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CDBIO/INF(2022)13Addendum

**STEERING COMMITTEE
FOR HUMAN RIGHTS IN THE FIELDS OF BIOMEDECINE AND
HEALTH (CDBIO)**

SURROGACY

**Addendum to the Replies to questionnaire on access to medically
assisted procreation (MAP), on right to know about their origin
for children born after MAP**

Document prepared by the Secretariat
based on the replies by the delegations

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Table of countries which sent updated replies to the Surrogacy Questionnaire in March 2024, the others in 2016-2023

Country	Country
Andorra	Lithuania
Austria	Luxembourg
Belgium	Montenegro
Bosnia and Herzegovina	<u>Netherlands</u>
Croatia	Norway
Cyprus	Portugal
<u>Czech Republic</u>	Romania
<u>Denmark</u>	Russian Federation
Finland	San Marino
France	Spain
Georgia	Sweden
<u>Germany</u>	<u>Switzerland</u>
Greece	Türkiye
Hungary	Ukraine
Iceland	<u>United Kingdom</u>
<u>Italy</u>	Belarus
<u>Ireland</u>	

Table of countries which sent their replies to the 2005 Questionnaire, but have not updated since then (see Appendix II for their replies)

Country	Country
Albania	Poland
Armenia	Serbia
Azerbaijan	Slovakia
Bulgaria	Slovenia
Estonia	"the former Yugoslav Republic of Macedonia"
Latvia	Canada
Malta	Israel
Republic of Moldova	

1. Is surrogacy regulated by a specific law in your country?

Country	Reply	Country	Reply
Andorra	No	Lithuania	No
Austria	Yes*	Luxembourg	No
Belgium	No*	Montenegro	Yes
Bosnia and Herzegovina	No	<u>Netherlands</u>	No*
Croatia	Yes*	Norway	No (1)
Cyprus	Yes*	Portugal	Yes* (1)
Czech Republic	No*	Romania	No
<u>Denmark</u>	No	Russian Federation	Yes*
Finland	No (1)	San Marino	No*
France	Yes*	Spain	No (1)
Georgia	Yes*	Sweden	No (1)
Germany	Yes*	Switzerland	Yes *
Greece	Yes*	Türkiye	No (1)
Hungary	No	Ukraine	No
Iceland	No (1)	<u>United Kingdom</u>	No*(1)
<u>Ireland</u>	No*	Belarus	Yes
<u>Italy</u>	-* (1)		

(1): No specific law, but specific provisions in more general laws

AUSTRIA

Law on medical assisted Reproduction “Fortpflanzungsmedizingesetz”

BELGIUM

In the absence of a prohibition, Belgium implicitly authorises non-commercial surrogacy

CROATIA

Surrogacy is regulated within the scope of Act on MAP

CYPRUS

The Law on Medically Assisted Reproduction N.69(I) (initially approved by the Cyprus Parliament in 2015). This law has been revised in July 2016 regarding the qualifications of the Members of the Board on Medically Assisted Reproduction. More importantly, however, Article 23 of the 2015 Law has been amended and the details are given below:

- Before the amendment:
 - Both the woman (wishing to have a child) and the surrogate mother-to-be must have had their permanent or usual residency addresses in the Republic of Cyprus.
- After the amendment:
 - In the event that a surrogacy mother cannot be found in the Republic of Cyprus, then the Board on Medically Assisted Reproduction could grant permission for the surrogacy mother not to have a permanent or usual residency address in Cyprus.

CZECH REPUBLIC

The absence of a ban is to be declared as a permit. The one-off steps are regulated by the laws of MAR, adoption, determination of parenthood, and the donation of parts of the body.

FRANCE

Article 16-7 of the civil code establishes the principle that agreements on surrogate procreation or pregnancy are null and void. This is a public order provision (article 16-9 du code civil).

Article 227-12 of the criminal code prescribes a penalty of one year's imprisonment and a fine of € 15,000 for acting as an intermediary between a person or a couple wishing to receive a child and a woman prepared to bear this child for the purpose of giving it to them. When the acts have been committed repeatedly or for commercial gain the penalties are doubled.

GEORGIA

The law of Georgia on Health Care (LHC) - Chapter XXIII Family Planning.

GERMANY

Pursuant to section 1 subsection (1), no. 7, of the Act on the Protection of Embryos [*Embryonenschutzgesetz*, ESchG], a person who undertakes to perform an artificial insemination on a woman who is prepared to give up her child permanently after birth to third parties (surrogate mother) or to transfer a human embryo to her is liable to imprisonment of up to three years or a fine. In such case neither the surrogate mother nor the person who wishes to permanently take care of the child is liable to punishment.

Pursuant to section 13c of the Adoption Placement Act [*Adoptionsvermittlungsgesetz*, AdVermiG], the procurement of surrogate mothers is prohibited by law in Germany.

GREECE

The main legal documents regulating surrogacy in Greece are Law 3089/2002, Law 3305/2005, Law 4272/2014 and the Civil Code (Articles 1455-1460).

The first of these laws (L.3089) concerned questions of kinship and inheritance whereas the second law (L.3305) concerned conditions for the establishment and operation of medically assisted reproduction units and cryopreservation banks. Equally important, the second law also provided for the establishment of an independent national authority as well as for criminal and administrative sanctions in the event of violations of the law.

Specifically as regards surrogate motherhood, Article 8 of L. 3089/2002, in order to safeguard the practice of surrogacy, initially provided that only women who have their permanent residence in Greece could act as gestational carriers or commissioning mothers. The new provision included in L.4272 broadens this possibility extending it to women who either have permanent or temporary residence in Greece, without specifying the duration of residence. Although the prohibition of commercial surrogacy still remains in place, the amendment indirectly facilitates "commercial" surrogacy, opening up the market for putative carriers and commissioning mothers from abroad.

IRELAND

The Health (Assisted Human Reproduction) Bill 2022 (the AHR Bill) was introduced to, and passed Second Stage in, the Dáil (lower House of the Irish Parliament) in March 2022. The focus of this Bill is on the regulation, for the first time in this country, of a wide range of assisted human reproduction (AHR) practices undertaken within the jurisdiction. The Bill as initiated provided for domestic altruistic surrogacy but did not contain provisions to regulate surrogacy arrangements undertaken in other jurisdictions. In March 2024 the Bill passed Committee Stage (Third Stage) in the Dáil. The AHR Bill, as amended at Committee Stage, includes new provisions in respect of the regulation of international surrogacy agreements and the recognition of certain past surrogacy arrangements.

ITALY

Article 12 (general prohibitions and penalties), section 6 of Law n°40/2004 on assisted reproduction techniques bans surrogacy (“Whoever, in any form, produces, arranges or advertises the sale of gametes or embryos or surrogate motherhood is punished with imprisonment from three months to two years and a fine ranging from 600,000 to one million euros”).

Pursuant to the Italian Constitution, the combined provisions of Articles 2, 30 and 31 preclude its legitimacy, thereby stating the irreplaceability of both personal and economic duties related to parental responsibility incumbent upon genetic parents, alongside the child’s right to be raised by the latter and to be entitled to a substitute family only when the parents’ incapacity is objectively certified.

In addition, Article 5 of the Italian Civil Code prohibits any actions on one’s own body when causing a permanent damage to physical integrity or when violating Law, public order or decency.

NETHERLANDS

Surrogacy is currently unregulated, apart from a *criminal* prohibition of (commercial) mediation in surrogacy. Currently, there is a legal framework in preparation regulating parentage following surrogacy in the Netherlands as well as the acceptance of parentage following international surrogacy. This legislative proposal has been sent to parliament for adoption on the 4th of July of 2023.

PORTUGAL

In Portugal, access to surrogacy is regulated by Law no. 25/2016, of 22 August, which amended Law no. 32/2006, of 26 July. On 24 April 2018, the Constitutional Court declared to be unconstitutional the conditions under which the surrogate could withdraw her consent, which led to the extinction of any pending surrogate gestation contracts - Judgement no. 225/2018. In July 2019, the Portuguese Parliament approved a new Decree which was again declared unconstitutional on the same account - Judgment no. 465/2019 of the Constitutional Court, a fact that led the President of the Republic to return the Decree to the Portuguese Parliament, without promulgation. The President of the Republic returned the Decree to the Portuguese Parliament, where the debate is ongoing. The revised bill will have to be approved by the Portuguese Parliament and by the President of the Republic, subject to the Constitutional Court rulings. In practical terms, the legal framework regulating surrogacy in Portugal is not currently in force and cannot be applied.

RUSSIAN FEDERATION

Surrogacy (different aspects) is regulated in three Legislation Acts (Laws):

The Federal Law on Protection of Citizens’ Health 2011 contains article/section on ART, which, in turn, contains provisions on surrogacy (s. 55);

The Family Code 1995 (as amended) regulates the issues of parentage (contest of parentage), including in case of surrogacy (ss. 51-52); and

The Federal Law on the Acts of Civil Status 1997 (as amended) regulates registration of the child birth and list the documents to be presented for registration of the birth of a child, including in case of surrogacy (s. 16).

Besides, there is the RF Ministry of Health Order of 13 August 2012 № 107H “On the Order of Use of Assisted Reproduction Technologies, Contraindications to Them, and Their Limitations” (Regulations), which contains a section on surrogacy.

SAN MARINO

There is no specific law in Republic of San Marino.

In case of infertile heterosexual couples are guaranteed links with the Italian reference centers to proceed with the medical procedure in order to proceed with the medically assisted fertilization. Therefore, the laws that underlie these subjects are Italian.

In San Marino as in many Italian hospitals, obstetrics deals with physiological pregnancies, while for those at risk is used to have the Rimini (Italy) hospital consulting for the guarantee offered by the neonatology service. However, it is easy to say that our hospital, like many in Italy, do not have a structure that deals with fertility treatment that would require a contribution offered by a molecular biology and cellular service, and cryopreservation. We have only a gynecology and obstetrics service that deals with the health of women and pregnancy, childbirth and the postnatal period but not of assisted reproductive technology.

Those who want to make this kind of surgery have to go to an Italian structure and pay all procedures of their own pockets. San Marino covers only the pharmaceutical expenses for two cycles of therapy linked to the induction of ovulation in the woman to perform the oocytes explantation. At the failure of the second attempt, if there are no frozen embryos to replant and the couple wanted to undergo another treatment, the couple pays also drug costs.

If pregnancy occurs, after a few attempts (it makes no difference whether the first or second) through assisted reproduction techniques it will be followed as a normal pregnancy and all health coverage that are entitled to residents or citizens of the state.

The health care system provides drug treatment for two cycles of ovarian stimulation and all medical examinations pre and post implant.

To sum up:

None of the questions about surrogacy is affirmative for Republic of San Marino.

All questions related to medically assisted fertilization with the possible donation of gametes are the same answers from Italy, although the Italian Republic has bound to specific laws.

Infertility is followed free of charge by the health care system in respect of two pharmacological cycles and the pre and post implantation. The gamete extraction techniques, fertilization, implantation and embryo storage at Italian specialized structures are the responsibility of the couple as well as any subsequent pharmacological cycles to the two provided free and the possible pregnancy of control remains in the responsibility of the health care system.

SWITZERLAND

Surrogacy is prohibited in Switzerland (see [Art. 119 para 2 lit d Swiss Constitution](#); [Art. 4 of the Swiss Reproductive Medicine Act](#), RMA)

UNITED KINGDOM

In part. There is no overarching law regulating surrogacy and no surrogacy regulator, as such. Legislation does, however, make commercial surrogacy arrangements illegal and recognizes altruistic surrogacy.

The procedures for setting up an arrangement for a woman to act as a surrogate for another party are subject to the provisions of the *surrogacy arrangements act 1985*.

Surrogacy agreements between the surrogate mother and the commissioning persons are not enforceable by law. *Provisions for transferring legal parenthood from the surrogate to the intended parents are covered by the Human Fertilisation & Embryology Act 1990 (as amended 2008)*.

BELARUS

- Law of the Assisted Reproductive Technologies (2012)
- The Marriage and Family Code of the Republic of Belarus (1999 with alterations in 2016)/ art.52

2. Is surrogacy regulated in another way? (please specify)

Country	Reply	Country	Reply
Andorra	No	Lithuania	Yes*
Austria	No	Luxembourg	No
Belgium	No	Montenegro	No
Bosnia and Herzegovina	No	<u>Netherlands</u>	No*
Croatia	No	Norway	Yes*
Cyprus	Yes*	Portugal	No
Czech Republic	Yes*	Romania	No*
<u>Denmark</u>	Yes*	Russian Federation	No
Finland	Yes*	San Marino	No*
France	No	Spain	Yes*
Georgia	No	Sweden	No*
Germany	N/A	Switzerland	No*
Greece	No	Türkiye	No
Hungary	Yes*	Ukraine	Yes*
Iceland	Yes*	<u>United Kingdom</u>	Yes*
Ireland	-*	Belarus	No
<u>Italy</u>	No		

CYPRUS

According to Article 24(1) of the Law [N.69(I)/(2015)], following the appropriate authorization by the Board of Medically Assisted Reproduction a Court order is also required to regulate issues that would lead to the successful implementation of the surrogacy agreement.

CZECH REPUBLIC

MAP regulation, laws of adoption, determination of parenthood, and the donation of parts of the body.

DENMARK

Surrogacy is not regulated by one specific law. However surrogacy is regulated in § 33 in the Danish Adoption Act, § 31 of the Danish Children's Act, and in § 13 in the Danish Act on Assisted Reproduction.

FINLAND

According to Section 8 of the Act on Assisted Fertility Treatments (1237/2006), assisted fertility treatment cannot be provided, if there is reason to presume that the child will be given up for adoption.

According to Section 35 of the same Act, a person who intentionally provides assisted fertility treatment although there is reason to presume that the child will be up for adoption, shall be sentenced to a fine for assisted fertility treatment offence.

According to Section 45, Paragraph 3 of the Maternity Act (253/2018), a decision by which someone is established as the mother of a child instead of the person who has given birth to the child may be recognised only if:

- 1) it has been issued in the state in which the person established as the mother is habitually resident at the time of the child's birth and in which she has resided without interruption for at least one year before the birth of the child; or
- 2) it is recognised in the state in which the person established as the mother is habitually resident at the time of the child's birth and in which she has resided without interruption for at least one year before the birth of the child.

A decision of a court or another authority and the establishment or registration of a legal act is deemed a decision as referred to above, if the relationship between a child and a woman is considered a maternal relationship as a result of such a measure (Section 45, Paragraph 4).

HUNGARY

In the Act on Health § 166 sets a restrictive list of special procedures for reproduction. Surrogacy fails to be contained in the list. Consequently, surrogacy cannot be performed in Hungary.

ICELAND

In Act no 55/1996 on Artificial Fertilisation and use of Human Gametes and Embryos for Stem Cell Research

IRELAND

No, but in February 2012, the Department of Justice and Equality issued a guidance document to parents seeking travel documents for children born outside the State as a result of surrogacy arrangements entitled: *Citizenship, Parentage, Guardianship and Travel Document Issues in Relation to Children Born as a Result of Surrogacy Arrangements Entered Into Outside the State*. A pre-condition of granting emergency travel documents is that the genetic father (intending father) makes an application for a declaration of parentage and guardianship for the child within 10 working days of the arrival of the child into the State.

LITHUANIA

Any form of surrogacy is forbidden in Lithuania by the Law on Medically Assisted Procreation of the Republic of Lithuania (2016-09-14 No. XII-2608)

NETHERLANDS

The Dutch civil code has no mention of surrogacy. Accordingly, the regular *provisions in the field of parentage, parental responsibility and child protection apply in these cases. After birth, the surrogate mother is the legal mother of the child. The intended parents can only become the legal parents through recognition and adoption upon request at the Dutch court. Surrogacy arrangements can be made but will not be enforceable when it contains arrangements that conflict with Dutch legislation, such as arrangements to transfer the legal parentage.*

NORWAY

Access to medically assisted procreation (MAP) services (in Norway) is regulated in the Act relating to the application of biotechnology in human medicine, etc. [The Biotechnology Act]. According to Section 2-15 an embryo may only be implanted in the womb of the woman who is to be the child's mother. Furthermore, embryo donation is not allowed. Single women do not have access to oocyte donation, and couples may use either oocyte or sperm donation. (An exception has been made for same-sex couples so that an oocyte may be collected from one of the women and the embryo implanted into the womb of the other woman in the couple.)

This implies that surrogacy is not allowed according to the Biotechnology Act. Sanctions for breach of prohibitions in the Biotechnology Act apply to medical personnel etc, but not for the intending parents or the surrogate mother.

Furthermore, an agreement to give birth to a child for another woman is not binding according to the Act relating to Children and Parents [The Children Act] section 2. To sum up: Some forms of surrogacy are expressly prohibited by law, while others are not expressly prohibited, notwithstanding - the law stipulates that agreements to give birth to a child for another woman is not binding, and consequently surrogacy arrangements cannot be enforced.

