Intersex & Transgender Luxembourg a.s.b.l.

Initiative proposing a legal text on the protection of people with variations in sex characteristics[1]

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PROPOSAL FOR A LEGAL TEXT ON THE PROTECTION OF PEOPLE WITH VARIATIONS IN SEX CHARACTERISTICS

Article 1 [Objective]

This law aims to:

(1) protect the right of people with variations in sex characteristics, also referred to as intersex people, to physical integrity, including when these variations are identified before birth;

(2) define the rights of people with variations in sex characteristics to information and compensation.

Article 2 [Definitions] – For the purposes of this law:

(1) 'sex characteristics' means a person's chromosomal, gonadal, anatomical and hormonal characteristics, including primary characteristics such as reproductive organs and genitals and/or chromosomal structures and hormones, as well as secondary characteristics such as muscle mass, hair distribution and breasts;

(2) 'people with variations in sex characteristics' means any person who naturally has sex characteristics, including chromosomal, gonadal, anatomical and hormonal characteristics, including from before their birth, that diverge from societal and/or medical conceptions of typical female and male bodies.

Article 3 [Regulation of medical practices that irreversibly alter sex characteristics]

Medical practices that alter sex characteristics are strictly regulated using the following conditions.

(1) Irreversible medical acts that affect internal or external sex characteristics of embryos, foetuses, minors or protected adults who have not given their personal consent, i.e. not through a representative, and prior, free, clear, explicit and documented consent do not have any therapeutic necessity.

[1] This text has been drawn up by Benjamin Moron-Puech, Erik Schneider, Blaise Meyrat, Thierry Bosman. Translated into English by Zosia Niedermaier-Reed.

Notably, the following acts do not have any therapeutic necessity when minors and protected adults have not given their prior, free, clear, explicit and documented personal consent:

1. the creation of a neo-vagina;
2. the removal or reduction of the clitoris;
3. hypospadias surgery.

(2) It can only be in the case of medical emergencies – in other words where there is an imminent danger to life or risk of serious and imminent harm to physical health, which must be medically certified and established, duly substantiated and recorded in the person's medical record, and which cannot be avoided through any other less invasive means – that intervention is strictly necessary and proportionate to the risk, and limited only to treatments of immediate medical need, notably excluding any acts for aesthetic or non-essential reasons.

(3) Excluding the cases provided for in paragraph 2, refusal to carry out the acts referred to in paragraph 1 can under no circumstances constitute a matter giving rise to disciplinary, civil or criminal liability.

Article 4 [Criteria for assessing serious and imminent harm to physical health].

The evaluative criteria for serious and imminent harm to physical health notably include the following.

(1) Serious and imminent harm to physical health cannot be hypothetical nor based on purely psychosocial considerations.

(2) Ensuring a child's atypical genital organs conform to representations of male and female does not constitute a therapeutic necessity. In these cases, a decision should not be taken until the minor is able to participate in the decision.

(3) Harm should be certain or highly probable if no intervention is carried out, according to current medical science.

Article 5 [Guarantees regarding information given to minors and protected adults]

(1) Unless impossible due to a medical emergency (characterised by imminent danger to life or the risk of serious and imminent danger to physical health), all medical acts that alter a person's sex characteristics must be preceded by the minor or protected adult, receiving comprehensive, comprehensible and evidence-based information that is suitable for their age and comprehension skills, as well as their legal representative. This information should be documented in the patient's record, including reasons for an emergency.

(2) The information provided for in this article must be given by the doctor who undertakes or prescribes the medical act that alters sex characteristics, under their professional responsibility.

(3) This information, given both verbally and in writing, must include the proposed medical act, the medical justification, the associated risks and the consequences to the patient in both the long and short term, particularly with regard to fertility. It must also include the option for the person concerned to defer, refuse or choose alternatives to this act.

(4) In the case of referrals to doctors abroad, the doctor who writes the referral letter must:
1) define the aim of the referral as strictly consultative, and not prescriptive,
2) clarify the reason for the referral,
3) provide the reference number associated with the *Nomenclature et tarifs des actes et services des médecins* or, where applicable, with the International Classification of Diseases;
4) inform the doctor being consulted of the content of the present law, to ensure that its legal and ethical obligations are respected.

(5) The doctor must provide the patient and their legal representatives with a brochure informing them of their rights under the present law.

(6) Rules for best practice must be developed to facilitate the provision of information to the people concerned and their legal representatives that is not unduly pathologising. In particular, when doctors establish the presence of a variation in sex characteristics in a prenatal diagnosis, they are required to provide the parents with exhaustive information that the aforementioned variation does not constitute a disease in and of itself, and that the physical integrity of the child after birth is protected by the present law. The brochure provided for in Article 5(5) should be given to the parents and the consultation should be documented in the patient's record.

Article 6 [Guarantees regarding the consent given by minors and protected adults]

(1) In order to legitimately consent, the minor or protected adult must be able to:
- understand that they have a choice, and that these choices have consequences;
- receive, retain and weigh up information;
- understand the nature, objective, risks, side effects and alternatives to the proposed intervention;
- make a decision and justify this decision, in particular to be able to communicate the reasons for their choice, and the advantages, risks and other consequences of this, according to the most up-to-date information, including on their fertility, after a period of reflection of at least 21 days for puberty blockers and four months for other treatments.

(2) The minor or protected adult's capacity to consent must be documented both by the attending physician and by a psychologist trained in the field and not pertaining to the treatment team, to be chosen from a list of experts.

(3) The minor or protected adult has the right to a second medical opinion.

(4) By way of derogation from Article 13(1), first sentence of the Law of 24 July 2014 relating to the rights and obligations of patients, the minor or protected adult's prior, personal, free, informed consent is needed for the undertaking of the acts provided for in Article 3(1).

(5) In the case of disagreement between the person concerned and their legal representatives, or between the representatives themselves, the case is to be brought before a family court in the case of a minor, and before a guardianship court in the case of a protected adult.

Article 7 [The right to peer counselling and psychosocial support]

(1) During perinatal care and throughout the life of a person with variations in sex characteristics, the person and, where applicable, their legal representatives, have the right to peer counselling and psychosocial support, or, where appropriate, specialised neurodevelopmental support.

(2) The organisation or professional providing psychosocial support must have in-depth expertise in intersex matters, extensive experience in supporting intersex individuals and their families, and proven, continuous specialised and documented training in this field. This expertise must be attested through documented publications, training, or professional practices. The organisation or professional must provide contact information for a peer support association.

(3) Peer counselling is provided by an association of concerned persons, led and administered predominantly by persons with variations in sex characteristics and whose approach is respectful of the human rights of intersex persons.

(4) The peer and psychosocial support referred to in this article are fully covered by Luxembourg's national health service.

The criteria for recognising professionals and organisations, as well as the quality requirements, will be established by a Grand-Ducal regulation.

Article 8 [Right to psychiatric or psychotherapeutic consultation]

(1) A minor or protected adult with variations in sex characteristics has the right to a psychiatric or psychotherapeutic consultation when they have to give their consent to or rejection of a medical act that alters their sex characteristics.

This consultation must be exceptional, not be systematic, and be duly justified and documented to prevent any unjustified pathologisation.

(2) Any person with variations in sex characteristics has the right to full coverage of the costs of psychiatric or psychotherapeutic consultations when they experience suffering as a result of the medical acts referred to in Article 3(1), including those performed before this law entered into force.

Article 9 [Patient record]

(1) All elements of the discussion surrounding the medical act altering sex characteristics are recorded in the individual's patient record and kept for a period of 30 years from the age of majority, after which, the record may only be destroyed with the individual's consent and after they have had full access to it. The details for this procedure are detailed by a Grand-Ducal regulation.

