



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Norway
<b>Title:</b>	Amendments to the Norwegian Biotechnology Act. Egg-donation and assisted fertilization of single women permitted. Free ultrasound early in the pregnancy
<b>Date:</b>	23 July 2020
<b>Expert:</b>	Marte Bauge
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Strengthening the pregnancy and health services for women
<b>Grounds of discrimination:</b>	Sex, Gender
<b>Field of application:</b>	Goods and services, Pregnancy and maternity
<b>Source:</b>	National legislation
<b>Applicable law:</b>	The Act on Biotechnology <sup>1</sup> and the Gender Equality and Anti-Discrimination Act (GEADA) <sup>2</sup>

### **Content**

On 26 May 2020, the Norwegian Parliament decided on several important amendments to the Norwegian Act on Biotechnology that affects gender equality (and women's rights). The amendments entered into force on 1 July 2020.

The key aspects of the changes are:

#### **The ban on egg donation has been removed**

Until 1 July 2020, according to Article 2-18 of the Biotechnology Act, the donation of eggs was prohibited in Norway. At the same time it was allowed in all the other EU countries except for Germany. The main arguments for the ban on egg donation was that pregnancy and childbirth are linked to a process that takes place inside the female body. Egg donation introduces a 'third party' to the process and represents a break with the natural biological fertilization process.

Some academics from the feminists movement have argued that egg donation fundamentally alters the reproductive process for women. Several feminist critics have described reproductive technology as a way to control the female body, depriving the woman of the main role she has been given in the reproductive process.<sup>3</sup> In the debate on egg donation, critics have also argued that legalizing egg donation will make it easier to legalize surrogacy later. The critics also fear that reproductive technology will be used to manipulate and create qualities in children. Other academics from the feminist movement

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<sup>1</sup> Act-2003-12-05-100 <https://lovdata.no/pro/#document/NL/lov/2003-12-05-100/%C2%A72-18> (only in Norwegian).

<sup>2</sup> Act 2017- 06-16-51 <https://lovdata.no/pro/#document/NLE/lov/2017-06-16-51> (English).

<sup>3</sup> Stabel (1988) page 33.

are positive towards the changes on egg donation and argue that donation of eggs equals men and women's infertility.<sup>4</sup>

The Parliament has now decided to permit egg donation in Article 2-11 of the Biotechnology Act. According to the amendment, egg donation entails that a woman donates one or more eggs, which can be used for artificial fertilization of another woman, or for research purposes. The female donor must be over the age of 25, and not older than 35 (while the semen donor must be over the age of 18). It is the physician who chooses the semen or egg donor.

#### Surrogacy will still be illegal in Norway

##### Free ultrasound with additional examinations:

Until 1 July 2020, women have had to pay for an early ultrasound in their pregnancy. Due to this amendment, all pregnant women in their first trimester of pregnancy will now be offered an ultrasound with additional examinations, which can reveal serious illness or fetal injury of the fetus. Until the changes, this has not been a part of the public health care service in Norway, and pregnant women have had to pay for this themselves. The Parliamentary majority's reason for the change is to increase the chances of identifying a fetus which has an increased risk for diseases, and consider possible measures at an early stage. The age limit for obtaining fetal diagnosis, which is used to acquire information regarding genetic characteristics of the fetus, is reduced to 35 years of age when the woman will give birth. Previously the age limit was 38 years.

The amendment also allows to conduct a so-called Non-Invasive Prenatal Test (NIPT) on all pregnant women in Norway. The pregnant woman is not obliged to go through with the test. The NIPT test is a fetal diagnostic method, which provides information about the child's gender, and whether the child has trisomy 21 (Down's syndrome) and certain other rare conditions. The method can be used between the 9<sup>th</sup> until the 11<sup>th</sup> week of pregnancy, according to information from the Norwegian Directorate of Health.

##### Assisted fertilization for single women:

Until 1 July 2020, according to Article 2-2 of the Biotechnology Act, assisted fertilization could only be performed on a woman who is married or lives with someone in a stable relationship. The conditions for insemination were previously either that the man's semen cannot successfully fertilize the woman's egg, that the man has or carries a serious illness, or that two women are married or living together in a stable relationship resembling marriage. This resulted in the fact that single women who wanted children went abroad (for example to Denmark) to get the insemination process done.

With the new changes, insemination can also take place on a single woman, without the requirement of her having a male or female partner. To be considered as a single person, the woman must live alone.

**Key points of analysis:** The amendments in the Biotechnology Act, especially the changes on egg donation, are important from a gender equality perspective.

The ban on egg donation in Article 2-18 of the Biotechnology Act raised questions on gender discrimination, because infertile men were allowed to have children with their partner by means of sperm donation, while infertile women were not allowed to receive eggs from a donor, and thereby have children with their partner. It's difficult to see sufficiently compelling reasons to justify this differential treatment between men and women in this area. This was also the main argument for the amendment of the Biotechnology Act when it comes to egg donation.

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<sup>4</sup> See website; <http://kjonnsforskning.no/nb/2020/06/endringer-i-bioteknologiloven-skaper-nye-sporsmal-for-feminister> (only in Norwegian).

The Equality and Anti Discrimination Ombud (Equality Ombud) has argued, on several occasions, that the ban on egg donation is not in line with the prohibition on gender discrimination of Article 6 of GEADA (and the prohibitions in the previous gender Equality Acts) because infertile men could have children with their partner, but infertile women could not.<sup>5</sup> The previous ban on egg donation may also conflict with Article 12 of the UN Convention on the Rights of Women (CEDAW) when it comes to equal access to health services.

Free ultrasound for women will also provide security for mothers and children by ensuring that all women, regardless of finances, background and location in Norway get equal treatment options through their pregnancy. The amendment will also secure that a mother feels secure that the child she is carrying receives the best medical follow-up both before, during, and after birth.

Assisted fertilization gives single women the possibility to become pregnant without having to go abroad to have the insemination procedure done.

**Internet link source:**

<https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=77395> (Only in Norwegian).

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<sup>5</sup> See the Equality ombuds website; <https://www.ldo.no/arkiv/nyheitsarkiv/Nyheter-i-2013/Forbud-mot-eggdonasjon-er-lovstridig/> (Only in Norwegian).