ROMANIA

There are some notarial agreements between couples and surrogate mother before procedure and followed by adoption after birth.

SAN MARINO

In case of infertile heterosexual couples are guaranteed links with the Italian reference centers to proceed with the medical procedure in order to proceed with the medical assisted fertilization. Therefore the laws that underlie these subjects are Italian.

SPAIN

Surrogacy is not allowed in Spain, although it is recognized as an assisted reproductive technology in the Law 14/2006 on Assisted Human Reproduction Technologies (LTRHA) approved in 2006.

This Law declares null and void any contract agreement of surrogate motherhood conducted by a woman who refuses the filiation in favour of the contracting part or of a third party beneficiary, no matter it is with or without remuneration. It also lays down that filiation of children born by surrogate motherhood is determined by birth and that the fatherhood claim of the biological father remains possible.

Although the law in general seems to be very innovative and according to the critics, it is one of the most permissive regulations in the world, in relation to surrogate motherhood it takes a conservative character.

SWEDEN

It is considered illegal in Sweden because by Swedish law (lagen (2006:351) om genetisk integritet) a woman may only be inseminated or implanted if it is done with either her egg cells or her partner's semen. In the case of single women it needs to be her own egg cells. A breach against this regulation for economical gain is sanctioned.

SWITZERLAND

The case law of the Swiss Federal Supreme Court governs the conditions for recognition of parent-child relationships resulting from surrogate motherhood.

Article 119.2 of the Swiss Constitution also contains relevant information: [RS 101 - Federal Constitution of the Swiss Confederation... | Fedlex \(admin.ch\)](#)

UKRAINE

- a. family code art 2 and 123
- b. Ministry of Health of Ukraine, orders N 52/5 jan18x2000

UNITED KINGDOM

The Human Fertilisation and Embryology Act 1990 (as amended 2008) governs treatment involving the use of donated gametes or in vitro fertilisation. The Act would also apply to surrogacy arrangements where these procedures are involved, including an assessment of the welfare of any child that might be born as a result of the treatment and any existing children that might be affected by the birth.

3. Has surrogacy been the subject of jurisprudence/court cases in your country?

Country	Reply	Country	Reply
Andorra	No*	Lithuania	No
Austria	Yes*	Luxembourg	Yes*
Belgium	Yes	Montenegro	No
Bosnia and Herzegovina	No	<u>Netherlands</u>	Yes*
Croatia	No	Norway	No
Cyprus	Yes*	Portugal	No*
Czech Republic	No*	Romania	No
Denmark	No	Russian Federation	Yes*
Finland	Yes*	San Marino	No
France	Yes*	Spain	Yes
Georgia	No	Sweden	No*
<u>Germany</u>	Yes*	<u>Switzerland</u>	Yes*
Greece	Yes*	Türkiye	No
Hungary	Yes*	Ukraine	Yes*
Iceland	Yes*	United Kingdom	Yes*
Ireland	Yes*	Belarus	No
<u>Italy</u>	Yes*		

ANDORRA

Not for the moment.

AUSTRIA

Not currently. The last decision date from 2012
VfGH 14.12.2011, B 13/11; VfGH 11.10.2012, B 99/12

CYPRUS

However, Court Cases in Cyprus, in reference to surrogacy, concern surrogacy disputes that have originated from agreements carried out in other Countries.

CZECH REPUBLIC

Not yet.

FINLAND

Surrogacy has been subject of court cases with regard to surrogacy arrangements performed abroad. Some of the intended parents have sought recognition of legal parentage from the courts.

FRANCE

Pursuant to the former case law of the Court of Cassation of 13 September 2013, a child born under a surrogate pregnancy agreement could not enjoy legal recognition in France of the filiation in respect of its intended parents, even if they had been cited as the child's parents on a foreign birth certificate legally established abroad (1st Civil Chamber, 13 September 2013, Nos. 12-30.138 and 12-18.315).

By two judgments delivered on 3 July 2015 (1st Civil Chamber, 3 July 2015, No. 14-21.32; JurisData No. 2015-01587), the Court of Cassation ruled that the child's paternal filiation, where it corresponds to the biological reality, should be entered in the French civil status register, thereby drawing the legal conclusions of the *Mennesson v. France* and *Labassee v.*

France judgments handed down by the European Court of Human Rights on 26 June 2014, which found against France on this issue.

These two judgments did not call into question the principle of the absolute prohibition of surrogacy in France, but ensure that the right to respect for private and family life is upheld under the terms of Article 8 of the European Convention on Human Rights and Fundamental Freedoms.

The French courts have therefore gradually developed case law intended to offer legal solutions to the situations of these children. The European Court of Human Rights recently validated this case law with two decisions of December 12, 2019 and July 16, 2020.

In its decision of July 16, 2020 (*D. v. France*), the European Court of Human Rights ruled in particular that the refusal to transcribe the birth certificate of a child born abroad from a surrogacy does not infringe the right to respect for the private and family life of the child in that the adoption procedure makes it possible to recognize a bond of filiation between the child and his intended parent.

However, despite the compliance of the French system with the European Convention, the Court of Cassation, by two judgments of December 18, 2019, modified its case law, by modifying its interpretation of Article 47 of the Civil Code on the probative value of acts of the foreign civil status. It is now considered that the assessment of the conformity with the "reality" of a foreign civil status document is assessed with regard to the criteria of foreign national law and not those of French law. It thus ordered the total transcription of foreign civil status documents drawn up following a surrogacy agreement, even with regard to the intended mother who has not been given birth or the second father.

This reversal of case law has forced the Parliament to return to the case law of the Court of Cassation before its reversal of last December, and therefore, to regulate the recognition of the filiation of children born at the end of a surrogacy agreement carried out abroad. *Article 7 of the law n°2021-1017 of 2 August 2021 on bioethics has returned to the state of the law before the reversal of the case law of the Court of Cassation of 18 December 2019 by allowing the transcription of the foreign birth certificate with regard to the father indicated in the act, while prohibiting the transcription with regard to the woman who has not given birth or with regard to a second father, except adoption.*

GERMANY

Domestic surrogacy has not been subject of (civil law) jurisprudence due to strict prohibitions.

So far the courts have delivered only a few judgments dealing with the recognition of foreign judicial decisions issued following an international surrogacy arrangement.

In its leading decision of 10 December 2014, the Federal Court of Justice recognised a judgment from California establishing paternity of two German male nationals on the basis of a surrogacy agreement. The surrogate mother was not married, an anonymous egg donor was used and the child was, therefore, genetically related to only one of the intended fathers.

The Federal Court of Justice held that the recognition of a foreign judgment establishing a legal parent-child relationship between the child and the intended parents does not lead to a result that is obviously incompatible with significant principles of German law (*ordre public*) if (at least) one of the intended parents is genetically related to the child and the surrogacy mother is not. Whether the intended parents are of the same sex and live in a registered life partnership (or are married) or whether they are of a different sex and are married is not decisive. What is crucial for the possibility of recognition, according to the Federal Court of

Justice, is whether or not the child was transferred by the surrogate mother into the care of the intended parents voluntarily – although this was not problematic in this particular case.

According to the Federal Court of Justice, binding the child to the legal maternity of the surrogate mother, as would follow from Section 1591 of the Civil Code (*Bürgerliches Gesetzbuch – BGB*), is not in the child's best interest, because the surrogate mother does not want to take care of the child and because the foreign state will not acknowledge the legal maternity of the surrogate mother due to the foreign judgment.

The jurisprudence established by the Federal Court of Justice's ruling has already been referred to by the Higher Regional Court of Düsseldorf in its decision of 7 April 2015 and several other German courts thereafter. The Federal Court of Justice itself subsequently further reaffirmed and specified its case law in two decisions of 5 September 2018 and 12 January 2022.

For instance, it held that the voluntary nature of the surrogate mother's cooperation is not called into question by the fact that the surrogate mother receives money in return or that there is a social disparity between her and the intended or appointed parents.

Recent first instance court decisions point to an even broader recognition of foreign surrogacy judgments, as the genetic link between one of the intended parents and the child has been declared of lesser relevance than the free and informed decision of the surrogate mother to accept the transfer of parenthood to the intended parents as well as the child's best interests' assessment.

GREECE

Yes, because court authorization is required before establishing surrogacy (Civil Code, Article 1458).

It should be of note that Greek legislation permits only partial surrogacy: the woman who carries the child cannot be the one from whom the oocytes are provided.

HUNGARY

Historically, surrogacy was originally (1997) an item in this list, and the list was exemplary. An amendment of the Act was adopted in 1999, skipping surrogacy from the list, and making the restrictive list. This amendment was preceded by a broad professional, juristic and ethic discussion.

ICELAND

Court case from 2 March 2016 (Case no E-2488/2015) and court case from 2 July 2015 (Case no E-4732/2014).

IRELAND

MR and Anor – v- An tArd Chlaraitheoir & Ors [2014]

This case concerned an arrangement whereby a woman agreed to act as a surrogate for her sister and brother-in-law (the commissioning couple). The commissioning couple provided the genetic material (egg and sperm), which ultimately resulted in the birth of twins. The commissioning couple sought to have the birth register altered so that the commissioning couple were both registered as the legal parents. The Registrar refused to do so, on the principle that under Irish law the woman who has given birth to a child is always regarded as the legal mother. That refusal was challenged in the High Court.

In his judgment of 5th March 2013, Judge Abbott found in favour of the commissioning couple. He held that the genetic mother, and not the birth mother, was the mother, and that the person with the genetic/blood link was entitled to be registered as the parent on the birth certificate.

In February 2014, the State appealed Judge Abbott's decision on the grounds that: it could create uncertainty regarding the parentage and parental rights of children born as a result of egg donation; demean the role of birth mother; lead to an opinion that commercial surrogacy is not unlawful; and result in the Registrar requiring genetic proof of maternity for every birth.

In November 2014 the Supreme Court overturned the High Court decision on the basis that the case had raised important, complex and social issues which are best addressed by the Oireachtas rather than the judiciary.

High Court Ruling:

<http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/e3f0dc917872554c80257b250052dab3?OpenDocument>

Supreme Court Ruling:

<http://www.courts.ie/Judgments.nsf/0/E238E39A6E756AB480257D890054DCB6>

ITALY

YES, Judgments by Italy's Supreme Court (n. 24001/2014) and the Constitutional Court (n.162/2014) confirmed the prohibition of Law no.40/2004. Particularly, in judgment n° 162/2004, the Court ruled that "the technique under examination must be strictly restricted to the donation of gametes and kept separate from other different methods, such as "surrogate pregnancies", which are expressly prohibited under Article 12(6) of Law no. 40 of 2004, the prohibition of which has not been challenged and is not affected in any way and at any point by this ruling, and will hence continue to be valid and effective".

LUXEMBOURG

Luxembourg appeal court ruling no 41814 of 15 July 2015

NETHERLANDS

Yes, in specific international surrogacy cases:

In recent years there have been court rulings that allowed for the recognition of foreign denial of maternity (not recognized in Dutch Civil Law, Court The Hague June 27th 2019 and Court Amsterdam February 12th 2020, ECLI:NL:RBAMS:2020:871). And also the recognition of a foreign birth certificate with two intending parents of opposite-sex (Court Amsterdam, August 29, 2023, ECLI:NL:RBDHA:2023:13397) and two fathers on it (Court Amsterdam, February 12th, 2020, ECLI:NL:RBAMS:2020:1628). In all cases the court only recognized the foreign birth-certificates under the condition that there had been due process in the originating country, and information on the origin of the child, under which the genetic relations of the child, were clear. In the case of two fathers on the birth certificate the court also considered that the certificate had already been recognized in another EU country (Spain).

PORTUGAL

As the MAP techniques for the surrogacy cases authorized by the Portuguese National Council for Medically Assisted Procreation following the enactment of both the law and the regulatory decree had yet to be initiated, the effects of the Court rulings extended to all surrogacy contracts. Therefore, all contracts were cancelled and to this date no case has reached the judicial courts.

RUSSIAN FEDERATION

Yes, but to a certain extent only.

There was a Constitutional Court Ruling of 15.05.2012 No. 880-O where commissioning couple/intending parents (genetic parents) claimed that a provision of the Family Code that

allowed a surrogate to keep a child she gestated and gave birth to should be recognised as unconstitutional. In this case surrogate mother refused to give her consent to the intending parents' registration as the legal parents and registered the child herself in a civil status state registry as her own child (accordingly she was registered as the legal mother). The Constitutional Court confirmed constitutionality of this provision of Family Code and rejected the application of the intended parents.

There is a contradiction between the federal laws. The Family Code, when regulating the issues regarding surrogacy, speaks about a married couple only (therefore, excluding cohabitating couple). There is a similar approach in the Federal Law On the Acts of Civil Status 1997 (s. 16). However, the Fundamentals on Protection of Citizens Health 2011 (s.55), when regulating access to assisted reproduction, does not restrict it to married couples. The result of this discrepancy is contradiction in practice, because the agencies for registration of civil status (births) often refused to register birth of child born through surrogacy when intending parent(s) claiming to be registered as the child's legal parent(s) if these persons are not a husband and a wife. So far, these problems were solved by courts, and the birth of a child in such a situation was registered on the basis of a court judgment.

SWEDEN

Not surrogacy as such, but the consequences for a child conceived by surrogacy are not accommodated to the situation, and therefore there are court rulings in adoption cases/ custodianship of children. As late as March 18th 2016 the Court of Appeal admitted a genetic mother to adopt twins conceived by surrogacy abroad (Svea Hovrätt, ÖÅ 945-16). In January 20th 2015 The Court of Appeal concluded that an American court decision declaring two men as the legal parents of a child born after a surrogacy arrangement in the United States should be accepted in Sweden. One of the men was the genetic father of the child (Svea Hovrätt Ö9822-14), (The Court of Appeal gave a similar ruling on 7th October 2014 in Svea Hovrätt Ö6952-14.) In an early case in the Supreme Court on 7th July 2006 the genetic mother was denied adoption because the genetic father and the surrogate mother (who was the sister of the genetic father) withdrew their consents after the couple had separated.

SWITZERLAND

A number of cases concern the legal status and adoption of children born through surrogacy abroad (in the United States, for example).

UKRAINE

Very rare, when conflict during the surrogacy process appeared.

UNITED KINGDOM

In May 2016, a ruling in the Family Division of the High Court of Justice for England and Wales determined that single people can apply to be recognized as the legal parents of a child following a surrogacy arrangement. The law was subsequently changed in December 2018 to allow an application from an individual, subject to conditions, including that he/she is genetically related to the child.

4. Is there a legal definition of the term “surrogacy”? (please specify)

Country	Reply	Country	Reply
Andorra	No	Lithuania	Yes*
Austria	No*	Luxembourg	No
Belgium	No	Montenegro	No
Bosnia and Herzegovina	No	Netherlands	No
Croatia	Yes*	Norway	No
Cyprus	Yes*	Portugal	Yes*
Czech Republic	No	Romania	Not yet*
Denmark	Yes*	Russian Federation	Yes*
Finland	No*	San Marino	No
France	No*	Spain	Yes*
Georgia	No	Sweden	No
Germany	Yes*	Switzerland	Yes*
Greece	Yes*	Türkiye	No
Hungary	No*	Ukraine	Yes*
Iceland	Yes*	United Kingdom	Yes*
<u>Ireland</u>	No*	Belarus	Yes*
<u>Italy</u>	No		

CROATIA

Surrogacy is defined as service of delivery for other person.

CYPRUS

According to the Law, surrogacy is the case during which a woman carries and gives birth to a child on behalf of a couple following the transfer, using in-vitro fertilization methods, of an embryo produced with genetic material unrelated to the surrogate mother.

DENMARK

When there is an agreement between the woman, where the pregnancy will be sought, and another person, that the woman gives birth to a child for the other person.

FINLAND

There is no legal definition in the letter of law. However, in a memorandum published by the Ministry of Justice in September 2012, surrogacy arrangements have been described as "arrangements, where a woman (surrogate mother) becomes pregnant and gives birth to a child with the intention of the child to be given away after birth and to be raised by another person or couple (intended parent/parents)".

FRANCE

Article 16-7 of the civil code, which prohibits surrogate pregnancies, refers to: "any agreement on surrogate procreation or pregnancy". There is otherwise no definition of surrogacy as such.

GERMANY

See answer to question 1.

GREECE

According to Article 1458 of the Civil Code, the definition of surrogacy is given as follows: The transfer of fertilized ova to another woman and pregnancy by her.

HUNGARY

Not in force. Surrogacy (under the name of “dajkaterhesség”) used to be defined originally in § 183. (1) of the Health Act

ICELAND

Artificial fertilization performed on a woman who intends to carry a child for another woman, and has agreed before the pregnancy to give up the child immediately after birth

IRELAND

A legal definition of the term in the AHR Bill, as initiated, is as follows:

“surrogacy’ means an agreement, between a woman and the intending parents (or, in the case of a single intending parent, that intending parent) under which the woman agrees to attempt to become pregnant, by the use of an egg other than her own, and, if successful, to transfer the parentage of any child born as a result of the pregnancy to the intending parents (or, in the case of a single intending parent, that intending parent)”.

