

Comparative Analysis of the Legal and Policy Landscape on (Trafficking for the Exploitation of) Surrogacy Across Europe

How is current surrogacy legislation applied and how are (exploitative) surrogacy practices connected to human trafficking?

**La Strada International,
October 2025**

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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Glossary of terms

Term	Definition
Surrogacy	Surrogacy is an arrangement between a prospective surrogate/surrogate mother and (a) prospective intended parent(s) that 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) ¹ .
Gestational surrogacy	A surrogacy arrangement in which the surrogate does not provide her own genetic material and thus the child born is not genetically related to the surrogate. Such an arrangement will usually occur following IVF treatment. The gametes may come from both intended parents, one, or neither. This may be an altruistic or for-profit arrangement. ²
Traditional surrogacy	A surrogacy arrangement where the surrogate provides her own genetic material (egg) and thus the child born is genetically related to the surrogate. Such an arrangement may involve natural conception or artificial insemination procedures. This may be an altruistic or for-profit arrangement. ³
Commercial surrogacy	A surrogacy arrangement in which the intended parent(s) pay the surrogate financial remuneration which goes beyond her "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. This may be a gestational or a traditional surrogacy arrangement. N.B. It is often difficult to distinguish between an altruistic surrogacy arrangement and a for-profit arrangement. ⁴
Altruistic surrogacy	A surrogacy arrangement in which the intended parent(s) pay(s) the surrogate nothing or, more usually, only for "reasonable expenses" associated with the surrogacy. No financial remuneration beyond this is paid to the surrogate. This may be a gestational or a traditional surrogacy arrangement. Such arrangements often (but not always) take place between the intended parent(s) and someone they may already know (e.g. a relative or a friend). ⁵

¹ 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, <https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf> (p.25) (accessed on 30 September 2025)

² Hague Conference on Private International Law, 2014. "The desirability and feasibility of further work on the Parentage / Surrogacy Project" (Prel. Doc. No 3 B of March 2014), <https://assets.hcch.net/docs/6403eddb-3b47-4680-ba4a-3fe3e11c0557.pdf> (p.33) (accessed on 30 September 2025)

³ Idem

⁴ Idem

⁵ Hague Conference on Private International Law, 2014. "The desirability and feasibility of further work on the Parentage / Surrogacy Project" (Prel. Doc. No 3 B of March 2014), <https://assets.hcch.net/docs/6403eddb-3b47-4680-ba4a-3fe3e11c0557.pdf> (p.33) (accessed on 30 September 2025)

Surrogate (mother)	The woman who agrees to carry a child (or children) for the intended parent(s) and relinquishes her parental rights following the birth. In this paper, the term is also used to refer to a woman who has not provided her genetic material for the child. In these circumstances, surrogates are called “gestational carriers” or “gestational hosts” in some European states. ⁶
Intended parent(s) or commissioning parent(s)	The person(s) who request(s) another to carry a child for them, with the intention that they will take custody of the child following the birth and parent the child as their own. Such (a) person(s) may, or may not, be genetically related to the child born as a result of the arrangement. ⁷
Gamete (egg) donor	A woman who provides her eggs to be used by (an) other person(s) to conceive a child. In some States, such “donors” may receive compensation beyond their expenses. The question of the anonymity of “donors” also varies among States. ⁸
Palermo Protocol	Protocol to “Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children”, supplementing the United Nations Convention against Transnational Organized Crime. ⁹
THB	Trafficking in human beings
Exploitation of surrogacy	Surrogacy practices that comprise severe exploitative practices, including but not limited to the use of deception or force to obtain consent, taking advantage of someone’s poverty or vulnerability, absence of decent conditions, and lack of adequate compensation.
THB for the exploitation of surrogacy	When exploitation of surrogacy also comprises all the elements of the human trafficking offence (act, means and purpose), i.e. when it involves coercion, deception, or abuse of vulnerability for exploitative purposes.
Continuum of exploitation	A spectrum of exploitation within surrogacy practices with, at one end, practices in which surrogate mothers are treated with dignity and are compensated for their service, bad practices such as rights breaches (e.g. discrimination, lack of compensation) situated along the continuum, and severe exploitation such as human trafficking and forced surrogacy at the opposite end. Where minor breaches of rights occur and are not sufficiently addressed, the risk of more severe exploitation along the continuum increases.
(EU) Anti-trafficking Directive	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.

⁶ Hague Conference on Private International Law, 2014. “The desirability and feasibility of further work on the Parentage / Surrogacy Project” (Prel. Doc. No 3 B of March 2014), <https://assets.hcch.net/docs/6403eddb-3b47-4680-ba4a-3fe3e11c0557.pdf> (p.34) (accessed on 30 September 2025)

⁷ Idem

⁸ Idem

⁹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

Executive summary

On 14 July 2024, the recast EU Anti-Trafficking Directive entered into force, explicitly recognising the **“exploitation of surrogacy”** as a form of human trafficking, provided it meets the elements of the human trafficking definition (the means, the act, and the purpose of exploitation). While even before this amendment, the exploitation of surrogacy, could in principle already be prosecuted under human trafficking law, as long as all legal criteria were fulfilled, the EU legislators felt this explicit inclusion was needed to reflect the gravity, as well as the (presumed) prevalence and the relevance of this form of exploitation. As such it refers to a legal and political move to explicitly recognize that surrogacy arrangements can be exploitative and may amount to human trafficking, when women are coerced or deceived into acting as surrogate mothers with the purpose of their exploitation.

To gain a deeper understanding of the scope of potentially exploitative surrogacy practices, this study considers the current legal and policy frameworks in Europe and their practical application, while also analysing the conditions under which surrogacy may be linked to, or constitute, human trafficking. Thereto, this comparative report analyses how 38 European countries, including all 27 EUMS, currently regulate surrogacy and deal with trafficking-related risks, ahead of full transposition of the Directive. It has been produced using in-depth desktop analysis of all observed countries, with the findings confirmed by LSI members where possible.

We acknowledge that, due to the ongoing transposition period and the fact that EU Member States are currently revising national laws and regulations, some of the information presented in this report may soon become outdated. This report should therefore be regarded as a baseline against which future developments and changes can be measured.

Key findings

- **Surrogacy is not inherently trafficking in human beings (THB)** and the two practices should be clearly distinguished. Most European legal systems treat surrogacy as a civil matter involving parentage and contracts, not as an issue of criminal law.
- In Europe, only **Moldova** criminalised the exploitation of surrogate mothers under their human trafficking law, prior to the amendment of the EU Anti-Trafficking Directive, and it reported just **one case** in the past decade.
- Where **regulated and altruistic surrogacy** exists (e.g. in Greece, Cyprus and the United Kingdom), legal frameworks include strong safeguards (e.g. medical necessity, court oversight), that arguably help minimise THB risks.
- **Detection or identification of cases of human trafficking for the exploitation of surrogacy remains rare.** In the period from 2022 to 2024, Ukraine identified six trafficking cases involving surrogacy out of a total of 264 surrogacy-related cases, suggesting that such instances were isolated. Other notable but unresolved or limited cases were identified in **Greece, Portugal, and Bulgaria**. *For a detailed analysis see [ANNEX 1](#), and for all Ukrainian cases see [ANNEX 5](#).*
- Eurojust confirmed 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.

- Despite the recast Directive's assumption of the prevalence and gravity of human trafficking for the exploitation of surrogacy, only **eleven trafficking cases** involving surrogacy have been documented across Europe (see [ANNEX 1](#) for details)
- Notable patterns and tactics that can be discerned from the aforementioned Ukrainian cases and, to the extent that it is possible, from the one case discussed in the Greek media, include:
 - Recruitment framed as a legal income opportunity for vulnerable women
 - False claims about the legitimacy of the programme and the identities of the clients
 - Legal infrastructure (lawyers, translators, notaries) used to facilitate fraud
 - Medical personnel misled
 - Birth certificates falsely registered
 - Children transferred abroad under false pretences
 - Clinic staff **deceived by the clinic director**; medical personnel performed IVF based on false claims that clients were in legal heterosexual relationships
- **Among the non-THB-related criminal cases** we observed, we found that, even when surrogacy arrangements contravene domestic law, authorities tend to prosecute them under charges such as illegal adoption or document fraud rather than as human trafficking offences. In cases in which the intent appeared to be the formation of a family rather than financial gain, courts often showed restraint, resulting in acquittals, suspended sentences or relatively minor fines. This reflects a general reluctance to treat intended parents or surrogates as traffickers, particularly when such prosecution could adversely affect the welfare of the child (for a more detailed analysis see [ANNEX 2](#)).
- In parallel, **jurisprudence from civil, administrative, and human rights cases** in Europe reveals a tension between enforcement of restrictive surrogacy policies and the protection of children's rights. What emerges from these cases – particularly in countries such as Austria, Belgium, Czechia, Finland, Germany, and Luxembourg, as well as from European Court of Human Rights (ECtHR) rulings (*Mennesson, Labassee, Foulon, D. v. France; K.K. v. Denmark; C. v. Italy*) – is a trend towards recognizing parent-child relationships resulting from surrogacy, especially when a genetic link exists. Courts have increasingly prioritized the best interests of the child, emphasizing legal identity and family continuity, which has led even restrictive jurisdictions to allow partial recognition through the acknowledgment of paternity or through adoption pathways (for a more detailed analysis see [ANNEX 2](#)).

