

Exploitation of Surrogacy as a Form of Human Trafficking

How did it end up in the amended EU Anti-Trafficking Directive?

**La Strada International,
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About La Strada International (LSI)

La Strada International is a European anti-human trafficking NGO platform, which supports trafficked persons from a human rights perspective. The platform aims to prevent human trafficking, and help trafficked persons to realise their rights. This is done by providing victims with access to adequate assistance and support, and via information and knowledge exchange, capacity building for NGOs and other stakeholders, and the promotion of cross-sectoral cooperation. The platform further works on research, monitoring and advocacy to drive systemic change and ensure that European Anti-Trafficking policies and regulations are implemented effectively and with accountability.

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Exploitation of Surrogacy as a Form of Human Trafficking

La Strada International is a European NGO Platform against human trafficking, that works from a human rights and victim-centred perspective in support of trafficked persons. The platform aims to prevent human trafficking and to protect and realise trafficked persons' rights. This is done by providing access to adequate assistance and support to victims, information and knowledge exchange, capacity building, and cross-sectoral cooperation, next to monitoring and advocacy to ensure accountability for the effective implementation of European Anti-Trafficking policies and regulations. From 2022 to 2024, La Strada International actively engaged in close monitoring and strategic advocacy around the revision of the EU Anti-Trafficking Directive, with a strong focus on ensuring that victims' rights provisions are strengthened and effectively upheld.

The objective of this paper is to examine the arguments and dynamics of the revision process, that led to the inclusion of (the exploitation of) surrogacy as a form of exploitation in the amended definition of the recast EU Anti-Trafficking Directive (Directive (EU) 2024/1712).

In 2024 - 2025, following the adoption of the recast Directive, La Strada International conducted a comparative analysis of the legal and policy landscape on surrogacy across Europe, including all EU Member States. This study examined the varying regulatory frameworks on surrogacy, analysed case law, and explored the extent to which (the exploitation of) surrogacy has been criminalised and connected to, or considered as human trafficking.

So far, the Platform has not found any evidence for the claim made that exploitive surrogacy is indeed 'an emerging form of human trafficking' which would support the need for such legislative change and embedding this form explicitly in EU law. With this additional paper, we aim to understand "how", "why", and "when" surrogacy was incorporated in the Directive, as well as which organizations and actors pushed surrogacy into the discussions.

I. Introduction

On 13 June 2024, the revision of the EU Anti-Trafficking Directive on preventing and combating trafficking in human beings (THB) and protecting its victims¹ was adopted. The recast Directive, which is enforced as of 14 July 2024, introduces additional forms of exploitation in Article 2; 'the exploitation of surrogacy, of forced marriage, or of illegal adoption'. Despite being absent from the European Commission's proposal² and the Council's negotiating position, only appearing at a late stage of the discussions- on the initiative of the European Parliament through amendments proposed by members of the FEMM and LIBE committees - "exploitation of surrogacy" ended up in the adopted text of the amended Directive.

The revision of the EU Anti-Trafficking Directive began with the European Commission's proposal to amend Directive 2011/36/EU on trafficking in human beings of 19 December 2022, following the earlier evaluation of the Directive. Both the evaluation and the revision were already foreseen in the EU Strategy on Combatting Trafficking in Human Beings (2021-2025), adopted by the European Commission on 14 April 2021³. Alongside the proposal, the Commission also released several supporting documents,

¹ Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU. Retrieved from <https://eur-lex.europa.eu/eli/dir/2024/1712/oj/eng>.

² Only Forced Marriage and Illegal Adoption were proposed initially. See European Commission. 2022. *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*. Retrieved from eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0732

³ European Commission. 2021. *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the EU Strategy on Combatting Trafficking in Human Beings 2021- 2025 - OM/2021/171 final*

including the Fourth Progress Report⁴, the Evaluation Report⁵, and the Impact Assessment⁶, which assessed the implementation of the Directive and the broader state of human trafficking in the Union. As mentioned, the proposal by the Commission did not mention surrogacy. The other reports made only a small number of references to “illegal surrogacy”, specifically when it constitutes human trafficking, also highlighting the rising challenges posed by the varying definitions across Member States’ legal systems. Yet, no evidence was presented in the evaluation or progress report, to demonstrate an alarming rise in cases of trafficking for the exploitation of surrogacy, to qualify it as an emerging form.

From the start, various EU institutions, Member States, international organisations, and civil society organisations contributed and tried to influence the EU Anti-Trafficking Directive revision, through the public consultation process and by providing reports, opinions, and recommendations, as well as meeting with the negotiators. On 17 May 2023, the Council of the European Union published its general approach on the Commission’s proposal⁷, which, again, did not make any reference to surrogacy.

Similarly, the European Parliament Committees’ initial draft report did not mention the issue. It was only introduced in the legislative proposal after several members of the European Parliament (MEPs) proposed amendments to the European Parliament’s draft to include surrogacy.

The revision of the Directive was conducted under significant time pressure, and surrogacy, in particular, was one of the last topics addressed during the negotiations, resulting in what MEP’s described as ‘a rushed debate with little time to explore the complexities of the issue in depth or to ensure a broader debate with specialists and relevant stakeholders on the issue’.

This paper seeks to understand the key drivers behind its inclusion, identifying the actors, EU institutions, and non-governmental organizations (NGOs) that advocated for or opposed it. Additionally, this paper analyses the legislative and negotiation dynamics that shaped this development and assesses the potential legal and practical implications of this addition to the Directive.

II. Methodology

This article adopts a qualitative approach, examining a range of reports, comments, and position papers, that have shaped the debate around surrogacy during the negotiations, next to checking recordings of meetings, press conferences and releases, amendments submitted and voting lists. Moreover, a number of experts and decision-makers were interviewed to better understand the course of events and developments. This approach allows for a comprehensive analysis of the key arguments, stakeholder positions, and policy developments that influenced the inclusion of the ‘exploitation of surrogacy’ in the revised directive.

