

You Can't Sit With Us:
Free Movement of Workers in the European Union and Same-Sex Partners

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July 30, 2012

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STATEMENT OF PURPOSE

The purpose of this Legal Research Pathfinder is to help students, practitioners, and academic researchers find sources and information on the European Union's freedom of movement of worker's and their same-sex partners. This is a developing area of law and is especially topical for legal researchers as the European Court of Justice is most likely to play a major role in shaping the rights that same-sex partners have with regard to freedom of movement.

This pathfinder begins by providing a brief introduction to the topic of European Union law, the freedom of movement of workers, and the rights of worker's same sex partners in the EU framed by a hypothetical situation. From there this pathfinder is split into three sections. In the first part critically important secondary sources are discussed. These include research guides, treatises, books, websites, and news sources. From there the pathfinder discusses primary sources of law relevant to the issue. This discussion includes an explanation of the relevant EU legislation, treaties, and case law that impacts this issue directly. Finally, the pathfinder concludes with a summation of the current law and the present situation faced by worker's same-sex partners in trying to assert their freedom of movement within the European Union.

INTRODUCTION

Free movement of workers within the European Union is a fundamental right protected for all European Union citizens. This right, in general, extends to the immediate family and dependants of the worker who is asserting that right. This means that in a different-sex marriage, the husband or wife of a worker who decides to relocate to another EU member state to work, can move with their partner and live without legal problems or immigration status concerns. But, what about the growing number of same-sex partners within the European Union? This

Pathfinder seeks to provide the information on the freedom of movement of workers in the European Union. Specifically, a focus is given on the freedom of movement for spouses of workers in the EU and the current problems that face same-sex partners in asserting that right.

As stated above, in the EU persons have the right to freedom of movement with regard to employment. This right extends to family members of the worker—including legal spouses. Because the definition of marriage is left to the individual member states of the EU, if a state does not recognize the legitimacy of same-sex marriages, gay and lesbian spouses may not be afforded the same rights as their heterosexual counterparts. Take, for example, the hypothetical couple, Roberto and Miguel. Both are Spanish citizens who were married in 2011 in Spain, where, under national law, same-sex marriage is legally recognized. The two have a young child together, Maria. Biologically she is Roberto's. Roberto has recently been offered a Professorship at the University of Bologna. Miguel is a stay at home dad, does not speak Italian well enough to find employment in Italy, and does not plan to seek employment. Italy does not recognize same-sex marriage. Will Miguel be able to permanently move to Italy with his family? Will Maria? What problems would they face if they were merely domestic partners or the equivalent?

These are just a few of the many ambiguities in the law that may necessitate extensive research. Furthermore, the answer to these questions, and many others, revolving around this situation may not be as clear as a researcher may desire. Nevertheless, the sources and research path provided in this pathfinder should help a range of researchers from novice to expert, in finding the answers to questions such as that presented above.

I. SECONDARY SOURCES

It is usually a better idea to start research with secondary materials. Secondary materials, while not binding law, provide the background information that is critical to understanding a topic. Plunging head first into the primary, binding, sources of law, is something that should be avoided for novices new to an area of law. A critical aspect of legal research is learning about a topic, not simply answering a question.

Secondary sources are particularly helpful for this topic because it is affected by so many different elements of law and policy. Furthermore, because it is a topic of foreign law, significant time will most likely be spent by any researcher reading through secondary sources in order to inform their further research, unless fully informed on the background and intersecting subjects. Secondary sources are also highly helpful in leading a researcher to the primary sources that they will need. This is especially helpful when conducting research on foreign law, such as European Union law, because a novice to the area will most likely have no idea where to find primary sources, nor what primary sources are relevant. Supplementing your knowledge by looking at the work of others who have commented on or about primary sources really helps to shape a research path and limit the time spent sorting through confusion.

A. RESEARCH GUIDES

Research guides tend to be one of the best sources to start any research, unless the topic is something that is highly obscure. Even with specific and narrow topics such as same-sex partners' rights to free movement of workers in the European Union, a research guide on the broader, overarching topic of European Union law can be highly helpful in guiding one's research as well as providing sources that a novice in the field of law would not know where to find.

