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<http://www.steff.suite.dk/ilgaeur.htm>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at

<http://www.steff.suite.dk/survey.htm>

A description of partnership laws and other laws regarding same-sex partners can be found at

<http://www.steff.suite.dk/partner.htm>

Consolidated versions of the basic treaties of the European Union including amendments from the Amsterdam Treaty can be found at this web-site: <http://ue.eu.int/Amsterdam/en/traiteco/en1.htm>

NEW EU DIRECTIVES ON ANTI-DISCRIMINATION PROMISED

by Mark Bell and Kurt Krickler.

'Anti-discrimination: the way forward' was the title for a conference organised by DGV of the European Commission, held in Vienna, 3-4 December. Several delegates from various lesbian/gay organisations attended and sexual orientation discrimination was raised in all of the conference's workshops and in the final plenary. The main focus of discussion was how to proceed with the implementation of the new Article 13 in the EC Treaty which allows the EU to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. The breadth of the expression 'appropriate action' allows for a wide range of implementing measures, from non-binding recommendations and action plans, to binding legislation creating new individual rights to non-discrimination.

Discussion revealed divisions within and between all the groups mentioned in Article 13 as to the best means to proceed. On the one hand, certain delegates felt that the specific needs of each group could not be incorporated in common measures and it would be better to introduce separate measures. On the other, many individuals expressed concerns that separate provision for each group would inevitably lead to unequal levels of protection. In this regard, an innovative suggestion was the idea for a declaration from the Commission (and possibly the other institutions) expressing a commitment that all grounds of discrimination included in Article 13 would receive equal priority.

The response of the Commission tries to build a compromise between these two perspectives. Commissioner Flynn announced a "package" of mainly three things:

1. A framework directive as a general basis including all grounds of discrimination mentioned in Article 13 but only for the area of employment (being the main guarantee for social inclusion).
2. Directive on racial discrimination to cover also other areas such as social insurance, health, education, sports (but this is nothing new - that was already promised in the Commission's Action Plan against Racism, as you know - see Mark Bell's contribution in The 1998 ILGA-Europe report, Equality for lesbians and gay men).
3. Action programmes (together with the member states and the civil society) - building partnership and

knowledge; new community initiatives, especially in the structural funds.

It may also be interesting what Odile Quintin said in her statement (she is the deputy acting director general of DG V) - it was a little cautious - but maybe it's just a realistic view. She stressed the "soft" tools such as programmes, good practice, referred to the experience of the women, also stressed subsidiarity, proportionality, flexibility and respect of the culture of the member states (which does not sound really promising in this context). She also stressed the diversity of situations and only mentioned women, race and disability.

Nonetheless, the package of measures announced by Commissioner Flynn represents a truly ambitious programme of law reform and, if achieved, would mark a considerable extension in European anti-discrimination law. The requirement of unanimity in the Council of Ministers though ensures that no-one should underestimate the great difficulties which will be experienced in translating these proposals into legislation. Whilst there will be understandable disappointment amongst lesbians and gay men (and other groups) that they have not been accorded the same priority as persons vulnerable to racial discrimination, the proposal for a general directive on employment discrimination is a good foundation for future lobbying.

In particular, ILGA-Europe and its supporters in the Member States will need to clarify exactly what they want from new legislation on employment discrimination. For example, the Lisa Grant case together with the long-standing work of EGALITE highlight the need for protection against employment discrimination to extend to recognition by employers of same-sex partners. As the recent changes to the EC Staff Regulations demonstrate, it is quite possible for anti-discrimination laws to still leave the issue of partners' rights unaddressed.

More generally, ILGA-Europe needs to consider how it will approach the directive proposed on racial discrimination. Should lesbians and gay men (together with other groups?) seek to persuade the Commission to also include them within this proposal, or should they accept the parameters of the debate as set by the Commission and instead focus on producing concrete proposals for an alternative directive specifically dealing with sexual orientation discrimination? Arguably, whichever approach is adopted, it will be more effective if it is one shared and supported by the other groups included in Article 13. The joint work of the European Parliament InterGroups provides a good model for such cooperation, and continued dialogue seems the best basis on which to proceed.

EU COMMISSION PROPOSES PROHIBITION OF SEXUAL ORIENTATION DISCRIMINATION

By Philipp Raether

On July 22, 1998 the Commission of the European Communities proposed several amendments to the Council Regulation (EEC) No 1612/68 on the freedom of movement for workers within the European Community. The proposal's document number is: COM(1998) 394 final.

One of the amendments is to insert the new article 1a to the Regulation. The text of the proposed article 1a is:

"Within the scope of this Regulation, all discrimination on grounds of sex, racial or ethnic origin, religion, belief, disability, age or sexual orientation shall be prohibited."