The focus is placed on the revision process of the EU Anti-Trafficking Directive, tracing the evolution from the European Commission’s proposal in December 2022 to its final approval in June 2024. After an introduction of the broader debate surrounding surrogacy in Europe and main definitions, the paper will analyze and discuss the legislative process of the EU Anti-Trafficking Directive and how surrogacy was included in the amended version. Subsequently, the paper will delve into the different positions regarding the introduction of surrogacy in the Directive, to better understand the reasoning behind it as well as future implications.

⁴ European Commission, 2022. REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Report on the progress made in the fight against trafficking in human beings (Fourth Progress Report). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0736>

⁵ European Commission. 2022. Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022SC0427>.

⁶ European Commission. 2022. COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022SC0425>.

⁷ Council of the European Union. 2023. Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims - General approach. Retrieved from <https://data.consilium.europa.eu/doc/document/ST-9313-2023-INIIT/en/pdf>.

III. Context

The term surrogacy denotes an arrangement between a prospective surrogate/surrogate mother and (a) prospective intended parent(s) which is made before a child is conceived and provides that, following the child's birth, the parties intend for the intended parent(s) to be the child's legal parent(s) and for the child to be placed into the care of the intended parent(s)⁸. Surrogacy is broadly distinguished between commercial and altruistic. In commercial practices, there is a financial element involved, where the surrogate mother receives compensation from the intending parent(s) for her services beyond covering reasonable expenses. This may be termed "compensation" for "pain and suffering" or may be simply the fee which the surrogate mother charges for carrying the child. In contrast, altruistic surrogacy does not involve financial compensation beyond covering reasonable expenses associated with the surrogacy, such as medical costs. In this case, the surrogate mother agrees to participate on altruistic grounds, often motivated by existing friendship or family ties.

Surrogacy regulation across European countries varies significantly. However, until the moment of adoption of the revised Anti-Trafficking Directive, none of the EU Member States explicitly defined surrogacy as a form of human trafficking in their criminal codes. Hence, the argument of harmonisation of EU law is not applicable here.

Human trafficking is defined by the European Union as "*The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*"⁹. Surrogacy could be deemed Human Trafficking if the conditions of its legal definition are met, which according to the EU's definition (based on the UN Palermo Protocol¹⁰), includes the act (e.g., recruitment or transfer of surrogates), the means (e.g., threat, fraud, abuse of vulnerability, coercion of surrogate mothers and other forms of deception and abuse of power), and the purpose (e.g., exploitation of forced marriage, surrogacy, or illegal adoption).

Following La Strada International's research (2025)¹¹, surrogacy laws in EU member states can be grouped into four categories: (1) regulated - altruistic surrogacy is allowed and regulated; (2) explicit prohibition - surrogacy is strictly forbidden in all forms; (3) indirect tolerance - absence of specific surrogacy legislation, however in practice contracts are signed and enforced; (4) legal grey zones - laws or political messages are contradictory or rapidly changing, and "while *official* policy might disapprove of surrogacy, *unofficially* the practice finds ways to happen, leveraging loopholes or simply the inertia of enforcement."¹²

Most countries do regulate surrogacy, but not necessarily allowing surrogacy. Only 6 countries lack a specific legal acts on surrogacy. Countries that lack specific surrogacy legislation, like Belgium, Ireland, and Czechia, regulate surrogacy under other existing legal frameworks, such as family law mechanisms. All EU countries ban all forms of commercial surrogacy within their borders¹³, with four countries - Cyprus, Greece, Ireland, and Denmark - allowing altruistic surrogacy only under conditions such as medical necessity and judicial approval. Moreover, some countries, namely the Netherlands and Finland, seem to be moving towards legalizing altruistic surrogacy. On the other hand, many national legal frameworks prohibit surrogacy entirely. For example, in France, surrogacy contracts are considered legally void. Meanwhile, in Germany, surrogacy is explicitly and entirely forbidden, with penalties including fines and up to three years imprisonment. However, the illegality of commercial surrogacy does not prevent EU citizens from seeking and paying for surrogacy abroad. Recently, discussions have moved towards penalizing citizens who pursue surrogacy abroad. Italy has taken further steps by criminalizing such practices, which is so far the only EU country to do so.

⁸ Hague Conference on Private International Law. 2022. *Parentage / Surrogacy Experts' Group: Final Report: "The feasibility of one or more private international law instruments on legal parentage* (p.25). Retrieved from <https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf> (accessed on 20 January 2025)

⁹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA ([OJ L 101, 15.4.2011, p. 1](https://eur-lex.europa.eu/eli/dir/2011/36/oj)).

¹⁰ United Nations General Assembly resolution 55/25. 2000. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000*. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

¹¹ La Strada International, *Comparative analysis of the legal and policy landscape on (trafficking for the exploitation of) surrogacy across Europe and its current practical application*, 2025

¹² https://www.researchgate.net/publication/382005693_Legal_Regulation_of_Surrogacy_in_Poland_and_Ukraine_-_a_Comparative_Analysis

¹³ In Europe, commercial surrogacy is allowed in Ukraine, Belarus, Georgia and Russia.

