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NEW DRAFT EU CONSTITUTIONAL TREATY

After months of negotiations, EU Heads of State and Governments reached a historic agreement on the EU's first ever Constitution on 18 June. The final text preserves the great majority of the draft text proposed by the Convention but the price of the agreement was the entrenchment of unanimity in some areas such as tax, foreign and security policy and in any future review of the Constitution.

From an LGBT perspective the key elements are:

Non-discrimination and equality are included both in the **values and the objectives** (PART I)

The draft constitution includes the **Charter of Fundamental Rights of the Union** (PART II)

Article III-3 (new) – horizontal clause: *“In defining and implementing the policies and activities referred to in this Part, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”*

Article III-8 (ex Article 13 TEC) – legislation requires unanimity in Council:

1. *Without prejudice to the other provisions of the Constitution and within the limits of the powers assigned by it to the Union, a European law or framework law of the Council may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council shall act unanimously after obtaining the consent of the European Parliament.*
2. *By way of derogation from paragraph 1, European laws or framework laws may establish basic principles for Union incentive measures and define such incentive measures, to support action taken by Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, excluding any harmonisation of their laws and regulations.”*

The Constitution is now due to be ratified by the 25 Member States over the next two years. With referenda due to take place in at least 9 member states (Denmark, Ireland, the UK and Luxembourg will hold a referendum on the Constitution; Poland, Spain, the Netherlands, Belgium, France and others could do so as well), the entire project is still highly vulnerable to rejection if not ratified in any one Member State.

EUROPEAN COMMISSION – ANNUAL REPORT 2004 ON EQUALITY AND NON-DISCRIMINATION

The second Annual report on equality and non-discrimination in the EU reports on new rights to legal protection against discrimination which have been introduced across the EU during the last year. It describes efforts that have been made to raise awareness about these new rights and to promote the positive benefits of diversity.

http://europa.eu.int/comm/employment_social/news/2004/jul/annualrep2004_en.pdf

COMMISSION GOES TO THE EUROPEAN COURT OF JUSTICE TO ENFORCE EU ANTI-DISCRIMINATION LAW

The European Commission has announced that it is taking legal action against six Member States that have failed to transpose two antidiscrimination Directives. The Commission will refer Austria, Germany, Finland, Greece, and Luxembourg to the European Court of Justice.

Infringement proceedings have also been launched against the same five Member States and Belgium for having failed to transpose fully the Employment Framework Directive. The Commission's decision means that the Member States in question have two months to reply to a 'Reasoned Opinion' from the Commission. Following that, they could then face the next step of referral to the European Court of Justice. For those Member States, which have already adopted legislation transposing the Directives, the Commission is now in the process of examining the national laws in question to ensure they conform in full with the provisions of EU law.

http://europa.eu.int/comm/employment_social/news/2004/jul/ip_04_947_en.pdf

NEW PARTNERSHIP LAW VOTED IN LUXEMBOURG

By *FRANÇOIS DIDERICH*
President of Rosa Lëtzebuerg

On 12 May 2004 the Luxembourg Parliament finally voted on the draft *bill on the legal effects of certain partnerships*. It will probably enter into force on 1 September, depending on the timing of the publication in the *Mémorial*, the official bulletin.

In line with their coalition programme, the two coalition partners – the Christian Democrats (CSV) and the Liberals (DP) – both voted in favour of the partnership bill. The two main opposition parties (the Greens and the Socialists), however, abstained from the vote, considering the bill too restrictive. Both tabled alternative proposals on opening up marriage to same-sex couples. These, however, were rejected by the government. Interestingly, the Liberals support same-sex marriage in their election programme for national elections to be held on 13 June 2004.

Thus, the CSV remains the only major political party opposed. The new partnership law is designed to propose an alternative to hetero-sexual couples who do not want to marry and a new possibility for homosexual couples who cannot marry. It has been largely inspired by the French *PaCS*, but with fewer formalities, a private agreement on the patrimonial regime being an option. The law determines a minimum set of rules of solidarity and responsibilities between the partners while allowing social protection to the non-working partner and fiscal deduction possibilities.

No rights concerning children are included in the new law, as are no regulations concerning recognition of foreign partnerships or foreign same-sex marriages.

GERMANY PROPOSES ADOPTION RIGHTS

By DPA

Three years after it moved to bring gay relationships into line with married couples, Germany's centre-left coalition government has stepped up efforts to improve homosexual rights.

This week Chancellor Gerhard Schroeder's Social Democrat-led Government unveiled legislation that would permit a homosexual to co-adopt the child of a gay partner.

The legislation, which faces an uphill battle for enactment in the conservative-controlled upper house of parliament, stops short of allowing gay couples to adopt children.

Instead, it would permit a parent who already has a child to offer that child for "co-adoption" by his or her gay partner. The gay partnership would have to be registered with local authorities under terms of a 2001 law granting homosexual couples limited legal rights.