Relevant international law

In international law, surrogacy is not defined under any legally binding convention although efforts were made at the Hague Conference on Private International Law (HCCH) to harmonize international surrogacy arrangements. Nevertheless, authoritative sources do exist and can be used as guidance. The most prominent are the so-called “Verona Principles”, along with reports from the working group of the HCCH, as well as the UN Convention on the Rights of the Child. Additionally, and particularly influential in the context of the observed countries, is the jurisprudence of the ECtHR. In that respect, of particular importance is the ECtHR's advisory opinion No. P16-2018-001 (2019, §§ 36–38, 37–46, 43–44, 51–55).¹⁰ This states that, where a de facto parent-child relationship exists, Article 8 requires States to ensure the

¹⁰ Council of Europe, European Court of Human Rights (2019). Advisory Opinion No. P16-2018-001, <https://hudoc.echr.coe.int/fre?i=003-6380464-8364383> (retrieved on 20 April 2025)

possibility of legal recognition of the intended mother, as it is largely accepted that the parenthood of an intended father with a genetic link to a child born out of surrogacy can be acknowledged. The advisory opinion went on to request that this recognition must be prompt and efficient, while leaving the choice of means within the margin of appreciation. This wide discretionary scope is exemplified by the ECtHR's acknowledgement in *Paradiso and Campanelli v. Italy* [GC] (2017, §§ 147–158, 161–165, 203–215)¹¹ that, in the absence of biological links and in breach of domestic law, the permanent removal of the child from intended parents can be considered proportionate and within the State's margin of appreciation.

None of these sources label surrogacy as Trafficking in Human Beings, including the arguably more critical reports from the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. One commonality among them, however, is reference to the inherent risk of exploitation stemming from unregulated commercial surrogacy arrangements. For more details on these sources, please consult section 1 below.

The comparative legal landscape

On the domestic level, analysed in section 2 below and in the country profiles in [ANNEX 3](#), it can be observed that only **nine out of 38 countries** studied, have dedicated surrogacy legislation: Cyprus, Greece, Ireland, Albania, North Macedonia, Belarus, the United Kingdom, Denmark, and Ukraine. Most allow only altruistic surrogacy, while Ukraine and Belarus permit commercial arrangements.

Twenty-four countries criminalise surrogacy¹² in some form, yet only 10 criminalise the actions of intended parents or surrogates themselves¹³. **Italy** is the only country to criminalise surrogacy conducted abroad.

Recognition of international surrogacy arrangements is relatively harmonised. Most countries recognise parenthood established via international surrogacy: 25 allow recognition of both parents¹⁴, six recognise only the father (with adoption required for the mother to be recognised),¹⁵ and seven require both to adopt.¹⁶ These recognition practices often reflect **ECtHR jurisprudence**, which emphasises the child's best interests while granting States a **wide margin of appreciation**.

Implications for implementation

As mentioned, we found only **eleven trafficking cases** involving surrogacy documented across Europe (see [ANNEX 1](#) for details). Most of the identified surrogacy-related legal procedures concern **parentage** rather than coercion or trafficking. Surrogacy only becomes human trafficking when all the elements of the legal human trafficking definition are met (the means, the act and the purpose of exploitation).

¹¹ Council of Europe, European Court of Human Rights (2017). *Paradiso and Campanelli v. Italy* [GC], <https://hudoc.echr.coe.int/eng?i=001-170359> (retrieved on 20 April 2025)

¹² Austria, Bulgaria, Croatia, Czechia, Slovakia, Estonia, Finland, France, Germany, Hungary, Italy, Malta, Netherlands, Portugal, Romania, Slovenia, Spain, Sweden, Serbia, Turkey, Bosnia, Montenegro, Moldova, Switzerland

¹³ Croatia, Slovakia, Estonia, Finland, France, Hungary, Italy, Malta, Slovenia, Spain

¹⁴ Cyprus, France, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Sweden, Serbia, Turkey, Bosnia, Albania, Montenegro, North Macedonia, Moldova, Belarus, United Kingdom, Ukraine, Germany, Switzerland

¹⁵ Austria, Belgium, Bulgaria, Czechia, Slovakia, Finland

¹⁶ Croatia, Estonia, Italy, Lithuania, Malta, Poland, Romania, Bulgaria, Serbia

The current **diverse approaches of EU Member States**, as visible in current national legislation and policy (further analysed in section 2 below and in the country profiles in [ANNEX 3](#)), and the fact that the amendments made to Directive 2011/36/EU by the 2024 Directive do not alter how surrogacy is defined under existing national laws, suggests that a **harmonised legal framework is unlikely**.

The exploitation of surrogacy, like labour exploitation, may exist on a **continuum of exploitation**, making it difficult to state definitively whether criminal thresholds have been met. The 2024 Directive recognizes this in its definition of the exploitation of surrogacy in Point 6 of its Preamble, in which it stipulates that: *“More specifically, as regards **trafficking for the exploitation of surrogacy**, this Directive targets those who coerce or deceive women into acting as surrogate mothers.”* The case from Greece is also relevant here because the prosecution has had difficulties defining the alleged perpetrators as part of a human trafficking ring – despite their portrayal in the media as such – as none of the women living and providing surrogacy services under ostensibly unacceptable conditions agreed to testify in the trafficking-related proceedings. The European Union Agency for Criminal Justice Cooperation (Eurojust) has confirmed this and also highlighted other challenges to the practical implementation of the Directive.¹⁷

Overview of the remainder of this report and its integral annexes

Reaching the conclusions above involved extensive desktop research and LSI member and other experts' input across all the countries observed. As further outlined in part 1.1. of the introductory section below, the methodology leans strongly on local sources and has been checked for credibility with members of LSI where possible.

Having explained the methodology behind the report, this study moves on to look at international law as it strives to summarize all the relevant instruments tackling the matter of (primarily) international surrogacy arrangements.

These considerations, and especially the jurisprudence of the ECtHR, inform the legal landscape of the countries observed to a significant degree. The general overview of these legislative frameworks is examined as the first subsection of the comparative analysis section, which also looks at irregular and illegal practices around surrogacy, asking when these amount to human trafficking for the purpose of exploitation of surrogacy, according to the relevant legislation.

The study then outlines the conclusions inferred from the entirety of the research in section 3 and provides an overview of the report's annexes, including a detailed analysis of the sources used to create the comparative analysis and reach its conclusions.

Similarly, [ANNEX 1](#) contains an overview of all the THB-related cases found and analysed as part of the research – including an analysis of elements of the human trafficking definition relating to the EU Directive – and places these cases in a broader context. In an attempt to establish an overall legal framework, other non-THB related cases where found are summarized in [ANNEX 2](#) of this study.

¹⁷ Eurojust. (2024, October 18). *Surrogacy and human trafficking*. European Union Agency for Criminal Justice Cooperation. <https://www.eurojust.europa.eu/publication/surrogacy-and-human-trafficking> (last accessed on 02.06.2025)

Profiles of the countries examined constitute the most significant part of this study, and are presented in [ANNEX 3](#). These profiles were informed by thematic and country-specific research carried out during the study process and have served as building blocks for this report and other annexes.

One of the goals of this study was to establish a comparable baseline report prior to transposition of the Directive and, for this reason, the information outlined in this report is presented in tabular form in [ANNEX 4](#). Lastly, due to the fact that the Ukrainian case law database yielded more than 300 cases in which the word “surrogacy” is mentioned, a database of these cases was created and is presented in [ANNEX 5](#). Summarized information on cases found in this database is available in [ANNEX 1](#) (with reference to THB-related cases and their relation to the totality of cases examined) and in [ANNEX 2](#) (with reference to non-THB-related case law).

