

SURROGACY ACROSS EUROPE: COMPARATIVE ANALYSIS OF THE LEGAL AND POLICY LANDSCAPE

How is current surrogacy legislation applied and connected with human trafficking?




Exploring Legal Frameworks, International Standards, and Their Implications

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Report Purpose

This report analyzes European countries' approaches to surrogacy, focusing on:




-  Criminalization of surrogacy at national level
-  Related policies and regulations
-  Connection to human trafficking

Timeline Context

Following the EU Anti-Trafficking Directive revision on 14 July 2024:

-  “exploitation of surrogacy” was included in human trafficking definition
-  Urgency of understanding this complex topic

Research Focus

-  How is surrogacy criminalized in national laws?
-  What policies exist for surrogacy regulation?
-  When does surrogacy constitute human trafficking?

Publication Context

Provides baseline analysis for EU member states to adjust laws before directive implementation

Research Methodology

Desktop Research

- ✓ Review of international materials and comparative analysis
- ✓ Search of national databases for domestic information
- ✓ Standardized search across all countries

Data Collection

- ✓ Internet and academic databases for national information
- ✓ GRETA reports from European Commission
- ✓ OHCHR special procedures website materials
- ✓ Review of national anti-trafficking reports

Research Limitations

Language Barriers

Non-English materials translated via Google Translate, potentially introducing bias and translation errors.

Definitional Ambiguities

Lack of clear definition for "exploitation of surrogacy" or "trafficking for exploitation of surrogacy" in most countries.

Judicial Decision Accessibility

Wide variations: Ukraine, Spain, Portugal have easily accessible judgments; Greece provides only partial summaries.



Directive Overview

Effective on **14 July 2024**, the revised EU Anti-Trafficking Directive explicitly includes "**exploitation for surrogacy**" in its definition of human trafficking, as a form of exploitation under Article 2(3) of the Directive.



Legal Inclusion

"exploitation for surrogacy" as a form of exploitation under Article 2(3)

- ✓ Specifically targets those who exploit women to act as surrogate mothers
- ✓ Requires criminalization of trafficking for surrogacy exploitation
- ✓ Applies the three elements of human trafficking: means, conduct, and purpose

What's Not Criminalized

The directive **does not** criminalize surrogacy itself.


Article 2(5) states that child trafficking should be punished even without coercive means, **except** for surrogacy exploitation.

This indicates that in surrogacy exploitation cases, the potential victims are the surrogate mothers, not the children.

Definition of Exploitation


"Surrogate exploitation" is listed as a form of exploitation under Article 2(3) of the directive.


The directive targets those who "coerce or deceive women to act as surrogate mothers."

 The directive focuses on the **coercive or deceptive elements** of surrogacy arrangements.

Member State Obligations

 Introduce specific criminal provisions or clarify existing ones

 Ensure alignment with the EU directive's definition

 Focus on identifying and protecting surrogate mothers



Implementation Challenges

 Lack of agreed definition of exploitation or surrogate exploitation

 Insufficient guidance for member states on implementation

 Limited political debate or stakeholder consultation during negotiations

CRC Article 35

"Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, sale or trafficking of children for any purpose or in any form."

Committee Position

- ✓ CRC Committee has not declared commercial surrogacy violates Article 35
- ✓ Committee acknowledges commercial surrogacy is not typically considered human trafficking


Key Concerns

- ⚠ Commercial surrogacy arrangements may lead to child trafficking
- ⚠ Particularly concerning when parental relationship is based on pre-conception or pre-birth contracts

Committee Recommendations

- ➡ Consider legislation to address child trafficking in surrogacy
- ➡ Focus on legal recognition of parent-child relationship after birth

Note: The Committee has not addressed whether these measures comply with Article 35.

