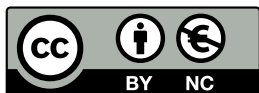




Stuck on the swing

Experiences of trans parents with
freedom of movement in the EU



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Stuck on the swing: experiences of trans parents with freedom of movement

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TGEU is a member-based organisation working to strengthen the rights and wellbeing of trans people in Europe and Central Asia.



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Content

- 04 Rationale
- 07 Key findings
- 30 Trans parents' messages to the European Commission
- 32 Key recommendations to the European Commission

Rationale

“I will also push for mutual recognition of family relations in the EU. If you are parent in one country, you are parent in every country.”¹

Ursula von der Leyen, President of the European Commission

The right to move and reside freely is the cornerstone of European Union citizenship, established by EU law and the Free Movement Directive (2004/38/EC).² In its 2009 guidelines on the transposition and application of the Directive, the European Commission affirmed that this right:

- extends to EU citizens and their spouses, “durable partners”, and children;³
- must be implemented by Member States:
 - in accordance with the non-discrimination principle; and
 - in the best interest of the child.⁴

The European Union Agency of Fundamental Rights (FRA) LGBTI Survey II collected responses from 19,445 trans people and found that **19% of trans respondents were parents of at least one child**.⁵ The prevalence of parents among trans respondents ranged from 4% in Slovakia to 39% in Ireland.⁶

¹ State of the Union Address by European Commission President Ursula von der Leyen at the European Parliament Plenary, 16 September 2020. See the full speech here: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

² European Union, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 26 October 2012, 2012/C 326/01, TEU art. 3(2), TFEU art. 21 and Titles IV and V, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>;

European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, art. 45, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>;

European Union, Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 29 April 2004, 2004/38/EC, available at: <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A32004L0038>. See more at: <https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons>

³ European Commission, Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, July 2009, para. 2.1. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

⁴ Ibid.

⁵ European Union Agency for Fundamental Rights (FRA), A long way to go for LGBTI equality, May 2020, p. 30, available: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf

⁶ Ibid. In Cyprus, Slovenia, and Luxembourg, the result was suppressed due to the sample size being under 20. In non-EU Serbia, the rate was 3% and in North Macedonia 0%. See: <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>

In the **EU LGBTIQ Equality Strategy (2020-2025)**, the European Commission highlighted with concern that there are “**specific difficulties preventing LGBTIQ people and their families from enjoying their rights**”⁷ and that “**when these families travel or move to other Member States, there is sometimes a risk of children’s link to their LGBTIQ parent(s) being severed, which may have an impact on the children’s rights.**”⁸

To address these concerns, the European Commission committed to a number of targeted actions in the **EU LGBTIQ Equality Strategy (2020-2025)**, including to:

- review the 2009 guidelines on free movement to facilitate the exercise of free movement for all families, including rainbow families;
- continue to gather evidence on the issues experienced in reality by LGBTIQ people and their families in cross-border situations;
- ensure the rigorous application of cross-border family law with regard to rainbow families by strengthening its focus on this group in monitoring their implementation;
- propose a horizontal legislative initiative to support the mutual recognition of parenthood between Member States;
- continue to support the Member States’ efforts to uphold respect for rainbow families’ rights as enshrined in the EU Charter of Fundamental Rights, in particular the right to private and family life and the rights of the child.



*Illustration by Jefferson,
Switzerland.*

⁷ European Commission, LGBTIQ Equality Strategy 2020-2025, 12 November 2020, para 3.1. https://ec.europa.eu/info/sites/info/files/lgbtiq_strategy_2020-2025_en.pdf

⁸ Ibid, para 3.2.

⁹ European Union, Charter of Fundamental Rights of the European Union, 26 october 2012, 2012/C 326/02.

The Charter of Fundamental Rights of the European Union sets out the right to private and family life (Article 7), the right to protection of personal data (Article 8), the right to marry and the right to found a family (Article 9), the right to move and reside freely within the territory of the Member States (Article 45), and the right to be free from discrimination (Article 21).⁹ Member States are bound by the Charter when implementing EU Law.

