humana asistida [Reproductive Medicine Act]: <https://www.boe.es/buscar/act.php?id=BOE-A-2006-9292>

⁷⁵ <https://noticias.juridicas.com/conocimiento/articulos-doctrinales/13944-gestacion-subrogada:-enfoque-legal-y-estado-actual-en-espana/>

⁷⁶ Orden Ministerial 2065/2014 [Ministerial Order]: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-11444

	government plans to allow access for lesbian, bisexual and single women as well as trans* persons willing to give birth.⁷⁷ Malta is the only country where access to assisted reproduction is legally possible for all persons regardless of their sexual orientation, gender identity, gender expression or sexual characteristics. In addition, also uniquely, there is direct coverage of costs for fertility treatment by the state.
The German Federal Government's plans	Establishment of a commission on reproductive self-determination and reproductive medicine. This commission should inter alia examine possibilities for legalising egg donation and altruistic surrogacy (SPD/Bündnis 90/Die Grünen/FDP 2021: 116; cf. also political demands by Bündnis90/Die Grünen and the FDP); Allow reimbursement of costs for reproductive treatment, regardless of medical indication, marital status and sexual identity. Moreover, review of the restrictions on age and treatment cycles and cost coverage of 25 percent by the federal government regardless of the participation of the respective Bundesländer (federal states), and return to full cost coverage planned (ibid.; see also political demands by Bündnis90/Die Grünen and the FDP).

Source: author's illustration

On the challenge to the Ministerial order by the Madrid Social Court in 2015 see: <https://www.elboletin.com/nacional-123433-lesbianas-reproduccion-asistida-sentencia-html/>

⁷⁷ See footnote 46 und 49.

7 Recognition of legal parenthood in assisted reproduction

Table 8: Chapter 7

Problem situations	Legal and social uncertainties in assisted reproduction due to the lack of regulation of legal parenthood of social, non-biological parents.
Need for action	Need for regulation with regard to legal parenthood in the case of the use of sperm donation and assisted reproduction techniques that are not legalised in Germany, and with regard to children conceived or born in this way (abroad) but growing up in Germany.
Demands & solution approaches	Introduction of further legal regulations towards the recognition of legal parenthood in the case of private sperm donation, for example through • introduction of a legally binding parenthood agreement prior to conception (LSVD 2019; BIG RBFF 2018) for biological and intended parents (Bündnis 90/Die Grünen 2021c, Bündnis 90/Die Grünen 2019a), on the basis of which not only a clear parental assignment but also custody, contact, alimony and inheritance issues can be clarified (FDP 2021b), or • introduction of a prenatal right to renounce the legal parenthood by the sperm donor (Land Berlin 2021: 3; Bundesregierung 2021: 507); • extension of the current rights of challenge under article 1600 (1) BGB and their exclusions under article 1600 (4) BGB also to the non-bearing mother as well as the introduction of a brief right of challenge for biological fathers (Land Berlin 2021: 3). Introduction of further legal regulations for the recognition of legal parenthood for children conceived or born abroad but growing up in Germany: • clear legal provisions on paternity for children born of foreign surrogates with fathers from Germany (LSVD 2017; Bundesregierung 2021: 507; Westermann et al. 2019); • the biological father's partner should be the legal father from birth if no mother is registered on the foreign birth certificate (LSVD 2017). A clear legal framework, should non-commercial surrogacy be allowed (FDP 2021a: 41; see also FDP 2021d). This includes the biological mother's option to a legally binding renunciation of her relationship to the child, provided this has no financial background (LSVD 2018), so

	that the biological father's partner can become the legal father from birth without the need for stepchild adoption (LSVD 2017).
Insights from other countries	The majority of EU Member States do not have sufficient regulations to recognise legal parenthood in assisted reproduction. Different regulations in four EU Member States could be found. The most far-reaching regulation is that of the Canadian province of Ontario, which is why it is also presented here. • Province of Ontario (Canada): 2017: With the adoption of the All Families Are Equal Act, pre-birth parenthood agreements are considered legally binding when assisted reproduction techniques were used. The Act thus regulates the number of possible legal parents. Among other things, the surrogate mother can also be recognised as the legal mother of a child.⁷⁸ • Denmark: 2013: Reform of the Assisted Reproduction Act⁷⁹ allows for pre-conception parenting agreement between the biological mother, her partner and the biological father; surrogate motherhood still leads to legal uncertainties as the surrogate mother is considered the legal mother.⁸⁰ • In France⁸¹, Malta and Austria⁸², there are legal provisions for parenthood of children born via surrogacy abroad, although surrogacy itself is prohibited in these countries.
The German Federal Government's plans	Enabling agreements on legal parenthood , parental care, rights of custody and alimony before conception (SPD/Bündnis 90/Die Grünen/FDP 2021: 101; also see political demands of Bündnis90/Die Grünen and the FDP).

