

EN

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Answer given by Mr McGrath
on behalf of the European Commission
(26.3.2025)

The Commission remains committed to upholding children's and women's rights within the framework of its competences. Substantive family law, such as rules on the definition of family and on surrogacy, falls within the competence of the Member States. Each Member State therefore decides its position as regards surrogacy.

EU law already requires Member States to recognise the parenthood of children as established in another Member State for the purposes of children's rights derived from EU law, such as the rights to enter or reside in another Member State¹. Based on Article 81(3) of the Treaty on the Functioning of the European Union, the Commission adopted a proposal² on the recognition of parenthood between Member States to protect all children's rights, including children's rights derived from national law, such as the rights to inheritance and maintenance. Negotiations in the Council on the proposed legislation – which requires adoption by unanimity – are ongoing.

Given that, under international³ and EU law⁴, all children have the same rights, the Commission proposal covers the recognition of parenthood established in a Member State irrespective of how the child was conceived or born, and irrespective of the child's type of family. The proposal thus includes the recognition of the parenthood of children born abroad through surrogacy, provided the parenthood has been established in a Member State.

The exploitation of surrogacy, among others, is included as a form of exploitation in the Anti-Trafficking Directive, modified by Directive (EU) 2024/1712 of 13 June 2024⁵. It targets those who coerce or deceive women into acting as surrogate mothers, without prejudice to the national rules on surrogacy, including criminal law or family law.

¹ This was confirmed, including as regards children with same-sex parents, by the Court of Justice in its judgment of 14 December 2021 in the VMA case (C-490/20).

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0695>, 7 December 2022, COM(2022) 695.

³ In particular the United Nations Convention on the Rights of Children (UNCRC) and the European Convention of Human Rights (ECHR).

⁴ Including the EU Treaties and the Charter of Fundamental Rights of the EU.

⁵ <https://eur-lex.europa.eu/eli/dir/2024/1712/oj>