Research Report

Leiden Model United Nations 2015
~ fresh ideas, new solutions ~

Forum: *European Council*
Issue: *Same sex legal pair bonds and the free movement of goods, services, labour and capital throughout the European Union*

Position: *President*

Introduction

Over the course of the last few years, many demonstrations have been held in favour and against gay rights –that being the rights of homosexuals. Especially in the last decade, same sex legal pair bonds –or simply gay marriage- have been a topic of great interest. Several nations around the world have legalized gay marriage, and in the present, several governments are discussing whether or not to legalize gay marriage as well.

However, although many governments have voted in favour of marriage equality –be it through referenda or not-, legislation prevents the governments from implementing laws to legalize gay marriage right away. Major changes like that take time.

In much the same way, another problem has arisen. What is the legal status of a married same sex couple that moves to a country where gay marriage is not possible? Will they be able to adopt a child together and both be assigned as a legal caretaker? Will they be able to make legal decisions for their partner? In short: will they have the same rights as they do in the country where they married?

Definition of Key Terms

Gay
"Gay" originally meant "light-hearted", "carefree" or "joyful". The association with "homosexual" came around the 1920's. One theory is that the homosexual sense is an outgrowth of an earlier sense of gay meaning addicted to pleasure, self-indulgent or immoral.
The word "gay" is mostly associated with men that are emotionally/sexually attracted to men, but it can be used to refer generally to lesbian, gay and bisexual people.

LGBT
LGBT stands for "Lesbian, Gay, Bisexual and Transgender" and is a term that is commonly used when referring to those who are not heterosexual.

Sexual orientation
Sexual Orientation refers to an enduring pattern of emotional, romantic and/or sexual attractions to men, women or both sexes.

Legal pair bond
A legal pair bond is the bond between two people that grants the participating partners mutual conjugal rights and restrictions by the law. One could compare it with legal marriage, as opposed to religious or social marriage, which does not grant any legal rights.

General Overview

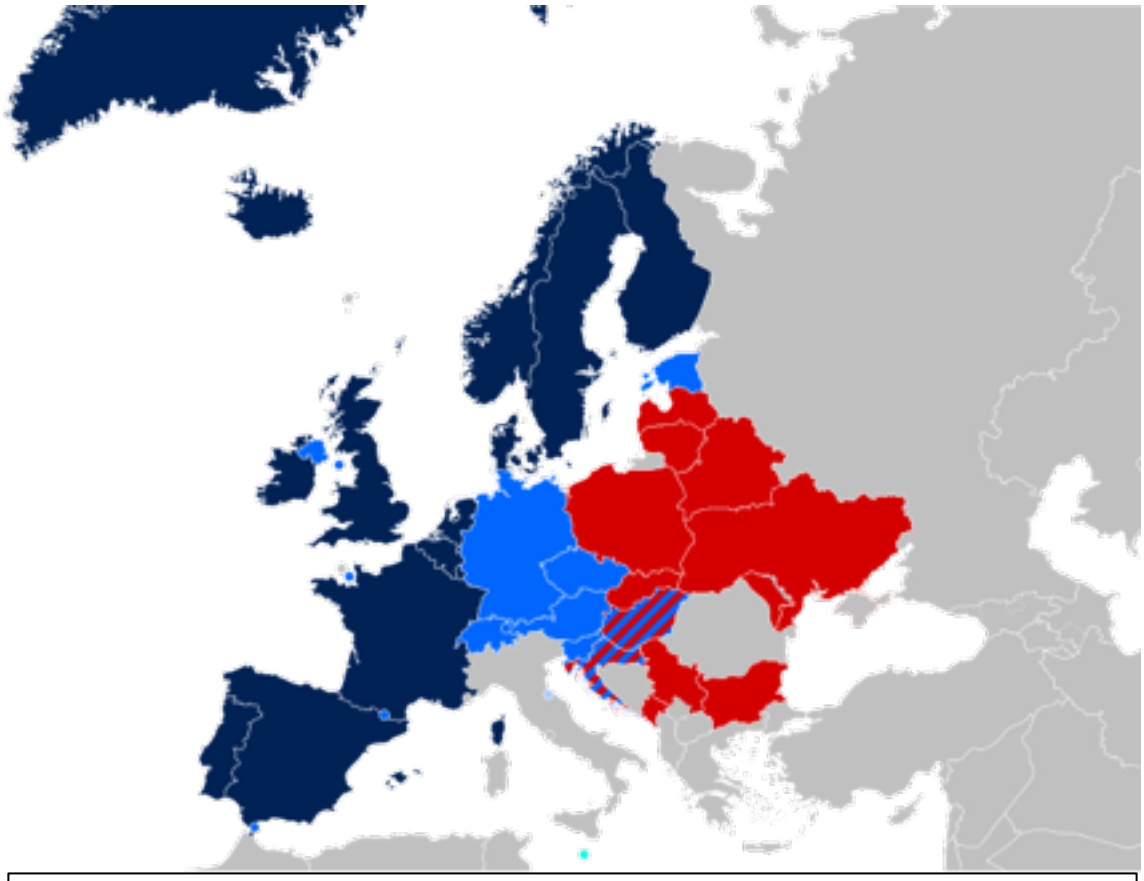
Free movement of workers is a fundamental principle of the Treaty, stated in Article 45 of the Treaty on the Functioning of the European Union. EU citizens are entitled to look for a job in another EU country, work there without needing a work permit, reside in that nation for the purpose of working there and even after employment has finished and enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages. EU nationals may also have certain types of health and social security coverage transferred to the country in which they go seek work.

