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OTHERS MAY FOLLOW: THE INTRODUCTION OF MARRIAGE, QUASI-MARRIAGE AND SEMI- MARRIAGE FOR SAME-SEX COUPLES IN EUROPEAN COUNTRIES

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I. INTRODUCTION

The legal recognition of same-sex partners living together as husbands or wives has gradually emerged in the law of several European countries.¹ Initially, this was done through the process of recognizing *de facto* cohabitation for a number of specific legal purposes. The earliest examples of such recognition and regulation of same-sex partnerships are found in the 1970s.² This *model* of regulating informal cohabitants can be categorized in many ways. The most accurate categories are given by Wintemute, who speaks of *unregistered cohabitation*,³ and by Forder who speaks of *cohabitation protection arising by operation of law*.⁴ The categories can be piecemeal or more systematic.⁵ Sometimes this model is simply referred to as *domestic partnership*,⁶ but that is confusing since many so-called domestic partnership schemes require registration.⁷ It is tempting to introduce the word *para-marriage* to

* Dr. Kees Waaldijk is a senior lecturer and research fellow at the E.M. Meijers Institute of Legal Studies of the Faculty of Law of Leiden University in the Netherlands. For further information please visit <http://www.emmeijers.nl/waaldijk>. This article is based on the text of an affidavit written by the author in October 2003, at the request of the Department of Justice Canada, for the Supreme Court of Canada, in the matter of a reference by the Governor in Council concerning the proposal for an act respecting certain aspects of legal capacity for marriage for civil purposes, as set out in Order in Council P.C. 2003-1055, dated July 16, 2003. In this reference the Canadian government is asking the Supreme Court of Canada for an advisory opinion on proposed legislation to extend the definition of civil marriage to same-sex couples (after appellate courts in two common law provinces ruled that the exclusion of same-sex partners from marriage is unconstitutional, and a superior court in civil law Québec ruled the province's statutory bar to be similarly unconstitutional). The hearing on the reference is scheduled for October 2004.

¹ This evolution has also taken place in Canada, Australia, South Africa, and elsewhere.

² The first piece of legislation was in reference to Dutch rent law. *See* Law of June 21, 1979 (Stb. 1979, 330) (amending the Civil Code, arts. 1623h, 1623i) (allowing a tenant's partner, of any sex, to become co-tenant after two years of cohabitation in a "lasting joint household.") Even before this legislation, the immigration practices or rules of some countries, including Sweden, and the Netherlands in the 1970s, allowed for a residence permit for the same-sex partner of a national.

³ Robert Wintemute, *Conclusion, in* LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW 759, 764 (Robert Wintemute & Mads Andenaes eds., 2001).

⁴ Caroline Forder, *European Models of Domestic Partnership Laws: The Field of Choice*, 17 CAN. J. FAM. L. 371, 376 (2000).

⁵ Michael Coester, *Same-Sex Relationships: A Comparative Assessment of Legal Developments Across Europe*, 4 EUR. J. FAM. L. 589-91 (2002).

⁶ *Id.* at 590.

⁷ YUVAL MERIN, EQUALITY FOR SAME-SEX COUPLES: THE LEGAL RECOGNITION OF GAY PARTNERSHIPS IN EUROPE AND THE UNITED STATES 245 (2002).

capture this phenomenon of unregistered cohabitation.⁸

Recently, a further level of legal recognition occurred in some jurisdictions through marriage and/or through a status similar to marriage. It is possible to distinguish between three types of status' that are being made available to same-sex couples. The first is *marriage*, which may be defined as a traditional legal form of partnership that is created by a formal act of registration and results in a great number of rights and obligations in private and public law.⁹ The second available status is *quasi-marriage*, a new legal form of partnership that is created by a formal act of registration and results in *almost* all of the rights and obligations of marriage.¹⁰ Finally, there is the *semi-marriage*: A new legal form of partnership that is created by a formal act of registration and results in only a *limited selection* of the rights and obligations of marriage.¹¹

As far as European countries are concerned, marriage has now been opened up to same-sex couples in two countries, the Netherlands and Belgium. Nine European countries, including these two, have introduced a form of quasi-marriage—Denmark, Norway, Sweden, Iceland, Finland, and the Netherlands—or of semi-marriage—France, Belgium, and Germany. This Article will explore these nine countries.¹²

⁸ See Kees Waaldijk, *Taking Same-Sex Partnerships Seriously: European Experiences as British Perspectives?*, INT'L FAM. L. 86 (2003).

⁹ To distinguish legal marriage from religious marriage, the former can sometimes best be referred to as "civil marriage."

¹⁰ Quasi-marriage corresponds to what Forder and Wintemute call "registered partnership." See Forder, *supra* note 4, at 390; Wintemute, *supra* note 3, at 764. Like Coester, I prefer to use the terms "registered partnership" and "civil union" loosely as an umbrella term referring to quasi-marriages and semi-marriages. See Coester, *supra* note 5, at 591-92.

¹¹ Semi-marriage corresponds to what Yuval calls "light versions of registered partnerships," and what Wintemute calls registered cohabitation. See MERIN, *supra* note 7, at 136; Wintemute, *supra* note 3. Forder distinguishes between "optional cohabitation protection" and "enrolled contract." See Forder, *supra* note 4, at 283-86. I will refer to her examples in both of these categories as "semi-marriages."

¹² This article does not discuss European countries where marriage, quasi-marriage or semi-marriage has only been made available in certain provinces. Such is the case in Spain, Switzerland, Canada, United States, Australia, and Argentina. Countries where such legislation is now being prepared at the national level, such as Switzerland, England, Wales, Scotland and Liechtenstein, also fall outside the scope of this article, as do countries where same-sex couples are only recognized in legislation on unregistered cohabitation, such as Hungary and Portugal. Finally, the purely symbolic *pseudo-marriages*, which do not result in any legal rights or obligations are not covered here. Furthermore, the focus is on civil marriage, not on religious marriage. For an overview of developments throughout Europe, see LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE (Katharina Boele-Woelki & Angelika Fuchs eds., 2003) [hereinafter EUROPE]; LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL EUROPEAN AND INTERNATIONAL LAW (Robert Wintemute & Mads Andenaes eds., 2001); MERIN, *supra* note 7; see also Kees Waaldijk, *Civil Developments: Patterns of Reform in the Legal Position of Same-Sex Partnership in Europe*, 17 CAN. J. FAM. L. 62, 62-88 (2000); Kees Waaldijk, *Chronological Overview of the Main Legislative Steps in the Process of Legal Recognition of Homosexuality in European Countries*, INT'L FAM. L. 91-95 (2003) (also available at <http://www.emmeijers.nl/waaldijk>).