(2) When the person concerned reaches the age of 18, they are informed, via their last known contact details, of the existence of the patient record relating to the alteration of their sex characteristics. They are invited to recover it.

Article 10 [National register]

(1) A national register of variations in sex characteristics is hereby established, including all variations in sex characteristics, including diagnoses of hypospadias and diagnoses of congenital adrenal hyperplasia (or adreno-genital syndrome).

(2) The aim of this register is to verify the application of the present law.

(3) The register includes the following data:

- date of birth,
- sex observed at birth, including undetermined,
- sex as recorded in civil status,
- description of the variation and of possible diagnoses,
- medical acts carried out and the date they took place,
- place in which these acts took place,
- pseudonymised national identification number.

(4) The register is managed by a public body designated by the Ministry of Health.

(5) Data in the national register of variations in sex characteristics are held anonymously for 30 years after the age of majority, after which the record may only be destroyed with the individual's consent. The procedures for this destruction are detailed by a Grand-Ducal regulation.

(6) Data in the register are published annually in anonymised form.

(7) The procedures for implementing the register are defined by a Grand-Ducal regulation.

Article 11 [Financial compensation]

(1) Any person who has suffered material or moral harm resulting from voluntary actions committed in violation of Article 3 is entitled to compensation from the State if the following conditions are met:
1. these procedures have caused or are causing bodily injury and have resulted in death, permanent disability, or total incapacity for personal work for more than one month;
2. the harm consists of serious disruption to conditions of life resulting from a loss or reduction of income, an increase in expenses or exceptional costs, an inability to engage in professional activity, the loss of a year of schooling, physical or mental harm, or moral or aesthetic damage, as well as physical or psychological suffering.

(2) A claim for compensation may be brought for procedures that occurred before the entry into force of this law.

(3) The claim for compensation shall be submitted to the Minister of Justice, who shall adopt a decision within six months, following the same procedure as that provided for in Article 2 of the amended Law of 12 March 1984.

(4) Under penalty of foreclosure, the claim for compensation must be submitted within thirty years from the victim reaching the age of majority or from the date on which the damage stabilises.

(5) If compensation has been awarded to the victim in accordance with this article and the victim's harm has subsequently significantly worsened, the victim may claim additional compensation.
This additional compensation may not exceed the maximum compensation determined in accordance with this article in force at the time of the claim for additional compensation, reduced by any sum previously awarded as compensation under the present law.
Under penalty of foreclosure, the claim for additional compensation must be submitted within five years from the date on which the harm worsened.

(6) Those concerned who do not accept the minister's decisions referred to in points 3 and 4 may bring an action to establish a claim or provision against the State represented by the Minister of Justice before the district courts, in the last instance, in accordance with Articles 4 to 8 of the amended Law of 12 March 1984.

(7) The committee may conduct or have conducted any hearings and investigations necessary for reviewing the application, in accordance with Article 9 of the amended Law of 12 March 1984.

(8) Where criminal proceedings have been initiated, the procedures set out in Article 10 of the amended Law of 12 March 1984 shall apply.

(9) Articles 11 to 14 of the amended Law of 12 March 1984 regulate the compensation scheme.

(10) [Pursuant to Article 17 of the amended Law of 12 March 1984] Anyone who has obtained or attempted to obtain compensation under this Law on the basis of information they knew to be inaccurate is liable to the penalties provided for in Article 496 of the Criminal Code, without prejudice to restitution of the obtained amounts.

Article 12 [Assessment report]

(1) Every three years, the government shall prepare a comprehensive report on the application of the present law. The report will be sent to the Chamber of Deputies and made public.

(2) The report is written by a committee of independent experts composed of:
1. a professor of medicine with proven expertise in medical ethics or children’s health rights;
2. a professor of law specialising in children’s rights;
3. a professor of social sciences other than law with expertise in the field of sex and gender diversity or vulnerable groups.

(3) The report shall include:
1. an assessment of the effectiveness of the measures implemented;
2. an analysis of compliance with the rights enshrined in the present law;
3. anonymised statistical data from the national register of variations in sex characteristics;
4. recommendations for improving the application of the present law.

EXPLANATORY STATEMENT

This initiative proposing for a legal text aims to provide a legal framework for medical acts that are carried out on minors as well as adults with reduced cognitive capacity with variations in sex characteristics.

Medical acts in question

Minors with variations in sex characteristics are subject to controversial medical acts, denounced by bodies including the United Nations:

> *'In countries around the world, intersex infants, children and adolescents are subjected to medically unnecessary surgeries, hormonal treatments and other procedures in an attempt to forcibly change their appearance to be in line with societal expectations about female and male bodies. When, as is frequently the case, these procedures are performed without the full, free and informed consent of the person concerned, they amount to violations of fundamental human rights.'*[2]

The medical acts in question are also called 'intersex genital mutilations'. Mutilation can be defined as 'the removal or loss of a member of part of the body'[3]. Intersex genital mutilations are:

> *'non-consensual, unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical treatments that would not be considered for "normal" children, practiced without evidence of benefit for the children concerned, but justified by societal and cultural norms and beliefs, and often directly financed by the state via the public health system'*[4].

These medical acts are associated to other practices, such as hormonal treatments (including prenatal treatments[5]), forced and repeated genital exams, medical photographs, human experimentation, denial of needed healthcare and abortions (late term) [6]. Abortions take place in Luxembourg in cases of Turner syndrome[7].

The contested medical acts include masculinising and feminising acts, as well as gonadectomies.

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[2] United Nations (2016): *Intersex Awareness Day – Wednesday 26 October,* https://www.ohchr.org/en/press-releases/2016/10/intersex-awareness-day-wednesday-26-october.

[3] Translated from French. Quevauvilliers (dir.) (2009): Dictionnaire médical avec atlas anatomique, 6th ed., Masson.

[4] StopIGM.org / Zwischengeschlecht.org (2018): *Intersex Genital Mutilations. Human Rights Violations Of Children With Variations Of Reproductive Anatomy. NGO Report (for PSWG) to the 5th and 6th Report of Luxembourg on the Convention on the Rights of the Child (CRC)*, p. 8, https://intersex.shadowreport.org/public/2018-CRC-PSWG-Luxembourg-NGO-Intersex-StopIGM.pdf.

[5] Dreger, Felder, Tamar-Mattis (2012): *Prenatal Dexamethasone for Congenital Adrenal Hyperplasia. An Ethics Canary in the Modern Medical Mine*. In: J Bioeth Inq. September; 9(3): 277-294.

[6] StopIGM.org / Zwischengeschlecht.org (2018).

[7] RADELUX I (2012): *Rapport supplémentaire au 3e et 4e rapport national (2001-2009) sur les droits de l'enfant à Luxembourg. Rapport Alternatif des ONG luxembourgeoises au 3e et 4e rapport gouvernemental sur les Droits de l'Enfant*. Groupe ONG RADELUX, p. 18, https://caitia.de/wp-content/uploads/2023/02/RADELUX_global.pdf.

Masculinising acts mainly include hypospadias surgeries as well as masculinising pharmacological treatments, particularly those that aim to make a micro-penis grow more quickly.
Hypospadias can be defined as an 'opening of the urethra [which] is not at the tip of the penis but on its underside'[8].

According to classifications of hypospadias, they can be:
- distal or anterior (urinary meatus towards the end of the penis),
- intermediary or mediary (urinary meatus towards the middle of the penis,
- proximal or posterior (urinary meatus towards the base of the penis).

According to another classification, the last two forms are qualified as 'proximal'[9].

Hypospadias can be accompanied by other particularities such as penile curvature or a micro-penis.