When an EU citizen is working abroad in another EU country, their family members also have the right to reside and work in that country, regardless of their nationality. They do not need a work permit to work, even if they are non-EU nationals. They also have the right to equal treatment, including access to all social and tax advantages. However, what happens to married same-sex couples comprised of at least one EU citizen, who move between member states? If they move to a member state which has not opened same-sex marriage to its own nationals, do they lose their status as a married couple, and with it, the right to move and reside to the host state together as a couple? Also, once they are within that nation's territory, are they not treated as a married couple for all legal purposes and, hence, are they refused benefits and advantages that are only available to married couples? The answer is not entirely clear, and that is the issue that needs to be addressed.

The reason behind the opaqueness is that the EU legislation which makes provision for the rights of migrating EU citizens, uses the gender- and sexual orientation-neutral term 'spouse', without clarifying that this term refers to both same-sex and opposite-sex spouses. It has thus been read by some member states as a license to refuge to recognise same-sex marriages contracted in other member states.
The image below is a rough map of the standards of European countries.

A restriction on the exercise of free movement is likely to emerge from the fact that a same-sex married couple will lose its status or will have its status converted into a registered partnership –and thus with less rights. Apart from the hurt feelings that such a loss of status will cause, not being recognised as a married couple throws many obstacles on their path. For instance, hospital visitation rights or pensions, and tax, social or other advantages –such as both having the legal status of caretaker of a child-, which, under national law, are only available to married couples will not be granted to the spouses.

The European Union cannot force member states to open marriage to same-sex couples, let alone non-EU European nations. Thus, a solution needs to be found and the nations of the European Council should resolve this issue together, as there is no other way in which this problem can be battled.



Laws regarding same-sex partnerships in Europe:
Marriage | Foreign marriages recognized | Other type of partnership | Unregistered cohabitation | Unrecognized | Constitution limits marriage to same-sex couples.
Wikipedia

Major Parties Involved

Denmark

Denmark was the first country, in 1989, to allow same-sex couples to form "registered partnerships", giving them a status and benefits similar to marriage.

Netherlands

In 2001, the Netherlands legalized gay marriage, and was the first country to do so.

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Ireland
On the 22th of May 2015, Ireland became the first country to legalize marriage equality through a referendum.

Timeline of Events

1 April 2001	The Netherlands implemented the law that legalized gay marriage
2007	EU Charter of Fundamental Rights was amended; Article 21 now also states that discrimination based on sexual orientation shall be prohibited.

Previous Attempts to solve the issue

The EU Charter of Fundamental Rights was altered in 2007. Article 21 now also states that discrimination based on sexual orientation shall be prohibited. Ultimately, this should lead to the prohibition of discrimination against same-sex legal partners. However, quite a few steps still need to be taken.

Possible Solutions

As stated before, this issue needs to be addressed by all member states of the European Council. If a few nations will not agree, any resolution is a lost cause.

Keep in mind that legislation must undergo major changes before same-sex couples are legally recognised. Therefore, not only long-term solutions must be presented, but also short-term solutions.

Additionally, resolutions must specifically state what shall and shall not be done. Definitions are vital. This is shown by the multiple interpretations of the word 'spouse' that member states of the European Union handle when looking at the EU legislation that makes provisions for the rights of migrating EU citizens.

Remember that governments cannot be forced to agree to a treaty. Therefore, the resolution must be made with care. Also, it is crucial that any and all concerns and issues are addressed. The resolution should be balanced and not too strict in order for every country to sign it. Only then shall this issue be resolved.

Useful documents

Information on gay marriage in Europe:
http://www.pewresearch.org/fact-tank/2015/06/09/where-europe-stands-on-gay-marriage-and-civil-unions/

EU charter on Fundamental Rights
https://fra.europa.eu/sites/default/files/charter-of-fundamental-rights-of-the-european-union-2007-c_303-01_en.pdf

An essay on this topic
http://www.rug.nl/research/portal/files/14415363/same-sex.pdf

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