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EU law and the rights of rainbow families to move freely between EU Member States

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ABSTRACT

EU citizens and – through them – certain of their family members, derive from EU law the right to move between EU Member States and reside in the Member State of their choice. When rainbow families (i.e. families comprised of a same-sex couple and their child[ren]) exercise this right and move to a Member State which does not provide legal recognition to same-sex couples and/or their children, they are faced with the possibility that that Member State will refuse to legally recognise the familial ties among all or some members of the family, as these have been legally established elsewhere. This means that such families are not treated in the same way as the typical nuclear family which has an opposite-sex married couple with children as its basis: the familial links among the members of a nuclear family are only very rarely – if ever – legally contested. The question that this chapter aims to explore, therefore, is whether the severance in the host Member State of the legal ties among the members of rainbow families amounts to a breach of EU law. In particular, the chapter will focus on the parent-child relationship and will examine whether the refusal of the host Member State to legally recognise the relationship between a child and one or both of his/her same-sex parents when the family moves to its territory amounts to a breach of EU law.