According to some medical guidelines, hypospadias surgery should be performed at a young age[10].

Questions are raised as to why distal hypospadias should be operated on, when some adults are not aware of nor bothered by this type of hypospadias[11] and the complication rate is around one in ten cases[12].

According to the most recent studies by Gaines and Simhan (2024), the complication rate for other types of hypospadias surgery ranges from 30 to 68%, and complications can arise decades after the initial surgery[13].

Post-operative complications include:

- fistulae (sutures do not hold and urine flows where it should not),
- stenosis (narrowing of the urinary meatus or urethra),
- residual curving,
- infections (dermatological or urinary),
- urethrocele (pressure on the urethra after the use of a technique using skin),

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[8] Non-pathologising definition used by De Bruyn (2017): *Promoting the human rights of and eliminating discrimination against intersex people*, point 11, p. 9, https://pace.coe.int/en/files/24027/html.
[9] For a more detailed classification with accompanying drawings, see Horst and de Wall (2017): Hypospadias, all there is to know, Eur J Pediatr. 2017 Feb 11;176(4):435–441, p. 437, https://pmc.ncbi.nlm.nih.gov/articles/PMC5352742/.
[10] European Association of Urology (2025): Cheat Sheet: Hypospadias. EAU Guidelines on Paediatric Urology, https://d56bochluxqnz.cloudfront.net/documents/EAU-Cheat-Sheet-EAU-Guidelines-on-Paediatric-Urology-Hypospadias.pdf.
[11] Carmack, Earp and Notini (2016): Should Surgery for Hypospadias Be Performed Before An Age of Consent? The Journal of Sex Research 53(8):1047-1058, https://www.researchgate.net/publication/279180849_Should_Surgery_for_Hypospadias_Be_Performed_Before_An_Age_of_Consent.
[12] Gaines and Simhan (2024): Adult Hypospadias Outcomes for the Pediatric Urologist, Curr Urol Rep. 2024 Apr;25(4):63-70.
[13] Ibid.

- pain,
- difficulty urinating (including incontinence),
- unsatisfactory aesthetic outcome[14],
- loss of sexual sensitivity,
- urethral strictures leading to kidney failure requiring dialysis[15].

Given the possible complications and their frequency, the present initiative aims to defer masculinising surgery and pharmacological treatments until the person is able to give personal, free and informed consent.

Feminising medical acts include feminising surgery and hormonal treatments.

Feminising surgeries primarily include the amputation/reduction of clitorises that, according to medical norms, are bigger, than a clitoris/smaller than a penis, as well as vaginoplasty and dilation. They can be associated with a labiaplasty.

Concerned babies are mainly those who have received a diagnosis of adreno-genital syndrome or partial insensitivity to androgens.

The amputation/reduction of a clitoris can cause pain, a loss of sexual sensation, anorgasmia and scarring. Daniela Truffer (Switzerland) gave the following testimony to *Quotidien*[16]:

> *'I had no idea what was happening, but I knew something wasn't right in my body. At the age of 7, my genitals had been cut. When I was at school I'd feel pain between my legs, I felt really bad, but I did not know why. It was only later that I understood that I'd been subjected to genital mutilation, that the doctors had inflicted this on me so that, no matter the cost, I would look like a woman. But I was so focused on my suffering, and, above all, on the fact that I didn't understand what had happened, that I'd not even had the time to really understand that I wasn't a 'girl' like the others.'*

With regards to vaginoplasty (the creation of a neo-vagina or enlargement of the vagina), the Council of Europe Commissioner for Human Rights notes[17]:

> *'The feminising procedure of vaginoplasty, i.e. creating a vaginal opening, can be both painful and psychologically scarring. When it is performed in early childhood, the neo-vagina must be kept open using a dilator, which is usually inserted regularly by the child's mother. This procedure is repeated throughout childhood and intersex people have stressed that it has been extremely painful and akin to a form of rape. Some parents*

[14] Meyrat (2021: Talk on 'Hypospadias' at the 'Hypospadies, un terrain inconfortable de la discussion sur l'intersexuation' conference, 20.10.2021, as part of the 'Intersexe ? Variations des caractéristiques sexuées ? Une série d'événements pour apprendre et enseigner' event, Luxembourg, organised by Intersex & Transgender Luxembourg a.s.b.l.

[15] The final two examples are added by StopIGM.org / Zwischengeschlecht.org (2016): CEDAW France NGO Report, p. 49, https://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

[16] Translated from French. Somnard, A. (2017b) : 'J'ai été castrée alors que j'étais bébé', Le Quotidien, 21/03/2017, p. 3.

[17] Council of Europe Commissioner for Human Rights (2015): Human rights and intersex people, Council of Europe, p. 21, https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2015/07/31/Intersex.pdf.

> *have had the impression of committing rape on their child. The procedure may have to be continued later on in life.'*

Complications of vaginoplasty include the following[18]:

- during adolescence, a high occurrence of vaginal stenosis (narrowing), requiring another surgery,
- urinary tract infections,
- fistulae,
- haematocolpos (menstrual blood cannot flow because of a vaginal obstruction).

Since 2004, gynaecologist Dr Creighton, has maintained[19] :

> *'Surgery has been regarded as the cornerstone of treatment for virilized female infants and parents. Immediate cosmetic results can be good and this may relieve the concern of both parents and clinicians. However, there is very scanty evidence of a satisfactory postpubertal cosmetic or anatomical outcome. Surgical revision of the vagina to allow tampon use and intercourse is necessary in most patients. If vaginal surgery were deferred it would limit the total number of operations for each individual and may reduce the substantial risk of fibrotic introital stenosis. It is now unacceptable to claim that clitoral surgery does not affect sexual function, although the magnitude of this effect needs further evaluation.'*

In Dr Blaise Meyrat's experience, a significant number of girls with congenital adrenal hyperplasia who were not operated on in childhood do not request intervention at puberty[20].

Given the repercussions of surgical and hormonal feminisation acts, the present initiative aims to defer them until the person is able to give their personal, free and informed consent.

Finally, the third form of intersex genital mutilation is castration or gonadectomy, which is the removal of one or more gonads (testicles, ovaries, ovotestes[21])[22].

Children with variations in sex characteristics undergo gonadectomies in two cases. The first case is motivated by a risk of cancer, although this risk is not entirely proven. If the risk is hypothetical, or will not arise until puberty, the intersex movement demands that the gonads are left as is or that the intervention is delayed until puberty. The second case is if the gonads 'do not correspond' to the sex which was chosen for the child to be raised as (removal of testicles in a child that has been assigned female, or removal of ovaries in a child that has been assigned male).

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[18] Creighton (2004): Long-term outcome of feminization surgery: the London experience. BJU Int. 2004 May;93 Suppl 3:44-6.

[19] Ibid.

[20] Meyrat (2024): 'Nécessité médicale et consentement préopératoire chez les enfants avec une variation du développement sexué (VDS)', in: Final report on the 'Intersexe ? Variations des caractéristiques sexuées ? Journées pour apprendre, enseigner et agir ' event, 14.-26.10.2024, Luxembourg, Volume II, p. 63.

[21] Combination of testicular and ovarian tissue.

[22] Quevauvilliers (2009).

