

Justice and Home Affairs meeting Council of the EU

Belgian Presidency solution to surrogacy: The public policy/order exception

14 June 2024

Discussion can be listened to here - <https://video.consilium.europa.eu/event/en/27510>

1. Please take note that the discussion was about the countries' positions on the Belgian Presidency's "solution", the public policy/order exception, to the issue of surrogacy as contained in the European Commission's *Proposed Regulation on Cross-border Parenthood*.
2. It was not a discussion about whether the countries are **against or for** the *Proposed Regulation* itself, although some countries did allude to this as well.
3. **Countries marked in Green** – “Against” the public policy/order exception as a solution to the issue of surrogacy. It did not seem like there was potential risk that the position might change (**Sweden, Italy and Slovakia**).
4. **Blue** – “Against” proposed solution by the Belgian Presidency (public policy/order exception on surrogacy) and further research called for - therefore, there is a small chance that the country's position might change in favour of the public policy/order exception if further technical research is done and safeguards introduced (**Romania, Bulgaria, Hungary, Croatia**).

Country	In favour of	Against proposal	In favour of public policy exception in cases of surrogacy	Against public policy exception as a solution to surrogacy.	There is potential that they will accept the public policy solution if their concerns are met
	1. proposal as a whole + 2. public policy/order exception in	as a whole	BUT against other parts of proposal		

	cases of surrogacy				
Sweden				Yes	
Italy				Yes	Yes
Latvia	Yes				
Romania				Yes	Yes – technical solutions and further research needed
Lithuania	Yes				
Bulgaria		Yes		Yes	Yes (against it for now)
Estonia	Yes		Not clear – but could possibly be as they warned against a back door to influence family law		
Czech Republic			Not clear - In favour of public policy exception but supports Hungary's proposal to go back and redefine scope of Proposal.		
Slovakia		Yes		Yes	
Cyprus	Yes				
Luxembourg	Yes				
Hungary		Yes		Yes	Yes, says can be changed if further technical work is done on Proposal
Malta	Yes				
Portugal				No domestic position yet, but in favour of	Yes (in favour of public policy exception on surrogacy, but no

				public policy exception	domestic position yet, so can still be in favour)
Croatia				Yes	States that the public policy exception should be used as overriding for all concepts protecting family law (therefore same-sex marriages as well)
Greece	Yes, but further technical work needed				
Germany	Yes				
France	Yes, France would be swayed if public policy exception for surrogacy is inserted.				
Austria	Yes, but further technical work needed				
Spain	Yes, but further technical work needed				
Poland	Yes				
Finland	Yes, but further technical work needed				
Netherlands	Yes				
Finland	Yes, but further technical work needed				
Ireland	Yes, but further technical work needed.				

Country positions described:

Sweden (against the public policy exception). The group wants different solutions to surrogacy that fully address their concerns.

Italy (against public policy exception). Agrees with the purpose of the proposal. The Italian government is against any form of surrogacy because it is seen as something that works against the dignity of women and children based on the way it takes place. It is seen as a crime punishable by up to three years in prison. Parliament is in the process of approving a law where citizens engaging in surrogacy outside of Italy will also be an offence and banned. Point of principle under constitutional laws. Italy cannot agree with the basis of this proposal which directly clashes with their constitution. There needs to be a biological link to the child. Surrogacy, be it voluntary or commercial, is not acceptable.

Latvia (support public policy exception). Respect the presidency's considerations. They support the introduction of public policy exceptions, which will suffice under their law.

Romania (against public policy exception for now). Appreciates the broader aims of the Proposed Regulation. Open to reflection to find balance. Need to ensure a balance between the interest of some member states to balance surrogacy and best interest of the child. Premature and needs to pursue technical analysis.

Lithuania (support for public policy exception). Support the main provisions in the proposal. There must be no intention to change national laws on families.

Bulgaria (against public policy exception for now). Needs further investigation and analysis to ensure high-level protection of parents and children. There must be a balance between unhindered rights and competences of countries. It must take into account the social and cultural contexts of each country. Discussions should continue. Public policy exceptions are well known and can only be supported if surrogacy is kept at the discretion of member states.

Estonia (support public policy exception). Should not create a back door to legalize surrogacy and important to maintain the national competency of the country. Prefers public policy exception.

Slovenia (possibly in favour of public policy exception subject to more technical work). Supports the goals of the Proposed Regulation, but the legal system does not support surrogacy. Would not like to use EU legislation to indirectly promote surrogacy. Threat to women and their rights. Welcomes public policy solutions but technical work to establish whether they can actually work. Will cooperate in this work.

Czech Republic (support). Public policy/order exception appropriate on surrogacy. Support return to discussions to clearly define the scope of the Proposed Regulation.

Slovakia (against Proposed Regulation even if public policy exception is introduced). Positive about surrogacy, but many problematic provisions running counter to parenthood. Slovakia cannot support the Proposal as a whole even after the introduction of the provisions regarding surrogacy.

Cyprus. Supports Presidency proposal on surrogacy.

Luxembourg. Supports initiative.

Hungary (against public policy exception for now). Plans to carry on work on a technical level during its Presidency. As far as surrogacy is concerned – will be able to use public policy exemptions. But there are constitutional issues that should be taken into account. What is a family? Will have to find solutions acceptable to all Member States.

Malta (support public policy exception). Does not foresee issues and might be problematic for others. Committed to finding solutions for all.

Portugal (supports public policy exception but no domestic consensus on file as a whole yet). Surrogacy is allowed in exceptional cases. There is no position on the entire Proposed Regulation yet. Premature.

Croatia (against public policy exception for now). An article on overriding provisions of countries applying to any situation is necessary.

Greece (Against surrogacy and supports public policy exception solution). The law protects the best interest of the child and the mother bearing the child. Commercial surrogacy is not allowed. Support public order exception. Continuing work at the technical level is needed.

Germany (proposal on public order exception is heading in right direction) support goal of entire Regulation and Belgian Presidency efforts. Three points must be taken on board: 1. Openness in terms of what happens in future, 2. Flexibility taking into account differences surrogacy, 3. System has to be in line with the EU community. Should be placed in the recitals.

France (public policy exception supported, which will enable avoidance of automatic recognition through surrogacy whilst maintaining the possibility of having internal laws to protect the rights of children). Supports the entire regulation in large part. Surrogacy not allowed. Against automatic recognition of children born of surrogacy.

Austria (supports public policy exception). Further in-depth work needed on this. Domestic courts should have possibility to protect child and mother against exploitation. Can change if technical provisions are provided for.

Spain. Public policy exception is a good way forward but not sufficient given the case law of the ECtHR. They therefore support other ways of going about it. Technical discussions should continue.

Poland. Satisfied with public policy exception for surrogacy.

Finland (Supports public policy exception, but further work is needed). This is not sufficient for Finland as such. A biological mother is a mother. The public policy exception is a good way forward, but further work is needed.

The Netherlands. Supports Commission proposal. Accepts proposal of public policy exception.

Ireland. Proposed solutions could be a way forward. Further technical work is needed.