1. Introduction and Relevant International Law

On 14 July 2024, the revised EU Anti-Trafficking Directive entered into force, requiring EU Member States (EUMS) to ensure that trafficking for the exploitation of surrogacy is punishable under human trafficking legislation.¹⁸ The text of the Directive noted that exploitation of surrogacy may already fall within the scope of the human trafficking offence, as defined in Directive 2011/36/EU, if all the criteria constituting this offence are fulfilled. The text of the recast Directive added that, “in view of the gravity of such practice, and in order to tackle the steady increase in the number and relevance of offences concerning trafficking in human beings committed for such purpose, it should be included as forms of exploitation in the Directive.”

For this reason – and due to the lack of adequate data, any recent comparisons with earlier findings, or any evidence clarifying the seriousness of or potential increase in human trafficking cases involving surrogacy – La Strada International (LSI) decided to conduct research into the current legal and policy landscape on surrogacy in Europe and its application in practice, next to checking the linkages of surrogacy practices in Europe with exploitation or human trafficking. The research is focused on all 27 EUMS and 11 other European countries in which LSI has a member organization. Most of these other European countries are EU accession countries and as such must align their legislation with EU law as part of the process of joining the European Union.

This comparative analysis aims to answer the following questions:

1. *Is surrogacy criminalised at the national level (e.g. treated as a separate criminal offence), and what does this entail?*
2. *Are there policies, legislation or criteria related to this, e.g. under which conditions is surrogacy allowed?*
3. *When does surrogacy become human trafficking and how can the three elements of human trafficking be proven?*
4. *Is there some case law/jurisprudence available? Or is there any other evidence of exploitative practices – such as referrals or requests for assistance and support – which might provide information on the gravity and/or possible increase of this form of exploitation in relation to human trafficking.*

1.1. Methodological notes

The methodology employed in this research and its limitations can be summarized as follows:

1. This research is desktop based and, where possible, has been verified by LSI members’ and other experts in relation to their particular country;
2. This research began with the examination of international materials and comparative analyses;

¹⁸ European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0036-20240714> (accessed on 30 September 2025)

3. In addition to these materials, domestic sources of information, obtained from searches of the internet and academic databases in each respective country, were also used;
4. Where non-English sources are used and cited, the original wording has been translated using Google Translate, which may lead to discrepancies;
5. All countries were researched in the same way by employing the following steps:
 - a. An internet search based on a prompt in English (“surrogacy law in [name of country]”);
 - b. An internet search based on a prompt in the local language (for example in German: “*Leihmutterschaft gesetz Deutschland*”);
 - c. These same searches in academic databases;
 - d. An examination of state inputs to GRETA, the monitoring mechanism on human trafficking established by the Council of Europe Convention on Action against Trafficking in Human Beings, including survey responses and reports as published on the dedicated CoE website;¹⁹
 - e. A review of inputs published on the website of an OHCHR-mandated Special Procedure – specifically the section containing submissions from states;
 - f. An examination of the official case law databases of all states examined using the search term “surrogacy” or “surrogacy motherhood” in local languages;
 - g. A review of the most recent reports produced by national anti-trafficking bodies or mechanisms using the search term “surrogacy” in the local language or in English.²⁰
6. For the purposes of confirming our findings, particularly considering the language barriers, LSI members were consulted where possible to verify the credibility of the sources and the accuracy of the research. Changes were then made in accordance with this feedback.
7. Along with the language barrier, one of the most challenging aspects of this research was the absence of clear definitions for “exploitation of surrogacy” or “THB for exploitation of surrogacy” – in fact, only Moldova explicitly mentions some form of exploitation of surrogate mothers in its human trafficking legislation. Furthermore, some of the countries observed define surrogacy differently from others (e.g. in France there is no specific term, but rather the phrase “*La gestation pour autrui*” or literally “*giving birth for another*” is used). Furthermore, the varying levels of publicly available judicial decisions posed a significant challenge. In some countries, such as Ukraine, Spain, or Portugal, nearly all judicial decisions are easily accessible, while in others, such as Greece, only excerpts are available for non-paying users. This creates a risk that some relevant decisions may have been missed. To mitigate this, findings were cross-checked and validated with input from LSI members, where possible.

1.2 Tracking the implications of the revised EU Anti-Trafficking Directive

The 2024 revision of the EU Anti-Trafficking Directive (Directive (EU) 2024/1712) explicitly lists “exploitation of surrogacy” as a form of exploitation under Article 2(3). As explained in Point 6 of the Preamble to the revision, this amendment obliges all EU Member States to criminalise THB for exploitation of surrogacy – meaning only those practices that meet the threshold for trafficking in human beings, i.e.

¹⁹ https://www.coe.int/ru/web/bioethics/surrogacy-search?p_l_id=138808833&delta=30

²⁰ Please note that, where these reports contained no reference to surrogacy, they are not mentioned or cited

those that involve coercion, deception, or abuse of vulnerability for exploitative purposes. The Directive particularly mentions that it *“targets those who coerce or deceive women into acting as surrogate mothers”*.

It is therefore important to note that the Directive does not criminalize surrogacy as such. This is evident from Article 2(5), which establishes that trafficking involving children is punishable even without the use of coercive means, except in cases of trafficking for the exploitation of surrogacy. This suggests that, in trafficking for exploitation of surrogacy-related cases, the potential victim under EU law is understood to be the surrogate mother, not the child, who is typically intended to be raised by the commissioning parents and is not the one at risk of exploitation in this situation. This distinction is crucial as surrogacy, particularly when altruistic and regulated, remains lawful.

However, EUMS are now expected – due to the obligation to transpose the amended EU anti-trafficking Directive - to reflect this change in their domestic laws, potentially introducing specific criminal provisions (although they are not legally bound to do so) or clarifying existing ones to address exploitation of surrogacy. This is where the potential for more overarching changes to surrogacy policy lies. Although the EU Directive does not require Member States to prohibit surrogacy, their status as parties to the ECHR, and the ECtHR’s recognition of a wide margin of appreciation in this area, may possibly encourage countries to ban the practice entirely, while allowing only limited recognition of foreign surrogacy arrangements. Another challenge here is the absence of agreed definitions on exploitation or the exploitation of surrogacy, and the lack of further guidance for EUMS on transposing the Directive on this point. Moreover, as the exploitation of surrogacy was added to the text at a very late stage of the negotiations, no adequate political debate or exchange among practitioners on the issue has been held. This situation is confirmed by Eurojust in one of its latest thematic publications.²¹

It is with regard to this issue that **this comparative analysis report could also be used. It serves as a baseline for (future) evaluating how EU Member States respond to this new obligation** and how others, such as EU Candidate Countries (e.g. Serbia and Turkey) will align their systems accordingly. For this reason, the report not only provides an overview of relevant legislative and regulatory national and international frameworks, including key applicable provisions in criminal and civil law, but also of national policies or practices allowing recognition of surrogacy, whether domestic or abroad, across all 38 countries. It also expands on the jurisprudence regarding trafficking for the exploitation of surrogacy cases. Going forward, it will be important to assess whether national laws will simply replicate the Directive by listing “exploitation of surrogacy” as a form of trafficking in human beings – essentially the requirement the Directive bears in this regard – or whether they adopt broader measures regulating or restricting surrogacy.

It will also be interesting to assess whether the definition of trafficking for the exploitation of surrogacy will be further defined at the national level, thereby providing more guidance to (legal and other) practitioners, or whether it will be left up to judges to interpret the law when cases of trafficking for exploitation of surrogacy are detected, investigated and prosecuted, and to decide which exploitative

²¹ Eurojust. (2024, October 18). *Surrogacy and human trafficking*. European Union Agency for Criminal Justice Cooperation. <https://www.eurojust.europa.eu/publication/surrogacy-and-human-trafficking> (last accessed on 02.06.2025)

surrogacy practices can be defined as human trafficking and which not, and when all elements of the crime are established.

1.3. Relevant international law

While surrogacy is arguably not specifically regulated in international law, there are several relevant international legal texts that deal with it indirectly. In that sense, the following international legal instruments are the most relevant:²²

- (1) The UN Convention on the Rights of the Child ("CRC");²³
- (2) The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography ("the OPCRC");²⁴
- (3) The 2018 and 2019 reports of the UN Special Rapporteur on the sale of children, child prostitution and child pornography on surrogacy ("the Special Rapporteur's reports")²⁵
- (4) The Verona Principles;²⁶
- (5) The Hague Conference on Private International Law (HCCH) and The Hague Convention on Parental Responsibility and Protection of Children;²⁷
- (6) The stances of the ECtHR based on its jurisprudence and advisory opinion.