The main purpose of this Article is to provide an overview of the fairly similar laws passed in the Netherlands¹³ and, more recently, in Belgium¹⁴ that legally recognize same-sex relationships through the civil institution of marriage. This Article will discuss the character of the legislation, present its component parts, compare the few remaining differences between same-sex marriages and different-sex marriages in each country, and finally, review the steps by which the amendments were introduced.

After a short comparison between Dutch and Belgian law,¹⁵ this Article will also provide a brief comparative summary of the law in seven European countries that recognize same-sex relationships not through marriage, but by means of a legal status similar to marriage.¹⁶ First, the five Nordic countries—Denmark, Norway, Sweden, Finland, and Iceland—will be reviewed together given the similarity of their registered partnership regimes (quasi-marriages). Secondly, this Article will separately address legislation in Germany and in France, given that these two countries have introduced quite distinct regimes both characterized under semi-marriages: life partnerships in Germany, and civil pacts of solidarity in France.

II. DUTCH LEGISLATION RELATING TO SAME-SEX MARRIAGE AND QUASI-MARRIAGE

1. *Amending the Civil Definition of Marriage*

In 2001, the Netherlands was the first country in the world to open up the institution of civil marriage to same-sex couples. The Dutch Parliament made this change by amending the Civil Code, specifically Book 1 on family law. The amending legislation was entitled *Wet Openstelling Huwelijk*, which can be translated as the *Act on the Opening Up of Marriage*.¹⁷ The Act changed the civil

¹³. See *infra* Part II.

¹⁴. See *infra* Part III.

¹⁵. See *infra* Part IV.

¹⁶. See *infra* Part V.

¹⁷. De Wet Openstelling Huwelijk of December 21, 2000, was published in the Official Journal of the Kingdom of the Netherlands, Stb. 2001, 9, available at <http://www.overheid.nl/op/index.html> (click “Staatsblad” and type “Openstelling Huwelijk” under “2a.”). An official English language version of the Dutch legislation is not in existence. Dr. Waaldijk’s unofficial translation of key excerpts of both the text of the amending provisions and the Explanatory Memoranda accompanying the original bills can be found at <http://www.emmeijers.nl/waaldijk>. These translations have also been published as appendices. See Kees Waaldijk, *Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands*, in LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW 437, 437-64 (Robert Wintemute & Mads Andenaes eds., 2001); see also IAN SUMNER & HANS WARENDOR, FAMILY LAW LEGISLATION OF THE NETHERLANDS (Ian Sumner & Hans Warendor eds., 2003). This translation includes Book 1 of the Dutch Civil Code, procedural and transitional provisions in private international law legislation.

definition of marriage by amending Article 30 of Book 1 of the Dutch Civil Code.¹⁸ Previously, the whole of Article 30 read, quite simply: “The law only considers marriage in its civil relations.” This provision is now Article 30(2). The new Article 30(1) provides: “A marriage can be contracted by two persons of different sex or of the same sex.”

All Dutch legislation regarding marriage—whether different-sex or same-sex marriage—purports to regulate the institution of marriage only in its civil capacity. This is because, since the early 1800s, there has been a clear divide in the Netherlands between the state as keeper of the registry of births, marriages, and deaths—known in the Netherlands as the *Burgerlijke Stand*—on the one hand, and religious institutions as solemnizers of religious marriage, on the other hand. A Dutch marriage, whether different-sex or same-sex, can *only* take place before an official of the *Burgerlijke Stand*, normally in the town hall.

Only once a marriage is registered, can the couple exercise their *option* to enter into a religious marriage conducted by a religious official. Indeed, Article 68 of Book 1 of the Dutch Civil Code prohibits couples from having a marriage conducted by a religious official without having first married each other at the *Burgerlijke Stand*. It follows that the *Act on the Opening Up of Marriage* reaffirms the reach of the legislation intended to be only about marriage in its civil capacity.

2. *Component Parts of the Amending Legislation in Force Today*

The Dutch legislation to open up marriage and to take further steps to equalize same-sex and different-sex marriages developed by the passage of four bills.¹⁹ The first two became the *Act on the Opening Up of Marriage* and the *Act on Adoption by Persons of the Same Sex* respectively. They were both introduced at the same time, on July 9, 1999. They were passed by the Lower House on September 12, 2000, and by the Upper House on December 19, 2000. On December 21, 2000, Queen Beatrix signed them into law. They were published in the *Staatsblad*, the official

¹⁸ The consolidated text of the Civil Code (*Burgerlijk Wetboek*) and of all other legislation in force can be found at <http://wetten.overheid.nl>.

¹⁹ Acts are published in the *Staatsblad*, available at <http://www.overheid.nl/op/index.html>.

journal of the Kingdom of the Netherlands, on January 11, 2001, and became effective on April 1, 2001.²⁰ Each legislative act amended provisions of Book 1 of the Civil Code.²¹

The third bill became the *Adjustment Act of March 8, 2001*,²² an omnibus bill to adjust the language of legislation *other than* the Civil Code to the “opening up” of marriage and adoption. It replaced gender-specific language such as “mother” and “husband” with gender-neutral language such as “spouse” and “parent,” wherever appropriate.

The fourth bill became the *Act of October 4, 2001*.²³ Its main purpose was to amend the Dutch Civil Code to address the legal void created by the *Act on the Opening Up of Marriage* in deliberately not extending the application of the presumption of paternity to children born to same-sex married couples.²⁴ The *Act of October 4, 2001* inserts a new Article, 253sa, in Book 1 of the Dutch Civil Code.²⁵ Article 253sa provides that, when a child is born to a same-sex married couple (i.e. a female couple), the birth mother *and* her married partner automatically obtain all the rights and obligations of joint parental authority towards that child, unless a man has acknowledged the child as his own before its birth. In other words, the married female partner automatically obtains *almost* all of the same rights and obligations that a (presumed) father obtains upon the birth of a child into a different-sex marriage. The main difference is that the married female partner does not also automatically obtain the status of being a legal parent to the child, and consequently the inheritance rules on intestacy do not apply. To obtain legal parent status, the married female partner of the birth mother must go through a formal adoption process.