Source: author's illustration

⁷⁸ All Families Are Equal Act: <https://www.ontario.ca/laws/statute/s16023>; see also: <https://boulbyweinberg.com/blogs-articles/custody/all-families-are-equal-the-new-legislation-regarding-parentage-in-ontario-canada1/>

⁷⁹ Lov om ændring af lov om kunstig befrugtning [Act amending the Act on Artificial Insemination], LOV nr 1313 af 27/11/2013: <https://www.retsinformation.dk/eli/lt/2013/1313> (§3, §27)

⁸⁰ <https://ast.dk/born-familie/artikler/adoption/surrogatmoderskab-2013-en-usikker-afsaere>; <https://lgbsundhed.dk/fertilitet-for-cismaend-dine-muligheder-og-din-laeges-rolle/>

⁸¹ <https://www.vie-publique.fr/loi/268659-loi-bioethique-pma>

This regulation re-curtailed a court-ordered approach by the Court of Cassation at the end of 2019. According to this regulation, by validating the full transcript of the foreign birth certificate of the child conceived through surrogacy abroad, both the biological father and the intended parent (i.e. the other member of the couple, with no biological connection to the child) are recognised as parents. Cf. <https://www.ouest-france.fr/societe/famille/gpa/gpa-les-deux-membres-d-un-couple-d-hommes-peuvent-desormais-etre-reconnus-comme-parents-6660782>

⁸² <http://www.nademleinsky.at/spezialgebiete/leihmutterchaft.html>

8 Multi-parenthood

Table 9: Chapter 8

Problem situations	Legal and social uncertainties due to the lack of legal parenthood of social but non-biological parents.
Need for action	Enabling legal recognition of family forms with several parents (multi-parenthood).
Demands & solution approaches	Legal recognition of family forms with several parents (multi-parenthood) by means of • introduction of a legally binding parenthood agreement before conception (LSVD 2019; LSVD 2018; FDP 2021a: 41; FDP 2021d), • further development of a minor right of custody in the Civil Code (BGB) towards a legal institution of parental joint responsibility (Bündnis 90/Die Grünen 2021a: 42, Bündnis 90/Die Grünen 2021c; Bündnis 90/Die Grünen 2019a), • introduction of full custody rights (Bundesregierung 2021: 507f.), • introduction of a legally recognised shared responsibility (BVT* 2019a; FDP 2021a: 42; SPD 2021a: 43), • introduction of a right of elective affinity that can also include same-sex families with more than two persons (DIE LINKE 2021a: 107; DIE LINKE 2021c), • reviewing the transferability of the regulations for rainbow families to patchwork families (Land Berlin 2021: 3).
Insights from other countries	Currently, there is no country in Europe that recognises multi-parenthood, specifically more than two legal parents. Therefore, the existing regulations of the Canadian province of Ontario will be highlighted again at this point. • Province of Ontario (Canada): 2017: With the adoption of the All Families Are Equal Act⁸³, more than one person can be recognised as a legal parent – regardless of the degree of relationship – and registered directly on the children's birth certificate. There is current discussion and plans on this issue in three EU Member States:

⁸³ All Families Are Equal Act: <https://www.ontario.ca/laws/statute/s16023>; see also: <https://boulbyweinberg.com/blogs-articles/custody/all-families-are-equal-the-new-legislation-regarding-parentage-in-ontario-canada1/>

	• Finland: 2021: In the course of the introduction of a law on parenthood, the topic of multi-parenthood was also controversially discussed. However, the government proposal retains the two-parent principle.⁸⁴ • Netherlands: 2016: Recommendation of a state commission to introduce a legal regulation on multi-parenthood, according to which a child can have up to four parents,⁸⁵ March 2021: In the run-up to the general election, eight parties sign an agreement to introduce multi-parenthood into law,⁸⁶ December 2021: Coalition agreement of the Mark Rutte IV government refers to this agreement and intends to carefully implement the agreements made therein with (initiative) laws and guidelines.⁸⁷ • Sweden: Legal provisions currently under review; no later than 21 June 2022 to determine whether further measures should be taken to facilitate parental responsibility for families with more than two adults.⁸⁸
The German Federal Government's plans	Enabling agreements on legal parenthood, parental care, rights of custody and alimony before conception (SPD/Bündnis 90/Die Grünen/FDP 2021: 101; also see political demands of Bündnis90/Die Grünen and the FDP); extension and further development of the minor right of custody for social parents into a separate legal institution that can be transferred to up to two further adults (ibid.; cf. also demands of Bündnis 90/Die Grünen); introduction of the institution of parental joint responsibility for two or more adults to enable the assumption of legal responsibility beyond love relationships or marriage (ibid.; cf. demands of the FDP).