Librarians at law schools typically compile these guides across the country, as well as internationally. Research guides provide a path toward primary sources, secondary sources, as well as databases and search engines in which to find additional sources. Finding these guides is incredibly easy, especially for such a large and important topic as European Union law. A simple Google or Bing search for “European Union law research guide” provides numerous results from some of the top law schools in the nation. Sifting through the guides to determine which is the most useful in helping research the intersection of same-sex partners and free movement of workers provided the following top results. They each have specific strengths and weaknesses, but in total they all helped provide opening guidance in conducting research for this topic.

The following research guides provide relevant material help and are all easily navigable:

- New York University Law Library, *available at* <http://www.law.nyu.edu/library/research/researchguides/europeanunionresearch/index.htm>:

According to NYU, “This guide covers the Law Library’s EU depository collection of official documents and publications, plus related books, journals, case reporters, yearbooks, indexes, finding tools, databases, and websites. [But,] [i]t does not reflect any changes to the composition, functions and documentation of the EU institutions that will take effect because of the Treaty Establishing a Constitution for Europe.” Because it refers to the failed Constitution of Europe, it appears to be outdated. Nevertheless, it can be used for an introductory guide to EU law. This is a valuable source of information to start your research.

- Georgetown Law Library, *available at* <http://www.law.georgetown.edu/library/research/guides/EuropeanUnion.cfm>:

Georgetown provides an abundant supply of research guides for researcher's use. The European Union legal research guide is incredibly helpful and full of sources that create an easily navigable path. The guide informs you of tips where to start, provides valuable sources and information regarding the European Union's institutions, links to sources for background information, provides a path for finding legislation, details the different types of European legislation, provides links to the full text of European treaties, adopted and proposed directives, information on how to find case law, links to case law, periodicals, other internet sites, as well as so much more. What is best about this research guide is how easy it is to navigate. The sources are all listed in a coherent fashion, and the guide gives very good brief summaries of important terms and elements of EU law and legislation. This is by far one of the best research guides you will find when looking for information on this topic.

- Columbia University Arthur W. Diamond Law Library, *available at* http://library.law.columbia.edu/guides/European_Union_Legal_Materials:

The introduction of this research guide states that “[t]he purpose of this research guide is to provide an introduction to the European Union and the resources available about it.” In order to do so “it provides an overview of many of the information resources available in the library, through the library homepage and on the Internet.” Furthermore, “[t]he guide is designed to present general information and resources first before giving specifics into the different kinds of EU materials.” Columbia's librarians state that “[b]y gaining an understanding of the overall organization, it is then easier to sort through the information within each institution or subject area. For the beginning researcher it is helpful to start with the broad resources, which provide an overall sense of the EU structure and organization.” Additionally, because this guide is broken into subject areas, researchers who are more familiar with the EU can begin their research in a

specific area of EU law. Nevertheless, the “guide is organized to follow the research strategy of a beginning researcher.” This is one of the best guides found online and will be of valuable aid to any researcher, beginner or novice.

- LLRX: Law and Technology Resources for Legal Professionals, *available at* <http://www.llrx.com/features/eulaw2.htm>:

This is the most unusual of research guides that can be found from a simple search engine search, as it was not created by a law school, but rather, it is the product of a legal research company. This is also one of the most user-friendly of guides available online. The information found throughout the research guide is not much different than that provided in other, law school affiliated guides, but is unique in that it shows screen shot images of sources that it links to. This step-by-step guide with concurrent image instructions is incredibly helpful for a novice researcher as well as calming for someone who is afraid they will get lost once they leave the safety of the research guide. This guide will greatly benefit any researcher who has very limited, or no knowledge of European law.