The Council of Europe Commissioner of Human Rights quotes the following testimony in its report 'Human rights and intersex people'[23] :

> *'Amongst these testimonies of trauma and pain is the experience of Christiane Völling, who was born in 1960 in Germany with "indeterminate external genitalia" and was raised as a boy. In her autobiography, Völling stated:*
> *The castration [removal of internal testes] that I suffered and the paradoxical administration of high-dose testosterone considered as necessary resulted in physical and psychological damage such as hot flashes, depression, sleeping disorders, early osteoporosis, the disappearance of my sexuality and my reproductive capacity, trauma linked to the castration, lesion of the thyroid glands, change in my brain's metabolism and my bone structure as well as many other secondary effects and lesions. The taking of testosterone has caused the development of a typical male hair pattern, a masculine beard, the loss of all my hair linked to the impact of the androgens, a masculinisation of my previously feminine voice, the masculinisation of my facial features and the production of a male anatomy despite female predispositions. The male genitalia surgically constructed have caused irreversible damage such as chronic urinary infections, disorders of urination, strictures and scarring. These interventions have made me lose all my innate feeling of belonging to a sex and all sexual behaviour.'*

The aim of the present initiative is to guarantee that gonads will only be removed if necessary and not prematurely removed.

Without gonads, people need hormone replacement therapy for life.

Kris Günther[24] was assigned female at birth, and had his testicles removed in childhood, but he felt himself to be male. As stated in *Le Quotidien* [25]:

> *'At puberty, he was pumped full of oestrogen injections and pills, without really knowing what he was being given: 'It worked, my breasts started to grow, which really bothered me. Some people feel good in their feminine role, but that wasn't at all the case for me. Why did they take out my testicles? Castration is taking out every part that produces testosterone and then only giving oestrogen. In me, it created a lack.' At 23 or 24 years old, Kris therefore decided to stop taking oestrogen, which had unpleasant side effects. 'I had hot flashes like menopausal women, I felt awful when I was taking those hormones. It's like my body rejected it.' But, without any hormones at all, Kris developed osteoporosis between the age of 40 and 45. A few years later, Kris illegally obtained testosterone online. 'I felt so much better. So, I presented my case to a doctor, with studies to back me up. I managed to convince him to prescribe me testosterone legally, otherwise I would have continued anyway thanks to the internet. I was so tired, even more as I was older, but testosterone gave me back my vitality."*

Hormonal and, more broadly, pharmacological treatments should be subject to personal, free and informed consent, which the present initiative aims to guarantee.

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[23] Council of Europe Commissioner for Human Rights (2015), p. 21.

[24] Kris passed away in 2025 – we are grateful for all the support he gave us in Luxembourg. For our homage (in French), see: In memoriam, https://caitia.de/7_soziales/in-memoriam/.

[25] Translated from French. Somnard, A. (2017c) : 'Le droit à l'intégrité physique', Le Quotidien, 21/03/2017, p. 3.

Moreover, medical acts undertaken during early childhood – and therefore without consent – also have psychological consequences.

Medical practices can not only cause 'the development of shame, stigma, symptoms arising from sexual abuse[26], depression, self-destructive behaviours, suicidal ideation (Hester, 2006; Tamar-Mattis, 2014; Tosh, 2013; Jones et al., 2016)'[27], but can also be traumatic[28].

An interview with Thierry Bosman, from Belgium, in *L'Essentiel* states[29]:

> *'Not a man, not a woman, but 'intersex'. Thierry Bosman is Belgian, and since birth his body has developed particular biological characteristics. 'My genitals did not develop normally. I have a penis and a female chest developed', he stated, having had a 'traumatic' adolescence. 47 – rather than 46 – chromosomes, have given him a different body and a life of imposed medical interventions.*
>
> *'I've undergone sex reassignment surgeries, which were presented to my parents as if they were common and necessary. Doctors take charge, and gloss over the consequences that this has on our lives,' added the forty-something-year old, who has lost count of the painful injections and hormonal treatments he has had. A double mastectomy at the age of 14 still has side effects thirty years later: 'I can't always look at my body in the mirror.' A life of physical and emotional suffering, with a feeling of having been 'tortured' and of having to hide this 'secret'. Pretending for years and forgetting to be himself.'*
>
> *'Castration, sterilisation, fixing what's not as it should be… I'd like to share my experience so that we don't put children through that anymore', hopes Thierry Bosman.'*

Assignment of wrong sex

Sometimes, a person's assigned sex does not correspond to their gender[30] [31]. However, taking out tissue or organs is irreversible.

Waiting for a person's gender identity to develop would prevent one source of error, which is why the present initiative argues that medical acts on children who present with variations in sex characteristics should be carried out with the person's personal consent and why it establishes a framework for granting consent.

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[26] Alexander, T. (1997): *The Medical Management of Intersexed Children: An Analogue for Childhood Sexual Abuse*, Intersex Society of North America, http://www.isna.org/articles/analog.

[27] Translated from French. Bastien Charlebois, J. (2017): 'Les sujets intersexes peuvent-ils (se) penser ? Les empiétements de l'injustice épistémique sur le processus de subjectivation politique des personnes intersex(ué)es.' Socio, 9, p. 143-162, https://journals.openedition.org/socio/2945.

[28] See also Schneider, E. (2013): An insight into respect for the rights of trans and intersex children in Europe, published by the Council of Europe, points 166-168, https://rm.coe.int/168047f2a7.

[29] Chauty (2018) 'Tout le monde ne naît pas fille ou garçon', *L'Essentiel,* https://www.lessentiel.lu/fr/story/tout-le-monde-ne-nait-pas-fille-ou-garcon-121335307885.

[30] For a testimony, see Schneider, E. (2013), points 160-162.

[31] For recent case studies trying to assess assigned sex at birth that does not correspond with a person's felt gender, see: Intersex & Transgender Luxembourg a.s.b.l. (2024): *Mutilations génitales des personnes avec des variations des caractéristiques sexuées : pour une loi au Luxembourg*, points 63-75, https://caitia.de/wp-content/uploads/2024/07/Mutilations-genitales.docx-v-finale.pdf.

Situation in Luxembourg

At medical level

Until 2021[32], doctors in Luxembourg acknowledged the existence of some of the practices described below:

> *'The Ministry of Health does not have precise data on the number of intersex children born in Luxembourg.*
>
> *According to data the Ministry of Health has access to, three surgical interventions have been practiced on intersex children over the past six years. These three children were all operated on due to adreno-genital syndrome with assigned sex. It should be noted that adreno-genital syndrome is a congenital disease of the adrenal glands which, if left untreated, can be fatal in some cases for the affected child.*
>
> *In recent years, a disorder of sexual development has been observed in a fourth child hospitalised for an inguinal hernia. This child underwent no surgery on the genitals or gonads, i.e., the sex glands.'*

In reality[33]:

> *'115. Surgical "sex assignment" constitutes genital mutilation of persons with variations in sex characteristics if the person has not given their free, personal, and informed consent.*
>
> *116. On the contrary, intersex organisations call for the child's body be left intact and that a sex be recorded in civil status, which will be the sex in which they are raised until they can make their own choice.*
>
> *117. It should be noted that adreno-genital syndrome poses a life-threatening risk to the child in the event of salt loss and that this must be treated hormonally, not surgically.'*

In 2024, it was said that these surgeries were no longer carried out in Luxembourg, with no explanation for the change given[34]:

> *'Confirmed cases of 'DSD'[[35]] are referred to highly specialised centres of expertise abroad, as required by international recommendations.'*

and

[32]Joint response from the Minister of Health, Minister of Family Affairs and Integration, Minister of Justice, Minister of Social Security to parliamentary question 4023/2021 from Deputy Carole Hartmann and Deputy Max Hahn, https://www.chd.lu/en/question/21187.

[33] Intersex & Transgender Luxembourg a.s.b.l. (2024).

[34] Joint response from the Minister of Health, Minister of Social Security, Minister for Gender Equality and Diversity to parliamentary question 1425 of 24 October 2024 from Deputy Joëlle Welfring and Deputy Djuna Bernard, https://www.chd.lu/en/question/27758.

