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[bioethics/Textes publics/2005/INF(2005)7 e MAP]

CDBI/INF (2005) 7

**STEERING COMMITTEE OF BIOETHICS (CDBI)**

**Replies by the member States to the questionnaire on  
access to medically assisted procreation (MAP) and on right to know about their origin  
for children born after MAP**

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**Explanation of abbreviations**

- \* indicates that a comment accompanies the respond and is presented below the table
- - means the question was not applicable
- "FYROM" stands for the Former Yugoslav Republic of Macedonia

**Language of the questionnaire answers:**

<b>Countries</b>	<b>English</b>	<b>French</b>	<b>Countries</b>	<b>English</b>	<b>French</b>
Albania			Lithuania	Yes	Translation
Armenia			Luxembourg	Translation	Yes
Austria	Yes	Translation	Malta	Yes	Translation
Azerbaijan	Yes	Translation	Moldova		
Belgium	Translation	Yes	Netherlands	Yes	Translation
Bosnia & Herzegovina			Norway	Yes	Translation
Bulgaria			Poland	Translation	Yes
Croatia	Yes	Translation	Portugal	Translation	Yes
Cyprus	Yes	Translation	Romania		
Czech Republic	Yes	Translation	Russian Federation	Yes	Translation
Denmark	Yes	Translation	Serbia and Montenegro	Yes	Translation
Estonia	Yes	Translation	Slovakia	Yes	Translation
Finland	Yes	Translation	Slovenia	Yes	Translation
France	Translation	Yes	Spain	Yes	Translation
Georgia	Yes	Translation	Sweden	Yes	Translation
Germany	Yes	Translation	Switzerland	Translation	Yes
Greece	Yes	Translation	'FYROM'	Yes	Translation
Hungary			Turkey	Yes	Translation
Iceland	Yes	Translation	Ukraine	Yes	Translation
Ireland	Yes	Translation	United Kingdom	Yes	Translation
Italy	Yes	Translation	Canada	Yes	Translation
Latvia	Yes	Translation	Israel	Yes	Translation

- Extracts of national legislations have been translated by the Department

**Questionnaire on access to MAP and  
on right to know about their origin for children born after MAP**

*Delegations are invited to reply to the questions, but also, where possible, to provide explanations for the basis for such positions/decisions in their countries.*

**Section I – Legal regulation or practice and access to MAP**

Relevant legal instruments, draft legal instruments, or practice

Title of the law \_\_\_\_\_  
\_\_\_\_\_

Date of adoption and entry into force \_\_\_\_\_

Published in \_\_\_\_\_

Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law \_\_\_\_\_  
\_\_\_\_\_

If no legal instrument please describe the practice

Legal aspects

1. Is access to medically assisted procreation (MAP) (artificial insemination, in vitro fertilization procedures (IVF))

- |  |        |
|--|--------|
| a. restricted to heterosexual couples?                     | YES/NO |
| b. possible for women not living in a heterosexual couple? | YES/NO |

Possible, further comments

Medical aspects

2. Are there specific criteria for access to MAP?

Medical reasons:

- |   |        |
|---|--------|
| a. Infertility  |        |
| i. for a heterosexual couple?   | YES/NO |
| ii. for women not living in a heterosexual couple?                            | YES/NO |
| b. Risk of transmission of a disease (please specify the risk and/or disease) |        |
| i. for a heterosexual couple?   | YES/NO |
| ii. for women not living in heterosexual couple?                              | YES/NO |

c. Other  
Please specify

Possible, further comments

Financial aspects

3. Are MAP procedures covered by the social security system? YES/NO

Please explain why (e.g. infertility considered as a disease)

Possible, further comments

4. Are there specific criteria for such coverage (e.g. infertility, age limit)? YES/NO

Please explain the basis for such criteria

Possible, further comments

5. Is the financial coverage limited to a number of MAP procedures (e.g. three IVF procedures only)? YES/NO

Possible, further comments

Sperm/oocyte/embryo donation

6. Are donation of the following permitted in your country?

- a. Sperm YES/NO
- b. Oocytes YES/NO
- c. Embryos YES/NO

Possible, further comments

7. Are there specific compensation arrangements for such donation(s) (e.g. financial compensation, reduced fees for a MAP procedure in the case of oocyte donation)? YES/NO

Possible, further comments

8. Are there specific criteria for donation of the following?

- a. Sperm YES/NO
- b. Oocytes YES/NO
- c. Embryos YES/NO

What are those criteria (e.g. being parents, age limit)?

Possible, further comments

9. Are there specific non medical criteria for selection of gametes/embryo to be used for MAP (e.g. matching appearance of donor and future parent(s))? YES/NO  
Please explain

Possible, further comments

10. Are there special measures for the prevention of consanguinity? YES/NO  
(e.g. official register, limited number of donations) Please explain

Possible, further comments

11. In a homosexual couple, is a legal relationship possible between a child and the partner of his or her legal parent? YES/NO  
Please specify

Possible, further comments

Surrogate mothers

12. Is surrogacy permitted in your country? YES/NO  
If yes, describe all conditions regulated by law

Possible, further comments

13. If yes, can the surrogate mother be legally remunerated? YES/NO  
Please explain

Possible, further comments

14. If surrogacy is forbidden in principle, are there exceptions? YES/NO  
Please explain

Possible, further comments

15. Are you aware of illegal practices in your country? YES/NO

Possible, further comments

**Section II - Right to know about their biological origin for children born after MAP**

16. Are donation of the following anonymous?

- |            |        |
|------------|--------|
| a. Sperm   | YES/NO |
| b. Oocytes | YES/NO |
| c. Embryos | YES/NO |

Please explain what legal provisions

Possible, further comments

17. Is it possible to obtain information about the biological origin of a child born after gametes or embryo donation?

- |                                 |        |
|---------------------------------|--------|
| i. For the child him or herself | YES/NO |
| ii. For the parents             | YES/NO |
| iii. For a court                | YES/NO |

In particular:

- |                                 |        |
|---------------------------------|--------|
| a. Identity of the donor(s)     |        |
| i. For the child him or herself | YES/NO |
| ii. For the parents             | YES/NO |
| iii. For a court                | YES/NO |

- |   |        |
|---|--------|
| b. Certain health information concerning the donor(s) |        |
| i. For the child him or herself                       | YES/NO |
| ii. For the parents                                   | YES/NO |
| iii. For a court                                      | YES/NO |

- |                                 |        |
|---------------------------------|--------|
| c. Other information            |        |
| i. For the child him or herself | YES/NO |
| ii. For the parents             | YES/NO |
| iii. For a court                | YES/NO |

Please explain legal provisions and procedures to be followed

Possible, further comments

18. Is it possible to contest maternity and paternity of children born utilising MAP and under which conditions (family law provisions)? YES/NO

Possible, further comments

**Section III – Current debate and specific situations met in your country, in relation to these issues**

19. Is there an important current debate in your country on these or related issues? If so, what might the implications be (e.g. changes to the legal situation)?

20. Delegations are invited to provide information, in this section, on particular cases encountered in their country, and especially their case-law, in relation to the questions appearing in Sections I and II above.

**Please provide relevant articles of the law concerning MAP (including family law), where possible translated into English or French.**

**Section I – Legal regulation or practice and access to MAP**  
**Relevant legal instruments, draft legal instruments, or practice**

Austria

**Title of the law:** Law on Medical Assisted Reproduction “Fortpflanzungsmedizingesetz”

**Date of adoption:** 14 May 1992 **entry into force** 1 July 1992

**Published:** in Federal Gazette “Bundesgesetzblatt” BGBl. Nr. 275/1992

Revision concerning duration of storage of gametes and embryos is envisaged. Public consultation is finished. Decision of the Federal Government on the draft bill will be prepared in due course.

Azerbaijan

**Title of the law:** No specific law, but different articles in the Code:

– Law of population health protection

**Date of adoption:** 26 June 1997; **entry into force:** 24 September 1997.

Chapter 5.

Article 29 Artificial insemination and embryo implantation.

Article 40. The usage of semen and human organs for transplantation.

– The Criminal Code of Azerbaijan Republic

**Date of adoption:** 30 December 1999; **entry into force:** 01 September 2000

Chapter 8.

Article 136. Illegal Artificial insemination.

Belgium

**Title of the law:** No legislation regarding access to MAP. Concerning the authorization of hospitals equipped to carry out MAP: a royal decree fixing the standards to which the programme of care for “reproductive medicine” must conform in order to be approved. It is forbidden to create embryos outside authorised centres.

**Date of adoption:** 15 February 1999; **entry into force** 01 June 1999.

**Published in:** 25 March 1999

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** no

**If no legal instrument please describe the practice:** It goes without saying that the regulations of professional ethics and the respect of Good Medical Practices are strictly observed by the relevant scientific community.

Croatia

**Title of the law:** The Act on Health Measures Related to Right to the Enjoyment of Free Choice in Childbirth (Official Gazette 18/78, 31/86, 47/89)

**Date of adoption and entry into force:** 29 April 1978

**Published in** Official Gazette 18/78, 31/86, 47/89

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** The Republic of Croatia has intention to make new legislation on MAP.

Cyprus

**Title of the law:** Not Applicable

Czech Republic

**Title of the law:** no law has been issued yet but there are some regulations and standards available

1. MAP measures of the Ministry of Health of the Czech Republic
2. Recommended standards for methods that offers and conducts MAP, 11/20/01
3. The medical Act on Health Care is under the preparation

**Published in:** Journal of the Ministry of Health

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** These recommended standards are followed, however they are not legally binding norms.



### Denmark

**Title of the law:** Act nr. 460, 10 June 1997 on medically assisted procreation in connection with medical treatment, diagnosis and research etc. amended by Act nr. 427, 10 June 2003 (Research on embryonic stem cells) and Act nr. 240 5 April 2004 (pre implantation diagnosis).

**Date of adoption and entry into force:** 1 October 1997

**Published in:** Danish Law Journal

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** The law will be revised in Parliament in 2004-2005.

### Estonia

**Title of the law:** Artificial Insemination and Embryo Protection Act

**Date of adoption and entry into force:** 11 July 1997

**Published in:** State Gazette 1997, Nr. 51. Art 824

### Finland

**If no legal instrument please describe the practice:** Finland has no law on artificial procreation. A proposal is in preparation in the Ministry of Justice. There are no other regulatory elements that are binding. The public health care system only heterosexual couples are treated, and the age of the woman determines if different treatments are available. The age limit for in vitro fertilization has varied there between 38 and 42 years, depending on the length of the waiting list.

In the private sector there are not such waiting lists, so also older women get treatment, also single women, and one can suppose, lesbian women. So the background of the woman that asks for treatment is not a determining factor. This policy may vary in different infertility clinics.

The Family Federation of Finland has an infertility clinic that is supported by public funds. It has been the only clinic that has also used surrogates for infertility treatment (about 20 pregnancies). The Family Federation of Finland has also quite long waiting lists for infertility treatments.

In the proposal concerning infertility treatments the law will regulate:

- if single mothers may get artificial procreation (In previous proposal it was limited to infertility also in the case of single mothers). There has been a hectic discussion if lesbian couples would have a right to get infertility treatment (possibly will be allowed).
- surrogate motherhood will not be permitted (infertility treatment is not allowed if it is obvious that the child will be given for adoption after birth)
- the child will have the right to know the identity or description of the donor of gamete cells (according to the consent of the donor)
- there will be a registry of donors
- no incentives are allowed for donation of gametes but fair compensation will be allowed (whatever it may be)...
- some additional regulations will be elaborated for the research of embryos
- some requirements of storage of embryos, registry, licensing etc.

The date of the introduction of this proposal to the Parliament is not known.

### France

**Title of the law:** Act n° 2004-800 on bioethics 6 August 2004 (codified in the Public Health Code articles L.1244-1 to L.1244-9 for gametes donation and articles L.2141-1 to L.2142-4 for medically assisted procreation.

**Date of adoption and entry into force:** 6 August 2004

**Published in:** Official Journal 7 August 2004

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** Yes, concerning implementing regulations for the Bioethics Act of 6 August 2004

### Georgia

**Title of the law :**

a) The law of Georgia on Health Care (LHC) - Chapter XXIII Family Planning

b) The Draft law on Reproductive Health and Reproductive Rights (DL-RHRR)

**Date of adoption and entry into force:**

- a) LHC - Adopted by Parliament of Georgia on 10 December 1997  
b) DL-RHRR– Submitted to the Georgian Government in December 2003  
**Published in:** LHC - News of the Parliament, 1997, Dec.

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** DL-RHRR– Before submitting the draft law to the Government, it was discussed among main stakeholders within the healthcare system and relevant non-governmental organizations. Professor of Toronto University Bernard Dickens (expert in the field of health law) was involved in the drafting process.

Later the document was sent to the various Ministries, Departments and governmental agencies and their comments have been taken into consideration as well.

The next steps should be: (a) discussions within the apparatus of the President and later (b) debates in the Parliament.

#### Germany

**Title of the law:** Embryonenschutzgesetz (Act on the Protection of Embryos); section 27 a Sozialgesetzbuch V (Social Code Book V); sections 1591 to 1600e, 1682, 1685 Bürgerliches Gesetzbuch (Civil Code); section 9 Lebenspartnerschaftsgesetz (Registration of Homosexual Partnerships Act)

**Date of adoption and entry into force:** Act on the Protection of Embryos: 13 December 1990; 1 January 1991

Civil Code in the version of the Reform of the Law relating to Parents and Children: 26 September 1997; 1 July 1998

Registration of Homosexual Partnerships Act: 10 November 2001; 1 August 2001

Social Code Book V: 14 November 2003; 1 January 2004

**Published in:** Act on the Protection of Embryos: Bundesgesetzblatt (Federal Journal) Part I 1990 p. 2746;

Civil Code: Bundesgesetzblatt Part I 2002 p. 42;

Registration of Homosexual Partnerships Act: Bundesgesetzblatt Part I 2001 p. 266;

Social Code Book V: Bundesgesetzblatt Part I 2003 p. 2190

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** No ongoing revision

**If no legal instrument please describe the practice:** Richtlinien der Bundesärztekammer zur Durchführung der assistierten Reproduktion als Beschreibung des aktuellen ärztlichen (Berufs-) Standards (Guidelines of the German Medical Association on the performance of assisted reproduction as the description of the current medical (professional) standard) (Deutsches Ärzteblatt 95 ; 1998 : p 2454 – 2459)

#### Greece

**Title of the law:** “Medically Assisted Human Procreation” Law 3089, State journal (FEK) No 327.

**Date of adoption and entry into force:** 20 December 2002

**Published in:** 23 December 2002

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** This law [3089/92] mostly regulates issues of affiliation with the child to be born with medically assisted reproduction (MAP). This law also legalizes post-mortem insemination and surrogate motherhood, under certain conditions which are specified in the relevant articles. The issues regarding the organization and the function of MAP Units as well as all similar matters will be regulated by another law which is currently being drafted.

#### Iceland

**Title of the law:** Artificial Fertilisation Act N° 55/1996

**Date of adoption and entry into force:** 1 June 1996

**Published in:** <http://eng.heilbrigdisraduneyti.is/laws-and-regulations/nr/685>

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** No process of revision has yet been embarked upon, a parliamentary resolution on the necessity of a revision, specifically with regards to issues pertaining to embryonic stem cell research, is being discussed.

### Ireland

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** In Ireland, assisted human reproduction services are not regulated by any specific health legislation; medical practice is governed by guidelines issued by the Medical Council. The relevant extract from the current edition of the Guidelines is presented in the Addendum.

In response to public concerns about the absence of legislation in this area, and as the first essential step of a process aimed at bringing forward policy proposals in relation to regulation of the area of assisted human reproduction, the Government agreed to the establishment of a Commission on Assisted Human Reproduction in 2000. The terms of reference of the Commission are:

“To prepare a report on the possible approaches to the regulation of all aspects of assisted human reproduction and the social, ethical and legal factors to be taken into account in determining public policy in this area.”

The Commission comprises the medical, scientific and legal expertise necessary for a detailed and informed examination of issues involved. The Commission is obliged to consult widely with interested bodies, in particular with philosophical and theological experts to ensure that their perspectives are considered and reflected, as appropriate. Among the core issues, which the Commission is examining, are:

- Whether regulation is best achieved by legislation or reliance on medical ethics, or a combination of the two;
- The replacement, freezing and subsequent usage or disposal of embryos the freezing and subsequent usage or disposal of sperm;
- The regulation of who may use the services, for example, the age and marital status of couples;
- The regulation of donor programs, surrogacy, legal parentage, succession rights, registration of births, etc.;
- Possible screening of embryos for genetic conditions;
- Research on embryos;
- Cloning;
- Issues such as licensing of facilities, qualifications of staff, conditions of storage of embryos and other human reproductive material, optimum number of treatments in an individual case, testing of infectious diseases, record keeping and data collection will also need to be considered.

The Commission is nearing completion of its work. However, given the complexity of the legal, ethical and social implications involved, it is not possible to say when it will finalize the report. When to hand, the report will provide the basis for informed public debate which will assist in development of policy in this sphere.

### Italy

**Title of the law:** Rules Concerning Medical Assisted Procreation

**Date of adoption and entry into force** 19 February 2004 NO.40

**Published in:** Gazzetta Ufficiale della Repubblica Italiana (the official publication containing details of new laws)

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law**

### Latvia

**Title of the law** “Law on reproductive and sexual Health”

**Date of adoption** 31 January 2002 **and entry into force** 01 July 2002

**Published in** 19 February 2002

### Lithuania

**Title of the law** The practice of MAP is currently regulated by the “Ministry of Health decree on Artificial Insemination of a Married Woman”.

**Date of adoption** 24 May 1999

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** The answers to this questionnaire are based on the mentioned decree. However, there are also two draft laws attracting quite an active public debate:

Draft Law on Artificial Fertilization, proposed by the Ministry of Health (Draft Law 1) in 2003, and Draft Law on Artificial Fertilization, proposed by the group of the members of the Lithuanian Parliament (Draft Law 2) as an alternative to the Draft Law 1. We will put references to these drafts as comments to the relevant questions.

#### Luxembourg

It is note-worthy that MAP is not currently regulated in Luxembourg, except that:

- Article 312 of the Civil Code states that a repudiation of paternity by the husband of the mother is non-admissible "if it established by all proven means that the child has been conceived by means of artificial insemination, whether by the husband or by a third party with the written consent of the husband.
- The national hospital plan, adopted in 2001 by regulation, provides for the creation of a MAP department in a general hospital with an obstetrics department.

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** There is a proposed law, in fact a draft law initiated by Parliament, concerning MAP. Parliament had planned a large general debate but this has not yet taken place.

#### Malta

**If no legal instruments please describe the practice** Malta, to date, does not have a legal framework for assisted procreation. *In vitro* fertilisation has been practised in Malta probably for at least 10 -12 years. However, there is no monitoring of what is being done. Medically assisted procreation raises a number of ethical, societal, psychological and legal issues. After an extensive debate the Bioethics Consultative Committee, in 1992, issued a document entitled "Ethical Considerations relating to Reproductive Technology". This document was meant to serve as a guide to practitioners and researchers and to form a basis for legislation. The Malta College of Obstetricians and Gynaecologists, in October 1994 issued ethical Guidelines in Human Artificial Procreation.

#### Netherlands

##### **Title of the law:**

- Wet houdende regels inzake handelingen met geslachtscellen en embryo's (Embryowet) (= Bill containing rules relating to the use of gametes and embryos) (Embryos Bill). Next to that, a Guideline from the Dutch Society for Obstetrics and Gynaecology states medical criteria. Furthermore it specifies practices with regard to for instance in vitro fertilization, the storage of embryos, oocyte- donation.
- Wet Bijzondere Medische Verrichtingen (= Act on special medical operations). This act, and the lower legislation based on it, require clinics to have permission of the Minister of Health to perform in vitro fertilization.