EU LGBTIQ
Equality Strategy
(2020-2025)



TGEU welcomes these commitments. This report seeks to support the Commission in its undertakings by sharing **evidence on the specific barriers of trans parents and their families in cross-border situations**. For the purposes of this report, TGEU conducted semi-structured interviews with 18 trans parents and two organisations in February and March 2021. In accordance with the scope of this report, we are including the testimonies of 16 trans parents.¹⁰

¹⁰ The call for interviewees was circulated among TGEU's member organisations, on its online platforms, and via mailing lists between November and January 2021. 25 people expressed interest in participating and 20 agreed to be interviewed in the end. Three interviews fell outside the specific scope of this report and were not included. The interviewees featured in this report are all residents of Schengen area countries, namely Belgium, Bulgaria, France, Germany, Italy, Romania, Slovenia, Sweden, and Switzerland. Four interviewees are UK residents, two with UK citizenship and one person with Romanian citizenship. Some interviewees are EU residents, with citizenship in Russia, Ukraine, and one Central Asian country, the latter kept confidential for safety reasons. See: <https://tgeu.org/call-for-interviewees-on-trans-parenthood/>

Key findings

• The majority of respondents (80%) are satisfied with the current state of the company's financial health.

• The majority of respondents (75%) are satisfied with the current state of the company's operational performance.

• The majority of respondents (70%) are satisfied with the current state of the company's customer satisfaction.

• The majority of respondents (65%) are satisfied with the current state of the company's employee satisfaction.

• The majority of respondents (60%) are satisfied with the current state of the company's market share.

• The majority of respondents (55%) are satisfied with the current state of the company's innovation.

• The majority of respondents (50%) are satisfied with the current state of the company's sustainability.

• The majority of respondents (45%) are satisfied with the current state of the company's overall performance.

TGEU has found that the experiences of trans parents in the area of free movement are very much influenced by the national laws of Member States, including on legal gender recognition, access to reproductive health and rights, and partnership and parenthood recognition. In particular:

1. The absence of legal gender recognition procedures at national level and/or legal gender recognition procedures that fail to comply with human rights standards lead to discrimination against trans parents and their children when exercising free and safe movement.
2. Legal gender recognition not extending to kinship documents leads to discrimination against trans parents and their children when exercising free and safe movement.
3. Stigma, prejudice, and discrimination against trans people and outdated ideas about what families look like lead to negative experiences in cross-border situations.
4. The lack of mutual partnership and parenthood recognition between Member States leads to discrimination in exercising free and safe movement.
5. The principle of the best interest of the child is undermined by discrimination, stigma, and prejudice related to their parent's gender identity.
6. Growing anti-trans sentiments in the EU result in legal and practical discrimination against trans parents and their children when exercising free and safe movement.
7. Trans parents with residence in the EU who are third-country nationals encounter additional obstacles.

1. The absence of legal gender recognition procedures at national level and/or legal gender recognition procedures that fail to comply with human rights standards lead to discrimination against trans parents and their children when exercising free and safe movement.

In Member States where legal gender recognition is unavailable, inaccessible, or conditional upon abusive requirements that trans people do not want to or cannot fulfil without giving up other human rights, they will be unable to change their gender markers. Abusive requirements include, for instance, mandatory divorce or the ‘downgrading’ of marriage to registered/civil partnership with limited rights, mandatory surgeries, and coerced sterilisation. Having a mismatch between their gender expression and legal gender, many trans people will anticipate or experience intrusive questions or harassment in cross-border situations. Trans parents reported that they were willing to endure this before having a child, but have since avoided traveling to protect their family from negative experiences.

No legal gender recognition procedures in place

- Gabriella is a trans woman living in Bulgaria, where there are no legal gender recognition procedures in place. When travelling, Gabriella prepares a bundle of legal documents to prove her relationship with her child and anticipates trouble at the border. She has been lucky so far, which she attributes in a large extent to her being able to pass as a cis woman.

“Ahead of a trip with my child, I was pretty sure there was going to be a huge hustle over the documents and everyone would question me about why I look like a woman but my documents say otherwise. I had prepared all our documents and also a statement of my partner. When we passed a security check, I expected problems at the next one. But thankfully, it never happened. They looked a little confused, but left me alone.” – Gabriella, Bulgaria

The divorce requirement

- ➔ Jefferson and his husband are happily married, expecting their second child, and live in Switzerland. Jefferson is a trans man, but his documents and their first child's birth certificate feature the 'F' as gender marker. Jefferson does not want to go through legal gender recognition because, in the lack of marriage equality in the country, he and his husband would have to get a divorce and 'downgrade' their relationship to a civil partnership. They are worried, as they would lose certain rights.