However, this definition is subject to amendment and may not be the version in the finalised AHR legislation by the time it has passed through all stages in both Houses of the Oireachtas and has been enacted.

LITHUANIA

In the Law on MAP of the Republic of Lithuania surrogacy is defined as a civil agreement, when a woman commits herself to get pregnant, to carry the child to term and then to give the child to another person or persons, and to renounce all the maternity rights concerning the born child.

PORTUGAL

According to Article 8, paragraph 1 of Law No. 32/2006, “Surrogacy is defined as any situation in which a woman is prepared to carry out a pregnancy on behalf of third parties and to hand over the child after giving birth, thus renouncing the powers and duties of motherhood.”

ROMANIA

Not yet, but under discussion in the Parliament.

RUSSIAN FEDERATION

Surrogate motherhood is defined as “gestation of and giving birth to a child (including premature birth) under a contract made between a surrogate mother (a woman who carries a fetus after transfer of a donor’s embryo), and potential parents, whose germ cells were used for fertilization, or a single woman, for whom it is impossible to gestate and give birth to a child by medical reasons”.

SPAIN

It is defined in the LTRHA as surrogate gestation: gestation, with or without price, in charge of a woman who refuses motherhood filiation in favour of the contracting part or of a third party beneficiary.

SWITZERLAND

Article 2, paragraph k, of the Federal Law on Medically Assisted Procreation reads as follows: "surrogate mother: a woman who agrees to carry a child conceived by means of a medically assisted procreation method and to hand it over permanently to a third party after the birth;".

UKRAINE

Order N787 from 9/09/2013 on medically assisted procreation and reproductive technologies.

UNITED KINGDOM

Two definitions (of Surrogate mother and Surrogacy Arrangement) in the Surrogacy Arrangements Act 1985 cover this:

England, Wales and Northern Ireland.

“Surrogate mother” means a woman who carries a child in pursuance of an arrangement.

- (a) Made before she began to carry the child, and
- (b) Made with a view to any child carried in pursuance of it being handed over to, and parental responsibility being met (so far as practicable by, another person or other persons.

An arrangement is a surrogacy arrangement if, where a woman to whom the arrangement relates to carry a child in pursuance of it, she would be a surrogate mother.

Scotland

“Surrogate mother” means a woman who carries a child in pursuance of an arrangement.

- (a) Made before she began to carry the child, and
- (b) Made with a view to any child carried in pursuance of it being handed over to, and the parental right being exercised (so far as practicable) by, another person or other persons.

An arrangement is a surrogacy arrangement if, were a woman whom the arrangement relates to carry a child in pursuance of it, she would be a surrogate mother.

BELARUS

- Surrogate motherhood is defined as a “type of assisted reproductive technologies, consisting in connection of a sperm and an egg, which have been removed from the body of a genetic mother (or a donor egg outside the woman's body), development of the resulting embryo, the further transfer of this embryo to the uterus of the surrogate mother for carrying and birth of the child”, (art.1 Law of the Medical Assisted Reproductive Technologies)
- Surrogate mother is defined as a “women, who is according to the agreement of surrogate motherhood, is bearing and give birth a child who is not her genotype carrier”

5. Is surrogacy prohibited in your country?

a. any form of surrogacy

b. only specific forms of surrogacy (e.g. commercial) (please specify)

Country	a.	b.	Country	a.	b.
Andorra	-*	-*	Lithuania	Yes	No
Austria	Yes	No	Luxembourg	No	No
Belgium	No*	Yes*	Montenegro	Yes	-
Bosnia and Herzegovina	N/A*	N/A*	Netherlands	No	No
Croatia	Yes		Norway	-*	-*
Cyprus	No*	Yes*	Portugal	No*	Yes*
Czech Republic	No*	Yes*	Romania	No	Yes
<u>Denmark</u>	Yes*	No*	Russian Federation	No*	Yes*
Finland	Yes*	Yes*	San Marino	-	-
France	Yes	No	Spain	Yes	No
Georgia	No	-	Sweden	Yes*	No*
Germany	Yes	N/A	Switzerland	Yes	-
Greece	No*	Yes*	Türkiye	Yes*	No*
Hungary	No*	Yes*	Ukraine	No	Commercial
Iceland	Yes	-	United Kingdom	No*	Commercial*
<u>Ireland</u>	-*	-*	Belarus	No*	-
<u>Italy</u>	Yes	No			

ANDORRA

It is not subject of any law or reglementation. It is not regulated.

BELGIUM

Commercial surrogacy is devoid of legal value under certain principles in the Civil Code, such as the principle according to which the human body is extra-patrimonial and therefore cannot be traded.

BOSNIA AND HERZEGOVINA

In Bosnia and Herzegovina there is no specific legislation related to surrogacy

CYPRUS

Both the woman who wishes to become a mother through surrogacy and the surrogate mother must have their permanent or usual legal residency in Cyprus. Any surrogacy agreement on a commercial basis is prohibited; Advertisement for entering surrogacy agreement is prohibited.

CZECH REPUBLIC

B. According to Czech legislation, the human body and its parts must not be a source of financial gain.

DENMARK

According to § 13 in the Danish Act on Assisted Reproduction, assisted reproduction cannot be established in relation to an agreement between the woman, who seeks to be pregnant, and someone else, who wishes for her to give birth to a child for them (surrogacy).

FINLAND

A - Surrogacy arrangements that involve performing of assisted fertility treatments are prohibited by law in Finland. As all surrogacy arrangements facilitated by fertility treatments are prohibited, it is not in these cases relevant whether the arrangement is commercial or not. If the surrogate mother becomes pregnant for the purposes of surrogacy without assistance from the fertility clinics (e.g. by sexual intercourse), surrogacy arrangements are not prohibited. However, there is no information whether such arrangements take place in practice.

Although only surrogacy arrangements performed by assisted fertilization are prohibited by the Act on Assisted Fertility Treatments, Section 5 of the Act (as amended by the Act 22/2012) prohibits granting adoption "if any remuneration for the adoption has been given or promised or if someone other than the prospective adopter has, with a view to the adoption being granted, made or undertaken to make remunerative payments for the maintenance of the child. Any contract or commitment concerning the payment of remuneration referred to in subsection 1 shall be null and void".

B – YES, please see answer to question 5 a above.

GREECE

Only partial surrogacy is permitted in Greece. Full surrogacy and commercial surrogacy are prohibited.

HUNGARY

- a. No Prohibition not specifically expressed but it cannot be performed legally.
- b. Yes. Any form of commercial utilization of the human body is prohibited.

IRELAND

It is proposed that under the planned legislation commercial surrogacy will be prohibited; however, the reimbursement of reasonable expenses will be permitted.

It is proposed that only gestational surrogacy will be permitted and there will have to be a genetic link to at least one of the intending parents.

NORWAY

See question 2 (above)

MAP is a service regulated in the Biotechnology Act and an embryo may only be implanted into the womb of the intended mother. This implies that surrogacy cannot be accomplished according to the Biotechnology Act.

PORTUGAL

Commercial forms of surrogacy are explicitly forbidden (Article 8, paragraph 2 of Law No. 32/2006). Gratuitous surrogacy is pendant on a new legislative revision.

RUSSIAN FEDERATION

Only the form of so-called 'traditional'/partial surrogacy is prohibited (when a surrogate is genetically related to a child she gestates.)

SWEDEN

b) Only commercial surrogacy may be prosecuted, but all forms are considered illegal to facilitate

TÜRKIYE

All forms of surrogacy have been prohibited in Türkiye.

UNITED KINGDOM

Commercial surrogacy arrangements are prohibited under the Surrogacy Arrangements Act 1985.

BELARUS

Only the form of so-called partial surrogacy is prohibited (when a surrogate is genetically related to a child she gestates.)

2 types of surrogacy are allowed: commercial and non-commercial

6. Is access to surrogacy subject to specific criteria?
 a. medical criteria (e.g. infertility of the intended parent(s))
 b. other criteria (please specify)

Country	a.	b.	Country	a.	b.
Andorra	-	-	Lithuania	N/A*	N/A*
Austria	No	No	Luxembourg	N/A	N/A
Belgium	Yes*	Yes*	Montenegro	-	-
Bosnia and Herzegovina	N/A	N/A	Netherlands	Yes*	No*
Croatia	No	No	Norway	N/A	N/A
Cyprus	Yes*	Yes*	Portugal	Yes*	Yes*
Czech Republic	No*	No*	Romania	Yes*	*
Denmark	N/A	N/A	Russian Federation	Yes*	Yes*
Finland	N/A*	N/A*	San Marino	-	-
France	-	-	Spain	No	No
Georgia	Yes*	-*	Sweden	N/A	N/A
Germany	N/A	N/A	Switzerland	-	-
Greece	Yes*	Yes*	Türkiye	No	-
Hungary	N/A	N/A	Ukraine	No	No
Iceland	No	No	United Kingdom	No*	No*
Ireland	-*	-*	Belarus	*	*
Italy	-	-			

BELGIUM

Fertilization centers which agree to practice medically assisted procreation with a surrogate mother currently pose their own terms. Eg: one center limits acceptance to medical indications (e.g. patient with significant heart defect) and to surrogacy without oocyte donation or sperm, which excludes homosexual couples. But another Belgian fertilization center accepts homosexual couples.

Thus the criteria may vary from one center to another (e.g. procedure for screening of the surrogate mother; limited access for Belgian applicants).

CYPRUS

Must apply and obtain appropriate authorization from the Board of Medically Assisted Reproduction and then obtain appropriate Court order.

CZECH REPUBLIC

b. Surrogacy is not regulated by law. The Czech MAP Society has issued recommendations (exclusively medical indications, weighting with the applicants' own gametes, transfer of a single embryo, age of the surrogate mother under 49, surrogate mothers' permanent residence in the Czech Republic, etc.), but the compliance is not enforceable.

FINLAND

Not applicable, as medically assisted surrogacy is prohibited.

GEORGIA

Infertility because of absence of uterus (woman has no uterus)

GREECE

a. According to the Greek legislation "The court authorization is issued following an application of the woman who wants to have a child, provided that evidence is adduced not only in regard with the fact that she is medically unable to conceive but also with the fact that the surrogate mother is in good health condition and able to conceive".

b.

- A written and, without any financial benefit, agreement between the involved parties, meaning the persons wishing to have a child and the surrogate mother and, in case the latter is married, of her spouse as well.
- Evidence that the intended mother is medically unable to conceive
- Evidence that the surrogate mother is in good health condition and able to conceive
- The relevant articles of the Civil Law can apply only if the intended mother or the surrogate mother have their permanent or temporary residence in Greece.

IRELAND

a. It is proposed that access to surrogacy will be made available to on the basis of medical need.

b. The proposed legislation sets out additional criteria which must be met by the intending parents in order for the surrogacy to be approved by the Regulatory Authority, the establishment of which the draft legislation also provides for. Under the draft legislation, for example, each intending parent must be 21 years of age or over and at least one intending parent in each surrogacy must be habitually resident in Ireland.

LITHUANIA

See answer to question 2.

NETHERLANDS

There are no rules or regulations for surrogacy set by the government, apart from the criminal prohibition of (commercial) mediation between intending parents and surrogate mothers.

The guideline of gynecologists states that for surrogacy by means of IVF, a medical indication is necessary (uterus-based infertility of the mother, or a condition of the mother which is life threatening when pregnant). Medio 2016 an additional indication was added, i.e. male intended parents. Until then, also both gametes needed to be donated by the intended parents. This was changed; now treatment is also allowed if only one of the intended parents donates a gamete. That made IVF-surrogacy accessible to male couples. In 2019 the first clinic has started a pilot performing this treatment for male couples.

PORTUGAL

Access to surrogacy is subject to medical criteria, namely in cases of absence of uterus, injury or disease of this organ that prevents pregnancy of the intended mother, or in other justifiable clinical situations (Article 8, paragraph 2 of Law No. 32/2006).

ROMANIA

Not commercial.

RUSSIAN FEDERATION

a. Certain types of infertility or impossibility to gestate/give birth.

b. The Law is unclear and inconsistent in this regard. If interpreted literally, it requires both potential/intending parents (who make a contract for surrogate motherhood) to be genetically related to a future child. There is no explanations why that wording was accepted, neither any jurisprudence on that matter. However, it is known that at least until recently this requirement has not been observed in practice (and it significantly limits application of surrogacy). At the

same time, the Law does not contain such a restricting requirement with regard to a single woman.

UNITED KINGDOM

No. Access to a Parental Order, to confer legal parenthood on the intended parents following surrogacy, is subject to being able to satisfy certain criteria (see question 14).

BELARUS

a. Certain types of infertility or impossibility to gestate/give birth.

Only women who can't bear and give birth to a child according to medical reasons or if it's associated with a risk to her life and / or the life of her child can use the service of a surrogate mother.

Law requires the ability (opportunity) to potential/intending parents (or one of the parents) to be genetically related to a future child. To fertilize intending mother's egg her husband sperm or donor sperm can be used. To fertilize donor's egg only sperm of intending mother's husband can be used.

b. There are specific demands for women who want to be surrogate mother

- She has to be married and to have a child,
- She should not have medical contraindications to surrogate motherhood
- she was not deprived of parental rights,
- she has not court sentence concerning legal disability (partial disability)
- she was not convicted by the court for serious (particularly serious) crimes against a person
- she is not a defendant or a suspect in criminal cases
- at the same time, she cannot be a donor of oocyte/egg for the intend mother (for the women she has an agreement of surrogate motherhood)

7. If surrogacy is allowed, is it lawful for the surrogate mother to receive:

- a. refund of medical expenses
- b. refund of other expenses
- c. compensation for loss of income
- d. other compensation including non-pecuniary
- e. remuneration or comparable advantage

Country	a.	b.	c.	d.	e.
Andorra	N/A	N/A	N/A	N/A	N/A
Austria	N/A	N/A	N/A	N/A	N/A
Belgium	Yes	No	No	No	No
Bosnia and Herzegovina	N/A	N/A	N/A	N/A	N/A
Croatia	N/A				
Cyprus	Yes	Yes	No		No
Czech Republic	Yes	Yes	Yes	No	No
Denmark	N/A	N/A	N/A	N/A	N/A
Finland	N/A*				
France	N/A	N/A	N/A	N/A	N/A
Georgia	-*				
Germany	N/A	N/A	N/A	N/A	N/A
Greece	Yes	Yes	Yes	Yes	No
Hungary	N/A	N/A	N/A	N/A	N/A
Iceland	N/A				
<u>Ireland</u>	-*				
Italy	-				
Lithuania	N/A	N/A	N/A	N/A	N/A
Luxembourg	N/A				
<u>Netherlands</u>	No*	*	*	*	*
Montenegro	-	-	-	-	-
Norway	N/A				
Portugal	Yes*	Yes*	No	Yes*	No*
Romania	No	No	No	No	No
Russian Federation	Yes*	Yes*	Yes*	Yes*	Yes*
San Marino	-				
Spain	N/A				
Sweden	N/A	N/A	N/A	N/A	N/A
Switzerland	-				
Türkiye	No, N/A	No, N/A	No, N/A	No, N/A	No, N/A
Ukraine	Yes*	Yes*	Yes*	Yes*	Yes*
United Kingdom	-*	-*	-*	-*	-*
Belarus	-*	-*	-*	-*	-*

FINLAND

Not applicable, as medically assisted surrogacy is prohibited.

GEORGIA

Issues of compensation or refund are not regulated by law.

IRELAND

It is proposed that the reimbursement of reasonable, receiptable expenses will be permitted which might include: any pre-natal or post-natal medical expenses associated with the pregnancy or birth; expenses associated with the surrogate mother receiving counselling, independent legal advice; maternity clothing, paid housework or childcare undertaken by persons other than the surrogate mother; the expense of reimbursing the surrogate mother for any loss of income but only for a) a period of not more than 6 months during the which the birth happened or was expected to happen; b) any other period during the pregnancy or thereafter, not exceeding 12 months in total, when the surrogate mother was unable to work on medical grounds related to the pregnancy or birth.

NETHERLANDS

Health insurance only refunds medical expenses if the person undergoing the treatment has a medical need. The surrogacy mother does not have such a need, thus there will be no refund of medical expenses out of the insurance. The authority advising the minister on health insurance issues is now looking into this with regard to situation where the intended parents do have a medical indication for the surrogacy treatment.

Since surrogacy is unregulated in The Netherlands, there are no rules for compensations for the surrogate mother by the intended parents. In the bill that is in parliament at the moment, there are limitations to what payment will be allowed. Although it is not yet clear how exactly, it is clear that any (appearance of) the buying of children should be avoided.

PORTUGAL

- a. refund of medical expenses

Yes, if medical care is proven to have been effectively provided (Article 8, paragraph 5 of Law No. 32/2006).