3. *Remaining Differences Between Same-Sex and Different-Sex Marriages*

Only two differences remain in Dutch law between same-sex

²⁰ See Stb. 2001, 9 & 10.

²¹ For translations see *supra* note 17.

²² See Stb. 2001, 128. The bill was introduced August 22, 2000, approved by the Lower House January 30, 2001, approved by the Upper House March 6, 2001, signed into law March 8, 2001, and came into force April 1, 2001.

²³ Stb. 2001, 468.

²⁴ The bill was introduced March 15, 2000, approved by the Lower House March 27, 2001, approved by the Upper House October 2, 2001, signed into law October 4, 2001, and came into force January 1, 2002.

²⁵ For translations see *supra* note 17.

and different-sex marriages.²⁶ The first difference is in regard to inter-country adoption. Although the *Act on Adoption by Persons of the Same Sex* made adoption available to same-sex married couples, the Act did not allow same-sex couples to take part in inter-country adoption as their different-sex counterparts. Inter-country adoption remains possible *only* for a different-sex married couple or for an individual. This exception materialized due to concerns about negative reactions from countries sending children to the Netherlands for inter-country adoption. This exception was inserted by the *Adjustment Act of March 8, 2001* into Article 1 of the *Act on the Reception of Foreign Children for Adoption*.²⁷

Although, it is a controversial exception, it may eventually be abolished. On December 18, 2003, the Lower House of Parliament adopted a non-binding resolution which states that “adoption by two persons of the same-sex can be in the best interest of a foreign child.”²⁸ The resolution goes on to request that the Government introduce legislation to amend the *Act on the Reception of Foreign Children for Adoption*, so that such adoption by same-sex couples would be possible.²⁹ In a letter to parliament the Minister of Justice replied that because in 2003 adoption by same-sex partners became possible in South Africa—one of the countries of origin of children for inter-country adoption—his ministry, in its spring 2004 visit to South Africa, would inquire whether South Africa would be prepared to allow adoption of a South African child by a Dutch same-sex couple.³⁰ If that would prove to be the case, the Dutch Government would attempt to draft a bilateral treaty with South Africa on the matter supplementing the Hague Convention on Intercountry Adoption of May 29, 1993,³¹ which does not cover adoption by same-sex couples.³² Once a treaty is agreed upon, the Dutch legislation would be amended accordingly. In his letter to

²⁶. There may also be a difference, *outside* of Dutch law, under the rules of private international law with regard to the recognition of Dutch same-sex marriages by other countries.

²⁷. Wet Opnemng Buitenlandse Kinderen ter Adoptie, December 8, 1988, *amended* by the Adjustment Act of March 8, 2001, Stb. 2001, 128.

²⁸. *Kamerstukken II* (Parliamentary Papers of the Lower House) 2003/2004, 28457, nr. 11.

²⁹. *Kamerstukken II* (Parliamentary Papers of the Lower House) 2003/2004, 28457, nr. 11. A second resolution (nr. 12) was passed on the same day, requesting that the Government investigate which countries of origin (including the United States) allow adoption of their children by Dutch same-sex partners. Parliamentary papers can be searched at <http://www.overheid.nl/op/index.html> (click “Kamerstukken”).

³⁰. *Id.* nr. 14.

³¹. *See id.*

³². *See id.*

Parliament, the Minister of Justice also announced that in 2005 a new survey will be held to see which other countries of origin would be prepared to allow such adoptions.³³ Finally, he announced that if the United States would ratify the Hague Convention on Intercountry Adoption, he would investigate whether another supplementary bilateral treaty on the matter could be agreed upon between the Netherlands and the United States.³⁴

The second difference is in regard to the presumption of paternity. The Dutch Civil Code presumes that a husband is the father of a child born to his wife.³⁵ This presumption applies exclusively to different-sex couples because Article 199 is phrased in a gender-specific way. In this way, it cannot apply to a child born to a *female* married couple, quite simply, because there is no *husband* to whom it can apply. The Explanatory Memorandum that accompanied the original proposal for the *Act on the Opening Up of Marriage* addressed this proposed treatment of the presumption of paternity as follows:

It would be pushing things too far to assume that a child born in a marriage of two women would legally descend from both women. That would be stretching reality. The distance between reality and law would become too great. Therefore this bill does not adjust chapter 11 of Book I of the Civil Code, which bases the law of descent on a man-woman relationship.³⁶

The Dutch legislature then passed the *Act of October 4, 2001* in order to address this legal void. Article 253sa of the Civil Code now makes joint parental authority automatic on the birth of a child to a female same-sex married couple. The married female partner of the birth mother can use the adoption process to secure the status of being a legal parent to the child. During this process, the biological father can seek to have his interests taken into account.

This presumption of paternity exception is also a controversial issue. During the debate on the adoption of the *Act on*

³³. See *id.*

³⁴. See *id.*

³⁵. See Civil Code, bk. 1, art. 199, bk. 1. The consolidated text of the Civil Code (*Burgerlijk Wetboek*) and of all other legislation in force is available at <http://wetten.overheid.nl>.

³⁶. *Kamerstukken II 1998/1999*, 26672, nr. 3, p. 4-5; see *supra* note 17 for this translation.

the Opening Up of Marriage the Lower House of Parliament passed a non-binding resolution requesting the Government to investigate the possibilities of greater equality in the law of parentage between children born to different-sex parents and children born to lesbian women.³⁷ It took the Government three years to respond to this request. In a letter dated December 22, 2003, the Minister of Justice concluded that there were not sufficient reasons to change the law on this point. According to the Minister there was a certain risk that parentage of a second mother would not be recognized in other countries unless a court established such parentage during an adoption proceeding. Furthermore, he asserted that the automatic joint parental authority was already solving most practical issues. The Minister did acknowledge one problem that might need a legislative solution: inheritance upon intestacy (without parentage the child would not inherit from its mother's female spouse). However, he stated that he would rather wait until 2006 to see whether this problem could be avoided by the simple drafting of last wills and testaments.³⁸

Although there are differences regarding adoption, it should be noted that all of the legal conditions for marriage between same-sex and different-sex couples are exactly the same. Marriage is restricted to two persons, and the same rules of consanguinity apply equally to both.³⁹ The same conditions with respect to capacity to marry in terms of citizenship or residence also apply equally to same-sex and different-sex couples.⁴⁰ To be entitled to marry in the Netherlands, one member of the couple has to be either a Dutch citizen or a Dutch resident. It should be noted, however, that citizens of any one of the member countries of the European Union are entitled to become Dutch residents, and therefore this condition is not as restrictive as it may first appear.