1.3.1. The UN Convention on the Rights of the Child (CRC)

The CRC, its implementation guide, and its Optional Protocols all fail to specifically mention surrogacy in any form whatsoever. However, Article 35 of the CRC states that: "State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children **for any purpose or in any form.**" However, the implementation guide to the CRC states that, in order to apply Article 35, one should use the definition of human trafficking from Article 3(a) of the UN Trafficking Protocol, effectively rejecting that interpretation.²⁸ This is because, when one looks at the definition of human trafficking in that protocol from the perspectives of the surrogate mother and the commissioning

²² As summarized by: United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), <https://lawcom.gov.uk/project/surrogacy/> (p. 69-70)(accessed on 30 September 2025 on)

²³ UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815> [accessed on 30 September 2025]

²⁴ UN Committee on the Rights of the Child (CRC), Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography : list of issues to be taken up in connection with the consideration of the initial report of Argentina (CRC/C/OPSC/ARG/1), CRC/C/OPSC/ARG/Q/1, 26 March 2010, <https://www.refworld.org/reference/countryrep/crc/2010/en/89634> [accessed on 30 September 2025]

²⁵ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, 15 January 2018, A/HRC/37/60; and M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, 15 July 2019, A/74/162

²⁶ International Social Service (2021), Principles for the protection of the rights of the child born through surrogacy (Verona Principles)

²⁷ The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

²⁸ Hyder-Rahman, Nishat (2021) Commercial gestational surrogacy: unravelling the threads between reproductive tourism and child trafficking. Anti-Trafficking Review, 2021, link: <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/542/415> (p.14) (accessed on 30 September 2025)

parents, one can reach the following conclusions with respect to the three elements of the UN Trafficking Protocol definition of human trafficking:

i) the act – transferring the child(ren) from the surrogate to the commissioning parents constitutes the “act” in this context; intermediaries may be involved in the transport, harbouring, and receipt of the child(ren), ii) the means – in line with Article 3(b), there is no requirement for this element to be met; however, payments/benefits to the surrogate as the “person in control” of the child, physically and/or legally in her capacity as the automatic legal mother (bearing in mind the conflict of laws viz. parentage), or to the intermediaries in cases where the child(ren) is/are in intermediary care before being collected by the commissioning parents, could nonetheless constitute means, iii) the purpose – when it comes to the purpose however, there is arguably no exploitative purpose as the purpose of the arrangement is to provide a home for the child.²⁹ The CRC Committee never stated that surrogacy is *per se* a violation of Article 35 of the Convention. On the contrary, the CRC Committee acknowledged that surrogacy will not often fall under the definition of trafficking in persons. In its concluding observations on the United States’ report regarding the Optional Protocol to the Convention, regarding the Sale of Children, Child Prostitution and Child Pornography, it stated that:

“While noting that surrogate motherhood is a complex area that raises many different questions that fall outside the scope of the Optional Protocol, the Committee is nevertheless concerned that widespread commercial use of surrogacy in the State party may lead, under certain circumstances, to the sale of children. The Committee is particularly concerned about the situations when parentage issues are decided exclusively on a contractual basis at pre-conception or pre-birth stage. The Committee recommends, in the light of articles 1 and 2 of the Optional Protocol, that the State party consider the possibility of developing legislation that would address the issue of sale of children that may take place in the context of surrogate motherhood and that is outside the scope of family law.”³⁰

This extract shows that the CRC Committee concurs that commercial surrogacy is not, *per se*, the sale of children – an act prohibited under Articles 2 and 3 of the CRC Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography.³¹ This is in contrast to the views expressed with the below cited reports from the UN Special rapporteurs which, ultimately in 2025 found that all commercial surrogacy lead to sale of children (see the summary of the 2025 report below). One of the contributors to the below cited Verona Principles, prof. David M. Smolin, has, in his comments to this report expressed a view according to which most commercial surrogacy as currently practiced constitutes the sale of children, since those are not being practiced in line with the standards set out in the Verona

²⁹ Hyder-Rahman, Nishat (2021) Commercial gestational surrogacy: unravelling the threads between reproductive tourism and child trafficking. Anti-Trafficking Review, 2021,

<https://www.antitraffickingreview.org/index.php/atrjournal/article/view/542/415> (p.14) (accessed on 30 September 2025)

³⁰ Committee on the Rights of the Child, Concluding observations on the second periodic report of the United States of America submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, CRC/C/OPSC/USA/CO/3-4 (12 July 2017) para 24 and 25

³¹ UN Committee on the Rights of the Child (CRC), Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> (accessed on 30 September 2025)

principles. This is an argument he also puts forward in his co-authorship chapter in the Handbook on Surrogacy³².

In summary, while it remains the subject of debate, potential of commercial surrogacy to amount to sale of children is not the subject of this report as there is a clear distinction between sale of children and human trafficking (most notably the exploitation intent on part of the intended parents). Nevertheless, it is important to note these relevant debates and views in the process of implementation of commercial surrogacy practices in order to ensure their compliance with the Verona Principles' standards (where these practices are allowed).

1.3.2. The UN Special Rapporteur's reports

The 2018 report

In her 2018 report, the former UN Special Rapporteur on the sale of children, child prostitution and child pornography noted that, in the CRC's Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, the definition of the sale of children has three components: (1) remuneration or any other consideration, that is payment; (2) transfer of a child; and (3) the exchange of payment for the transfer of a child.³³ Such a definition led the Special Rapporteur to be particularly concerned with commercial surrogacy arrangements in which the surrogate is contractually obligated to hand over the child, physically and legally, to the intended parents.³⁴ In these circumstances it is clear that the surrogate entered an arrangement to provide a child for the intended parents in exchange for payment.³⁵ However, the former UN Special Rapporteur recommended regulating altruistic surrogacy to avoid any reimbursements made to surrogates and intermediaries, such as surrogacy organisations, because they blurred the line between altruistic and commercial arrangements.³⁶

The former Special Rapporteur stated that, in international law, the 'sale of children' requires, in all cases, that the surrogate is the child's legal parent at birth. This recommendation applies to commercial and altruistic surrogacy arrangements. If the surrogate wishes for the intended parents to raise the child, an application should be made to the court after birth to determine whether this arrangement would be in the child's best interests.³⁷ However, the Special Rapporteur arguably clarified her stance later by endorsing the Verona Principles, which explicitly allow commercial surrogacy under certain strict conditions. More on this follows below.

³² Smolin, D., & Boer-Buquicchio, M. d. (2024). "Chapter 5: Surrogacy, intermediaries, and the sale of children". In Research Handbook on Surrogacy and the Law. Cheltenham, UK: Edward Elgar Publishing. Retrieved Oct 16, 2025, from <https://doi.org/10.4337/9781802207651.00010>

³³ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (January 2018), A/HRC/37/60 para 42

³⁴ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (January 2018), A/HRC/37/60 paras 47 to 51

³⁵ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), <https://lawcom.gov.uk/project/surrogacy/> (p. 82) (accessed on 30 September 2025)

³⁶ Idem

³⁷ M de Boer-Buquicchio, Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (January 2018), A/HRC/37/60 para 71

The 2025 report

In her 2025 report³⁸, the UN Special Rapporteur on violence against women and girls, Reem Alsalem, examined the violence and human rights violations associated with surrogacy. She highlighted that surrogacy - particularly in its commercial form - often involves the sale of children and the exploitation of women and girls. The report emphasized that commercial surrogacy arrangements typically include three key components: (1) remuneration or other consideration (payment); (2) the transfer of a child from the surrogate to the intended parents; and (3) the exchange of payment for the transfer of the child.

The Special Rapporteur expressed particular concern about the commodification of women's bodies and the objectification of children in surrogacy arrangements. She noted that surrogates, often from economically vulnerable backgrounds, are contractually obligated to hand over the child to the intended parents, both physically and legally. This dynamic raises serious questions about consent, exploitation, and human rights violations, as the surrogate's role is reduced to a reproductive service provider in exchange for payment.

The report also addressed altruistic surrogacy, warning that even in these cases, reimbursements to surrogates and intermediaries - such as surrogacy agencies - can blur the line between altruistic and commercial arrangements. The Special Rapporteur underscored that true altruism should not involve financial incentives that could coerce or exploit women, particularly those in precarious economic situations.