- b. refund of other expenses

Yes for transportation expenses, provided they are duly titled (Article 8, paragraph 5 of Law No. 32/2006).

- c. compensation for loss of income

No.

- d. other compensation including non-pecuniary

In case of abortion, general rules apply to surrogate (Labour laws, social benefits).

- e. remuneration or comparable advantage

No. Any kind of payment or donation of any good or amount from the beneficiaries to the pregnant woman for the child's pregnancy is forbidden (save for a) and b). Surrogacy contracts are forbidden in situations of economic subordination or employment between the parties involved (Article 8, paragraphs 5 and 6 of Law No. 32/2006).

RUSSIAN FEDERATION

The issue of any payment or compensation is not regulated by law. This means it is not expressly forbidden. In practice, it is known that medical and other related expenses are refunded. Loss of income, monthly allowances and other forms of compensation/payments are often included in the contracts. Some agencies advertise the surrogacy is remunerated.

UKRAINE

Yes, only on the basis of an agreement between both sides of surrogacy process in each case.

UNITED KINGDOM

Reasonable expenses only. Under the provisions of the Human Fertilisation & Embryology Act 1990 (as amended 2008) a surrogate may receive reasonable expenses, however, “expenses” are not defined in the Act. No money or other benefits may be provided for any part of the surrogacy arrangement unless authorised by a Court.

BELARUS

2 types of surrogacy are allowed: commercial and non-commercial.

Issues of compensation/ refund/ remuneration are regulated by agreement (contract) between intending parents and surrogate mother.

8. Can the surrogate also be the oocyte donor?

Country	Reply	Country	Reply
Andorra	N/A	Lithuania	N/A
Austria	N/A	Luxembourg	N/A
Belgium	Yes*	Montenegro	Yes*
Bosnia and Herzegovina	N/A	Netherlands	Yes
Croatia	N/A	Norway	N/A
Cyprus	No	Portugal	No*
Czech Republic	Yes*	Romania	Yes*
Denmark	N/A	Russian Federation	No
Finland	N/A*	San Marino	-
France	N/A	Spain	-
Georgia	Not regulated by law	Sweden	N/A
Germany	N/A	Switzerland	-
Greece	No	Türkiye	No, N/A
Hungary	N/A	Ukraine	Yes
Iceland	N/A	United Kingdom	Yes
Ireland	-*	Belarus	No
Italy	-		

BELGIUM

No general prohibition but it depends on the conditions set by the fertilization centers

CZECH REPUBLIC

Theoretically, because there is no law. The Czech MAP Society has issued recommendation not to use her eggs.

FINLAND

Not applicable, as medically assisted surrogacy is prohibited.

IRELAND

It is proposed that traditional or partial surrogacy will be prohibited and that only gestational surrogacy will be permitted.

MONTENEGRO

Oocyte donation is regulated by the same law as surrogacy (Law on Infertility Treatment with Assisted Reproductive Technologies). Instead of surrogacy which is prohibited, oocyte donation is allowed, and the criteria are specified.

PORTUGAL

No. The gametes of at least one of the respective beneficiaries must be used in gestational surrogacy procedures, and under no circumstances may the surrogate be the donor of any oocyte used in the specific procedure in which she participates (Article 8, paragraph 3 of Law No. 32/2006).

ROMANIA

If not commercial and only if the couple involved find the oocyte donor by themselves.

9. Is it lawful to advertise surrogacy services?

Country	Reply	Country	Reply
Andorra	-	Lithuania	No
Austria	No	Luxembourg	N/A
Belgium	Yes*	Montenegro	No
Bosnia and Herzegovina	No	Netherlands	No
Croatia	No	Norway	No*
Cyprus	No	Portugal	No*
Czech Republic	Yes*	Romania	Not really
Denmark	No	Russian Federation	Yes*
Finland	No*	San Marino	-
France	No	Spain	No
Georgia	Not regulated by law	Sweden	No*
Germany	No	Switzerland	No
Greece	No*	Türkiye	No
Hungary	No	Ukraine	No
Iceland	-	United Kingdom	No*
Ireland	-*	Belarus	*
<u>Italy</u>	No*		

BELGIUM

Yes, conditional

Under certain conditions, the informative adverts of medical procedures performed legally are authorised.

CZECH REPUBLIC

No specific prohibition, these procedures are offered, for example, on the sites of the MAR centers. However, the Czech Transplantation Act says: Advertising and advertising for the purpose of demand or offer of organs are prohibited.

FINLAND

No. The provision of medically assisted surrogacy services is prohibited as such. Although there is no specific provision in law on the advertising of (illegal) surrogacy services, there are provisions in the Criminal Code, which criminalise *unlawful obtaining of consent to adoption* and *unlawful arrangement of adoption* (Chapter 25, Sections 3b and 3c). According to paragraph 2 of Section 3c, also a person who publicly or otherwise among the public circulates an offer to place a child for adoption or takes a child in his or her care with intent of adoption shall be sentenced for unlawful arrangement of adoption.

GREECE

The law does prohibit advertising of surrogacy services.

IRELAND

It is proposed that advertisements seeking a person to act as a surrogate or offering to act as a surrogate will be prohibited.

ITALY

Surrogacy advertisement is banned.

NORWAY

No specific prohibition. General rules regarding marketing apply.

PORTUGAL

According to Article 39, paragraphs 5 and 6 of Law No. 32/2006, anyone who promotes surrogate, namely by public announcement, outside the cases provided for in paragraphs 2 to 6 of Article 8 stands to be punished by imprisonment for up to two years.

This can admit an a contrario interpretation with regard to informative adverts of medical procedures, namely for surrogacy services carried out solely within the scope of article 8 and provided in public or private MAP centres expressly authorized for this purpose by the Ministry of Health.

RUSSIAN FEDERATION

Not regulated. Not expressly prohibited.

SWEDEN

It is according to Swedish marketing laws not considered "god sed" (good ethics/good tradition) to advertise illegal services.

UNITED KINGDOM

This is prohibited by the Surrogacy Arrangements Act 1985.

BELARUS

It's not regulated/ not prohibited.

10. Is it lawful to remunerate a facilitator/surrogacy agency

Country	Reply	Country	Reply
Andorra	-	Lithuania	No
Austria	No	Luxembourg	N/A
Belgium	No	Montenegro	No
Bosnia and Herzegovina	No	Netherlands	No
Croatia	No	Norway	No specific prohibition
Cyprus	No*	Portugal	No*
<i>Czech Republic</i>	No*	Romania	No
Denmark	No*	Russian Federation	Yes*
Finland	N/A*	San Marino	-
France	No	Spain	No*
Georgia	Not regulated by law	Sweden	No
Germany	N/A	Switzerland	-
Greece	No*	Türkiye	No
Hungary	No	Ukraine	No
Iceland	No	United Kingdom	No*
<i>Ireland</i>	-*	Belarus	*
<i>Italy</i>	No*		

CZECH REPUBLIC

No agency officially exists yet. But at least one private centre seeks out prospective surrogate mothers and offers mediation to those interested in the procedure.

DENMARK

Until 1 January 2018 a health care person was not allowed to establish MAP unless the egg came from the woman who was to give birth to the child, or the semen came from her partner. However, since 1 January 2018 it is legal to use both donated egg and donated semen if the single woman/the woman and her partner do not have functional eggs or semen, and at least one donor is non-anonymous.

FINLAND

Not applicable, as medically assisted surrogacy is prohibited as such.

GREECE

According to Greek Law (L.3305/2005, article 13) and article 4 of Decision No 36 of the National Authority on Medically Assisted Reproduction (State Journal 670/β/2008 surrogacy agreements do not include any financial remuneration. The following, however, are not considered as remuneration Payment of pregnancy, childbirth and puerperium costs and losses from work absence. The amount of reimbursement is defined according to the salary that the woman would receive or if, she be unemployed to the hypothetical salary. In any case this cannot exceed the amount of 10.000 Euros in total. The reimbursement is given only if the relevant court order which permits the procedure of surrogacy to begin, has already been issued.

IRELAND

It is proposed that it will be an offence to receive remuneration for arranging a domestic surrogacy agreement. Under the proposed provisions regarding international surrogacy agreements, the utilisation of intermediaries abroad may be permitted if certain conditions are met.

ITALY

NO, to remunerate a facilitator/surrogacy agency is banned.

PORTUGAL

No. Any person who, in any circumstance, derives economic benefit from the signing of surrogacy contracts or their promotion, by any means, shall be punished with imprisonment for up to 5 years (Article 8, paragraph 6 of Law No. 32/2006).

RUSSIAN FEDERATION

Not regulated. Not expressly prohibited.

SPAIN

According to Law 14/2006, it is a major infraction the publicity or promotion made with the aim of incentivizing cell and human tissues donation by authorized centers by means of compensation or any economic gain.

UNITED KINGDOM

This is prohibited by the Surrogacy Arrangements Act 1985. Any UK-based surrogacy organisation must run as not-for-profit.

BELARUS

Not regulated. It is not stipulated in the law

11. If surrogacy is forbidden, is the conduct of the following persons criminalised by the law?

- a. surrogate mother
- b. intended parent(s)
- c. gamete donor
- d. facilitator

Country	a.	b.	c.	d.
Andorra	No	No	No	No
Austria	No	No	No	Yes
Belgium	N/A			
Bosnia and Herzegovina	N/A			
Croatia	Yes	Yes	Yes	No
Cyprus	N/A			
<i>Czech Republic</i>	N/A*			
Denmark	No	No	No	Yes
Finland	No*	No*	No*	Yes*
France	Yes*	Yes*	Yes*	Yes*
Georgia	N/A	N/A	N/A	N/A
Germany	No	No	No	Yes
Greece	N/A	N/A	N/A	N/A
Hungary	Yes*	Yes*	N/A*	Yes*
Iceland	Yes			
Ireland	N/A			
<i>Italy</i>	Yes	Yes	No*	Yes
Lithuania	No*	No*	No*	N/A*
Luxembourg	N/A			
Montenegro	No	No	No	No
<i>Netherlands</i>	Yes*	Yes*	Yes*	Yes*
Norway	N/A*	No*	No*	Yes*
Portugal	Yes*	Yes*	N/A	Yes*
Romania	N/A	N/A	Yes	Yes
Russian Federation	N/A*	N/A*	N/A*	N/A*
San Marino	-			
Spain	Yes*		Yes*	Yes*
Sweden	No	No	Yes*	Yes*
Switzerland	No	No	No	Yes
Türkiye	N/A*	N/A*	N/A*	N/A*
Ukraine	N/A	N/A	N/A	N/A
United Kingdom	N/A	N/A	N/A	N/A
Belarus	N/A	N/A	N/A	N/A

CZECH REPUBLIC

Surrogacy is not explicitly prohibited and is commonly performed. So far this has not happened, although there are reports of overstepping Czech law. However, where there is no prosecutor (so far), there is no judge. If a plaintiff were found, any of the persons mentioned could be criminalized if they were found to have violated the prohibition against financial gain from the human body or the prohibition against trafficking in human beings, especially women and children.

FINLAND

a - No, unless she is considered guilty of *unlawful arrangement of adoption* (Chapter 25, Section 3c of the Criminal Code, see excerpt below).

b - No, unless they have *paid or promised to pay remuneration for the gametes or embryos* to be used in violation of Section 21 of the Act of Assisted Fertility Treatments, or they are considered guilty of *unlawful obtaining of consent to adoption or unlawful arrangement of adoption* (Chapter 25, Sections 3b and 3c of the Criminal Code, see excerpts below).

c - No, unless he or she is considered guilty of *unlawful obtaining of consent to adoption or unlawful arrangement of adoption* (Chapter 25, Sections 3b and 3c of the Criminal Code, see excerpts below).

d - According to Section 35 of the Act on Assisted Fertility Treatments (1237/2006), a person who intentionally provides assisted fertility treatment although there is reason to presume that the child will be up for adoption, shall be sentenced to a fine for *assisted fertility treatment offence*. The facilitator is also more likely to be considered to violate the *ban on remuneration* (Section 35, paragraph 2 of the Act on Assisted Fertility Treatments) and to be considered guilty of *unlawful obtaining of consent to adoption and unlawful arrangement of adoption* (Chapter 25, Sections 3b and 3c of the Criminal Code).

FRANCE

a. Prosecution is possible on grounds of voluntary substitution, simulation or dissimulation resulting in an infringement of the civil status of a child (Article 227-13 of the criminal code).

c, d: Article 227-12, paragraph 1 of the criminal code establishes a penalty of 6 months' imprisonment and a fine of € 7,500 for the act of inciting one or both parents to abandon a child or an expected child either for commercial gain or through enticements, promises, threats or abuse of position.

Article 227-12, paragraph 2 establishes a penalty of one year's imprisonment for having acted or sought to act as an intermediary, for commercial gain, between a person wishing to adopt a child and a parent wishing to relinquish his or her child. Article 227-12, paragraph 3 also establishes the same penalty for acting as an intermediary between a person or a couple wishing to receive a child and a woman prepared to bear this child for the purpose of giving it to them, and two years' imprisonment and a fine of € 30,000 for such acts when they have been committed repeatedly or for commercial gain. Attempting to commit these offences is also punishable.

HUNGARY

For A., B. and D. § 175 on prohibited use of human body of the Criminal Code (Act C of 2012) is relevant. In addition, for a. to d., § 213 on violation of family status are also valid.

LITHUANIA

There are no specific provisions in the Lithuanian law regarding criminalization of surrogacy and there have been no legal surrogacy cases in Lithuania.

ITALY

The sale of gamete is banned, not the donation.

NETHERLANDS

If they violate article 151b and/or c of the penal code, which prohibits (commercial) mediation with the intend of surrogacy and making public the desire to be a surrogate mother or seeking one. The gamete donor is not included in the prohibition. *In the bill that has been sent to Parliament is proposed to decriminalize making public the desire to be a surrogate mother or seeking one.*

NORWAY

The Biotechnology Act Section 7-5 criminalizes persons that wilfully contravene the Act. (Prohibition described in question 2.) This applies to all professionals, not only health professionals. It is specified that the provision applies neither to non-professional persons who seek or make use of services that are illegal under the Act, nor to persons who donate gametes or embryos.

PORTUGAL

Yes, for surrogacies carried out in violation of Article 8 or outside licensed public or private MAP centres (Article 39 of Law No. 32/2006), in which cases:

a. surrogate mothers who enter into onerous surrogacy contracts can be sentenced to a fine of up to 240 days. If contracts are exempt of payment, but are outside of paragraphs 2 to 6 of Article 8, she can be punished with a term of imprisonment of up to 1 year or a fine of up to 120 days.

b. intended parent(s) who enter into onerous surrogacy contracts can be sentenced to imprisonment of up to 2 years, or a fine of up to 240 days. If contracts are exempt of payment, but are outside of paragraphs 2 to 6 of Article 8, they can be punished with a term of imprisonment of up to 1 year or a fine of up to 120 days.

c. gamete donor

N.A.

d. facilitator

Yes. The application of any MAP technique, including those carried out within the framework of gestational surrogacy, outside authorised centres is an offence punishable by a fine of 10 000 to 50 000 Euros in the case of individual facilitators, the maximum being (euro) 500 000 in the case of companies.

RUSSIAN FEDERATION

Surrogacy is not forbidden.

SPAIN

According to the article 10 in the LTRHA it is not allowed the birth of children through surrogacy in Spain. The conduct of them, who by means of economic compensation, put a child, a descendent or a minor in charge of a person with no filiation or familiar relationship, eluding the legal proceedings for custody, guardianship or adoption, with the purpose of stablishing a relation similar to the filiation, is classified as a criminal activity by the Criminal Code art. 221. This crime is punishable by two to five years imprisonment and by four to ten years disqualification to exercise the right of parental authority, curatorship, custody or guardianship. According this same article 221.2, the person who receives the minor and the intermediary are also punished, even though the delivery had taken place in a foreign country.

SWEDEN

c, d - Yes, if remuneration is involved.

TÜRKIYE

Although there is no law or regulation enacting the conditions of surrogacy in Türkiye, the surrogate motherhood is forbidden by law regarding the familial link article of the Civil Code. The conduct of surrogacy is criminalized by law.