IV. Debate around surrogacy

The debate around surrogacy is highly polarized across Europe and within countries, which became visible during the negotiations of the EU Anti-Trafficking Directive. To better capture the complexity of the debate we will distinguish two broad positions. On one side, there were those who wanted to expand the human trafficking definition to include all forms of surrogacy, believing that surrogacy is inherently exploitative and should be criminalised – whom we labelled as inclusionists. On the other side, those who argued that surrogacy, in and of itself, does not constitute human trafficking or exploitation and who argue that surrogacy can be ethical, consensual, and beneficial – especially when properly regulated, and hence see no reason to justify its inclusion in the THB Directive – the exclusionists. The latter group also highlighted that without its explicit reference in the legal definition, it would already have been possible to criminalise human trafficking cases involving surrogacy, when the three elements of the legal definition are established – acts, means, and purpose. This is also acknowledged in the amended Directive¹⁴

The European Network of Migrant Women (ENoMW), the European Women's Lobby (EWL), International Coalition Against Prostitution (CAP International), Federation of Catholic Family Associations in Europe (FAFCE), and the International Coalition for the Abolition of Surrogate Motherhood (ICASM) in particular, were part of the "inclusionists" and strongly advocated for the inclusion of 'reproductive exploitation' within the scope of the Directive. By reproductive exploitation, these organizations refer to practices such as the prohibition of abortion, forced abortion, forced pregnancy, surrogacy, and oocytes sales¹⁵. Some of the organisations within this group shared a common grounding by their conservative and Catholic perspectives on women's rights, aligning with former Pope Francis's active call for a worldwide ban on surrogacy. Feminist groups that advocate for a ban on all forms of surrogacy – including commercial and altruistic surrogacy – typically align with radical or abolitionist feminism, which understand surrogacy, as well as prostitution, as forms of gendered exploitation, rooted in patriarchal and capitalistic systems that commodify women's bodies.

On 10 November 2022, in the month preceding the European Commission's proposal to revise the EU Anti-Trafficking Directive, these organizations coordinated the publication of a joint statement signed by more than 180 NGOs, including mainly their own member organisations. In the statement, they called upon the European Commission and Parliament to "include the crime of reproductive exploitation of women in all their legislative initiatives as violence against women and as trafficking in human beings".

Asserting that all practices of surrogacy constitute human trafficking, these organizations presented their arguments, engaged with MEPs, and conducted targeted advocacy that aimed at criminalising all forms of surrogacy under (the) EU (anti-trafficking) law. Alongside these NGOs, there were also important actors representing European institutions, such as Eurojust¹⁶, Europol¹⁷, and the European Economic and Social Committee (EESC) who recommended and advocated for its inclusion. The same goes for the two rapporteurs, appointed to lead the examination of the legislative proposal on behalf of the Civil Liberties, Justice and Home Affairs (LIBE) and the Women's Rights and Gender Equality (FEMM) Committees, jointly responsible for drafting and negotiating the Parliament's position on the revised Directive. Both rapporteurs played a central role in shaping the Parliament's position on the proposal¹⁸, by supporting and actively advocating for the introduction of surrogacy in the Directive.

The push for the inclusion of surrogacy in EU legislation was not new. Apparently earlier attempts had been made to incorporate surrogacy in EU law, at least in relation to the EU Directive on combating

¹⁴ See Recital 6 of the Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims "The exploitation of surrogacy, of forced marriage or of illegal adoption can already fall within the scope of offences concerning trafficking in human beings as defined in Directive 2011/36/EU, to the extent that all the criteria constituting those offences are fulfilled".

¹⁵ European Women's Lobby, European Network of Migrant Women, International Coalition Against Prostitution, and the International Coalition for the Abolition of Surrogate Motherhood. 2000. *Joint Statement on Surrogacy*. Retrieved from <https://womenlobby.org/joint-statement-on-surrogacy/?lang=en>

¹⁶ Source: Interviews & Eurojust. 2023. *Eurojust 2023 Annual Report*. Retrieved from <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-annual-report-2023-en.pdf>.

¹⁷ Source: Interviews & European Commission. 2022. *REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Report on the progress made in the fight against trafficking in human beings (Fourth Progress Report)*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0736> which said "Europol, Eurojust and some Member States⁴ reported cases of trafficking for the purposes of illegal surrogacy and forced pregnancy, where women are recruited to give away their new-borns upon the promise of compensation or to participate in illegal surrogacy programmes."

¹⁸ Source: Interviews & European Parliament. 2023. *Draft amendments to the draft report on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims* (COM(2022)0732 – C9-0431/2022 – 2022/0426(COD)). Committee on Civil Liberties, Justice and Home Affairs (LIBE); Committee on Women's Rights and Gender Equality (FEMM). Retrieved from https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ01/AM/2023/09-07/1282466EN.pdf

violence against women and domestic violence¹⁹, following a similar approach: seeking to limit the right and access to surrogacy across Member States. Until now, this had failed to gain traction, but with the revision of the Anti-Trafficking Directive, (the exploitation of) surrogacy was successfully included, marking a significant shift in EU policy.

On the other side, numerous organizations, including La Strada International itself, the European Council on Refugees and Exiles (ECRE), European Sex Workers' Rights Alliance (ESWA), Global Alliance against Traffic in Women (GAATW), Platform for International Cooperation on Undocumented Migrants (PICUM)²⁰, raised concern about its inclusion into this EU law, which 'seemed more based on political interests, instead of adequate data and evidence'. They asked the EU Commission and Member States to first conduct thorough research and collect the necessary evidence for the exploitation of surrogacy in relation to human trafficking; to provide for an adequate debate on facts and evidence and ensure further guidance on the (legal and practical) application of this form of human trafficking. These organizations wanted to ensure that - if surrogacy was to be included - it would be clearly framed as applicable only in cases where it is non-consensual and forced, and constitutes human trafficking, to avoid misinterpretation and overreach.

The *inclusionists*, instead, as mentioned, pushed for the overall criminalisation of surrogacy including the recognition and criminalisation of surrogacy as a form of human trafficking through the Directive, without exception for consensual forms. Four main concerns are commonly shared among *inclusionists* across Europe. Firstly, those advocating for the abolition of surrogacy view its practices inherently as reproductive exploitation of women, regardless of whether it involves commercial or altruistic surrogacy.

