



Observatoire Européen de la Non-Discrimination
et des Droits Fondamentaux



POSITION OF THE EUROPEAN OBSERVATORY FOR NON- DISCRIMINATION AND FUNDAMENTAL RIGHTS

**CONCERNING THE EUROPEAN
COMMISSION'S PROPOSED
REGULATION ON THE RECOGNITION OF
PARENTHOOD BETWEEN MEMBER
STATES**

OENDDF POSITION ON THE RECOGNITION OF PARENTHOOD BETWEEN EU MEMBER STATES

The European Observatory for Non-Discrimination and Fundamental Rights (E.O.N.D.D.F.) is an international non-governmental organisation and a platform bringing together 45 associations working in the fields of social exclusion (including homelessness), disability, migration and child protection.

We are experts in the protection of fundamental rights, particularly the rights of people in situations of vulnerability.

The preliminary guidelines published by the European Commission aimed at regulating the cross-border recognition of parenthood between Member States raise serious concerns.

The question of the recognition of parenthood between Member States indirectly raises the issue of recognising the parent-child relationships of children conceived through cross-border surrogacy arrangements, since children conceived under such arrangements are among those who may encounter difficulties in having their parentage recognised or registered.

Although, at first sight, it appears to be in the best interests of every child to have their parent-child relationship legally recognised in any country of the European Union, it is also necessary to consider the reasons why some children do not benefit from automatic recognition of parentage from one State to another.

Certain practices used to conceive children, particularly surrogacy, are prohibited in many Member States and authorised only under very restrictive conditions in others. Many children facing difficulties with the recognition or registration of parentage from one State to another have intended parents who deliberately circumvented the laws of their own country by using the services of a surrogate mother in a State - sometimes outside the European Union - where such practices are permitted.

Before considering the cross-border recognition of parentage, we wish to recall our position that the best interests of children conceived through surrogacy are affected from the very intention of their conception, because these children are conceived on the basis of a commercial contract involving substantial payments. Women in situations of poverty may rent their wombs at risk to their lives in an attempt to improve their economic situation. In our view, this constitutes a form of exploitation and human trafficking that should be combated, including through an international abolition treaty. We refer readers to our study on surrogate mothers available on our website.

PROTECTING THE BEST INTERESTS OF THE CHILD OR INDIRECTLY SUPPORTING SURROGACY?

SUPPORTING THE VIOLATION OF MEMBER STATES' DOMESTIC LAW

We also wish to recall that European citizens facing difficulties with the recognition of parentage may, in some cases - particularly in relation to surrogacy - have acted in breach of the laws of their own country. The adoption by the European Union of binding or non-binding measures establishing common rules for the recognition of parenthood could encourage citizens to circumvent national laws, while providing a European legal framework to resolve the legal consequences of such conduct. In our view, this raises concerns regarding the principle of subsidiarity and the competences of Member States.

THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Furthermore, family-law matters remain largely within the competence of the Member States. In general, each State defines in law what it understands by marriage and parentage. The diversity of laws and regulations in these areas reflects the social, cultural and political differences of each State and should be respected.

MEMBER STATES' COMPETENCE IN MATTERS OF MARRIAGE, FAMILY AND PARENTAGE

CONCLUSION

Under the objective of facilitating the mobility of children in the European Union who face difficulties in having parentage recognised from one State to another, the European Commission risks, in the OENDDF's view, indirectly supporting surrogacy, a practice which the Observatory considers contrary to women's rights and to the best interests of children to be born.

The Commission also risks creating a legal framework that may facilitate the consequences of citizens using practices prohibited in their own countries.

Finally, the OENDDF considers that the European Union should respect the principle of subsidiarity and the competences of Member States in establishing rules on parentage.

In practice, EU-wide recognition of parentage could contribute to the social acceptance and further development of surrogacy rather than to its abolition. The European Union should not directly or indirectly support practices that the OENDDF considers to involve human trafficking.

OUR RECOMMENDATIONS

The European Commission should:

- support the development of an international convention aimed at abolishing surrogacy, which the OENDDF considers a form of human trafficking;
- strengthen respect for the principle of subsidiarity of Member States in order to support citizens' confidence in the European project;
- respect the competences established by the Treaty on the Functioning of the European Union, particularly in matters of parentage and family law.

The OENDDF calls on the European Commission to withdraw the proposed legislation.

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