Source: author's illustration

⁸⁴ See footnote 43.

⁸⁵ <https://www.rijksoverheid.nl/documenten/rapporten/2016/12/07/rapport-van-de-staatscommissie-herijking-ouderschap-kind-en-ouders-in-de-21ste-eeuw>

Further information and assessment of the recommendation: <https://www.transgendernetwerk.nl/sekseneutrale-ouderschap-swetgeving/>

⁸⁶ REGENBOOG STEMBUSAKKOORD [Rainbow Vote Chord] 2021: <https://www.coc.nl/wp-content/uploads/2021/03/COC-Regenboog-Stembusakkoord-2021.pdf>

⁸⁷ https://content1b.om-roep.nl/urishieldv2/I27m039021a908f733a50061e6c36b000000.99f1f99fef72a4f18015c1bb52f4fc37/nos/docs/15122021_coalitieakkoord.pdf, p 25.

⁸⁸ This review is part of a comprehensive enquiry into parenthood in Sweden: https://riksdagen.se/sv/dokument-lagar/dokument/kommittedirektiv/en-foraldraskapsrattslig-lagstiftning-for-alla_H8B1132. In 2017 and 2018, bills introduced in the *Riksdags* on multi-parenthood were rejected (Bundestag 2018b: 18).

9 Joint adoption for unmarried same-sex couples

Table 10: Chapter 9

Problem situations	Lack of legal regulation on joint adoption of children for unmarried same-sex couples (including civil partners).⁸⁹ In contrast, with the liberalisation of marriage for same-sex couples in October 2017, this is now possible for married couples.
Need for action	Abolition of this unequal treatment in German adoption law.
Demands & solution approaches	Reforming Adoptionsgesetz (Adoption Law) to allow joint adoption for unmarried same-sex couples (FDP 2021b; Bundesregierung 2021: 76).
Insights from other European countries	13 EU Member States allow same-sex couples to adopt jointly. However, the Rainbow Index does not distinguish whether the couples have to be married for this, as in Germany, or whether joint adoption is also possible for unmarried same-sex couples. Of the five EU Member States examined here, in Belgium, Ireland, Malta and the Netherlands, joint adoption by unmarried same-sex couples is possible under certain conditions: • Belgium: 2006: Adoption of the law amending specific provisions of the Belgian Civil Code⁹⁰ to allow adoption by same-sex persons; couples must either make a declaration of legal cohabitation or have lived together continuously for at least three years when adopting jointly. They do not have to be married. • Ireland: 2015: Amendments to the Children and Family Relationship Act⁹¹; couples must have lived together in a relationship for at least three years when adopting jointly, but do not need to be married to do so.

⁸⁹ Similarly, unmarried opposite-sex couples cannot adopt jointly.

⁹⁰ Wet tot wijziging van een aantal bepalingen van het Burgerlijk Wetboek, teneinde de adoptie door personen van hetzelfde geslacht mogelijk te maken [Act amending certain provisions of the Civil Code to allow adoption by same-sex individuals]: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2006051844&table_name=wet.

See also: https://ostbelgienlive.be/PortalData/2/Resources/downloads/familie/Adoptionsbroschuere__deutsch_internet.pdf.

⁹¹ Children and Family Relationship Act, Part 11 Amendments to Adoption Act 2010: <http://www.irishstatutebook.ie/eli/2015/act/9/enacted/en/html>

	• Malta: 2014: The Civil Unions Act⁹² allows unmarried same-sex couples to adopt jointly. • Netherlands: 2000: Amendment of the adoption regulations in Book 1 of the Dutch Civil Code⁹³ in connection with the introduction of an option for adoption by persons of the same sex;⁹⁴ couples must have lived together for at least three years when adopting jointly. They must be able to prove this with a civil partnership agreement or information from the civil status register, but do not need to be married to adopt jointly. • Sweden: It is currently being assessed until 21 June 2022 whether persons who are neither married to each other nor living in a cohabitation will be allowed to adopt jointly.⁹⁵
The German Federal Government's plans	Enabling adoption of minors by non-married couples (SPD/Bündnis 90/Die Grünen/FDP 2021: 101; cf. demands by the FDP)