Regarding the rules of Dutch private international law, no distinction is made between same-sex and different-sex marriages. As to other countries, however, the rules of private international law may provide for different outcomes. For example, in some countries the recognition of a same-sex marriage validly entered into in the

³⁷ *Kamerstukken II* 1999/2000, 26672 & 26673, nr. 9.

³⁸ *Id.* nr. 14.

³⁹ Civil Code, bk. 1, art. 41.

⁴⁰ Wet conflictenrecht huwelijk (Private International Law (Marriages) Act) of September 7, 1989, art. 2; and Civil Code, bk. 1 art. 43. The consolidated text of the Civil Code (*Burgerlijk Wetboek* or *BW*) and of all other legislation in force is available at <http://wetten.overheid.nl>.

Netherlands could be seen as against *public order*.⁴¹ The Dutch legislature acknowledged these concerns in the same Explanatory Memorandum that accompanied the original bill referred to above:

The question relating to the completely new legal phenomenon of marriage between persons of the same sex concerns the interpretation of the notion of public order to be expected in other countries. Such interpretation relates to social opinion about homosexualityAs a result of this, spouses of the same sex may encounter various practical and legal problems abroad. This is something for future spouses of the same sex to take into account.⁴²

4. *Developments Leading to Legislation*

The process by which the Netherlands became the first country in the world to open up marriage to same-sex couples involved several small, sequential steps. Each was a small step that led to another; each also being a precursor and even a stimulant to the next. I have referred to this as the operation of the “law of small change” and the “trend of standard sequences.”⁴³ Any change was contingent on the decriminalization of homosexuality, and on the introduction of anti-discrimination laws.

In the Netherlands, homosexuality was decriminalized as early as 1811. In 1992, for the first time, the Penal Code explicitly prohibited sexual orientation discrimination. In 1994, the *General Equal Treatment Act*⁴⁴ broadened the protection against sexual orientation discrimination in two ways. First, it extended the range of remedies available in response to discrimination on several grounds including sexual orientation. Second, it explicitly added a prohibition against discrimination on grounds of civil status—between married and unmarried persons.

Since 1979, Dutch law has increasingly been giving legal rights and obligations enjoyed by married couples to informally

⁴¹ See, e.g., Kenneth McKNorrie, *Would Scots Law Recognise a Dutch Same-Sex Marriage?*, 7 EDINBURGH L. REV. 147-73 (2003).

⁴² *Kamerstukken II 1998/1999*, 26672, nr. 3, p. 7-8. See *supra* note 17 for this translation. Parliamentary papers are available at <http://www.overheid.nl/op/index.html> (click “Kamerstukken”).

⁴³ Kees Waaldijk, *Standard Sequences in the Legal Recognition of Homosexuality: Europe's Past, Present and Future*, 4 AUSTRALASIAN GAY AND LESBIAN L. J. 50-72 (1994); see also Waaldijk, *supra* note 17, at 437-64; Kees Waaldijk, *Towards the Recognition of Same-Sex Partners in European Union Law: Expectations Based on Trends in National Law*, in LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW 635, 635-51 (Robert Wintemute & Mads Andenaes eds., 2001).

⁴⁴ March 2, 1994, Stb. 1994, 230.

cohabiting couples.⁴⁵ Aside from parenting issues, these laws did not make any distinction between different-sex or same-sex cohabiting couples, and therefore there was never a need for a specific law on same-sex cohabitation.

Regarding parenting rights, there was a gradual shift allowing these rights to be secured outside the confines of civil marriage. In the 1970s, for example, fostering children became possible for cohabiting couples whether different-sex or same-sex. Nevertheless, some differences between different-sex married and different-sex cohabiting couples remained. As previously mentioned, one of these differences was the presumption of paternity. It only applied to the husband of a legally married birth mother, while the unmarried cohabiting male partner of the birth mother could secure legal status as a parent by acknowledging the child as his own.

In the late 1980s and the early 1990s, these remaining legal differences between married different-sex couples and cohabiting same-sex couples led to pressures for change. In 1992, the Advisory Commission for Legislation recommended the introduction of a registered partnership regime, along the lines of the model introduced by the Danish legislation in 1989.⁴⁶ Bills were introduced in 1994—one on registered partnerships and another on joint authority and joint custody. These bills became law in 1997, and came into force on January 1, 1998.⁴⁷ Simultaneously, the omnibus *Registered Partnership Adjustment Act* of December 17, 1997, amended hundreds of provisions of Dutch law by changing any reference to marriage or spouse into a reference to marriage/spouse and registered partner/partnership.⁴⁸

With these changes, the Netherlands thereby created a new civil status—a *quasi-marriage*. Couples could put themselves in almost exactly the same position as married partners by registering their partnership. This was an important advancement with respect to financial rights—property rights, inheritance rights, death duties and taxes. Contrary to the Danish model, however, the Dutch legislature chose to make registered partnerships equally available to

⁴⁵ See *supra* note 2 and accompanying text.

⁴⁶ See *Kamerstukken II* 1991/1992, 22300-VI, nr. 36. Parliamentary papers are available at <http://www.overheid.nl/op/index.html>.

⁴⁷ The Act on Registered Partnership of July 5, 1997, Stb. 1997, 324, and the Act on Joint Authority and Joint Custody of October 30, 1997, Stb. 1997, 506 (amending the Civil Code). The *Staatsblad* can be searched at <http://www.overheid.nl/op/index.html>.

⁴⁸ Stb. 1997, 660. (effective Jan. 1, 1998).

same-sex partners *and* to different-sex partners.

With these legislative steps, there remained only three essential differences between registered partnerships and marriage. These related to parenting, foreigners and pensions. As to parenting, registration had no effect on the relationship of a partner's children, except for the purposes of tax law. As to foreigners, initially they were not allowed to enter into registered partnerships, either with a Dutch citizen or a Dutch resident, until they had first acquired a right to Dutch residence themselves—for example, as a recognized refugee, worker, or stable *de facto* partner of a Dutch citizen. As to pensions, although most surviving registered partners were entitled to pensions, they would be significantly smaller than pensions available to widows and widowers under the same pension scheme.

