



To the Health Committee of the Parliament

Bill to damage reproductive health in Europe

A new bill will prohibit sales from sperm banks to individuals. This will remove access to controlled sperm for single women and lesbian couples in many countries in Europe and force them into a shady market.

November 20, 2016

Lessons learned in Denmark: Prohibition does not prevent families but simply creates risks

In Denmark from 1997 to 2006 there was a ban on assisted reproduction to single women and couples consisting of two women. A similar ban exists today in many countries in Europe, countries such as France, Italy, Portugal, Greece and Poland.

In Denmark, the ban was politically motivated by the wish to avoid rainbow families, i.e. all families where at least one parent is an LGBT person. In other words, it was a family policy agenda to limit rainbow families and promote the traditional family form – father, mother and children. One very clear lesson from the time of prohibition in Denmark was that it is not possible to enforce certain family forms by means of legislation: People will have the children they want – it is only a matter of how difficult and risky it will be.

When female couples and single women are denied access to fertility treatment, they often resort to home insemination. This also happens today to a large extent e.g. in the above countries. Often sperm is obtained from Danish sperm banks.

The bill and the EU Commission's unpublished analysis

The bill – Bill amending the Medicines Act and the Danish Tissue Act¹ – has been through the consultation phase i.e. the public hearing. § 2, no. 6 of the proposal states that reproductive cells cannot be distributed to individuals.

¹ <https://hoeringsportalen.dk/Hearing/Details/59709> (LGBT Denmark was not heard)



The proposal is the result of a request from the European Commission². A group of Member States (according to unofficial sources it is a number of southern European countries) have asked whether a requirement for distribution through authorized channels will be in accordance with EU law and whether a Member State could require another Member State to cooperate in the enforcement of such a requirement.

In its reply to the group the Commission states, that not only would such a restriction be admissible, the lack of such a restriction may not be compatible with the rules on traceability. It is not clear how the Commission reached this conclusion. The Commission has not presented its analysis.

Health safety not real reason – actual reason: traditionalistic family policy

The Commission argues the importance of traceability for the sake of reporting serious adverse reactions. As stated in the consultation response from Cryos, the world's largest sperm bank, through their 30 years of operation they have not experienced such incidents. In contrary, there are examples that traceability deteriorates when extending the distribution chain, e.g. due to data loss associated with closing down clinics. There are no indications that the bill will lead to better health safety.

On the contrary, an inevitable consequence of the proposal will be that female couples and single women will begin to access sperm through private, uncontrolled channels - on the shady market. That is, instead of be treated safely with controlled sperm, these women will need to find methods of obtaining sperm from other sources. The care taken by the Commission to ensure the health of mother and child only applies to families consisting of father, mother and children. Obviously, the risks the Commission wants to protect against are much greater on the shady market. In addition to this, these families would often find themselves in a difficult situation in relation to legal parenthood.

Even in the case the Commission is right concerning health safety being increased by a ban – which LGBT Denmark doubts – this still may not be compatible with the EU Charter of Fundamental Rights, including prohibition of discrimination on grounds of sexual orientation. This is evident in the decision³ by the EU Court of Justice on France's exclusion of gay blood donors, in which it held that the principle of proportionality must be met.

The question of traceability seems to have come from the Commission itself: apparently, the inquiring Member States only asked about the lawfulness of a ban on sales to individuals. This clearly indicates that the proposal is about controlling family forms rather than ensuring health.

Not innocent symbolic politics – families are harmed

Since the Commission's analysis is not published, it is not known 1) whether it contains a valid analysis of traceability issues, 2) if it contains an analysis of the worsening reproductive health for lesbian couples and single women, and 3) whether it contains an analysis of whether the exclusion of same-sex couples are compatible with the EU Charter provisions on non-discrimination. However, LGBT Denmark considers that this may not be the case and that the Commission's reasoning is incorrect.

Furthermore, LGBT Denmark believes that the intention of the Member States posing the question to the Commission is that they want to promote a particular family form at the expense of others. One must ask if it is a task of the state of Denmark to use national legislation to promote traditionalist forces in Europe. Is it our job to undermine the health and legal status of certain groups of families around Europe?

² cf. http://ec.europa.eu/health/blood_tissues_organs/docs/ev_20150603_sr_en.pdf, sec. 2.3.2

³ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/cp150046en.pdf>



Based on these considerations LGBT Denmark finds, that it is necessary to delete the part of the bill, which is about banning the distribution of gametes to private persons (§ 2, no. 6).

Kind regards

LGBT Denmark

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(Translation from Danish by the author)

LGBT Denmark – Danish National Organisation for Gay Men, Lesbians, Bisexuals and Transgender Persons
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