Source: author's illustration

⁹² Civil Unions Act, 2014 [An act to regulate civil unions and to provide for matters connected therewith or ancillary thereto], Article 12: <https://legislation.mt/eli/act/2014/9/eng/pdf>

⁹³ Burgerlijk Wetboek Boek [Civil Code Book] 1 (§ 227–232): <https://wetten.overheid.nl/BWBR0002656/2021-01-01>

⁹⁴ Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek (adoptie door personen van hetzelfde geslacht) [Act of 21 December 2000 amending Book 1 of the Civil Code (same-sex adoption)]: <https://zoek.officielebekendmakingen.nl/stb-2001-10.html>

⁹⁵ This review is part of a comprehensive study into parenthood in Sweden: https://riksdagen.se/sv/dokument-lagar/dokument/kommittedirektiv/en-foraldraskapsrattslig-lagstiftning-for-alla_H8B1132

10 Righting wrongs and compensation

Table 11: Chapter 10

Problem situations	Prevented or impeded parenthood due to past injustice such as forced sterilisation, forced divorce or withdrawal of custody, as well as individual suffering from the consequences.
Need for action	By means of the law in force in Germany or in the form of court decisions, injustice was done to various social groups on the basis of their gender identity or sexual orientation in the past. It is important to address this injustice, to make amends for it and to compensate the affected persons. Until 2011, many trans* persons were prevented by the Transsexual Law in Germany of 1981 from having biological children in the case of a legal gender change. The reason for this was the legally stipulated sterilisation following a change of gender. The Bundesverband Trans* e. V. estimates that in 30 years, more than 10,000 people in Germany have been sterilised because of this regulation.⁹⁶ Until the introduction of a corresponding law in Germany in May 2021, inter* persons may also have lost their ability to reproduce due to gender reassignment treatments. It has not yet been researched how many people have been deprived of the possibility of having biological children because of these surgical procedures and through drug treatments. Injustice has also been done to lesbian mothers. Many of them were deprived of custody of their children in the case of divorce and when their subsequent lesbian relationship became known. Historian Dr Kirsten Plötz has dedicated herself to this field of research in a comprehensive study in which such cases can be traced back to the 1980s (Plötz 2021b).
Demands & solution approaches	Official state apology to the people affected by injustice; establishment of dedicated victim compensation funds for the affected persons (BVT* 2019a; LSVD 2019; Bündnis 90/Die Grünen 2021a: 193; Bündnis 90/Die Grünen 2019a; Bündnis 90/Die Grünen 2019b; DIE LINKE 2020; DIE LINKE 2021a: 109; DIE LINKE 2021b; FDP 2021c);

⁹⁶ www.bundesverband-trans.de/unrecht-anerkennen-bvt-fordert-entschaedigungsfonds-fuer-erzwungene-sterilisationen-an-trans-menschen

	introduction of a right of legal action by associations to enforce victim protection in compensation (BVT* 2019a); further reappraisal and research (DIE LINKE 2020; DIE LINKE 2021a: 109) as well as strengthening commemorative work (Bündnis 90/Die Grünen 2019a).
Insights from other European countries	The majority of EU Member States have neither excused nor compensated for (past) injustice. Moreover, there are six EU Member States – the Czech Republic, Cyprus, Finland, Latvia, Romania and Slovakia – where forced sterilisation is still a prerequisite for legal gender change. Sweden was the first country to grant compensation for persons who had been forcibly sterilised. • By law⁹⁷, Sweden made it possible between May 2018 and May 2020 for affected persons who had to undergo sterilisation to change their sex under the law⁹⁸ in force from 1972 to 2013 to receive a compensation of SEK 225,000.⁹⁹ Recently, the Netherlands followed suit with similar measures: • Official government apology: In November 2021, the then Dutch Minister of Education, Culture and Science, Ingrid van Engelshoven, apologised on behalf of the cabinet to those who had been wronged under the Gender Change Act¹⁰⁰ in force from 1985 to 2014.¹⁰¹ • In October 2021, a guideline came into force, valid until October 2024, which provides for compensation of 5,000 euros for affected persons following their respective application.¹⁰² In Finland, preparations have been underway since April 2019 to abolish forced sterilisation as a condition for legal gender changes.¹⁰³

⁹⁷ Lag (2018:162) om statlig ersättning till personer som har fått ändrad könstillhörighet fastställd i vissa fall [Act on state compensation for persons who have had their gender changed determined in certain cases]: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2018162-om-statlig-ersattning-till_sfs-2018-162

⁹⁸ Lag (1972:119) om fastställande av könstillhörighet i vissa fall [Act on the determination of gender in certain cases]: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1972119-om-faststallande-av_sfs-1972-119

⁹⁹ <https://www.kammarkollegiet.se/om-oss/vara-uppgifter/forteckning-over-vara-uppgifter/statlig-ersattning-till-transpersoner-som-omfattats-av-steriliseringskrav>

¹⁰⁰ Wet Wijziging Geslacht [Gender Change Act].