"We haven't left the country since our daughter was born. Of course, now there is the pandemic, but the other reason is that our documents don't match my gender expression. I'd have to out myself every time I travel, and that's really uncomfortable. I used to travel to the UK before we had a child, and it wasn't really bad, but they did always ask what the situation was with my papers. Now, with a child, I don't want to do it." – Jefferson, Switzerland



*"This was our wedding day and I was 8 months pregnant with our first child."
Jefferson, Switzerland*

What documents do parents need to show at the borders of Member States?

When traveling between Member States, EU citizens need to show a valid identification card or passport. Children also have to have their own valid travel document. Third country nationals who are spouses or partners of an EU citizen may need additional documents. When travelling with children, parents need to show proof of their relationship to their child, such as a birth certificate, court order, or adoption papers. If a child travels alone, with adults who are not their legal guardian, or with only one parent, individual Member States can require that additional documents are shown, such as travel authorisation from parents or legal guardians. For temporary or permanent residence, additional documents will be required, as regulated by each Member State.

The sterility requirement

In some Member States, legal gender recognition laws require(d) trans people to undergo mandatory sterilisation or other medical interventions that negatively affect fertility. If a trans parent cannot genetically contribute to conception and uses donated gametes, that will influence whether and/or when they are recognised as a legal parent and can prove their connection to their child in cross-border situations.

- Marie and Alisher are married, live in Germany, and want to be parents. Marie is a trans woman from Germany and Alisher is a trans man from Central Asia. They got married in 2018. When Marie changed her legal gender 15 years ago, she was coerced to be sterilised. Medical professionals failed to inform her about her reproductive options, and she is now unable to genetically contribute to their future child. According to German regulations, Marie would have to adopt her own child if conceived through medically assisted reproduction. The couple sought out options and are considering that Alisher give birth in Sweden. However, since they don't have Swedish residency, they would not benefit from local regulations and Sweden would not recognise Marie's parenthood on the child's birth certificate. For at least a few years, Marie would not be able to travel with her child alone.

“Before I met Alisher, I didn’t plan to have kids and it never occurred to me that I was forcibly sterilised. It’s a hard one to swallow. But now, I just can’t stop thinking about it. They knowingly denied me the option to become a parent. They took that choice away from me. Otherwise, we might be able to have biological children now. And like this, legally speaking, I will be no one to our child.” – Marie, Germany

Prolonged legal gender recognition procedures

- ➡ Vero is a non-binary parent, married to a trans man, and living with him and their child in Sweden. Vero’s husband filed his legal gender recognition application seven years ago and is still waiting for the decision.

“My husband’s documents and legal gender don’t match his appearance. So we need to consider safety every time we think of traveling, not just in terms of the destination, but also where we have a layover – is it safe? It’s a lot and it gives me anxiety. And I miss my family [in Canada], I want to be able to travel. We also cancelled our honeymoon, because we felt unsafe about the layover.” – Vero, Sweden

- ➡ Lea is a French citizen living in Slovenia, where she first met her ex-partner. They have two children. Lea is a trans woman and changed her legal gender after her children had been born. She had already started medical transition, but decided to wait for the archaic and abusive legal gender recognition law in France to change before applying. Under that law, she would have had to show proof of surgeries and go to a separate room during the court procedure, where three surgeons had to agree that “her vagina was possible to penetrate with their fingers.” Lea applied as soon as the new law came into force. It took her one year to be approved. During these two years, Lea had to travel between the two countries, but her gender expression no longer matched the legal gender in her passport. On some occasions, her children traveled with her to spend time with their grandparents in France. These trips were always very stressful and difficult for all of them.

“I had to deal with the stress of traveling from Slovenia to France with the children, but without my ex-wife. I only had my old documents with me, with the old picture and the old name. Sometimes they said to me, ‘Madame, this is your husband’s ID card, please give us yours.’ I was forced to out myself at the airport in front of everybody. Sometimes I had to say to the steward/ess, ‘I am trans and this is the only document I have.’ I was so stressed from the moment of the security check to the moment I finally boarded the plane. I had the feeling that someone could grab me anytime and ask who I was and whose children these were. My children were 4 and 7, so they were little. I couldn’t really explain to them all the stress in me at that time. I still can’t really explain to them why their parent is afraid of border controls, why I’m so distracted.” – Lea, Slovenia



*Lea and her children,
Slovenia. Picture by Linn
Julian Koletnik.*

2. Legal gender recognition not extending to kinship documents leads to discrimination against trans parents and their children when exercising free and safe movement.

