

**FBE General Congress: Bologna, Friday 18 May 2018**  
**Third panel: International Disputes and Comparative Aspects**

# **Beyond Brexit, beyond the traditional family: same-sex union and parenthood in England/Wales and beyond**

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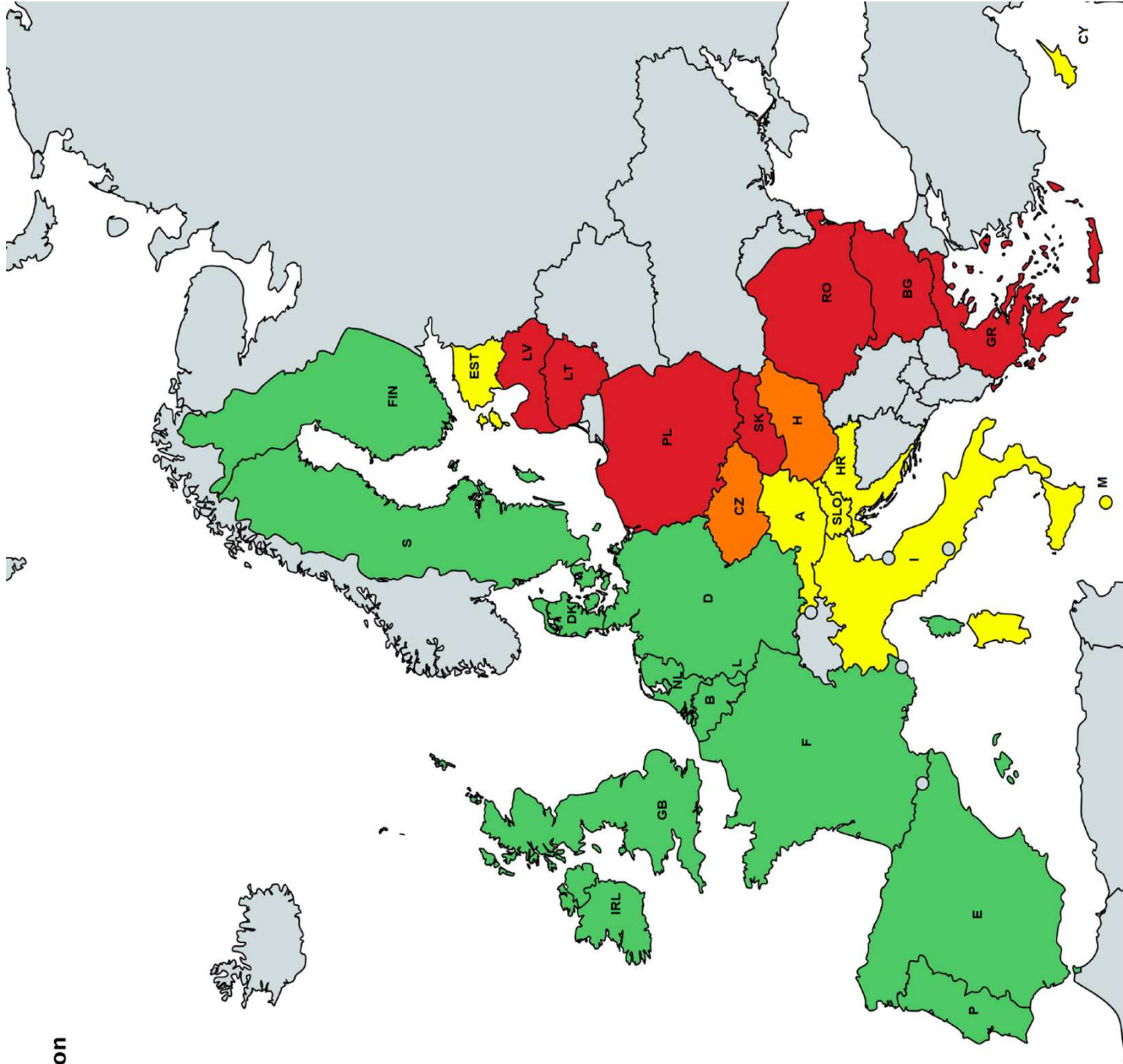
# Same-sex union: what is available in England/Wales?