**Date of adoption and entry into force:** Embryowet: 20 June 2002 - Act on special medical operations 24 October 1997.

**Published in:** Staatsblad van het Koninkrijk der Nederlanden

#### Norway

**Title of the law:** The act relating to the application of biotechnology in human medicine etc

**Adopted** 5 December 2003, **partly into force** from 1 January 2004, 1 September 2004 and 1 January 2005.

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law** Amendments were made by the Parliament in May 2004 regarding section 2-14 on pre-implantation genetic diagnosis.

#### Poland

**Title of the law:** There are no general laws or regulations on medically assisted procreation in Poland

**If no legal instrument please describe the practice:** In view of the lack of specific legal provisions, MAP may be practised under the general rules of medical law and in particular those governing the practice of medicine (duty to inform patients of the medical and legal consequences, confidentiality with regard to the MAP itself and the identity of the donor of the gametes, due care in the choice of the donor and examination of the genetic material to be used, the duty to obtain free and informed consent, etc), the corresponding rights of patients,

the general laws on families, descent and registration, and the Medical Code of Ethics (which does not address this issue specifically). Some questions are addressed in the Opinion of the Polish Association of Obstetricians concerning the MAP techniques used in the treatment of infertility, and others by the internal regulations of the clinics practising MAP (practice may therefore vary from one place or establishment to another).

#### Portugal

There is no legislation.

#### Russian Federation

**Title of the law:** The Fundamentals of Legislation of RF on Protection of Citizens Health 1993 (s. 35 especially).

**Date of adoption and entry into force:** adopted – 22 July 1993; enacted – on the day of official publication.

**Published in:** “*Vedomosti SND & VS RF*” (“Ведомости СНД и ВС РФ”) 19 August 1993, N 33, ст. 1318.

The process of revision is ongoing, but no changes/amendments regarding MAP are planned.

**Title of the law:** The Family Code 1995 (ss. 51-52 especially).

**Date of adoption and entry into force:** adopted – 29 December 1995; enacted – 01 March 1996.

Published in: original version published in “*Sobranie Zakonodatelstva RF*” 01 January 1996, № 1, s.16.

**Title of the law:** The Federal Law on Acts of Civil Status 1997 (especially s.16 (5))

**Date of adoption and entry into force:** adopted -15 November 1997; enacted – on the day of official publication

**Published in:** “*Sobranie Zakonodatelstva RF*”, 1997, № 47, s. 5340

**Title of the law:** RF Ministry of Health Order 2003 № 67 “On Application of assisted reproduction technologies (ART) in therapy of female and male infertility” (Regulations).

**Date of adoption and entry into force:** adopted 26 February 2003, enacted on the day of official publication

**Published in:** “*Rossiiskaya Gazeta*”, № 84, 06 May 2003

#### Serbia and Montenegro

**Title of the law:** So far no law has been adopted on MAP's

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** Adoption of a law is being considered, but it is still at a drafting stage.

**If no legal instrument please describe the practice** In Serbia and Montenegro the examination and treatment of a fertility problem, along with biomedical intervention, where it is necessary, perform in public and private medical health institution.

So far this important issue has not been regulated with specific law act. The law for health care and health insurance, the law about pregnancy interruption in health institutions in Republic of Serbia, the law about conditions and procedures for pregnancy interruption in Republic of Montenegro, the law about conditions and procedures for taking and transplantation of human organs and normative acts of health institutions as Statute and other bylaws, are in force.

It is important to mention that the health institutions which provide medically assisted procreation, perinatal diagnostic, genetic examination, abortion, must obtain a licence from Ministry of Health subject to the fulfilment of the conditions concerning, space, equipment, staff, etc.

Therefore, part of the conditions which Ministry of Health proposes for performing the mentioned activity and concerns about ethic aspects, recommendations and how to process information, are specified

Information is registered in protocols for each patient and procedure immediately after the examination.

Institutions which perform IVF procedures are obliged to provide the Institute for national health of Montenegro with yearly reports about their working results which could be published afterwards. The results have to be submitted before the 1 st February for the previous year, by the methodology of American Fertility Society. In order to obtain the licence for work in the

results of the following year, the results of the the institution have to be at least 10% born children in IVF cycle and yearly 100 procedures minimum.

Records about frozen embryo must contain the name of patient, the identification number, the date of conservation, the date of cryo-preservation, the procedures in which cryo-preservation was performed and the place of embryo in the container.

Ethical aspects and propositions:

Person in health institution has to respect the discretion of procedure and to be informed about possible alternative method of treatment and other procedures, as well as about procedures which do not performed in it.

Montenegrin Ethic committee of medical doctors' Chamber allow and supervise eventual experiments. It is recommended that health institutions for IVF asks for registration in some european societies for the same medical issue for the purpose of observation and monitoring the results and strengthening the professional collaboration.

In both of our states – community of states the process for law adoption of this issue is foreseen.

Slovakia

**If no legal instrument please describe the practice** There is no law regulating particular assisted reproduction techniques, but these methods are generally permitted. For insurance, basic problems of MAP are partially solved by the Sanitary Order Law / there are definitions of indications, contra – indications for reimbursement of MAP are: more than 38 years of age, tubal sterility or previous interruption for social or personal reasons. There are reimbursement only for 2 cycles of MAP.

Slovenia

**Title of the law:** The Law on treatment of infertility and procedures of fertilization with biomedical assistance (Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo (ZZNPOB))

**Date of adoption and entry into force** 28 July 2000 / 8 September 2000

**Published in** Uradni list RS 70/2000 z dne 8 August 2000 (Official Gazette of the Republic of Slovenia, 8 August 2000, 3307).

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** Not at present

Spain

**Title of the law:** Ley 35/1988 sobre técnicas de reproducción asistida (Law 35/1988 on assisted reproductive techniques)

**Date of adoption [and entry into force]:** 22 November 1988 (this law has been modified by Ley 45/2003 21 November 2003)

**Published (entry into force) in:** Boletín Oficial del Estado nº 282, 24 November, 1988 (the modification of this law has been published in Boletín Oficial del Estado nº 280, 22 November 2003).

Sweden

**Title of the law:** Act on Insemination (1984:1140), The In Vitro Fertilization Act (1988:711) (revised 2002)

**Date of adoption and entry into force** 1 March 1985, 1 January 1989

**Published in** Svensk Författningssamling, SFS

Switzerland

**Title of the law :** Federal law of 18 December 1998 on medically assisted procreation; Order of 4 December 2000 on medically assisted procreation

**Date of adoption and entry into force** 1 January 2001

**Published in** Recueil systématique du droit fédéral, Number 810.11 (Law), 810.112.2 (Order)

Turkey

**Title of the law :** By Law on Centres for Treatment (for medically assisted procreation) - Üremeye Yardimci Tedavi (Üyte) Merkezleri Yönetmeliği

**Date of adoption and entry into force :** 31 March .2001

**Published in** Official Gazette

Ukraine

**Title of the law :**

- 1) Decree of the Ministry of Health dtd 4 February 1997
- 2) Family Code of Ukraine dtd 1 January 2004
- 3) Decree N52/5 of the Ministry of Justice dtd 18 October 2000

**Date of adoption and entry into force:** 1 January 2004

**Published in:** Vydavnychiy dim 'Kuib' 2004

United Kingdom

**Title of the law:** Human Fertilisation & Embryology Act 1990.

**Date of adoption and entry into force** 1<sup>st</sup> August 1991.

A review of Act was announced by the Public Health Minister on 21<sup>st</sup> January 2004. A public consultation on review will take place in the Summer.

Canada

**Title of the law:** An Act relating to assisted human reproduction and related research ("the Act").

**Date of adoption and entry into force:** The Act received Royal Assent on 29 March 2004. The provisions of the Act will come into force in stages. The first set of provisions came into force on 22 April 2004.

**Published in:** Statutes of Canada 2004 chapter 2.

**Indicate if process of revision is ongoing and, in your answers, provide information on provision in the draft law:** Section 70 of the Act provides that within three years after the coming into force of the provision establishing the Assisted Human Reproduction Agency of Canada (s. 21), the administration of the Act shall be reviewed by any committee of the Senate, the House of Commons or both Houses of Parliament.

Israel

**Title of the law:**

- (1) Regulations of IVF
- (2) Agreement of foetus carrying act (surrogate mothers)
- (3) Donation of ovules act (still in draft)

**Date of adoption and entry into force:** Regulations of IVF – 1987 – Agreements - 1996

## Legal aspects

### 1. Is access to medically assisted procreation (MAP) (artificial insemination, in vitro fertilization procedures (IVF)

- a. restricted to heterosexual couples?  
b. possible for women not living in a heterosexual couple?

Country	a	b	Country	a	b
Albania			Lithuania	Yes	No
Armenia			Luxembourg	No	Yes*
Austria	Yes	No	Malta	*	*
Azerbaijan	Yes	Yes	Moldova		
Belgium	No*	Yes	Netherlands	No	Yes*
Bosnia & Herzegovina			Norway	Yes	No
Bulgaria			Poland	Yes*	No*
Croatia	Yes	-	Portugal	Yes	No
Cyprus	Yes	No	Romania		
Czech Republic	Yes	No	Russian Federation	No*	Yes*
Denmark	Yes	No*	Serbia and Montenegro	No*	No
Estonia	Yes	Yes	Slovakia	Yes	No
Finland	No	Yes	Slovenia	Yes*	No
France	Yes*	No	Spain	Yes	Yes
Georgia	*	*	Sweden	Yes	No*
Germany	Yes*	No	Switzerland	Yes*	No
Greece	No*	Yes*	"FYROM"	Yes	No
Hungary			Turkey	Yes	No
Iceland	Yes	No	Ukraine	No*	Yes*
Ireland			United Kingdom	No	Yes*
Italy	Yes	No	Canada	No*	Yes*
Latvia	No	Yes	Israel	No*	Yes

#### Belgium

No legislation regulating access to MAP. Each authorised centre establishes its own criteria on access and on this basis the requests are examined case by case.

#### Denmark

The restriction is related to procedures performed by doctors. Simple insemination procedures are not covered by this prohibition.

#### France

Access is restricted to married heterosexual couples or to persons who can prove that they have been living together for at least 2 years, are alive and of procreation age.

#### Georgia

##### a. LHC: Insemination-No; IVF-Yes

a) At present the law gives access to artificial insemination to heterosexual couples as well as to single women.

b) However in vitro fertilization (IVF) is accessible only to couples.

##### DL-RHRR: No

Draft law gives access to medically assisted procreation (artificial insemination as well as in vitro fertilization procedures) to heterosexual couples as well as to single women.



**b. LHC: Insemination-Yes; IVF-No**

a) Law gives access to artificial insemination to single women. However, the Law does not specify whether women should be living in heterosexual couple or not.

b) IVF is not accessible for single women.

**DL-RHRR: Yes**

Draft law gives access to medically assisted procreation (artificial insemination as well as in vitro fertilization procedures) to single women.

Germany

Restrictions only in line with the Guidelines of the German Medical Association.

Greece

The law only refers specifically to persons who desire to have a child and to single women. It does not refer to homosexual couples but it does not directly forbid their access to fertility services, either.

According to article 1456 Civil Code (CC):

A. the written consent of the married couple is required before the MAP procedure

B. consent before a notary public is demanded for a single woman or a couple living in a free-union

Luxembourg

Selection on the basis of a psychologist's opinion and following the recommendations formulated by the National Ethics Commission.

Malta

There is no legal framework

Netherlands

Basic principle is to have no difference in access for single or lesbian women. However, some IVF-centers apply a stricter selecting policy than others.

Poland

There is no specific legislation on the subject. In practice only heterosexual couples are concerned.

Russian Federation

There is a contradiction between two federal laws. The Fundamentals of Legislation of RF on Protection of Citizens Health 1993 (s.35) provide that every woman attained the age of majority and of fertile age has the right to artificial fertilization and embryo implantation. The Family Code 1995, on the opposite, speaks about "married couple" in a section that governs registration of parents of a child conceived through MAP in birth registration books. There are already some problems in practice; but they concern registration of child, and not access itself to MAP. If this contradiction is to be solved in the future, it will be most probably done by rewording-expanding the respective Family Code provisions, and not by restricting access to MAP

Serbia and Montenegro

The draft of future law is only concerned with couples and relations out of wedlock.

Slovenia

Art. 5: MAP is available to heterosexual couples living in marriage or in extra-marital relationship, which must exist at the time the procedure is performed.

Sweden

A proposal from the Ministry of Justice (April 2004) states that lesbian couples should have access to MAP.

Switzerland

Only a married couple can use the sperm of a donor.

Ukraine

Possible for single women; not for persons living in homosexual couple.

United Kingdom

The Human Fertilisation & Embryology Act 1990 (HFE Act) does not prohibit treatment for same sex, lesbian couples and single women

Canada

Restrictions are not placed on access to medically assisted procreation (MAP) in Canada based on sexual orientation or marital status. Human rights instruments in Canada, such as the Charter of Rights and Freedoms and human rights legislation protect generally against discrimination based on such grounds.

In addition, section 2 of the Act sets out broad principles on which the Act is based and on which future regulations will be based. One of the principles specifically referred to is the principle of non-discrimination. Section 2(e) states that:

The Parliament of Canada recognizes and declares that [ ...]

(e) persons who seek to undergo assisted reproduction procedures must not be discriminated against, including on the basis of their sexual orientation or marital status.

Israel

While IVF is not restricted, there is a restriction concerning surrogacy that is authorized only for heterosexual couples.

## Medical aspects

### 2. Are there specific criteria for access to MAP?

#### - Medical reasons:

##### a. Infertility

i. for a heterosexual couple?

ii. for women not living in a heterosexual couple?

##### b. Risk of transmission of a disease (please specify the risk and/or disease)

i. for a heterosexual couple?

ii. for women not living in a heterosexual couple?

##### c. Other

Country	2a i	2a ii	2b i	2b ii	2c	Country	2a i	2a ii	2b i	2b ii	2c
Albania						Lithuania	Yes	-	Yes	-	-
Armenia						Luxembourg	Yes*	Yes*	Yes*	Yes*	-
Austria	Yes	-	No	-	-	Malta	*	*	*	*	-
Azerbaijan	Yes	Yes	Yes	Yes	-	Moldova					
Belgium	No	No	No	No	-	Netherlands	Yes	Yes	Yes*	Yes*	Yes*
Bosnia & Herzegovina						Norway	Yes	-	Yes*	-*	-
Bulgaria						Poland	Yes*	-	Yes*	-	-
Croatia	Yes	-	Yes	-	-	Portugal	Yes	No	-*	-	-
Cyprus	Yes	No*	Yes	-	-	Romania					
Czech Republic	Yes	No	Yes*	No	-	Russian Federation	Yes	Yes*	Yes	Yes	
Denmark	Yes*	-	Yes*	-	-	Serbia and Montenegro	Yes	No	Yes*	No	-
Estonia	Yes	Yes	Yes	Yes	-	Slovakia	Yes	No	Yes	-	-
Finland	Yes	No	Yes	Yes	Yes*	Slovenia	Yes	-	Yes*	-	-
France	Yes	-	Yes*	-	-	Spain	Yes	Yes	Yes	Yes	-
Georgia	*	*	*	*	*	Sweden	Yes	-	Yes*	-	-
Germany	Yes	-	No	-	-	Switzerland	Yes*	-	Yes*	-	No
Greece	Yes*	Yes*	Yes*	Yes*	-	"FYROM"	Yes	-*	No*	-	-
Hungary						Turkey	Yes	No	Yes	No	
Iceland	Yes	No	No	No	*	Ukraine	Yes*	Yes*	No*	No*	-
Ireland						United Kingdom	No*	No*	No*	No*	-
Italy	Yes	-	No	-	-	Canada	*	*	*	*	-
Latvia	Yes	Yes	Yes*	Yes*	-	Israel	Yes	Yes	No	No	-

#### Cyprus

The access to MAP for homosexual couples is not permitted for any reason.

#### Czech Republic

HIV/AIDS, Hepatitis etc.

#### Denmark

Only women living in heterosexual couples have access to MAP. It is possible to use pre-implantation diagnosis in cases, which involve serious risk for the future child.

France

To avoid a risk of transmitting to the future child or to the other member of the couple a particularly severe disease.

The Act of August 6<sup>th</sup> 2004 authorizes self-storage of gametes or reproductive tissues with a view to further MAP for persons who would have to undergo a medical intervention which might affect fertility (e.g. radiotherapy).

Finland

Genetic diseases, mitochondrial diseases.

Georgia

**2ai**

LHC: Yes

DL-RHRR: Yes

**2aii**

LHC: No

DL-RHRR: Yes

**2bi**

LHC: Yes

“Risk of transmission of a genetic disease”

DL-RHRR: Yes

a) “Proven likelihood of the transmission of a serious genetic disease to a naturally conceived child from a woman or man, that may result in a child’s severe disability and/or premature death.”

b) “Proven likelihood that a child from natural insemination will be born with a non-genetic disease that may result in grave disability and/or premature death.”

**2bii**

LHC: No

DL-RHRR: Yes

a) “Proven likelihood of the transmission of a serious genetic disease to a naturally conceived child from a woman or man, that may result in a child’s severe disability and/or premature death.”

b) “Proven likelihood that a child from natural insemination will be born with a non-genetic disease that may result in grave disability and/or premature death.”

Accordingly, the draft law of Georgia on Reproductive Health and Reproductive Rights permits access to medically assisted reproductive technologies for heterosexual couples or single women only if at least one of the conditions listed below are met:

a) A woman and/or man of reproductive age is infertile, other alternatives available in the country for treating infertility have proved ineffective; or such treatment hasn’t yet been carried out, but there is a reason to assume that it will be ineffective, as attested by a state medical institution with the proper license;

b) There is a proven likelihood of the transmission of a serious genetic disease to a naturally conceived child from a woman or man, which may result in a child’s severe disability and/or premature death;

c) There is a proven likelihood, that a child from natural insemination will be born with a non-genetic disease, that may result in grave disability and/or premature death;

d) A woman carries a disease due to which the pregnancy may endanger the woman’s life and/or health.

**2c-** There is one more medical criterion, but only for accessing surrogacy: existence of a disease due to which the pregnancy may endanger the woman’s life and/or health.

Greece

Article 1455 CC refers to the risk of transmission of a serious disease

Article 1455 CC refers to age limit (age of natural ability for reproduction of the assisted person)

Iceland

See Art. 3 in Act no. 55/1996 (Artificial fertilisation may only be carried out if: a) the woman undergoing the procedure has been living with a man, married or in a non-formalised

relationship, continuously for at least three years, and they have both given written consent in the presence of witnesses.

b) the age of the couple may be deemed natural, *inter alia* with regard to the welfare of the child as he/she grows up.

c) the mental and physical health and the social circumstances of the couple are good, and

d) other procedures to overcome infertility have failed or are unavailable.)

#### Latvia

It is not mentioned in law, but practically possible for genetically hereditary diseases, sexually Transmitted Disease (STD).

#### Luxembourg

Biological examinations as laid down by the French Bioethics Law.

#### Malta

It depends on the moral integrity and personal values of practitioners and researchers, as there is no legal framework.

#### Netherlands

There is a screening on sexually transmitted diseases.

**2c** - For women who receive a donor-oocyte there is an indicated maximum age of 45 years.

#### Norway

In addition to cases of infertility, assisted procreation by insemination can be offered if:

- a) the woman is a carrier of serious X-linked diseases. In such cases, the act allows that procedures for selection of sperm can be used to ensure a female offspring. Such procedures can only be accepted after thorough scientific evaluation, and must be approved by the Directorate for Health and Social affairs.

- b) the husband/spouse is affected by or carrier of a serious Mendelian disorder.

The act does not specify a right to treatment in cases where there is a risk of transmission of contagious diseases (such as HIV).

#### Poland

There is no specific legal provisions on the subject. In practice only heterosexual couples are concerned. Ad point b: Both partners undergo screening tests to reduce the risk of transmission of AIDS, viral hepatitis and syphilis.

#### Portugal

Possibility of MAP has been evocated in general press for couples where only the husband was HIV positive and sperm needed to be washed.

#### Russian Federation

With regard to artificial insemination with the donated sperm, Regulations of the Ministry of Health stipulate that absence of a sexual partner is an indication to MAP.