12. Subject to the applicable law, are you aware of the following unlawful practices in your country?

- a. remuneration of the surrogate
- b. remuneration of the gamete donor
- c. advertising for surrogacy services
- d. remuneration of facilitators
- e. any other unlawful practices (please specify)

Country	a.	b.	c.	d.	e.
Andorra	-				
Austria	No	No	No	No	No
Belgium	Yes*	Yes*	Yes*	Yes*	Yes*
Bosnia and Herzegovina	No				
Croatia	No				
Cyprus	No*	No*	No*	No*	No*
<i>Czech Republic</i>	No*	No*	No*	No*	Yes*
Denmark	No	No	No	No	No
Finland	No	No	No	No	No
France	No*	No*	No*	No*	No*
Georgia	No	No	No	No	No
<i>Germany</i>	No*	No*	No*	No*	No*
Greece	Yes*	Yes*	Yes*	Yes*	Yes*
Hungary	No	No	No	No	No
Iceland	No	No	No	No	Yes
Ireland	-				
<i>Italy</i>	-		Yes		
Lithuania	No	No	No	No	No
Luxembourg	No	No	No	No	No
Montenegro	No	No	No	No	No
Netherlands	No	No	No	No	No
Norway	No	No	No	No	No
Portugal	No*	No*	No*	No*	No*
Romania	No	No	No	No	No
Russian Federation	-*	-*	-*	-*	-*
San Marino	-				
Spain	No	No	No	No	No
Sweden	No	No	No	No	No
Switzerland	No	No	No	No	No
Türkiye	No*	No*	No*	No*	No*
Ukraine	No	No	No	No	No
United Kingdom	No	No	No*	No	No
Belarus	No*	No*	No*	No*	No*

BELGIUM

In practice, we are informed of these illegal practices if a complaint is filed in court or if the facts are known to us (e.g. via the hospital or communal services of the Civil Registry).

CYPRUS

Please note that since the Law is new, there was not enough time to observe any irregularities in the implementation of the law.

CZECH REPUBLIC

For several years, the Czech Republic has been a country where Ukrainian surrogate mothers go to give birth and hand over their children to foreign clients, usually single men. However, giving birth and registering a child when both parents agree is not in itself a criminal offence. The procedure is cleverly planned by the actors into successive steps in different countries, where each partial step is legal. The Czech police have been monitoring these practices for a long time in cooperation with other countries. However, international surrogacy obviously cannot be solved without common international legislation.

FRANCE

There is no legal information network. The information obtained by the French authorities is opportunistic: the sources are criminal investigations or data collected during civil cases brought by the families concerned in order to have foreign birth certificates transcribed in France.

GERMANY

The Federal Government is not aware of any of the unlawful practices referred to in a. to e. in Germany. *However, since oocyte transfer is prohibited too, German artificial reproduction clinics cannot engage in any form of surrogacy.*

GREECE

The National Bioethics Commission (www.bioethics.gr) published in 2013 a Report on the "Control in the field of Medically Assisted Reproduction" after having received complaints about illegal practices in Greece including among other things cases of exploitation of non-resident women (trafficking), in combination with commercialization of oocytes, services of surrogate motherhood and use of illegal drugs.

PORTUGAL

No. The Portuguese authorities, as well as the National Council for MAP, are incumbent to observe and act upon any irregularities detected in the implementation of the law.

RUSSIAN FEDERATION

Hard to answer as these issues are not regulated.

TÜRKIYE

It is known that surrogacy is forbidden by law in Türkiye, the conduct of surrogacy can be done abroad, outside Türkiye Even if it is done by Turkish citizens it cannot be openly revealed because of the familial (parenthood) link legalised by the Civil Code.

UNITED KINGDOM

There are an increasing number of on-line adverts and companies advertising surrogacy packages in other countries, that are unlawful in the UK, but due to foreign servers they cannot be stopped from viewing in the UK.

BELARUS

Unfortunately, surrogacy can be done abroad, outside Belarus. Even if it is done by Belarus citizens it cannot be openly revealed.

13. Who is recognised as the legal parent(s) of a child born following surrogacy?

- a. surrogate mother
- b. oocyte donor
- c. sperm donor
- d. intended mother
- e. intended father

Country	a.	b.	c.	d.	e.
Andorra	-*				
Austria	Yes*	No	No	No	Yes
Belgium	Yes*	No*	No*	No*	Yes*
Bosnia and Herzegovina	N/A				
Croatia	N/A				
Cyprus	No	No	No	Yes	Yes
Czech Republic	Yes*	No	No	No*	Yes*
Denmark	Yes*	No	Yes*	No*	No
Finland	Yes	No	Yes*	No*	No*
France	Yes*	No*	No*	No*	Yes*
Georgia	No	No	No	Yes	Yes
Germany	Yes*	No	Yes/No	No	Yes/No
Greece	-*	-*	-*	Yes*	Yes*
Hungary	N/A*				
Iceland	Yes	No	No	No	No
Ireland	Yes*	No	No	No	Yes
<i>Italy</i>	Yes*				
Lithuania	Yes	No	No	No	No
Luxembourg	N/A				
Montenegro	There are no legal provisions on the subject*				
Netherlands	Yes*	No*	No*	No*	Yes/No*
Norway	Yes*	No*	No*	No*	
Portugal	Yes*	No*	No*	No*	No*
Romania	Yes*	No*	No*	No*	No*
Russian Federation	Yes*	No*	No	Yes*	Yes*
San Marino	-				
Spain	-	-	-	-	Yes
Sweden	Yes*	No*	No*	No*	No*
<i>Switzerland</i>	Yes*	No*	No*	Yes/No*	Yes/No*
Türkiye	No*	No*	No*	No*	No*
Ukraine	No	No	No	Yes	Yes
United Kingdom	Yes*				
Belarus	No	No*	No*	Yes*	Yes*

ANDORRA

The Law of Civil Registry of July 11, 1996, Article 62 provides for the need to prove maternity and so this would be the surrogate mother.

AUSTRIA

Mother is the women who gave birth to the child.

BELGIUM

A – yes, under Belgian law, the woman who gives birth is the legal parent, even if this is not the genetic mother of the child.

B – no, in the context of medically assisted procreation, no action concerning filiation or its economic effects is open to gamete donors.

C – no, idem, cf. B

D – no, she can become a legal mother only through adoption

E – yes conditional. Under the Civil Code, if the mother is not married, in casu the surrogate mother, the intended father may introduce a demand of paternity recognition

CZECH REPUBLIC

A. Yes, Czech law: the woman who gives birth is the legal parent

D. No, she has to go through the adoption procedures

E. Yes, if the surrogate is not married and if she determines the intended father as the child's father

DENMARK

A: Mother is the women who gave birth to the child.

C and D: Yes, but if the mother is married, her husband will be considered the father by pater-est. A sperm donor (and intended father) may be able to recognize the paternity instead of the husband.

FINLAND

C. sperm donor

YES

If sperm has been used domestically outside fertility treatments in order to fertilize an unmarried woman, the sperm provider will be considered as the father. If sperm has been used in fertility treatment for surrogacy abroad, confirming paternity depends on the recognition of the foreign decision and the circumstances involved.

D. intended mother

NO

Intended mother is not recognized as mother unless legal transfer of motherhood from the birth mother has taken place.

E. intended father

NO

Intended father without genetic link to the child is not recognized as father unless legally valid transfer of parentage has taken place. Whether consent to fertility treatment abroad is considered sufficient will depend on the recognition of the foreign decision and the circumstances involved.

FRANCE

On this last point, it follows from *Article 7 of the law n°2021-1017 of 2 August 2021 on bioethics* which takes up the case law of the Court of Cassation previously mentioned (1st Civil Chamber, 3 July 2015, No. 14-21.32; JurisData No. 2015-01587) that foreign birth certificates indicating the paternal and maternal filiations, in respect of the mother who gave birth to the child and the intended father, entered on the birth certificate and presumed to be the biological father, may be transcribed in French civil status registers.

Under French law, the mother is the one who gave birth to the child (Article 311-25 of the Civil Code). The intended mother, who by definition has not given birth to the child, can only establish filiation with the child through adoption.

The same applies to the second father who cannot be entered in the child's birth certificate, article 320 of the Civil Code prohibiting the registration of double paternal (or maternal) filiation,

except adoption. Paternal filiation with regard to the second father can only be established by adoption.

GERMANY

The mother is the woman who gives birth to the child (Section 1591 of the Civil Code). The father is the man who is married to the mother at the time of birth (Section 1592 number 1 of the Civil Code) or acknowledges the child with consent of the mother (Section 1592 number 2 of the Civil Code). This can be either the sperm donor, the intended father or another man, i.e. the husband of the surrogate mother. If the child has no legal father, the natural father can in principle be established as the legal father of the child (Sections 1592 number 3, 1600d of the Civil Code). Since 1 July 2018, this no longer applies to the official sperm donor, Section 1600d(4) of the Civil Code.

In cases where foreign law is applicable to questions of filiation, by virtue of Article 19 of the Introductory Act of the Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch – EGBGB*), its application is always subject to a public policy (*ordre public*) review. Problematic cases are particularly those in which the intended parents are assigned legal parenthood under foreign law by operation of law, even though they are not the biological parents. In the past, German courts have often tended to view this as a violation of public policy. It remains to be seen what influence the Federal Court of Justice's decision of 2014 (see question 3) will have on future court decisions on this matter. The Federal Court of Justice itself has expressly left this question open in its subsequent decision of 2018 (see question 3).

GREECE

In case the child is born after medically assisted reproduction of a surrogate mother, under the conditions of Civil Code article 1458, it is presumed that the mother is the one who has obtained the Court permission. Declaration to the Birth Registries is done accordingly (Law 344/1976) .

This presumption can be reversed by a legal action contesting the maternity, within six months from the birth of the child. This legal action can be initiated either by the presumed mother or by the surrogate mother, provided that evidence is provided that the child is biologically linked to the latter. The contesting must be proceeded with by the woman entitled to do so personally or by her specially authorized attorney or by the Court permission by her lawful representative. Following the irrevocable Court decision in favour of the legal action, the mother of the child is considered to be the surrogate mother with retroactive effect as from the fact of its birth.

HUNGARY

Not applicable

According to § 4:115 (1) of the Civil Code (Act V of 2013) the mother of the child is the woman who has delivered the child.

According to section (4) thereof, if the child was born in an assisted reproduction event, the oocyte donor cannot legally apply for the mother status.

IRELAND

a. surrogate mother YES (birth mother is the legal mother - see note on the MR and Anor – v- An tArd Chlaraitheoir & Ors [2014] case)

If the surrogate mother is married, then under the Status of Children Act 1987, the surrogate mother's husband is presumed by law to be the father of the child. The husband will also, along with the surrogate mother, be the joint guardian of the child.

If the commissioning father is the genetic father of the child, it is possible to overcome the presumption of paternity in favour of the surrogate mother's husband, so as to allow the commissioning father to be recognised as the legal parent of the child. The commissioning father will need to provide evidence of paternity in support of this application.

If the surrogate mother is not married, and the commissioning father is the genetic father of the child, then the Irish authorities may recognise his paternity of the child on receipt of reliable DNA evidence.

As provided for under the Children and Family Relationships Act 2015, gamete/embryo donors are not regarded to be the parent(s) of donor-conceived children.

ITALY

The biological parent is recognized as the legal parent, that is the father. Under Italian law, the mother is the one who gave birth to the child. The partner of the father (the biological parent) can only establish filiation with the child through adoption: the intended mother through L.44/1983, art.44; the same can be applied to the second father, due to ruling No. 38162 of Dec. 30, 2022, Supreme Court of Cassation 's United Civil Section.

MONTENEGRO

There are no legal provisions on the subject.

NETHERLANDS

The surrogate mother is always the legal mother of the child (*mater semper certa est*). When the surrogate mother is married, her husband will be the legal father of the child. When the surrogate mother is not married, the intended father can claim legal parenthood by acknowledging the child. *The only way currently for intended parents to gain full legal parenthood (and for the surrogate mother to end her parenthood) is through adoption (or recognition of the foreign birth certificate or foreign court decision). This would change with the new legislation in preparation; which would allow legal parenthood by the intended parents from the moment of birth of the child.*

NORWAY

There are no specific provisions in the Children Act or in the Adoption Act with regard to legal parentage for children born by a surrogate mother. The woman who has given birth to the child shall be regarded as the mother. Maternity can only be transferred by means of adoption. Paternity may be established according to the provisions in the Children Act. If paternity is not established pursuant to the *pater est* rule, a man may acknowledge paternity. Paternity shall be acknowledged in writing either in the notification of birth or by appearing in person before i.a. the National Register, the Norwegian Labour and Welfare Service (NAV), an embassy/consulate, a midwife/doctor at an pregnancy check-up (in Norway). Acknowledgement is valid if the mother has accepted it in writing, or when the acknowledgement is given by the person whom the mother has named as the father. Paternity may also be established/changed by a court order, or changed according to a decision by the authorities. In individual cases, paternity established abroad may be recognized in Norway (strict conditions)

PORTUGAL

The intended parent(s) are recognised as the legal parent(s) of a child born following surrogacy (Article 8, paragraph 7 of Law No. 32/2006). An amendment to the Law establishing the terms under which consent might be revoked by the surrogate mother up to 20 days after the child was born, thus making the surrogate the legal parent, but with no genetic ties, was rejected in 2019 by the Constitutional Court before the Bill was enacted.

ROMANIA

a. But then adopted by the intended parents.

RUSSIAN FEDERATION

a. Under the law, surrogate has the right to keep the child. This provision is based on the idea that a mother is a woman who gives birth to a child. The intending parent(s) can be registered as legal parent(s) only provided a surrogate mother gives her consent to it.

d, e. Intending parent(s) are recognized as legal parent(s) provided the surrogate gives her consent to it.

SWEDEN

Other: Depends on circumstances. A husband of a woman who gives birth to a child is recognized as the legal father. If the woman is unmarried the legal father has to actively confirm his parenthood and its likeliness to achieve legal parenthood.

SWITZERLAND

d. The intended father is recognised as the legal father of the child born as a result of surrogate motherhood if he is a sperm donor and if there is a foreign surrogacy judgment, recognisable in Switzerland, establishing the legal parent-child relationship between the genetic father of intent and the child born as a result of surrogate motherhood.

e. The intended mother is recognised as the legal mother of the child born through surrogate motherhood if she is an egg donor and if there is a foreign surrogacy judgment, recognisable in Switzerland, which establishes the legal parent-child relationship between the genetic intended mother and the child born through surrogate motherhood.

Note: if this condition is not met, the parent-child relationship between the intended parents and the child born as a result of surrogate motherhood can only be established through adoption.

TÜRKIYE

As surrogacy is not recognised by law in Türkiye, there is not any answer to this question.

UNITED KINGDOM

a. The surrogate mother. Under the Human Fertilisation and Embryology Act 2008 the woman who carries and gives birth to the child is recognised as the child's legal mother in all cases. If the surrogate has a spouse or civil partner that person will be recognised as the legal father/second parent unless they are judicially separated or that person did not consent to the procedure.

BELARUS

b) and c) only if they are the intending parents at the same time
d) and e) according to agreement of surrogate motherhood

14. Do mechanisms exist to transfer parentage from the surrogate mother to the intended parent(s) (e.g. adoption procedures)?

Country	Reply	Country	Reply
Andorra	Yes*	Lithuania	No*
Austria	Yes*	Luxembourg	No
Belgium	Yes*	Montenegro	No legal provisions*
Bosnia and Herzegovina	No	Netherlands	Yes*
Croatia	No	Norway	Yes*
Cyprus	Yes*	Portugal	No
Czech Republic	Yes*	Romania	Yes*
Denmark	Yes and No*	Russian Federation	No*
Finland	Yes*	San Marino	-
France	No*	Spain	Yes*
Georgia	No	Sweden	Yes*
Germany	Yes*	<u>Switzerland</u>	Yes*
Greece	No*	Türkiye	No
Hungary	Yes*	Ukraine	Yes*
Iceland	Yes*	United Kingdom	Yes*
Ireland	-*	Belarus	-*
Italy	-*		

ANDORRA

Adoption could be possible.

AUSTRIA

As in any other constellation, however, adoption may take place between the child and the intended parents without any special provision for surrogacy cases.

BELGIUM

The breaking of parentage can only occur with the adoption by the intended mother and this, following the waiving of the rights by the surrogate mother. But if the surrogate mother is married, the husband of the latter is considered the legal father and must therefore contest his paternity. Once the paternity is contested, the intended father can recognize the child.

CYPRUS

Yes

In accordance with Article 25 of the Law, immediately after the birth of a child through surrogacy, parentage is immediately transferred to the intended parents.

CZECH REPUBLIC

Adoption.

DENMARK

Not directly. See also answer to question number five.

If the intended father is also the genetic father (e.g. sperm donor), he will be recognized as legal father of the child unless the surrogate mother is married and there has not been a paternity case, where the husband of the surrogate mother declares that he is not the father of the child.

A spouse or cohabiting partner may apply for a stepchild adoption. However according to Danish regulation, the spouse or partner must have been living with the child for 2½ years before a stepchild adoption may be granted and an adoption decree shall not be issued if any of the parties required to consent to the adoption are to give or receive any kind whatsoever of payments or consideration, including compensation for loss of earnings.

If the intended father is not recognized as a legal father the only option to become legal parent of the child is an adoption, which must be in accordance with the 1993-Hague Convention on Intercountry Adoption, and therefore is difficult.

FINLAND

Yes, Adoption procedures may be applied in some cases. However, there are no specific provisions in the Adoption Act (22/2012) with respect to surrogacy.