More guides are available online. A good researcher should look at all these research guides and utilize the ones they feel the most confident in navigating as well as ones that provide relevant material. The choice tends to be a personal one; therefore, this pathfinder has provided numerous guides to choose from. Here are three additional guides that, while equally as useful as the aforementioned guides, do not necessitate separate discussions:

- University of California Berkeley Boalt School of Law Library, *available at* <http://www.law.berkeley.edu/library/dynamic/guide.php?id=52>
- UCLA Hugh & Hazel Darling Law Library, *available at* <http://libguides.law.ucla.edu/europeanunion>
- Duke School of Law Library, *available at* <http://law.duke.edu/lib/researchguides/europe>

B. TREATISES

Continuing on your research journey at this point still requires more background on both the European Union as well as European law generally. Treatises provide detailed and current examinations of law in a specific area in order to provide background as well as guidance and answers to simple legal questions. For a topic as broad as European Union law there is an almost endless array of sources to choose from. Narrowing this pool of sources can save you significant time and effort. Therefore, it is wisest to choose only one or two of the most comprehensive treatises on the topic of EU law as a whole. From that, one can narrow the topic down to more relevant areas of the law and seek more topical treatises.

Doing so allows a researcher to reap the benefits of the breadth of treatises on narrowly tailored topics. The following treatises represent both overarching as well as pinpointed treatises:

- ALINA KACZOROWSKA, *EUROPEAN UNION LAW* (2nd ed. 2011)

This is a one-stop guide to European Union law in its entirety. Updated to include the Treaty of Lisbon, the treatise is best used as a general reference guide to any problems or confusion found while researching the specific areas of EU law that coincide with the free movement of workers and LGBT rights. While looking at this treatise may not provide solid answers to the burning questions you have regarding this topic, it will give solid background, and will help to answer general questions that arise while a researcher is looking at unfamiliar foreign law. Because it provides both authoritative information as well as case summaries, this guide also will give researchers guidance to primary sources while also providing simplified and concise analyses of difficult European legal principles.

- P.S.R.F. MATHIJSEN, *A GUIDE TO EUROPEAN UNION LAW: AS AMENDED BY THE TREATY OF LISBON* (10th ed. 2010)

This work gives a researcher looking for background information a comprehensive overview of the European Union's institutions and their functions. Furthermore, this treatise is great at providing analysis of the substantive law of the European Community, from competition and agriculture to, among others, environment, culture, health protection and consumer protection. This breakdown of topics within EU law is especially helpful for looking at the two intersecting rights at play with this topic: free movement of workers and LGBT rights. This treatise is one of many that offers valuable insight for a researcher of European law.

- PAUL CRAIG & GRAINNE DE BURCA, *EU LAW: TEXTS, CASES, AND MATERIALS* (5th ed. 2011)

While this is more of a textbook than a typical treatise, it nonetheless provides an unbelievable overview of the European Union as a supranational organization as well as the law, legislation, and cases that make up the foundation for your research. This textbook is a European law researcher's manual to understanding the law and is also highly valuable in leading a researcher down a path towards greater results. The textbook offers case summaries, citations to all types of primary sources, and great analysis of the laws at play. Furthermore, the source is incredible trustworthy and highly exhaustive. This book discusses at length the critical elements of the law necessary to doing a proper research of the topic at hand.

There are so many treatises available for use on the topic of European Union law, and even topical treatise on European labor law, social and employment law, and European policy guides. These narrowly tailored treatises, while still expansive, can help to guide a researcher once the broader treatises mentioned above have been covered. The sources listed below are all incredibly helpful along the path of researching in the area of law that free movement of worker's same-sex partners is impacted by. Some of these treatises may have redundant

information to previously covered treatises on EU law in total, but should nevertheless be examined for helpful guidance. Furthermore, these sources are great at explaining the narrowed focus of your research in terms that are easily understood by a researcher who, even after looking at so many other background sources, may still be feeling confused or unsure of certain legal aspects or principles. The following is a list of such narrow field treatises:

- ROGER BLANPAIN, EUROPEAN LABOUR LAW (12th ed. 2010)
- PHILIPPA WATSON, EU SOCIAL AND EMPLOYMENT LAW: POLICY AND PRACTICE IN AN ENLARGED EUROPE (2009)
- MORTEN BROBERG & NINA HOLST-CHRISTENSEN, FREE MOVEMENT IN THE EUROPEAN UNION: CASES, COMMENTARIES AND QUESTIONS (2nd ed. 2007)
- LABOR AND EMPLOYMENT LAW IN THE NEW EU MEMBER AND CANDIDATE STATES (Anders E. Reitz ed., 2007)
- ANJA WIESBROCK, LEGAL MIGRATION TO THE EUROPEAN UNION (2010)
- FREEDOM OF MOVEMENT OF PERSONS: A PRACTITIONER'S HANDBOOK (Joanna Apap ed., 2002)

C. BOOKS

Researching this topic can be incredibly difficult, especially for someone with no background in European Union Law. Because it is so highly specific and EU law is a very complicated system, even with the guidance that research guides provide, the task of conducting meaningful research can seem daunting at first. While not necessary to learn every intricacy of European law, it is critical that a researcher expand beyond the narrow scope of the fundamental European freedom of movement for workers. So many elements of European law and social policy touch on this issue that a good researcher must be able to link them and examine them all. Thus, this topic requires a heavy reliance on books.

Regardless of the specific benefits looking at books may have with regard to the intricate web of law and policy that relates to this topic, a researcher may find that books are simply helpful in understanding the basics. The books that cover elements of this topic are high in number, mainly because the free movement of workers is one of the fundamental “four freedoms of EU law.” Though high in number and easily found through a local library, each book only covers small aspects of the relevant law, or discusses relevant matters very briefly. Nevertheless, as mentioned before, this is a highly convoluted topic that requires a basic understanding of so many aspects. Reading through varied sources, such as the books listed below, is one of the best ways to begin the process towards understanding. It is rare that a single book will provide a full understanding of a topic, especially with law that still in such a developmental stage, as is this topic. Therefore, piecing together a thorough understanding of the overarching law and the side-elements that effect application of that law is required.

The following list of sources may prove to be helpful in generating a better understanding of the multi-faceted, layered issues at play with regard to the free movement of workers and same-sex partners:

- YUVAL MERIN, *EQUALITY FOR SAME-SEX COUPLES: THE LEGAL RECOGNITION OF GAY PARTNERSHIPS IN EUROPE AND THE UNITED STATES* (2002)

In *Equality for Same-Sex Couples*, Yuval Merin presents a comparative study of the legal regulation of same-sex partnerships worldwide, and provides a unique survey of the status of same-sex couples in Europe. This is a great book to begin looking at policy arguments that impact the law of free movement of worker’s same-sex partners. Furthermore, it gives great insight into the social field of LGBT issues and should help to broaden the scope of your research.

Merin begins by providing a historical overview of the transformation of marriage from antiquity to the present. Then the author identifies and compares four principal models for the legal regulation and recognition of same-sex partnerships: civil marriage, registered partnership, domestic partnership, and cohabitation. Knowing these differences, though not necessarily required to answer the question at hand, will help with research in this field.

- DAGMAR SCHIEK, *ECONOMIC AND SOCIAL INTEGRATION: THE CHALLENGE FOR EU CONSTITUTIONAL LAW* (2012)

Just as Merin's book discusses the field of social policy and law regarding same-sex marriage, Dagmar Schiek's book discusses an area outside the scope of the question at hand but of the utmost importance in shading it: social integration and federalism in the European Union. According to the book's introduction, Dagmar Schiek "proposes a 'constitution of social governance': the Court and EU institutions should encourage steps towards social integration at EU level to be taken by transnational societal actors, rather than condemn their relevant activity." This is relevant because, as a researcher in European Union law will soon come to know, issues of federalism and social integration amongst the member states of the EU fuels the dilemmas for nearly all EU related legal problems, including the right of free movement for same-sex partners. In conclusion, *Economic and Social Integration* will appeal to academics and postgraduate students in EU law, EU politics, European sociology, international relations, international law, labor law, and welfare state theory.