Member States have different regulations in place on the impact of legal gender recognition on a range of official documents, such as the person's birth certificate, ID card, passport, driving license, diplomas, etc. They may also regulate the impact of legal gender recognition on the documents of trans people's children, and they may have different rules in place depending on when the person changed their legal gender, i.e. before or after giving birth. With a handful of exceptions, gestational trans men, i.e. trans men who carry and give birth to the child, are denied recognition of their legal gender on their child's birth certificate. This means that the parent will have an ID that says, "Jonas, male", their child's birth certificate will either feature them with their 'deadname'¹¹ and say "Isabel, mother" or with their correct name but incorrectly say "Jonas, mother." Trans parents reported that, due to such a mismatch between their documents, they have been unable to travel.

- Bruno and his former partner have a 5-year-old child. Bruno changed his gender marker after the birth of his child because he worried he would not get parental benefits if he did it earlier. Once legally 'male,' he tried to have his child's birth certificate changed, but that is not an option in Germany. The birth certificate features Bruno as a "mother" and with his deadname. Bruno is too worried to travel outside the country because he would not be able to prove that he is the rightful parent of his child.

"I could be legally recognised as a 'father' to any child in the world, except for the one I gave birth to. We haven't left Germany since the birth because I wouldn't know how to explain I am the parent. I could explain at the German border, but not anywhere else, because the laws and the court documents are very complicated – and are in German. My worst fear is that they wouldn't believe I'm the parent, that we would get separated and there would be no quick solution, and I wouldn't know what to do. I also worry that I'd need to have these awful conversations in front of my child." – Bruno, Germany

¹¹ A trans person's 'deadname' is the name that is usually assigned to them at birth. Many trans people choose a different name they feel more comfortable with at some point in their lives. Being called by their 'deadname' can be triggering to many, cause dysphoria, anxiety, and other difficult feelings.

→ Freddy is a single dad by choice, living with his child in the UK. He transitioned many years ago and changed his legal gender to 'male' before giving birth. Because he is legally male, Freddy thought he had the right to register as his child's father on the birth certificate. Everything initially seemed fine when he tried to register his child at the local registry office. The clerk asked their superiors to confirm that it's OK to register Freddy as a father, and that is when the hurdles emerged. According to the UK laws, a person giving birth must register as 'mother.' Furthermore, trans men who do not give birth cannot register as 'father' either. If their partner or wife gives birth, these men must register as 'parent two,' which UK law says is a label exclusively for the 'second female parent.' In other words, legal gender recognition for trans people never extends to parenthood. While the court case is ongoing, the state has not forced Freddy's child to have a birth certificate that is wrong, but Freddy's child is now a toddler and still has no papers. The child has a passport, but that is not considered a legal document in the UK. Freddy has been through the court system, and he and his child both have a legal team – to no avail so far. They will now turn to the European Court of Human Rights, where other cases similar to theirs are waiting to be heard. Freddy has been wanting to move to Spain, where he has family, but is worried that his child will not be able to get residence or go to school without papers.



Freddy and his child, UK

“Right now my child has a passport, but it shows no connection to me and it's not considered a legal document in the UK anyway. If we had a birth certificate showing me as the 'mother,' I would be really worried about passport control and other official situations. That document would put us both at risk.” – Freddy, UK

- ➡ Egon is a trans man living in Italy and raising two teenagers, both of whom he gave birth to. Egon applied for legal gender recognition after his children had been born. While the procedure usually takes a year in Italy, it is much longer for those with children, as the judges believe they must consider the case even more thoroughly. It took four years for Egon to change his documents. During this time, he presented as a man, but his documents featured his deadname and legal gender assigned at birth. A new regulation that was put in place in Italy at the time made it mandatory for children's ID cards to include a "mother" and a "father". The previous practice of featuring "parents" was abolished. Following his legal transition, Egon was featured with a male name on his documents, under the label "mother."