 **Developed by:** International Social Service (ISS) to protect children's rights in surrogacy arrangements
Recognized by: UN Special Rapporteur and UN Committee on the Rights of the Child

Post-Birth Consent Framework

- ✓ Legal parentage transfer at birth if surrogate mother consents post-birth
- ✓ Surrogate retains right to veto legal parentage transfer
- ✓ No post-birth best interest assessment required if all parties agree

Commercial Surrogacy Regulations

- ✓ Commercial surrogacy allowed under certain conditions
- ✓ Separate legal and financial arrangements from legal parentage
- ✓ Prohibits payment for genetic material or egg donation

Key Safeguards

- ✓ Surrogate mother's right to decide whether to agree to legal parentage transfer
- ✓ Payments must be made post-birth and cannot be refunded (except in case of fraud)
- ✓ All payments and subsidies must be legally reported and regulated

Implementation Impact

- ✓ Mediation agencies must be legally regulated
- ✓ Child's best interests remain paramount consideration
- ✓ Procedural efficiency balanced with legal recognition needs

HCCH is researching international private law issues related to children's legal parentage in international and domestic surrogacy arrangements.

Expert Group Recommendations

November 2022 final report:

- ✓ Exclude international surrogacy arrangements from general legal parentage conventions
- ✓ Process in separate document (protocol)

Safeguard Measures

Expert group discussed various measures:

- ✓ Consent of parties
- ✓ Genetic links
- ✓ Financial regulation

Challenges

- Disagreements on which safeguards to include
- How to incorporate safeguards
- Domestic arrangements inclusion

Future Direction

Experts agree that:

- ✓ Uniform safeguards are best for protecting rights
- ✓ Child's best interests primary consideration

💡 **Key challenge:** Exploitation issues were not discussed in expert group sessions.

ECtHR's Approach to Surrogacy

The European Court of Human Rights faces significant challenges in surrogacy cases, balancing individual rights with state interests.

Individual Rights (Article 8)

- ✓ Right to respect for private life
- ✓ Protection of family relationships



Balance

Public Policy

- ✓ Maintaining public order
- ✓ Protection of women and children

ECtHR Judgments

- 🗨 Child-centered approach
- 🗨 Situational context consideration

Current Approach

- ↗ Shifting toward child's best interests
- ↗ State autonomy in legal recognition

The European Court of Human Rights has developed a nuanced approach to surrogacy cases, balancing respect for national legal frameworks with protection of children's rights.

ECtHR Key Principles



Child-Centered Approach

Increasing recognition of children's rights and best interests in legal parentage decisions.



Biological Connection

Greater weight given to biological ties between intended parent and child.



De Facto Parental Responsibility

Recognition of intended parents' role when they have assumed practical parental duties.

Notable Judgment

C v. Italy (2023, § 68)

Key Principles

- ✓ Prioritize child's best interests in legal procedures
- ✓ Avoid excessive formalism in legal recognition
- ✓ Domestic courts must provide legally viable solutions