- WAALDIJK & M. BONINI-BARALDI, *SEXUAL ORIENTATION DISCRIMINATION IN THE EUROPEAN UNION: NATIONAL LAWS AND THE EMPLOYMENT EQUALITY DIRECTIVE* (2006)

This book accomplishes two major tasks: it informs the researcher of the current status of LGBT discrimination in the European Union member states and provides an understanding of how Directives, a critical legislative tool of the EU, are implemented (and not implemented).

The Employment Equality Directive, which this book discusses at length, requires European Union Member States to prohibit sexual orientation discrimination in the field of employment. This book assesses to what degree the Directive's requirements have been met by the Member States as well as Bulgaria and Romania. A researcher new to this topic will most likely not understand the outcome of his or her research until they read this book because legislation in the EU is highly complex and its implementation is even more complex. This book helps to explain the failures of implementation, and gives a good background in the problems faced by LGBT people in the workplace within what is supposed to be a socially integrated Union.

There are countless books that can give insight into the areas of social policy and law that impact this research question, some more helpful than others. Those that I have highlighted are of significant aid in completing a well-rounded research and should be useful for gaining much needed insight and clearing up confusion. Additionally, these books may be of use to a researcher looking for further guidance in the areas of family law and a specific guide to the implementation of the Directive that directly shapes the law surrounding the free movement of worker's same-sex partners, which I highly recommend a researcher look at:

- JOHAN MEEUSEN ET AL., INTERNATIONAL FAMILY LAW FOR THE EUROPEAN UNION (2007)
- MARK BELL, EU DIRECTIVE ON FREE MOVEMENT AND SAME-SEX FAMILIES: GUIDELINES ON THE IMPLEMENTATION PROCESS (2005)

D. LEGAL ENCYCLOPEDIAS

Like all encyclopedias, legal encyclopedias are useful mainly as reference tools and for concise background information on specific topics. Of particular use for these purposes, and in adding additional background information to one's research repertoire, legal encyclopedias can be used like inflated dictionaries. In other words, questions that arise while conducting any research on the topic of European law can most likely be answered by reference to a legal

encyclopedia. Having a reference guide to resort to instead of wasting time finding the answer to a basic question by conducting further outside research is key to a productive, time-conscious research process. Though, with regard to the topic of same-sex partners and freedom of movement for workers, certain questions may be left unanswered by such a resource. This is not to discredit the usefulness for basic questions and perhaps additional information that could lead your research along a new, novel path. Legal encyclopedias, such as the one listed below give answers, guidance, as well as new ideas to a research path that has been halted by confusion or misunderstanding.

- ENCYCLOPEDIA OF EUROPEAN UNION LAW: CONSTITUTIONAL TEXTS (Neville M. Hunnings ed., 2012)

E. PERIODICALS

Topics of foreign law tend to be more difficult to research than domestic law, especially when not previously competent in the underlying foundational legal principles inherent in the legal system. While most people, legally trained or not, would have a general idea as to where a domestic law or regulation is found and what it is in reference to, the same cannot be said for foreign sources. Therefore, literature found in law journals and scholarly publications can be very helpful in providing an overview of a topic as well as critically important citations to primary and secondary sources. Furthermore, if capable of finding a highly relevant periodical, one can see how laws have developed, their shortcomings, problems, and successes, as well as leave with an understanding of future developments that could impact the area of study.

This is an emergent area of law, with the national laws of individual member state's crucial to its development. While scholarship on the free movement of workers in the European Union is aplenty, specified content regarding the intersection of free movement of workers and same-sex partner discrimination is a topic that has not been specifically discussed at length.

Nevertheless, articles have been written and are easily accessible through mediums such as HeinOnline, Westlaw, and LexisNexis.