FRANCE

Since surrogate pregnancy is prohibited in France and the only possible exemption enabling a woman who has not given birth to a child to be identified as its mother is full adoption, there is no ad hoc mechanism enabling transfer of a filiation link from the surrogate mother to the intended parent. The only possible exemption enabling the woman who has not given birth to be identified as the mother is therefore full adoption.

Nevertheless, when there is no established filiation with the surrogate mother, and the child accordingly has legally established paternity only, some courts have recently been willing to accept the child's adoption by the father's partner.

GERMANY

Yes

As regards legal paternity, cf. answer to question 13.

The surrogate mother's legal parentage can only be transferred to an intended parent (woman or man) by way of adoption, to which general conditions apply.

GREECE

No parentage transfer is necessary, as surrogacy is legal.

HUNGARY

Yes

A birth after surrogacy can happen abroad, in a country where it is lawful. Depending on the specification of the legal mother in the original birth certificate, an adoption procedure may follow in Hungary.

According to the Civil Code, the legal mother cannot be forced to agree to the intended adoption, and the legal decision on the adoption can be withdrawn if a commercial motivation of the adoption comes to light.

ICELAND

Yes

Adoption procedures

IRELAND

See previous note.

In addition, it is proposed that the legislation on assisted human reproduction will establish a court-based mechanism for transfer of parentage from the surrogate (and her husband) to the intending parents. At least one of the intending parents will have to be genetically related to the child.

ITALY

Surrogate pregnancy is prohibited in Italy: there is no ad hoc mechanism enabling transfer of a filiation link from the surrogate mother to the intended parent. The only possible exemption enabling the woman who has not given birth to be identified as the mother is therefore adoption through L.44/1983, art.44.

LITHUANIA

Surrogacy is not allowed in the country.

MONTENEGRO

There is no legal provision.

NETHERLANDS

Yes, adoption proceedings. See also the previous answers.

NORWAY

General rules for adoption will apply if the parents of a child wish to transfer parentage.

ROMANIA

Now only adoption; but is under discussion in the Parliament.

RUSSIAN FEDERATION

No adoption procedure is used in surrogacy cases. Dependently on a situation, either surrogate or intending parent(s) are registered as legal parent(s) (please see answer to Q. 13). After the child's birth is officially registered no transfer of parentage is possible (to put aside the possibility to place a child for adoption that is available to all parents, irrespective on how the child was conceived).

SPAIN

Yes, See point number 17.

SWEDEN

Yes, if the adoption procedure of the country where the child is born is accepted by the Swedish authorities, the adoption will be recognized in Sweden. However, in the one known case where the child was born in Sweden, the adoption was denied because the legal parents withdrew their consent.

SWITZERLAND

Yes, in most cases the parent-child relationship between the intended parents and the child born as a result of surrogate motherhood can be established through adoption.

UKRAINE

Order N 787, 2013

UNITED KINGDOM

Under the Human Fertilisation and Embryology Act 2008, a Court can grant a Parental Order that transfers legal parentage from the surrogate mother (and her spouse/ partner if she has one) to the persons that commissioned the surrogacy provide the criteria in the Act are satisfied.

BELARUS

It depends on the content of the agreement between intending parents and surrogate mother. Surrogate mother is not recognized by the law as the mother of the child she gave birth to. After the child's birth is officially registered no transfer of parentage is possible.

15. Is the existence of a genetic link required for establishing parentage?

Country	Reply	Country	Reply
Andorra	-	Lithuania	-
Austria	No	Luxembourg	N/A
Belgium	No*	Montenegro	No
Bosnia and Herzegovina	No	Netherlands	No
Croatia	No	Norway	No
Cyprus	No	Portugal	Yes*
Czech Republic	No*	Romania	No*
Denmark	No*	Russian Federation	No*
Finland	No*	San Marino	-
France	Yes and No*	Spain	Yes*
Georgia	No	Sweden	-*
Germany	No*	<u>Switzerland</u>	Yes*
Greece	No*	Türkiye	Yes*
Hungary	No*	Ukraine	Yes*
Iceland	No	United Kingdom	Yes*
Ireland	-*	Belarus	-*
<u>Italy</u>	-*		

AUSTRIA

Maternity: no. Paternity: no, the father is the mother's husband, the man who acknowledged paternity or the male partner of the woman giving birth following ART, always under the condition that he formally consented to the treatment.

BELGIUM

The legal mother is the woman who gives birth even if she is not the genetic mother. If the surrogate mother is not married, the intended father can recognize the child at birth.

CZECH REPUBLIC

No, in cases of MAP.

DENMARK

In Denmark maternity is established by *mater est*, which means that the woman who gives birth to the child is the legal mother.

Paternity can be established in three different ways:

1. By presumption (*pater est* (the husband to a mother is presumed to be the father of a child) or a man and the mother jointly sign a Care and Responsibility Declaration, paternity will be recognized)
2. By declaration or judgment when the man is the genetic father.
3. When a man has consented to his spouse or partner undergoing assisted fertilization, paternity can be established. This also applies to co-maternity, when a woman has consented to her spouse or partner undergoing assisted fertilization.

FINLAND

No, however, in absence of genetic link, for *paternity*, marriage to the birth mother, valid consent to fertility treatment or a valid adoption decision will be required for recognition of paternity. In practice, these will all be international cases where rules on private international law on recognition of foreign decisions on paternity will be applied. According to Section 2 of

the Maternity Act (253/2018), the person who has given birth to a child is the mother of the child irrespective of genetic link. The Act also includes the private international rules on maternity as stated under question no. 2.

FRANCE

YES: The paternal filiation of a child produced by a surrogate pregnancy will not be recognised in France unless it appears to correspond to the biological reality. It should be noted that the Court of Cassation has not yet ruled on the extent of the verifications to be made regarding a father's acknowledgement of paternity when the child's birth certificate is transcribed in France. The question is whether legal evidence of a biological filial link between the man who has registered the child should be required or whether a claimant's voluntary declaration is sufficient.

NO: On the other hand, the genetic maternal filial link will not be recognised in the case of a surrogate pregnancy resulting from the implantation of oocytes provided by the intended mother: in France the mother is the woman who gives birth to the child (article 311-25 of the civil code).

GERMANY

See answer to question 13.

To date, German courts have delivered relatively few judgments dealing with the recognition of foreign judgments on legal parenthood. In the above-mentioned landmark decision of 2014 and in subsequent decisions (see answer to question 3), the Federal Court of Justice has so far only argued that a possible requirement of there being a genetic relationship would be sufficiently met if only one of the intended parents is genetically related to the child and the surrogate mother is not, due to an egg donation. Whether or not recognition of a foreign judgment that awards parenthood to two persons who are not genetically related to the child is contrary to German public policy is, therefore, unclear at present.

GREECE

See question no. 13.

HUNGARY

No

In the case of assisted reproduction the genetic link cannot be complained by the parents, according to the Civil Code, § 4:108 a) for the father, and § 4:115 (4) for the mother.

IRELAND

As previously stated, the birth mother is automatically regarded as the legal mother under the Irish Constitution. See notes under Q 13 re paternity and Q 14 re transfer of parentage in cases of surrogacy.

ITALY

YES: The genetic link allows the paternal filiation. NO: see answer n.13

PORTUGAL

Yes, at least one of the intended parents (Article 8, paragraph 3 of Law No. 32/2006).

ROMANIA

Not yet, under discussion in the Parliament.

RUSSIAN FEDERATION

A genetic link is not required for establishing paternity/maternity in cases of MAP.

However, the law requires genetic links for making a contract for surrogate motherhood but law is inconsistent and not quite clear on this matter.

SPAIN

Yes, According to Spanish Civil Code, birth is the essential issue to determine motherhood. Mother is the woman who gives birth, not the one who provides the genetic material. In the current filiation system, natural fatherhood is based in the genetic truth, while motherhood is based on biological motherhood.

SWEDEN

See above question 13 f. In a surrogacy situation the child has to be legally adopted by the intended parents in the birth country, and the adoption has to be recognized by the Swedish court. If a child was to be born in Sweden the woman who gives birth and her husband are considered legal parents. Also in this case an adoption would have to be approved in a surrogate situation.

SWITZERLAND

No genetic relationship between the intended parents and the child born of surrogate motherhood is required for adoption. However, the parent-child relationship between the intended parents and the child can only be directly recognised on the basis of a foreign surrogacy judgment (e.g. in the United States) if the intended parents are also the genetic parents of the child.

See also the answer to question 13 above.

TÜRKIYE

This can be done in case of any forensic medicine queries, not for surrogacy context which is unlawful in Türkiye

UKRAINE

Only in cases of any conflict situation.

UNITED KINGDOM

One of the criteria for granting a Parental Order is that the gametes of at least one of the intended parents should have been used to bring about the creation of the child.

BELARUS

A genetic link is not required for establishing paternity/maternity in cases of MAP.

16. Are the other parties involved mentioned in the birth certificate or other official document connected to the birth?

- a. surrogate mother
- b. oocyte donor
- c. sperm donor
- d. intended mother
- e. intended father

Country	a.	b.	c.	d.	e.
Andorra	-				
Austria	-*	No	No	-	Yes
Belgium	Yes*	No	No	No	Yes*
Bosnia and Herzegovina	N/A				
Croatia	N/A				
Cyprus	No	No	No	Yes	Yes
Czech Republic	Yes*	No	No	No*	Yes*
Denmark	Yes*	No*	Yes and No*	No*	Yes and No*
Finland	Yes	No	Yes*	No*	No*
France	Yes*	No	No	No*	Yes*
Georgia	Yes	-	-	Yes	No
<u>Germany</u>	No*	No*	No*	No*	No*
Greece	-	-	-	Yes	Yes
Hungary	N/A*				
Iceland	Yes	No	No	No	No
Ireland	Yes*	No	No	No	Yes*
<u>Italy</u>	-*				
Lithuania	-				
Luxembourg	N/A				
Montenegro	N/A	No	No	N/A	N/A
Netherlands	Yes	No	No	No	Yes/No
Norway	N/A*	N/A*	N/A*	N/A*	N/A*
Portugal	Yes	No	No	No	No
Romania	-*				
Russian Federation	No*	No	No	No*	No*
San Marino	-				
Sweden	Yes*	No*	No*	No*	No*
<u>Switzerland</u>	No*	No*	No*	Yes*	Yes*
Türkiye	No	No	No	No	No
Ukraine	No	No	No	No	No
United Kingdom		No	No		
Belarus	No*	No*	No*	Yes*	Yes*

AUSTRIA

*mother is the woman who gave birth to the child.

BELGIUM

A – yes, she is the legal mother
E – yes, if he recognizes the child at birth

CZECH REPUBLIC

A. Yes, before the adoption
D. Not first, after adoption yes
E. Yes, if the surrogate is not married

DENMARK

If the intended father is also the genetic father, it is possible to recognize the paternity (cf. answer to question 13).

FINLAND

Not applicable, as medically assisted surrogacy is prohibited.

FRANCE

a. Case law permits the transcription of the child's birth registration in France with mention of the maternal affiliation when the surrogate mother is entered on the birth certificate.

d. *Between the reversal of the case law of the Court of Cassation on December 18, 2019 and the adoption of the law of 2 August 2021 on bioethics*, the birth certificate of the child mentioning the intended mother, despite the fact that she has not given birth, has been fully transcribed.

Indeed, the above-mentioned law intended to reverse this case law and allow only the transcription of the birth certificate with regard to the mention of the father of intention (presumed biological).

e. The Court of Cassation has ruled that the child's paternal filial link, where corresponding to the biological reality, must be entered in the French civil status register.

GERMANY

The persons mentioned in the birth certificate are those whose legal parenthood has been established (cf. answer to question 13). *The birth certificates or other official documents do not establish parenthood, but can be used as proof of parenthood towards other authorities and courts.*

IRELAND

A – Yes (birth mother is always the legal mother)
E – Yes (so long as he is the genetic father)

The proposed legislation will establish a national surrogacy register where the contact details of any person involved in a surrogacy, e.g. sperm or oocyte donor, intending parent and surrogate, will be recorded. Once a person born to a surrogate reaches the age of 18, he or she may access the full information contained in the national surrogacy register, unless there are exceptional circumstances.

ITALY

NO, only the biological parents can be mentioned in the birth certificate.

NORWAY

Not applicable
Only the parents of the child are mentioned in the birth certificate.

PORTUGAL

Besides the intended parent who has consented to the use of the technique in question, other parties may be mentioned in the birth certificate (Article 20), namely the person to whom she

is married or linked by registered partnership. The respective parenthood shall be established at the time of registration.

ROMANIA

Only the woman giving birth is involved and the father.

RUSSIAN FEDERATION

Only those parties that were recognized as legal parents mentioned in the birth certificate. Entry in a birth registry book contains some information about a surrogate being involved, provided she refused to be registered as a legal mother and gave her consent to intending parents being registered as legal parents.

SWEDEN

A – Yes, in a Swedish birth certificate the woman giving birth would be mentioned as the legal mother

B – Yes, a donor is registered in a special donor record

C – Yes, a donor is registered in a special donor record

D – No, unless mentioned in a medical file

E – No, unless mentioned in a medical file

SWITZERLAND

a, b, c - The details of the surrogate mother, egg donor and sperm donor are recorded in the civil register, in the event that the child born after surrogacy wishes to know about them at a later date. However, they do not appear on any official document (birth certificate, etc.). This also applies after the child has been adopted by the intended parents.

d, e - Yes, if the parent-child relationship between the intended parents and the child born through surrogate motherhood can be recognised in Switzerland (see also question 13), the intended parents will be entered in the civil status register as the child's legal parents and will appear on civil status documents (birth certificate, etc.). This also applies if the child is adopted by the intended parents.

UNITED KINGDOM

Where gamete donation has taken place in a licenced clinic, the donors cannot be the legal parents. The intended parents are named on the parental order. If the surrogate is single, the intended father, if he supplied the sperm, can be named on the birth certificate.

BELARUS

Only those parties that were recognized as legal parents mentioned in the birth certificate.

17. Are foreign birth certificates in surrogacy cases registered in your country

Country	Reply	Country	Reply
Andorra	-	Lithuania	-
Austria	Yes*	Luxembourg	N/A
Belgium	Yes*	Montenegro	No data as far
Bosnia and Herzegovina	No	<u>Netherlands</u>	-*
Croatia	No	Norway	*
Cyprus	-*	Portugal	-*
Czech Republic	Yes*	Romania	No
Denmark	No*	Russian Federation	No*
Finland	Yes*	San Marino	-
France	Yes*	Spain	Yes*
Georgia	No info	Sweden	No, not as such
Germany	No*	<u>Switzerland</u>	No*
Greece	Yes*	Türkiye	No
Hungary	No	Ukraine	No*
Iceland	No	United Kingdom	No
Ireland	No	Belarus	-*
<u>Italy</u>	No*		

AUSTRIA

If there is a genetic link between the parents and the child, the foreign birth certificate is recognized in Austria because of the best interests of the child.

BELGIUM

Despite the illegality of a surrogacy contract that results in a birth certificate drawn up abroad, parentage can be recognized in the best interests of the child.

CYPRUS

We do not have any information on this to allow us to answer this question

CZECH REPUBLIC

Very recently (mid May 2018). The reason is the best interest of the child.

DENMARK

According to Article 30 of the Children Act, a woman bearing a child who is the result of medically assisted procreation shall be considered the mother of the child (*mater est*). In Denmark a foreign birth certificate that indicates another person than the birth mother, as parent of the child will not be recognized. If the birth certificate also mentions a father, that paternity will be recognized if the man is also the genetic father of the child.

FINLAND

Yes. Section 45, paragraphs 3 and 4 of the Maternity Act (253/2018) state the conditions for recognition of foreign decisions and birth certificates in surrogacy cases.

FRANCE

Yes under specific conditions (see reply above).

GERMANY

According to section 108 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction [*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG], only foreign “judgments” can be recognised. As the issuing of a birth certificate normally does not require a substantive examination by a public authority of the foreign state, birth certificates usually cannot be considered to be foreign judgments in this regard. Therefore, they cannot be recognised in Germany.

GREECE

The Ministry of Interior and Administrative Reconstruction provides instructions for registering the birth of a child born abroad to the relevant Greek Authority. For this, there must exist affiliation with the Greek State of at least one of the parents of the child. When a child is born abroad, either a birth certificate from a Greek Consulate is required or a birth certificate from the relevant authority of the foreign state. If the foreign birth certificate is issued according to a foreign court order, an official translation of this court order in Greek is required as well as a decision of the Greek court accepting the foreign court decision. These are general provisions, not pertaining specifically to surrogacy. In some countries where surrogacy tourism is thriving, it is required that before the beginning of the procedure, the intended parents provide documentation that the state to which they will turn back permits surrogacy and that it can accept the child as the biological child of the intended parents. Nevertheless, as far as Greek citizens are concerned, (e.g. the commissioning parents or one of them) Greek Embassies abroad cannot issue any documents which are not in line with Greek legislation, since Greece requires a court order for a legal surrogate procedure to begin and since it accepts only partial surrogacy. It is likely, however, that as surrogacy is acknowledged by Greek legislation under certain forms and conditions, any such issue will be settled more easily than in countries where surrogate motherhood is absolutely prohibited.

