

SHADOW REPORT

Directive (EU) 2024/1712

Transposition of the qualification of surrogacy exploitation as a form of human trafficking under the Anti-Trafficking Directive. 27 EU Member States.

Status as of 15 July 2026, the transposition deadline

Produced by ICASM, International Coalition for the Abolition of Surrogate Motherhood

abolition-ms.org

Recipients: Members of European and national parliaments; DG Justice, European Commission

Executive Summary

19 of 27 Member States are not ready on the deadline.

Directive (EU) 2024/1712 of June 13th 2024, in force since July 14th 2024, amends Directive 2011/36/EU and constitutes the first legislative recognition at EU level of surrogacy exploitation as a form of human trafficking. The transposition deadline is July 15th 2026, the date of this report.

- 8 Member States are compliant or on a solid compliance trajectory: Italy, Austria, Germany, Poland, Sweden, Slovenia, Luxembourg, Slovakia.
- 12 Member States are at partial risk: Estonia, Spain, France, Portugal, Malta, Romania, Hungary, Bulgaria, Latvia, Lithuania, Finland, Croatia.
- 7 Member States are at critical risk: Greece, Netherlands, Cyprus, Denmark, Czech Republic, Ireland, Belgium.

The Estonian precedent. Estonia is the only Member State to have adopted an express transposition, in June 2026. Its Penal Code now lists surrogacy against a woman's will (naise tahte vastane asendusemadus) among trafficking offences. This is a threshold of will, not the threshold of vulnerability required by Article 2(2a). A surrogate mother who has formally consented remains outside criminal protection, which is the precise loophole the Directive was drafted to close. Amendments seeking to remove the apparent exclusion of surrogacy from the offence of knowingly using the services of a trafficking victim were rejected in committee. If the most willing transposer in the Union produces a consent threshold and leaves commissioning parties outside the criminal scope, the failure is structural, not national. Estonia is the case for binding Commission guidance, not a model to be copied.

The French precedent. On July 3rd 2026, twelve days before the deadline, the Cour de cassation sitting in Assemblée plénière held that the French prohibition of surrogacy, while belonging to French international public policy, does not on its own permit refusal of exequatur of a foreign judgment establishing filiation. France demonstrates that a formal prohibition, absent an anti-trafficking qualification, is circumvented through civil proceedings. The argument that existing law already covers the question is now doubly disqualified.

Denmark. A critical profile compounded by active liberalisation. Rules in force since 1 January 2025 recognise parenthood arising from foreign surrogacy. In early 2026 a citizens' proposal to open Danish clinics to surrogate mothers obtained all-party support at first reading. No anti-trafficking transposition measure has been identified.

I. Legal and Institutional Context

The EU anti-trafficking framework now explicitly extends to reproductive exploitation, including surrogacy.

Key provisions of Directive (EU) 2024/1712

- Article 2: criminalisation of surrogacy exploitation, punishable by 5 to 10 years' imprisonment depending on aggravating circumstances.
- Extraterritorial coverage: EU citizens are liable for surrogacy concluded abroad.
- Obligation to adopt early-detection measures, irrespective of the “commercial” and “altruistic” distinction.
- Criminalisation of the wilful use of services: commissioning parties who knowingly exploit trafficking victims must face effective sanctions.

The vulnerability threshold, and how it is being lost

Article 2(2a) defines a position of vulnerability as a situation in which the person has no real or acceptable alternative but to submit. This is the operative core of the instrument. Where legislators substitute a test of will, coercion or refusal, women in economic vulnerability who engage with surrogacy organisations fall outside criminal protection entirely. Estonia, the only Member State to have legislated expressly, has done exactly this. The risk is therefore not hypothetical: it is documented in the sole transposition adopted to date.

Reinforcing instruments

- European Parliament resolution of November 13th 2025 on the Gender Equality Strategy (P10_TA(2025)0278), paragraph 14: the Parliament condemns the practice of surrogacy, which it describes as involving the reproductive exploitation and use of women's bodies for financial or other gain, in particular in the case of especially vulnerable women in third countries, and calls on the Commission to take measures to support ending this phenomenon. The instrument is non-binding, but it is the Parliament formally requesting Commission action, which is the political basis for the infringement recommendation below.
- UN Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, report A/80/158 (2025), The different manifestations of violence against women and girls in the context of surrogacy: documents systematic exploitation of women from low-income countries by intermediaries, structural power imbalances incompatible with free and informed consent, and calls for the abolition of surrogacy in all its forms.
- Eurojust, Surrogacy and human trafficking (2024): organised crime groups take advantage of unharmonised national legislation on surrogacy across Member States. The regulatory gap is itself the criminal opportunity.
- Collapse of the HCCH project: the Hague Conference working group on Parentage and Surrogacy closed without consensus. The EU Directive remains the sole binding instrument to date.