It is most helpful for this topic to use Westlaw in order to browse the Legal Journals Index, which indexes approximately 485 legal journals published in the United Kingdom and Europe. Using this source for your search will help to find law review and practitioner articles to give a basic overview of the relevant law as well as provide the aforementioned benefits that only a periodical can provide. Using Boolean terms and connectors is also recommended so that your search is as precise yet flexible as possible in order to return an abundant collection of highly relevant results. An example of a search term that resulted in relevant sources is “‘European Union’ & ‘Free Movement of Worker!’” A basic search on HeinOnline also helped provide targeted articles. From HeinOnline the following sources were helpful in understanding this topic as well as guiding further research.

- Katharina Boele-Woelki, *The Legal Recognition of Same-Sex Relationships Within the European Union* 82 TULANE L. REV. 1949 (2008)

The abstract to this article summarizes the areas with which it touches, by saying that it is an article about how the question of “whether to permit same-sex couples to formalize their relationship is one of the most contested issues within Europe and the United States. The issue becomes even more disputed and complicated in the case of cross-border situations because the private international law approaches in respect of same-sex relationships differ to a large extent. This Article aims to explore how the member states of the European Union cope with the problems created by the free movement of same-sex couples across internal borders. An overview is provided of the actual situation concerning the possibilities of formalizing a same-sex relationship in the European Union. The development of the law shows that the competence of national courts of the EU member states is restricted. They have neither allowed the

formalization of same-sex relationships nor have they recognized same-sex relationships concluded abroad if specific statutory rules are lacking. Instead, the courts encourage particular legislatures to enact rules. The Article then focuses on the recognition in one member state of same-sex relationships legally registered in another country. Thereby, a distinction is made between the individual national perspectives, on the one hand, and the European perspective on the other. The latter includes European human rights law and European law consisting of directives and (future) regulations. It is submitted that the European legislature should include same-sex relationship when legislating cross-border family relationships.” Thus, this article presents the reader with information on the rights of same-sex partners in Europe as well as how laws affecting those rights take shape and the competing clash between the European unity perspective and those of the individual member states—a classic case of federalism versus state’s rights.

- Adam Weiss, *Federalism and the Gay Family: Free Movement of Same-Sex Couples in the United States and the European Union* 41 COLUMBIA J.L. & SOC. PROBS. 81 (2007)

This is perhaps the most relevant of all the periodical sources that one may find currently. The article discusses the topic of research precisely, giving case examples, citations to the relevant law, and an analysis of where the implementation of the law stands. This is a significantly direct article that is easy to understand and will help any researcher find a conclusion to their question relating to the free movement of worker’s same-sex partners in the European Union.

- Clare McGlynn, *Family Reunion and the Free Movement of Persons in European Union Law* 7 INT’L L.F. D. INT’L 159 (2005)

Like the first article, this does not directly cover the matter at hand. Nevertheless, a

discussion of the Family Reunification Directive allows a researcher to see how Directives are implemented, which is significant to understanding research on same-sex partner's free movement. This article will enlighten the reader as to the European idea of the right of free movement, and help to shed light on the conflict between the EU perspective on certain laws and rights and conflicting national legislation.

F. WEBSITES

Luckily, we live in a digital age. This is of special relevance when conducting research on foreign law, such as the European right of free movement of workers. Having the world's legal sources at your fingertips via electronic databases helps limit the time spent finding primary and secondary sources, and saves you from the task of finding and sifting through unfamiliar bound copies of case reporters, statutory compilations, and loose leaf collections of additional legislative materials. Though research has been aided by digital means, and finding these materials is easier and quicker than it has ever been before, one must still find out where online these sources are.

Furthermore, utilizing foreign websites for research on foreign law bears its own unique challenges. The trustworthiness of information is much more difficult to gauge for foreign web sources. While a domestic site may be created and maintained by a company or non-profit that is familiar or easily validated, foreign sites may be maintained or created by authors whose credibility you cannot easily determine. Additionally, finding government documents and researching on the correct government agency websites requires basic background knowledge of the basic functioning of the foreign state or organization. This is just one reason why learning as much background information on the European Union is critical to furthering a productive research path. Knowing the role of each element of the EU governance structure as well as the

powers of each government entity is critical to validating the legitimacy of websites while shaving precious time wasted from researching the vast catalogue of information available on the internet.