The new legislation would give gay parents equal rights and responsibilities in raising children, said Justice Minister Brigitte Zypries.

"But it must be stressed that this is not a blank cheque for gays to adopt children," said Greens MP Volker Beck, who co-sponsored the bill. "It does however permit children who are the offspring of one partner to be co-adopted by the other gay partner in the relationship. The best interests of the child are always the priority."

Conservatives vowed to prevent the legislation from becoming law.

"This is an assault on family values and Christian traditions," said Christian Social Union (CSU) head Edmund Stoiber.

ANTI-DISCRIMINATION CLAUSE IN PORTUGAL'S CONSTITUTION

Portugal is the first country in Europe and (after Ecuador, Fiji and South Africa) the fourth worldwide to explicitly ban sexual orientation discrimination by constitutional legislation.

On July 24, 2004, Constitutional Law no. 1/2004, amending (for the sixth time) the Portuguese Constitution, was published ("Diário da República" [official gazette], no. 173, of July 24, 2004). It comes into force, on the mainland, on July 31, 2004, and on the Azores and Madeira Regions on August 10, 2004. Therefore, article 13 of the Portuguese Constitution now officially states that:

- «1. All citizens have the same social rank and are equal before the law.
2. No one shall be privileged or favoured, or discriminated against, or deprived of any right or exempted from any duty, by reason of his or her ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation, social circumstances or sexual orientation.»

NEW DIRECTIVE ON FREE MOVEMENT

By Mark Bell

The final version of the new Directive on Free Movement of EU Citizens is now available at:

http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_229/l_22920040629en00350048.pdf

This provides a limited right for registered partners to move between EU states which treat registered partnerships as equivalent to marriage in their domestic legislation. The principal rights to unlimited free movement remain restricted to married couples (the Directive does not specify if this includes same-sex married couples).

COURT VOIDS FRANCE'S FIRST GAY MARRIAGE

By GaiPar

France's first gay marriage -- performed last month in the Southwest City of Bordeaux -- was officially declared void by a court here Tuesday, but the two homosexual men involved immediately said they would appeal the ruling. The judges sided with the conservative government by deciding that the June 5 wedding was not valid and declared "null" the marriage between shopkeeper Bertrand Charpentier, 31, and male nurse Stephane Chapin, 33.

"A difference of sexes is a condition of marriage under French law," the verdict read, rejecting the couple's argument that such a provision is not expressly spelt out in the relevant statute. It explained that, in the view of the court, "the traditional function of marriage (is) commonly considered as constituting the foundation of a family." Charpentier and Chapin vowed to appeal the ruling all the way to the European Court of Human Rights if necessary. "We will take this right to the end," Charpentier said after the Bordeaux court's verdict. The couple's lawyer, Emmanuel Pierrat said: "We are going to appeal, and Bertrand and Stephane are staying married." He added that "we are confident that the court of appeal or the court of cassation (higher appeals court) or the European Court of Human Rights will have a more progressive view of what makes a family." The couple asserted that pending the outcome of the appeal, their marriage stood. Chapin said he and his partner expected the Tuesday's ruling, but that "in any case, we're still married and we'll see what happens later." The mayor of the Bordeaux suburb of Bègles who officiated at the ceremony, Noel Mamère, who is also a leading member of the opposition Greens party, was suspended from his municipal post for a month for defying a government order to drop the wedding. He, too, said he was not surprised by the ruling, but added: "The debate in society has taken place and I can only welcome that." A hearing in the European Court of Human Rights would widen the issue, he said, "because the judges... would have to take into account the state of law in other countries of the (European) Union such as

Belgium, Denmark, Sweden and Spain. Logically, they'd have to align themselves with those countries and therefore validate the marriage." Charpentier and Chapin's union has already generated intense attention in France, where a civil contract known as PACS has since 1999 permitted couples, including same-sex ones, to attain some of the legal rights of marriage, but not others, notably those dealing with taxes and inheritance. The issue was at the forefront of a Gay Pride march through Paris late last month, when some of the 500,000 participants dressed as brides and grooms to demand recognition of gay marriages. Although homosexual partnerships are recognised to varying degrees in several European countries, Belgium and the Netherlands are the only two EU members so far that recognise same-sex marriages. Prime Minister Jean-Pierre Raffarin said in a meeting with gay rights groups in June that he was considering setting up a commission to study marriage and adoption, but warned it would not lead to a reform of French institutions. His government has taken steps in favour of homosexuals in other areas, notably by approving a parliamentary bill which would punish homophobic attacks or insults with jail time and a fine of up to 45,000 euros (54,000 dollars). The bill, which puts sexist and anti-gay remarks on the same criminal level as words encouraging racism or anti-Semitism, was conceived in the wake of a vicious attack on a homosexual man who was badly burned earlier this year.