[35] 'Disorder of sex development', a medical classification term sometimes replaced today by 'differences of sex development' in order to not pathologise.

> *'As explained, cases of 'DSD' are generally referred via the 'Kannerklinik' to highly specialised centres of expertise abroad, which consist of multidisciplinary teams for the care of children with variations in sex characteristics. These centres apply international care recommendations and are also subject to their national legislation.'*

As Intersex & Transgender Luxembourg a.s.b.l. pointed out to the European Commission against Racism and Intolerance of the Council of Europe (ECRI) [36]:

> *'1) Since the response does not specify which countries the children are sent to, it is impossible to know which international recommendations are being applied.*
>
> *2) The fact that the centres in question are subject to their national legislation is not reassuring, as some countries offer absolutely no protection to intersex children or children with other variations in sex characteristics. The children therefore continue to undergo surgery, but abroad. The response would have been interpreted differently if the children were sent to hospitals known to no longer perform the operations in question.*
>
> *3) Hypospadias surgeries (around fifty per year) continue to be performed in Luxembourg [37].*
>
> *4) A Luxembourgish law must necessarily include extraterritorial sanctions.*
>
> *17. The fact that the children are sent abroad does not mean that the medical position has changed, but rather that these children are no longer being operated on in Luxembourg and that it will be more difficult, if not impossible, to know what has become of them.*
>
> *18. The position of the doctors at the Centre hospitalier du Luxembourg, who are in favour of continuing the surgeries, has been reported in the press on several occasions[38].'*

At constitutional level

The Luxembourgish Constitution states[39]: 'Article 13. (1) Every person has the right to physical and mental integrity.'

Coalition agreement and NAP LGBTIQ+

[36] Intersex & Transgender Luxembourg a.s.b.l. (2025): Observations d'Intersex & Transgender Luxembourg a.s.b.l. en vue du suivi intermédiaire de l'ECRI en 2025, https://caitia.de/wp-content/uploads/2025/07/ECRI-2025_Obs-ITGL-v-1.0-finale_12.07.2025.pdf.

[37] Gomes, Cindy. (2023): Talk at the 'Wann ist ein Junge ein richtiger Junge? – Wer entscheidet das?' conference, organised by Intersex & Transgender Luxembourg in cooperation with Familljen-Center, 25/10/2023, during the 'Intersex? Variationen der Geschlechtsmerkmale? Eine Veranstaltungsreihe zum Lernen und Lehren' event, 16.-27.10.2023, Luxembourg.

[38] For detailed examples, see Intersex & Transgender Luxembourg a.s.b.l. (2024), p. 30-33.

[39] Translated from French. Constitution of the Grand Duchy of Luxembourg (2023): https://www.chd.lu/sites/default/files/2023-04/Constitution_en%203%20langues.pdf.

According to the *2023-2028 coalition agreement*[40] :

> *'Intersex Children*
> *[…] [The government] will work to ensure that the procedures applicable to sex reassignment and sex assignment for intersex people are assessed and adapted to their needs.*
> *The government will closely monitor and analyse the legal framework in this area in other European Union countries.'*

Unfortunately, unlike the previous coalition agreement, legislative intervention is no longer mentioned.

The new national action plan for the promotion of LGBTIQ+ rights (hereinafter 'NAP LGBTIQ+')[41], does not include legislation to protect intersex children or children with other variations of sex characteristics. However, it does provide for an analysis of the legal frameworks of other European Union countries and the establishment of a working group coordinated by the Ministry for Gender Equality and Diversity:

> *Chapter 8: Intersex People, first measure:*
> *'Commit to respect and enhanced protection for non-binary gender identities.*
>
> *Action 1: 'Closely monitor and analyse the legal frameworks of other EU countries regarding sex assignment surgeries performed on intersex children from birth on, as well as subsequent hormonal treatments.'*
>
> *Action 2: 'In order to take into account international recommendations and the coalition agreement, establish an inter-ministerial working group, which will be expanded to include stakeholders, to assess the procedures applicable to sex assignment for intersex people and adapt them to their needs.'*

The new NAP LGBTIQ+ represents a step backwards compared to the previous national action plan[42], which, in Chapter 8 ('Ensuring equal rights for intersex people'), provided for:

> *'Objective 2: Respect the rights to physical integrity, self-determination, and the principle of free and informed consent in health matters.*
>
> *Action 2: Prohibit medical treatments for non-life-threatening "sexual normalisation" performed without the free and informed consent of the intersex person (and consequently stop these from being reimbursed by the public health insurance service).'*

[40] P. 99, file:///C:/Users/gvvbr/Downloads/accord-coalition.pdf.
[41] https://gouvernement.lu/dam-assets/images-documents/actualites/2025/07/21-backes-pan-lgbtiq/documents/20250723-pan-lgbtiq-2025-mega.pdf.
[42] Ministry for Family, Integration and the Grande Région (2018): *Plan d'action national pour la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes*, https://mfsva.gouvernement.lu/dam-assets/publications/plan-strategie/lgbti/Plan-d-action-LGBTI.pdf.

The Consultative Commission on Human Rights (CCDH) of the Grand Duchy of Luxembourg (2025)[43] notes the aforementioned step backwards and states that:

> *'The prohibition of these interventions must be an integral part of child protection and respect for human rights, and the CCDH calls on the government to legislate without delay in this regard.'*

Human rights organisations

For several years, the following bodies have recommended that Luxembourg cease the medical practices described above: the National Ethics Committee (NEC)[44], the Centre for Equal Treatment (CET)[45], the Ombudsman Committee for Children's Rights (ORK)[46] [47], the Ombudsman for Children and Young People (OkaJu)[48], the CCDH[49], His Excellency Prince Zeid Ra'ad Al Hussein United Nations High Commissioner for Human Rights[50], United Nations Committee on the Elimination of Discrimination against Women[51], United Nations Committee on the Rights of the Child[52], United Nations Committee on Human Rights[53], ECRI[54], United Nations Committee on Economic, Social and Cultural Rights[55], United Nations

[43] *Plan d'action national LGBTIQ+ : une occasion manquée et un recul préoccupant pour les droits humains. Prise de position*, https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/lgbti/prises-de-position/prise-de-position-pan-lgbtiq-version-finale.pdf.

[44] Opinion 27 on gender diversity 2017, July, p. 1 and 17. https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://cne.public.lu/dam-assets/fr/publications/avis/avis-27.pdf&ved=2ahUKEwju1vGY8KSSAxXMRPEDHZcAEC8QFnoECBkQAQ&usg=AOvVaw0d_04utywJTFBI4_pgdz-9.

[45] Queer Loox, Centre pour l'égalité de traitement, Intersex & Transgender Luxembourg a.s.b.l. and Intersex Belgium (2017): Press report, '"Orchids, my intersex adventure". L'aventure intersexe au Luxembourg ? Une prise de conscience encore à promouvoir ! Un ciné-débat du 7 novembre 2017 à l'occasion de la Journée de la solidarité intersexe', https://caitia.de/wp-content/uploads/2023/12/CP-Cine-debat-Orchids-my-intersex-adventure-07.11.2017-final.pdf.

[46] Now the Ombudsman for Children and Young People.

[47] In relation to proposal for a law 7146, https://www.chd.lu/fr/dossier/7146.

[48] *Rapport annuel 2025. Reflets de l'enfance et de la jeunesse : Un kaléidoscope des droits de l'enfant au Luxembourg. Justice et protection, environnements de vie*, p. 283, https://caitia.de/wp-content/uploads/2025/12/RAPPORT_OKaJu_2025.pdf.

[49] Among others, the opinion of 13 October 2017, in relation to proposal for a law 7146, https://www.chd.lu/fr/dossier/7146.