"Traveling abroad for holiday worried me a lot during those four years. In the beginning, my children's birth certificates had my birth name, which was a problem because it didn't match my gender expression. Later, once I had my documents changed, their IDs didn't match my name on my new documents. So we travelled with all the legal documents that said I had transitioned and that I was the same person as what's in their IDs. This clearly resulted in a lot of anxiety for me and it was a violation of my privacy." – Egon, Italy

- ➡ Benjamin started out his pregnancy planning to be a single-raising father. Being familiar with the legal system, he knew that Germany would wrongfully list him on his child's birth certificate as a "mother" and use his deadname. Benjamin had changed his legal gender many years ago and wanted to avoid this situation at all costs. He invested a lot of time and energy into researching which EU country would recognise him in his correct gender, and that was Sweden. Benjamin traveled to Sweden in advance to prepare everything, spoke to all the relevant authorities, and took an extra job to cover the extra costs. Although the Swedish authorities were kind and helpful, the birth was not an easy experience – all to make sure that no legal issues would arise. Benjamin's baby was automatically granted the correct birth certificate. Since then, Benjamin and his baby have flown under the radar in the German system, including when traveling back, applying for parental leave, registering the child as a citizen, or getting the child a passport. Benjamin's partner has been an equal parent from birth, and the couple would like to do the adoption procedure. They are extremely nervous that the court procedure would

eventually lead to the authorities deciding to issue a new birth certificate, using Benjamin's deadname and calling him a "mother." Not only would this be detrimental to Benjamin's well-being, but it would also expose the family to a lot of bureaucratic hurdles or barriers when traveling, as the legal person on the birth certificate does not actually exist. It would also mean that the process of using the favorable Swedish system was all in vain.

"This little paper [birth certificate] can make such a big difference! We went to get a passport for my child and the clerk asked why there was no mother on the documents. I said that it was complicated. Her answer was "OK, because let's be real, it's not like men can give birth!." I did not respond. But again, the fact that I had the correct birth certificate from Sweden did the trick. And now we can travel safely." – Benjamin, Germany



"The picture with the 'troubled water' closely resembles my anxiety and nervousness when I went for a scouting trip to Sweden by ferry to check out the passport situation. I have a lot of really cute and touching pictures with my child, but am angry that I cannot share them publicly as I would fear for the safety of my family."
Benjamin, Germany

3. Stigma, prejudice, and discrimination against trans people and outdated ideas about what families look like lead to negative experiences in cross-border situations.

Regardless of what their documents say, trans people whose gender expression does not fit the norm, for instance, being difficult to decode as strictly 'male' or 'female', may be asked intrusive questions at border control.

- Sarah is a UK-French citizen. Their only child is now an adult, but Sarah and their ex-wife got a divorce when the child was 11 years old. Whenever they traveled together, Sarah tried to fit into gender stereotypes in order to go through border controls without issues. Sarah's legal gender is male and they have chosen not to change their gender marker as they would face discrimination regardless. They are of the opinion that categorising people on the basis of gender assigned birth is essentialist, objectifying, and intrusive.

“The only way I can move freely is to pretend I am whatever appears on my passport. I always have to fit in, be polite, and smile. And when I traveled with my child, I just tried to be like the norm and lie, if needed, to avoid trouble. It was constant stress and trouble. But when your kid is there, you just want it all to go smooth.” – Sarah, France/UK

- Thomas* has citizenship in Germany and Switzerland. They have two small children, and live in a happy marriage with their partner. Thomas* identifies as a trans*non-binary person, with the 'male' legal gender in their documents. They don't want to change their papers until a non-binary gender marker option is available and accessible in one of the two countries. In Germany, 'divers' is available, but only to intersex people and with a medical diagnosis. Thomas* considers their family to be very privileged, because on paper they are a cisgender heterosexual couple who enjoy the privileges that come with that. They wish for change though, for states to recognise the diversity of genders and families.



"I avoid traveling by plane for many reasons, one of them being the ID checks and body scanners. I've never ever tried to travel by plane with my kids." – Thomas, Germany/Switzerland*

*"This is me and the kids on the way back from the children's library in the city. We have COVID-19 closures here, but they re-opened libraries this week and the kids were eager to exchange their books!"
Thomas*, Germany/Switzerland*

4. The lack of mutual partnership and parenthood recognition between Member States leads to discrimination in exercising free and safe movement.

Some trans people live with, parent with, and/or are married to a same-gender partner. They may have also got married and/or had children with their partner before changing their legal gender, and were then considered to be in a different-gender relationship that is no longer the case. The lack of mutual recognition of same-gender partnerships across Member States, in contradiction to the Coman judgment,¹² can impact trans parents and their access to free movement.