Secondly, the practice of surrogacy is said to objectify women and commodify children, treating both as goods in a transaction. This practice is argued to undermine the dignity and rights of both the surrogate mother and the children born through such arrangements. Thirdly, they believe it constitutes a form of human trafficking, considering that it involves the use of individuals for the purpose of exploitation, rooted in inequality between women and men and a manifestation of structural discrimination against women. They also point out that private surrogacy clinics often profit from such arrangements, further exacerbating the economic exploitation of women, next to highlighting that existing provisions are undermined by the practice of cross-border surrogacy.

They state that "Not only does surrogacy directly destroys human dignity, but it meets all three criteria for the classification of trafficking. Mothers recruited as surrogates by brokers or clients may be "transported" to the clients' country, or to a third country to circumvent regulations, or subject to mobility within their own country. Their so-called "consent" is often based on manipulation, deception, or pressure, because of their social and economic vulnerability. The result is financial gain for the stakeholders involved (brokers, psychologists, lawyers, clinics, medical personnel, travel agencies), and the procurement of new-born human beings for the clients".²¹

In addition to these concerns, it is also frequently highlighted that surrogate mothers lack adequate information and that there are medical risks associated with surrogacy, including inadequate post-natal care and an increased likelihood of postpartum depression, which disproportionately affect surrogate mothers. Finally, *inclusionists* often emphasize that many countries have already prohibited surrogacy, considering that this constitutes a recognition of such practices as a violation of fundamental human rights.

While all these arguments can be debated, it is clear, as it was explored previously in this paper, that only few EU countries criminalise and prohibit all practices of surrogacy, which makes the latter claim incorrect.

The *exclusionists*, on the other hand, acknowledge that when characteristics of human trafficking are present, such cases should rightly be classified and treated as human trafficking, which was already possible under the existing EU law. However, they argue that such cases have generally not been identified over the past two to three decades, casting serious doubt on the presumed high prevalence. They further assert that cases of altruistic surrogacy call for better regulation to prevent exploitation, rather than criminalisation. The *exclusionists* also felt that the revision of the Anti-Trafficking Directive should not be (mis)used for an attempt to criminalise surrogacy across the EU.

They advocated for evidence-based and rights-respecting approaches to combating human trafficking, as well as for a clear distinction between consensual, voluntary surrogacy arrangements and cases where exploitation, coercion, or illegal practices are present. Highlighting the risks posed by broad

¹⁹ Source: Interviews

²⁰ ESWA. 2024. *Joint NGO Statement on recast EU Anti-Trafficking Directive*. Retrieved from https://www.eswalliance.org/eu_thb_statement_2024

²¹ Joint statement by European Women's Lobby and others, 25 11 2022, see <https://abolition-ms.org/wp-content/uploads/2022/11/Surrogacy-joint-Statement-final-1.pdf>

and unsubstantiated definitions, exclusionists warned that it could undermine both the Directive's effectiveness and human rights protections, risking diverting the focus of anti-trafficking efforts. Moreover, the vague definition of "exploitation of surrogacy" and the fact that exploitation is generally not defined in European or international law, raises concerns that it could result in unintended consequences and interpretations, such as the criminalization of ethically conducted and legally permitted surrogacy arrangements within certain European countries - possibly by claiming that this is required by the Directive, which is not the case.

V. Legislative process

On 19 December 2022, the European Commission initiated the Directive's revision by publishing its proposal to amend the Directive 2011/36/EU, accompanied by supporting documents such as the Impact Assessment, Fourth Progress Report, and the Evaluation Report, which assessed the Directive's implementation and broader challenges of human trafficking in the EU. The key changes introduced by the proposal included the explicit addition of forced marriage and illegal adoption as forms of trafficking, addressing crimes committed through information and communication technologies, and introducing mandatory sanctions for legal persons involved in trafficking. The proposal also aimed to make using services from trafficking victims a criminal offense and improve data collection.²² As earlier noted, the proposal did not make any reference to surrogacy. The supporting documents, however, did touch on the topic, albeit very limited and exclusively related to illegal surrogacy. The Fourth Progress Report²³ states: "Europol, Eurojust and some Member States²⁴ reported cases of trafficking for the purposes of illegal surrogacy and forced pregnancy, where women are recruited to give away their new-borns upon the promise of compensation or to participate in illegal surrogacy programmes." No further information or evidence was provided on these cases, neither data on how many cases were reported.

The Evaluation Report²⁵ noted that consulted stakeholders emphasized the evolving nature of human trafficking and suggested the inclusion of other forms of exploitation, including "illegal surrogacy". However, the report does not mention which stakeholders made these suggestions, nor the rationale behind them. The report also highlighted 'the challenges posed by the varying definitions regarding surrogacy within Member States' legal systems to approaching surrogacy'. The Impact Assessment report went further, referencing surrogacy seven times, identifying emerging trends in forms of exploitation, specifically highlighting "the trafficking of women for the purpose of illegal surrogacy programmes by coercing women into a pregnancy and selling newborn children." Yet, again, no data or further information was provided.

Following the Ordinary Legislative Process of the European Union, the proposal was then submitted to the European Parliament and to the Council of the European Union for review. The Council published its position on 17 May 2023²⁶, addressing the growing number and relevance of offences concerning human trafficking. In its position, the Council emphasized the need to include forced marriage and illegal adoption as forms of exploitation listed in the Directive. Surrogacy was not included in the Council's position, although we learnt the issue was discussed, including before and after the position was adopted.

At the time, some EU Member States had published their national positions on the revision of the Directive, the four positions that are available on the website of the Commission - Spain²⁷, Romania²⁸,

²² Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 19 December 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0732>

²³ European Commission. 2022. *REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Report on the progress made in the fight against trafficking in human beings (Fourth Progress Report)*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0736>

²⁴ Bulgaria, Cyprus and Greece.

²⁵ European Commission. 2022. Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022SC0427>.