#### Serbia and Montenegro

A transmission risk of hereditary genetic diseases.

#### Slovenia

Risk of transmission of serious genetically determined disease (Art. 5).

#### Sweden

HIV, hepatitis B and C, syphilis. Suitability examination.

#### Switzerland

**2ai** - Medically assisted procreation is authorised if it remedies the sterility of a couple and other treatments have failed or are futile.

**2bi** - The medically assisted procreation is authorised if the risk of transmission of a serious and incurable illness to descendants cannot be isolated in another way.

### FYROM

There is not a law or specific articles in the healthcare law addressing MAP or people who are not living in heterosexual couple.

### Ukraine

Risk of transmission is possible if donors have not gone through medical examination.

### United Kingdom

There is no requirement under the legislation that a patient must have a diagnosed fertility problem to access IVF or treatment with donor gametes. Private fee-paying (non-National Health Service) patients can have treatment for purely social reasons if they wish.

Serious illness is not, in itself, a barrier to treatment, However, Section 13(5) of the HFE Act requires clinicians to take account of the welfare of any child that might be born as a result of treatment or any other children that may be affected before offering treatment. The UK regulatory body's, the Human Fertilisation & Embryology Authority (HFEA), code of practice contains guidance on assessing a patient's suitability for treatment. Among the criteria to be considered is the patient's age, health and ability to provide for the needs of a child/children.

### Canada

The Act does not address access to MAP for medical reasons. Therefore, fertility clinics and practitioners are able to formulate their own policies with respect to accepting patients based on certain medical criteria. For example, a fertility clinic may choose not to accept a heterosexual couple as patients unless they have tried unsuccessfully to conceive for one year.

With respect to access to MAP for those who risk transmitting a disease, there is currently only one facility in Canada that offers pre-implantation genetic diagnosis services. Other fertility clinics offer genetic counseling services. Again, fertility clinics and practitioners are able to formulate their own policies with respect to accepting patients who are at risk of transmitting diseases to their offspring, as long as the principles of non-discrimination are respected.

### Financial aspects

3. Are MAP procedures covered by the social security system?  
Please explain why (e.g. infertility considered as a disease).

Country	Reply	Country	Reply
Albania		Lithuania	No
Armenia		Luxembourg	Yes
Austria	*	Malta	No*
Azerbaijan	No	Moldova	
Belgium	Yes*	Netherlands	Yes*
Bosnia & Herzegovina		Norway	Yes*
Bulgaria		Poland	No
Croatia	Yes	Portugal	Yes*
Cyprus	No*	Romania	
Czech Republic	Yes*	Russian Federation	No*
Denmark	Yes*	Serbia and Montenegro	Yes*
Estonia	Yes	Slovakia	Yes*
Finland	Yes*	Slovenia	Yes*
France	Yes*	Spain	Yes
Georgia	No*	Sweden	*
Germany	Yes*	Switzerland	No
Greece	Yes*	“FYROM”	No*
Hungary		Turkey	No
Iceland	Yes*	Ukraine	No*
Ireland		United Kingdom	Yes*
Italy	*	Canada	*
Latvia	No*	Israel	Yes*

#### Austria

Unfulfilled desire to have children is not considered as a disease.

A fund is established to cover 70% of costs of IVF – treatments under specific conditions.

#### Belgium

Disease. The IVF is covered but not the donation of gametes. Reimbursement of the IVF since 1 July 2003.

#### Cyprus

The Ministry of Finance covers the cost of MAP procedures.

#### Czech Republic

Sick benefit, medical insurance system

#### Denmark

MAP – procedures are considered a part of health services offered to the public.

#### Finland

Yes, Infertility is considered as a disease.

#### France

Medical coverage of infertility and prevention of risk of transmitting severe disease.

#### Georgia

Due to the general difficult economic conditions in Georgia, the Health and Social Security System is not able to cover such high technology procedures as MAP.

#### Germany

It is a medical therapy under section 27 a of Social Code Book V

The medical services covered by the statutory health insurance also include medical interventions aimed to induce a pregnancy. MAP measures must be medically diagnosed as necessary and have reasonable chances of success.

The GKV-Modernisierungsgesetz (Act on the modernisation of the statutory health insurance) reasonably restricted the entitlement to MAP measures from 1 January 2004. 50% of the costs are covered by the health insurance fund, so that the insured equally share in the costs of MAP interventions with a co-payment of 50%.

While infertility may be defined as a disease, the wish to have children is a matter of private life planning. Therefore, the legislator has limited cost coverage to a rate of 50%.

#### Greece

Social security in Greece is covered by a variety of organizations, some of which provide an extended coverage of pharmaceutical products related to MAP procedures. However, MAP procedures genuinely are covered only by large social security organizations and in a limited extent.

#### Iceland

Partially covered.

#### Italy

Not yet established

#### Latvia

Due to the small budget for social security.

#### Malta

Diagnostic Tests for infertility are carried out for free under the National Health Scheme, however, the treatment procedures are not provided for free.

People have access to pharmacological treatment for free for a number of diseases under the National Health Scheme. These diseases are listed under the Social Security Act, and infertility is not one of them.

#### Netherlands

Yes, but partly. In case of IVF, there is a maximum of three attempts. The first trial is not covered, the second and third treatment are.

#### Norway

MAP procedures are covered by the National Health care system and by co-payments. The ambulatory care clinic where the MAP procedure is conducted is financed as follows:

- Fee-for-service reimbursement from the National Insurance Scheme based on the treatments of IVF and intracytoplasmic sperm injection (ICSI) procedures
- Block grant subsidies from the state
- Co-payments from the patients, the couple pays maximum NOK 18 000 to cover some medicines and treatment costs for IVF/ICSI. The couples are usually offered three treatment cycles (three IVF or ICSI procedures, or a combination).

The reimbursement procedures for MAP are currently under consideration.

#### Portugal

Infertility is considered as a disease.



Russian Federation

Usually the cost for screening for infections and some other diseases and some basic medical tests are covered by mandatory medical insurance; additionally some of the tests may be covered by medical institutions (dependently on the financial status of a patient). But in general the patients pay themselves for MAP.

Serbia and Montenegro

Infertility is the disease of reproductive organs.

Slovakia

Infertility is considered as a disease.

Slovenia

Indeed, infertility is considered a medical condition of the couple.

Sweden

Differs between County Councils. Some give three treatments free, others no treatment at all.

“FYROM”

MAP is not incorporated in the social security system. The drugs for infertility may be covered (80 %) only if patient is treated by the hospital facilities.

Ukraine

First step is made to cover one cycle in case of bilateral tubectomy.

United Kingdom

Infertility is classified as a medical condition.

Canada

In general, MAP procedures are not covered by the health care system. In Canada, the recipient pays for 99 percent of all assisted human reproduction procedures received. One exception is in the province of Ontario, where a maximum of three cycles of in vitro fertilization treatment is covered where both of the patient’s fallopian tubes are blocked.

Israel

Infertility is considered as a disease.

4. Are there specific criteria for such coverage (e.g. infertility, age limit)?

Country	Reply	Country	Reply
Albania		Lithuania	-
Armenia		Luxembourg	Yes*
Austria	*	Malta	-
Azerbaijan	No	Moldova	-
Belgium	Yes*	Netherlands	No
Bosnia & Herzegovina		Norway	Yes*
Bulgaria		Poland	-
Croatia	Yes	Portugal	Yes*
Cyprus	Yes*	Romania	
Czech Republic	Yes*	Russian Federation	No
Denmark	Yes*	Serbia and Montenegro	Yes
Estonia	Yes	Slovakia	Yes
Finland	No	Slovenia	Yes*
France	Yes*	Spain	No
Georgia	-	Sweden	*
Germany	Yes*	Switzerland	-
Greece	Yes*	"FYROM"	No
Hungary		Turkey	No
Iceland	Yes*	Ukraine	Yes*
Ireland		United Kingdom	Yes*
Italy	*	Canada	*
Latvia	No	Israel	Yes*

Austria

(See answer to question 3.)

Specific criteria for coverage are:

- male sterility and/or female sterility (occluded fallopian tubes, endometriosis, polycystic ovary syndrome (PCO));
- male age up to 50 years and female age up to 40 years.

Belgium

Age of the woman = 42 maximum because very little chance of success after that.

Cyprus

Specific criteria for such coverage are: (1) infertility (2) for women under 40 years old.

Czech Republic

Medical indication, age.

Denmark

For heterosexual couples; age limit for the woman of 45 years of age.

France

Medically established infertility, age (43 years old), presence of a severe transmissible disease.

Germany

The criteria included in section 27a of Social Code Book V:

Coverage of part of the costs by the statutory health insurance funds is subject to the following requirements:

- the measures must be medically diagnosed as necessary
- according to medical diagnosis, the intervention must be reasonably likely to induce a pregnancy
- the procedure may be performed up to three times
- only married couples are eligible (non-married couples are not)
- only using the spouses' egg and sperm cells (homologous system)
- prior to treatment, the spouses must have themselves thoroughly informed about the medical and psychosocial consequences and risks involved by a physician other than the one who will perform the treatment.
- MAP may only be performed by physicians or facilities that are correspondingly qualified and have obtained a corresponding licence from the authority responsible under the law of the federal Land.

Any method other than homologous fertilisation is excluded from the mandatory package of benefits and services of the statutory health insurance system.

The restriction of eligibility to married couples is justified by the State's duty to promote marriage and the family (Art. 6 of the Basic Law). Consequently, methods other than homologous fertilization are excluded from the mandatory package of services.

Eligibility is subject to age limits of between 25 and 40 years for women and between 25 and 50 years for men.

#### Greece

A large catalogue of specific criteria is required for MAP procedures coverage, however, this differs from one social security organism to another.

#### Iceland

The proportion of the payment covered by the social security system differs according to how many times treatment has been undertaken.

#### Italy

Only for potentially fertile age and for incurable infertility.

#### Luxembourg

Age limit of woman – 40 years old.

#### Norway

All couples that are offered MAP through the national health care system have a right to partial coverage of the treatment. Whether treatment will be offered or not depends on the following:

As a first step in the process, the couple will consult their family physician. Based on an evaluation of the couple (see below), the physician will decide whether to recommend the couple to one of the clinics offering MAP.

There are certain guidelines for evaluation of couples asking for medically assisted procreation. The guidelines apply to all medical personnel involved in the process (i.e. the family physician and physicians etc. at the clinic).

The guidelines recommend that the woman should be between the ages of 25 and 40, and there should be "reasonable difference in age" between her and her spouse/husband.

According to the Act on Biotechnology, a clinic offering MAP needs approval from the Ministry of Health. This authority has been transferred to the Directorate for Health and Social Affairs.

#### Portugal

Only infertility. Age limit is a medical criteria and can vary between departments.

#### Slovenia

The criteria are the same as those entitling the couple to MAP. These include infertility not treatable in other ways, age appropriate for pregnancy (the upper age limit for the woman is 43 years) and parenthood, the need to avoid transmission of a serious genetic disorder.

Sweden

See answer to question 3.

Ukraine

1. Only tubal factor of infertility.
2. Age up 35 years.

United Kingdom

As public funding for medical services has to cover priorities within a set budget, there are conditions for access to National Health Service (NHS) funded treatment. The UK's National Institute for Clinical Excellence (NICE) has provided guidance on access to NHS funded treatment. For IVF, NICE has recommended that access be given to couples in which the woman is aged 23-39 at the time of treatment and who have an identified cause of fertility problems or who have had infertility for 3 years duration. For intrauterine insemination (IUI), which can include the use of donor sperm, NICE recommended access for couples with mild male factor fertility problems, unexplained fertility problems or minimal to mild endometriosis.

The Government is looking to the NHS to work towards the implementation of the NICE guideline, which includes the provision of a maximum of 3 cycles of IVF. To start this implementation process the Government has asked that all women aged 23-39 who meet the NICE clinical criteria be offered a minimum of one full cycle of IVF from April 2005, giving priority to couples who do not already have a child living with them. This applies to England and Wales. In Scotland the criteria for NHS funding is: the woman is aged less than 38 at time of treatment, neither partner previously sterilised, diagnosed infertility with cause of any duration or unexplained infertility of at least 3 years duration, less than 3 previous embryo transfers funded from any source and no child living in their home.

Canada

See answer to question 3.

Israel

Possible until the age of 45 with autologous oocytes.

5. Is the financial coverage limited to a number of MAP procedures (e.g. three IVF procedures only)?

Country	Reply	Country	Reply
Albania		Lithuania	-
Armenia		Luxembourg	Yes*
Austria	Yes*	Malta	-
Azerbaijan	Yes	Moldova	
Belgium	Yes*	Netherlands	Yes*
Bosnia & Herzegovina		Norway	Yes*
Bulgaria		Poland	-
Croatia	Yes*	Portugal	No*
Cyprus	Yes*	Romania	
Czech Republic	Yes*	Russian Federation	*
Denmark	Yes*	Serbia and Montenegro	Yes*
Estonia	Yes	Slovakia	Yes*
Finland	No*	Slovenia	Yes*
France	Yes*	Spain	No
Georgia	-*	Sweden	Yes
Germany	Yes*	Switzerland	-
Greece	No	"FYROM"	No
Hungary		Turkey	No
Iceland	Yes*	Ukraine	Yes*
Ireland		United Kingdom	No*
Italy	*	Canada	*
Latvia	No	Israel	No*

Austria

Limitation to four IVF procedures; if a pregnancy is achieved further four IVF procedures are possible.

Belgium

Maximum of six attempts.

Croatia

According to legislation a woman has a right on three IVF procedures until she is under 38 years old.

Cyprus

The financial coverage is limited to only one (1) MAP procedure.

Czech Republic

These problems will be regulated by the proposed Act on health care.

Denmark

Practise: Three procedures and one more, if there already is a frozen spare embryo from the couple.

Finland

This is limited by the waiting list (especially in public health care system).

#### France

Legally, there is no limitation on the number of attempts. However, medically, the maximum recommended number is four attempts, renewable after pregnancy followed with the birth of a living child.

#### Georgia

The same reasons as question 3 connected with economic situation in the country.

#### Germany

As of 1 January 2004, the health care reform introduced a reasonable restriction to the entitlement to benefits and services. Since then, only three instead of four attempts to induce a pregnancy have been partially covered by the health insurance funds. The payment of expenses by the health insurance funds has been limited to 50% of the costs approved along with the treatment schedule.

#### Iceland

For couples without a child together coverage for first treatment approx. 50%  
For second to fourth treatments approx. 70%. No coverage for further treatments.  
For couples with one child. Coverage for first to fourth treatment approx. 20%. No coverage for further treatments. No coverage for couples with more than one child.

#### Italy

Regional authorities will decide the financial coverage

#### Luxembourg

Four attempts.

#### Netherlands

(See answer to question 3.)

#### Norway

Financial coverage is limited to three MAP procedures (three IVF or ICSI procedures, or a combination)

#### Portugal

Doctors decide freely on a case by case basis.

#### Russian Federation

Because there is in general no social security coverage, probably the answer should be negative. But there are no clear provision in law.

#### Serbia and Montenegro

The financial coverage for two IVF procedures.

#### Slovakia

Only two.

#### Slovenia

Up to four IVF procedures are covered. The rate of pregnancies achieved is among the highest in Europe, in spite of the fact that since 1999, a maximum of two embryos is transferred in a single MAP procedure.

#### Ukraine

Only one IVF procedure.

#### United Kingdom

Although guidelines exist on access to NHS funded treatment for IVF and IUI, it is for local primary care trusts to decide the appropriate health care services to fund for their communities. Patients who pay for their own treatment are not limited of procedures.

Canada

(See answer to question 3)

Israel

Fully covered until achievement of two children.

## Sperm/oocyte/embryo donation

### 6. Are donation of the following permitted in your country?

- a. Sperm
- b. Oocytes
- c. Embryos

Country	a	b	c	Country	a	b	c
Albania				Lithuania	No*	No*	No
Armenia				Luxembourg	Yes	Yes	Yes
Austria	Yes	No	No	Malta	Yes*	Yes*	Yes*
Azerbaijan	Yes	Yes	No	Moldova			
Belgium	Yes	Yes	Yes	Netherlands	Yes	Yes	Yes
Bosnia & Herzegovina				Norway	Yes*	No	No
Bulgaria				Poland	Yes*	Yes*	Yes*
Croatia	Yes	No	No	Portugal	Yes	Yes	No
Cyprus	Yes*	-	-	Romania			
Czech Republic	Yes*	Yes*	Yes*	Russian Federation	Yes	Yes	Yes
Denmark	Yes	Yes	Yes*	Serbia and Montenegro	_*	_*	_*
Estonia	Yes	Yes	Yes	Slovakia	Yes	Yes	Yes
Finland	Yes	Yes	Yes	Slovenia	Yes	Yes	No*
France	Yes	Yes	Yes	Spain	Yes	Yes	Yes
Georgia	Yes*	Yes*	Yes*	Sweden	Yes	Yes	No
Germany	Yes	No	*	Switzerland	Yes	No	No
Greece	Yes*	Yes*	Yes*	"FYROM"	No*	No*	No*
Hungary				Turkey	No	No	No
Iceland	Yes*	Yes*	No*	Ukraine	Yes*	Yes*	Yes*
Ireland				United Kingdom	Yes	Yes	Yes
Italy	No*	No*	No*	Canada	Yes*	Yes*	Yes*
Latvia	Yes	Yes	Yes	Israel	Yes	Yes	No

#### Cyprus

Sperm donation is being done in practice but not under the provisions of any law. For (b) and (c) the situation is unknown as there are no cases referred to.

#### Czech Republic

Sperm (oocytes) embryos can be donated only if the person concerned agrees with it.

#### Denmark

Donation of embryo is only permitted for research not for parental project.

#### Georgia

Both, the Law on Health Care and draft Law on Reproductive Health and Reproductive Rights in principle permit donation of gametes and embryo.

However, the Law on Health Care does not include specific provisions on this issue. It includes only a general provision saying donor's gamete(s) or embryo could be used for MAP. The draft Law on Reproductive Health and Reproductive Rights is more specific. It includes a separate chapter on gamete donation, which defines conditions and procedures for gamete donation.



### Germany

Embryo donation per se is not regulated by law. However, the bans contained in the Embryo Protection Act make it highly unlikely. Specifically, an oocyte may only be artificially fertilised for the purpose of bringing about a pregnancy in the same woman from whom the oocyte has been obtained (section 1 subs. 1 no. 2 of the Embryo Protection Act) and it is prohibited to remove an embryo from a woman before its nidation is completed to transfer it to another woman (section 1 subs. 1 no. 6 Embryo Protection Act). In addition, the Act incorporates provisions aimed to prevent the creation of supernumerary embryos in the course of artificial fertilisation (especially the ban on the artificial fertilisation of more oocytes than can be inserted into a woman within one cycle - section 1 no. 5 Embryo Protection Act). Consequently, permissible embryo donation is only conceivable in the exceptional instances where an artificially created embryo can unexpectedly no longer be transferred to the woman from whom the oocyte originated.

### Greece

Law 3089/2002 does not refer to embryos but to fertilized ova. The law indirectly acknowledges the above-mentioned donations in article 1459 where it is provided that persons asking for IVF methods have to consent to what will happen to their gametes or fertilized ova which will not be used by them.

### Iceland

See <http://eng.heilbrigdisraduneyti.is/laws-and-regulations/nr/686>

### Italy

There are administrative and penal sanctions for violation of prohibitions.

### Lithuania

The donation of sperm and oocytes would be permitted if the Draft Law 1 was accepted.

### Malta

No legal framework.

### Norway

Norway has recently changed the legislation on the use of donated sperm for MAP. This part of the Act on Biotechnology will enter into force in January 2005, and will only allow the use of sperm from identifiable donors.

The comments about sperm donation and the rights of children refer to the situation after the new act enters into force, unless stated otherwise.

### Poland

There is no legal provisions on the subject.

Clinics' internal regulations define the specific medical criteria applicable to donors. Some questions are covered by the Opinion of the Polish Association of Obstetricians.

### Serbia and Montenegro

Unregulated.