[50] 20 January 2017.

[51] 2018, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&CountryID=102&DocTypeID=5; 2025 , https://docs.un.org/en/CEDAW/C/LUX/CO/8.

[52] 2021, Concluding observations, point 19, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=tuujnSiNE5p19pN8bY9b2MfHzfinD%2BYPUdUZ1ENfZlzQUNGpMXbxoTSptoJHvMRovh0yZaNs%2FS7Sxm6un9DEYA%3D%3D.

[53] 14/09/2022, CCPR/C/LUX/CO/4, https://docs.un.org/en/CCPR/C/LUX/CO/4.

[54] (2023), ECRI Report on Luxembourg (sixth monitoring cycle), point 35, https://rm.coe.int/sixth-ecri-report-on-luxembourg/1680ac8c45.

[55] Concluding observations on the fourth periodic report of Luxembourg (2022), E/C.12/LUX/CO/4, points 36 and 37, https://www.ohchr.org/en/documents/concluding-observations/ec12luxco4-concluding-observations-fourth-periodic-report.

Committee against Torture[56], the United Nations within the Universal Periodic Review[57], among others.

Analysis of German law

Gesetz zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung[58] (Law on the Protection of Children with Variations in Sex Development) of 12 May 2021 entered into force on 22 May 2021.

According to Section 1631e, paragraph 1, of the German Civil Code, parental authority does not include the right to consent to treatment of a child incapable of giving consent who has a variation in their sex development, nor to personally carry out such treatment when it is performed solely for the purpose of aligning the child's physical appearance with that of the male or female sex, without any other justification for the treatment.

According to the second paragraph, parents can only consent to surgeries – not excluded by the first paragraph – if they cannot be postponed until the child can make their own decision.

The following paragraph provides for the intervention of the family court to authorise the surgeries referred to in the second paragraph; the court must assess the best interests of the child. If the parents present a favourable opinion regarding the intervention issued by an interdisciplinary committee to the family court, it is presumed that the planned intervention is in the child's best interests.

The interdisciplinary committee consists of two doctors, a psychologist/child psychotherapist/child psychiatrist, and an ethics expert.

According to the response to parliamentary question 1425/2024, cited above, the relevant ministries will 'pay close attention to' the evaluation of the German law, which was set to be carried out by 2026.

This evaluation was conducted by Mangold and Markwald (2025) of the University of Flensburg[59].

Of the 40 court decisions analysed, 39 followed the recommendations of the interdisciplinary committee established by German law, while one request was deemed inadmissible.

The decisions primarily concerned hypospadias and adreno-genital syndromes.

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[56] Concluding observations on the eighth periodic report of Luxembourg (2023), https://www.ohchr.org/en/documents/concluding-observations/catcluxco8-concluding-observations-eighth-periodic-report.

[57] Recommendations published 19 January 2024, https://www.ohchr.org/en/hr-bodies/upr/lu-index.

[58] https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s1082.pdf#__bgbl__%2F%2F*%5B. For an analysis of the law, see Niedenthal, K. (2024): 'Schutz von Kindern mit Varianten der Geschlechtsentwicklung – Gesetzeslage in Deutschland', in: Abschlussbericht der Veranstaltungsreihe „Intersex? Variationen der Geschlechtsmerkmale? Eine Tagungsreihe zum Lernen, Lehren & Verändern', https://caitia.de/wp-content/uploads/2025/05/Abschussbericht-Band-2_v1.0.pdf.

[59] Letter to the Federal Ministry of Justice, https://eufbox.uni-flensburg.de/index.php/s/CY32N7GQAiic6xy

21 of the decisions specified the children's ages. 19 were under three years old, one child was five, and one person was 14.

As far as they were mentioned in the decisions, the surgeries primarily involved: separation of the urethra and vaginal canal, creation of a vaginal opening of 'normal' size in children with adreno-genital syndrome, and penile straightening and urethral lengthening along the penis in children with hypospadias. There was one case of clitoral reduction and two cases of gonad removal.

The arguments put forward to justify the impossibility of postponing surgery were as follows: complication rates in early childhood are lower and surgical outcomes are better, and developmental disorders could occur in the child if they were to grow up with atypical genitalia. However, 16 decisions referred solely to a medical opinion claiming that it was impossible to postpone, without undertaking own assessments. Furthermore, none of the decisions invoked the constitutional right to self-determination of sex/gender to determine whether the surgery could be postponed until the child made their own decision.

In addition, 14 decisions indicated that the intervention was medically appropriate on the grounds that 'normal' sexual relations would not be possible without the surgery.

The authors of the study found it problematic that:

- the decisions do not contain an independent assessment of fundamental rights, particularly the constitutionally protected right to self-determination of sex/gender, and rely solely on medical reasoning.
- the decisions include considerations of normality without weighing them against fundamental rights [60].

Furthermore, the authors of the study recommend the creation of a centralised registry for patient records.

The main finding from the evaluation by the University of Flensburg is that German law does not prevent the continuation of surgeries at a young age, despite the combined system of intervention by an interdisciplinary committee and a court decision. Furthermore, the wording of the first paragraph, 'without any other justification for the treatment' is too general and leaves room for circumventing the law, which has occurred in practice.

The present initiative addresses the shortcomings observed in German law by precisely defining the principle of postponing medical acts until the individual can give personal, free, and informed consent, and the exceptions to this.

Recommendation of the Committee of Ministers to member States on equal rights for intersex persons[61]

The recommendation covers many themes:

[60] On the subject of norms and pathologisation, see Schneider (2013), points 139-142.

[61] CM/Rec(2025)7 - Adopted by the Committee of Ministers on 7 October 2025, https://search.coe.int/cm#{%22CoEIdentifier%22:[%22091259488028b934%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}.

In particular, concerning the present initiative, it is recommended that Member States 'enact legislation that explicitly and specifically prohibits any medical intervention on a person's sex characteristics, including surgical, hormonal and/or mechanical procedures and other treatments, without their prior, free, informed, express and documented consent' (Annex, point 3). Exceptions to this rule are defined as:

- 'where it is necessary to avert an imminent threat to life or imminent serious damage to physical health and where the intervention is strictly confined to the minimum required to address the immediate medical need. […]' (Annex, point 4(a)).

- 'where a sufficiently mature minor explicitly requests a medical intervention related to their sex characteristics, provided that a clear decision-making process is in place to assess such requests. […]' (Annex, point 4(b)).

Regarding the first exception above, the following precise terms must be explained:

- 'immediate risk' or 'serious imminent harm': in the case of gonadectomies, if a risk of cancer does arise, this risk does not generally occur during early childhood, and gonad removal surgery can generally be postponed until puberty, which allows the child's body to receive the hormones naturally produced by the gonads up until puberty;
- 'physical health' and not a hypothetical psycho-social risk: for example, the risk of harassment should not be a reason to operate at a young age when the risk is hypothetical, and when measures aside from changing the child's physical body should be taken to mitigate harassment when present. For example, hypospadias surgery, with the aim of allowing a child to urinate while standing up, does not aim to allow the child to urinate, which would constitute a therapeutic need, but instead aims to allow the child to urinate in a culturally acceptable position. For more on this subject, see, the Swiss National Advisory Commission on Biomedical Ethics' opinion (2012)[62]:

'The limiting factor in the consideration of family/cultural circumstances will be the physical and psychological integrity of the child. An irreversible sex assignment intervention involving harmful physical and psychological consequences cannot be justified on the grounds that the family, school or social environment has difficulty in accepting the child's natural physical characteristics. The harmful consequences may include, for example, loss of fertility and sexual sensitivity, chronic pain, or pain associated with dilation (bougienage) of a surgically created vagina, with traumatizing effects for the child. If such interventions are performed solely with a view to integration of the child into its family and social environment, then they run counter to the child's welfare. In addition, there is no guarantee that the intended purpose (integration) will be achieved.'