NETHERLANDS

This depends on what information is on the birth certificate. In general, Dutch law requires the mother who gives birth to be on the birth certificate. (but see earlier answer with reference to jurisprudence deviating from this starting point) As a result, a foreign birth certificate on which the intended parents are listed as the legal parents without mentioning the birth/surrogate mother is not recognized in practice because of a violation of Dutch public policy (*ordre public*). If this is the case, the birth data can be determined in the Netherlands and included in a (new) birth certificate.

NORWAY

Only when the child is born on the territory of the State.

ITALY

NO, see answer n.16

PORTUGAL

Competent authorities are not aware of any requests at this juncture.

RUSSIAN FEDERATION

There is no system of registration of foreign birth certificated in Russia, whether they relate to surrogacy or not.

SPAIN

Yes, In September 2010 a direction of the General Directorate of Registries and Notaries established that those children born by means of surrogate motherhood could be registered with Spanish citizenship in the Civil Registry, provided they were born in a country

where this technique is regulated, one of the parents had Spanish citizenship and there were a judicial sentence warranting the legality of the process and established the filiation of the child.

A sentence of the Supreme Court in February 2014 laid down that registering children born by means of surrogate motherhood in the name of both parents results in evading the 2006 Law that doesn't allow this technique in Spain, so that all registrations in consulates came to a halt or were even refused since then. This sentence affected the families who had carried out the process in the USA. The only solution since that moment was to register the child by the parent who could certify his /her genetic parenthood and the adoption of the child by the other, as it happens in other countries.

End of June the European Court for Human Rights in Strasbourg condemned France (65192/11 (Mennesson c/ France) y 65941/11 (Labassee c/ France) for not having recognised parenthood of couples, who have had their children by means of this method in USA. The reason given by this Court was that rights of the child are above legal public order.

Due to this sentence Spanish Ministry of Justice has ordered the consulates to allow again the registration of these children in the General Register Office, as it had been done until 2010.

SWITZERLAND

No, foreign birth certificates are never recognised directly in surrogacy cases. It is only when there is a foreign judgment that can be recognised in Switzerland (art. 70 LDIP), which establishes the parent-child relationship with the intended (genetic) parents, that the foreign birth certificate drawn up on the basis of the judgment can also be recognised (case law of the Federal Court).

UKRAINE

No cases are known.

BELARUS

There is no system of registration of foreign birth certificates in Belarus, whether they relate to surrogacy or not. Foreign birth certificate is considered in the general order. In case of disagreement, it's realized by a court decision in accordance with the Marriage and Family Code. These are general provisions, not pertaining specifically to surrogacy. The court decisions are made in favor of application of genetic parents. Despite the illegality of a surrogacy contract that results in a birth certificate drawn up abroad, parentage can be recognized in the best interests of the child.

18. Is there:

a. any public discussion about the topic

b. planning of new regulation at national level

Country	a.	b.	Country	a.	b.
Andorra	-		Lithuania	-	
Austria	No	No	Luxembourg	Yes	Yes
Belgium	Yes*	No*	Montenegro	Yes	Yes
Bosnia and Herzegovina	-	-	<u>Netherlands</u>	Yes*	Yes*
Croatia	No*	Yes*	Norway	Yes*	No*
Cyprus	Yes	Yes	Portugal	-	Yes*
<u>Czech Republic</u>	Yes*	Yes*	Romania	Yes	Yes
Denmark	No	No	Russian Federation	No*	No*
Finland	Yes	No	San Marino	-	-
France	Yes*	No*	Spain	No	No
Georgia	Yes*	Yes*	Sweden	Yes*	No*
Germany	Yes	No	<u>Switzerland</u>	Yes*	No
Greece	No	Yes	Türkiye	Yes/No	No
Hungary	No*	No	Ukraine	No	No
Iceland	Yes	Yes	United Kingdom	Yes	Yes
Ireland	Yes	Yes	Belarus	-*	-*
<u>Italy</u>	-*	-*			

BELGIUM

Debates were held in the Senate, a report was delivered on 4 December 2015. Parliamentary initiatives to regulate surrogacy may emerge during this legislative period.

CROATIA

New legislation is foreseen for the MAP field, but primarily to regulate technical issues, not surrogacy.

CZECH REPUBLIC

Since the publication of the news (2022) that Prague is a place of birth and handover of children from Ukrainian surrogate mothers to foreigners, the topic is still present in all media. It is very often addressed by MPs, and in 2023 there were three independent parliamentary motions to ban the procedure, none of which were adopted. The Ministry of Justice is currently drafting legislation, the intention is strict regulation, not a ban.

FRANCE

French case law is developed in accordance with French law, which maintains an absolute prohibition on the practice of surrogacy while aiming to find a solution compatible with the right to respect for the private life of children born under surrogate arrangements.

Public debate continues on this topic, which raises particularly strong ethical issues.

The question was widely debated in the context of the examination of the bioethics bill and in particular after the reversal of jurisprudence operated by the Court of Cassation which weakened the ban on surrogacy in France.

GEORGIA

A

Time to time articles appear in the printed as well as electronic media discussing issues of surrogacy, including interviews with surrogate mothers. Some journalists are trying to identify adverse effects of surrogacy, including psychosocial problems of surrogate mothers.

B

The first initiative to regulate surrogacy in details was in 2003 as a part of developing new Draft Law on Reproductive Health and Reproductive Rights, which had been submitted to the Parliament of GEORGIA in December 2003. The draft Law has never been discussed by the Parliament.

The last initiative was in 2014, when the Ministry of Justice developed Specific Draft Law on Surrogacy. The draft law was very detailed on the matters of contract, financial issues and rights and responsibilities of intended parents and surrogate mothers. The draft law as a matter of fact envisaged commercial surrogacy as well, as it would give right the surrogate mother to get additional (in addition to the expenses related to pregnancy and medical care) **reasonable remuneration**.

The national Council on Bioethics of Georgia responded on this matter twice:

- a) On 4 February 2014 – Recommendation of the National Council on Bioethics on the Legal Regulation of the transfer and development of embryo (obtained as a result of IVF) to the uterus of another woman (surrogate mother).
- b) On 17 December 2014 – Conclusion of the Chair of the National Council on Bioethics on the Draft Law on Surrogacy and on the Existence of the Institute of Surrogate Mother in GEORGIA.

Both documents urges for prohibiting Surrogacy because of its unacceptability due to medical, social, moral and ethical reasons.

The conclusion of the NCB of GEORGIA included the following recommendations:

1. Institute of surrogate motherhood is unacceptable due to medical, social, moral, ethical and legal considerations;
2. Surrogate motherhood has to be banned by GEORGIAN legislation and new cases of surrogate motherhood shall be avoided.
3. Simultaneously with introducing legislation prohibiting surrogate motherhood the Government shall ensure:
 - a. protection of current surrogate mothers from any form of undue influence; protection and promotion of their rights and dignity; adequate support to bring pregnancy to the end and give birth to the child;
 - b. psychological support to surrogate mothers who have had or currently experience psycho-emotional problems due to giving newborn to couple;
 - c. support and help to former surrogate mothers to find alternative jobs;
 - d. support to the organisations and employees of organisations involved in surrogacy in changed their field of business;
 - e. improvement accessibility to child adoption to infertile couples, for which unjustified barriers have to be removed.

The draft law is not being considered now and has not yet been submitted to the Parliament of Georgia.

HUNGARY

A - It used to be, see no. 3

ITALY

a) there is an important public debate on this topic, with a public opinion predominantly opposed to surrogacy

b) The bill approved by the Chamber of Deputies and forwarded to the Senate (No. 824), which incorporates proposals presented in the previous legislature (Nos. 2599 and 306, Chamber of Deputies), extends the application of Italian criminal law to the crime of surrogacy committed by Italian citizens abroad.

NETHERLANDS

In 2016, the Government Committee on the reassessment of parenthood gave an advisory report on surrogacy and parenthood. The government has decided to regulate surrogacy by law and last summer a bill has been sent to Parliament. In November 2023 there have been elections and a new Government will be formed.

NORWAY

We are not aware of any planned new regulations.

PORTUGAL

b. planning of new regulation at national level

A Portuguese legislative election was held on 6 October 2019 and it is expected that, after the new Government has been sworn in, Surrogacy will be again debated and a new amendment to the law discussed.

RUSSIAN FEDERATION

a. There are currently no important/serious discussions among general public on surrogacy.

b. There is a draft-law that aims to withdraw from a surrogate her right to keep a child, thus allegedly making surrogacy exclusively based on a contract. It is hard to say now what the chances are that this law will be adopted (although it is not the first attempt to change the law this way).

SWEDEN

A - YES, following the SOU mentioned below.

B - NO: In the recent publication on the 24th February 2016 "Olika vägar till föräldraskap (SOU 2016:11)" a government inquiry had been issued to consider different ways to increase the possibilities for involuntarily childless people to become parents. That included considering whether to permit altruistic surrogacy, if any, in Sweden. The conclusion was that commercial surrogacy should not be permitted, nor should altruistic surrogacy, in the Swedish health system, and that society should also counter that type of surrogacy. The final report has been submitted to a large number of stakeholders, organisations and authorities, for comments by the 23rd June 2016.

SWITZERLAND

A. There is currently no political debate at federal level.

B. no.

The two parliamentary items (postulate) have been settled.

UNITED KINGDOM

In the light of debate by Parliamentarians and stakeholders, the UK Government has recognised that the existing legislative framework is in need of review, so the Law Commissions of England & Wales and Scotland undertook a comprehensive review of all aspects of surrogacy legislation, starting in 2018. A final report was published on 29 March 2023. The UK Government is considering the recommendations and will publish a response in due course.

[Surrogacy - Law Commission](#)

BELARUS

From time to time, articles appear in the printed as well as electronic media discussing issues of surrogacy, including interviews with surrogate mothers.

But there are currently no important/serious discussions among general public on surrogacy.

B. The first initiative to regulate surrogacy in details was in 2011 as a part of developing new **Law of the Assisted Reproductive Technologies**, which had been submitted to the Parliament of Belarus in 2011. The last legal initiative was in 2016, when the Ministry of Justice developed amendments to the Marriage and Family Code.

The Bioethics Committee of the Republic of Belarus plans to consider the issue of making proposals for amendments to the Law on ART in September 2018.

The draft issues of discussion as a matter of fact envisaged commercial and non-commercial surrogacy as well as the problem of reasonable remuneration for surrogate mother and also the problems of donation for realization of ART.

19. Please specify any additional relevant aspects which were not mentioned.

BOSNIA AND HERZEGOVINA

In Bosnia and Herzegovina there is no specific legislation on MAR as yet. Currently, it is regulated by the Health Protection Act (in both B&H entities: Federation BiH and Republika Srpska), as well as by some specific provisions (mainly regulating rights of the couple to reimbursement of IVF costs for two attempts)

MAR as a medical procedure is well established both in public and private sector in Bosnia and Herzegovina

A draft Law on Medically Assisted Reproduction in the Federation B&H, after a long time preparation and public debate, has been rejected by the Parliament of Federation B&H in June 2014.

Article 50. of this Law :

- (1) prohibits advertising (looking for or offering) of surrogacy services
- (2) prohibits arranging and performing surrogacy
- (3) contracts or any other legal arrangements on surrogacy and delivery of child born after MAR, with or without remuneration, are unlawful.

CYPRUS

An amendment to the recent Law is prepared by the Board of Medically Assisted Reproduction which will be presented for approval to the Council of Ministers and the House of Representatives of the Republic of Cyprus in 2016.

CZECH REPUBLIC

In March 2023, the Casablanca Declaration was announced, calling for a universal ban on surrogacy. The representative of the CR (a member of the CDBIO) was one of the signatories and spokesperson directly in Casablanca at the announcement of the call (of course not on behalf of the CR, it is a private professional position) and continues to be a member of the active Casablanca team. The next meeting is at the beginning of April in Rome, the agenda is here: <https://declaration-surrogacy-casablanca.org/wp-content/uploads/2024/02/Programme-Rome-En.pdf>.

FINLAND

Excerpts from the unofficial translation of the Finnish Criminal Code

<http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>

Chapter 25 – Offences against personal liberty

Section 3(b) – Unlawful obtaining of consent to adoption (28/2012)

(1) A person who by (1) promising or providing compensation or (2) misleading or by utilization of an error gets another to give the consent referred to in section 10, subsection 1, section 11, subsection 1 or section 13, subsection 3 of the Adoption Act to adoption of a child under the age of eighteen, shall be sentenced for *unlawful obtaining of consent to adoption* to a fine or to imprisonment for at most two years.

(2) An attempt is punishable.

Section 3(c) – Unlawful arrangement of adoption (28/2012)

(1) If a person other than the one with care and custody of the child or a person other than the provider of adoption advice referred to in section 22 of the Adoption Act or the service provider referred to in section 32 of the Adoption Act places a child under the age of eighteen years with the intent of adoption in a private home to be raised or in another manner arranges for the possibility that someone else adopts the child, he or she shall be sentenced for *unlawful arrangement of adoption* to a fine or to imprisonment for at most one year.

(2) Also a person who publicly or otherwise among the public circulates an offer to place a child for adoption or takes a child in his or her care with intent of adoption shall also be sentenced for unlawful arrangement of adoption.

GEORGIA

Currently there is just one article the Law on Healthcare (adopted in 1997) about surrogacy which specifies two issues:

- a) the embryo developed as a result of IVF can be transferred to other woman (surrogate mother) if an intended mother has no uterus;
- b) surrogate mother shall not be considered as a mother born as a result of surrogacy – intended mother and father are considered to be the parents.

The text of the above article is given below:

Article 143.

1) Extra corporeal fertilization is allowed in the following cases:

- a) treatment of childlessness, presence of risk of transmission of genetic diseases on the part of husband or wife, by use of gametes of spouses or donor or embryo, if there is a written consent of a couple.
- b) if a woman has no uterus, by the transfer and raising of embryo received as a result of fertilization to the uterus of other woman (surrogate mother). A written consent of a couple is mandatory.

2) In case of birth of child the couple is considered a parents with all related responsibilities and rights. “Surrogate Mother” has no right to be considered as a mother of the child born.

GERMANY

Any activities of the Council of Europe regarding surrogacy issues should be coordinated with the Hague Conference on Private International Law. Matters of international private and procedural law in this area should be reserved for the Hague Conference in order to avoid duplication of work.

ICELAND

Please see Appendix I.

ITALY

Italy brought the *Paradiso and Campanelli v. Italy* case in front of the ECHR (judgment on 27 January 2015). A case of a child born in Russia following a surrogacy arrangement entered into by a couple who had no biological relationship with the child, contrary to allegations made by the applicants. The Italian State declared the child legally available for adoption and placed him under guardianship. The European Court of Human Rights condemned Italy. However, the Italian government appealed this decision and requested that the case be referred to the Grand Chamber of the ECHR. Grand Chamber hearing with the Italian government was held on 9 December 2015. With the judgment on 24 January 2017, the ECHR established: “ The Court accepts that the Italian courts, having assessed that the child would not suffer grave or irreparable harm from the separation, struck a fair balance between the different interests at stake, while remaining within the wide margin of appreciation available to them in the present case. It follows that there has been no violation of Article 8 of the Convention”. The ECHR recognized that the measures in question were deemed proportionate to the protection of the overriding interest of the child and essential to avoid recognizing as legitimate a situation created in violation of rules important to the national system.

LUXEMBOURG

Draft law no 6568 proposes to prohibit surrogacy (“any agreement for surrogacy is void”). See the recent opinion of the NEC: MAP, Surrogacy anonymously: so many ethical challenges to society (pages 24-26)

http://www.cne.public.lu/publications/avis/Avis_26.pdf

MONTENEGRO

A law of reproduction has been discussed in Parliament in the last 3 years, but no final form is released yet.

MAP is regulated by Law on Infertility Treatment with Assisted Reproductive Technologies, endorsed by Parliament of Montenegro in 2009. Oocytes and sperm donation are only allowed if the donation is not commercial.



MNE Law on
Infertility Treatment \

SPAIN

Growing cases of celebrities who turn to these media, especially homosexual couples, are known.

The Spanish Surrogate Association is promoting the legalisation of this method as another Assisted Reproductive Technology, which should not be an option only for the ones who can afford to travel abroad.

TÜRKIYE

Surrogacy in the sense of surrogate mothership in the context of medically assisted procreation is not allowed in Türkiye. Medically assisted procreation is limited to artificial insemination such as IVF techniques and the like, and these are practiced in cases of infertility at certified medical centres permitted / authorised and monitored by the State in line with the concerned Regulation.