### Slovenia

Embryo donation as well as MAP with both gametes donated is not allowed (Art. 13, Art. 7), on the basis of the principle that the child born with the MAP procedure should be genetically related to at least one of the parents.

### "FYROM"

There is no legal regulation in the country therefore no gamete banks aiming to this are functioning.

### Ukraine

It is possible to make cryoembryotransfer.

Canada

Altruistic donations of sperm, oocyte and *in vitro* embryos are permitted in Canada. Pursuant to section 7 of the Act, the purchase of sperm or eggs from a donor is prohibited. In addition, the purchase or sale of an *in vitro* embryo is prohibited. Altruistic donation of sperm, eggs and *in vitro* embryos is in keeping with the Canadian tradition and practice whereby human organs, tissues, and blood are donated, rather than sold or purchased, for the use of those in need.

7. Are there specific compensation arrangements for such donation(s) (e.g. financial compensation, reduced fees for a MAP procedure in the case of oocyte donation)?

Country	Reply	Country	Reply
Albania		Lithuania	No*
Armenia		Luxembourg	No
Austria	No	Malta	*
Azerbaijan	Yes	Moldova	
Belgium	No*	Netherlands	No
Bosnia & Herzegovina		Norway	Yes*
Bulgaria		Poland	No*
Croatia	No	Portugal	No
Cyprus	*	Romania	
Czech Republic	No*	Russian Federation	*
Denmark	No	Serbia and Montenegro	No*
Estonia	Yes	Slovakia	No
Finland	No	Slovenia	No*
France	No*	Spain	Yes
Georgia	No*	Sweden	No
Germany	No	Switzerland	No
Greece	No*	“FYROM”	No
Hungary		Turkey	No
Iceland	No	Ukraine	No
Ireland		United Kingdom	Yes*
Italy	No	Canada	Yes*
Latvia	No	Israel	No

#### Belgium

Article 5.3 of the Law of 11 May 2003 regarding research on embryos in vitro forbids the use of embryos, gametes and embryonic stem cells for commercial purposes. Only reimbursement of expenses incurred by the donor is allowed.

#### Cyprus

It is not possible to say whether there are specific compensation arrangements for such donations as it is not a legally regulated issue.

#### Czech Republic

There is no possibility to manipulate sperms/oocytes/embryos in order to gain any financial benefit.

#### France

Donation is as a matter of principle anonymous and free. Gamete donors are only reimbursed for travel and accommodation expenses by the health establishment carrying out the procedure.

#### Georgia

LHC: No

DL-RHRR: No; According to the article 20 of DR-RHRR “there is no reimbursement for gamete donation. A donor shall be reimbursed for time spent and other expenses incurred by donorship” (e.g. time, transport, absence from office, etc.).

### Greece

There is no legal provision but in practice a token compensation is provided to sperm donors.

### Lithuania

According to the paragraph 9.5 of the Draft Law 1 “embryos and germ cells are not subject to the civil agreements” (no commercial interactions); the draft law does not specify the details of financial compensation.

### Malta

No legal framework.

### Norway

There will be a small compensation for donation of sperm that also covers travel expenses. In addition, coverage of documented travel expenses that exceeds the standard compensation may be covered, but only up to a certain limit.

The Norwegian legislation allows the use of donor sperm both for assisted insemination and for IVF/ICSI (this has already entered into force).

### Poland

There are no legal provisions on the subject.

The Opinion of the Polish Association of Obstetricians provides for the lump-sum compensation of donors of genetic material for the expenses incurred.

### Russian Federation

Sperm donors are compensated. With regard to compensation for oocyte or embryo donation, the situation is not quite clear. It all depends on a particular IVF clinic; and currently different forms of compensation for egg or embryo donation exist. For example, some clinics practice reduced fees for a MAP procedure in case of oocyte or embryo donation. Egg donors are sometimes directly paid, and the price varies significantly dependently on the region and a particular clinic.

### Serbia and Montenegro

The donation of oocyte is forbidden.

### Slovenia

Financial rewards are explicitly prohibited. However, any expenses generated by the donation may be reimbursed (Art. 10).

### United Kingdom

Donors are paid £15.00 per donation plus reasonable expenses. Guidance on what constitutes reasonable expenses is provided in the HFEA’s code of practice. Egg sharing arrangements, where a woman who needs IVF treatment agrees to share her eggs with another woman needing donated eggs, in return for free or reduced rate treatment, is also permitted. Again guidance is contained in the HFEA code of practice.

### Canada

As mentioned above, pursuant to section 7, the purchase of sperm or eggs is prohibited. Moreover, the purchase and sale of an *in vitro* embryo is prohibited. It is noteworthy that in section 7, “purchase” or “sell” includes to acquire or dispose of in exchange for property or services. In other words, it is prohibited to donate gametes in exchange for free fertility services. However, the reimbursement of a sperm or egg donor’s receipted expenditures relating to the act of donation will be permitted upon the coming into force of section 12 and the corresponding regulations. In addition, the reimbursement of any person for receipted expenditures incurred in the maintenance or transport of an *in vitro* embryo will also be permitted.

8. Are there specific criteria for donation of the following?

- a. Sperm
- b. Oocytes
- c. Embryos

Country	a	b	c	Country	a	b	c
Albania				Lithuania	No*	No*	No*
Armenia				Luxembourg	Yes*	Yes*	Yes*
Austria	Yes*		-	Malta	No*	No*	No*
Azerbaijan	Yes		-	Moldova			
Belgium	No*	No*	No*	Netherlands	Yes*	Yes*	Yes*
Bosnia & Herzegovina				Norway	Yes*	No	No
Bulgaria				Poland	Yes*	Yes*	Yes*
Croatia	Yes*	-	-	Portugal			
Cyprus	No*	*	*	Romania			
Czech Republic	Yes	Yes	Yes	Russian Federation	Yes*	Yes*	Yes*
Denmark	Yes*	Yes*	Yes*	Serbia and Montenegro	*	*	_*
Estonia	Yes	Yes	Yes	Slovakia	Yes*	Yes*	Yes*
Finland	No	No	No	Slovenia	Yes*	Yes*	
France	Yes*	Yes*	Yes*	Spain	Yes*	Yes*	Yes*
Georgia	*	*	*	Sweden	Yes*	Yes*	
Germany	No*	-	-	Switzerland	Yes*		
Greece	No*	No*	No*	"FYROM"			
Hungary				Turkey	No	No	No
Iceland	Yes*	Yes*	_*	Ukraine	No*	No*	No*
Ireland				United Kingdom	Yes*	Yes*	Yes*
Italy	No	No	No	Canada	Yes*	Yes*	Yes*
Latvia	Yes*	Yes*	Yes*	Israel	Yes*	Yes*	No

Austria

Written consent of the donor is required. Donation can only be done to a specifically authorized hospital.

Belgium

The criteria is set by centres on the basis of good medical practice.

Croatia

Donor can only be a healthy man.

Cyprus

It is not possible to say whether there are specific criteria for the above mentioned donations as they are not legally regulated issues.

Denmark

The medical person in charge of the MAP procedure has the responsibility to choose a donor and ensure the quality of the sperm. Only women undergoing MAP procedures themselves can donate oocytes. Donation of embryos is only possible for research reasons. All donations must be anonymous.

### France

For gamete donation: medical examination of the donor (antecedents, genetic study, infectious disease indicators, ...), the donor must already be a father or a mother, consent of the donor as well as his wife or her husband or partner.

For embryo donation: for donating couple, consent of both members of the couple is required (a surviving member of the couple); for couple benefiting from the embryo donation: decision by the legal authority.

### Georgia

LHC: No DL-RHRR: Yes

DL-RHRR:

A gamete donor must be a legally competent man or woman above 18 years of age, who has none of the diseases defined by law.

The fusion of the sperm or ovum of genetic relatives for medically assisted reproductive technologies is prohibited.

The gamete can be retrieved from a deceased male person, only if he has given an advanced directive for taking his gametes after his death for homologous artificial insemination, or for *in vitro* fertilization of the ovum of his spouse, married under the rules defined by the legislation of Georgia. On the other hand taking ovum or an ovary from a deceased woman for the implementation of medically assisted reproductive technologies is prohibited.

### Germany

Age limit in place for eligibility to cost coverage by the health insurance funds, see response to question 4.

### Greece

The existing law does not provide for such criteria. The law which is being drafted will provide for these.

### Iceland

See regulation: <http://eng.heilbrigdisraduneyti.is/laws-and-regulations/nr/686>

(Artificial insemination with donor sperm shall only be carried out if the fertility of the man is impaired, he has a serious hereditary disease or there are other medical reasons to use of donor sperm. (Article 8)

In vitro fertilization shall only be carried out with the gamete of the couple. It is however permitted to use donor gamete if the fertility of the man or the woman is impaired, either of them has a serious hereditary disease or there are other medical reasons to use of donor gamete. It is prohibited to carry out in vitro fertilization unless the gamete of either partner or either cohabitant is used. Donation of embryos and surrogacy is prohibited. (Article 9))

### Latvia

For sperm age limit 18-45.

For oocytes 18-35.

If checking on sexually transmitted disease STD, Hepatitis B, C are positive.

If General health are not in good condition.

If in anamnesis have genetic diseases.

### Lithuania

Paragraph 11 of the Draft Law 1 states that only an adult person who has filled in a written informed consent form and only in case the donation would not be harmful to his or her health may become a donor. It is forbidden to use the germ cell of a dead person for artificial fertilization.

### Luxembourg

In fact there is neither a collection nor a bank in Luxembourg. The service functions in collaboration with a foreign bank.

### Malta

There are no legal provisions.

### Netherlands

Within the Embryos Bill, there are criteria to guarantee the free consent of the donor. In addition to that, the Guideline states furthermore absolute contra-indications, like for oocyte-donors who are older than 40 years, for oocyte-donors who have an higher risk on complications is case of oocyte-stimulation- or puncture and for donors with sexually transmitted diseases who cannot be cured. In addition to, there are relative contra-indications for instance for oocyte-donors who have no children themselves and are under the age of 30 or for donors with a severe genetic disease within their family.

### Norway

Criteria for donation of sperm:

- good health (both physical and mental) and "normal" sperm (count and motility)
- no known contagious diseases
- no known serious inheritable diseases (based on the donors information. No chromosomal analysis or tests for single gene disorders will performed)
- between 25 and 45 years of age
- should have children of his own.

The last two criteria are instructive.

To prevent the use of sperm from diseased donors and to ensure that information about the donor (name, address) can be provided to the child when reaching majority, Norwegian citizenship or permanent habitual permission is required.

There will be an interview to ensure an altruistic motivation. Homosexual men may be accepted. Donation of oocytes and embryos is forbidden.

### Poland

Criteria for donation of sperm:

There are no legal provisions on the subject.

Some questions are covered by the Opinion of the Polish Association of Obstetricians. Clinics' internal regulations define the medical criteria applicable to donors. These include: age: 30 - 45 years (correlation between the risk of a genetic disorder, such as Down's syndrome, and age), state of health (absence of mental, systemic, tumour or infectious disease), and testing for viruses and sexually transmitted diseases. Where there is a high risk of the mother transmitting a genetic disorder to her offspring, the sperm donor must undergo exclusion tests for the same autosomal recessive gene. The donor's blood group must also be known, to make sure it is compatible with the parents' blood groups.

Sperm tests are carried out in conformity with WHO standards. Sperm is only preserved if bacteriological tests yield negative results. Donated sperm must be frozen for 6 months prior to the first insemination.

### Russian Federation

Apart from medical criteria, the sperm and oocyte donors must meet the following requirements. The sperm donors must be of the age between 20 and 40, must not have problems in organometrical characters. The oocyte donors must be of the age between 20 and 35, must have at least one healthy child, and must be somatically healthy.

The sperm and oocyte donors must not have problems in phenotypic features.

With regard to embryo donation the Regulations state that those «patients», who went through extra-corporeal fertilization program and who have spare embryos left in the bank after the «full family has been formed (the birth of a child)», *i.e.* that are not part of the so-called «parental plan» any longer, may be the donors of embryos.

Criteria for selection of embryo donation are the same as in the case of oocyte donation

### Serbia and Montenegro

IVF procedure is allowed with the donated sperm. But, there is no data about IVF and oocyte donors, as well as, the specific criterion for donation.

### Slovakia

For sperm donation – health, state.

For oocytes donation and for embryos donation – parents, age.

### Slovenia

A person may donate his/her gametes to one center only (Art. 11).

The donors must be of legally mature age, healthy and mentally competent (Art. 14).

Donated gametes may not be used in cases where that would constitute illicit consanguinity (Art. 14).

### Spain

- Donor: Adult (18 years old or more) and legally capable.
  - Sperm donor: no more than 50 years old. Oocyte donor: no more than 35 years old.
- No lucrative or commercial purposes.
- Good psychophysical health.
- Written contract.

### Sweden

Medical (HIV, etc.).

### Switzerland

The donors must be chosen with care according to medical criteria, to the exclusion of all other criteria; in particular, all risks to the health of the woman who receives the sperm must be avoided as much as possible.

### Ukraine

All donors investigated for TORCH (toxoplasmosis, syphilis, rubeole, cytomegalovirus (CMV), herpes simplex virus (HSV)) infection, genetical and medical tests.

### United Kingdom

Criteria: Age and health.

Sperm donors must be between age 18-45, egg donors 18-35. Upper age limits should only be breached in exceptional circumstances (these age limits also apply to a couple whose gametes created a donated embryo). Donors must be free of inheritable genetic disorders or other medical condition that could put the recipient and/or resulting child at risk.

### Canada

Specific criteria for donated reproductive material do exist. Section 9 of the Act prohibits a person from obtaining sperm or eggs or using sperm or eggs so obtained from a donor who is under 18 years of age. Certain exceptions do exist, namely, sperm or eggs may be obtained from a person under 18 years of age for the purpose of preserving the gametes or for the purposes of creating a human being that is reasonably believed to be raised by the donor.

Further, once the relevant provision of the Act comes into force, a licensee will not be able to accept a donation of reproductive material or an in vitro embryo unless the licensee has obtained from that person the health reporting information (defined in the Act) required to be collected under the regulations. Therefore, specific information must be provided before donations are accepted.

With respect to semen, in 1996, the Processing and Distribution of Semen for Assisted Conception Regulations were promulgated under the Food and Drugs Act. These regulations set out stringent health and safety requirements specifically concerning the processing and distribution of third party donor sperm that is used or intended for use in an assisted human reproduction procedure. These requirements stipulate the necessary serological and microbiological tests that must be performed before third party donor sperm can be used in an assisted human reproduction (AHR) procedure. The Processing and Distribution of Semen for Assisted Conception Regulations appears in the Addendum.

### Israel

Criteria of health and appropriate psychological profile (to ensure donations are altruistically motivated).



9. Are there specific non medical criteria for selection of gametes/embryo to be used for MAP (e.g. matching appearance of donor and future parent(s))?

Country	Reply	Country	Reply
Albania		Lithuania	No*
Armenia		Luxembourg	Yes*
Austria	No	Malta	No*
Azerbaijan	No	Moldova	
Belgium	Yes*	Netherlands	No
Bosnia & Herzegovina		Norway	Yes*
Bulgaria		Poland	No*
Croatia	No	Portugal	
Cyprus	No	Romania	
Czech Republic	Yes*	Russian Federation	Yes*
Denmark	Yes*	Serbia and Montenegro	No
Estonia	Yes	Slovakia	Yes
Finland	No	Slovenia	No*
France	Yes*	Spain	Yes*
Georgia	*	Sweden	*
Germany	No	Switzerland	Yes*
Greece	No*	“FYROM”	-
Hungary		Turkey	No
Iceland	Yes*	Ukraine	Yes*
Ireland		United Kingdom	Yes*
Italy	No	Canada	*
Latvia	Yes	Israel	No

Belgium

In practice, the centres try to avoid too great a dissimilarity between donors and recipients.

Czech Republic

Age limit

Denmark

The medical person in charge of the MAP procedure may take into account matching appearance (eye and hair colour).

France

Guidelines for good clinical and biological practices in MAP request that receiving couple and donor be matched on the basis of physical and, when appropriate, medical (blood type for example) characteristics.

Georgia

LHC: No

DL-RHRR: Yes

According to the draft Law on Reproductive Health and Reproductive Rights a couple or a single woman have the right to choose a donor on the basis of the donor's age, appearance, ethnic background, and health condition. However, information on the identity of a sperm donor is confidential.

#### Greece

The current law does not provide for such criteria. According to the above mentioned draft Bill the phenotype and the blood group of the donors will be taken into consideration.

#### Iceland

If donated gametes are used, the doctor in charge of the treatment shall select the appropriate donor. A donor of gamete shall be healthy and have no hereditary diseases. Necessary tests shall be carried out to ensure that the donor is healthy and fertile and to prevent the transmission of diseases with the gamete. If imported gametes are used, the fulfilment of the aforementioned demands must be ensured. A doctor shall endeavour to realize the wishes of applicants that the build, height, colour of eyes and hair and the blood type of the gamete donor is as closely resembling the parent's as is possible . (art.17 reg.568/1997)

#### Lithuania

The existing instruments do not allow donation of germ cells.

Paragraph 2 of the Draft Law 1 states that: "woman who is going to be artificially inseminated has a right to know and to choose the phenotype of a donor".

#### Luxembourg

Five classic characteristics (blood group, complexion, eyes, colour of hair, height).

#### Malta

There are no legal provisions.

#### Norway

One will seek to match the physical appearance of the future father (hair colour, eye colour, skin colour, height, and if possible, bodily appearance).

The only information available for selection of a suitable donor will be on physical appearance. Information about occupation or academic profession, interest, family relations etc will not be available.

#### Poland

There is no legal provisions on the subject.

In practice basic physical and ethnic resemblance (skin colour) is taken into account.

#### Russian Federation

The patients/recipients have the right to choose donors on the basis of information about donors' phenotype.

#### Slovenia

Such non-medical criteria are not contained in the law, but may be considered in practice, as far as circumstances allow.

#### Spain

Matching appearance and immunological compatibility of donor and future parent(s).

#### Sweden

It is up to the doctor to choose which fertilized egg to use. If the future parents so wish, the doctor should choose a fertilized egg that will most probably give rise to a child with the same eye-, skin- and hair colour as the non-genetic parent.

#### Ukraine

We take into account phenotypical characteristics of donors and recipient.

#### United Kingdom

Where donor gametes are used, if possible the physical characteristics of the donor are match to the couple e.g. the sperm donor used have similar physical characteristics to the male partner of the woman being treated.

### Switzerland

It is forbidden during the same cycle to use the sperm from several donors. No family link should exist between the persons providing the gametes. Only the blood group and physical resemblance of the donor with the man with regard to which a filial link will be established are determinants in the selection of spermatozooids.

### Canada

The Act does not address selection criteria for gametes / embryos to be used for MAP. However, it is a relatively common practice for fertility clinics to try to match the ethnic origin or physical characteristics of a sperm donor with the future father. This is less common with respect to egg donors and future mothers because the selection of eggs available for donation is not as plentiful.

10. Are there special measures for the prevention of consanguinity? (E.g. official register, limited number of donations.)

Country	Reply	Country	Reply
Albania		Lithuania	No*
Armenia		Luxembourg	No*
Austria	Yes*	Malta	*
Azerbaijan	No*	Moldova	
Belgium	Yes*	Netherlands	No
Bosnia & Herzegovina		Norway	Yes*
Bulgaria		Poland	No*
Croatia	No	Portugal	
Cyprus	*	Romania	
Czech Republic	Yes*	Russian Federation	Yes*
Denmark	Yes*	Serbia and Montenegro	Yes
Estonia	Yes	Slovakia	Yes*
Finland	No	Slovenia	Yes*
France	Yes*	Spain	Yes*
Georgia	*	Sweden	Yes*
Germany	Yes*	Switzerland	Yes*
Greece	No*	“FYROM”	*
Hungary		Turkey	No
Iceland	Yes*	Ukraine	Yes*
Ireland		United Kingdom	Yes*
Italy	No	Canada	Yes*
Latvia	Yes*	Israel	No*

Austria

The sperm of a donor may only be used in favour of three couples. The donation by a certain donor is permitted only to one single hospital.