The following websites are a collection of the various databases, designed and operated by the governance structure of the European Union, where one can find relevant primary sources. Additionally, other sources consist of authorized European LGBT-rights based organizations as well as government news and information sites. These each can help guide your research and are primarily useful in facilitating the collection of additional information and sources.

- European Union Delegation of the European Commission to the USA, A To Z Index of European Union Websites, *available at* <http://www.eurunion.org/infores/euindex.htm>

This is a site maintained by the Delegation of the European Commission to the USA and is a great starting point for any research on the EU or EU law as it provides links to almost all important sites.

- EUROPA, *available at* http://europa.eu/abc/treaties/index_en.htm

This is a website headed by the Commission, an entity of the European Union responsible for the executive duties of implementing decisions and upholding the European Union's laws. The site includes information on the goals, policies and agendas of the EU, official documents and links to other EU homepages. This site is the hub of EU research.

- EUR-Lex, *available at* <http://eur-lex.europa.eu/en/index.htm>

This is a portal to EU law and a single entry point to complete collections of most legal documents and information. This site is the hub of official legal documents for the EU.

- Council of Europe: Commissioner for Human Rights: Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons (LGBT), *available at* http://www.coe.int/t/commissioner/activities/themes/lgbt/default_en.asp

This is a site dedicated to the rights of LGBT citizens of the European Union and a helpful source of information for legal research of LGBT issues.

- EUROPARL, *available at* <http://www.europarl.europa.eu/news/en/headlines/>

This is the official site of the European Parliament. It contains links to other relevant sites as well as an overview of the parliament and news that may be helpful.

- The European Parliament's Intergroup on LGBT Rights, *available at* <http://www.lgbt-ep.eu/>

This is a site dedicated to the LGBT rights of EU citizens that is headed by the Parliament. It has information and links to relevant sources of information on the EU Parliament's stance on LGBT rights.

- ILGA Europe, *available at* <http://ilga.org/ilga/en/organisations/ILGA%20EUROPE>

ILGA stands for the International Lesbian, Gay, Bisexual, Trans and Intersex Association, and this link is to their Europe division. This is one of the largest non-profit organizations working for legal equality of LGBT individuals in Europe. The site has links to sources as well as valuable information on the rights and difficulties of LGBT citizens in the EU.

- Pre-Lex, *available at* <http://ec.europa.eu/prelex/apcnet.cfm>

This is a database for tracking the status and getting the history of any European Union document. The site follows all Commission proposals and communications and tracks legislation in all its stages.

G. NEWS SOURCES

This is a fast developing topic and massive changes in European Union law can occur rather quickly, therefore, it is critical that a good researcher in this field check for recent developments via news sources. While news sources are unlikely to give detailed legal analysis

that a legal researcher is looking for, they can alert you to changes in the law, upcoming debate, affects of the law, public opinion, and even legislative history if using an old source.

As with any other source, credibility must be taken into account when looking at news sources. This is, once again, more difficult for foreign sources as reputations may not be known, trustworthiness may be taken for granted, and opinionated pieces without valid foundations may sway readers. Nevertheless, large European newspapers printed in English speaking nations, such as the United Kingdom's Telegraph, Guardian, or Times, can provide reliable information that a researcher can feel confident in using. Furthermore, if a researcher speaks another language of European origin, such as French or German, newspapers like Le Monde or Die Zeit can offer varying opinions within Europe for a well-rounded research.

Another way to keep oneself apprised of developments with this topic is to create alerts from varying news sources. Google News allows you to set up email alerts for topics of your choice. If you find in your research that a pending development is in the works, it is highly recommended that you set up an alert either of general European Union law or specifically of the freedom of movement of workers. This will save you time and the chance of missing critical developments that affect your research.

