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Unit A.1: Civil justice

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M.J. Devillers
A.L. Stoicea-Deram
B.O. Garcia
Co-chairs
International Coalition for the
Abolition of Surrogate Motherhood
163 av. de Charenton - 75012 Paris
F-37 av. Pasteur - 93100 Montreuil

abolition.surrogacy@gmail.com

Dear Ms Devillers, Ms Stoicea-Deram and Ms Garcia,

Thank you for your letter of 13 July 2022 addressed to Commission President Ursula von der Leyen, who has asked me to reply as Head of the Civil Justice Unit at the European Commission.

In your letter, you consider that the practice of surrogacy infringes the human rights of the surrogate mother and of the child, and express concern about the work of the Hague Conference on international surrogacy and about the Commission legislative initiative on the recognition of parenthood between Member States.

I would like to refer to the letters that Karen Vandekerckhove, Head of the Gender Equality Unit, and myself addressed to your organisation on 17 June 2022¹ and 26 July 2021² discussing the above-mentioned matters in response to previous letters from your organisation.

As indicated in our earlier responses, under the Treaty on European Union and the Treaty on the Functioning of the European Union, the competence to adopt measures of substantive family law, including provisions on surrogacy, falls with the Member States. When adopting such measures, Member States must ensure that the human rights of the surrogate mother and of the child are effectively respected and protected in accordance with the Member States' national legislation and international human rights obligations.

¹ Ares(2022)4469669.

² Ares(2021)4784242.

However, in conformity with the Treaties, the Union can adopt measures concerning family law with cross-border implications (pursuant to Article 81(3) TFEU) The forthcoming Commission proposal on the recognition of parenthood will cover the recognition of parenthood for all children whenever their parenthood has already been established in another Member State. It will have the rights of the child and the best interests of the child as its primary consideration and will aim to protect the rights of children in cross-border situations within the Union.

The future proposal will therefore not affect the Member States' competence on the establishment of parenthood, including in the context of surrogacy. Furthermore, in line with all existing Union instruments on family law, the recognition of parenthood established in a non-EU country will not be covered by the Commission proposal but will remain subject to Member States' national law.

Yours sincerely,

Electronically signed

Andreas STEIN
Head of Unit