With respect to parenting, the legislation on joint authority and joint custody (effective January 1, 1998) narrowed the gap between married couples and unmarried couples—whether registered partners or informal co-habitants, and whether of the same or of different sex. This legislation allowed one unmarried partner to secure joint parental authority over the child of the other partner, and both unmarried partners to secure joint custody over a foster child. Adoption legislation, which became effective on April 1, 1998, further narrowed the gap relating to parenting.⁴⁹ For the first time adoption became possible outside the confines of marriage either by a different-sex cohabiting couple or by an individual, even if that individual was living with a same-sex partner.

With all these changes there was still pressure to close the remaining gaps between married different-sex couples and same-sex registered partners. This pressure was expressed at many forums, and by the Dutch Parliament through resolutions requesting the Government to introduce legislation to open up marriage and adoption.⁵⁰ In 1996, the Government put together an advisory commission of eight legal experts known as the *Commission on the Opening Up of Civil Marriage to Persons of the Same Sex*.⁵¹ This Commission released its report in October of 1997.⁵² It unanimously recommended that same-sex couples—whatever their civil status—be allowed to adopt either jointly, or as a stepparent to their

^{49.} See Act of December 24, 1997, Stb. 1997, 772.

^{50.} See *Kamerstukken II*, 1995/1996, 22700, nrs. 14, 18.

^{51.} The Commission was chaired by Professor S.C.J.J. Kortmann. Dr. Waaldijk served as one of the other seven members.

^{52.} *Rapport van de Commissie Openstelling Burgerlijk Huwelijk Voor Personen van Hetzelfde Geslacht* (Report of the Commission on the Opening Up of Civil Marriage to Persons of the Same-Sex), Ministry of Justice, The Hague (1997). This report has not been translated.

partner's child, and that all remaining parental rights be extended to them. With respect to the presumption of paternity and automatic joint parental authority, the Commission unanimously proposed the solution of automatic joint parental authority. A majority of the Commission also recommended that marriage be opened up to same-sex couples. Following elections in May of 1998, a renewed coalition government undertook to introduce legislation to open up marriage, adoption and automatic joint parental authority.

It also introduced legislation to allow, (1) registered partners to have the same rights and obligations towards their partner's child as married partners have towards their stepchildren;⁵³ (2) registered partners to enjoy automatic joint authority (two women or a man and a woman) over the children born to them during their registered partnership;⁵⁴ (3) foreigners who have *not* acquired the right to Dutch residency to enter into registered partnerships on the same basis as they can enter into marriages with either a Dutch citizen or with another foreigner *as long as* the latter is legally residing in the Netherlands;⁵⁵ and, (4) surviving registered partners the right to pensions more comparable to those received by widows or widowers upon the death of their partner.⁵⁶

The amending legislation referred to above came into force about the same time as the legislation to open up marriage, adoption and automatic joint parental authority. These legislative measures were closely linked to, and facilitated each other. Together, they have had the effect of equalizing the legal position of same-sex couples and different-sex couples particularly in the context of civil marriage.⁵⁷

^{53.} See Civil Code, bk. 1, arts. 395, 395a, *amended* by the Act of December 21, 2000, Stb. 2001, 9 (effective Apr. 1, 2001). The consolidated text of the Civil Code and of all other legislation in force is *available* at <http://wetten.overheid.nl>. See *supra* note 17 for translations.

^{54.} See Civil Code, bk. 1, arts. 253aa, 253sa, *amended* by the Act of October 4, 2001, Stb. 2001, 468 (effective Jan. 1, 2002).

^{55.} See Civil Code, bk. 1, art. 43, *amended* by the Act of December 13, 2000, Stb. 2001, 11 (effective Apr. 1, 2001).

^{56.} See Pension Fund Act, art. 2(c), *repealed* by the Act of May 25, 2000, Stb. 2000, 256 (effective June 23, 2000).

^{57.} See generally M. Antokolskaia, *Recent Developments in Dutch Filiation, Adoption, and Joint Custody Law*, in *FAMILIA*, 781-804 (2002); Katharina Boele-Woelki, *Registered Partnership and Same-Sex Marriage in the Netherlands*, in *LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE* 41-53 (Katharina Boele-Woelki & Angelika Fuchs eds., 2002); MERIN, *supra* note 7, at 111-29; Barbara Reinhartz, *The Netherlands*, in *FAMILY LAW IN EUROPE* 437-467 (C. Hamilton & A. Perry eds., 2002); Astrid Mattijssen et al., *Legal Protection for All Children: Dutch-American Comparison of Lesbian and Gay Parent Adoptions*, 3.1 ELEC. J. COMP. L. (1999), at <http://law.kub.nl/ejcl/31/abs31-2.html>; Nancy Maxwell, *Opening Civil Marriage to Same-Gender Couples: A Netherlands-United States Comparison*, 18 ARIZ. J. INT'L COMP. L. 141-207 (2001); Wendy M. Schrama, *Registered Partnership in the Netherlands*, 13 INT'L J. L. POL'Y FAM. 315-27 (1999); Ian Sumner, *Comparative Analysis and Assessment of the Gradual Recognition of Homosexuality with Respect to the Netherlands and England*, 9 MAASTRICHT J. 29-56 (2002).

III. BELGIAN LEGISLATION RELATING TO SAME-SEX MARRIAGE AND SEMI-MARRIAGE

1. *Amending the Civil Definition of Marriage*

Belgium was the second country to open up the institution of civil marriage to same-sex couples. The Belgian Parliament made this change by amending the country's Civil Code, specifically Book 1.⁵⁸ The amending legislation was entitled *Loi Ouvrant le Mariage a des Personnes de Même Sexe et Modifiant Certaines Dispositions du Code Civil* of February 13, 2003 (Law opening up marriage to persons of the same sex and amending certain provisions of the Civil Code).⁵⁹

By amending Article 143 of the Belgian Civil Code, the civil definition of marriage was changed. It now reads: "*Deux personnes de sexe différent ou de même sexe peuvent contracter le mariage*" (two persons of different sex or of the same sex may contract into a marriage). Similar to the Netherlands, Belgium also has the same clear divide that exists between civil and religious marriage. A Belgian marriage, therefore, can *only* take place before a public officer—*officier de l'état civil*, the keeper of the civil registry. Once a marriage is so registered a couple can optionally choose to also enter into a religious marriage conducted by a religious official.