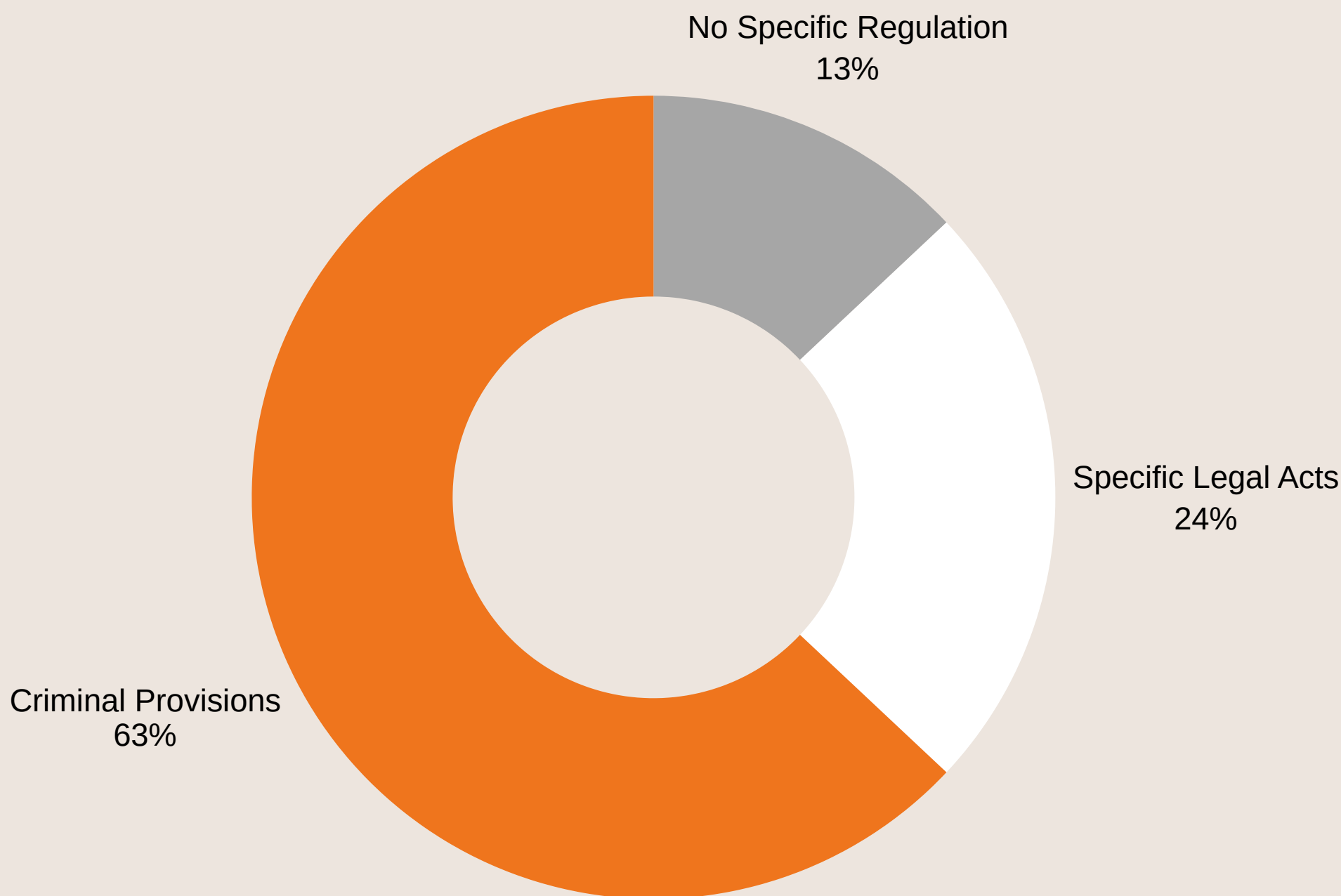
Significance

This judgment represents the Court's shift toward a more flexible approach to legal parentage in surrogacy cases, emphasizing the child's best interests while respecting national legal frameworks.

The ECtHR's evolving jurisprudence reflects a growing recognition of the complexity of surrogacy arrangements and a greater emphasis on protecting the rights of all parties involved.

European Legal Landscape: Regulatory Status

The legal approach to surrogacy varies significantly across European countries, with different regulatory frameworks implemented across the region.



 Based on analysis of 38 European countries



Specific Legal Acts Allowing Surrogacy (9 countries)

Detailed legal frameworks governing surrogacy arrangements



General Prohibition (24 countries)

Some form of civil law provision against surrogacy arrangements



No Specific Legal Acts (Tolerate) (5 countries)

Neither criminal prohibition nor distinct legal regulation



Italy's Extraterritorial Approach

Italy stands out as the only country that criminalizes engaging in surrogacy agreements both domestically and abroad, as of October 2024.

Countries with Specific Legal Acts Allowing Surrogacy Practices

9 out of 38 European countries (24%) have established specific legal acts governing surrogacy arrangements. These nations have developed detailed legal acts to regulate various aspects of surrogacy.

Regulated Countries



● Regulated (9)

● Other EU Countries (29)



Altruistic vs Commercial

Most regulated countries limit surrogacy to **altruistic arrangements**.



Exceptions: Ukraine and Belarus also permit **commercial surrogacy**.

Common Regulatory Conditions

In the 9 countries with distinct legal acts regulating surrogacy, several common conditions and requirements are observed:



Altruistic Arrangements

Surrogacy is generally limited to altruistic arrangements. Notable exceptions: Ukraine and Belarus, which also permit commercial surrogacy.