¹⁰¹ <https://www.rijksoverheid.nl/actueel/nieuws/2021/11/27/kabinet-maakt-publiekelijk-excuses-voor-oude-transgenderwet>

¹⁰² <https://zoek.officielebekendmakingen.nl/stcrt-2021-39392.html>

¹⁰³ See footnote 59.

The German Federal Government's plans	Establishment of compensation funds for trans* and inter* persons who were/are victims of bodily harm or forced divorce as a result of past legislation (SPD/Bündnis 90/Die Grünen/FDP 2021: 120; cf. also demands by Bündnis90/Die Grünen and the FDP).
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Source: author's illustration

11 Counselling services

Table 12: Chapter 11

Problem situations	Limited counselling services, lack of awareness and expertise of counselling professionals regarding rainbow families and ensuing discrimination.
Need for action	There is a need for counselling in many respects, given the specific challenges, problem situations and needs of rainbow families. Solution approaches already exist, such as the online information portal “Regenbogenportal” of the Bundesregierung¹⁰⁴ or the model project “Beratungskompetenz zu Regenbogenfamilien” (“Counselling competence on rainbow families”)¹⁰⁵, which was carried out from 2015 to 2018 by the Lesben- und Schwulenverband e. V. In addition to the expansion and improvement of counselling services, there is also a need for awareness-raising training and the transfer or provision of expertise for counselling staff. Implementation also requires sustainable funding of corresponding programmes by the federal and state governments.
Demands & solution approaches	Improvement of existing and expansion of new counselling services, including awareness-raising trainings and the provision of expertise for counselling professionals; • Examples: Family counselling and family education, education and pedagogy, police, medicine, in particular with regard to starting a family and fertility treatment, nursing care (Bündnis 90/Die Grünen 2016; FDP 2021d; Westermann et al. 2019: 95; Bundesregierung 2021: 507f.; Adamietz/Bager 2017: 262f.; Boulila 2020: 59); Financial support and funding by federal and state governments (LSVD 2018); Introduction of a legal right to counselling for trans*, inter* and non-binary people and their relatives (Dialogforum Geschlechtervielfalt 2021).

¹⁰⁴ <https://www.regenbogenportal.de/>

¹⁰⁵ <https://www.regenbogenkompetenz.de/>

Insights from other European countries	Merely a few examples could be researched: • Denmark (2021): Agreement between the Danish government and LGBT+ Danmark – Denmark’s largest and oldest political organisation for LGBT persons – to use government funding to improve and expand legal services for rainbow families.¹⁰⁶ • France: The French National Action Plan (2020-2023) includes a series of awareness-raising trainings for professionals dealing with rainbow families, including childcare workers, administrators and judges.¹⁰⁷
The German Federal Government’s plans	Strengthening of counselling and support offers in the context of an abolition of the German Transsexual Law and replacement by a self-determination law (SPD/Bündnis 90/Die Grünen/FDP 2021: 119; see also political demands by Bündnis90/Die Grünen, the FDP and the SPD).

Source: author’s illustration

¹⁰⁶ <https://lgbt.dk/politisk-aftale-styrker-lgbt-danmarks-familieretslige-raadgivning/>

¹⁰⁷ „Using communication tools and best practice guides, educate childcare professionals (nurseries, day-care centres, child-care providers, social workers, etc.) about the need to take into account all family types. Raise awareness at the child welfare offices of the Departmental Councils, which issue adoption licences, as well as the Family Councils for Wards of the State, to teach them how to avoid discrimination against same-sex and/or transgender couples. Train magistrates to avoid discrimination against same-sex and trans families.“ (NAP FR 2020: 23)

12 Conclusion

For the political implementation of the diverse need for action and need for regulation with regard to equality for rainbow families in Germany, a structured approach is recommended. On the one hand, this approach should keep an eye on the various legal needs for change and on the other hand – especially in view of the large number of topics and responsible federal ministries – accompany these legal changes and extensions as well as other non-legislative measures in the form of a National Action Plan (DIMR 2019).

Below, the need for legal changes will be summarised and the necessity of a German National Action Plan will be examined more closely.