Azerbaijan

Consanguinity (between cousins) is very widespread in Azerbaijan and these marriages are not forbidden.

Belgium

The sperm banks accept as a general rule ten births per donor or births in a maximum of five families (criteria preferable to that of number of children).

Cyprus

It is unknown whether there are special measures for the prevention of consanguinity.

Czech Republic

RH negative factor of sperm donors used for women RH negative. IVF cannot be conducted among consanguinity (or blood related) relatives

Denmark

A sperm donor may not have more than twenty-five offspring's.

### France

A maximum of ten children born after the same gamete donation contributes to the prevention of that risk.

### Georgia

LHC: No  
DL-RHRR: Yes

The following two principles are introduced in the draft law (DL-RHRR) to avoid consanguinity:

- a) Gametes from one person can be used no more than three times (that result in childbirth);
- b) United register of gamete donors is to be established, which will collate data of the persons participating in medically assisted reproductive technologies using donated gametes.

### Germany

Limited number of donations in practice.

### Greece

According to the Bill under preparation there will be a limited number of donations permitted by the same person.

### Iceland

Indirectly, see art.18 reg.568/1997 (If a donor wishes to remain anonymous, health workers are obliged to ensure that this is respected. In this case, the donor may neither receive information about the couple receiving the donated gamete or the child, nor the couple or the child receive information about the donor. If a donor does not wish to remain anonymous, the institution shall preserve information about him in a special file. If the donation of gamete leads to the birth of a child, information about the child and the couple who received the gamete shall be kept in the same file. A child born on account of a gamete donation where the donor does not wish to remain anonymous can at the age of 18 gain access to a file pursuant to paragraph 2 for the purpose of obtaining information about the identity of the donor. If a child receives information about the gamete donor at the institution, the said institution shall as soon as possible inform the donor that the information has been given.)

### Latvia

No more than three children can be born from one donor, furthermore, special means are taken if the children born from donor have genetically hereditary disease.

### Lithuania

The existing legal instruments do not allow donation of germ cells.

Paragraph 9.3 of the Draft Law 1 states that: "the donor germ cells shall be destroyed after the birth of five children".

### Luxembourg

The straws of sperm come from abroad.

### Malta

There is no legal framework.

### Norway

There will be a national registry of donors to ensure the right for children that are conceived by donor sperm to know the identity of the donor when reaching the age of majority (in Norway, 18 years), and to ensure that a donor is only registered with one of the two sperm banks. Sperm from one donor can be used until six children are born.

### Poland

There is no legal provisions on the subject.

Clinics' internal regulations may settle this question. According to the Opinion of the Polish Association of Obstetricians, the number of pregnancies obtained using sperm from the same donor may not exceed five.

#### Russian Federation

Birth of 20 children from the same donor in a region with 800,000 inhabitants is the limit after which the gametes of this donor are not used anymore.

#### Slovakia

Limited number of donations.

#### Slovenia

Donated gametes may be used until children are born in two different families (Art. 29).

#### Spain

No donor can be parent of more than six children. This is controlled through the National Registry of Donors and the banks of the clinics of assisted reproduction.

#### Sweden

A donor of egg or sperm may not give rise to more than six children.

#### Switzerland

The sperm of the same donor can only be used for the procreation of a maximum of eight children.

#### "FYROM"

With the exception of the occasional donor for inseminations with fresh sperm which may be done outside of any control, other donor procedures have not been performed in the country.

#### Ukraine

Very strict measures.

#### United Kingdom

The HFEA maintains a register of all donors and patients who have had a child using donor gametes. There is a limit of 10 live birth events per donor (a birth "event" also includes multiple births). This limit may only be breached in exceptional circumstances, such as the recipient wishing to have a sibling to an existing child. After this limit is reached the donor can no longer be used. The donor may also specify a lower live birth limit if he/she wishes. This limit cannot be breached in any circumstances.

#### Canada

Pursuant to the Act, a regulatory body will be created to oversee the area of assisted human reproduction and related research in order to protect and promote the health and safety of Canadians using Assisted Human Reproduction (AHR) technologies. This Agency will be known as the Assisted Human Reproduction Agency of Canada.

Once established, the objectives of the Agency will be:

- to protect and promote the health and safety, and the human dignity and human rights, of Canadians in relation to AHR; and
- to foster the application of ethical principles in relation to AHR.

The Agency will perform several essential functions under the legislation, including:

- issuing, renewing, amending, suspending or revoking licences for AHR procedures or research using in vitro embryos;
- inspecting AHR clinics and research laboratories to ensure health and safety;
- collecting and analysing health reporting information;
- providing advice to the Minister of Health on AHR issues; and
- monitoring and evaluating national and international developments related to AHR.

As part of its function to collect and analyse health reporting information, the Agency will store identifying information for health and safety reasons, such as being able to verify consanguinity for individuals born using donor genetic material. This would ensure that individuals who wish to marry and reproduce are not genetically related. In addition, the Act

provides that regulations may be made with respect to the number of children that may be created from the gametes of one donor through the application of assisted reproduction procedures.

Israel

To preserve anonymity there is no register (although the sperm bank keeps records for medical purposes only).

**11. In a homosexual couple, is a legal relationship possible between a child and the partner of his or her legal parent?**

Country	Reply	Country	Reply
Albania		Lithuania	-
Armenia		Luxembourg	No*
Austria	No	Malta	No
Azerbaijan	No	Moldova	
Belgium	No	Netherlands	Yes*
Bosnia & Herzegovina		Norway	Yes*
Bulgaria		Poland	No*
Croatia	No	Portugal	
Cyprus	*	Romania	
Czech Republic	No*	Russian Federation	No*
Denmark	Yes*	Serbia and Montenegro	No
Estonia	No	Slovakia	No
Finland	No*	Slovenia	*
France	No	Spain	No
Georgia	No	Sweden	*
Germany	Yes*	Switzerland	No
Greece	No	“FYROM”	No*
Hungary		Turkey	No
Iceland	Yes*	Ukraine	No
Ireland		United Kingdom	*
Italy	No	Canada	Yes*
Latvia	No	Israel	Yes*

Cyprus

It is not possible to say whether in a homosexual couple, a legal relationship is possible between a child and the partner of his or her legal parent. There are no referred cases of homosexuals having a child.

Czech Republic

There is no law regulating a registered partnership in the Czech Republic

Denmark

The legal partner may adopt the other partners child unless it is an internationally adopted child.

Finland

There is legislation on this.

Germany

German law includes the following provisions governing the legal relationship between the child and the partner of the legal parent:

- Authority of the (registered) partner of a parent who has the sole custody of the child to have a say in matters of daily life (so-called “lesser custody” - section 9 of the Registration of Homosexual Partnerships Act),



- Right of contact, if a “family-like social” relationship has evolved between the parent’s partner and the child (section 1685 subs. 2 Civil Code),
- Option of the (registered) parent’s partner to seek a court residence order on behalf of the child if his/her partner dies or is prevented from exercising the parental custody for other reasons and the non-residential parent claims the child (section 1682, s. 2 Civil Code)

It is being discussed whether the (registered) partner shall be additionally granted the option of adopting his/her spouse’s child (sections 1591, 1592 Civil Code), so-called “step-child adoption”.

#### Iceland

Art. 6, Act no. 87/1996 (The provisions of the Adoption Act relating to spouses shall not apply to registered partnership. A person in registered partnership can however adopt a child of the other partner of whom that partner has custody, provided the child has not been adopted from another country. Nor shall statute provisions on artificial insemination apply to registered partnership.

Statute provisions involving particular rules depending on the sex of a married spouse shall not apply to registered partnership. 1). Provisions of international agreements to which Iceland is a party shall not apply to registered partnership unless approved by the other party.)

#### Luxembourg

Currently no legislation.

#### Netherlands

By way of adoption.

#### Norway

Under Norwegian law, a partner in a formalized consensual union between persons of the same sex has the right to adopt the other partner’s child, unless the child is already adopted from a country that does not allow this (Act on adoption).

The provision is general.

#### Poland

There are no legal provisions on the subject.

A legal relationship between a child and the homosexual partner of his or her legal parent would be considered contrary to the spirit of Polish law on families and descent, which defines the family as the union of two individuals of the opposite sex.

#### Russian Federation

Russian law currently does not provide for any possibility to establish the legal relations between a child and a same-sex partner of the child’s parent (neither through registration as a parent, nor through adoption).

It is unlikely that it may be possible in foreseeable future

#### Slovenia

No legal provisions.

#### Sweden

A homosexual partner may adopt the child.

#### “FYROM”

No legal regulations.

#### United Kingdom

It would be possible to adopt the child if the circumstances were appropriate

#### Canada

In Canada, adoption laws are within the jurisdiction of the provinces and territories. In large part, whether or not a legal relationship is possible between a child and the same-sex partner of his or her legal parent depends on the provisions in the relevant legislation setting out who

can apply to adopt. The provisions detailing who can apply to adopt have been successfully challenged by same-sex partners on the basis that they violated equality rights in Nova Scotia, Alberta and Ontario. Consequently, these jurisdictions have amended their legislation to allow for same-sex partners to adopt their partner's child. Other jurisdictions in Canada have also changed their adoption legislation to allow for same-sex partners to adopt the child of their partner.

#### Israel

The legal position was decided in a specific case which came before the Supreme Court.

## Surrogate mothers

12. Is surrogacy permitted in your country?  
If yes, describe all conditions regulated by law

Country	Reply	Country	Reply
Albania		Lithuania	No*
Armenia		Luxembourg	*
Austria	No	Malta	*
Azerbaijan	No	Moldova	
Belgium	Yes*	Netherlands	Yes*
Bosnia & Herzegovina		Norway	No
Bulgaria		Poland	No*
Croatia	No	Portugal	No
Cyprus	*	Romania	
Czech Republic	No	Russian Federation	Yes*
Denmark	Yes*	Serbia and Montenegro	No*
Estonia	Yes	Slovakia	No
Finland	-*	Slovenia	No
France	No	Spain	No
Georgia	Yes*	Sweden	No
Germany	No	Switzerland	No
Greece	Yes*	"FYROM"	No*
Hungary		Turkey	No
Iceland	No	Ukraine	Yes*
Ireland		United Kingdom	Yes*
Italy	No	Canada	Yes*
Latvia	*	Israel	Yes*

### Belgium

The practice is not forbidden in Belgium. On the other hand an agreement of "gestation for others" is stripped of judicial value by reason of the principle of unavailability of the human body.

### Cyprus

There is no legal provision referring to surrogate mothers.

### Denmark

Surrogacy is a part of the legislation concerning adoption. It is forbidden to give or receive help in order to make a match between a surrogate mother and a woman wanting a child. Arrangements concerning custody or granting adoption are forbidden, if there is money involved in the transaction. If there exists an agreement between two women on surrogacy, MAP is forbidden. Such agreement between two women is invalid and a surrogate mother is not bound to give the child to the order party and the woman in question is not bound to receive the child.

### Finland

There is no legislation; in the proposal that is in preparation most probably surrogacy is not permitted (MAP is not allowed if it is obvious that the child will be adopted after birth).

### Georgia

Both, the Law on Health Care and draft Law on Reproductive Health and Reproductive Rights permit surrogacy.

LHC:

Surrogacy is allowed for a couple if the woman has no uterus. The written consent of the couple is mandatory. If a child is born, the “surrogate mother” has no right to be considered as a mother. Couple is considered to be parents with all related responsibilities and rights.

There are no other specific provisions in the Law on Health Care about surrogacy.

DL-RHRR:

The draft Law defines surrogacy as “an agreement between an infertile couple and a woman, whereby the woman agrees to pregnancy by means of assisted reproductive technologies and delivers the child to the couple after birth.”

The draft Law sets out the following principles for surrogacy:

- a) The right to apply for surrogacy is granted only to an infertile couple married under the rules established by legislation of Georgia. Surrogacy is not accessible for single women.
- b) Surrogacy is allowed only for altruistic purposes.
- c) Only gestational surrogacy is permitted (i.e. when embryo is created as a result of in vitro fusion of donors’/donor’ and/or infertile couple’s gametes); Ovum of surrogate mother shall not be used for creation of embryo.
- d) It is prohibited to engage in surrogate motherhood for financial gain.
- e) It is prohibited to force somebody to become a surrogate mother.
- f) Medical personal are obligated not to participate in the process of surrogacy, if there is a reason to assume that the surrogacy will be carried out for obtaining financial gain.
- g) A surrogate mother must be a legally competent woman of reproductive age, who has given birth to at least one live child.
- h) A married woman can become a surrogate mother only with the written, informed consent of her husband.
- i) The list of medical criteria, which must be met by a surrogate mother, as well as the list of obligatory medical tests, that a surrogate mother must undergo, is determined by the legal act of the Minister.
- j) A surrogate mother has no right to be recognized as a parent of a child born as a result of surrogacy.
- k) Only the childless couple are considered to be the parents of a surrogate child.

### Greece

Surrogate motherhood - Article 1458 Civil Code.

Conditions regulated by law:

- a) petition to the Court is required by the woman who desires a child under the condition that she is medically unable to deliver a child and the surrogate mother is healthy;
- b) a written and without any compensation agreement between the persons who want to have a child, the surrogate mother and her husband, in case she is married;
- c) permanent residence in Greece both for the commissioning and the surrogate mother;
- d) Approval by the Court.

### Latvia

It is not mentioned in law.

### Lithuania

There is no explicit prohibition of surrogacy in the existing laws. However, as far as MAP using donated cells is prohibited, the practice of surrogate motherhood is almost impossible.

According to the Paragraph 10 of the Draft Law 1, surrogacy is forbidden. It is argued that according to the Civil Code of the Republic of Lithuania, such kind of agreement where one woman commits to conceive and deliver a child for another woman is in conflict with the “good morals”.

### Luxembourg

Currently no legislation.

### Malta

There is no legal framework.

### Netherlands

Although surrogacy by *in vitro* fertilization is allowed, the policy attitude is one of reserve. At this moment it is not performed, since the only intake- and expertise-centre for surrogacy was closed recently. It is left to hospitals to arrange a new one, if they desire so. The penal code contains some prohibitions, especially with regard to commercial surrogacy.

### Poland

There are no specific legal provisions on the subject.

Surrogacy contracts are considered contrary to the general rules of law: the free formation of kinship ties is not permitted, and parental authority may not be transmitted by civil law contract. Such a contract would also be contrary to the spirit of Polish law on families and descent, and to the rules governing life in society. The Polish Association of Obstetricians considers the use of surrogate mothers contrary to medical ethics because of the risk of conflict between the genetic mother and the mother who gives birth to the child.

### Russian Federation

Russian law expressly permits the so-called full, or “gestational” surrogacy. The Family Code s.51 (4 (2)) states: «Persons who are married to each other and who gave their consent to the implantation of an embryo in another woman for the purpose of bearing may be entered as the child’s parents only with the consent of the woman who gave birth to the child (surrogate mother)».

Russian law proceeds from the fact a woman who gave birth to a child is the child’s mother, and that the surrogate has the right to decide whether to keep the child or not. It follows from the above-mentioned Family Code provision about the surrogate mother’s consent.

To become a surrogate mother a woman, apart from being mentally and somatically healthy, must be of 20 – 35 years of age and must have her own healthy child.

Russian law does not contain any provisions on partial, or “traditional” surrogacy (what is, in fact, artificial insemination with donor’s sperm). If partial surrogacy had been performed, it would be most probably recognized illegal.

### Serbia and Montenegro

Surrogacy is not provided in the future draft law.

### “FYROM”

No legal regulations.

### Ukraine

Family Code of Ukraine dtd 1 January 2004 (see Section I).

### United Kingdom

Surrogacy arrangements, including advertising for surrogates and payments to them, are regulated by the Surrogacy Arrangements Act 1985. The criteria for obtaining a parental order, which transfers legal parentage from the surrogate and her partner to the commissioning couple, is included in The Parental Orders (Human Fertilisation & Embryology) Regulations 1994, made under the HFE Act.

### Canada

Pursuant to the Act, commercial surrogacy arrangements are prohibited. Section 6 of the Act prohibits a person to pay, offer to pay, or advertise to pay a woman to become a surrogate mother. The Act also prohibits a person to accept consideration for arranging, offering or advertising to arrange, the services of a surrogate mother. Further, it is prohibited for a person to pay, offer to pay, or advertise to pay consideration to another person to arrange for the services of a surrogate mother. Finally, the Act prohibits a person to counsel or induce a female person under the age of 21 to become a surrogate mother or undertake an AHR

procedure to assist her to become a surrogate mother. The rationale behind the prohibition on commercial surrogacy is that allowing commercial surrogacy arrangements might lead to the inducement of women to enter into a surrogacy agreement purely for financial gain. However, the legislation will not prohibit altruistic surrogacy arrangements.

Israel

Available for heterosexual couples only.

13. If yes, can the surrogate mother be legally remunerated?

Country	Reply	Country	Reply
Albania		Lithuania	-
Armenia		Luxembourg	-
Austria	-	Malta	-
Azerbaijan	-	Moldova	
Belgium	No	Netherlands	No*
Bosnia & Herzegovina		Norway	-
Bulgaria		Poland	No*
Croatia	-	Portugal	-
Cyprus	-	Romania	
Czech Republic	-	Russian Federation	*
Denmark	No	Serbia and Montenegro	-
Estonia	-	Slovakia	-
Finland	Yes*	Slovenia	-*
France	-	Spain	-
Georgia	*	Sweden	-
Germany	-	Switzerland	-
Greece	No*	“FYROM”	-
Hungary		Turkey	-
Iceland	-	Ukraine	No*
Ireland		United Kingdom	Yes*
Italy	-	Canada	Yes*
Latvia	-	Israel	Yes

Finland

We have no regulations on this.

Georgia

LHC: no specific provisions are included in the LHC on remuneration.

DL-RHRR: No

However draft Law obligates an infertile couple to cover expenses related to:

- a) Medically assisted reproductive technology(ies), including medical tests for the surrogate mother, according to the rules established by this law;
- b) The surrogate mother’s pregnancy, labour, and post-labour medical services, and newborn child’s care and treatment;
- c) Legal and other related issues necessary for drawing up a surrogacy contract;
- d) Any other expenses related to surrogacy, including the loss of possible income, as long as the compensation doesn’t imply a financial benefit for the surrogate mother.

Greece

No, only expenses related to this pregnancy are allowed to be reimbursed according to Law 3089/2002.

Netherlands

Cost can be remunerated. Commercialization of surrogacy is not allowed.

Poland

Such a contract would be considered unlawful and immoral.

Russian Federation

Most probably, the answer should be "Yes", because there are no provisions in law that forbid remuneration.

Slovenia

Art. 7: both paid and unpaid surrogate motherhood is excluded.

Ukraine

It is possible that she is remunerated by the couple.

United Kingdom

The surrogate can only receive payment of reasonable expenses. This is also a criteria for obtaining a parental order. No other money can be paid unless authorised by a court.

Canada

A surrogate mother cannot financially gain, but once in force, section 12 of the Act will allow for the reimbursement of receipted expenditures incurred in relation to the surrogacy, including compensating the surrogate for loss of work-related income during the pregnancy if continuing to work may pose a risk to her health or to that of the developing foetus.



14. If surrogacy is forbidden in principle, are there exceptions?

Country	Reply	Country	Reply
Albania		Lithuania	No
Armenia		Luxembourg	-
Austria	No	Malta	-
Azerbaijan	No	Moldova	
Belgium	-	Netherlands	-
Bosnia & Herzegovina		Norway	No
Bulgaria		Poland	No
Croatia	-	Portugal	Non
Cyprus	-	Romania	
Czech Republic	No	Russian Federation	-
Denmark	-	Serbia and Montenegro	No
Estonia	-	Slovakia	No
Finland	-*	Slovenia	No
France	-	Spain	No
Georgia	-	Sweden	No
Germany	No	Switzerland	-
Greece	-	"FYROM"	No
Hungary		Turkey	No
Iceland	No	Ukraine	-
Ireland		United Kingdom	-
Italy	No	Canada	-
Latvia	*	Israel	-

Finland

We have had about twenty surrogate pregnancies.