Medical Necessity

Intended parents typically required to demonstrate a medical necessity for surrogacy, ensuring it's pursued as a last resort when other reproductive options are not viable.



Surrogate Criteria

Surrogates must meet strict criteria: prior childbirth, specified age range, and comprehensive health assessments.



Legal Parentage Transfer

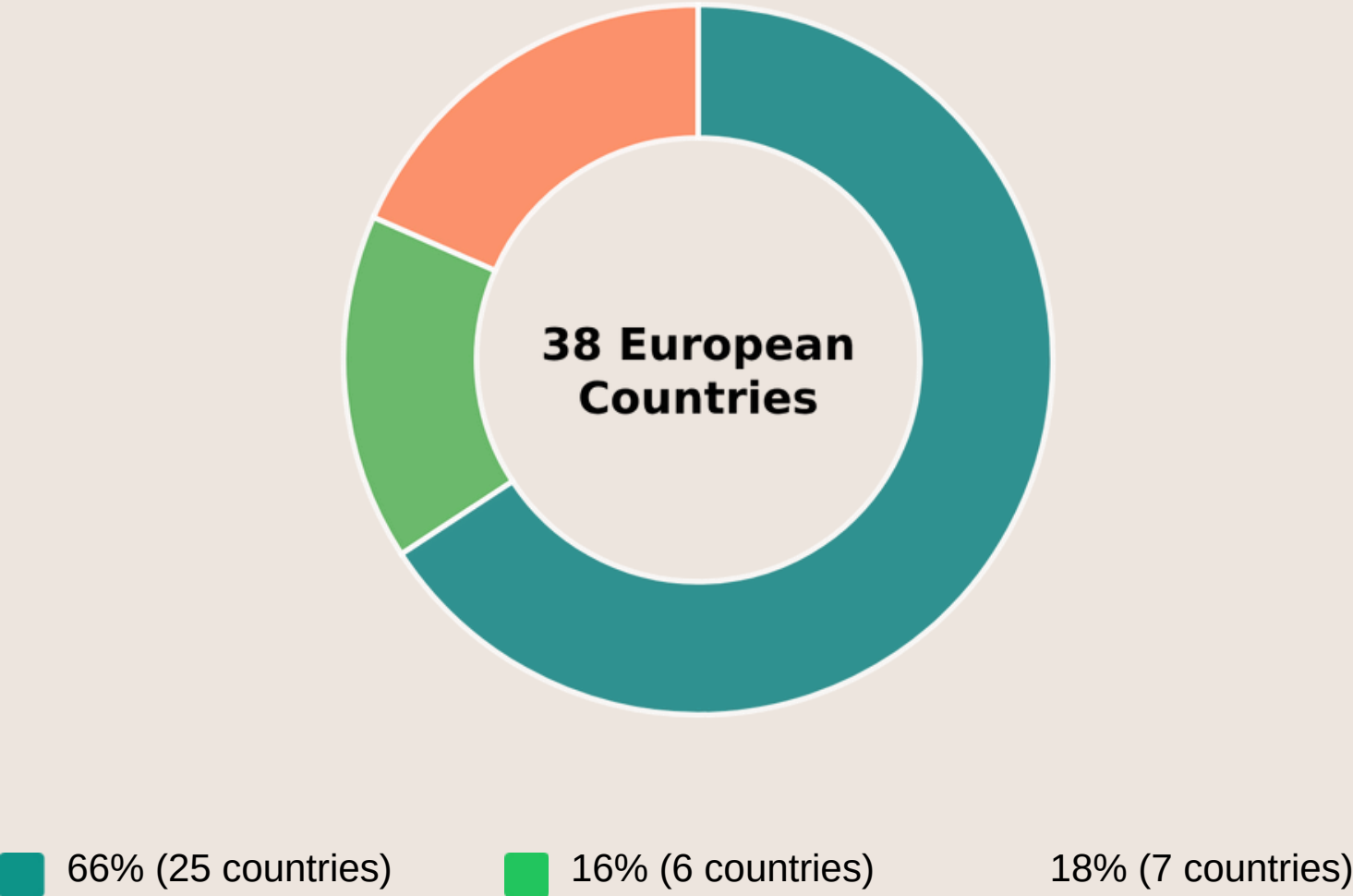
Legal parentage transferred post-birth. Notably, in 4 countries (Greece, Cyprus, UK, Ireland), surrogates can withdraw consent after birth.

