

Malta: Widened access and scope of in vitro fertilisation laws, amid controversy

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SUE VELLA – EUROPEAN SOCIAL POLICY NETWORK

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In vitro fertilisation (IVF) services have been offered free of charge since 2013. Legislative amendments in 2018 extended IVF to same-sex couples and single women and introduced embryo freezing. On 9 May 2022, a Bill was tabled in Parliament which (along with Protocols) allows for pre-implantation genetic testing (PGT-M) for nine genetic diseases. Several civil society groups took a strong stand against PGT-M. Government and opposition reached agreement on the Bill which will now pass into law.

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Description

The Embryo Protection Act was promulgated in 2012. In 2013, the Embryo Protection Authority (EPA) was set up to regulate fertility services in Malta, and free in vitro fertilisation (IVF) services started to be offered at Malta's public hospital. Legislative amendments in 2018 extended treatment to same-sex couples and single women, and introduced the freezing of embryos. From 2020, in the case of couples, both parents became entitled to 60 hours of paid leave per IVF cycle, for a maximum of three cycles. In 2022, refunds for stimulation medicines were introduced, which formerly had to be purchased by IVF patients.

As promised in its electoral manifesto, the Labour Party tabled amendments to the IVF legislation in the first session of parliament after national elections on 9 May 2022 (Bill No. 5 of 2022). The amendments may be grouped into three types: i) both the donations of oocytes, and the transfer of cryopreserved embryos, can now occur from abroad; ii) the upper age for entitlement to free IVF services is raised from 42 to 45, and the number of possible IVF cycles is increased, including for a second child through IVF; and iii) the Adoptions Board (as established in the Adoptions Administration Act [Cap. 495]) is empowered to make recommendations to the EPA on the eligibility and suitability of prospective adoptive parents.

At a press conference held on 26 May 2022, the Minister of Health explained that the legislative amendments would allow for pre-implantation genetic testing (PGT-M) where a genetic predisposition to serious

diseases has been established. Embryos exhibiting genetic diseases would be frozen to be possibly given up for adoption in future, but only if a cure for the condition becomes available. A protocol tabled in Parliament by the EPA on 8 June 2022 specifies the first nine genetic diseases, and also states that other conditions may eventually be considered at the parents' request via a licensed clinic.

The announcement of PGT-M brought about swift opposition from various quarters. In late May and early June 2022, four statements against PGT-M were issued by numerous groups of organisations, putting forward similar arguments which we have grouped here for ease: a) life begins at fertilisation; b) embryo selection is tantamount to eugenics; c) PGT-M strengthens discriminatory attitudes against people living with the nine diseases, implying that their lives are valueless; and d) the notion of adoption is misleading as genetically abnormal embryos are likely to remain frozen, and indefinite cryopreservation is wrong. To these concerns, the position paper by the Archdiocese of Malta (2022) added that placing the responsibility for deciding what constitutes a eugenic practice on the EPA rather than on Parliament effectively "removes the regulation of fundamental and controversial decisions from scrutiny by the House of Representatives". The Archdiocese's paper was backed by the Federation of Catholic Family Associations in Europe on 19 June 2022.

On the other hand, Doctors for Choice asserted that "embryos are not babies" and that it is "heartless and discriminatory" that parents carrying a genetic disorder should have to spend thousands to have embryo testing abroad. Parents from

different social classes are not equally able to afford such embryo testing abroad, which may result in a situation where those in the lowest income groups are at higher risk of transmitting their genetic disease to their children. The Commission for the Rights of Persons with Disability (CRPD) also came out in favour of the amendments, arguing that people should have the right not to pass on genetic disorders to their children and that the discourse had been “hijacked” by those whose concerns were only moral or academic. However, two days later, 12 of the 15 CRPD Council members dissociated themselves from CRPD’s official stance, stating that this position had never been discussed with them prior to being issued and did not represent their views.

While initially the opposition Nationalist Party took a stance against the amendments, insisting on polar body diagnosis before fertilisation (PBD) rather than after it, as in PGT-M, at Parliamentary Committee stage on 27 June 2022 both government and opposition approved (with minor amendments) the proposed changes to the IVF legislation. The Minister for Health noted that while couples undergoing IVF may first have PBD testing, PGT-M will also be necessary as couples deserve to have information on their child’s potential conditions. Thus, the Bill was approved by Parliament on 6 July 2022 with only three members of the Opposition voting against (Martin and Carabott, 2022), and

will pass into law upon the President’s signature in the near future.



Outlook and commentary

The issue of PGT-M is a very sensitive one and its ethical dimensions are complex and beyond the scope of this report.

The legal amendments to IVF in Malta have brought to the fore a social divide around reproductive ethics, particularly in respect of deeply held and diverging convictions about the moral status of an embryo at its various stages of development. This occurs in a country with strong religious roots, and where efforts have been made to valorise and enhance the lives of people with disabilities, but also in a context of rapid social change, secularisation and concern for equality of access to more costly healthcare services

The amendments that have just been adopted were not subject to public consultation, unlike those of 2015 which attracted responses from 25 parties including local authorities, NGOs and individuals. That said, the latter consultation report does not appear to have ever been made public “in order not to undermine decisions to be taken in view of the sensitive nature of subject matter” (Ministry for Energy and Health, 2016, p. 5) which perhaps sheds some light on the absence of consultation this time around.

Further reading

Archdiocese of Malta. (2022). [Embryo Protection Act](#) (Amendment) Bill no.5. A position paper

Bill No. 5 (26 May 2022). [Various Laws relating to Assisted Procreation](#) (Amendment) Act, 2022. Malta, House of Representatives.

Martin, I. and Carabott, S. (7 July 2022). [Embryo testing law approved, with three PN MPs voting against](#). Times of Malta.

Ministry for Energy and Health. (2016, January 19). [Government response to consultation on IVF legislation](#)

[New IVF amendments do not ensure healthy babies – organisations \(2022, May 28\)](#). Times of Malta.

Author

[Sue Vella](#) (University of Malta)

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