In line with international human rights standards, the Special Rapporteur reiterated that legal parentage should be attributed to the birth mother at the time of birth. If the surrogate wishes for the intended parents to raise the child, she recommended that parental rights should only be transferred after birth, through a judicial process, to ensure the arrangement aligns with the best interests of the child. This approach aims to prevent the automatic commodification of children and protect the rights of both the surrogate and the child.

However, the report criticized existing regulatory frameworks for failing to adequately address the exploitation and violence inherent in surrogacy. It called for stronger protections for women and children, including legal recognition of the birth mother, access to justice, and measures to prevent trafficking and abuse. The Special Rapporteur ultimately recommended the abolition of commercial surrogacy and the adoption of strict regulations to prevent human rights violations in all surrogacy arrangements.

1.3.3. The Verona Principles

In line with its mandate to assist children and families confronted with complex social problems as a result of migration, the INGO International Social Service (ISS) conducted a consultation process resulting in the Verona Principles for the protection of the rights of the child born through surrogacy.³⁹ These principles were later endorsed by the UN Special Rapporteur on the sale of children, child prostitution and child pornography⁴⁰ and the UN Committee on the Rights of the Child.⁴¹ The principles establish a

³⁸ United Nations General Assembly. (2025). Report of the Special Rapporteur on violence against women and girls, its causes and consequences: The different manifestations of violence against women and girls in the context of surrogacy (A/80/158). <https://undocs.org/A/80/158>

³⁹ See website here: <https://iss-ssi.org/surrogacy/>

⁴⁰ Idem

⁴¹ See here: https://bettercarenetwork.org/sites/default/files/2021-03/VeronaPrinciples_25February2021.pdf

comprehensive framework for regulating surrogacy and envisage conferring legal parental status on the intended parents at birth, without the need for a post-birth best interests assessment, if: (1) the surrogate confirms consent post-birth; (2) the parties have complied with pre-conception safeguards; (3) there is no conflict between the surrogate and the intended parents with regard to legal parental status or parental responsibility/ parental rights and responsibilities; and (4) there are no unforeseen developments, for example, relating to any party's ability to care for the child, or relating to child sale or trafficking.⁴²

The principles also permit commercial surrogacy if those States that permit it shall ensure, at a minimum, that all payments are separate from the determination or transfer of legal parentage and parental responsibility. Measures should include that: **a.** the surrogate mother at birth retains the right to decide whether or not to consent to transfer of legal parentage and parental responsibility; **b.** any remuneration or any other consideration provided to the surrogate mother (or anyone on her behalf) be made in advance of any post-birth transfer of legal parentage and parental responsibility to the intending parent(s) or post-birth confirmation of the surrogate mother's consent, and be non-refundable (absent fraud); **c.** all payments and reimbursements are reported and properly regulated by law; and **d.** intermediaries are properly regulated by law.⁴³

1.3.4. The Hague Conference's work on international surrogacy arrangements

Pursuant to a mandate from its Members, the Permanent Bureau of the Hague Conference on Private International Law (HCCH) is currently studying the issues of private international law encountered in relation to the legal parentage of children, as well as in relation to international surrogacy arrangements more specifically.⁴⁴

The HCCH has produced various notes and reports on the issues arising from international surrogacy arrangements, in an attempt to find a workable compromise between the positions taken in different states.⁴⁵ In its 2014 Report, it admitted that work in this area would be difficult given the diverse approach of States to questions concerning legal parentage in internal and private international law, as well as the difficult questions of public policy raised in an area traditionally connected with States' cultural and social milieu.⁴⁶

In 2015, the Hague Conference convened an Experts' Group on parentage and surrogacy. The group submitted its final report (the "Experts' Group final report") in November 2022. Following an approach it had proposed in 2018, it considered the feasibility of two separate private international law instruments on legal parentage, a convention dealing with legal parentage in general, and an optional protocol dealing with legal parentage established as a result of an international surrogacy arrangement. In respect of international surrogacy arrangements, the Experts' Group final report concluded that: "...in order to respect the policy concerns of many States, as well as the various approaches to surrogacy globally, the most feasible way forward would be to exclude legal parentage resulting from ISAs [international

⁴² International Social Service, Verona Principles (February 2021) paras 10.6 and 10.7.

⁴³ International Social Service, Verona Principles (February 2021) para 14.7.

⁴⁴ See website of the project here: <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>

⁴⁵ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), link: <https://lawcom.gov.uk/project/surrogacy/> (p. 74-77) (accessed on 30 September 2025)

⁴⁶ Idem

surrogacy arrangements] from the scope of an instrument on legal parentage generally (a Convention) and address such legal parentage in a separate instrument (a Protocol).⁴⁷

The final report of the Experts' Group noted that it had discussed various safeguards and standards for an optional protocol dealing with international surrogacy arrangements, including consent of the surrogate and intended parents, a requirement of a genetic link, the eligibility and suitability of the surrogate and intended parents, and regulation of the financial aspects of the arrangement.⁴⁸ In that respect, one of the standards discussed to mitigate the risks of human trafficking in surrogacy was to implement the guidelines outlined in UNICEF's paper on children's rights and surrogacy, which specifically required that contractual provisions purporting to determine definitive legal parentage or parental responsibility pre-birth should not be enforceable.⁴⁹ Another was to invoke the safeguards endorsed by the UN Special Rapporteur, as described above.⁵⁰ The final report concluded that: "There was general agreement that to be feasible, a Protocol would need to include safeguards/standards." However, with respect to overall feasibility, experts had different views on:

- which safeguards/standards to include;
- how safeguards/standards should be included (i.e. as part of a definition, as conditions for recognition, as grounds for refusal, as general obligations, with an opt-in or opt-out mechanism, or through a declaration procedure); and
- how these should feature, either (i) as uniform safeguards/standards directly included in a Protocol or (ii) as State-specific safeguards/standards included indirectly in a Protocol (i.e. safeguards/standards applicable in the domestic law of the State of establishment of legal parentage).

Experts acknowledged that safeguards/standards represent a challenge. Notwithstanding this, most of them considered that having uniform safeguards/standards is the best way to guarantee the protection of the human rights of the child and the persons concerned. Others considered that State-specific safeguards/standards would be preferable as they would give States flexibility to decide whether another State Party's legal framework was robust enough to allow them to apply a Protocol with that State.⁵¹

In respect of domestic surrogacy arrangements, the Experts' Group agreed that it would be desirable to include legal parentage established as a result of a domestic surrogacy arrangement in the scope of either a Convention or (as proposed for international surrogacy arrangements) a Protocol. It considered that further discussion would be needed to determine the type of instrument in which legal parentage as a result of domestic surrogacy should be included. The Group also concluded that further discussion would be needed on whether such legal parentage should be dealt with in a chapter of the proposed Convention or in rules that were separate from those dealing with children who were not born of surrogacy arrangements, noting that such an approach risks being discriminatory towards those born of surrogacy

⁴⁷ Idem

⁴⁸ Idem

⁴⁹ UNICEF and Child Identity Protection Briefing Note, Key Considerations: Children's Rights and Surrogacy, February 2022 available at <https://www.unicef.org/media/115331/file> (last visited 30 September 2025)

⁵⁰ Hague Conference on Private International Law Experts Group on the Parentage / Surrogacy project, Final Report: The feasibility of one or more private international law instruments on legal parentage, 1 November 2022. Available at <https://assets.hcch.net/docs/6d8eeb81-ef67-4b21-be42-f7261d0cfa52.pdf> (last visited 30 September 2025) (see footnote 64).

⁵¹ United Kingdom, Law Commission and Scottish Law commission, 2023, Building families through surrogacy: a new law the Full Report (Volume II), <https://lawcom.gov.uk/project/surrogacy/> (p. 74-77) (accessed on 30 September 2025)

arrangements. The final report noted that favouring either one of these options might have an impact on the overall feasibility of both instruments.

Finally, the Experts' Group report recommended that the Council on General Affairs and Policy (CGAP) consider establishing a working group to further inform policy considerations and decisions in relation to the scope, content and approach of any Convention, and any Protocol on international surrogacy arrangements. Any such working group should proceed on the basis that the aim of any new instrument would be to provide greater predictability, certainty and continuity of legal parentage in international situations for all persons concerned, taking into account their human rights including, for children, those enshrined in the UNCRC and in particular the right that their best interests be a primary consideration in all actions taken concerning them. The Experts' Group did not discuss the issue of exploitation in relation to domestic surrogacy or international surrogacy arrangements.