²⁶ Council of the European Union. 2023. *Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims – General approach* (ST 9313/2023 INIT). Retrieved from <https://data.consilium.europa.eu/doc/document/ST-9313-2023-INIT/en/pdf>

²⁷ Spanish Parliament. 2023. *Opinion on the Proposal for a Directive on preventing and combating trafficking in human beings and protecting its victims* – COM(2022)0732. Retrieved from [https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2022/0732/ES_PARLIAMENT_CONT1-COM\(2022\)0732_ES.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2022/0732/ES_PARLIAMENT_CONT1-COM(2022)0732_ES.pdf)

²⁸ Romanian Senate. 2023. *Opinion on the Proposal for a Directive on preventing and combating trafficking in human beings and protecting its victims* – COM(2022)0732. Retrieved from

Portugal²⁹, and the Netherlands³⁰ - made no mention of surrogacy. These positions, submitted to their respective national parliaments, primarily focused on broader aspects of human trafficking and other forms of trafficking, without addressing or suggesting the inclusion of surrogacy as a form of exploitation.

The European Parliament designated the LIBE Committee (Committee on Civil Liberties, Justice and Home Affairs) and the FEMM Committee (Committee on Women's Rights and Gender Equality) to lead the revision of the Anti-Trafficking Directive, with MEPs Malin Björk and Eugenia Rodríguez Palop appointed as rapporteurs, responsible for guiding the discussions, drafting reports, and coordinating input from different stakeholders. They played a pivotal role in shaping the parliamentary discussions and the proposed amendments to the directive.

In the early stages of the revision, the Parliament's first draft³¹, prepared by the LIBE and FEMM rapporteurs, did not include any reference to surrogacy among the additional forms of exploitation proposed for the directive. Adopted in June 2023, this absence aligned with both the Commission's initial proposal and the Council's position, neither of which had incorporated surrogacy as part of their recommendations.

However, apparently the issue was being discussed by the rapporteurs, as on 24 May 2023, during the meeting with the Committees to discuss the Commission's proposal, rapporteur Rodríguez Palop questioned the former European Commissioner for Home Affairs, Ylva Johansson on why surrogacy, despite being mentioned in the Evaluation document, was excluded from the final Commission's proposal of December 2022. Johansson justified its absence on insufficient investigation from Member States, highlighting that for surrogacy to be considered human trafficking, it 'must involve intentional and forced acts'. Furthermore, the then-Commissioner noted that there were only limited documented cases of illegal surrogacy, whereas other forms of exploitation, such as forced marriage, had seen an increase of cases reported by EU Member States.

A pivotal shift in the debate occurred in the month after the first European Parliament draft, when surrogacy was introduced in the second draft through amendments proposed by MEPs. These amendments reflected a coalition of MEPs, including from the European People's Party (EPP), the European Conservatives and Reformist Party (ECR), Identity and Democracy (ID), and the Patriots for Europe (PfE), emphasizing the framing of surrogacy as a potential form of exploitation within the broader context of human trafficking.

Earlier, in April, the European Economic and Social Committee (EESC) had published an opinion on the Directive's revision, which included a reference to surrogacy, after questions were raised during a special consultation with stakeholders (03/05/2023) related to the drafting of the text. In its opinion, the EESC welcomed the "broadening of the definition of the different forms of exploitation" and stated that additional forms not contemplated in the directive "could also be regarded as forms of trafficking, such as forced marriages, gestational surrogacy or illegal adoptions"³². By doing so, the EESC advocated for gestational surrogacy, as a whole, to be recognised as a form of exploitation and to be included in the revised text of the Directive. This might have prompted MEPs of the FEMM and LIBE committees to raise the issue too, if not already intended.

However, MEPs represented in the two committees were deeply divided on the issue. While groups such as Renew and the Greens largely opposed the inclusion of surrogacy in the Directive, the Left, the Progressive Alliance of Socialists and Democrats (S&D), and more conservative parties tended to support its introduction. Interviews conducted for this research highlighted that the inclusion of (the exploitation of) surrogacy in the Anti-Trafficking Directive was seen by some as a strategic first step towards advocating for a complete legal prohibition of surrogacy in future EU initiatives. Interviewees also confirmed that the debate around surrogacy's inclusion became predominantly political, reflecting broader ideological divides rather than a consensus based on evidence or trafficking-related concerns.

Furthermore, it was noted that the revision of the Directive was conducted under significant time pressure, not allowing for a thorough discussion. Surrogacy, in particular, was one of the last topics

[https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2022/0732/RO_SENATE_CONT1-COM\(2022\)0732_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2022/0732/RO_SENATE_CONT1-COM(2022)0732_EN.pdf)

²⁹ Portuguese Parliament. 2023. *Opinion on the Proposal for a Directive on preventing and combating trafficking in human beings and protecting its victims* – COM(2022)0732. Retrieved from [https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2022/0732/PT_PARLIAMENT_CONT1-COM\(2022\)0732_PT.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/parlements_nationaux/com/2022/0732/PT_PARLIAMENT_CONT1-COM(2022)0732_PT.pdf)

³⁰ Government of the Netherlands. 2023. *Opinion on the Proposal for a Directive on preventing and combating trafficking in human beings and protecting its victims* – COM(2022)0732. Retrieved from https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/F2670965_en

³¹ European Parliament. 2023. *DRAFT REPORT 2022/0426(COD) on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*. Retrieved from https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ01/PR/2023/06-05/1279072EN.pdf

³² Retrieved from <https://webapi2016.eesc.europa.eu/v1/documents/EESC-2022-06310-00-00-AC-TRA-EN.docx/content>

addressed during the negotiations, resulting in a rushed debate with little time to explore the complexities of the issue in depth. This meant that discussions occurred predominantly within political groups and only within FEMM and LIBE, without a broader debate in the European Parliament or wider consultation with experts, practitioners, and relevant stakeholders across Europe.