Note on scope and on divergent readings

This report addresses transposition, not the underlying merits of the practice. ICASM records that other actors mapping the same legal landscape reach different conclusions: La Strada International, whose comparative survey is used here for factual mapping only, holds that surrogacy is not inherently trafficking, that regulated frameworks include safeguards which minimise trafficking risk, and that few cases have been documented. ICASM does not share that reading. The scarcity of documented cases is a function of the absence of detection protocols, which is what the Directive requires Member States to build, and cannot be treated as evidence of absence. ICASM's position is that the “commercial” and “altruistic” distinction is structurally irrelevant to the exploitation dynamic, and that the abolitionist framework is grounded in women's bodily autonomy, including the right to abortion. The Parliament's resolution of November 13th 2025 affirms both propositions in a single text.

II. Status of All 27 EU Member States

Data as of July 15th 2026. “Altruistic” and “ethical” surrogacy appear in quotation marks throughout, reflecting ICASM’s position that the distinction from “commercial” surrogacy is structurally irrelevant to the exploitation dynamic.

Risk levels. COMPLIANT: solid legislative or constitutional basis and transposition engaged. PARTIAL: restrictive framework but no specific transposition, or a transposition that does not meet the Article 2(2a) threshold. CRITICAL: surrogacy permitted or tolerated without an anti-trafficking criminal framework.

Member State	Surrogacy Status	Transposition Status	Risk
Italy	Banned; universal crime	Transposed. Law 169/2024 extends criminal jurisdiction to nationals concluding surrogacy anywhere abroad.	COMPLIANT
Austria	Banned	Criminal Code adapted to the Directive.	COMPLIANT
Germany	Banned	Specific measures H1 2026; Frontex training deployed.	COMPLIANT
Poland	Banned (constitutional)	Legislation completed. Detection protocols and resources to be confirmed.	COMPLIANT
Sweden	Banned	Anti-trafficking legislation aligned.	COMPLIANT
Slovenia	Banned	Legislation adapted.	COMPLIANT
Luxembourg	Banned	In progress. Text to be confirmed by the deadline.	COMPLIANT
Slovakia	Banned (constitutional)	2025 constitutional amendment prohibiting all surrogacy agreements. Criminal protocols to be confirmed.	COMPLIANT
Estonia	Banned (2002)	Adopted June 2026, the only express transposition in force. But the new offence is surrogacy against a woman's will (naise tahte vastane asendusemadus): a threshold of will, not of vulnerability. Amendments to remove the apparent exclusion of surrogacy from the knowing-use-of-services offence were rejected in committee. Final text pending verification against Riigi Teataja.	PARTIAL
Spain	Banned	Partial; limited scope. Draft Organic Law in progress.	PARTIAL
France	Banned (Arts. 16-7, 16-9 Civil Code)	No specific bill. Cass. Ass. plen., 3 July 2026 (nos 24-50.028 and 24-50.029): the prohibition belongs to international public policy but cannot on its own bar exequatur of a foreign filiation judgment.	PARTIAL
Portugal	“Altruistic” inoperative	No process identified.	PARTIAL
Malta	Banned	No transposition. Parental-leave amendment in force June 21 st 2026.	PARTIAL
Romania	Banned de facto	No process identified.	PARTIAL
Hungary	Restricted (constitutional)	No process identified.	PARTIAL
Bulgaria	Banned (implicit)	No process identified.	PARTIAL
Latvia	Banned (implicit)	No process identified. Trafficking covered by Penal Code Art. 154.1 without surrogacy-specific qualification.	PARTIAL
Lithuania	Banned (express)	No process identified.	PARTIAL
Finland	Banned (implicit)	No process identified.	PARTIAL
Croatia	Banned (express)	No process identified.	PARTIAL
Greece	“Altruistic” legal	Law 5197/2025, Art. 46 (effective May 16 th 2025) restricts surrogacy to residents following the Crete case. Administrative restriction, not criminal qualification. No transposition.	CRITICAL
Netherlands	Tolerated; no statute	Non-compliant. Wet kind, draagmoederschap en afstamming pending since June 30 th 2023, not enacted.	CRITICAL
Cyprus	“Altruistic” legal	To be completed; control protocols unconfirmed.	CRITICAL