12.1 Need for legal changes in Germany

Needs for change in legislation that have been identified in this working paper and can be regarded as solution approaches for equality of rainbow families include the following:

- **Reform of the Abstammungsrecht (Law of Descent)** for inter* or trans* persons giving birth along article 1591 Bürgerliches Gesetzbuch (BGB) as mothers ([Chapter 5](#)) as well as for an automatic recognition of the non-bearing parent when it comes to women, trans*, inter* or non-binary persons, irrespective of the civil/marital status ([Chapter 4](#)) and at the same time abolition of the previously necessary stepchild adoption ([Chapter 9](#)).
- **Abolition of the Transsexuellengesetz (Transsexual Law)** and replacement by a self-determination law regulating the gender entries in civil/marital status law. This goes along with the legal recognition of trans* men as fathers and trans* women as mothers in the birth certificates of their children when it comes to a legal change of gender. A minimal demand for change is the deletion without replacement of articles 7 (1) and 5 (3) as well as 11 of Transsexuellengesetz ([Chapter 5](#)).
- **Reform of article 42 (2) of the Verordnung zur Ausführung des Personenstandsgesetzes (PStV; Civil/Marital Status Act)**, which regulates the family law allocation in the civil status entry of inter* persons. The reform should include the possibility to enter “parent” on the birth certificates of children in addition to the prevalent options “mother” or “father” ([Chapter 5](#)).
- **Reform and further development of the Embryonenschutzgesetz (Embryo Protection Act) into a Reproductive Medicine Act**, including regulation of access to assisted reproduction as well as financial support for fertility treatments regardless of marital status, sexual orientation or gender identity, and including an expansion of assisted reproduction techniques to include egg donation and the ROPA method as well as a review of the potential legalisation of altruistic surrogacy ([Chapter 6](#)).
- **Introduction of further legal regulations for the recognition of legal parenthood in the case of private sperm donation**, for example by introducing a legally binding parenthood agreement and/or a prenatal renunciation right for the sperm donor ([Chapter 7](#)).

- **Introduction of further legal regulations for the recognition of legal parenthood for children conceived or born abroad but growing up in Germany** (Chapter 7).
- **Legal recognition of family forms with several parents (multi-parenthood)** by introducing a legally binding parenthood agreement, by extending minor custody rights, by introducing full custody rights or by introducing a legally recognised shared responsibility (Chapter 8).
- **Reforming Adoptionsgesetz (Adoption Law)** to allow joint adoption for unmarried couples of opposite or same sex (Chapter 9).
- **Introduction of a right of action by associations to enforce the protection of victims** in the compensation of groups who have been wronged or treated unjustly in the past due to their gender identity or sexual orientation (Chapter 10).

12.2 The need for a National Action Plan

Societal inclusion cannot be achieved through legal regulations alone. National Action Plans thus play a special role in this context (Wittenius 2022). In contrast to existing demands for a dedicated National Action Plan to protect LGBTIQ* persons from hate and violence (Molter 2022), there is no comparable demand for rainbow families. Nevertheless, their needs and problems are part of the demands for action plans that aim to advance equality for LGBTIQ* persons in Germany across departments and topics (Wittenius 2022). For example, the **Jugend- und Familienministerkonferenz der Bundesländer** (JFMK; Conference of Ministers and Senators of the Bundesländer responsible for child, youth and family policy) clearly positioned itself in its resolution of 1 July 2020 on the adoption of a National Action Plan. The Conference called for “family law to include rainbow families as a matter of course and on an equal footing in all areas in the future” (JFMK 2020: 2; own translation).

In May 2019, **Bündnis 90/Die Grünen** called for a “nationwide action plan for sexual and gender diversity” going beyond family law (Bündnis 90/Die Grünen 2019a; own translation).¹⁰⁸ Complementing the need for family law regulation in the recognition of legal and social parenthood, the party points to the need to address the persecution of LGBTI persons, which also prevented or impaired biological parenthood, and to adequately compensate affected persons (ibid.). In December 2019, a public hearing on this motion was held in the Ausschuss Familie, Senioren, Frauen und Jugend of the Bundestag (Committee on Family Affairs, Senior Citizens, Women and Youth)¹⁰⁹, in which, among others, the two civil society organisations **Bundesverband Trans* e. V.** and **Lesben- und Schwulenverband e. V.**, which are mentioned and quoted several times in the working paper (and this abridged version) as well, participated with corresponding statements (BVT* 2019a; LSVD 2019). Both organisations welcomed the initiative to establish a National Action Plan and doubled down on the need for