2. *Remaining Differences Between Same-sex and Different-sex Marriage*

The legal requirements for entering into marriage whether for same-sex or different-sex couples are the same. Marriage is restricted to two persons, and the same rules of consanguinity apply equally to both. Like the Dutch Code, the Belgian Civil Code has always specified various prohibited degrees, such as marriage between a brother and sister. The amended Code now also prohibits marriage between brothers as well as between sisters. While the requirements to enter into marriage are the same, once a couple is married there are three explicit differences between different-sex and same-sex marriages. These are regarding the presumption of paternity, second-parent adoption and joint adoption.

⁵⁸ The Belgian legislation consists of only one set of amendments to the Belgian Civil Code, as noted above. This legislation, however, has the effect of amending numerous provisions of that Code's Book on Family Law, as well as other books in the same Code.

⁵⁹ For more information on this law, see *Moniteur Belge*, the official journal of Belgium on February 28, 2003, at <http://www.just.fgov.be>.

Article 143 (2) of the amended Civil Code now provides that the presumption of paternity (found in article 315 of the Code) does not apply to children born into a same-sex marriage. Article 345 now provides that second-parent adoption is permitted *only* if partners are married and of different-sex, and Article 346 similarly provides that joint adoption is permitted *only* if partners are married and of different-sex. Previously, articles 345 and 346 had provided that second-parent adoption and joint adoption, respectively, were permitted only if partners were married. Once this *Law Reforming Adoption* comes into force,⁶⁰ second-parent and joint adoption will also become possible for different-sex cohabitants who have been living together for at least three years (new text of article 343 (1)), but not yet for same-sex spouses and cohabitants.

In the end of 2003, three bills were introduced in the Lower House of Parliament to delete the words “of different sex” from article 343 (1) of the Civil Code.⁶¹ It seems likely that a parliamentary majority will adopt one of these bills. Once this happens, joint and second-parent adoption will become possible for same-sex spouses and same-sex cohabitants.

Initially, there seemed to be another difference on the capacity to marry. Belgian law provides that the capacity to marry is to be decided by the national law of each partner. It seemed to follow that, if the national law of one or both same-sex partner(s) did not allow same-sex couples to marry, then these partners could not marry in Belgium. A few months after the amending legislation came into force, the Minister of Justice issued an administrative circular clarifying the ambiguity. The circular stated that any foreign legal prohibition on same-sex marriage must be considered discriminatory and contrary to Belgian public order, and therefore should not be applied. The circular goes on to say that in such cases Belgian law should be applied if at least one of the future spouses is either a Belgian citizen or a habitual resident of Belgium.⁶² This interpretation of Belgian law makes it identical to Dutch law.

3. Developments Leading to Legislation

Belgium followed a similar path to that of the Netherlands.

⁶⁰. For more information on this law, see *Loi Réformant L'adoption* (Law reforming adoption) of April 24, 2003, published in the *Moniteur Belge* of May 16, 2003, at <http://www.just.fgov.be>.

⁶¹. For more information, see *Propositions de Loi*, nos. 0664, 0666, 0667, at <http://www.lachambre.be>.

⁶². For more information, *Moniteur Belge* of Jan. 24, 2004, at <http://www.just.fgov.be> (go to *Moniteur Belge/ Français/ Nouvelle Recherche*).

Decriminalization of sodomy took place in 1792. The first explicit prohibition against sexual orientation discrimination in employment was introduced in 1999 through Collective Agreement No. 38, made obligatory by Royal Decree. The first general explicit prohibition of sexual orientation discrimination was introduced into law on February 25, 2003.⁶³

In regard to providing legal rights and obligations to *de facto* cohabiting couples, developments in Belgium were rather different than those in the Netherlands. Because Belgium did not provide many rights to cohabiting couples, whether different-sex or same-sex, pressure to create a new institution—open equally to cohabiting different-sex and same-sex couples—began to develop. On January 1, 2000, it became possible for any couple, different-sex or same-sex, to go before an *officier de l'état civil* and publicly choose to register and live under the legal regime of *cohabitation légale*.⁶⁴

This so-called “legal cohabitation,” however, in contrast to the Dutch registered partnership regime, did not come nearly as close to the institution of marriage. Rather, it was an institution in between marriage and informal cohabitation—a *semi-marriage*, as opposed to the *quasi-marriage* that the Netherlands created with its registered partnership regime. The rights and obligations accorded by *cohabitation légale* are limited to the material realm—division of goods and debts and continuation of rent after death of the partner—and provide no rights with respect to children.

These stark differences between marriage and the new institution of *cohabitation légale* created new pressure for the introduction of a full-blown registered partnership regime (quasi-marriage), or for the opening of marriage itself to same-sex couples. The Belgian legislature chose the latter option. Marriage became available to same-sex couples on June 1, 2003.⁶⁵

IV. DIFFERENCES BETWEEN DUTCH AND BELGIAN LEGISLATION

There are a number of important differences between

⁶³. For more information, *Moniteur Belge* of March 17, 2003, at <http://www.just.fgov.be>.

⁶⁴. *Loi Instaurant la Cohabitation Légale* (Law Introducing Legal Cohabitation) of November 23, 1998 (inserting arts. 1475-79 in the Civil Code). For more information, *Moniteur Belge* of January 12, 1999, at <http://www.just.fgov.be>.

⁶⁵. See generally MERIN, *supra* note 7; Olivier De Schutter & Anne Weyembergh, “Statutory Cohabitation” Under Belgian Law: A Step Towards Same-Sex Marriage, in *LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW* 465, 465-74 (Robert Wintemute & Mads Andenaes eds., 2001).

legislation in the Netherlands and in Belgium. Most of these differences relate to children. In the Netherlands, marriages between different-sex and same-sex couples have been equalized in all respects except for inter-country adoption and recognizing the married female partner of a birth mother as the legal parent of a child born into that marriage. Nevertheless, the Dutch legislature has minimized the effect of the latter by providing for automatic joint parental authority on the birth of a child into the marriage. Moreover, that non-biological partner can also become the child's legal parent through the adoption process.