1.3.5. The jurisprudence of the ECtHR

Because the recognition of parenthood in surrogacy arrangements is a controversial issue lacking consensus among Council of Europe Member States, the European Court of Human Rights (ECtHR) has faced considerable challenges in adjudicating cases. The Court's evolving jurisprudence reflects a nuanced balancing act between individual rights under Article 8 of the European Convention on Human Rights (ECHR) and legitimate public policy objectives pursued by States – such as safeguarding public order, preventing human trafficking, and/or protecting the health and rights of women and children.

The ECtHR's approach has gradually shifted towards a more child-centred and context-sensitive understanding of legal parentage, particularly where biological ties exist or where an intended parent has assumed de facto parental responsibilities. At the same time, the Court affirms that States retain a margin of appreciation in determining the means by which legal recognition is granted. This margin, however, narrows at the point at which a child's identity and family life are directly impacted. Ultimately, the Court's case law underscores the primacy of the best interests of the child, the need for procedural efficiency, and the requirement that domestic legal frameworks provide realistic pathways to legal recognition. In that sense, one can observe the following conclusions in Table 1 below:

Table 1: Key principles from the ECtHR's rulings on surrogacy

Case	Key Principles or Findings
C v. Italy (2023, § 68) ⁵²	Legal procedures for establishing the parent-child relationship between the biological parent and the child born via surrogacy abroad must be focused on the best interests of the child, free from excessive formalism, and capable of achieving this interest independently of procedural defects. Domestic courts must assist by

⁵² Council of Europe, European Court of Human Rights (2023). C v. Italy, § 68. <https://hudoc.echr.coe.int/eng?i=001-226391> (retrieved on 20 April 2025)

	indicating legally viable solutions, regardless of the parties' procedural positions.
A.M. v. Norway (2022, §§ 110–111) ⁵³	If family life is not established, the private life limb of Article 8 may nevertheless be engaged. The Court recognised that interference with this right may occur in cases involving refusal of adoption, especially where the intended parent has assumed a parental role.
K.K. and Others v. Denmark (2022, §§ 74–77) ⁵⁴	Where a child born through surrogacy abroad has a de facto relationship with the intended mother designated as the legal mother abroad, the child's right to private life under Article 8 requires that domestic law provide a means of recognising that relationship.
H. v. the United Kingdom (2022, §§ 54–56) ⁵⁵	A legal presumption that the woman who carried the child is the legal mother and, if she is married, that her husband is the father falls within the State's wide margin of appreciation. Article 8 does not require that the biological father be listed on the birth certificate at birth.
D.B. and Others v. Switzerland (2022, § 89) ⁵⁶	Proceedings concerning the legal relationship between intended parents and a child born via surrogacy must be conducted with exceptional diligence to avoid the determination of legal issues on the basis of a fait accompli.
A.L. v. France (2022, §§ 52, 54) ⁵⁷	The best interests of the child are paramount. Legal proceedings on the recognition of parentage in surrogacy arrangements must be handled with exceptional diligence to prevent decisions based on a fait accompli.
S.-H. v. Poland (2021, §§ 73-77) ⁵⁸	Refusal to grant citizenship to children born through a surrogacy arrangement abroad was upheld. The decision reflects the State's discretion in citizenship matters and did not breach Article 8.

⁵³ Council of Europe, European Court of Human Rights (2022). A.M. v. Norway, no. §§ 110–111.

<https://hudoc.echr.coe.int/fre?i=001-216348> (retrieved on 20 April 2025)

⁵⁴ Council of Europe, European Court of Human Rights (2022). K.K. and Others v. Denmark, n, §§ 74–77.

<https://hudoc.echr.coe.int/fre?i=001-221261> (retrieved on 20 April 2025)

⁵⁵ Council of Europe, European Court of Human Rights (2022). H. v. the United Kingdom (dec.), §§ 54–56.

<https://hudoc.echr.coe.int/eng?i=001-218220> (retrieved on 20 April 2025)

⁵⁶ Council of Europe, European Court of Human Rights (2022). D.B. and Others v. Switzerland,

<https://hudoc.echr.coe.int/fre?i=001-220955> (retrieved on 20 April 2025)

⁵⁷ Council of Europe, European Court of Human Rights (2022). A.L. v. France, <https://hudoc.echr.coe.int/eng?i=001-216632> (retrieved on 20 April 2025)

⁵⁸ Council of Europe, European Court of Human Rights (2021). S.-H. v. Poland (dec.), <https://hudoc.echr.coe.int/eng?i=001-214296> (retrieved on 20 April 2025)

Valdís Fjölvisdóttir and Others v. Iceland (2021, §§ 59–62, 65, 75) ⁵⁹	The Court examined whether family life existed by assessing emotional ties, length of the relationship, and legal certainty. It acknowledged a wide margin of appreciation due to lack of European consensus on surrogacy. It evaluated the practical hindrances in the enjoyment of family life and the measures taken by the State to regularise the family bond.
D. v. France (2020, §§ 63–72) ⁶⁰	The obligation for a genetic mother to adopt her child born via surrogacy abroad, in order to obtain legal recognition, does not violate Article 8. This approach is consistent with the principles in Mennesson v. France and the 2019 Advisory Opinion.
C. and E. v. France (2019, § 43) ⁶¹	It would not impose an excessive burden on children born through surrogacy abroad to require the intended mother to initiate adoption proceedings in order to be recognised as the legal mother.
Advisory Opinion No. P16-2018-001 (2019, §§ 36–38, 37–46, 43–44, 51–55) ⁶²	Where a de facto parent-child relationship exists, Article 8 requires States to provide a possibility for legal recognition of the intended mother. This recognition must be prompt and efficient. The choice of the means remains within the margin of appreciation, but the procedures must be capable of producing a result without excessive delays.
Paradiso and Campanelli v. Italy [GC] (2017, §§ 147–158, 161–165, 203–215) ⁶³	Surrogacy may raise serious public interest concerns such as human trafficking and unlawful adoption. In the absence of biological links and in breach of domestic law, the permanent removal of the child from intended parents was considered proportionate and within the State's margin of appreciation.
D. and Others v. Belgium (2014, §§ 49, 58–59, 63) ⁶⁴	Family life may exist based on emotional ties and cohabitation even without biological links. The temporary delay in authorising the child's travel to verify the family relationship was justified under the State's margin of appreciation.

⁵⁹ Council of Europe, European Court of Human Rights (2021). Valdís Fjölvisdóttir and Others v. Iceland, <https://hudoc.echr.coe.int/fre?i=001-209992> (retrieved on 20 April 2025)

⁶⁰ Council of Europe, European Court of Human Rights (2020). D. v. France, <https://hudoc.echr.coe.int/eng?i=001-203565> (retrieved on 20 April 2025)

⁶¹ Council of Europe, European Court of Human Rights (2019). C. and E. v. France (dec.), <https://hudoc.echr.coe.int/eng?i=001-216707> (retrieved on 20 April 2025)

⁶² Council of Europe, European Court of Human Rights (2019). Advisory Opinion No. P16-2018-001, <https://hudoc.echr.coe.int/fre?i=003-6380464-8364383> (retrieved on 20 April 2025)

⁶³ Council of Europe, European Court of Human Rights (2017). Paradiso and Campanelli v. Italy [GC], <https://hudoc.echr.coe.int/eng?i=001-170359> (retrieved on 20 April 2025)

⁶⁴ Council of Europe, European Court of Human Rights (2014). D. and Others v. Belgium (dec.), <https://hudoc.echr.coe.int/eng?i=001-155182> (retrieved on 20 April 2025)

Labassee v. France (2014, §§ 54, 56–59) ⁶⁵	There is no European consensus on surrogacy, granting States a wide margin of appreciation. However, the margin narrows where the lack of recognition interferes with the child’s identity and family ties under Article 8.
Mennesson v. France (2014, §§ 62, 77–80, 97–100) ⁶⁶	Refusal to recognise a parent-child relationship established abroad may serve legitimate aims such as protecting health and the rights of others. However, Article 8 requires that domestic law provide a possibility for recognising the legal relationship where the intended father is the biological father. Failure to do so violates the child’s private life.