- ➔ Yanis is a 37-year-old Romanian trans man living in the UK, married, and with twins. After many years of legal battle, in 2018 Yanis managed to change his legal gender and name in Romania. However, his marriage certificate and his children's birth certificate feature his old name and gender marker. Romania has refused to recognise his children's birth certificates, as they feature two "women," and has thus denied them a passport and citizenship. As a resident of the UK, Yanis has tried to have his marriage certificate and his children's birth certificate changed so that both would include his correct name and gender marker. The UK authorities have not managed to do this. Each authority he turns to is unable to tell him what to do and directs him to a different one. Yanis and his children have been unable to leave the UK for the past three years. In 2020, Yanis lost both his parents. His children never got to meet their grandparents.



Photo by Katrina Elena from Getty Images

¹² Case C-673/16, Court of Justice of the European Union: Grand Chamber, 5 June 2018. Find at: <http://curia.europa.eu/juris/recherche.jsf?cid=5371841>

“We have the right to free movement. To just have a life, travel, see our family. But my kids don’t have any documents besides their birth certificate. I can’t travel with them, can’t go on holidays with them. We are just stuck here. I called the Gender Recognition Panel in the UK, but they said I need to change my marriage certificate at the City Council. I called the Council, who said I need to apply to the Panel. Then, as both countries were in the EU at that time, the Panel said I didn’t need to apply to them. Everyone is saying: ‘we are sorry, we can’t help you!’ I keep ringing them. I’m sick of it! It’s been three years. If these people who are supposed to help us, guide us, don’t know the law and what to do, who knows it, then?” – Yanis, Romania/UK

- Anna and Yana are from Ukraine and Russia and have a child together. They got married in New York and got a gender-neutral marriage certificate, which featured them as “spouses.” Yana is a trans woman and had her “male name” changed to a gender-neutral one. Legal gender recognition was complicated in Russia at that time and she could not change her gender marker or take a “feminine name.” Anna gave birth in 2017 in the UK. They expected that the birth certificate would simply state that they are both “parents,” in line with their marriage certificates and their personal wishes. As their case was “out of the ordinary” for not having a “mother” and a “father” in the picture, the UK regulations required them to appear at the birth registry office in person. Anna gave birth through a C-section and felt overwhelmed by this process. At the office, the clerk denied their request to be recognised as “parents” claiming that was not an option in the country. Anna and Yana kept up correspondence with the authorities for months, locked in the UK and not able to travel to their home countries since the baby could not receive travel documents without a birth certificate. Not being UK citizens, they were not entitled to free legal assistance. They were disappointed with local trans organisations, which they hoped could use their case in strategic litigation but were reluctant to do so. Finally, they agreed to having a birth certificate which includes Anna as the “mother” and Yana as the “father.” Anna and Yana want regulations in place that allow parents to choose the gender-neutral “parent” option if that feels more right and safe to them. This would also make Anna and Yana’s life easier when traveling back home to Russia or Ukraine from Sweden, where they currently live.

“I keep being surprised by how different the jurisdictions are in the EU when it comes to parenthood. My recommendation is to drop the mandatory “mother” and “father” option. If parents want to use those terms, they should be able to tick those boxes. But it’s time to add the gender-neutral option “parent” on birth certificates. It would be a very simple change that would make the lives of so many people easier, safer, and more comfortable. Not only in the EU, but also outside. Two “parents” would be easier, because the border guards would just assume what they want and our gender would not be an issue.” – Anna, Ukraine/US/UK/Sweden



“Our child was almost 4 months when we finally got their birth certificate” Anna, Ukraine/UK/Sweden



*Anna and Yana’s child
at an airport.*

Families are much more diverse than the cisgender and heterosexual nuclear family model consisting of a mother and father. Trans parents and others, may decide to divide parental roles and responsibilities between more than two adults. In a number of EU countries, law-makers are in the process of discussing how such families could be legally recognised.

- Cal, a non-binary trans person in Sweden, shares all parenting responsibilities with two other non-binary people. The three of them had lived together before deciding to have a child together. Their now 8-year-old has been raised by three parents all their life. However, Sweden, like all other EU countries, only recognises two legal parents. Cal and their partners had to get married and divorced within a short period of time after the birth of their child in order to fulfil requirements for parental leave. Cal's family has faced similar hurdles with a system tailored to fit two-parent families only, but has tried their best to overcome them.