Member State	Surrogacy Status	Transposition Status	Risk
Denmark	"Commercial" banned	No transposition. LOV nr 1687 af 30/12/2024 (in force 1 January 2025) recognises parenthood from foreign surrogacy via Familieretshuset pre-approval. Citizens' proposal B 8 on opening clinics had all-party support at first reading in early 2026. Protocol No. 22 opt-out.	CRITICAL
Czech Republic	Unregulated grey zone	No process. Clinics active de facto since 2014 without oversight.	CRITICAL
Ireland	"Altruistic" legal on paper	AHR Act 2024 not commenced as of July 2026. AHRRA established October 2025; second amendment bill on retrospective international surrogacy still in drafting. Neither a protective regime nor a criminal qualification is operative.	CRITICAL
Belgium	Unregulated grey zone	Non-compliant. No legislation; practised in 4 university hospitals under internal protocols.	CRITICAL

Legal bases. Italy: Law 40/2004; Penal Code Arts. 12 to 18; Law 169/2024. Austria: Criminal Code (StGB) ss. 218a to 218g. Germany: Embryo Protection Act (ESchG), s. 1. Poland: constitutional basis. Sweden: Genetic Integrity Act (Lag 2006:67), as amended. Slovenia: statutory prohibition since 1999, covering both forms. Slovakia: 2025 constitutional amendment prohibiting all surrogacy agreements. Estonia: Assisted Reproduction and Embryo Protection Act (criminal sanctions since 2002); Penal Code and Victim Support Act as amended June 2026. Spain: revised Criminal Code; surrogacy contracts null and void. France: Civil Code Arts. 16-7 and 16-9; Penal Code Art. 227-12; Cass. Ass. plen., July 3rd 2026, nos 24-50.028 and 24-50.029. Portugal: quasi-inoperative since Constitutional Court judgments, 2018 to 2019. Malta: Embryo Protection Act 2012, s. 6(f). Bulgaria: Ordinance No. 28/2007; Penal Code Arts. 182a and 182b. Latvia: Civil Code Art. 146; trafficking under Penal Code Art. 154.1. Lithuania: Law XII-2608 on Assisted Reproduction (2016), Art. 11. Finland: Act on Assisted Fertility Treatments (implicit ban). Croatia: Law NN 86/12 on Medically Assisted Reproduction, Art. 31. Greece: Civil Code Art. 1458; Law 5197/2025, Art. 46. Denmark: Children's Act (Boernelov) s. 31; LOV nr 1687 af 30/12/2024; opt-out under Protocol No. 22. Ireland: Health (Assisted Human Reproduction) Act 2024, not commenced; AHRRA established October 2025.

III. Recommendations

To national legislators: general principles

- Interpret vulnerability broadly: include economic vulnerability, contractual power imbalance, and deception, consistent with Article 2(2a) of the Directive. A threshold of will, coercion or refusal does not transpose the Directive.
- Transpose surrogacy as a specific criminal offence within anti-trafficking provisions. Generic qualifications are insufficient.
- Criminalise commissioning parties who knowingly use the services of a trafficking victim, with no surrogacy carve-out.
- Assess all arrangements under the same criteria, being abuse of vulnerability and coercion, and cover recruitment and intermediary structures explicitly to avoid regulatory gaps.

Compliant Member States (8)

Italy, Austria, Germany, Poland, Sweden, Slovenia, Luxembourg and Slovakia: maintain the existing framework and complete the outstanding verifications set out in the table. Italy (Law 169/2024, universal crime) and Slovakia (2025 constitutional prohibition) should be presented to other Member States as transposition models.

Partial-risk Member States (12)

These States rely on restrictive domestic law but have not specifically transposed the Directive, or have transposed it below the Article 2(2a) threshold. The central danger is the argument that existing law already covers the question.