2. Comparative Analysis

2.1. The general legal landscape

When assessing Europe’s legal and policy framework in relation to surrogacy, it can be observed that nine out of 38 countries have a specific legal act regulating surrogacy in a detailed manner. Of the other 29 countries, 24 have some form of criminal provision against surrogacy,⁶⁷ meaning that five of the observed countries have neither a criminal prohibition nor a distinct legal act regulating surrogacy in a more detailed manner.⁶⁸ In this latter group of countries, four have no prohibition of surrogacy whatsoever (even as a misdemeanour), leaving surrogacy completely within the remit of civil law or the interpretation of other criminal acts.⁶⁹

What is also important to note is that, out of the 24 European countries that criminalise surrogacy, only 10 of them criminalise the actions of the involved parties (the intended parents and/or the surrogate mother) at the national level⁷⁰ and almost none prohibits international surrogacy arrangements. The only outlier is Italy, which is the only country that criminalizes engaging in surrogacy agreements abroad and at home, as of October 2024.⁷¹

2.2. States with surrogacy-specific laws

Of the nine countries that have distinct legal acts regulating surrogacy (Cyprus, Greece, Ireland, Albania, North Macedonia, Belarus, the United Kingdom, Denmark and Ukraine), some have put the following

⁶⁵ Council of Europe, European Court of Human Rights (2014). Labassee v. France, <https://hudoc.echr.coe.int/eng?i=001-145180> (retrieved on 20 April 2025)

⁶⁶ Council of Europe, European Court of Human Rights (2014). Mennesson v. France, <https://hudoc.echr.coe.int/eng?i=001-145389> (retrieved on 20 April 2025)

⁶⁷ Austria, Bulgaria, Croatia, Czechia, Slovakia, Estonia, Finland, France, Germany, Hungary, Italy, Malta, Netherlands, Portugal, Romania, Slovenia, Spain, Sweden, Serbia, Turkey, Bosnia, Montenegro, Moldova, Switzerland

⁶⁸ Belgium, Latvia, Lithuania, Luxembourg, Poland

⁶⁹ Belgium, Luxembourg, Poland

⁷⁰ Croatia, Slovakia, Estonia, Finland, France, Hungary, Italy, Malta, Slovenia, Spain

⁷¹ see this report : <https://www.giurisprudenzapenale.com/2024/10/17/maternita-surrogata-il-senato-ha-approvato-in-via-definitiva-il-ddl/>

conditions in place: 1) surrogacy is limited to altruistic arrangements (except in Ukraine and Belarus, where commercial surrogacy is also allowed); 2) intended parents are typically required to demonstrate medical necessity; 3) surrogates must usually meet strict criteria relating to their individual circumstances, with common requirements including prior childbirth, falling within a specified age range, and passing health assessments; 4) legal parentage is often transferred post-birth through court orders or contracts, with half of the systems allowing the surrogate a window to withdraw consent (Greece, Cyprus, the United Kingdom, and Ireland).

It is also important to note that, while Greece and Cyprus do not allow commercial surrogacy, their understanding of profit in that regard differs from that of the United Kingdom and Ireland. This is because both Greece and Cyprus entitle the surrogate mother to receive compensation for lost earnings during an employment break taken in order to meet surrogacy obligations (i.e. to reduce physical and mental stress for the benefit of the child), which means refraining from working during certain periods. From this, one can conclude that Greece and Cyprus seem to recognize surrogacy as labour.

While, in general, sources on the judicial implementation of these laws are scarce, a valuable study of some 250 cases in Greece can be used to see how these systems operate (or can operate) in practice. A review of 256 court decisions from 2003 to 2017 shows that Greek courts strictly enforced safeguards to prevent abuse.⁷² The study shows that:⁷³

- Surrogacy was allowed only as a last resort, requiring proof of medical necessity and a court order.
- Residency requirements for intended parents prevented surrogacy tourism, while most surrogates were foreign-born women living in Greece, often in low-income jobs.
- Applications falling outside these strict criteria, such as cases involving intended mothers who already had one child, were denied. Courts were particularly cautious when surrogates had prior employment or dependent relationships with the intended parents, to guard against coercion. Overall, Greece's approach is narrowly focused on preventing exploitation, limiting surrogacy to cases of absolute infertility, and ensuring it remains non-commercial.

2.3. Recognition of international surrogacy arrangements

Despite the differences noted above, most of the countries examined have mechanisms in place to recognize international surrogacy arrangements. Twenty-five allow recognition of intended parenthood established via surrogacy arrangements abroad, often through the recognition of foreign birth certificates.⁷⁴ Six countries distinguish between an intended father who is also genetically connected to a child born out of an international surrogacy agreement, and its intended mother. These countries⁷⁵ do so by allowing direct recognition of the intended father as a parent, while requiring the intended mother to

⁷² Παβδάς, Παντελής. "Surrogate motherhood in Greece: Statistical data derived from court decisions." *Bioethica* 3, no. 2 (2017): 39-58. , link: <https://ejournals.epublishing.ekt.gr/index.php/bioethica/article/download/19723/17249> (conclusions) (accessed on 30 September 2025)

⁷³ Παβδάς, Παντελής. "Surrogate motherhood in Greece: Statistical data derived from court decisions." *Bioethica* 3, no. 2 (2017): 39-58. , link: <https://ejournals.epublishing.ekt.gr/index.php/bioethica/article/download/19723/17249> (conclusions) (accessed on 30 September 2025)

⁷⁴ Cyprus, France, Greece, Hungary, Ireland, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Sweden, Serbia, Turkey, Bosnia, Albania, Montenegro, North Macedonia, Moldova, Belarus, United Kingdom, Ukraine, Germany, Switzerland

⁷⁵ Austria, Belgium, Bulgaria, Czechia, Slovakia, Finland

establish her legal parenthood through adoption. The remaining seven countries⁷⁶ require both intended parents to pursue adoption procedures, regardless of whether they have a genetic link to the child.

This relative uniformity arguably stems from ECtHR case law, which obliges Member States to at least allow adoption as a means to recognise parenthood, thus prioritizing the child's best interests over restrictive domestic surrogacy policies. However, the ECtHR has also accepted a wide margin of appreciation on the part of States in this matter, accepting that recognition may be limited to cases in which the intended father has a genetic link to the child. This wide margin of appreciation is also seen in the specific requirements around international surrogacy laid down by several of the observed countries. For instance, Ireland requires a two-step process for international surrogacy: pre-conception approval by the Assisted Human Reproduction Regulatory Authority (AHRRA) and a post-birth court order. In the Netherlands, recognition of foreign surrogacy requires case-by-case court proceedings, often involving DNA testing and Child Protection Council approval. As of 2024, courts in France may recognize the parenthood of both the intended mother and father, even without genetic links, if surrogacy was court-validated abroad and safeguards around consent and fraud were satisfied. Although domestic surrogacy is illegal in Germany, it allows recognition of international surrogacy arrangements as long as one intended parent is genetically linked to the child and there is judicial oversight in the country where the surrogacy was carried out. As the ECtHR has also accepted the removal of a child from non-genetically-related intended parents, it appears that the margin of appreciation for Member States is wide beyond this core tenet: where at least one intended parent is genetically connected to the child (usually the father), States are obliged to provide the intended parents with a pathway to adoption that enables them and the child born out of surrogacy abroad to realise their Article 8 ECHR rights.

2.4. Exploitation of surrogacy as THB

Finally, before the recast anti-Trafficking Directive was adopted, only one European country (Moldova) had included the exploitation of surrogacy (exploitation of surrogate mothers) in its criminal law on human trafficking.

This seems to be a consequence of the fact that very limited data or case law is available on trafficking for the exploitation of surrogacy. Specialised national data providers such as National Rapporteurs have practically no data and nor do relevant bodies operating at the European level, including the EU ATC, Europol and Eurojust. As defined in EU law, surrogacy becomes human trafficking if all three constitutive elements of the human trafficking definition (offence) are present, including the means criterion.

In terms of the case law identified in the research, the most analytically valuable information comes from six verdicts from Ukrainian courts reached between 2022 and 2024. These verdicts exposed a trafficking scheme involving four clinics that used commercial surrogacy as a cover. Vulnerable women were recruited under false pretences and promised fair compensation, only to be later subjected to coercion and deception. The women were not initially told that the clinics' clients were mainly same-sex couples from abroad – such couples are not allowed to enter into surrogacy arrangements under Ukrainian law. Once this information became known, however, the women were coerced into continuing with the arrangement under threat of being exposed for participating in an unlawful practice. This scheme involved

⁷⁶ Croatia, Estonia, Italy, Lithuania, Malta, Poland, Romania, Bulgaria, Serbia

at least 25 foreign clients, mainly from France, Italy, and Germany. Furthermore, clients paid large sums, yet the women were paid very little in comparison, indicating an exploitative situation. Their payments were also often significantly delayed, making them more likely to comply with the ringleaders' demands out of financial desperation.