Latvia

If it is not mentioned in law, it is practically possible to do.

15. Are you aware of illegal practices in your country?

Country	Reply	Country	Reply
Albania		Lithuania	No
Armenia		Luxembourg	No
Austria	No	Malta	-
Azerbaijan	Yes	Moldova	
Belgium	No	Netherlands	No
Bosnia & Herzegovina		Norway	No
Bulgaria		Poland	No*
Croatia	*	Portugal	No
Cyprus	*	Romania	
Czech Republic	No*	Russian Federation	*
Denmark	No	Serbia and Montenegro	No*
Estonia	No	Slovakia	No
Finland	No*	Slovenia	No
France	No*	Spain	No
Georgia	No	Sweden	No
Germany	No	Switzerland	No
Greece	*	"FYROM"	No
Hungary		Turkey	No
Iceland	No	Ukraine	No
Ireland		United Kingdom	No
Italy	*	Canada	No
Latvia	-	Israel	No

Croatia

Possible illegal practices.

Cyprus

Since there is no law covering all of the above issues (12, 13, 14, 15), all the questions are not applicable.

Czech Republic

IVF is conducted only in selected centers of assisted reproduction in the Czech Republic. These are supervised on a regular basis

Finland

Since there is no law, there are no illegal practices.

France

Aware of cases where French citizens used this practice abroad.

Greece

As there is no law regarding the functioning of MAP Units yet, probably certain practices are not being regulated.

Italy

As soon as the regulation comes into force, they will be known.

Poland

Lack of data

Russian Federation

As have been stated before, Russian law does permit partial or traditional surrogacy. However, such cases are known to take place in practice

Serbia and Montenegro

It would not be possible to establish a health institution providing MAP without the authorisation of Ministry of Health and registration for this activity.

## **Section II - Right to know about his or her biological origin for children born after MAP**

### **16. Are donation of the following anonymous?**

- a. Sperm
- b. Oocytes
- c. Embryos

<b>Country</b>	<b>a</b>	<b>b</b>	<b>c</b>	<b>Country</b>	<b>a</b>	<b>b</b>	<b>c</b>
Albania				Lithuania	*	*	*
Armenia				Luxembourg	Yes*	Yes*	Yes*
Austria	No	-	-	Malta	*	*	*
Azerbaijan	Yes	-	-	Moldova			
Belgium	Yes*	No*	Yes*	Netherlands	No*	No*	No*
Bosnia & Herzegovina				Norway	No*	-	-
Bulgaria				Poland	Yes*	Yes*	Yes*
Croatia	Yes*	-	-	Portugal			
Cyprus	_*	_*	_*	Romania			
Czech Republic	Yes	Yes	Yes	Russian Federation	Yes*	Yes*	Yes*
Denmark	Yes	Yes	Yes	Serbia and Montenegro	-	-	-
Estonia	Yes	Yes	Yes	Slovakia	Yes	Yes	Yes
Finland	Yes*	Yes*	Yes*	Slovenia	Yes*	Yes*	-
France	Yes	Yes	Yes	Spain	Yes	Yes	Yes
Georgia	No*	No*	No*	Sweden	No	No	-
Germany	No*	-	No	Switzerland	No*	-	-
Greece	Yes	Yes	Yes	"FYROM"	-	-	-
Hungary				Turkey	No	No	No
Iceland	Yes*	Yes*	-	Ukraine	Yes*	Yes*	Yes*
Ireland				United Kingdom	No*	No*	No*
Italy	Yes*	Yes*	Yes*	Canada	*	*	*
Latvia	Yes	Yes	Yes	Israel	Yes	Yes	-

#### Belgium

Not regulated but in practice the MAP centres respect the anonymity of the sperm donor (with exceptions) and of embryos. On the other hand, the donation of oocytes is not anonymous. The two systems therefore co-exist.

#### Croatia

##### Article 32

Health workers employed in Health Care Facility that provide services of Assisted Fertilization have the obligation of keeping as a secret the data from which identity of donor, artificially fertilized woman her husband could be established.

In case of heterologous insemination, the donor is not entitled to know an identity on the woman to which he has donated his sperm and a woman who underwent assisted Fertilization is not entitled to know an identity of the donor.

#### Cyprus

There is no indication for the practice followed by several clinical centers, due to the non-existence of relevant legislation.

### Finland

No legal provisions.

It is most probably possible to know the donor (a good friend, relative, etc., by agreement).

### Georgia

LHC: no specific provisions are included in the LHC on this issue.

\*DL-RHRR:

Donation of gametes and embryo is not anonymous; however information on the identity of a gamete donor is confidential. Also, any personal data collected about a couple or single women applying for MAP is confidential.

United Register of Gamete Donors will include data about the identity of gamete donors as well as of couple.

These data are confidential. However, the law may make exceptions for specific cases; e.g. "when the disclosure of information on the donor's genetic characteristics is necessary for the health purposes of the child, born as a result of medically assisted reproductive technologies".

### Germany

The question of whether such donations for MAP purposes may remain anonymous is not explicitly regulated by law. However, recourse is made to the ruling of the Federal Constitutional Court which states that the general right of free development of personality (Art. 2 (1) in conjunction with Art. 1 (1) of the Basic Law) also applies to the right of the child to have knowledge of his/her parentage (unbroken line of authorities since the Federal Constitutional Court decision of 31<sup>st</sup> January 1989 - ! BvL 17/87 - BverfGE 79, 256). According to the predominant view, this right also covers the genetic father, such as the sperm donor. Therefore, the physician who oversees the sperm donation must ensure that the child will later on be able to find out who his/her father is. Anonymising the sperm donation or the use of pooled sperm for artificial fertilisation is not permissible. According to the Guidelines of the German Medical Association on the performance of assisted reproduction, the physician must inform the sperm donor that he/she is required to disclose the name of the donor to the child on request and cannot, in this regard, invoke medical confidentiality. Therefore, the physician cannot ensure the sperm donor anonymity, specifically because the Federal Constitutional Court (see above) found that the general right of free development of personality also comprises the right to have knowledge of one's parentage.

### Iceland

See art.18 reg.568/1997 (If a donor wishes to remain anonymous, health workers are obliged to ensure that this is respected. In this case, the donor may neither receive information about the couple receiving the donated gamete or the child, nor the couple or the child receive information about the donor. If a donor does not wish to remain anonymous, the institution shall preserve information about him in a special file. If the donation of gamete leads to the birth of a child, information about the child and the couple who received the gamete shall be kept in the same file. A child born on account of a gamete donation where the donor does not wish to remain anonymous can at the age of 18 gain access to a file pursuant to paragraph 2 for the purpose of obtaining information about the identity of the donor. If a child receives information about the gamete donor at the institution, the said institution shall as soon as possible inform the donor that the information has been given.)

### Italy

Only in the past. It is no longer permitted by the law of 19 February 2004.

### Lithuania

The existing law doesn't allow donation of germ cells. According to the Paragraph 12 of the Draft Law 1, all private information related to artificial insemination, including personal data of donors and recipients, is confidential and might be provided according to the provisions of the Law on Patients Rights and Compensation of Damage to their Health and the Law on legal Protection of Personal Data.

### Luxembourg

This depends on the legislation of the countries from which the donations originate.

#### Malta

There are no legal provisions.

#### Netherlands

The law contains the following provisions:

1. The natural person or legal entity who carries out artificial fertilization by donor or allows it to be carried out, is obliged to collect the following data about a donor and to make them available to the Foundation (on the Registration of Donors) within a period of time to be stipulated by the Regulation of this Foundation:
  - a) medical data that could be important for the healthy development of the child, as laid down in a decree;
  - b) physical characteristics, education and profession, as well as data concerning the social background and a number of personal characteristics; these things as determined by a further decree;
  - c) family name, Christian names, date of birth and town of residence.
2. He is also obliged to register and supply to the Foundation the family name, the Christian names, the date of birth and the town of residence of the women in whom artificial fertilization by donor has taken place, as well as the times during which fertilization by donor took place.
3. The data referred to in the first paragraph, under b, should not lead, either separately or in combination, to identification of the individual donor.
4. The obligations referred to in the first and second paragraphs are not valid or lapse as soon as it has been determined that fertilization did not lead to the birth of a child.

#### Norway

When all the sections of the new Act on Biotechnology have entered into force on 1 January 2005, only sperm from identifiable donors can be used. Until then, donors are anonymous. Donation of oocytes and embryo is forbidden.

#### Poland

Lack of specific legal provisions on the subject.

Anonymity of donations is a matter of medical confidentiality. The Opinion of the Polish Association of Obstetricians recommends double anonymity (of both the donor and the receiver). Clinics' internal regulations may provide otherwise.

#### Russian Federation

The Fundamentals of Legislation of RF on Protection of Citizens Health 1993, s. 61: Medical Secrecy.

Under the Ministry of Health Regulations, all the documents related to MAP must be kept as the documents for "special use", i.e., only for definitely restricted circulation.

#### Slovenia

Art. 18 specifies the rules of confidentiality regarding both the couples receiving MAP and the gamete donors.

#### Switzerland

The Constitution provides that: all persons have access to data concerning their ancestry.

#### Ukraine

It is permitted by law (Section I).

#### United Kingdom

Prior to 1<sup>st</sup> April 2005 the HFE Act rendered all donations anonymous and it was an offence to disclose identifying information. Donor anonymity was lifted for all people donating from April 2005 by The Human Fertilisation & Embryology Authority (Disclosure of Donor Information) Regulations 2004, made under the HFE Act. This means that people conceived from those donations will be able to ask the HFEA for the identity of their donor when they reach 18 (ie from 2023). The regulations are not retrospective. Any people who donated before April 2005 will retain anonymity.

### Canada

Pursuant to section 14 of the Act, which has yet to come into force, a licensee shall not accept the donation of human reproductive material or an *in vitro* embryo unless the licensee has collected the required health reporting information from the donor, which will be set out in the regulations. As defined in the Act, health reporting information can include the identity of the donor. Therefore, to the licensee who accepts a donation of human reproductive material or an *in vitro* embryo, the donation will likely not be anonymous.

However, section 15 of the Act, which has yet to come into force, states that licensees are not permitted to disclose health reporting information (which may include identity) for any purpose except with the written consent of the person to whom the information relates. Therefore, if a donor does not provide written consent to disclose his or her identity, the licensee is not permitted to disclose the information to anyone, including the recipient or the resulting child. Some limited exceptions to disclosure do exist, but not with respect to disclosure to recipients or resulting children. On the other hand, if a donor provides written consent for the purpose of disclosure to a recipient or resulting child, the licensee may disclose the health reporting information. Consequently, whether or not the identity of the donor is disclosed depends on whether written consent to do so was obtained.

**17. Is it possible to obtain information about the biological origin of a child born after gametes or embryo donation?**

**i. For the child him or herself**

**i. For the parents**

**iii. For a court**

Country	i	ii	iii	Country	i	ii	iii
Albania				Lithuania	-	-	-
Armenia				Luxembourg	-	-	-
Austria	Yes*	No	Yes*	Malta	_*	_*	_*
Azerbaijan	-	-	-	Moldova			
Belgium	No*	No*	Yes*	Netherlands	Yes	No	Yes
Bosnia & Herzegovina				Norway	Yes	No	No
Bulgaria				Poland	No*	No*	No*
Croatia	No*	No*	No*	Portugal			
Cyprus	_*	_*	_*	Romania			
Czech Republic	No	No	Yes	Russian Federation			Yes
Denmark	No	No	No	Serbia and Montenegro	No*	No	No
Estonia	Yes	No	No	Slovakia	No	No	Yes
Finland	No	No	No	Slovenia	No	No	Yes*
France	No	No	No	Spain	Yes	Yes	Yes
Georgia	Yes*	Yes*	Yes*	Sweden	Yes	No	No
Germany	Yes	Yes	No	Switzerland	Yes*	No	No
Greece	No*	No*	_*	"FYROM"	-	-	-
Hungary				Turkey	No	No	No
Iceland	Yes*	No	No	Ukraine	No	No	Yes
Ireland				United Kingdom	Yes*	No*	Yes*
Italy	-	-	-	Canada	Yes*	Yes*	Yes*
Latvia	No	No	Yes	Israel	No	No	Yes

Austria

The information contains the date of the sperm donation.

Belgium

Article 458 of the Criminal Code (medical confidentiality) forbids the communication of all information relating to the donor to the child and/or its parents. Moreover, there is often an explicit "contract" between donors, recipients and MAP centres which follows the same principle when it concerns an anonymous donation.

On the other hand where the courts are concerned, it is stressed that – contrary to the French law for example – the current Belgian law does not contain any provisions preventing the establishment of the paternity of the donor supposing that his identity is known. On this last point it should be noted that it is commonly acknowledged that the rules of professional confidentiality dictate certain behaviour when the doctor is called as a witness. In this way, the doctor who, called as a witness, reveals confidences which have been confided to him is not in violation of Article 458 of the aforementioned Criminal Code. But the doctor equally has the right to remain silent.

On the basis of the foregoing, the combination of Articles 331 and those that follow of the Civil Code on actions relating to filiation and of Article 458 of the Criminal Code and its exception



could lead to the establishment of the filial link to the donor. Up until now there has been no case law on this point. On the other hand several legal provisions aimed at putting an end to this uncertainty have been tabled.

The foregoing applies only to non-married couples. For married couples the presumption of paternity of the husband of the mother applies and there would be no possibility consequently of a paternity suit.

#### Croatia

There is no legal provisions on the right to know biological origin for children born after MAP.

#### Cyprus

There are no legal provisions.

There is no indication for the practices followed by the IVF centers, due to the non-existence of relevant legislation.

#### Georgia

LHC: no specific provisions are included in the LHC on this issue.

The answers given to question 17 are based on DL-RHRR.

#### Germany

There are no explicit legal provisions.

In case of litigation, courts have to decide on the above-mentioned rights; however, the courts themselves are not intrinsically entitled to request information about the parentage of a child.

#### Greece

The child born after gamete or embryo donation has access only to coded and anonymous medical data of the donor and only for reasons related to his health.

Law 2472/1997 on the "Protection of individuals with regard to the processing of personal data" qualifies health data as "sensitive" information and stipulates special permission of the Authority responsible for the protection of personal data (article 7).

#### Iceland

The child cannot obtain information if the donor has wished to remain anonymous, See art.18 reg.568/1997.

#### Malta

There are no legal provisions

#### Poland

There are no specific legal provisions on the subject.

Doctors are therefore bound by medical confidentiality in respect of both the donor and the receiver of the gametes. Information concerning the donor may be revealed only on medical grounds, when the life or health of the child is threatened.

#### Serbia and Montenegro

The future draft law proposes that on reaching the age of fifteen the child may have the possibility to access the donation registry and to find out his/her biological origin after the approval of the Court, the physician and the authorities.

#### Slovenia

Art. 18: The child may request medically important information about the donor after reaching 15 years of age, provided that he/she is mentally competent. The child's legal representative may be given such information only with a permission issued by court, in cases of exceptionally important medical reasons.

The child's physician has the right to access information in the donors' registry for health reasons.

The court and administrative body have a right to access information in the registry if that is absolutely necessary for carrying out their official duties under this law.

### Switzerland

The person who stores or uses sperm from donations must deposit it in a safe manner. The stored data on donors comprises the following:

- surname and first name, date and place of birth, address, place of origin or nationality, profession and education;
- date of the sperm donation;
- results of medical examinations;
- information on physical appearance;

Concerning the female beneficiary of the sperm donation and her husband, the data to be stored is the following:

- surname and first name, date and place of birth, address, place of origin or nationality ;
- date of use of the sperm.

The doctor must, immediately after the birth of the child, send the data required by law to the Federal State Office. If he does not have knowledge of the birth he must send the data immediately after the presumed date of the birth, at least as far as he can establish that the treatment failed. The transfer of the data by the doctor to the Office must be made by means of a form:

CONFIDENTIAL	
<b>Form for the registration of sperm donor data</b>	
By the Federal Office of the Civil State, according to articles 24 and 25 of the law issued on 18 <sup>th</sup> December 1998 on medically assisted procreation (LPMA)	
To be filled in, completely and legibly, by the treating doctor in accordance with art. 25 LPMA:	
<b>Sperm Donor</b>	
Surname	First Name
Place of Birth (town,canton or other province, country)	Date of Birth(dd/mm/yyyy)
Town of origin	Nationality
Address (exact)	
Education	
Profession	
Date of sperm donation	
Physical Appearance	
Build	
Hair Colour	Eye Colour
Height (cm)	Skin Colour
Distinguishing Features	
Medical Exam Results, enclosed in a sealed envelope (no. )	
Other Relevant Information ( )	
<b>Mother of the Child</b>	
Surname	First Name
Place of Birth (town,canton or other province, country)	Date of Birth(dd/mm/yyyy)
Town of origin	Nationality
Address (exact)	
Date of Insemination	
<b>Mother's Spouse</b>	
Surname	First Name
Place of Birth (town,canton or other province, country)	Date of Birth(dd/mm/yyyy)
Town of origin	Nationality
Address (exact)	
<b>Child (if known to the doctor)</b>	
Surname	First Name
Place of Birth (town,canton or other province, country)	

Date of Birth(dd/mm/yyyy)	
<input type="radio"/> Actual <input type="radio"/> Presumed	
Address (exact)	
Name and Address of the doctor who stored or provided the sperm (if different from the treating doctor)	
Place and Date Dispatch	Stamp and Signature of Doctor
<b>Send to</b> (by registered mail or courier)	
Federal Office of the Civil State	
For the personal attention of the Head of Department	
3003 Berne	
<b>To be filled in the Federal Office of the Civil State</b>	
Date of registration	Registration Number
Stamp and Signature	

Any other data must be transmitted separately. Results from medical examination shall be transmitted at the same time as the other data, but in a separate closed envelope on which the content is clearly mentioned. The communication of the data to the Office shall be made by registered letter or by a private mail service. At the request of the sperm donor, the Office may register other data that those prescribed by law, in particular photos of the donor.

The Office keeps data for 80 years.

A child aged 18 may obtain from the Office data concerning the identity of the donor and his physical appearance. When he/she is able to assert a legitimate interest, the child, at any age, has the right to obtain all data concerning the donor.

The child who wishes to obtain information on the sperm donor must make his/her request in writing to the Office, mentioning the identity of his/her mother. He/she must testify to his/her identity and prove that the conditions set forth by law are fulfilled. If the child is clearly not able to act him/herself, the Office may ask him/her to be represented. If this is not done within the time allowed, the Office will designate such a representative.

If the conditions required by law are fulfilled and the child asks to know the identity of the donor, the Office shall look for the current address of the latter. In doing so; it avoids, as far as possible, to disclosing the purpose of the inquiry. The Federal, Cantonal and Local Authorities that can provide useful information are expected to provide assistance to the Office if so requested by the latter. The Office informs the donor that his identity will be disclosed to the child. A reasonable period of time is given for him to say whether he accepts to be in contacts the child.

Before the Office provides the child with information concerning the donor's identity, the latter is informed as far as possible. If the donor refuses to meet with the child, the latter shall be informed about the rights of the donor and of his family. If the child maintains its request, the information will be given to him/her.

Decisions of the Office may be the object of an appeal to the Data Protection Federal Commission and, ultimately, of an administrative law appeal to the Federal Court.

#### United Kingdom

Even for anonymous donors, the HFE Act allows offspring to have non- identifying information about the donor, if available, such as hair/eye colour and interests, when they reach 18.. The Congenital Disabilities (Civil Liberties) Act 1976 permit the identity of an anonymous donor to be disclosed to parents/offspring for legal action if the child develops an inheritable genetic condition that the donor may not have disclosed at the time of giving his/her donation

#### Canada

As defined in the Act, health reporting information can include “the identity, personal characteristics, genetic information and medical history of donors of human reproductive material and *in vitro* embryos, persons who have undergone assisted reproduction procedures and persons who were conceived by means of those procedures.”