¹⁰⁸ The motion was rejected by the Bundestag on 19 May 2021: <https://dip.bundestag.de/vorgang/.../248238>

¹⁰⁹ <https://www.bundestag.de/dokumente/textarchiv/2019/kw51-pa-familienausschuss-vielfalt-669308>

regulations already identified in the motion. At the same time, however, they also hinted at further need for action, for instance with regard to trans* and inter* parenthood.¹¹⁰

In addition to the need for legal changes for the equality of rainbow families in Germany identified in this working paper ([Chapter 12.1](#)), the following aspects should at least be considered in a National Action Plan:

- **Monitoring the need for legal changes** in Germany ([Chapter 12.1](#)), especially with regard to their societal acceptance.¹¹¹
- **Research and Science:** Enabling the expansion and differentiation of the research field on rainbow families by providing research funds, by commissioning own expert opinions or studies or by grants for corresponding projects ([Chapter 3](#)).
- **Compensation** ([Chapter 10](#)):
 - Official state apology to victims who have been wronged because of their gender identity or sexual orientation,
 - establishment of respective victim compensation funds for trans* and inter* people as well as for lesbian mothers who were deprived of custody of their children after divorce,
 - further reappraisal and research.
- **Counselling:** Improvement of existing and expansion of new counselling services, including awareness-raising trainings and the provision of expertise for counselling professionals as well as corresponding financial support ([Chapter 11](#)).

The Federal Government has ambitious plans with regard to the equality of rainbow families. Based on the extensive insights gained in the context of this working paper, this is definitely to be welcomed. Among the projects agreed upon in the coalition agreement are, on the one hand, demands of civil society organisations and numerous other actors. Some of these demands have existed for a long time and have been repeatedly put forward in the political arena. On the other hand, the projects agreed upon in the coalition agreement also include demands that the parties now in power have set for themselves, in particular in their Bundestag election programmes 2021 (Bündnis 90/Die Grünen 2021a; FDP 2021a; SPD 2021a). This is a good sign and represents a political dawn for many rainbow families. These government plans should now be shaped and implemented as soon as possible – also by involving the diverse expertise of numerous actors who highlight the need for action and for regulation, as presented in this Working Paper.

¹¹⁰ The call for a National Action Plan for LGBTIQ* persons was also the subject of the 2021 Bundestag elections and was represented in four election programmes. However, concrete aspects concerning rainbow families are missing from these demands, which also differ in content (for more information, see Wittenius 2022). Nevertheless, the election manifestos and programmes contained further, in particular legal, requirements for equality for rainbow families. These were taken into account in this working paper (cf. Bündnis 90/Die Grünen 2021a; DIE LINKE 2021a; FDP 2021a; SPD 2021a).

¹¹¹ For example, by providing low-threshold information, via communication campaigns and other well-designed measures to raise public awareness, among other measures.

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¹¹² Alle im Arbeitspapier angegebenen Internetquellen sind aktuell verfügbar [Stand: 07.04.2022].

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13.2 Further literature

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- Council of Europe (2020): [CDDH Report on the implementation of Recommendation CM/Rec\(2010\)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity](#).¹¹⁴
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13.3 Further internet sources

13.3.1 Europe

- **European Union:**
 - Overview: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality_en
 - LGBTIQ Equality Strategy 2020–2025: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en
 - The European Parliament's Intergroup on LGBTI rights: <https://lgbti-ep.eu/>
 - Agency for Fundamental Rights: <https://fra.europa.eu/en/themes/sex-sexual-orientation-and-gender>
- **Council of Europe:**
 - Sexual Orientation and Gender Identity (SOGI) Unit: <https://www.coe.int/en/web/sogi>
 - European Commission against Racism and Intolerance: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/sexual-orientation-and-gender-identity>
- **ILGA Europe:**
 - Rainbow Index: <https://www.rainbow-europe.org/>
 - Policy Paper on family policy: <https://www.ilga-europe.org/resources/policy-papers/family-policy>
- **Network of European LGBTIQ* Families Associations:** <http://nelfa.org/>
- **OECD LGBTI Study:** <https://www.oecd.org/els/soc/lgbti.htm>