Lastly, given that this is an age of online media, topical websites that focus on blog-like news updates can be highly beneficial as supplements to your research, as well as great sources of links to more reputable news sources. Many sites are geared towards specific readers and compile current and breaking news published by other more established sources. Because this is a topic that has impact on the LGBT community, many sites that are devoted to servicing the European gay and lesbian community most likely will do the hard work of finding updates for you. Utilizing this source of information will save you time and help shape your research.

One such news site devoted to the LGBT community of Europe is listed below:

- Pink News, *available at* <http://www.pinknews.co.uk/>:

This site declares itself to be Europe's largest gay news service. Based in the United Kingdom, this English language site collects news updates that have an impact on the gay community of Europe and the UK and place them on an easily navigable site with links to more reputable news sources that it pulls the information from. The site has tabbed links to special subtopics within the LGBT community, one of which is "Law." Under this tab one can be almost certain to find updates to European legislation and court rulings that impact the freedom of movement of same-sex partners of workers in Europe.

II. PRIMARY SOURCES

Moving beyond secondary sources that provide background information, argument ideas, and other relevant information, primary sources are the meat of one's research. Furthermore, your secondary sources should have provided you with the information necessary to find all or most of the relevant primary sources. For European law, primary authority comes in three main categories: the treaties, legislation, and case law. From these areas, a researcher can compile the relevant law that guides the topic of a worker's same-sex partner right to free movement.

A. FOUNDING TREATIES

Treaties are the main documents of law in the European Union. Therefore, all significant rights and legal principles tend to be found in a founding treaty. The year 2009 saw a major development with the adoption of the Treaty of Lisbon, the most current treaty of the EU that amended two former founding treaties. Looking at the applicable treaty law one must see if they are relying on Lisbon, an older treaty, or an older treaty that has been amended by Lisbon.

Without looking at the relevant treaty law, it is nearly impossible to understand research on a principle of EU law

The Lisbon Treaty is also known as the Treaty on the Functioning of Europe or TFEU. The relevant portion of the TFEU with respect to the free movement of workers is Article 45.

B. DIRECTIVES

A directive is a type of legislation by the EU. Like a statute created by Congress in the United States, a directive is binding law. But, though a directive is binding as to the result to be achieved upon each Member State it is addressed, it leaves to the national authorities the choice of form and methods of implementation. It is important to look at all the binding forms of legislation possible in the EU to see if the topic of law has been impacted by any. These types of binding legislation are Regulations, Directives, and Decisions. The issue of same-sex partner's rights to free movement with their spouse who is asserting his or her right to free movement as a worker is directly impacted by Directive 2004/58/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

C. REPORTS

Reports summarize European Union activities and are beneficial for providing an overview of EU policy. One such report that is highly useful with regard to this topic is the EU Citizenship Report 2010: Dismantling the Obstacles to EU Citizens' Rights.

D. CASE LAW

Case law tends to be very helpful in European Union legal research. Unlike civil courts in some of the nation states of the EU, European Court of Justice decisions are precedential. This makes utilizing the court decisions much easier for a researcher from a Common Law background. With regard to this topic, the courts have not provided much guidance, which

merely means that a researcher must look to the courts to find future decisions. The court has provided some guidance in two cases: Case C-122/99P and 125/99P D and Sweden v. Council [2001] ECR I-4319, and Case 59/85 Reed v. Netherlands [1986] ECR I-1283.

CONCLUSION

It is important to remember that many of the aspects relating to this area of law are still developing. Specifically, because a European directive is left to the Member States of the Union to implement via national legislation, the means of implementation are various throughout the continent. This can lead to confusion and unequal protection for LGBT couples. For some conclusory analysis, and returning back to the hypothetical of Miguel and Roberto, one can see how this pathfinder's research path can lead to answers—albeit non-definitive ones. Given the current law, Miguel should be able to relocate with his family to Italy. Nevertheless, the law is ambiguous and he may not be able to exercise his right to relocate. It is critical to remember that the law is developing in this area and the court may soon deliver a resounding clarification.