One of the roles of the Assisted Human Reproduction Agency of Canada will be to collect health reporting information from fertility clinics for its information registries. Regulations will be developed to determine what information is to be provided to the Agency by the fertility clinics for the information registries.

In particular, the questionnaire asks whether it is possible to obtain identifying and non-identifying information about the donor. Once the relevant provisions are in force, the Act will ensure that, in cases where sperm, eggs or *in vitro* embryos are used, individuals undergoing treatment will be provided with the donor's non-identifying health reporting information. Moreover, the Act provides that a person born using donated sperm, eggs or *in vitro* embryos, may request the disclosure of all non-identifying health reporting information relating to the donor. However, in accordance with the Act, identifying information will not be released to offspring, donors, or individuals undergoing procedures except with the written consent of the person to whom it relates.

The Act only refers to the release of health reporting information, which encompasses a wide range of information. The disclosure of other information not included in the definition of health reporting information to persons born using donated sperm, eggs or *in vitro* embryos is not addressed in the Act.

The disclosure of health reporting information for any purpose by a licensee will be prohibited under the Act, except in specific instances. For example, a licensee must disclose health reporting information for the purpose of complying with a subpoena or warrant issued or order made by a court, body or person with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information.

In addition, the Assisted Human Reproduction Agency of Canada, described above, must disclose health reporting information for the purposes of complying with a subpoena or warrant issued or order made by a court, body or person with jurisdiction to compel the production of information, or for the purposes of complying with rules of court relating to the production of information.

In particular:

**a. Identity of the donor(s)**

- i. For the child him or herself**
- ii. For the parents**
- iii. For a court**

Country	a.i	a.ii	a.iii	Country	a.i	a.ii	a.iii
Albania				Lithuania	-	-	-
Armenia				Luxembourg	-	-	-
Austria	Yes	-	-	Malta	-	-	-
Azerbaijan	-	-	-	Moldova			
Belgium	No	No	Yes	Netherlands	Yes	No	Yes
Bosnia & Herzegovina				Norway	Yes	No	No
Bulgaria				Poland	No*	No*	No*
Croatia	-	-	-	Portugal			
Cyprus	-	-	-	Romania			
Czech Republic	-	-	-	Russian Federation	No	No	Yes*
Denmark	No	No	No	Serbia and Montenegro	No	No	No
Estonia	No	No	No	Slovakia	No	No	Yes
Finland	No	No	No	Slovenia	No	No	Yes*
France	No	No	No	Spain	Yes	Yes	Yes
Georgia	No	No	No	Sweden	Yes	No	No
Germany	Yes	Yes	No	Switzerland	Yes*	No	No
Greece	No	No	No	"FYROM"	-	-	-
Hungary				Turkey	-	-	-
Iceland	Yes*	No	No	Ukraine	-	-	Yes
Ireland				United Kingdom	Yes	No	Yes
Italy	-	-	-	Canada	Yes*	Yes*	Yes*
Latvia	No	No	Yes	Israel	No	No	No

Germany

There are no explicit legal provisions. The parents' rights to a) can result from the contract concluded with the physician performing the MAP. The right of the child to a) is derived as a collateral duty from the child's right to have knowledge of his/her parentage (see answer to question 16).

In case of litigation, courts have to decide on the above-mentioned rights; however, the courts themselves are not intrinsically entitled to request information about the parentage of a child.

Iceland

The child cannot obtain information if the donor has wished to remain anonymous, See art.18 reg.568/1997.

Poland

(See commentary to first table answer 17).

Russian Federation

There are no provisions in this regard, but under general rules of court proceedings it must be possible for a court to get any information that the court needs, including that about the donor.

Slovenia

(See commentary to first table answer 17).

Switzerland

(See commentary to first table answer 17).

Canada

(See commentary to first table answer 17).

**b. Certain health information concerning the donor(s)**

- i. For the child him or herself**
- ii. For the parents**
- iii. For a court**

Country	b.i	b.ii	b.iii	Country	b.i	b.ii	b.iii
Albania				Lithuania	-	-	-
Armenia				Luxembourg	-	-	-
Austria	Yes*	No	Yes*	Malta	-*	-*	-*
Azerbaijan	-	-	-	Moldova			
Belgium	No*	No*	Yes*	Netherlands	Yes	Yes	Yes
Bosnia & Herzegovina				Norway	No	No*	No
Bulgaria				Poland	No*	No*	No*
Croatia	-	-	-	Portugal			
Cyprus	-*	-*	-*	Romania			
Czech Republic	No	No	Yes	Russian Federation	Yes	Yes	Yes
Denmark	No	No	No	Serbia and Montenegro	Yes	No	Yes
Estonia	Yes	Yes	Yes	Slovakia	Yes	Yes	Yes
Finland	No	No	No	Slovenia	Yes*	Yes	Yes*
France	Yes*	Yes*	Yes*	Spain	Yes	Yes	Yes
Georgia	Yes*	Yes	Yes	Sweden	Yes*	No	No
Germany	Yes	Yes	No	Switzerland	Yes*	No	No
Greece	Yes	No	No	"FYROM"	-	-	-
Hungary				Turkey	-	-	-
Iceland	Yes*	No	No	Ukraine	-	-	Yes
Ireland				United Kingdom	Yes	Yes	Yes
Italy	-	-	Yes*	Canada	Yes*	Yes*	Yes*
Latvia	Yes	Yes	Yes	Israel	No	No	Yes

Austria

(See commentary to first table answer 17).

Belgium

(See commentary to first table answer 17).

Cyprus

(See commentary to first table answer 17).

France

Access limited to unidentifiable medical information only through a physician and for a therapeutic reason.

Georgia

Health data of the gamete donor, particularly information about the donor's genetic characteristics, could be disclosed from the register of gamete donors if this is necessary for the health purposes of the child, born as a result of MAP.

Germany

There are no explicit legal provisions. The child's right to b) can also result as a corollary duty from the medical contract concluded by his/her parents (cf. Coester-Waltjen, Opinion B for the 56<sup>th</sup> Deutscher Juristentag 1986, B 59ff, 116).

In case of litigation, courts have to decide on the above-mentioned rights; however, the courts themselves are not intrinsically entitled to request information about the parentage of a child.

Iceland

The child cannot obtain information if the donor has wished to remain anonymous, See art.18 reg.568/1997.

Italy

For the child's well being.

Malta

(See commentary to first table answer 17).

Norway

The parents will be familiar with the general criteria for selection of a donor (good physical and mental health, no known contagious or serious inheritable disease), but will not have any other information about the donor.

Poland

(See commentary to first table answer 17).

Slovenia

(See commentary to first table answer 17).

Sweden

If they are in the file.

Switzerland

(See commentary to first table answer 17).

Canada

(See commentary to first table answer 17).



**c. Other information**

**i. For the child him or herself**

**ii. For the parents**

**iii. For a court**

Country	c.i	c.ii	c.iii	Country	c.i	c.ii	c.iii
Albania				Lithuania	-	-	-
Armenia				Luxembourg	-*	-*	-*
Austria	Yes*	No	Yes*	Malta	-*	-*	-*
Azerbaijan	-	-	-	Moldova			
Belgium	No*	No*	Yes*	Netherlands	Yes	Yes*	Yes
Bosnia & Herzegovina				Norway	Yes*	No	No
Bulgaria				Poland	No*	No*	No*
Croatia	-	-	-	Portugal			
Cyprus	-*	-*	-*	Romania			
Czech Republic	No	No	Yes	Russian Federation	No		Yes
Denmark	No	No	No	Serbia and Montenegro	No	No	No
Estonia	No	No	No	Slovakia	No	No	No
Finland	No	No	No	Slovenia	No	No	Yes*
France	No	No	No	Spain	No	No	No
Georgia	-	Yes*	-	Sweden	Yes	No	No
Germany	No*	Yes*	No*	Switzerland	Yes*	No	No
Greece	No	No	No	"FYROM"	-	-	-
Hungary				Turkey	-	-	-
Iceland	Yes*	No	No	Ukraine	No	No	Yes
Ireland				United Kingdom	Yes	Yes	Yes
Italy	-	-	-	Canada	-*	-*	-*
Latvia	-	-	-	Israel	No	No	Yes

Austria

(See commentary to first table answer 17).

Belgium

(See commentary to first table answer 17).

Cyprus

(See commentary to first table answer 17).

Georgia

A couple or a single woman has the right to request and receive information on the donor's age, appearance, ethnic background, and health condition.

– Obligation of gamete donor to provide information about his/her health:

According to the DL-RHRR gamete donors are obligated "to give the medical personnel complete and comprehensive information on his/her health condition prior to gamete donation."

– Right of the gamete donor to receive information about his/her health:

According to the DL-RHRR gamete donors are entitled to receive "information concerning his/her own health, which may be discovered as a result of monitoring the child born after utilizing assisted reproductive technologies."

Germany

There are no explicit legal provisions. The parents' right to c) can result from the contract excluded with the physician performing the MAP.

In case of litigation, courts have to decide on the above-mentioned rights; however, the courts themselves are not intrinsically entitled to request information about the parentage of a child.

Iceland

The child cannot obtain information if the donor has wished to remain anonymous, See art.18 reg.568/1997.

Luxembourg

This depends on the legislation of the countries from which the donations originate.

Malta

(See commentary to first table answer 17).

Netherlands

Parents can obtain information about physical characteristics, education and profession and medical issues.

Norway

At the age of majority, the child can obtain information about the identity of the donor (name and address according to the national registry). This is the only information that will be provided.

Poland

(See commentary to first table answer 17).

Slovenia

(See commentary to first table answer 17).

Switzerland

(See commentary to first table answer 17).

Canada

(See commentary to first table answer 17).

**18. Is it possible to contest maternity and paternity of children born utilising MAP and under which conditions (family law provisions)?**

Country	Reply	Country	Reply
Albania		Lithuania	*
Armenia		Luxembourg	No*
Austria	Yes*	Malta	-
Azerbaijan	No	Moldova	
Belgium	Yes/ No*	Netherlands	No
Bosnia and Herzegovina		Norway	Yes*
Bulgaria		Poland	*
Croatia	Yes*	Portugal	
Cyprus	-	Romania	
Czech Republic	No*	Russian Federation	*
Denmark	No	Serbia and Montenegro	No*
Estonia	No	Slovakia	No
Finland	Yes*	Slovenia	No*
France	No*	Spain	No
Georgia	-*	Sweden	Yes*
Germany	*	Switzerland	Yes*
Greece	Yes*	“FYROM”	-
Hungary		Turkey	Yes*
Iceland	No*	Ukraine	Yes
Ireland		United Kingdom	No*
Italy	No*	Canada	Yes*
Latvia	No	Israel	No*

Austria

Under Austrian law, the mother is the woman who gave birth to the child. The father is the husband of the mother, or the man who recognized paternity or whose fatherhood was imposed by the court. The donor of sperm is excluded by law from fatherhood.

Belgium

It is necessary to make a distinction according to the situation of the couple who has had artificial insemination with donor (AID):

- Married couple: Article 318 paragraph 4 of the Civil Code provides that the husband who has consented to artificial insemination or another act aiming at procreation cannot contest paternity.
- Common-law couples: no similar provision exists for non-married couples. The common-law husband after having expressly given his permission for the MAP procedure for his partner can then refuse to recognise the child.

Croatia

Possible, further comments see art. 86 of the Family Law.

Czech Republic

An agreement with treatment is needed. A statement must be made.

#### Finland

In future legislation the law on paternity will also be changed, i.e. the person that has consented to infertility treatment will be the father of the future child.

#### France

Paternity established in a MAP procedure cannot be challenged.

#### Georgia

There are no specific provisions on this subject in family law at present.

#### Germany

German law does not provide for maternity to be challenged. A child's mother is - also where MAP has been used - the woman who has born him/her (section 1591 Civil Code). By contrast, it is in principle possible to challenge the paternity of children born as a result of assisted reproduction (sections 1599 ff. Civil Code). The persons entitled to do so are the father, the presumptive father, the mother and the child (section 1600 (1) Civil Code). However, any challenge to paternity by the father and the mother is excluded if they have both agreed to the artificial fertilisation (section 1600 (4) Civil Code).

#### Greece

Contestation of maternity and paternity.

Article 1475 § 2 Civil Code (CC), according to this article and in conjunction with article 1456 par.1b Civil Code, consent before a notary public of a man and a woman living in a free-union takes place in order to guarantee their affiliation with the child to be born. As a result of that, according to article 1478, par.2 CC, contestation of the voluntary affiliation is forbidden in cases provided by article 1475, par.2 CC.

In the case of surrogate motherhood, according to the law, the woman to whom the Court's approval has been given is considered to be the legal mother of the child. Exceptionally, either the commissioning, or the surrogate mother, may contest this in Court, under conditions provided for by the law.

#### Iceland

See art.6, Act in respect of Children, no. 76/2003 (A man who has agreed that his wife be artificially inseminated according to the Act on is deemed to be the father of a child so conceived. The same applies to a man and a woman who have registered their cohabitation with the National Registry. - A man who donates sperm for the purpose of it being used in artificial insemination a woman other than his wife or cohabiting spouse, cf. paragraph 1, according to the provisions of the Act on Artificial Insemination will not be deemed to be the father of a child conceived with his sperm. -A man who donates sperm for another purpose than stipulated in paragraph 2 is deemed to be the father of a child conceived with his sperm unless the sperm is used without his knowledge or after his decease.)

#### Italy

It is not by 19 February 2004 law.

#### Lithuania

According to Paragraph 15.4 of the Draft Law 1, a child might know only the fact that he was born using MAP technologies.

#### Luxembourg

See Art.312 of the Civil Code cited in the section I – relevant instruments or draft instruments.

#### Norway

- a child or a parent, as well as a third person who claims paternity of a child with another legal father may contest paternity in front of a court. There is no exception for children or parents of children born after MAP procedures using sperm from a donor, but there is no possibility for the donor to contest paternity of a child born after MAP procedures using donated sperm.

- the donor has no legal responsibility for the child, and has no right to any information about children that have been born using his sperm (except for the maximum number of 6).
- according to Norwegian family law provisions, the legal father of a child conceived after MAP is the one the mother is married to at birth ("pater est"). If the woman is not married, the legal father will be the man who acknowledge paternity for the child.

#### Poland

There is no specific legal provisions on the subject.

Under the general laws governing descent, it is not possible to contest paternity in the event of homologous insemination within a married couple.

In cases of heterologous insemination, however, paternity may be contested, but only if the spouse of the inseminated woman did not consent to insemination with another man's sperm.

Relevant provisions:

#### Presumption of paternity:

Art. 62 of the Code of the Family and Guardianship:

"1. A child born in wedlock or within three-hundred days of the dissolution or annulment of the marriage shall be presumed to be the child of the mother's husband.

2. A child born within three-hundred days of the dissolution or annulment of the marriage, but after the mother has remarried, shall be presumed to be the child of the second husband.

3. These presumptions may be rebutted only through action to disclaim paternity."

Art. 63 of the Code of the Family and Guardianship:

"The husband of the mother may take action to disclaim paternity within six months of learning of the birth."

Art. 85 of the Code of the Family and Guardianship:

"1. The man who had intercourse with the mother of the child between three-hundred days and one-hundred-and-eighty-one days before its birth shall be presumed to be its father.

2. The fact that, during that period, the mother also had intercourse with another man shall rebut this presumption only if, under the circumstances, the other man appears more likely to be the father."

#### Abuse of rights and public policy:

Art. 5 of the Civil Code:

"No person shall use their rights in a manner contrary to the social and economic purpose of those rights or the rules of life in society. Abuse or abusive non-use of a right shall not be considered as exercise of that right, or enjoy the protection of the law."

Art. 58 para. 2 of the Civil Code:

"Any legal act contrary to the rules of life in society shall be null and void."

#### Russian Federation

Under the Family Code (s.52 (3)), a spouse whose consent to artificial fertilization has been received in a form established by law shall not have the right to refer to these circumstances when contesting his paternity. Regarding surrogacy, the Family Code provides for the similar provision: both the spouses, who gave their consent to artificial fertilization and embryo implantation in a proper way, and a surrogate mother shall not have the right to refer to these circumstances when contesting their parentage after the entry of parents in the book of birth registrations has been made

#### Serbia and Montenegro

It is forbidden to contest the paternity of a child born with artificial insemination of the mother (article 106 of family law provisions Republic of Montenegro – Gazzette no. 7/89).

#### Slovenia

In principle, no.

Art. 41: Maternity cannot be contested if the mother had consented to the MAP procedure. When a donated egg is used, the donor cannot claim maternity for the child, nor can biological maternity be determined in the interest of other parties.

Art. 42: Paternity may not be contested, unless it is claimed that the child had in fact not been conceived with a MAP procedure. In that case articles 96-99 of the Marriage and family relations Act apply.

When donated sperm is used, the donor cannot claim paternity for the child, nor can biological paternity be determined in the interest of other parties.

#### Sweden

Paternity is regulated in the Parental Code.

Paternity can be contested if, having regard to all the circumstances, it is not probable that the child was conceived by insemination or IVF.

#### Switzerland

The child conceived by means of sperm donation, in conformity with the provisions of the law, cannot contest the family link with regard to the husband of his/her mother. The repudiation of paternity by the husband is regulated by the provisions of the Civil Code. When a child is conceived by means of sperm donation, a paternity action against the donor is excluded; it is nevertheless allowed if the donor has knowingly made a donation of his sperm to a person who does not possess the license to carry out medically assisted procreation or to store sperm donations and to provide them.

#### Turkey

DNA tests.

#### United Kingdom

The HFE Act sets out who is the legal father/mother where treatment, such as the use of donor gametes, has been used. To the best of our understanding, these provisions have not been successfully challenged in the courts.

#### Canada

In Canada, issues of maternity and paternity are within the jurisdiction of the provinces and territories. Most of the provincial and territorial family law statutes contain a provision regarding declarations of parentage. These provisions allow for interested persons to apply to a court for a declaratory order that a female person is the mother of a child. Similarly, the various provincial and territorial statutes also allow for interested persons to apply to a court for a declaratory order that a male person is or is not recognized in law to be the father of a child.

Certain provincial and territorial family laws specifically refer to parentage as it relates to assisted human reproduction. For instance, the Civil Code in the province of Quebec has specific provisions that deal with the filiation of children born of assisted procreation. It clearly provides that there is no bond of filiation between the contributor of genetic material and the resulting child.

The legislation in Newfoundland and the Yukon specifically deal with parentage and artificial insemination. The legislation provides that a man who is married or cohabiting with a woman who is artificially inseminated, whether with the man's semen or not, is deemed to be the father of the resulting child if he consented in advance to the insemination. Further, the legislation also provides that a man whose semen was used to artificially inseminate a woman with whom he is not married or cohabiting at the time of the insemination is not in law the father of the resulting child.

The province of Alberta is in the process of updating and consolidating various provincial statutes dealing with family law matters. Parentage in the context of surrogacy and artificial insemination is included in the new legislation, which has yet to come into force.

#### Israel

No, because when a surrogate mother is involved, there is a specific law stating that there are no parenthood rights for the surrogate mother. In all other cases, the rule is that the woman who gives birth is the mother, subject to the adoption act.

**Section III – Current debate and specific situations met in your country, in relation to these issues**

19. Is there an important current debate in your country on these or related issues? If so, what might the implications be (e.g. changes to the legal situation)?

Country	Reply	Country	Reply
Albania		Lithuania	*
Armenia		Luxembourg	*
Austria	*	Malta	*
Azerbaijan	-	Moldova	
Belgium	*	Netherlands	No
Bosnia and Herzegovina		Norway	*
Bulgaria		Poland	-
Croatia	*	Portugal	No
Cyprus	*	Romania	
Czech Republic	Yes*	Russian Federation	*
Denmark	*	Serbia and Montenegro	-
Estonia	No	Slovakia	-
Finland	*	Slovenia	No*
France	*	Spain	*
Georgia	*	Sweden	*
Germany	No	Switzerland	No
Greece	*	“FYROM”	*
Hungary		Turkey	*
Iceland	Yes*	Ukraine	*
Ireland		United Kingdom	Yes*
Italy	-	Canada	*
Latvia	*	Israel	-

Austria

According to Law the maximum duration of storage of gametes is only one year and the only allowed indication for the use of medical assisted reproduction is actual infertility of the couple. This is regarded as problematic in the case of future infertility e.g. as a result of envisaged cancer therapy.