In contrast, in Belgium, although bills on the issue have been introduced, the legislature has not yet opened up adoption to same-sex couples. The Belgian legislature has also not taken any steps to address the legal void created by the non-application of the presumption of paternity to children born to married female same-sex couples. It has not provided that a birth mother and her female married partner can enjoy joint parental authority of a child born into the marriage, either automatically, by process of law, or by allowing the non-biological parent to become the legal parent of the child through adoption processes.⁶⁶

One other difference should be pointed out between registered partnership in the Netherlands and *cohabitation légale* in Belgium. The former is a quasi-marriage while the latter, a semi-marriage, entails very few legal consequences. In the Netherlands, it is possible for a Dutch couple, same-sex or different-sex, to convert their registered partnership into a marriage, or, in the alternative, convert their marriage into a registered partnership. This conversion is possible because the two institutions are so similar in content in terms of legal rights and obligations. Contrastingly, in Belgium the amending legislation does not allow for conversion. There are two reasons for this. First, substantial differences remain between marriage and *cohabitation légale*. Second, Belgian law provides that a *cohabitation légale* terminates when a couple enters into a marriage, or either one of them marries another person.

⁶⁶ This latter option could be available if any of the bills on adoption becomes law.

V. EUROPEAN COUNTRIES THAT RECOGNIZE SAME-SEX RELATIONSHIPS BY MEANS OF QUASI-MARRIAGE OR SEMI-MARRIAGE

The following brief survey of other European countries recognizing same-sex relationships is limited in three ways. First, it includes only those countries that recognize same-sex relationships as a legal status similar to marriage. It does not include countries—such as Portugal and Hungary—that only have some legislation recognizing *de facto* cohabitation, whether same sex or different sex. Second, this survey is limited to countries that recognize same-sex relationships at a national level. Therefore, it does not include countries—Spain or Switzerland—that only have certain regions recognizing this status. Third, this survey includes only those countries that recognize same-sex relationships as of January 1, 2004. It does not include European countries that are currently in the process of preparing the introduction of a new status to recognize same-sex relationships—such as Switzerland, England and Wales, and Scotland.⁶⁷ Finally, except for two, each of the countries surveyed, is a unitary state. The two exceptions are Belgium and Germany; however, national law governs family law in both countries. Therefore, not one of the nine countries surveyed has a divided jurisdiction in regard to family law.

1. Nordic Countries – Registered Partnership

The five Nordic countries—Denmark, Norway, Sweden, Finland and Iceland—are surveyed together for four reasons. First, they all have registered partnerships.⁶⁸ Second, these registered

⁶⁷. For an overview of developments in Europe, see MERIN, *supra* note 7; Katharina Boele-Woelki, *Registered Partnership and Same-Sex Marriage in the Netherlands*, in LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE 41-53 (Katharina Boele-Woelki & Angelika Fuchs eds., 2003).

⁶⁸. For Nordic registered partnership regimes, see generally Maarit Jänträ-Jareborg, *Registered Partnerships in Private International Law: The Scandinavian Approach*, in LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE 137, 137-58 (Katharina Boele-Woelki & Angelika Fuchs eds., 2003); Ingrid Lund-Andersen, *The Danish Registered Partnership Act*, in LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE 11-23 (Katharina Boele-Woelki & Angelika Fuchs eds., 2003) [hereinafter Lund-Andersen, EUROPE]; Ingrid Lund-Andersen, *The Danish Registered Partnership Act, 1989: Has the Act Meant a Change in Attitudes?*, in LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS 417, 417-26 (Robert Wintemute & Mads Andenaes eds., 2001); MERIN, *supra* note 7, at 61-110; Matti Savolainen, *The Finnish and Swedish Partnership Acts: Similarities and Divergencies*, in LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE 24-40 (Katharina Boele-Woelki & Angelika Fuchs eds., 2003); Hans Ytterberg, “From Society’s Point of View, Cohabitation Between Two Persons of the Same Sex is a Perfectly Acceptable Form or Family Life”: A Swedish Story of Love and Legislation, in LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW 427, 427-36 (Robert Wintemute & Mads Andenaes eds., 2001); Morten P. Broberg, *The Registered Partnership for Same-Sex Couples in Denmark*, 8 CHILD & FAM. L. Q. 149, 149-55 (1996).

partnerships are all more like the *quasi-marriage* regime of the registered partnership in the Netherlands than the *semi-marriage* regime of the *cohabitation légale* in Belgium or the civil solidarity pact in France. Third, these registered partnership regimes are all open only to same-sex couples (in contrast to the registered partnership regimes in Belgium, the Netherlands and France). Finally, all of the Nordic countries allow religious officials to solemnize marriages for civil purposes. This is in contrast not only to the Netherlands and Belgium, but also to Germany and France.

Denmark was the first European country to introduce a registered partnership regime. Registered partnerships became available on October 1, 1989.⁶⁹ Norway followed, making registered partnerships available on August 1, 1993.⁷⁰ Sweden was next, making it available on January 1, 1995.⁷¹ Iceland followed in quick succession, making it available on June 27, 1996.⁷² Iceland was followed by Greenland, which as of April 26, 1999, applied Danish law.⁷³ Lastly, Finland followed, relatively recently, making it available on March 1, 2002.⁷⁴

In each of the five countries, the registered partnership regime introduced a new civil institution nearly identical to marriage. Rather than introducing an entirely new and unknown institution, each country simply modeled their registered partnership regime on their institution of marriage, and decided which specific marital rights would *not* be attached to the new status of being a registered partner. Aside from parenting issues (such as adoption) there are very few exceptions, the clearest being the Finnish exclusion of registered partners from the right to adopt a common surname.⁷⁵

Indeed, same-sex couples in all five Nordic countries gain approximately the same array of legal rights and obligations by

⁶⁹. For an English translation of the Danish Act on registered and of the registered partnership acts of the other Nordic see EUROPE, *supra* note 12, at 215-30; see also *infra* notes 70-74.

⁷⁰. See Norwegian Act on Registered Partnership of April 30, 1993, nr. 40, available at <http://www.ub.uio.no/ujur/ulov> (translated in English).

⁷¹. See Swedish Act on Registered Partnership of June 23, 1994, nr. 1994:1117, available at <http://www.homo.se/o.o.i.s/1630> (translated in English).

⁷². See Icelandic Act on registered partnership of June 12, 1996, nr. 87, available at <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/117> (translated in English).

⁷³. See Lund-Andersen, EUROPE *supra* note 68, at 13.

⁷⁴. See Finnish Act on Registered Partnerships of November 9, 2001, nr. 950/2001, available at <http://www.finlex.fi/english/index.html> (translated in English).