- **Estonia.** The only express transposition adopted, and the report's central exhibit. The June 2026 amendments add surrogacy against a woman's will (*naise tahte vastane asendusemadus*) to the Penal Code trafficking offences. This is a threshold of will, not of vulnerability, and it inverts the Directive's logic: it protects the woman who refused, and abandons the woman who had no real or acceptable alternative but to accept. Amendments to remove the apparent exclusion of surrogacy from the knowing-use-of-services offence were rejected in committee, which if confirmed leaves commissioning parties outside the criminal scope in direct contradiction of Article 2. Estonia should align the offence on abuse of a position of vulnerability and remove any surrogacy carve-out. ICASM will verify the final text against Riigi Teataja and update this entry accordingly.
- **France.** Existing law does not expressly qualify surrogacy as trafficking, and commissioning parties are not criminalised under Directive criteria. The Assemblée plénière held on July 3rd 2026 (nos 24-50.028 and 24-50.029) that the prohibition, though part of international public policy, cannot on its own bar exequatur of a foreign filiation judgment, and that the exequatur judge may not reclassify such a judgment as an adoption. The Procureur general had argued that granting exequatur weakens the prohibition in practice; he was not followed. France cannot rely on Article 16-7 of the Civil Code alone: its prohibition is now demonstrably circumvented through civil proceedings, while the recruitment and exploitation dimensions remain wholly outside the reach of the filiation litigation. Only the anti-trafficking qualification reaches them.
- **Spain.** A prohibition exists, but the criminalisation of commissioning parties who wilfully exploit trafficking victims remains incomplete. Complete that criminalisation per Article 2, confirm detection mechanisms and resources, and advance the draft Organic Law on Comprehensive Protection Against Trafficking and Exploitation.
- **Portugal.** Integrate an explicit anti-trafficking criminal qualification into national law. Lusophone networks, notably Brazil, document persistent abuses.
- **Malta.** The Work Life Balance Regulations amendment in force on June 21st 2026 extends parental leave to commissioning parties who have used surrogacy abroad. Extending a social entitlement to conduct that carries no criminal qualification is a regulatory inconsistency incompatible with the Directive. Adopt the qualification before extending entitlements.

- **Romania.** No dedicated prohibition. Proximity to regional hubs, notably Ukraine, is a cross-border risk factor. Adopt formal transposition with an anti-trafficking qualification.
- **Hungary.** Confirm the constitutional and legislative basis for criminal qualification and adopt formal transposition.
- **Bulgaria.** Confirm that Penal Code Arts. 182a and 182b are operational. Balkan proximity creates cross-border risk. Complete formal transposition.
- **Latvia.** The implicit prohibition renders victims legally invisible; no surrogacy-specific criminal qualification exists. Adopt an explicit qualification.
- **Lithuania.** Express prohibition, but no surrogacy-specific anti-trafficking qualification and no penalties for intermediaries. Complete transposition.
- **Finland.** Practical protection exists but the implicit framework is insufficient. Formalise the criminal qualification with explicit penalties for intermediaries, regardless of “altruistic” framing.
- **Croatia.** A solid criminal foundation exists. Formally qualify surrogacy exploitation as trafficking, as required by the Directive.

Critical-risk Member States (7)

Recruitment structures and financial mechanisms must be named explicitly in the covered offences. Prior evidence of abuse is not a condition of protection, and its absence is not a ground for exemption.