Courts confirmed that all three elements of human trafficking under the EU Directive were present. Still, it is important to put these cases into context – the number of formally recognized victims was small in relation to Ukraine's estimated 2,000 to 4,000 surrogacy births per year, indicating that such cases are the exception rather than the norm. The overall share of these clinics in the total estimated number of surrogacies in Ukraine was less than 3 per cent. Even if the majority of surrogate mothers involved in arrangements in one of these four clinics had been exposed to THB for the exploitation of surrogacy, such cases would still represent the exception rather than the norm. More details on this group of cases is available in [ANNEX 1 of this study](#).

Elsewhere in Europe, a similarly limited number of cases and related patterns have emerged. In Greece, a 2023 case involving an international criminal network led to multiple arrests, but the prosecution stalled due to difficulties proving coercion, as many of the women involved seem to have testified to their voluntary engagement in the arrangements.⁷⁷ Bulgaria extradited suspects linked to this case. In Portugal, a pending case involves a Brazilian woman who agreed to give up her baby in exchange for financial support; trafficking charges were filed, but proceedings are delayed.

Taken together, these cases show that, while trafficking for the exploitation of surrogacy can occur, it remains relatively rare and legally complex. This could be partially ascribed to the fact that the practice of surrogacy is inherently complex and demands the participation of many actors, including qualified professionals with their own professional standards. It is therefore highly relevant that all the countries studied in which surrogacy is allowed impose several safeguards around these arrangements – it appears that these safeguards are indeed having a positive impact, at least to the extent of preventing exploitation of surrogacy reaching the human trafficking end of the continuum of exploitation. Such a conclusion is further supported by the finding that, where cases of trafficking for exploitation of surrogacy did occur, they revolved around ambiguous consent, misuse of legal loopholes, fraudulent documentation, deception of clinic staff, and procedures that took place outside of recognized and regulated regimes (as was the case in Ukraine, for example) – rather than the clear-cut coercion typically associated with trafficking offences. Prosecuting such cases under anti-trafficking frameworks has therefore proven difficult.

3. Conclusion

The central questions posed by this report are: under what circumstances does the exploitation of a surrogacy arrangement meet the definition of human trafficking, and how often has that situation occurred across the 38 observed countries?

⁷⁷ Eurojust, 2024. Focus Group of Specialised Prosecutors against Trafficking in Human Beings. (2024, June 26–27). *Outcome report of the 3rd meeting of the Focus Group of Specialised Prosecutors against Trafficking in Human Beings*. Eurojust. <https://www.eurojust.europa.eu/publication/focus-group-specialised-prosecutors-against-human-trafficking-outcome-report-3rd> (p. 4, last accessed on 30 September 2025)

Based on the international UN definition (the Palermo Protocol) – upon which the EU human trafficking definition is based – trafficking in human beings requires three elements: an act (such as recruitment or transfer), by certain means (coercion, fraud, abuse of vulnerability, etc.), for the purpose of exploitation. Our study shows that, across the countries examined, most surrogacy situations do **not** satisfy these criteria, seeing how in a typical regulated surrogacy, the surrogate mother consents and is not coerced, and the intended parents plan to raise the child (not to exploit the child).

Thus, the essential elements needed to prove severe exploitation or the crime of human trafficking are absent. Indeed, the vast majority of legal cases around surrogacy in Europe have been civil cases – dealing with contract enforcement, parental rights, or citizenship of children – rather than criminal matters. These civil disputes, and multiple rulings by the ECtHR,⁷⁸ reinforce the assertion that surrogacy itself is not equivalent to trafficking in human beings.

Only in exceptional, severely exploitative cases can surrogacy cross into human trafficking. Such scenarios include forced surrogacy (women being trafficked for the purpose of bearing children) or schemes tantamount to the selling of children (trafficking in infants for adoption or profit). These are very rare, and the eleven cases found related to such practices are presented above.

This leads us to conclude that, although the inclusion of trafficking for the exploitation of surrogacy in the EU Trafficking Directive suggests it is a grave and prevalent issue, current evidence does not support this premise, although the possibility that it may be an emerging crime should not be ignored. However, our research identified only eleven trafficking cases involving surrogacy across 38 European countries over the past decade, and most surrogacy-related court decisions focus on issues of legal parenthood. It can therefore be concluded that surrogacy is not inherently exploitative; it becomes a trafficking concern only when it involves coercion or deception – situations that remain rare. With respect for the rights of all involved, clear legal safeguards, and the implementation of these safeguards through judicial oversight and consistent prosecution of those rare cases involving THB for exploitation of surrogacy, the practice can be ethically and safely undertaken.

We can also conclude that approaches to this issue by EU Member States are indeed highly varied. This is not only visible in current national legislation and policy but also confirmed by the fact that the amendments made by the 2024 Directive to Directive 2011/36/EU are without prejudice to existing national definitions of surrogacy, suggesting that a harmonized legal framework across Europe is unlikely. The core difficulty lies in establishing the point at which poor or irregular conditions cross the threshold into criminal exploitation. As with labour trafficking, surrogacy may exist on a continuum of exploitation, making it difficult for practitioners to consistently apply anti-trafficking laws. More detailed guidance and ongoing conversations among stakeholders will be essential to bring greater clarity and consistency to this evolving area of law.

In that respect, and in order to prevent potential abuse, states are encouraged to strengthen regulatory frameworks, for example by defining surrogacy in law, setting strict conditions for permissible arrangements, and improving cross-border cooperation to address illegal intermediaries. These

⁷⁸ For example, in cases like *Mennesson v. France* and *Paradiso & Campanelli v. Italy*, the ECtHR emphasized the child's best interests and stopped short of branding the surrogacy arrangements as human trafficking, even when the arrangements violated domestic law.

preventive steps can help ensure that surrogacy serves as a legitimate means of family formation. Particularly helpful in this regard are the Verona Principles outlined in subsection 1.3.3 above and the ECtHR established principles of ECHR implementation and interpretation outlined in subsection 1.3.5 above. Indeed, many of the countries observed have started implementing these safeguards within their procedures. For instance, Ireland mandates a two-step process: pre-conception approval by AHRRA and a post-birth court order. The Netherlands requires court proceedings for each case, including DNA testing and approval from the Child Protection Council. France, as of late 2024, permits recognition of both intended parents – even without genetic ties – if the foreign surrogacy was court-validated and safeguards such as consent and absence of fraud were complied with. Germany, despite domestic bans, recognize international surrogacy if one parent is genetically linked to the child and judicial oversight exists in the country in which the surrogacy occurred.

Safeguards such as these, coupled with closer international cooperation and coordination, have arguably already contributed to the low number of cases of trafficking for exploitation of surrogacy identified. For instance, the safeguards required by Germany appear to have had a positive impact on surrogacy practices taking place in Ukraine. As seen in [Annex 5](#) (sheet analysis), approximately two thirds of all the court cases we identified relating to surrogacy in Ukraine included court decisions validating arrangements in which the intending parents were from Germany. This is not just a strong indicator that many surrogacy arrangements taking place in Ukraine involve intended parents from Germany, but also that these sorts of safeguards succeed in ensuring that the vast majority of the clinics (more than 97 per cent) adhere to strict ethical standards. This conclusion is reinforced by the fact that the rare cases of THB for the exploitation of surrogacy in Ukraine identified as part of our research occurred in clinics operating within grey areas of the law.

Similarly, Greece and Cyprus have allowed surrogacy for a number of years, as has the United Kingdom. None of these countries have recorded any significant numbers of cases of THB for the exploitation of surrogacy. The case in Greece mentioned above, however, indicates that further guidance is needed as none of the surrogate or potential surrogate mothers involved in the scheme were willing to confirm their exploitation. While this scheme may not be fully compatible with the country's legal framework for surrogacy, it may not be on the human trafficking side of the continuum of exploitation either. This is exactly why further guidance and guidelines are required, as has been noted by Eurojust.⁷⁹ This study endeavours to contribute to these efforts, as will the follow-up study on the implementation of the Directive, once the two-year deadline for transposing of the Directive has lapsed.

⁷⁹ Eurojust. (2024, October 18). *Surrogacy and human trafficking*. European Union Agency for Criminal Justice Cooperation. <https://www.eurojust.europa.eu/publication/surrogacy-and-human-trafficking> (last accessed on 02.06.2025)

[ANNEX 1: THB-RELATED CASES](#)

[ANNEX 2: NON-THB-RELATED CASES](#)

[ANNEX 3: COUNTRY PROFILES](#)

[ANNEX 4: GENERAL OVERVIEW OF ALL STATES OBSERVED](#)

[ANNEX 5: DATABASE OF UKRAINIAN SURROGACY-RELATED CASES](#)