Thierry Bosman's interview with Land shows the same sentiment[63]:

'I was put through sexual reassignment surgery immediately after my birth, then a double mastectomy at the age of fourteen, as well as long, painful hormone therapies,'

[62] On the management of differences of sex development – Ethical issues relating to "intersexuality", Opinion No. 20/2012, p. 13-14, https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf.

[63] Clarinval (2025): Variations naturelles. Le Luxembourg sait qu'il faut protéger les personnes intersexuées, mais tarde à adopter une loi en ce sens, in : *Land,* 12.12.2025, p. 9.

> *he tells Land. At the time, and for many years, doctors presented these interventions as necessary for the child's wellbeing and social integration. 'These arguments are based on a false and stigmatising idea that a child cannot grow up in harmony with a sexually atypical body. This assumption has never been unpacked, and leads to the proposal of solutions that, in reality, disrupt the child's development even more,' he says, highlighting that he felt like a 'guinea pig'.'*

The present initiative aligns with the criteria of the Council of Europe's recommendation in this regard.

Furthermore, the Council of Europe recommendation addresses the consent of the person concerned. This consent must be 'prior, freely given, informed, explicit, and documented' and must take into account the maturity of the minor or adult who is permanently unable to give consent or unable to do so in the long term.

Since consent is linked to the information received, the recommendation specifies that this information must be 'comprehensive, comprehensible and evidence-based information about the proposed intervention, including the medical rationale, related risks and the short- and long-term consequences of the intervention, of delaying the intervention, not performing the intervention or performing another intervention.' (Annex, point 5).

The recommendation emphasises informed consent and the nature of the information to be provided because these elements have not always been respected in the past[64].

This initiative gives significant weight to the criteria for consent and lists the information that must be provided.

Furthermore, '[m]ember States should ensure that monitoring and evaluation mechanisms are in place to assess and further the implementation of the aforementioned provisions concerning medical interventions on sex characteristics.' (Annex, paragraph 8).

The register provided for by this initiative aims to achieve this objective.

COMMENTS ON ARTICLES

Article 1

Article 1 aims to define the purpose of the law, which is to protect individuals with variations in sex characteristics from non-consensual medical acts of masculinisation, feminisation, gonadectomies, and prenatal medical acts following past medical treatments administered to pregnant women to prevent the virilisation of babies, without scientific proof of safety[65].

[64] Schneider (2013), points 163-165.
[65] Dreger, Felder, Tamar-Mattis (2012).

The law protects individuals with variations in sex characteristics, not individuals defined by a medical classification[66]. Indeed, medical classifications can evolve over time, which would make the scope of the application of the law unpredictably changeable. Furthermore, similar diagnoses could be used to exclude certain cases from the law's application.

Article 2

Article 2 aims to define sex characteristics and individuals with sex characteristics.

Article 3

Article 3 forms the core of the law. It sets out the principle and exceptions.

The principle is to protect the right to physical integrity of minors and protected adults with variations in sex characteristics, as a paramount legal right. This right justifies the restriction of parental authority and therapeutic freedom concerning irreversible sex assignment interventions or sex modifications, until the person concerned acquires the capacity to make a personal, free and informed decision.

The exceptions relating to 'imminent danger to life' or 'serious and imminent harm to physical health' correspond to the annex of Council of Europe Recommendation CM/Rec(2025)7:

'3. Member States should enact legislation that explicitly and specifically prohibits any medical intervention on a person's sex characteristics, including surgical, hormonal and/or mechanical procedures and other treatments, without their prior, free, informed, express and documented consent.

4. Member States should ensure that any intervention on the sex characteristics of children and other persons who, according to the law, do not have the capacity to consent is postponed until they are capable of providing, withholding or withdrawing consent, except:

a. where it is necessary to avert an imminent threat to life or imminent serious damage to physical health and where the intervention is strictly confined to the minimum required to address the immediate medical need. The opinion of the person on whom the intervention will be carried out should be duly taken into consideration, ensuring that they can express their views freely without undue influence. In the case of a child, their opinion shall similarly be taken into account, as an increasingly determining factor in proportion to their age and degree of maturity;

b. where a sufficiently mature minor explicitly requests a medical intervention related to their sex characteristics, provided that a clear decision-making process is in place to assess such requests. This process should assess the maturity of the minor on a case-by-case basis, with their wishes carefully considered in light of their best interests, taking into account their evolving age, maturity and capacity for discernment. The process should include robust safeguards against undue influence and be thoroughly documented. Under such conditions, the

[66] See the classification of DSDs ('disorders of sex development', sometimes called 'differences of sex development' in an attempt to be less pathologising); Hughes, Houk, Ahmed, Lee; LWPES Consensus Group; ESPE Consensus Group (2006) Consensus statement on management of intersex disorders. Arch Dis Child. 2006 Jul;91(7):554-63, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2082839/.

process should then allow the legal representative, or an authority, person or body provided for by law, to authorise such an intervention. A similar process should be provided for adults who have a permanent or long-term incapacity to provide consent. The intervention should be strictly confined to that requested by the person on whom it is to be carried out.

In both cases, the following conditions should be met:

a. the person on whom the intervention will be carried out has received information about it in compliance with paragraph 5 of this appendix;

b. prior, specific and documented authorisation is given by the legal representative or an authority, a person or body provided for by law, who must have received prior information about the proposed intervention, in compliance with paragraph 5.

5. Member States should ensure that all persons on whom any intervention on their sex characteristics is considered, as well as their legal representatives in cases where they do not have the legal capacity to consent, are provided with comprehensive, comprehensible and evidence-based information about the proposed intervention, including the medical rationale, related risks and the short- and long-term consequences of the intervention, of delaying the intervention, not performing the intervention or performing another intervention.

[...]

9. Member States should ensure that either the general civil and criminal law provisions on the protection of bodily integrity, or specific provisions with at least equally severe sanctions, are applicable and effectively enforced with regard to the prohibited interventions on sex characteristics referred to in this recommendation, including in relation to referrals to jurisdictions where such prohibitions are not effectively in place.'

Article 4

Article 4 sets out criteria for assessing 'serious and imminent harm to physical health.'

According to paragraph (1), serious and imminent harm to physical health cannot be hypothetical nor based on purely psychosocial considerations, such as a hypothetical risk of harassment.

Paragraph (2) is inspired by the French Council of State, adapted in Order of 15 November 2022 establishing good practices for caring for children with variations in geniral development, in application of article L. 2131-6 of the public health code, NOR: SPRP2232078A) : ensuring a child's atypical genital organs conform to representations of male and female does not constitute a therapeutic necessity. In these cases, a decision should not be taken until the minor is able to participate in the decision.

According to paragraph (3), harm should be certain or highly probable if no intervention is carried out, according to current medical science.

Article 5

The information to be provided must be given:

- to both the person concerned and their legal representatives,
- taking into account their age and capacity for understanding,
- by the doctor undertaking or prescribing the medical act altering sex characteristics, under their professional responsibility, i.e., a surgery, hormonal treatment, or any other pharmacological treatment, or even dilation.

Under Article 5(3), it is important that the proposed medical act not be presented by the medical staff as indispensable (except in the cases provided for in Article 3(2)), but as one option among others, including the option to postpone or forego the medical act in question.