Greece and Cyprus specifically entitle the surrogate mother to receive compensation for lost earnings, acknowledging surrogacy as a form of labor.



International Recognition: Overview

European countries adopt varied approaches to recognizing parenthood from international surrogacy arrangements:



General Recognition (66%)

25 countries allow recognition of intended parenthood established via surrogacy arrangements abroad, typically through recognition of foreign birth certificates.

Differentiated Recognition (16%)

6 countries distinguish between intended father (genetically connected) and intended mother, often allowing direct recognition of the father while requiring adoption for the mother.

Adoption Required for Both (18%)

7 countries mandate that both intended parents pursue adoption procedures to establish legal parenthood, regardless of genetic links.

Human Trafficking Concerns

While the topic of surrogacy can sometimes raise concerns about its potential link to human trafficking (THB), available data indicates that such instances are exceptional rather than the norm. Research across 38 European countries over the past decade identified only 11 trafficking cases involving surrogacy.

⚠️ Limited Cases

Only 11 trafficking cases identified across 38 European countries over a decade

📉 Inconsequential

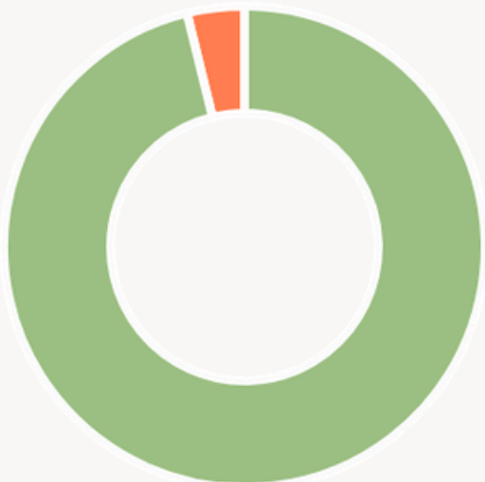
Even in Ukraine, where most cases were registered, these cases represent less than 0.01% of the estimated 2,000-4,000 surrogacy births annually in Ukraine

⚖️ Vast Majority

The vast majority of surrogacy arrangements in Europe do not involve human trafficking

🇺🇦 Notable Case: Ukraine (2022-2024)

- 🔍 Six verdicts exposed a trafficking scheme
- 🏠 Four clinics used commercial surrogacy as a cover
- 👥 Implicated at least 25 foreign clients