By October 2023, the compromise amendments had been introduced to reconcile differing perspectives among committee members. Two primary compromise texts were debated. The first included “surrogacy for reproductive exploitation” in the revised version of Article 2, paragraph 3, explicitly listing it as a form of exploitation under the Directive. The alternative compromise opted for a broader formulation, excluding the term “surrogacy for” and referring only to reproductive exploitation. Despite efforts to refine the language, the Committees ultimately adopted the version that explicitly included surrogacy as a form of exploitation under Article 2, signalling a stronger stance on its potential link to human trafficking, which was approved by the majority on 5 October 2023, when the final position of FEMM and LIBE was adopted. The decision was made during the first reading, with 69 votes in favour and 22 abstentions.

Attempts to further modify the language related to surrogacy were rejected, including a last minute oral amendment proposed by the Renew Group, which sought to change “surrogacy” to “forced surrogacy”, which was opposed by multiple MEPs³³. Both the Greens and Renew pushed for “forced surrogacy”, following the rationale behind “forced marriage”, differentiating between the legal practice of “marriage” and the exploitative practice. They intended to avoid a direct reference to “surrogacy” alone, which could conflate the broader practice of surrogacy with human trafficking. The final wording - “exploitation of surrogacy” - emerged only later as a negotiated compromise between the Parliament and Council.

On 22 April, the final agreed text was only shortly presented - not discussed in fact - during the Parliamentary plenary debate on the amended Directive, also as only one plenary vote was foreseen for the next day, on the full Directive text, instead of allowing for voting on separate parts of the text. The majority of the interventions, mainly by the rapporteurs and shadow rapporteurs, highlighted and celebrated the inclusion of additional forms of exploitation in the Directive, including the exploitation of surrogacy. Notably, the former EU Commissioner³⁴, despite previously stating that there was insufficient evidence to include surrogacy in the European Commission’s proposal, specifically celebrated the Directive’s stance on “zero tolerance for trafficking for surrogate mothers,” hence signalling also her own support for its inclusion.

Moreover, several MEPs from the European Conservatives and Reformists Group (ECR)³⁵, were particularly vocal in praising the inclusion of the exploitation of surrogacy. That day it became also clear that some MEPs had wanted to go even further, still arguing for its complete prohibition. Many MEPs³⁶ condemned surrogacy as a “shameful practice,” describing it as “far from liberating” and asserting that “surrogacy should be entirely banned.” Only one MEP from S&D³⁷ raised concern “that we have unfortunately listed all of surrogacy in general terms as something which is totally wrong - and I agree, if this is forced, it is unacceptable. But then there are some circumstances where we have altruistic surrogacy, and we need to make sure that we do not put this in a negative light”. This statement also revealed internal divisions within political groups in the European Parliament, with MEPs from the same party showing diverging positions.

Plus, it underscored the significance of surrogacy as a contentious, hot-button, divisive issue, sparking strong, often polarized opinions, which generated heated discussions. While other forms of human trafficking, such as forced marriage, were also introduced, these were hardly contested and seemed to have uniform support.

On 23 April 2024, the European Parliament adopted the text of the revised EU Anti-Trafficking Directive with an overwhelming majority of 563 votes in favour and only seven votes against, and 17 abstentions.

It is important to note that a full Parliament discussion has generally been absent, not only was there mainly an update by those responsible for the file, the day before the final vote, but also before the dialogues (negotiations between the three main EU institutions) started, the file proceeded through a fast-tracking procedure, bypassing plenary discussion, as LIBE and FEMM responsible for the file, voted

³³ MEP Halicki argued that such a change constituted a significant departure from the agreed text.

³⁴ Ylva Johansson.

³⁵ Beata Kempa, Bert-Jan Ruissen, and Margarita de la Pisa Carrión.

³⁶ Namely, Bert-Jan Ruissen (ECR), Beata Kempa (ECR), and Margarita de la Pisa Carrión (PFE).

³⁷ This was Cyrus Engerer of S&D

to enter the trilogue negotiations immediately,³⁸ which was just confirmed by the plenary on 18 October 2023.

It is not fully visible with which organisations the members of the European Parliament consulted to define their positions, and or if the Council was further advised by specific groups, next to the national governments. Under the joint Transparency Register established by the European Parliament, the Council of the European Union, and the European Commission, all three institutions demonstrate their commitment to openness and transparency. According to the Code of Conduct for Members of the European Parliament regarding Integrity and Transparency³⁹, Article 7 - Publication of Meetings, all MEPs are required to publish online information about their scheduled meetings with interest representatives covered by the interinstitutional agreement on the transparency register.

However, at the time of the legislative process to revise the Anti-Trafficking Directive, this transparency requirement was not yet mandatory, though many MEPs voluntarily reported their meetings. The available records indicate that the majority of documented meetings were held with NGOs that opposed the inclusion of "exploitation of surrogacy" in the Directive. Despite this, significant gaps remain, as no meetings involving MEPs from the ECR, PFE, or ID groups were registered. As a result, there is no way to determine whether these meetings occurred, with whom, and what influence they may have had on the negotiations and the final decision.

While no formal public statement has been issued by Europol or Eurojust clarifying their stance on the matter, both institutions were frequently mentioned during conversations with stakeholders and MEPs closely involved in the negotiations, who referred to them as active advocates for including surrogacy as a form of exploitation under the human trafficking definition.

Eurojust has been clear about its involvement. In its 2023 Annual Report⁴⁰, Eurojust stated that it "contributed to the EU legislator's decision to explicitly mention surrogacy in the Directive, as a potential type of exploitation, falling within the scope of the definition of human trafficking." The agency reinforced that this position was based on Eurojust's casework, yet interestingly their reports do not specifically support this claim, as generally their reports do not mention much about cases of human trafficking for the purposes of exploitation of surrogacy (see section VI below).

On 27 May 2024, the Council adopted the final text of the Directive, which added the exploitation of surrogacy, of forced marriage, and of illegal adoption as forms of exploitation covered by the EU anti-trafficking law. The press release published⁴¹ stressed that this modification "reflects the gravity, as well as the prevalence and the relevance of these forms of exploitation", even though during the full process of the revision, no further evidence on the prevalence of the exploitation of surrogacy or the other two forms were provided.