For example, in 2023, the Brussels Court of Appeal condemned a hospital on the grounds that, among other things, a 16-year-old intersex patient had not given informed consent to her vaginoplasty – even though she wanted it in order to feel 'normal', she had not been informed by the medical staff that she could live and identify as a woman, even if she did not have a vagina or uterus. Therapeutic abstention was not offered to her as an option[67].

In Article 5(5), an informative brochure is required by law to standardise the information received regarding the rights established by the law and its content.

Paragraph (6) concerns information provided during pregnancy. The way in which intersexuality is presented – i.e. the degree to which it is pathologized – can have a significant impact on parents' perception of intersexuality and on a request for medical intervention[68], or even a voluntary termination of pregnancy.

Article 6

Article 6(1) lists the criteria for consent, which must be documented in writing in the patient's record as per Article 6(2).

According to Article 6(3), a minor or protected adult has the right to a second medical opinion.

According to Article 6(4), legal representatives may not make decisions on behalf of the minor or protected adult concerned. This constitutes a derogation from Article 13(1), first sentence of the Law of 24 July 2014 on the rights and obligations of patients, according to which '[t]he rights of an unemancipated minor patient are exercised by their parents or any other legal representative.' Indeed, the consent of people with variations in sex characteristics must be personal.

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[67] Brussels Court of Appeals, 4th Chamber, civil affairs, 7 February 2023. For the judgment of the first instance and the judgment of the Court of Appeals, see the Genres Pluriels' press release (in French): https://www.genrespluriels.be/La-justice-condamne-un-hopital-bruxellois-pour-des-traitements-medicaux-normalisateurs-sur-une-personne-mineure-intersexe#nb4. See also Moron-Puech (2023): Mutilations génitales intersexuées : gare aux juges civils ! Jurisprudence commentée, BRUXELLES (4e CH. CIV.), 7 February 2023, Forum de droit familial, 2023/5 – October.

[68] Streuli, Vayena, Cavicchia-Balmer, Huber (2013) : Shaping parents: impact of contrasting professional counseling on parents' decision making for children with disorders of sex development. J Sex Med. 2013 Aug;10(8):1953-60.

Article 6(5) reiterates the procedures under common law in the event of disagreement between the person concerned and their legal representatives, or between the representatives themselves.

Article 7

A lack of information can lead to requests for medical acts without having fully considered all the risks and implications. Therefore, it is important that legal representatives and the persons concerned are, on the one hand, able to meet with people in similar situations (peers) and, on the other hand, able to access free psychosocial counselling, so as to receive information that complements strictly medical information.

The specialised neurodevelopmental support referred to in Article 7(1) is intended to help people with cognitive limitations to make a decision based on informed consent.

According to the Annex to Council of Europe recommendation CM/Rec(2025)7:

‘35. Member States should take effective measures to ensure that persons with variations of sex characteristics have equitable access to healthcare and are provided with effective, lifelong and publicly funded health services tailored to meet their needs. This should include health promotion, prevention and care, including gender-affirming healthcare, access to medically assisted procreation and fertility preservation, alongside knowledgeable medical, psychological and social assistance, as well as peer-support mechanisms provided by intersex persons. This support should extend to their families, caregivers and legal representatives, ensuring that they, like intersex persons, have access to quality prenatal, postnatal and lifelong care, as well as appropriate diagnostic methods that can facilitate more informed decisions about potential medical treatments, in line with paragraphs 3 and 4 of this appendix; and that they are equipped to support the person effectively from the moment any direct or indirect signs of potential variation of sex characteristics are observed.

36. Member States should address the specific health needs of intersex persons and the multiple barriers they face in accessing healthcare, including psychological support, and address the health issues resulting from previous medical interventions. They should also ensure access to reparative medical treatment, especially for intersex persons who have experienced interventions and treatments without their prior, free and informed consent, as well as for those facing irreversible and irreparable consequences of such interventions.’

‘56. Member States should ensure adequate funding and human resources for community-based and, where feasible, peer-to-peer counselling for intersex persons and their families, especially in relation to guidance on medical interventions and treatments. Such counselling should also be accessible to individuals who may suspect that they have a variation of sex characteristics.’

Moreover, the individuals concerned might require assistance to understand the records. As stated in the Annex to Council of Europe recommendation CM/Rec(2025)7:

‘32. Member States should take appropriate measures to ensure that persons who have undergone medical interventions on their sex characteristics and, where applicable, their legal representatives are provided, upon their request, with assistance to understand the records, as well as psychosocial support to help them deal with the implications of such interventions.’

Article 8

The medical acts referred to in Article 3(1), can have psychological aftereffects, including trauma. Therefore, full coverage of the costs of psychiatric or psychotherapeutic consultations related to these acts is proposed.

Article 8(1), second subparagraph, aims to avoid the systematic referral of the person concerned to a psychiatrist or psychotherapist. The individuals concerned do not necessarily have a mental illness requiring psychiatric or psychotherapeutic consultation. In addition, the quality of consent depends primarily on the information provided by the physician.

Article 9

It is proposed that the patient record be kept for 30 years from the age of majority and that it be destroyed only after the person has been informed of its contents. Indeed, often, the individuals concerned are not fully informed about the acts they have undergone and/or the reasons for them, and it is not uncommon for there to be a family taboo surrounding the issue.

According to the Annex to Recommendation CM/Rec(2025)7 of the Council of Europe's Committee of Ministers to member States on equal rights for intersex persons:

'28. Member States should ensure that those legally responsible for keeping medical records, record full information, including about the diagnoses related to a person's sex characteristics, the decision-making process, all details of interventions, the underlying rationale for these interventions, the related risks, short- and long-term consequences of both the intervention and of delaying or not performing the intervention and of possible alternatives to the intervention, as well as the consent or, where applicable, authorisation.

29. Member States should ensure that those legally responsible for retaining medical records retain such records concerning interventions on sex characteristics for a sufficient period, in order to ensure that persons who become aware, at a later stage in life, of medical interventions performed on them during childhood are able to obtain all relevant information. Medical institutions should have the obligation to inform the persons concerned and, where applicable, their legal representatives sufficiently ahead of any potential destruction of such documentation.

30. Member States should ensure that intersex persons and, where applicable, their legal representatives have easy and direct access to their records.

31. Member States should ensure that with regard to retention and access to such medical records, the rights to privacy, including confidentiality of personal data, are safeguarded through effective data protection measures.'

Article 10

The national register of variations in sex characteristics established by this article addresses a need for statistics and the evaluation of practices and partially implements the recommendations of the Council of Europe recommendation (CM/Rec(2025)7, Annex):

‘48. Member States should collect both qualitative and quantitative data, disaggregated by the ground of sex characteristics, analyse these data to assess the life situations of intersex persons, including experiences of bullying, harassment and violence, and identify best practices. Additionally, they should conduct further quantitative and qualitative research on the long-term impact of medical interventions performed without the consent of the concerned person, including in relation to aged care, home care, State care and disability services.’

Article 11

This article draws on the amended Law of 12 March 1984 concerning compensation for certain victims of personal injury resulting from an offense and the suppression of fraudulent insolvency to propose a compensation scheme.

In accordance with the Annex to Council of Europe Recommendation CM/Rec(2025)7:

‘10. Member States should provide intersex persons who have been subjected to medical interventions or treatments that violated their rights with effective access to justice, access to effective remedy, adequate redress and reparation and safeguards against repetition of these acts, which may include public apologies, financial compensation and, in accordance with national law, other forms of accountability and restorative justice’.

Article 12

This article provides for an assessment report, in accordance with the Annex to Council of Europe Recommendation CM/Rec(2025)7:

‘8. Member States should ensure that monitoring and evaluation mechanisms are in place to assess and further the implementation of the aforementioned provisions concerning medical interventions on sex characteristics.’