The Commission explains the proposal of the new article as followed:

"Europe's cultural, social, religious and ethnic diversity suggests that the protection currently offered against nationality-based discrimination is not enough to allow effective freedom of movement. (...) This new article is also to be seen as a contribution to the development of Community law, which will contain, when the Treaty of Amsterdam enters into force, a new clause on non-discrimination (Article 13)."

But the new article 13 of the European Union Treaty will not outlaw discrimination, it will only empower the EU introduce measures to prohibit discrimination on the grounds of sex, age, disability, sexual orientation etc. And it is questionable if non-discrimination measures will ever be introduced. Consequently the new proposed article 1a of the Council Regulation (EEC) No 1612/68 on the freedom of movement for workers within the European Community is a relatively big step.

The proposed article will outlaw discrimination of workers who left their EU member state in order to work in another EU member state on the grounds of sexual orientation etc.

Unfortunately it is uncertain if the amendments will ever become law because the European Parliament and the Council will have to pass the amendments (they are the law-makers). In the past the Council, which consists of the members are the governments of the member states, did not except amendments of this particular regulation because it did not want to extend the freedom of movement for workers and their families. Also according to the new proposals more family members (the age limit of descendents who

have a right of residence will be abolished) will be entitled to come and stay in the other member state where the worker moved to, so one may fear that the Council will be reluctant to pass these amendments. But it is to hope that the amendments will become law.

EUROPEAN PARLIAMENT REAFFIRMS GAY AND LESBIAN RIGHTS AS HUMAN RIGHTS

ILGA-Europe Press release

On 17 December 1998, the European Parliament adopted its report and resolution on respect for human rights in the European Union for the year 1997.

The report was drafted by conservative French MEP Anne-Marie Schaffner. Her draft resolution made only one minor reference to gay and lesbian issues recalling that no one should suffer as a result of belonging, inter alia, to a sexual minority.

Before the draft report was debated in the EP Committee on Civil Liberties and Internal Affairs on 24 November, ILGA-Europe wrote to MEPs of various political groups and proposed some amendments to be tabled. The Green group and the European Radical Alliance did so, and some of the proposed amendments were already adopted in the Committee, for instance confirming that the EP would not accept new members which do not respect the human rights of homosexuals, or welcoming the fact that some member states have adopted legal provisions for non-traditional partnerships, and calling on member states to equalise their age of consent provisions for all sexual orientations. But a series of other amendments failed in the Committee.

ILGA-Europe considered this still to be rather behind the texts voted in previous annual human rights reports and, therefore, wrote again to various MEPs to ask them to retable the proposed amendments for the plenary session. Various political groups, including the European United Left/Nordic Green Left, also tabled their own amendments. Finally, the plenary adopted an amendment which explicitly named those member states which have not yet equalised their age of consent provisions, e.g. Austria, Greece, Portugal and the United Kingdom - which was one of ILGA-Europe's proposal - and called on them to repeal these.

More information is available from:

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Here the full text of the gay and lesbian relevant items of the 'Resolution on respect for human rights in the European Union (1997)', adopted on 17 December 1998, Doc. A4-0468/98:

The European Parliament,

10. Stresses that European Union accession is out of the question for states which do not respect fundamental human rights, and calls on the Commission and Council to lay particular stress on the rights of minorities (ethnic, linguistic, religious, homosexual etc.) at the time of enlargement negotiations;

51. Welcomes the fact that the draft Treaty of Amsterdam includes provisions (Articles 12 and 13) making it possible to combat all forms of discrimination based on sex, race, nationality, ethnic origin, age, religion or belief, or sexual orientation;

52. Welcomes the fact that certain Member States, alongside their legislation on civil or religious marriage, have introduced legislative provisions for relationships between individuals who wish to establish a personal link recognised in law;

53. Calls on those Member States which have not yet done so to eliminate all discrimination against homosexuals; calls on Austria, Greece, Portugal and the United Kingdom in particular to abolish the difference in the age of consent for homosexuals and heterosexuals;

54. Calls once again for the elimination of all unfair treatment of homosexuals and lesbians, particularly as regards the age of consent, civil rights, the right to work, social and economic rights, etc.;

73. Recalls that no one should be subject to prejudice or discrimination as a result of belonging to a national, linguistic, religious or ethnic minority, or because of his or her sex, or because of his or her political, religious or philosophical opinions or sexual orientation, provided that the latter neither involve nor encourage violations of human rights, and of the rights of women and children in particular;

82. Asks that the specific situation of certain groups of particularly vulnerable prisoners be taken into account, namely minors, women, immigrants, ethnic minorities, homosexuals and persons suffering from illnesses; urges the Member States to adopt measures to ensure that these prisoners receive individual treatment, taking each of their special situations into account;

(The full text of the Resolution can be found on the website of the European Parliament:
<http://www.europarl.eu.int>)

THE PRESENT SITUATION OF PARTNERSHIP REGULATIONS IN BELGIUM

by Anke Hintjens (Federatie Werkgroepen Homosexualiteit, Gent, Belgium), translated by Alan Rieke

Summary

At present, nothing for GLB people has so far been fundamentally settled in Belgium. A few half-measures have indeed already been adopted, and a lot of proposals are under discussion. Here is an attempt to provide an overview.