- **2005** Civil partnership – granted by the Civil Partnership Act 2004 (decrease 85% since 2013)
- **2014** Marriage – granted by the Marriage (Same Sex Couples) Act 2013
- **Both** still available, but CP *not* to heterosexuals
- discrimination/differences?
- S/sex Adoption since 2005, IVF, Surrogacy
- **COMPARE MAINLAND EUROPE WEST/EAST ...**

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**Recognition of same-sex union within the EU**

- No legally recognised partnership, no adoption
- Civil union and step child adoption
- Marriage and full adoption
- Civil union only

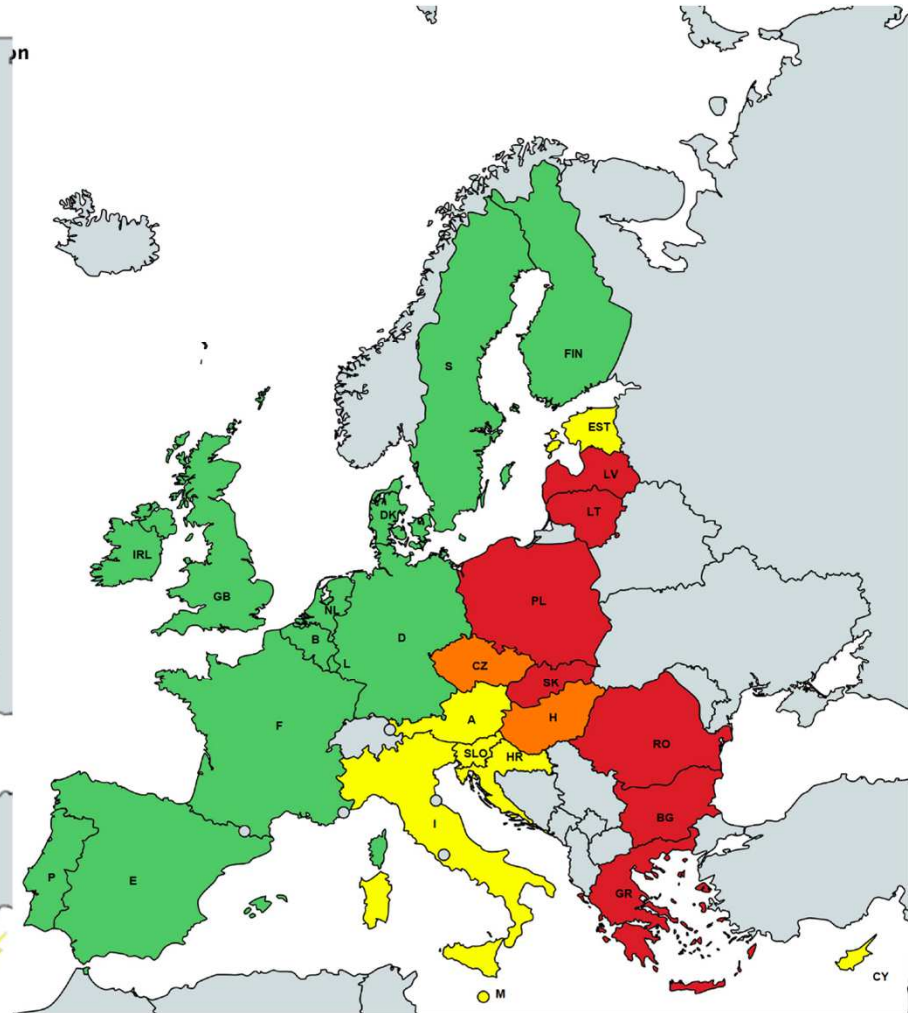
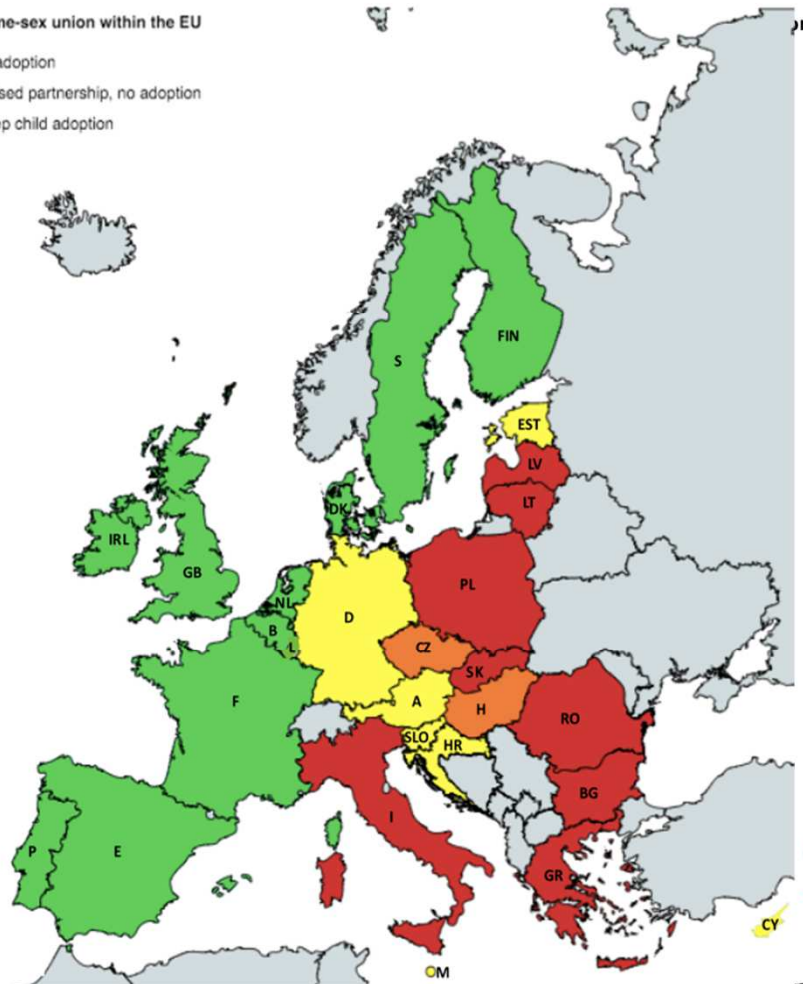