Belgium

Several recent opinions from the Consultative Bioethics Committee regarding MAP: Opinion n°28 of 21.06.04 on procreation after death, Opinion n° 29 of 21.06.04 on embryo donation, Opinion n°30 of 5.7.04 on gestation for others.

See the website of the Committee: [www.health.fgov.be/bioeth](http://www.health.fgov.be/bioeth).

No legislation initiative for the moment. But discussion started in parliament on certain legislative proposals in this issue (MAP, surrogate mother, in particular).

Croatia

Because of awareness of The Republic of Croatia that the new legislation is needed, there is a constant public debate on MAP subject, what help people to create their own ethic opinion.

#### Cyprus

The drafting of a law regulating MAP and IVF is currently under consideration. For this purpose a Steering Committee has been established by the Ministry of Health. The Committee is composed of representatives from Services and interested groups on MAP issues.

#### Czech Republic

An act related to this issue is being prepared.

#### Denmark

The upcoming debate in Parliament might lead to changes in the legal situation, but it is not possible to predict anything.

#### Finland

When the law proposal went before the Parliament two years ago it was a huge debate on this. The main debate focused on whether or not MAP procedure would be allowed to single women and lesbian couples. Also the right to know his/her origin was a very intensive topic. The proposal was referred back to the Ministry for further preparation.

#### France

The main principles of the Law on bioethics of 1994 have been confirmed by the Law of 6 August 2004 and made consensus. The transfer of embryos post mortem was discussed in particular but was not authorised.

#### Georgia

Debates took place about the draft Law on Reproductive Health and Reproductive Rights among the representatives of various professionals, especially medical professionals, representatives of church and religious groups, representatives of Ministry of Health and Social Affairs, etc.

As the above draft Law is more specific than the Law on Health Care it will change existing legal situation (details are already specified throughout the questionnaire).

#### Greece

A new law is being prepared regarding the organization and functioning of Units of Medically Assisted Reproduction.

#### Iceland

As previously stated, a debate has been ongoing on the necessity of revising the law on artificial insemination, specifically with regards to issues pertaining to embryonic stem cell research.

#### Latvia

There was a great discussion in Saeima about surrogate mother. A conclusion has not yet been reached.

#### Lithuania

The Draft Law 1 was widely debated in Lithuania and after that the Draft Law 2, which prohibits MAP using the donated germ cells, was drafted. The discussion is continuing in the Parliament.

#### Luxembourg

Opinion issued by the National Ethics Commission.  
General debate in Parliament expected.

#### Malta

There is a need for a debate on this subject in Malta. A conference on "Bioethics and the Family" is being considered for next year to raise awareness about the issues and the need for legislation. This conference is being planned by the Bioethics Consultative Committee and Family Commission.



### Norway

The issue of identifiable donors was debated during the revision of the new act on biotechnology. In Parliament, the majority voted for the new provisions.

### Russian Federation

There are currently no important debates on assisted reproduction in Russia; and in general the problem is not paid proper attention.

### Slovenia

Not at present. However, in 2001, an amended law on medically assisted procreation was passed, making, among other things, the MAP services freely accessible to single women without male partners and without a medical fertility problem, which under the previous law (2000) had not been possible. An opposition group in the Parliament called for a legislative referendum, triggering fervent public debate. The National Medical Ethics Committee (NMEC) and the National Health Council advised against arbitrary use of medicine for interventions with far reaching consequences, when, such as in this case, there is no valid medical indication. The NMEC quoted the Ad Hoc Committee of Experts on Progress in Biomedical Sciences (CAHBI)'s Report on human artificial procreation, 1989, which restricts the use of MAP procedures to heterosexual couples and to the situations with strict medical indications (infertility, failure of other methods of treatment, need to avoid transmission of a grave disease) as in fact contained in the previous law.

In the referendum, the voters rejected the new law with an overwhelming, nearly 3:1, majority. As a result, the law of 2000 described above remained in force.

### Spain

In November 2003 was approved a modification of the Law. Presently there is no public debate about this issue though it is foreseeable the debate be open due to the political change of the Spanish government.

### Sweden

A proposal from the Ministry of Justice (April 2004) states that lesbian couples should have access to MAP.

### "FYROM"

Some debates have just started in many professional organisations - obstetricians/gynecologists.

### Ukraine

It is necessary to renew Decree of the Ministry of Health.

### United Kingdom

While generally accepted in the UK, MAP remains a sensitive issue. The proposed review of the HFE Act is expected to provoke a lively debate. A recent report by a UK Parliamentary Committee, the House of Commons Select Committee on Science & Technology, on its review of human reproductive technologies and the law, made a number of radical recommendations, including the dissolution of the HFEA, which provoked a hostile reaction.

### Turkey

These issues are at present being discussed by the related circles (ie. Medical schools, Councils of Medical Doctors, Lawyers).

### Canada

During the 1980s, scientific advances in the area of reproductive technologies and a growing awareness of the legal, ethical and social issues related to reproductive technologies prompted individuals and groups in Canada to pressure the federal government to examine the complex issues related to these technologies. In response to this pressure, the federal government appointed the Royal Commission on New Reproductive Technologies in October 1989. The mandate of the Royal Commission was quite broad. In addition to the task of examining the current and potential scientific and medical developments related to new reproductive technologies, it was also mandated to consider: (1) the impact of the

technologies on society as a whole, (2) their impact on identified groups within society, such as women and children, and (3) the ethical, legal, social, economic and health implications of the new technologies.

After an extensive consultation process with citizens, the scientific and medical communities and the social science community, the Royal Commission released its final report in 1993, which included 293 recommendations.

After more than a decade of consultation, an Act respecting assisted human reproduction and related research became law on March 29, 2004. As outlined above, the coming into force of the provisions of the Act will follow a staged approach. The first set of provisions came into force on April 22, 2004. This set of provisions contained a number of prohibitions, including those related to commercial surrogacy and the purchase of sperm or ova from donors and most of the provisions on controlled activities, such as the manipulation of human reproductive material to create a human embryo.

During the legislative process and witness testimony before committees in both Houses of Parliament, it was evident that a number of different viewpoints or perspectives existed with respect to certain issues addressed in the Act. For example, some of the most compelling testimony before the Senate Committee was with respect to gamete donation. In particular whether a non-anonymous donation scheme or an anonymous donation scheme should be adopted.

20. Delegations are invited to provide information, in this section, on particular cases encountered in their country, and especially their case-law, in relation to the questions appearing in Sections I and II above

Please provide relevant articles of the law concerning MAP (including family law), where possible translated in English or French.

Azerbaijan

The law on reproductive health is being elaborated. Many aspects of MAP were included during discussions on the draft law.

Belgium

No other specific legislation other than several articles mentioned in the replies to the questionnaire.

To recap, the most important specific provision relating to MAP is Article 318, paragraph 4 of the Civil Code which provides that “the petition (of a paternity suit) is not admissible if the husband has consented to artificial insemination or another act aiming at procreation, except if the conception of the child cannot be its result.

Croatia

There is still no case-law on MAP subject.

THE FAMILY LAW (Official Gazette, 116/03, 17/04, 136/04)

Part Three

PARENTS AND CHILDREN

1. MATERNITY AND PATERNITY

*4. Special provisions concerning the maternity and paternity of a child conceived with medical assistance.*

Article 85

It is not permitted to establish or dispute in a judicial procedure the maternity or paternity of a child conceived in a procedure of fertilisation with medical assistance and the consent of a donor.

Article 86

(1) Exceptionally, the mother’s husband may dispute the paternity of the child born during the duration of the marriage or during three hundred days from the cessation of the marriage if the child is conceived with medical assistance with the semen of another person without the husband’s written consent.

(2) A woman who has given birth to a child who has been conceived with the egg cell of another woman has the right to dispute the maternity if the fertilisation with medical assistance occurred without her written consent.

(3) A woman with whose egg cell a child was conceived without her written consent has the right to dispute the maternity of a woman who gave birth to the child if she seeks at the same time to have her maternity established.

(4) A suit for the sake of disputing paternity can be submitted within a period of six months from the day of the discovery that the conception occurred in the manner defined in Paragraphs 1 of this Article, and at the latest up to the time the child has had its seventh birthday.

(5) If the mother’s husband found out before the birth of the child that conception occurred in the manner defined in Paragraphs 1 of this Article, suit for the sake of disputing paternity can be submitted within a period of six months from the day of the birth of the child.

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The Act on Health Measures Related to Right to the Enjoyment of Free Choice in Childbirth  
(Official Gazette 18/78, 31/86, 47/89)

I. Medical assistance in case of lower infertility

#### Article 29

Man and Woman, who cannot realise their wish to have child of their own, have a right on medical assistance.

Medical assistance in sense of this Article is medical treatment that consists of: diagnosing the causes of lower infertility and removing medical causes of the lower infertility.

#### Article 30

Assisted Fertilization is medical assistance that can be performed by using:

- Husband's sperm (homologous insemination)
- Donor's sperm (heterologous insemination)

Assisted Fertilization by donor sperm can be performed only in case when the married couple is incapable realising wish for their own children.

#### Article 31

Assisted Fertilization can be performed in Health Care Facility that is authorised for performing such services by competent body.

#### Article 32

Health workers employed in Health Care Facility that provide services of Assisted Fertilization have the obligation of keeping as a secret the data from which identity of donor, artificially fertilized woman her husband could be established.

In case of heterologous insemination, the donor is not entitled to know the identity of the woman to which he has donated his sperm and a woman who underwent assisted Fertilization is not entitled to know an identity of the donor.

#### Article 33

Only a healthy woman aged 18 or more and of the age suitable for giving birth has a right of undergoing Assisted Fertilization.

In case the woman is married, Assisted Fertilization by donor can be performed only with their husband's consent.

#### Article 34

Donor can only be a healthy Man

Donor is not entitled to financial reimbursement.

#### Cyprus

There is no case-law up-to-date.

#### Georgia

English versions of the following legislation related to MAP are presented in the Addendum:

- a) Law on Health Care (Relevant articles from Chapter XXIII Family Planning) [see Addendum];
- b) Draft Law on Reproductive Health and Reproductive Rights [see Addendum].

#### Germany

Social Code Book V - Statutory Health Insurance  
Chapter III  
Health insurance benefits  
Section V  
Benefits and services in case of illness  
Title 1  
Treatment of patients  
§ 27 a  
Medically assisted procreation

(1) The benefits and services rendered within the scope of the treatment of patients shall also include procedures to induce a pregnancy if

1. these measures are deemed to be necessary according to a physician's diagnosis

2. according to a physician's diagnosis, there are sufficient prospects that these procedures will successfully induce a pregnancy; sufficient prospects shall no longer exist where the procedure has been carried out three times without being successful,
  3. the persons who want to make use of these procedures to married with each other,
  4. Egg cells and sperm only from the spouses are used and
  5. prior to the treatment, the spouses have been informed about the treatment by a physician not carrying it out himself with due consideration for its medical and psychosocial aspects and, if the physician has referred them to a doctor or to one of the institutions having been granted an approval according to § 121a.
- (2) Subsection (1) shall also apply to inseminations which are carried out subsequent to hormone stimulations and which consequently lead to a higher risk of pregnancies with three or more embryos. Subsection (1) number 2, second half of the sentence and number 5 shall not apply to other inseminations.
- (3) The claim for benefits in kind pursuant to subsection (1) shall only exist for insured persons who have completed their 25<sup>th</sup> year; the claim shall not exist for insured women who have completed their 40<sup>th</sup> year and for insured men who have completed their 50<sup>th</sup> year. Prior to the beginning of the procedure, a treatment schedule has to be submitted to the health insurance funds for approval. The health insurance fund shall cover 50 per cent of the costs of the measures carried out on the insured person and included in the approved treatment schedule.
- (4) In the guidelines pursuant to § 92 the Joint Federal Committee shall determine the medical details of the prerequisites, type and extent of the procedures according to subsection (1).

#### Italy

- ART 1-4 Access to assisted reproductive technology is allowed only when the causes of sterility cannot be defeated by other means. The techniques are applied according to principle of graduality and with the written and informed consent of the couple.
- ART 5 Only heterosexual couples over the age of eighteen that are of potentially fertile age have access to ART.
- Art 8-9 The child born after ART has the status of legitimate and acknowledged child and it can not be disavowed.
- ART 10-11 ART can be performed only in authorized and accredited Centres by Istituto Superiore di Sanità.
- ART 13-14 Any experimentation on embryo is prohibited. Observational clinical research on embryos is permitted only in the interest of the embryo.
- More embryos than the number necessary for a single contemporary implantation are not allowed to be produced (The number required is no more than three).
- Crioconservation is allowed only if required by a particular (transitory) woman's health condition.
- ART 16. Conscientious objection is also recognized

#### Luxembourg

It is important to note that MAP is currently not regulated in Luxembourg, except that

- Article 312 of the Civil Code states that a paternity suit is non-admissible by the husband of the mother "if it is established, by all means of proof, that the child has been conceived by means of artificial insemination, either by the husband or by a third party with the written consent of the husband".
- the national hospital plan adopted in 2001 through regulation, envisages the creation of a service of MAP in a general hospital containing an obstetrics department.

In the meantime, the creation of a MAP department has effectively been authorised to the Hospital Centre of Luxembourg. This department is in place. The data supplied to the questionnaire reflects the practices of this department.

There exists a legal proposal, of which a bill is before parliament, with regard to MAP. Parliament had anticipated holding a large debate but as yet this debate has not yet taken place.

The National Ethics Commission has produced a very complete opinion on all aspects of MAP.

### Malta

- There are doubts as to whether all medically assisted procreation in Malta use husband's sperm;
- There are concerns that men are being offered sums of money to donate sperm;
- There is evidence that the number of ova being taken from a woman's ovary was higher than the amount which both scientifically and ethically makes sense. This can endanger the health of women (hyper stimulation syndrome).
- There is concern that more than two or three embryos are being transferred into a woman's uterus.
- There are concerns about the current services being provided to infertile couples. These include: the need for infertile couples to be managed with more sensitivity; and the need for the couple to be given information and counselling about treatment options and associated risks, about possible solutions and their likelihood of success and failure.

### Poland

Homologous insemination in a married couple has no legal incidence: the mother's spouse becomes the child's biological father; the means of conception (natural or artificial) has no legal incidence, nor does consent or the lack of it.

Heterologous insemination, on the other hand, raises legal questions concerning filiation. The donor of the sperm is certainly the child's biological father, but it is impossible to prove legal paternity as the identity of the donor is in principle unknown to the mother and the doctor is sworn to secrecy. Furthermore, no action to prove paternity may be opened in this case as Article 85 para. 1 of the Code of the Family and Guardianship makes sexual intercourse a prerequisite of such action.

The question of the legal paternity of the child thus remains open. In the case of an unmarried woman, action to prove paternity should be excluded, as the donor has the right to remain anonymous. However, if the child is born in wedlock or within 300 days of the marriage being dissolved or annulled, the mother's husband is presumed to be the legal father. He may take action to contest his paternity within six months of finding out about the birth (art. 63). This is a peremptory time limit, after which only the public prosecutor may institute such proceedings.

The situation is more complex in the event of heterologous insemination carried out with the husband's consent. As there are no specific legal provisions in the matter, the husband has the right to contest his paternity even though he did give his consent. Theoretically he only needs to prove that the birth was the result of MAP. However, according to a decision of the Court of Cassation on 27 October 1983: "Action by the spouse of the mother contesting paternity of a child born following MAP performed, with said spouse's consent, with the sperm of another man may be considered contrary to public policy." In stating its reasons, the Court stressed the importance of the child's welfare, arguing that if it were to accept an action contesting the father's paternity of a child born following MAP carried out with his consent using another man's sperm, the child would, to all intents and purposes, be fatherless; it would be virtually impossible to prove the paternity of the donor because of the rules protecting his anonymity. And the donor has no interest in proving his paternity. This interpretation also takes into account the interests of the family formed subsequent to the couple's decision to have recourse to MAP.

### Russian Federation

Olga A. Khazova:

*Genetics and Artificial Procreation in Russia* – in: 'Biomedicine, the Family and Human Rights' /Ed. by M.-T. Meulders-Klein, R. Deech, and P. Vlaadingbroek. Kluwer Law International, The Hague, 2002. Pp.377-391;

*Five Years of the Russian Family Code: The First Results*. – 'The International Survey of Family

Law, 2002 Edition' /Ed. by A.Bainham. Jordan Publishing Limited. 2002. P. 347-355 (p.350); *Problems of Gender Equality and Reproductive Rights of the Spouses* (in Russian) – at

[www.owl.ru/syostri/gender3.htm](http://www.owl.ru/syostri/gender3.htm);

*Legal Aspects of Application of Assisted Reproduction Methods in Russia* – in: 'Problems of Medical Law' /Ed. by O. Dubovik (in Russian), M. 2003;

*Legal Issues in ART and Embryo Transfer* – in: 'Assisted Reproductive Technologies and Infertility Treatment' (2<sup>nd</sup> ed.) /Ed. by V.I. Kulakov and B.V. Leonov (in Russian). M. (in print).

#### Slovenia

The matter of the law is published in:

ZUPANCIC, Karel, MEDEN-VRTOVEC, Helena, TOMAZEVIC, Tomaz, ZNIDARSIC, Viktorija. The future law on infertility treatment and on biomedically assisted procreation in Slovenia. *assist. reprod. genet.*, Oct. 2000, vol. 17, issue 9, pp. 496-497.

(The paper refers to the draft, but the final version is essentially unchanged).

Information on some other aspects of the legislation and practice of MAP in Slovenia are contained in a IFFS survey (See Addendum).

#### "FYROM"

Current healthcare law predates the era of MAP. No updates concerning MAP have been made.

In family law there are standard articles addressing the contesting of the paternity but not in relation to MAP.

#### Canada

Examples of Provisions Respecting Parentage in Provincial and Territorial Legislation

- Alberta – Domestic Relations Act, R.S.A. 1980, c. D-37
- Ontario – Children's Law Reform Act, R.S.O. 1990, c. C-12
- Newfoundland – Children's Law Act, R.S.N. 1990, c. C-13
- **Provincial and Territorial Family Law Provisions that Specifically Address Parentage and Artificial Insemination:**
  - Newfoundland – Children's Law Act, R.S.N. 1990, c. c-13
  - Yukon – Children's Act, R.S.Y. 1986, c.22
  - Quebec – Civil Code of Quebec
- **STATUTES OF CANADA 2004**, CHAPTER 2 An Act respecting assisted human reproduction and related research, BILL C-6 ASSENTED TO 29th MARCH, 2004
- **Alberta Court of Queen's Bench Judicial District of Calgary** IN THE MATTER OF The Child Welfare Act AND IN THE MATTER OF the Application of "A" for an adoption order in respect of the child "C" born on the 30th day of October, 1994.  
AND IN THE MATTER OF the Application of "K" for an adoption order in respect of the child "M" born on the 9th day of April, 1987., and Psychologists Association of Alberta, intervener
- **Nova Scotia Supreme Court (Family Division) - Nova Scotia (Birth Registration No. 1999-02-004200)(Re)** IN THE APPLICATION OF S.C.M. and N.J.C. to adopt the person whose birth is registered as Registration No. 1999-02-004200 by the Registrar General for the Province of Nova Scotia under The Children and Family Services Act, being Chapter 5 of the Statutes of Nova Scotia, 1990 AND IN THE APPLICATION OF S.C.M. and N.J.C. to adopt the person whose birth is registered as Registration No. 94-02-006955 by the Registrar General for the Province of Nova Scotia under The Children and Family Services Act, being Chapter 5 of the Statutes of Nova Scotia, 1990 .
- **Food and Drugs Act** Processing and Distribution of Semen for Assisted Conception Regulations.