13.3.2 EU Member States

- **Austria:**
 - FAMOs – Familien Andersrum Österreich. Verein zur Förderung von Regenbogenfamilien in Österreich: <https://www.regenbogenfamilien.at/>
 - Verein Intergeschlechtlicher Menschen Österreich: <https://vimoe.at/>
 - Plattform Intersex Österreich: <http://www.plattform-intersex.at/>
- **Belgium:**
 - Homoparentalités ASBL. L'association belge des parents, futurs parents LGBTQI+ et de leurs enfants: <https://www.homoparentalites.be/>
- **Bulgaria:**
 - Deystvie: <https://en.deystvie.org/>
- **Croatia:**
 - Dugine obitelji: <https://www.dugineobitelji.com/>
- **Denmark:**
 - LGBT+ Danmark: <https://lgbt.dk/>
 - LGBT komiteen: <https://komiteen.dk/>
 - Vidensbanken om kønsidentitet: <http://www.transviden.dk/>
- **Estonia:**
 - Eesti LGBT Ühing: <https://www.lgbt.ee/>
- **Finland:**
 - Sateenkaariperheet: <https://sateenkaariperheet.fi/>
- **France:**
 - L'Association Des Familles Homoparentales: <https://adfh.net/>

- L'Association des parents et futurs parents gays et lesbiens: <https://www.apgl.fr/>
- Inter-LGBT – L'Interassociative lesbienne, gaie, bi et trans: <http://www.inter-lgbt.org/>
- Les Enfants d'Arc en Ciel: <https://enfants-arcenciel.org/>
- **Germany:**
 - Bundesverband Trans*: <https://www.bundesverband-trans.de/publikationen/trans-mit-kind-online-veranstaltung-zur-veroeffentlichung-der-broschuere-des-bvt/>
 - Deutsches Institut für Menschenrechte: <https://www.institut-fuer-menschenrechte.de/themen/sexuelle-orientierung-und-geschlechtsidentitaet>
 - Deutscher Juristinnenbund e. V.: <https://www.djb.de/themen/lgbtiq-rechte>
 - Dialogforum Geschlechtervielfalt: <https://www.regenbogenportal.de/initiativen/dialogforum-geschlechtliche-vielfalt/aufgaben-und-ziele-des-dialogforums>
 - Friedrich-Ebert-Stiftung: <https://www.fes.de/themenportal-gender-jugend/gender>
 - Gunda-Werner Institut: <http://www.gwi-boell.de/de/sexuelle-selbstbestimmung-und-geschlechtliche-vielfalt>
 - Lesben- und Schwulenverband e. V.: <https://www.lsvd.de/>
 - Initiative NODOPTION: <https://www.nodoption.de/>
 - Regenbogenportal: <https://www.regenbogenportal.de/>
- **Greece:**
 - Rainbow Families Greece: <http://www.rainbowfamiliesgreece.com/english.html>
- **Netherlands:**
 - Meer dan Gewenst. Het platform voor LHBT'ers met een kinderwens: <https://www.meerdangewenst.nl/>
 - Transgender Netwerk Nederland: <https://www.transgendernetwerk.nl/>
- **Italy:**
 - Famiglie Arcobaleno – Associazione Genitori Omosessuali: <http://www.famigliearcobaleno.org/it/>
 - Rete Genitori Rainbow: <https://www.genitorirainbow.it/>
- **Ireland:**
 - LGBT Ireland: <https://lgbt.ie/>
- **Malta:**
 - Malta Gay Rights Movement: <http://maltagayrights.org/>
 - The Malta Foundation for the Wellbeing of Society: <https://www.facebook.com/MFWSmalta/?ref=bookmarks>
- **Poland:**
 - Fundacja Tęcza Rodziny: <http://teczowerodziny.pl/>
- **Sweden:**
 - Föreningen för transpersoner: <https://fpes.se/>
 - Riksförbundet för homosexuella, bisexuella och transpersoners rättigheter: <https://www.rfsl.se/>
 - Transamman – förbundet för transpersoner och närstående: <https://www.transamman.se/>
- **Spain:**
 - Familias LGTBI: <https://www.familieslg.org/>
 - Fundación Triángulo: <https://fundaciontriangulo.org/>
 - Galehi – Asociación de familias LGBT : <https://galehi.org/>
 - Galesh – Familias Homoparentales: <https://galesh.es/bienvenido/>
 - SEHASKA LGTBI Familiak: <https://sehaska.org/>



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Publishing Information

Publisher

Institute for Social Work and Social Education
**Observatory for Sociopolitical Developments
in Europe**

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This is a publication of the “Observatory for Sociopolitical Developments in Europe”. The German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth provides funding for the project “Observatory for Sociopolitical Developments in Europe”.

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Agency responsible for the Observatory

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Translation

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Status

December 2021

Publication date

September 2022

Please cite this publication as:

Lange, Katrin (2022): [Equality of rainbow families. Needs for action and solution approaches in Germany as well as insights from other European countries](#). Working Paper N° 23 of the Observatory for Sociopolitical Developments in Europe.