In Türkiye the main legal document dealing with the assisted procreation is the **Regulation on the application of Assisted Reproduction and the health institutions that practice this** (Uremeye Yardimci Tedavi Uygulamalari ve Uremeye Yardimci Tedavi Merkezleri Hakkinda Yonetmelik) (The Regulation).

The Regulation ordains the application of the medical techniques of assisted reproduction and embryo transfer in line with the modern medical technologies and sciences. It also regulates specifications of the practice, duties and responsibilities, physical conditions, terms of certification of the concerned health institutions (whether in the State or at private sector), requirements of the personnel who work there, and the like.

Article 1 states that assisted reproduction and embryo transfer can be applied only to **married couples** who are not able to procreate in natural way.

Article 4/f states that only expectant mother's ovum and her husband's sperm can be fertilized by diverse medical methods and transferred and placed into mother-to-be's womb through proper medical techniques.

It is added to the Regulation that only married but infertile couples can benefit from assisted procreation services using only their own fertilized oocytes, sperms and zygotes. Couples are also liable to document their infertility meaning that they are unable to reproduce in natural way.

Upon an amendment on 8.7.2005, Article 17 prohibits the use of ova, sperms and embryos harvested from married couples onto other persons or candidates of parents. This Article, prohibits also, the use of ova, sperms and embryos harvested from other persons or candidates for the applicant parents. This Article bans the commercialization of human reproduction cells, as well.

In conclusion, as understood from the Regulation, married couples are strictly forbidden to accept (egg and/or sperm) donation from other persons or to donate their own embryos to other persons, or transfer them to surrogate mother(s). Surrogacy is evaluated as against individual rights and freedoms, common morality and common law (1)

The underlying reasoning of this argumentation lies in the idea of parenthood and familial link stated in the Turkish **Civil Code** (2). However, the relevant parts of the Civil Code dealing with parenthood or familial link do not ordain assisted procreation and embryo transfer, neither their relevant outcomes are presumed. The Turkish Civil Code (2001) acknowledges the Roman Law principle “*Mater semper certa es*”, which has the power of *praesumptio iuris et de iure*, meaning that no counter-evidence can be made against this principle (literally: Presumed there is no counter evidence and by the law). Its meaning is that **the mother of the child is always known**. Article 282/1 states that the familial parental link between the mother and the child is set by birth that means legal mother is biological mother. The underlying reason of this is the presumption that there is a biological bond (umbilical cord unifying them) between the bearing and delivering mother with the child who is born (3).

Nevertheless, there seems to be some shortages to be amended to cover the needs of persons regarding emerging new medical technologies and genetics.

Sources

(1) The Regulation

<http://www.mevzuat.gov.tr/Metin.Aspix?MevzuatKod=7.5.20085&MevzuatIliski=0&sourceXmlSearch=%C3%BCreme> (Accessed on 29.08.2016)

(2) The Turkish Civil Code (recently amended in 2013):
<http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721-20130711.pdf> (Accessed on 29.08.2016)

(3) Sukran Sipka, “Tasiyici annelik ve getirdigi hukuki sorunlar” (Surrogate motherhood and the problems brought along with), *Cumhuriyet Dergi*, 25 February 2007 http://www.turkhukuk sitesi.com/makale_537.htm (Accessed on 29.08.2016)

Surrogacy has not been regulated by law in Türkiye, in other words, there is no law or regulation on surrogacy and surrogate motherhood in the sense of assisted reproduction. But the conditions of having a child through assisted procreation have been ordained by law and the allied Regulation mentioned above which do not include surrogacy nor surrogate motherhood.

In Türkiye, embryo is created for procreation, meaning that, it is produced in vitro for fertilization of the married couples who cannot have child in natural way. This procedure has been legalized and it can be done only by the ova and sperms (oocytes and zygotes, gametes) of the married couples themselves; they cannot be taken from third parties.

Additionally, embryo is not created by research purposes. The surplus embryos created during the process of assisted reproduction are not allowed to be used for research purposes. The legal regulations concerning stem cell and regenerative medicine are at a preliminary stage and this area needs to be improved and enhanced.

APPENDIX I

Draft proposal on surrogacy from Iceland

Background

- Working Group on Surrogacy appointed in January 2009 by the Health Minister to look into the ethical, legal and medical matters of surrogacy and whether it should be allowed in Iceland. Preliminary report in February 2010 whereby discussion of the matter was encouraged. Open symposium in March 2010. Final report of the Working Group in June 2010 with the conclusion that for the time being surrogacy should not be permitted in Iceland.
- Proposal for a parliamentary resolution in November 2010, put forward by 18 MPs. Content: A Committee should be established to write a bill to allow surrogacy for altruistic purposes. Strict rules should be put down for the arrangement and the surrogate and the expected parents should make a binding agreement. The parliament session ended before the discussion about the resolution was finished.
- Proposal for a parliamentary resolution in October 2011 put forward by 23 MPs. Content: A Committee should be established to write a bill to allow surrogacy for altruistic purposes. Emphasis should be put on guaranteeing first, the interests and rights of the child, second, the rights, self-determination and well-being of the surrogate and her family, and third, successful participation of the intended parents. Approved on 18 January 2012.
- In September 2012 the Working Group on Surrogacy was established and is expected to deliver a bill to the Health Minister no later than in January 2015.
 - Preliminary consultation process during autumn 2013.
 - In January 2014 the Minister of Health presented an interim report to the Althingi on the status of the work.
 - The Working Group has invited relevant specialist to its meetings, among others Karen Busby, professor at University of Manitoba.
- The Working group presented the bill to the Minister in February 2015.
- The bill now awaits to be discussed in Althingi.

Main elements of the proposed Icelandic legislation on Altruistic Surrogacy

1. New definition of the surrogacy term : Surrogacy is when an embryo with gametes of at least one of the intended parents is, after an IVF treatment, planted in the uterus of the surrogate, which has for altruistic purposes agreed to carry a child for certain intended parents, according to a licence issued by the Committee on Surrogacy, and intends to hand the child to the intended parents after its delivery and the intended parents have committed themselves to apply for the transfer of parental status according the Act in Respect of Children.
2. A special Committee on Surrogacy will be established. Its task will be to issue licences for surrogacy and to ensure that all parties will have professional counselling given by experts.
3. Interests of the child are emphasised. Surrogate licence cannot be issued unless the child to be conceived by the procedure may be deemed to be ensured good conditions in which to grow up, taken into consideration the mental and physical health of the surrogate, her spouse and the intended parents, their social circumstances and their financial standing.
4. Surrogate conditions:
 - a. Consent (and her spouse, if she has one)
 - b. Legally domiciled and resided continuously and lawfully in Iceland for the preceding five years and has permission for permanent residency.
 - c. Of the age 25-39.
 - d. In good health, mentally and physically

- e. Should have had a least one child and that the pregnancy and birth was normal. Her child should be older than two years old.
 - f. The surrogate and her spouse are not closely related (sister, brother, mother) to the intended parent who supplies the gamete.
5. Intended parents should be married or cohabiting, having lived together for at least 3 years. Allowed for heterosexual and homosexual couples which fulfil these conditions. In particular circumstances single men or women can get licence for surrogacy if there is no doubt that the interest of the child will be ensured.
6. Intended parents conditions:
- a. Consent and commitment to apply for the transfer of parental status after the birth of the child.
 - b. Legally domiciled and resided continuously and lawfully in Iceland for the preceding five years and have permission for permanent residency.
 - c. Of the age 25-45.
 - d. Do not have children under the age of 2.
 - e. Neither of them can undergo pregnancy and birth of a child on medical grounds or biological reasons excludes pregnancy.
7. It will not be permitted to use the surrogate's ova. It will be obligated to use gametes from at least one intended parents.
8. The process will be as follows:
- a. The intended parents and the surrogate apply together for a surrogacy-licence to the Committee on Surrogacy and deliver relevant documents (general information on the applicants, their health, housing situation, financial situation, the ability to ensure good conditions in which the child is to grow up in, certificate of marital status/certificate of cohabitation and consent for allowing the Committee to access information from criminal records and Child Protection Committee).
 - b. The Committee on Surrogacy will get the opinion of a healthcare facility which has a licence from the Minister to perform artificial fertilisation (currently one clinic in Iceland).
 - c. Applicants receive information and counselling on the treatment and the medical, legal, ethical, social and other implications which surrogacy could entail.
 - d. After receiving counselling and before the surrogacy-license is issued the applicants will agree upon mutual declaration of understanding on the communication during pregnancy, the attendance of the intended parents at the delivery, the arrangement of giving the child to the intended parents after the birth, the care of the child before the transfer of parental status is done and other matters.
 - e. The evaluation of the Committee on Surrogacy. Surrogacy-licences granted or refused. The refusal can be appealed to the Ministry of Welfare (the Minister of Health).
 - f. IVF treatment is performed at a relevant healthcare facility. The Surrogate carries the child and gives birth. The surrogate is considered as the mother of the child according the Act in Respect of Children and her spouse is considered to be the father of the child.
 - g. If agreed upon in the mutual declaration the child will be in the care of the intended parents after birth. The surrogate and her spouse have full custody of the child until the transfer of parental status, unless other arrangement has been made according the Act in Respect of Children.
 - h. Transfer of Parental Status takes place at the District Commissioner (sýslumaður) two months after the birth of the child according to amendments to the Act in Respect of Children thereof. Upon Transfer of Parental Status the child acquires the legal status in regard to the intended parents and their relatives as if he or she was the child of the intended parents. As of the same

- time the pre-existing relationship between the child and the surrogate and her spouse and other relatives is terminated.
9. The draft proposal contains amendments to the Act in Respect of Children to handle the different circumstances that could come up, for example death or divorce of the intended parents or the surrogate and her spouse. Problematic circumstances and situations where one of the parties involved refuses to give consent will have to be taken to court according to a new chapter in the Act in Respect of Children.
 - a. The intended parents have to apply together for the transfer of parental status. If one of the intended parents does not apply for the transfer of parental status the other intended parent can take the matter to court. If both of the intended parents do not apply for the transfer of parental status the parents (i.e. surrogate and her spouse) can take the matter to court.
 - b. If one of the intended parents dies before the transfer of parental status, a special guardian will be appointed to the child to apply for the transfer together with the surviving intended parent. If both of the intended parents die the parents (i.e. surrogate and her spouse) can apply for a transfer of parental status. In these cases a special guardian will be appointed for the child to apply together with the parents for the transfer of parental status and to look after the child's interests.
 - c. The parents' consent, i.e. the surrogate and her spouse, is of essence and the District Commissioner (*sýslumaður*) cannot transfer the child's parental status without the parents' consent. The consent is not valid unless it is confirmed two months after the birth of the child. If one parent cannot give consent (died or missing) it is enough for the other parent to give its consent. If both parents are deceased or missing the consent of the special guardian of the child is needed along with the consent of the person who has the custody of the child (normally the Child Protection Committee).
 - d. Transfer of parental status is valid from the approval of the District Commissioner with legal implications from the child's birth. The District Commission sends Registers Iceland (handles the public registry) information about the child's transfer of parental status.
 - e. If parents or special guardian of the child refuse to give consent for the transfer of parental status, or the District Commissioner is of the opinion that the transfer is contrary to the child's interest, the matter has to be taken to court.
 10. The intended parents are obligated to inform their child it was born with the help of a surrogate before it is six years old. When a child has reached 16 it can ask for the information on the surrogacy arrangement, among other things where the gametes came from and the name of the gametes donor.
 11. Commercial surrogacy will be prohibited. Nevertheless, intended parents are allowed to reimburse the surrogate for expenses which are directly linked to the IVF treatment, pregnancy or the birth of the child. These expenses are for example health services (patients cost), medication (patient cost), travel expenses and maternity clothes.
 12. The legislative proposal suggests prohibition of advertisements on surrogacy of any kind. Intermediation on surrogacy will also be prohibited.
 13. It will be prohibited to seek or exploit surrogacy in other states which does not fulfil the conditions of the legislation. Since the bill allows surrogacy for altruistic purposes it is clear that foreign judgements and decisions on transfer of parental status after surrogacy in altruistic circumstances does not contradict ordre public and should therefore be recognised in Iceland.
 14. It is suggested that the Minister will evaluate the legislation and how it has been executed and put a report before Althingi no later than in the Spring of 2021. If the report suggests the Act should be revised then it should be done.
 15. The proposal for a legislation includes amendments to other acts (most of them being consequence amendments):
 - a. Act on Artificial Fertilisation. Donor anonymity prohibited.

- b. Act in Respect of Children.
- c. Act on Maternity and Paternity Leave. The surrogate will get 2 months maternity leave and the intended parents will get normal leave (3 months for the mother + 3 months for the father + 3 months joint leave).
- d. Act on Public Registry.
- e. Personal Names Act.
- f. Inheritance Act.
- g. Icelandic Citizenship Act.

APPENDIX II

Replies to 2005 questions on surrogacy

SURROGATE MOTHERS

**12. Is surrogacy permitted in your country?
If yes, describe all conditions regulated by law**

Country	Country
Albania	Republic of Moldova
Andorra	
Armenia	Poland
Azerbaijan	Serbia
Bulgaria	Slovakia
Czech Republic	Slovenia
Estonia	"the former Yugoslav Republic of Macedonia"
Latvia	Canada
Lithuania	Israel
Malta	

ANDORRA

No.

LATVIA

It is not mentioned in law.

LITHUANIA

There is no explicit prohibition of surrogacy in Lithuanian legislation. However, as MAP is allowed only for married heterosexual couples, surrogacy would not be possible.

MALTA

There is no legal framework.

POLAND

There are no specific legal provisions on the subject. Surrogacy contracts are considered contrary to the general rules of law: the free formation of kinship ties is not permitted, and parental authority may not be transmitted by civil law contract. Such a contract would also be contrary to the spirit of Polish law on families and descent, and to the rules governing life in society. The Polish Association of Obstetricians considers the use of surrogate mothers contrary to medical ethics because of the risk of conflict between the genetic mother and the mother who gives birth to the child.

SERBIA

Surrogacy is not provided in the future draft law.

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

No legal regulations.

CANADA

Pursuant to the Act, commercial surrogacy arrangements are prohibited. Section 6 of the Act prohibits a person to pay, offer to pay, or advertise to pay a woman to become a surrogate mother. The Act also prohibits a person to accept consideration for arranging, offering or advertising to arrange, the services of a surrogate mother. Further, it is prohibited for a person to pay, offer to pay, or advertise to pay consideration to another person to arrange for the services of a surrogate mother. Finally, the Act prohibits a person to counsel or induce a female person under the age of 21 to become a surrogate mother or undertake an AHR procedure to assist her to become a surrogate mother. The rationale behind the prohibition on commercial surrogacy is that allowing commercial surrogacy arrangements

might lead to the inducement of women to enter into a surrogacy agreement purely for financial gain. However, the legislation will not prohibit altruistic surrogacy arrangements.

ISRAEL

Available for heterosexual couples only.

13. If yes, can the surrogate mother be legally remunerated?

Country	Reply	Country	Reply
Albania		Poland	*
Armenia		Republic of Moldova	
Azerbaijan	-	Serbia	-
Bulgaria		Slovakia	-
Czech Republic	-	Slovenia	-*
Estonia	-	"the former Yugoslav Republic of Macedonia"	-
Latvia	-	Canada	Yes*
Lithuania	-	Israel	Yes
Malta	-		

POLAND

Such a contract would be considered unlawful and immoral.

SLOVENIA

Art. 7: both paid and unpaid surrogate motherhood is excluded.

CANADA

A surrogate mother cannot financially gain, but once in force, section 12 of the Act will allow for the reimbursement of receipted expenditures incurred in relation to the surrogacy, including compensating the surrogate for loss of work-related income during the pregnancy if continuing to work may pose a risk to her health or to that of the developing foetus.

14. If surrogacy is forbidden in principle, are there exceptions?

Country	Reply	Country	Reply
Albania		Republic of Moldova	
Andorra**	Yes		
Armenia		Poland	No
Azerbaijan	No	Serbia	
Bulgaria		Slovakia	No
Czech Republic	No	Slovenia	No
Estonia	-	"the former Yugoslav Republic of Macedonia"	No
Latvia	*	Canada	-
Lithuania	No	Israel	-
Malta	-		-

LATVIA

If it is not mentioned in law, it is practically possible to do.

15. Are you aware of illegal practices in your country?

Country	Reply	Country	Reply
Albania		Republic of Moldova	
Andorra**	No		
Armenia		Poland	No*
Azerbaijan	Yes	Serbia	No*
Bulgaria		Slovakia	No
Czech Republic	*	Slovenia	No
Estonia	No	"the former Yugoslav Republic of Macedonia"	No
Latvia	-	Canada	No
Lithuania	No	Israel	No
Malta	-		

CZECH REPUBLIC

IVF is conducted only in selected centers of assisted reproduction in the Czech Republic. These are supervised on a regular basis

POLAND

Lack of data

SERBIA

It would not be possible to establish a health institution providing MAP without the authorisation of Ministry of Health and registration for this activity.