# PROGRESS: May 2016 to May 2018

*May 2016*

*October 2017*

- Recognition of same-sex union within the EU
- Marriage and full adoption
  - No legally recognised partnership, no adoption
  - Civil union and step child adoption
  - Civil union only



# European/ECtHR ground rules recap

- positive obligation to establish same sex protection framework: **Oliari v Italy** (18766/11) 21.10.2015 but
- No *obligation* to establish s-sex marriage, yet: **Schalk+Kopf v Austria** (301414/04) 3.6.2010,
- **X v Austria** (19010/07) 19.2.2013
- Discrimination/difference in treatment (esp sexuality)
  - viz **Gas + Dubois v Fr.** (25951/07) 15.3.2012
  - stepchild adoption reserved to marriage ok, even though indirect discrim.: pre-mg-for-all
  - cp **EB v Fr.**(43546/02) 22.1.2008: sgl lesb. adopter ok
  - cp **Vallianatos v Gr.**(29381/09) 7.11.2013: het civ ptr
- Why marriage is still relevant, exc. Malta!
- ECHR living instrument: never static

# Recent Developments

- Italy – (since 5.6.16) same-sex civil union and step-child adoption now available for same-sex couples after ECtHR condemnation in *Oliari* (above)
- Germany – (signed into law 20.7.17, in effect 1.10.17) – same-sex marriage **although** *software problems with German Government means that same-sex marriages cannot be formally registered until November 2018, in meanwhile same-sex couples have to register as opposite sex on central system!*
- Northern Ireland – still behind – two legal challenges to ban on same-sex marriage dismissed in Aug. 2017

# Marriage as “gold standard”?

- marriage brings all parental rights
- why marriage is still relevant (exc. in Malta)
- West/East progression/regression: map
- Enablers: 2001 NL, 2003 B, 2005 E, 2009 S, 2010 P, 2012 DK, 2013 F, 2014 England Wales Scotland, 2015 Finland Ireland Luxembourg
- Constitutional *bans* on s-sex marriage: Bulgar 1991, LT 1992, Poland 1997, Latvia 2006, Hungary 2011, Croatia 2013, Romania 2013, Slovakia 2014
- Compare Matrimonial Property Regimes Regulation + Registered Partnership Reg: W/E divide again



# English\* parenthood options for same-sex couples

- **ADOPTION** – same-sex couples have had full adoption rights in England and Wales\* since 2005
- **IVF** – available to single women and female same-sex couples in England and Wales
- **SURROGACY** – and ?individual autonomy



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The logo for QEB, featuring the letters 'Q', 'E', and 'B' in a dark blue, serif font. The 'Q' is stylized with a long, flowing tail that curves under the 'E' and 'B'.