A lot of people think that much has already been decided because they saw Tom Lanoye and his partner get "married" at the Antwerp Town Hall. What actually occurred on that occasion was a celebration organised around the official registration of a contract that both partners had signed in the presence of a Notary Public. In this way, each partner's obligations with respect to the other can be formally established. How much of the household expenditure each of them is committed to bearing, who owns what property, who is liable to pay how much, if anything, to the other partner if (s)he decides to put an end to the relationship. But such a contract does not give rise to any obligations with respect to third parties (eg their family, employer, or the public authorities).

Since October 1996, every municipality is obliged, at the request of any resident, to record in its Register of Inhabitants that (s)he is bound by such a contract of co-habitation. This obligation was adopted with a view to further developments in this context. However, so far this registration has no impact. In some municipalities, like Antwerp, registration can also be accompanied by a suitable ceremony in the Town Hall. Other municipalities (like Leuven) explicitly forbid such a ceremony.

At the end of October 1998, the Belgian Parliament approved the text of a Bill intended to create the provisions for "statutory cohabitation". The Cabinet has not yet decided when this law should come into force, because this depends on the tax rates for married couples being reduced.

People can get themselves registered as 'co-habiting' by their local authority's Registrar, and they will then be covered by the law when it comes into effect. The law settles a certain number of questions, most of which arise when the partnership is terminated. For example, one partner cannot simply kick the other out of their home when the partnership breaks down.

Property that cannot clearly be shown to belong to one of the partners is deemed (for tax purposes) to be jointly owned, just as when one of them dies after making a will in favour of the other.

Co-habitants are jointly responsible for contributing to the household living expenses of living together, in proportion to their abilities, and are also principally responsible for any debts incurred in this context, including those for any children that they are bringing up.

This law goes as far as possible in the eyes of conservatives who have been opposed to any sort of advantage for co-habitants. It amounts to granting them a legal status, which can be regarded as a victory. On the other hand, in practice it provides them with very little more than symbolic benefits.

Inheritance taxes

If your partner leaves you a share of his estate as his or her registered co-habitant, inheritance tax is payable at a lower rate than would otherwise be the case. Indeed, in Flanders (but not in Brussels or Wallonia), there have been separate rates of inheritance taxes for registered co-habitants since January 1998. Previously, you were considered to be unrelated to your late partner, and tax would have to be paid at between 45 and 65% on whatever bequest you received. Nowadays, the rates applicable to a co-habiting partner are between 10 and 50%. A considerable improvement, but still not complete equality with the situation of a married couple, where the widow(er) is liable to pay tax at a rate of between 3 and 27%. For those GLB people who still cannot marry their partner, this still amounts to discrimination.

Income tax

This brings us to the matter of income tax. This is quite a substantial tax, and the rate at which it is currently payable depends on whether one is married or not. In some cases this is advantageous, in others it is not. Where both husband and wife have incomes, they pay more tax than if they were unmarried. But if either of them is unemployed and is economically dependent on his or her partner, the latter is entitled to pay less tax than would otherwise be the case. And unmarried partners, such as same-sex couples, cannot take advantage of this provision. The fact that tax law treats the members of such couples as being unrelated can in some cases result in serious problems. For example, in a case where one partner was self-employed and declared an income of 20 thousand francs a month after deducting the household expenses while he was living together with a friend, three years later he had to pay the tax authorities a fine of 85 thousand francs per year for each year

because they considered that he had made a false declaration.

The income tax provisions are at least consistent, but unfair. Those concerning Social Security are not even consistent. In some cases co-habitation is recognised; in others it is disregarded. And sometimes they even differentiate between unmarried couples of the same or opposite sexes.

And where an employee has a co-habiting partner, his or her employer does not have to take that into account in cases where his or her spouse would be (eg in granting leave, private medical insurance, life-insurance or reimbursement of travel costs). However, there are no legal barriers preventing an employer from doing so.

Parental rights

There are currently no legal provisions applicable to GLB couples who are jointly bringing up children. The Bill on statutory co-habitation now deals with the joint responsibility for the cost of the education. The second parent thus has no rights, only duties. For all issues relating the education of the children (school, inheritance, decisions,...) the second partner is still not recognised."

Non-EU Partners

If you are (un)lucky enough to have somebody who comes from outside the European Union as your partner, then since November 1997 you have been able to obtain a residence permit for your partner. You have to be able to show that the relationship exists, that you have an income of at least 35 thousand francs (about \$US 1000) per month, and that you guarantee (s)he will not be a burden on public funds. You have to produce a large number of official documents - conditions that don't apply to married couples. A number of same-sex couples have already obtained permission to live together in Belgium on this basis.