⁷⁵. See Act on Registered Partnership, art. 9 2; see also Matti Savolainen, *supra* note 68, at 31-32.

entering into a registered partnership as do same-sex couples in Belgium by entering into marriage, or in the Netherlands by either entering into marriage or registering a partnership. Four of the five countries have subsequently added certain adoption rights, previously available only to married couples.⁷⁶ In Denmark,⁷⁷ Iceland,⁷⁸ and Norway,⁷⁹ only second-parent adoption has been made available to registered partners. To date Finland has not added any form of adoption. This may be due to the fact that its registered partnership regime only came into force two years ago.

Each of these countries chose to make the registered partnership regime available only to same-sex couples. This equalized the number of relationship options available to different-sex and same-sex couples: For different-sex couples, marriage or informal cohabitation; for same-sex couples, registered partnership or informal cohabitation. However, different-sex couples have one extra choice. This occurs because, unlike the Netherlands, Belgium, Germany and France, none of the Nordic countries has established a clear divide between the roles of the civil registry and religious institutions. Thus, in each Nordic country, a different-sex couple has the option of entering into a legally valid marriage in front of a civil official, *or* in front of a religious official. In contrast, a same-sex couple can only enter into a registered partnership in front of a civil official.

2. Germany – Life Partnership

Germany created a new institution to legally recognize same-sex relationships, *Lebenspartnerschaft*—translated as a “life partnership.”⁸⁰ It became possible to enter into a life-partnership on August 1, 2001. Similar to other partnership regimes, couples enter into a life partnership by means of registration. Similar to the Nordic countries’ registered partnership regimes, and in contrast to the Dutch, Belgian and French regimes, this new institution is only available to same-sex couples. In contrast to both the Nordic *and*

⁷⁶ Sweden makes *all* forms of adoption available—second-parent, joint and inter-country adoption. See Act 2002:603 (effective Feb. 1, 2003).

⁷⁷ See Act nr. 360 of June 2, 1999.

⁷⁸ See Act nr. 52/2000.

⁷⁹ See Act nr. 36 of June 15, 2001.

⁸⁰ See *Lebenspartnerschaftsgesetz* (Life Partnership Law) of February 16, 2001, published in the *Bundesgesetzblatt* of February 22, 2001, pt. I, no. 9, available at <http://www.lsvd.de/lpartg/index.html> (this website also contains translations of the law in English and French, and a guide (*Ratgeber*) to the law in German).

Dutch regimes, and similar to the Belgian and French regimes, this new institution is more a *semi-marriage* rather than a *quasi-marriage* because the law attaches only a limited selection of rights and obligations to it. Some exclusions are: presumption of paternity, adoption, statutory survivor's pension, certain tax reductions, and inheritance tax. A bill aiming to attach some of the now excluded rights failed to get a majority in the German Senate, whereas the main bill introducing "life partnership" did not require approval in the Senate.⁸¹ It should be noted that more legal rights and obligations flow from a "life partnership" than from *cohabitation légale* in Belgium and from *Pacte civile de solidarité*⁸² in France. In other words, the German semi-marriage is almost a quasi-marriage.

3. France – Pacte Civile de Solidarité (PACS)

France also created a new institution to legally recognize same-sex relationships, *Le Pacte Civile de Solidarité*—Civil Solidarity Pact.⁸³ Similar to other partnership regimes, couples enter into a *Pacte Civile de Solidarité*, registering. In contrast to the Nordic countries' and Germany's registered partnership regimes, this new institution is equally available to same-sex and to different-sex couples.

Although similar to Germany's and Belgium's counterpart regimes, France's regime is more like a *semi-marriage*. In terms of the legal rights and obligations that flow from it, France's *Pacte Civile de Solidarité* ranks somewhere in between Germany's life partnership and Belgium's *cohabitation légale*. Some exclusions are, among other things: presumption of paternity, adoption, statutory survivor's pension, intestate inheritance, certain aspects of tax law, and citizenship. When the French legislation was adopted, there was

⁸¹. The bill that was rejected by the *Bundesrat* (Senate) was called *Lebenspartnerschaftsgesetzergänzungsgesetz* (Life Partnership Amendment Bill). See Roland Schimmel & Stefanie Heun, *The Legal Situation of Same-Sex Partnerships in Germany: An Overview*, in *LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW* 575, 589-90 (Robert Wintemute & Mads Andenaes eds., 2001); see also MERIN, *supra* note 7, at 142-47; Karsten Thorn, *The German Law on Same-Sex Partnerships*, in *LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE* 84-98 (Katharina Boele-Woelki & Angelika Fuchs eds., 2001).

⁸². See *infra* Part III.C.

⁸³. See *Loi no 99-944 du 15 Novembre 1999 Relative au Pacte Civil de Solidarité*, published in *Le Journal Officiel de la République Française* of November 16, 1999, p. 16959, available at <http://www.legifrance.gouv.fr>. For an English translation of the consolidated text of the Civil Code, see http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm.

insufficient support to make the PACS more similar to marriage.⁸⁴

VI. SUMMARY AND CONCLUSION

Since 1989, nine European countries have taken steps to legally recognize the relationships of same-sex couples by opening up civil marriage or by introducing a form of registered partnership. Although each country has taken these steps at its own pace and in light of its own legal, social and political contexts, this brief survey shows that certain trends and patterns are emerging.

Six countries—the five Nordic countries and the Netherlands—started out by introducing a form of registered partnership that can be classified as a *quasi-marriage*, with almost all of the rights and obligations that flow from marriage. In most of these countries subsequent legislation reduced the gap between registered partnerships and marriages. Three other countries—France, Belgium and Germany—introduced a *semi-marriage*, a form of registered partnership with only a limited selection of the rights and obligations of marriage. To date, one country from each group—the Netherlands and Belgium—has taken the further step of opening up the institution of civil marriage to same-sex couples. Others may follow.

⁸⁴ For general PACS literature, see Daniel Borrillo, *The “Pacte Civil de Solidarité” in France: Midway Between Marriage and Cohabitation*, in LEGAL RECOGNITION OF SAME-SEX PARTERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW 475, 475-93 (Robert Wintemute & Mads Andenaes eds., 2001); Veronique Chauveau & Alain Cornec, *France*, in FAMILY LAW IN EUROPE 251, 251-90 (C. Hamilton & A. Perry eds., 2002); MERIN, *supra* note 7, at 136-42.