

SURROGACY AND HUMAN TRAFFICKING

This leaflet aims to raise awareness of the relation between international surrogacy arrangements and potential human trafficking, based on Eurojust's casework.



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MAIN ISSUES OF CONCERN



The exploitation of surrogate mothers and children



The sale and statute of children born from surrogacy

DEFINITIONS

Surrogacy is an arrangement in which a woman (the surrogate/carrying mother) agrees to bear a child and to hand over that child, on birth, to another party (the intended parent/s).

Commercial surrogacy (for-profit surrogacy) refers to arrangements where the surrogate mother is compensated for her services, beyond her medical and pregnancy-related expenses.

Surrogacy intermediaries handle different aspects of international commercial surrogacy arrangements. They include fertility clinics, physicians, agencies, brokers and businesses related to travel, legal advice and immigration.



ISSUE

Cross-border surrogacy arrangements can lead to human trafficking and the sale of children.

- Fertility clinics (and other surrogacy intermediaries) engage in illegal surrogacy arrangements, committing **cross-border crimes**.
- Surrogate mothers are artificially inseminated in one country and transported to give birth in another country.
- The intended parents come from EU and non-EU countries and pay large amounts of money to intermediaries for their service.
- **Organised crime groups** force surrogate mothers and the intended fathers to pretend to be married couples in order to mislead national authorities.
- In some cases, surrogacy contracts are signed by **fictitious companies** and the fees are sent to **foreign bank accounts** owned by the organised crime groups.

CAUSES

Surrogacy intermediaries, when acting as an organised crime group, take advantage of the unharmonised legal landscape for profit.

- Organised crime groups are motivated by the **large profits**.
- They take advantage of **unharmonised national legislation on surrogacy** in the EU Member States (i.e. depending the country, surrogacy is either allowed, prohibited or not regulated).
- **Commercial surrogacy** is illegal in EU Member States, but legal in certain countries outside of the EU. This has led to EU citizens engaging in 'fertility tourism'.
- **The absence of international laws** governing cross-border surrogacy arrangements 'leaves children born through this method vulnerable to breaches of their rights, and the practice often amounts to the sale of children', states the report of the UN Special Rapporteur on the Sale and Sexual Exploitation of Children.

CHALLENGES

Countries experience difficulties in judicial cooperation and the prosecution of cross-border surrogacy cases.

- **The legal qualification of the facts/conduct is complex.**
- **The revised EU Anti-Trafficking Directive represents major progress in this area.** The exploitation of surrogacy is now explicitly identified as a form of human trafficking. Still, **practical challenges remain**, for example:
 - It is difficult to determine whether a crime was committed and who should be treated as an offender, witness or victim.
 - It is difficult to establish whether the surrogate mothers are exploited and become **victims of trafficking** and whether the children are subject to **abuse or exploitation** once they are handed over to the intended parent/s.
- **Issues of double criminality can arise** when the facts do not constitute a criminal offence in all countries involved.

SOLUTIONS

Developing international standards, awareness and judicial cooperation.

- **Harmonised indicators** on what constitutes exploitation and trafficking in international surrogacy.
- **International standards related to cross-border surrogacy arrangements** to help protect children's best interests and surrogate mothers' rights.
- **Exchanges between judicial practitioners** on national legislation, best practices and challenges to develop appropriate legislative proposals.
- Eurojust can **support law enforcement and judicial cooperation, especially joint investigation teams**, to tackle illegal cross-border surrogacy.
- More **public awareness and prevention** of trafficking of surrogate mothers and the sale of children.