- **Greece.** The Crete clinic case shows that prior judicial approval does not prevent exploitation. Law 5197/2025, Art. 46, effective May 16th 2025, is an administrative restriction on access, not a criminal qualification. Enact criminal legislation naming recruitment infrastructure and financial mechanisms as trafficking offences.
- **Netherlands.** Surrogacy exploitation cannot be simultaneously criminalised and legalised. The Wet kind, draagmoederschap en afstamming has been pending since June 30th 2023 and is not enacted, while the practice continues at approved centres under existing medical frameworks. Transpose the Directive without the parallel legalisation track, and document cross-border reproductive-tourism flows.
- **Cyprus.** A permissive framework without anti-trafficking qualification is structural non-compliance. Adopt legislation qualifying surrogacy exploitation as trafficking, covering “altruistic” arrangements where vulnerability is abused.
- **Denmark.** Rules in force since January 1st 2025 (LOV nr 1687 af 30/12/2024) recognise parenthood arising from foreign surrogacy agreements through Familieretshuset pre-approval, including agreements concluded in commercial jurisdictions. In early 2026, citizens' proposal B 8, which would allow Danish clinics to treat surrogate mothers, obtained all-party support at first reading. Suspend the liberalisation process and adopt the anti-trafficking qualification first. The Protocol No. 22 opt-out creates a significant cross-border protection gap that must be addressed through cooperation. The precedent effect on other Nordic and EU States is critical.
- **Czech Republic.** Absence of law is not protection: women are invisible to the penal system. Clinics have operated de facto since 2014 without oversight. Legislate to prohibit surrogacy and qualify its exploitation as trafficking, explicitly including intermediaries and clinics.
- **Ireland.** The AHR Act 2024 is not commenced as of July 2026 and a second amendment bill covering retrospective international surrogacy remains in drafting. Ireland therefore has neither an operative protective regime nor a criminal qualification, while international surrogacy continues in practice. The two-track structure of the Act also risks limiting transposition to “commercial” surrogacy, shielding “altruistic” arrangements, which are the near-totality of cases. Guarantee that the anti-trafficking qualification covers “altruistic” arrangements, align penalties, and criminalise commissioning parties.
- **Belgium.** The absence of any legal framework, combined with industry pressure and legalisation advocacy, creates an existential risk. Cross-border reproductive tourism from France to Belgium is documented. Urgently adopt a legal framework qualifying surrogacy exploitation as trafficking, with a broad vulnerability

definition including economic coercion, and criminalise intermediaries. The obligation is reinforced by Belgium's EU Council Presidency during the provisional agreement on the Directive in January 2024.

To the European Commission

- Initiate infringement proceedings against any Member State that, while formally prohibiting surrogacy, does not expressly qualify it as trafficking within the meaning of the Directive, or relies on judicial passivity.
- Treat transposition below the Article 2(2a) threshold as non-transposition. A national provision keyed to the woman's will, rather than to abuse of a position of vulnerability, does not implement the Directive. The Estonian text adopted in June 2026 should be examined first, precisely because it is the most advanced and therefore sets the interpretive precedent for every Member State that follows.
- Publish binding guidelines on the interpretation of exploitation of surrogacy, addressing in particular the vulnerability threshold and the prohibition of carve-outs for commissioning parties, to prevent Member States from constructing “altruistic” or consent-based exemptions.
- Establish a multisectoral task force with civil society, Eurojust and Member States to monitor transposition and systematically identify victims, in line with Eurojust's finding that organised crime groups exploit unharmonised national legislation.
- Actively monitor Member States drifting toward de facto liberalisation, notably Denmark, the Netherlands and Malta, documenting transnational flows and issuing formal compliance warnings.
- Act on the mandate given by the European Parliament in its resolution of November 13th 2025, which calls on the Commission to take measures to support ending surrogacy.

IV. Sources

- Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.
- European Parliament resolution of 13 November 2025 on the Gender Equality Strategy, P10_TA(2025)0278, paragraph 14.
- European Parliament Research Service, Surrogacy: The Legal Situation in the EU, EPRS_BRI(2025)769508, February 2025.
- Eurojust, Surrogacy and human trafficking, 2024.
- United Nations General Assembly, The different manifestations of violence against women and girls in the context of surrogacy, report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, UN Doc. A/80/158, 2025.
- Republic of Estonia, Government of the Republic, Cabinet sitting of 9 April 2026, item on the draft Act amending the Penal Code and the Victim Support Act (transposition of Directive (EU) 2024/1712).
- Riigikogu, Act amending the Penal Code and the Victim Support Act, adopted at the final plenary sitting of the spring session, June 2026.
- Cour de cassation (France), Assemblée plénière, 3 July 2026, appeals nos 24-50.028 and 24-50.029, and the accompanying press release.
- Denmark, LOV nr 1687 af 30/12/2024, in force 1 January 2025; citizens' proposal B 8, first reading 2026.
- Greece, Law 5197/2025, Article 46, effective 16 May 2025.
- Italy, Law 40/2004 and Law 169/2024.
- Ireland, Health (Assisted Human Reproduction) Act 2024, Oireachtas.
- Protocol (No. 22) on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.