By 13 June, the EU Anti-Trafficking Directive was fully adopted. The law entered into force on 14 July 2024, with Member States having two years to implement the revised rules.

VI. Gravity, Prevalence, and relevance of the exploitation of surrogacy

Following the adoption of the Anti-Trafficking Directive's amendment, La Strada International conducted a comparative review (2025⁴² of legal and policy approaches and their implementation across Europe, covering all EU Member States. This study examined the varying regulatory frameworks, analysed jurisprudence, and explored the extent to which surrogacy has been considered a form of human trafficking.

Despite this comprehensive analysis, no substantial evidence emerged to justify its classification as a distinct form of exploitation within the Directive. Across Europe, criminal cases in this domain are so far sporadic, with very few indications of abuse or trafficking-related crimes. Despite the revised Directive's

³⁸ Rule 71 (ex-Rule 59) was applied: After the committee adopts its report, it may request a mandate to start interinstitutional negotiations (trilogues). If no objections are raised in plenary by a political group or 1/10 of MEPs within a deadline (usually 24 hours before the session starts), the mandate is deemed approved without debate or vote.

³⁹ European Parliament. *Code of Conduct for Members of the European Parliament regarding Integrity and Transparency*. Retrieved from https://www.europarl.europa.eu/pdf/meps/Code_Of_Conduct_20231101_EN.pdf

⁴⁰ Eurojust. 2023. Eurojust 2023 Annual Report. Retrieved from <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-annual-report-2023-en.pdf>.

⁴¹ Council of the EU Press release 27 May 2024 <https://www.consilium.europa.eu/en/press/press-releases/2024/05/27/fight-against-human-trafficking-council-strengthens-rules/>

⁴² La Strada International, 2025, *Comparative analysis of the legal and policy landscape on surrogacy across Europe*.

assumption of prevalence and gravity, we could trace only eleven trafficking cases involving surrogacy to have been documented across Europe. None of the EU cases concerning surrogacy – based on the available data – did conclude as a prosecution of human trafficking. Instead, they primarily focused on the rights of intended parents following surrogacy arrangements conducted abroad.

Most of the observed surrogacy-related legal procedures concern parentage - not coercion or trafficking practices. Legal cases tend to revolve around document fraud or unlawful adoption processes, rather than exploitative trafficking practices. Furthermore, evidence suggests that existing frameworks are largely effective, and surrogacy practices in regulated environments operate within legal boundaries and voluntary participation.

The Fourth Progress Report⁴³ published by the Commission stated that “Europol, Eurojust and some Member States⁴⁴ reported cases of trafficking for the purposes of illegal surrogacy and forced pregnancy, where women are recruited to give away their new-borns upon the promise of compensation or to participate in illegal surrogacy programmes.” No further information was provided on these cases, neither how many cases were reported.

Statistics published by Eurostat on trafficking in human beings in the EU between 2008 and 2023 have never revealed any data on trafficking for the exploitation of surrogacy. This may explain the EU Commission’s initial decision not to include the exploitation of surrogacy as a separate form of exploitation in the human trafficking definition.

In the process of gathering information and data to support this paper, several European institutions involved in the negotiations - such as Eurojust, Europol, and Members of the European Parliament - were contacted for insights and clarification. Only some advisors, but not one of the MEPs, including one of the rapporteurs contacted, provided a response and feedback to our requests, underscoring the sensitivity and political complexity of the issue. Specific questions were also directed to Eurojust and Europol regarding their reported mentions of human trafficking cases involving the exploitation of surrogacy and asking for a detailed list of cases since 2000 in the European Union.

Eurojust confirmed on 11 June 2025 that “only two cases involving trafficking in human beings for illegal surrogacy have been registered at Eurojust since 2000, namely in 2021 and 2023”. These two cases, both related to illegal surrogacy, are the only ones recorded over a span of 25 years. Through an informal conversation, a representative from Europol also acknowledged that they did not have further data on the issue at that time.

No further evidence or detailed case information was shared, except for one known case in Greece, reinforcing the observation that documented instances of trafficking for the purpose of surrogacy remain extremely limited in Europe.

In the reviewed documents, surrogacy was mentioned only briefly in Eurojust’s 2022 Annual Report⁴⁵, which noted a meeting with Bulgarian and Czech national authorities aimed at raising awareness about the potential for human trafficking in international surrogacy arrangements. Once again, no supporting data was provided about cases. Similarly, Europol’s EU-SOCTA 2021⁴⁶ report mentioned illegal surrogacy once, highlighting that women are sometimes trafficked to participate in illegal surrogacy programmes, yet no concrete evidence or detailed cases were included to substantiate this assertion.

Earlier, the Commission’s Third Progress Report⁴⁷ also underscored the threats posed by illegal surrogacy and consistently referenced it within the context of illegality, yet the amended version of the Directive expanded the scope of its definition, categorizing surrogacy under the broader concept of exploitation. The latest available EU-SOCTA 2025⁴⁸, published after the adoption of the Directive, does also not mention (human trafficking for) the exploitation of surrogacy. This highlights the limited attention or perceived relevance of human trafficking crimes linked to surrogacy practices.

⁴³ European Commission. 2022. *REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Report on the progress made in the fight against trafficking in human beings (Fourth Progress Report)*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0736>

⁴⁴ Bulgaria, Cyprus and Greece.

⁴⁵ Eurojust. 2023. *Annual Report 2022*. Retrieved from <https://www.eurojust.europa.eu/pt-pt/publication/annual-report-2022>

⁴⁶ Europol. 2021. *European Union Serious and Organised Crime Threat Assessment (SOCTA) 2021*. Retrieved from <https://www.europol.europa.eu/publication-events/main-reports/european-union-serious-and-organised-crime-threat-assessment-socta-2021>

⁴⁷ European Commission. 2020. *REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0661&qid=1651138806414>.