But this permission depends on the relationship - if it comes to an end within the first three years, then the partner from outside the EU loses his or her right to live in Belgium. And even while (s)he has the right to live in Belgium on this basis, which was introduced by the former Minister Vande Lanotte, (s)he is not allowed to take up employment. The FWH is trying to persuade the Ministry of Employment to correct this unsatisfactory system as quickly as possible. A solution is apparently in prospect.

A good definitive regulation?

The FWH considers that real equality requires that the institution of marriage should be opened to same-sex couples, and that those people who don't want to

get married should have the possibility of settling certain matters through a recognised status of statutory cohabitation. This status would be open to both same-sex and opposite-sex couples.

At present, it appears politically difficult to achieve both these solutions. What is currently proposed is the "Statutory co-habitation" Bill. This is a draft law that would create a separate legal status for same-sex couples. It would entitle those couples who acquired this status to enjoy most of the advantages of marriage except for those concerning parenting and adoption. Not really very much to ask, but [apparently] too much for the conservatives in this country.

SLOVENIA BANS WORKPLACE DISCRIMINATION

By Rex Wockner

Slovenia banned discrimination based on sexual orientation in the workplace Oct. 24.

Article 6 of the Law On Work Relations now reads: "An employer may not put an employment-seeker in an unequal position because of his/her race, skin color, gender, age, medical condition, religious, political or other belief, membership in a union, national or social origin, family status, wealth status, sexual orientation or other personal circumstance."

FRENCH NATIONAL ASSEMBLY OKs PARTNER BILL

By Rex Wockner

France's National Assembly passed a partnership-registration measure Dec. 9 that grants unmarried couples -- gay and straight, romantic or not -- spousal rights in areas such as inheritance, housing, taxation, workplace benefits, social security and social-welfare programs.

The vote was 316-249. The proposal will move to the Senate next spring then return to the lower house before predicted enactment in late 1999.

The bill was controversial from its inception and consumed over 70 hours of Assembly floor time as conservatives tried every approach imaginable to derail it. They were ultimately doomed to failure, however, since the measure is supported by Prime Minister Lionel Jospin's ruling Socialist Party, which holds 320 of the Assembly's 577 seats, and by the Communists and the Greens.

UNITED NATIONS HUMAN RIGHTS COMMITTEE REQUESTS AUSTRIA TO REPEAL ARTICLE 209

by Kurt Krickler, HOSI Wien

On 30 October 1998, the UN Human Rights Committee considered Austria's 3rd periodical report (according to Article 40 of the International Covenant on Civil and Political Rights) on the progress made in guaranteeing full human rights and implementing the ICCPR. In the debates, the representatives of the Austrian government were also questioned on the discriminatory age of consent provision in the penal code (Article 209) by some of the committee members. In September 1998, HOSI Wien had submitted an "alternative" report to the Committee in Geneva providing information on the human rights violations against gay men in Austria.

On 5 November 1998, the Committee adopted its concluding observations (published on 11 November), and the discrimination against homosexuals was mentioned as one of thirteen "principal subjects of concern and recommendations": "The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions." (para.13)

PS: General remark: These periodic reports which UN member states have to submit to the UNHR Committee on a periodic basis according to Article 40 of the ICCPR are a useful opportunity to denounce human rights violations against gays, lesbians and transgenders in countries where such violations occur. The dates for the submission of reports and the full texts of reports of individual countries can be found on the United Nations Human Rights website: www.unhchr.ch

UK, GREAT BRITAIN AND NORTHERN IRELAND

Corrections to EuroLetters 61 and 62

Thanks to P A MagLochlainn from NIGRA we have been aware of two mistakes in previous EuroLetters:

In Euroletter No 61, the Stonewall report **FIRST STEP TO EQUALISE AGE ON CONSENT IN UK**, paragraph 1, has "homosexual sex at 16". This should of course read "homosexual sex at 16 in Great Britain, and at 17 in Northern Ireland."

This mistake is repeated in Euroletter No 62, Rex Wockner's article **HOUSE OF LORDS STALLS**

AGE-OF-CONSENT CHANGE, paragraph 1 - and should be amended accordingly.

It also occurs in the same Euroletter, in the article UK GOVERNMENT PROMISES GAY RIGHTS REFORM NEXT YEAR, paragraph 1 - and should again be amended as above.

The exact situation is that the age of consent for straight people is 17 in the kingdom of Northern Ireland, whereas in the other three countries of the United Kingdom (England, Scotland and Wales) it is 16. When the whole United Kingdom achieves equality with heterosexuals, therefore, Northern Ireland will have equality at age 17, whereas Great Britain will have equality at 16.