

EUROPEAN ASSOCIATIONS FOR LEGALIZATION OF SURROGACY

INTRODUCTION

The European Parliament and European Council are preparing an update of the Directive about Preventing and combating trafficking in human beings and protecting its victims.

On Wednesday 24th January, the trialogue will start to reach a provisional agreement on the legislative proposal that is acceptable to both the Parliament and the Council, the co-legislators.

We are a group of European associations and agree with the project in its whole, but denounce all tentatives that want to consider every forms of surrogacy among human trafficking crimes, in particular that part of the proposed amendments to article 2, paragraph 3, of the European Directive 2011¹ which has been tabled by MEPs in order to declare surrogacy a universal crime, as a reproductive exploitation without any possible exception. The current amendment, already voted, focuses on the surrogacy as reproductive exploitation², where, the explicit reference to "surrogacy for reproductive exploitation, exploitation of children in residential and closed-type institutions" would ensure that if a woman is recruited by being threatened to become a surrogate for the purpose of reproductive exploitation, she would be considered a victim of trafficking and benefit from the rights under these rules, while the traffickers would be prosecuted. We believe that this amendment, thus formulated, is superfluous and ambiguous as the 2011 directive already punishes any conduct of reproductive exploitation, abuse and violence (Article 2 of **DIRECTIVE 2011/36/EU**).

Now, in the trialogue phase, our concern is growing because some groups would like to further modify the art. 2 eliminating the reference to surrogacy “for exploitation” and extending the punishability to any form of surrogacy.

EXPLANATORY STATEMENT

We remind that a majority of European countries don't prohibit surrogacy ([e.g. Belgium](#)) and [that many others are regulating surrogacy \(Greece, Portugal, United Kingdom\)](#). In The Netherlands and Ireland³ surrogacy is not prohibited and there are government-proposed regulatory frameworks which now await voting in Parliament. There is, therefore, no effective and sustainable reason to mention surrogacy in a directive aiming at protecting the human beings against trafficking.

First of all, prohibition is not a valid solution to prevent human trafficking but it would create more issues related to clandestinity and abuses. Moreover, prohibiting an assisted reproductive technology because it potentially could bring to exploitation represents an abuse of the criminal law which should be used only as *extrema ratio* and whenever the conduct

¹ Read the proposed committee amendments here:

https://www.europarl.europa.eu/doceo/document/CJ01-AM-750067_EN.html

² Read the current proposed amendments here:

https://www.europarl.europa.eu/doceo/document/A-9-2023-0285_EN.html#_section3

³ <https://www.oireachtas.ie/en/bills/bill/2022/29/>

violates a constitutional interest. In this case both parties agree to undertake the medical procedure.

We do agree with the general objective of the Directive of *Preventing and combating trafficking in human beings and protecting its victims*, as every conduct which is not based on consent and self-determination must be condemned. But we are also convinced that surrogacy should never be considered a crime when it is made in a regulated framework, with the informative consent of all the stakeholders.

Our European Associations believe that a good and effective framework for regulation is the only way to avoid potential derives in Surrogacy, as best practices attest in many countries in the world for 40 years. The ban has never been a solution and many countries in the world are now regulating this field. Our European Associations make common proposals for regulation of Surrogacy in Europe (see below).

Moreover, European citizens, recently involved in a Civic Assembly on Social Parenthood have confirmed the need of regulating surrogacy (Annex 1).

Our European Associations declare that there is no need nor opportunity to stigmatize Surrogacy in a Directive which already contains all the necessary measures to protect the Human Rights and specially those of women and children. There is in effect no necessity to stigmatize surrogacy as it would cause major damages to thousands of children already born thanks to this process, whatever their conditions of birth are. Moreover, it wouldn't help fighting against «human trafficking» as many measures already exist in this field as for any others to ensure «a more efficient protection of victims».

OUR REQUESTS

Our European Associations request the complete and immediate withdrawal of this amendment as a discrimination towards children born through surrogacy, who have the right to be protected and to have a recognized filiation as stipulated in article 8 of the European Constitution. We require a real debate to set up a regulatory framework for For Surrogacy. We can send our detailed proposal report on demand, and we are open to any discussion and informative session, as well as any hearing by the Parliament or the European Council.

Our common platform of proposals for a regulatory framework in Surrogacy in Europe is based on 5 fundamental principles:

- A solidarity-based Surrogacy for couples and single persons
- Informed Consent of all the stakeholders (surrogate, intended parents at least)
- Reimbursement of expenses of the Surrogate
- Establishment of the filiation on the basis of the “Anticipated Recognition” made by the intended parents during the pregnancy of the Surrogate
- Right to have a motherhood and fatherhood’s leave as for any other birth.

ANNEX 1 : TRANSNATIONAL CITIZENS' ASSEMBLY ON SOCIAL PARENTHOOD.

On October 19th and 20th 2023, a [Civic Assembly on Social Parenthood](#) was held in Italy. The Project was coordinated and co-organized by Associazione Luca Coscioni for the freedom of scientific research and Eumans, within the CERV project co-financed by the EU and with the patronage of the University of Milan “La Statale”.

A representative group of around 160 citizens, coming from 7 different European countries, was selected at random from the population to learn about, deliberate upon and make recommendations in relation to:

- 1) adoptions;
- 2) assisted reproductive technologies;
- 3) surrogacy
- 4) circulation of child status.

Among these 160 participants, 50 participants were randomly selected to also take part in special working tables, whose objective was to develop recommendations to be submitted, after voting on a digital platform, to the Italian and European institutions.

The policy-recommendations approved and voted by all the participants in the citizens' Assembly (that can be consulted at the following link: [Transnational European Assembly on Social Parenting | EUMANS.EU](#)) include also a clear request of the European citizens to regulate surrogacy instead of prohibiting it. **Together with our request to withdraw the statement, we would like to submit to your attention these results that cannot be ignored, with the aim of identifying the most suitable way to implement the recommendations at European level.**

SIGNATURES

FRANCE

Sylvie and Dominique Mennesson, presidents of association CLARA in France (2500 members, 40 experts and 1600 children born through surrogacy) contact phone : + 33607351335 – e-mail : claradoc.gpa@free.fr website : <http://claradoc.gpa.free.fr>

ITALY

Filomena Gallo E Francesca Re, Associazione Luca Coscioni, for the freedom of scientific research, <https://www.associazionelucacoscioni.it>

SPAIN

Olatz Mendiola, Asociación Son Nuestros Hijos, <https://sonnuestroshijos.com>

Pablo Bilbao, Gure Umeen Ametsak <https://www.haurro.org>

GERMANY

Verein Zur Förderung Der Legalisierung Der Leihmutterchaft, <https://vfld.de/>

THE NETHERLANDS

Pauline Van Berkel, Stichting Zwanger Voor Een Ander, <https://zwangervooreenander.nl>

IRELAND

Ciara Merrigan, Irish Families Through Surrogacy,
<https://www.irishfamielsthroughsurrogacy.ie/>