⁴⁸ Europol. 2025. *European Union Serious and Organised Crime Threat Assessment (SOCTA) 2025*. Retrieved from <https://www.europol.europa.eu/publications-events/main-reports/socta-report>

However with the adoption of the amended Directive, EU Member States are now required (article 19a) to collect anonymised statistical data to monitor the effectiveness of their anti-trafficking systems, which includes data on victims, suspects, prosecutions, convictions, and court decisions, disaggregated by factors such as sex, age, citizenship, and form of exploitation, including the exploitation or surrogacy. The data must be submitted to the European Commission annually, ideally by 30 September.

VII. Conclusion

The inclusion of surrogacy as a form of exploitation in the revised EU Anti-Trafficking Directive marked a significant and, to some extent, unexpected shift in European anti-trafficking law. The issue of surrogacy has not been present in European anti-trafficking policy debates over the last two decades and, hence, its sudden formal inclusion in the EU Directive was regarded by several civil society organisations, active in the anti-trafficking field, including La Strada International, as insufficiently grounded in evidence and mainly normative. The link between surrogacy and human trafficking appeared weak, and in some respects, artificially constructed.

While the revision process was initially framed as a means of promoting harmonisation among Member States, the addition of surrogacy did not follow this rationale. Prior to this amendment, no EU Member State had explicitly defined surrogacy as a form of human trafficking in their national legislation.

Surrogacy was first introduced by supporters of a complete ban on surrogacy, gained traction, ultimately resulting in a compromise formulation: “exploitation of surrogacy.” Conservative and religious groups, aligned their advocacy closely with calls from figures such as Pope Francis for a global ban on surrogacy, as well as feminist groups, aligned with radical or abolitionist feminism, seem to have carried a disproportionate weight in shaping the final legislative outcome.

This shift in approach was not only the result of advocacy efforts by some civil society organisations, but was also strongly promoted by European institutions, such as Eurojust, as well as by several MEPs, including the two rapporteurs leading the revision process.

This development occurred in the absence of substantial empirical evidence, as we have demonstrated throughout this paper. No substantial or consistent data was found linking surrogacy practices to the trafficking of human beings. Neither the European Commission’s supporting documents nor statistics from Eurojust, Europol, or Member States provided clear justification for the inclusion. Though some references to “illegal surrogacy” exist in EU documents, detailed cases remain scarce, and publicly available data is limited. Eurojust (apparently) advocating for its inclusion, confirmed that its position was based on only two cases - both related to illegal surrogacy – recorded over a span of 25 years.

The data gathered points rather to marginal or ambiguous situations, often involving document fraud or irregular adoption processes, not the systematic exploitation associated with human trafficking, which raises concern about the evidence base on which EU law is being made.

Nevertheless, the Directive has now introduced an obligation to recognise “exploitation of surrogacy” under human trafficking law. While this might contribute to more harmonised anti-trafficking legislation, national legislative frameworks on surrogacy will continue to diverge significantly, with some Member States allowing voluntary surrogacy under different preconditions, while the majority of them will continue to prohibit all forms of surrogacy. EU law is frequently used as a vehicle to address inconsistencies in national frameworks.

Moreover, the crime of trafficking for the exploitation of surrogacy may still lead to varying interpretations and implementation challenges, particularly in the absence of further EU-level guidance on how to interpret “exploitative surrogacy” in practice. The inclusion of “exploitation of surrogacy” still risks conflating all forms of surrogacy with human trafficking. This conflation was already evident in public and parliamentary discourse during the negotiations, as well as in social media and other statements published immediately after the adoption of the Directives. It may be exacerbated, giving institutional grounding to interpretations that equate all surrogacy practices with exploitation. This, in turn, could have unintended consequences, including legal uncertainty, further stigmatising surrogate mothers and intended parents, increasing the vulnerability of those involved in cross-border arrangements, and deterring the development of rights-based, regulated frameworks in Member States.

Importantly, if the purpose of the addition is to protect surrogate mothers and the children from exploitation, it must be acknowledged that it was already possible to criminalise human trafficking for the purpose of exploitation of surrogacy under the current legal definition of human trafficking across the EU. As such, the addition was not needed, especially as cases of trafficking for the purpose of exploitation of surrogacy are hardly ever reported. It might, however, raise more attention, and hopefully it could lead to better data collection and research on the issue.

Given that the transposition phase is now ongoing, further (clear) guidance from the European Union is needed to clarify how to interpret and implement this provision, what the exploitation of surrogacy entails, and when such exploitation qualifies as human trafficking. Without such clarification, the risk of diverging national interpretations and legal uncertainty will persist, precisely the opposite of what the Directive's revision sought to achieve.

In light of these findings, this paper concludes that the inclusion of surrogacy in the EU Anti-Trafficking Directive came too early, lacked adequate debate, and was not supported by the necessary evidence. While the intention to protect individuals from exploitation is admirable, legal instruments must be always rooted in documented realities. The EU and its institutions must ensure that future policymaking is driven by reliable data, transparent processes, and genuine concern for those at risk.

Looking ahead, there is a need for more systematic data collection and evidence-based analysis of (exploitative) surrogacy practices in Europe. Moreover, further research needs to be conducted to define if indeed exploitative surrogacy is an emerging form of human trafficking, as has been claimed. It is equally important to involve experts on the issue and to clearly define which professionals are best positioned to identify and refer potential victims. These individuals must be adequately trained and equipped to recognise indicators of human trafficking and to ensure timely referral to appropriate assistance and support services. Only through a clearer understanding of the realities of (exploitative) surrogacy practices can both civil society and public institutions uphold human rights, ensure legal coherence, and respond effectively to any risks of human trafficking that may emerge.