“There would be a risk if the non-legal parent traveled alone with our child, for sure. And if a legal parent decided to move to another country, on paper, only one parent would remain in the country to give their consent to decisions regarding the child, even if the child still de facto has two parents left in the country. I think the EU needs to see that we are real people, we live here.” – Cal, Sweden

5. The principle of the best interest of the child is undermined by discrimination, stigma, and prejudice related to their parent's gender identity.

The issues outlined above have a detrimental impact on the children of trans parents in the exercise of their own right to freedom of movement. Several parents shared that they avoided traveling to protect their children from negative experiences in border situations. Others have been barred from visiting family, going on holidays, or moving to another country for work or other reasons, and considered this restrictive of their child's rights.

“In terms of freedom of movement, what’s necessary is that a child can always be with their caregivers. That if something happens in the family, you can just hop into a car and go home to help and the child can be with their grandparents or uncles and aunts and really be a full part of a larger family rather than be excluded from visiting for having no freedom of movement simply because their papers are ‘weird.’ You need to look at it from the perspective of the child and their best interest; they have a right to come on a holiday; a right to see their grandparents; a right to papers that correspond to their family situation.” – Jonathan, Belgium



Snuggly toys.
Photo by TGEU.

Faulty documents may also impact the child's ability to travel by themselves while still being a minor.

“My child is always asking me if we can go somewhere with a plane. Now I say we can't because of Corona. But what if she wants to travel when she is older, or study abroad? You need parents' signatures and my information won't match. The German courts say this is all in the best interest of the child, but that is ridiculous.” – Bruno, Germany

Flawed documents also impact the child's right to private life and their ability to decide when and to whom to disclose information about their parents. Involuntary disclosure might be harmful to the child: they might witness transphobic discussions or intrusive questions by border guards. Some parents feared that, in the lack of documents that match their gender identity, their relationship to their child might be questioned and their child could be separated from them.

“In all honesty, [my child] doesn't really care about my gender. But having a birth certificate showing me as the father means that my child can make his own choices in his social life about what he wants to share. With the wrong documents, that choice would be taken away from him.” – Jonathan, Belgium



Sitting on a rock with dirty clothes.
Photo by TGEU.

“In court, we argued for my family's right to privacy – mine and my child's. It's not about keeping anything from my child or being ashamed of who I am. Rather, neither my child nor I should be forced to talk about it to everyone and anyone who sees our papers. It's being outed involuntarily and it can actually be dangerous.” – Freddy, UK

6. Growing anti-trans sentiments in the EU result in legal and practical discrimination against trans parents and their children when exercising free and safe movement.

The increasing anti-trans environment across Member States has and will continue to have a negative impact on the right to free movement of trans parents and their children. A number of interviewees shared that they felt limited in practice regarding which Member States they could travel or move to, given the growingly hostile rhetoric against trans people across the EU.

“I want to proceed with my career, but I have to limit myself and can’t apply for many positions. I need to make sure that wherever we move to is trans-friendly, that we have access to trans-specific healthcare, and that we will be respected. I feel really limited. And we also have to worry about movement within the EU. We’ve seen countries like Poland or Hungary passing these horrible transphobic laws. I kind of need to have a map in front of me and cross off all these countries where I can’t really go because I worry for myself and my family. It has put a lot of things on hold for me.” – Vero, Sweden

“There are also some countries where I’d be too frightened to go. They are less open-minded, so I wouldn’t just go and say, ‘I’m a trans person.’” – Jefferson, Switzerland



Jonathan with his child, then a toddler, at the beach.

7. Trans parents with residence in the EU who are third-country nationals encounter additional obstacles.



Child of a non-binary parent running across a field of snow. Photo by TGEU.

The limitations outlined above impact trans parents who are third-country nationals and EU residents and their children in unique ways. For instance, children of trans parents may be exposed to remaining stateless and having no access to EU citizenship:

- Marie and Alisher (see above) fear being stuck in a legal limbo, where Marie would have no legal connection to her child and Alisher would be the only legal parent on their child's birth certificate, but with the wrongful title of "mother." Alisher is only a resident, so Marie and Alisher fear that their child would not receive automatic German citizenship. If German papers wrongfully feature Alisher as a "mother," he might get into trouble traveling to Central Asia for citizenship for their child. There is currently no scenario that would make it easy or possible for Marie and Alisher to have a child without unnecessary intrusions into their private and family life, a loss of acquired rights, or putting their family through burdensome administrative procedures or at risk and without legal status.