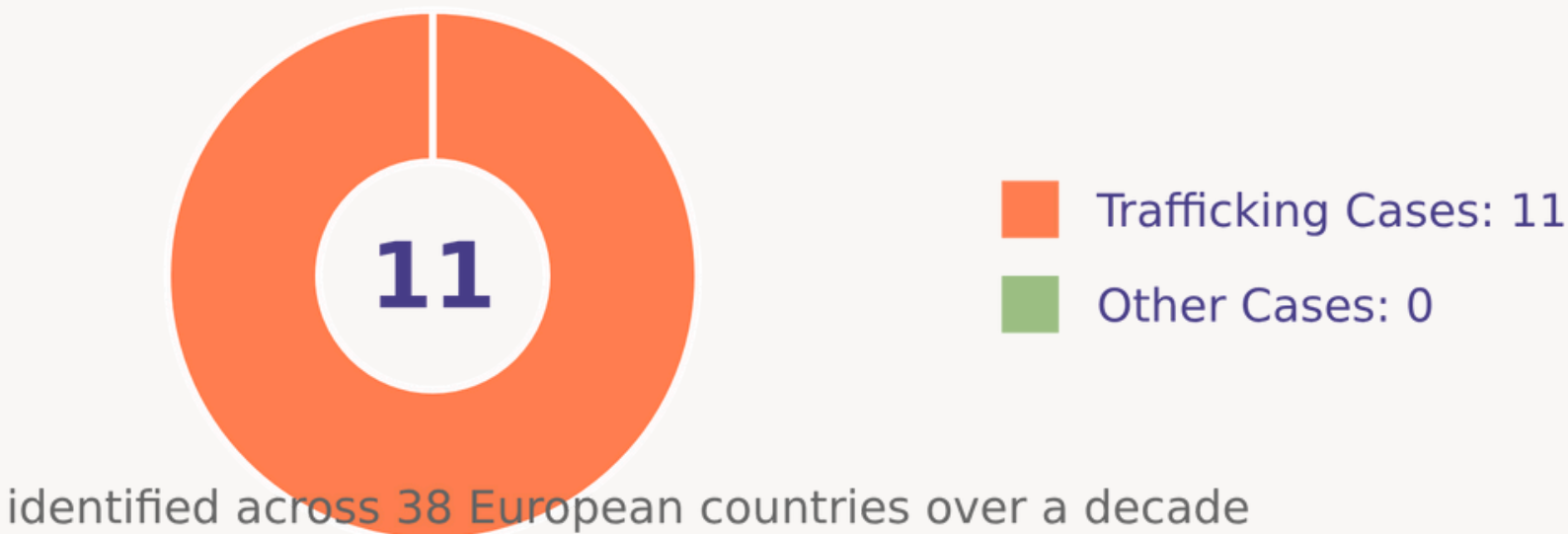
- Trafficking Clinics
- Total Estimated C

Safeguard Effectiveness

The low number of identified human trafficking cases for exploitation of surrogacy strongly suggests that the legal safeguards implemented by countries where surrogacy is permitted are having a positive impact.

Research across 38 European countries over the past decade identified only **11 trafficking cases** involving surrogacy, indicating that the vast majority of surrogacy arrangements do not involve trafficking.

Trafficking Cases in Context



Countries with Established Frameworks



Greece

No significant numbers of THB cases related to surrogacy, despite being a popular destination for international surrogacy arrangements.



Cyprus

Established regulatory framework with specific provisions for surrogacy arrangements, with minimal trafficking concerns identified.



United Kingdom

Comprehensive legal framework governing surrogacy with robust safeguards, with no significant trafficking issues documented.

The effectiveness of these frameworks suggests that well-designed legal safeguards can effectively prevent exploitation while allowing legitimate surrogacy arrangements to proceed.

EXPLOITATION OF SURROGACY AS A FORM OF HUMAN TRAFFICKING

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

[Read the full paper here.](#)



Conclusion & Future Outlook

Key Findings

Weak Evidence Base : The decision to include surrogacy was not grounded in substantial empirical evidence. No EUMS had previously classified surrogacy as a form of trafficking, and data linking surrogacy to human trafficking remains extremely limited.

Influence of Ideological and Political Advocacy: The inclusion was largely driven by ideological and advocacy pressure, particularly from conservative, religious, and abolitionist feminist groups, rather than by data or harmonisation needs.

Redundancy of the Amendment: The addition was not legally necessary, as existing human trafficking laws already allowed prosecution of trafficking for the purpose of surrogacy-related exploitation.

Lack of an inclusive, adequate and transperante debate: The legislative process was rushed and insufficiently consultative. Few civil society organisations specialising in human trafficking were involved or consulted, resulting in a non-inclusive and non-transparent decision-making process.

Future Outlook

Legal and Practical Risks

The new provision risks conflating all surrogacy practices with human trafficking, creating legal uncertainty, stigmatizing surrogate mothers and intended parents, and complicating legitimate, rights-based surrogacy frameworks in some Member States.

Fragmented National Approaches Likely to Persist

Because Member States have diverse legal stances on surrogacy, harmonisation across the EU remains unlikely, and implementation challenges are expected due to the lack of EU-level guidance on interpreting “exploitative surrogacy.”

Need for Clarification and Research

clear EU guidance, systematic data collection, and evidence-based research to define what constitutes exploitative surrogacy and to ensure coherent implementation.



Thank you for your attention