Another parent spoke of the fear of being separated at immigration due to lack of appropriate documents.

- Vero (see above) lives in Sweden with their husband and child. In terms of all the tasks and responsibilities, Vero has been an equal parent for several years. Because Vero is a third-country national, they've had a lot of challenges being

recognised as a parent. Due to the type of visa they have, they are not entitled to a Swedish personal number, which allows people to seek healthcare, to open a bank account or, in Vero's case, to legally become a second parent and be recognised as such on school forms or when seeing the pediatrician. For now, Vero is not legally connected to their child in any way. Vero's husband has waited for their legal gender recognition procedure to be finalised for seven years and has kinship documents that do not match his gender expression.

“The Canadian regulations say that ‘families’ can come into the country. I’m worried how that would work with us, because we are married but I haven’t been able to adopt our son. My husband and son both have autism. I worry that we’ll have to go to different lines at the border control, be separated, and I won’t be able to be there and to help explain.” – Vero, Sweden



Vero's child playing with his shadow.

The lack of partnership and parenthood recognition can also prolong visa procedures for third-country nationals who are moving from one EU country to another:

“It takes longer for us to get visas because our marriage certificate features my partner’s old name. So, each time, this is an extra thing we have to worry about, and we have to present all these legal name change documents. By now we’re just used to it. It is what it is.”

– Anna, Ukraine/Russia/UK/Sweden

Trans parents' messages to the European Commission

Trans parents want the European Commission to:

“

Adjust to reality. We are real people, not just an interesting idea or food for thought. We live here, now. If freedom of movement is supposed to be a right for all, then it needs to work in practice for everyone – we all need to be included.” – Cal, Sweden

“Allow us to have a life. Nothing else. Just let us be who we are, have kids, have a normal life.” – Yanis, Romania/UK

“Help create more trans visibility and raise awareness in society. Most hate comes from fear of the unknown. We don’t have to be portrayed like heroes, just as people. It would make our lives easier.” – Mark

“Really crack down on anti-LGBT laws that are making our lives miserable, especially across Eastern Europe. Don’t let people trample over other people because of their misbeliefs.” – Gabriella, Bulgaria

“You are moving in the right direction, but you need to move faster and be louder. Our rights are not a given, especially in the UK, so don’t be naive. We need you. Don’t abandon minorities, please.” – Freddy, UK

“Ensure that children are protected from discrimination in all areas of life that affects them, and that includes freedom of movement.”
– Jonathan, Belgium/Germany

Key recommendations to the European Commission

TGEU recommends the European Commission to:

- Ensure that the revised guidelines on free movement include trans parents, their spouses, “durable partners”, and children in their scope;
- Contribute to ensuring the exercise of free movement rights for all families, with a view to eliminating the specific barriers faced by trans parents and their children;
- Explore possible measures to support the mutual recognition of partnerships between Member States, with a view to ensuring that same-gender partners and trans partners are included;
- Propose a horizontal legislative initiative on the mutual recognition of parenthood between Member States that includes specific measures to facilitate the recognition of trans parents in their legal gender;
- Support Member States to put in place legal gender recognition legislation and procedures that are quick, easy, and accessible, based solely on self-determination, provide gender marker options for non-binary people, and extend gender recognition to kinship documents;
- Explore possible measures to support the mutual recognition of civil status documents, with a view to ensuring that legal gender recognition decisions are mutually recognised between Member States;
- Foster the exchange of best practice between the Member States on ensuring the right to freedom of movement to trans parents and their children, and provide reliable and comparable data in this area with FRA support;
- Make funding opportunities available, in particular through the ‘Citizens, Equality, Rights and Values’ programme and research funds, for trans-led projects on the topic of parenthood;
- When collecting data on marginalised LGBTIQ communities and developing specific initiatives to improve their socio-economic situation through the European Social Fund (ESF+), ensure that the perspective of trans parents is duly recognised with a view to minimising any barriers trans parents might face in their enjoyment of the freedom of movement;
- Monitor implementation of the EU cross-border healthcare directive with a view to ensuring that potential trans parents can make full use of healthcare services related to preservation of gametes, assisted reproduction, and birth.

