



FAFCE

FÉDÉRATION DES ASSOCIATIONS
FAMILIALES CATHOLIQUES EN EUROPE

FÖDERATION DER KATHOLISCHEN
FAMILIENVERBÄNDE IN EUROPA

FEDERATION OF CATHOLIC FAMILY
ASSOCIATIONS IN EUROPE

To the attention of
Mrs Ursula von der Leyen
President of the European Commission

For information:

Mr Josep Borrell Fontelles
High Representative of the European Union and
Vice-President of the European Commission

Mrs Dubravka Šuica
Vice-President of the European Commission for Democracy and Demography

Mr Margaritis Schinas
Vice-President of the European Commission for Promoting our European Way of Life

Brussels, 19 April 2021

Dear Madam President,
Dear Mrs von der Leyen,

During your State of the Union address in September 2020, you declared *"if you are parent in one country, you are parent in every country."* We would hereby like to draw your attention to the simple fact that parenthood is not just a question of desire and will, but it is first of all a gift and a responsibility built upon the acceptance of the child and his/her best interest. We have no doubt that you are fully aware of this joyful responsibility. At the same time, no human being can claim the right to having a child¹.

During the last years, the legal ramifications of adoption have become a focal point in the clash between the EU competence of free movement and national competences on family law. The distinction calls into question the difference of treatment between persons who opt to become parents through a normal adoption process and for all the others who opt for an alternative practice like surrogacy. We believe that any form of automatic recognition of the latter would create a form of discrimination within the EU, with serious consequences for the respect of human dignity and fundamental rights.

On the one hand, EU competences articulate a right to free movement and non-discrimination. On the other hand, EU Member States retain the competences to define marriage and parenthood and to regulate access to medically assisted procreation, adoption, and surrogacy. This raises key questions on the respect of the subsidiarity principle and of whether the right to free movement obliges an EU Member State to recognise a situation even if it is illegal according to its national laws.

The practice of surrogacy especially threatens to disrupt the harmony of EU and national legal systems. With regard to that practice, as of 2021, six EU Member States—Austria, Bulgaria, France, Germany, Italy, and Spain—prohibit it in all its forms. Meanwhile, three others—Belgium, Denmark, and Ireland—allow only so-called noncommercial surrogacy, wherein the surrogate mother receives no compensation beyond payment for her medical expenses. Despite the illegality of surrogacy in many EU Member States, some couples nonetheless circumvent the legal restrictions in their home countries by obtaining the services of a surrogate illegally, or by using surrogates from a foreign country where the practice is legal. Upon returning to their home country with a child, such couples further flout the rule of law, avoiding it by demanding recognition of their parenthood under the pretence of protecting the best interests of that child. The absence of EU action to counteract the phenomenon of transnational surrogacy risks normalizing citizens' *de facto* abrogation of laws with which they

¹ Cfr. FAFCE Board Resolution on Surrogacy: a violation of human dignity, Fatima, 13 April 2016, <https://www.fafce.org/fafceboardresolution-on-surrogacy/>.

do not agree. This is a serious threat to the rule of law in Europe and requires the immediate attention of the European Commission.

In effect, the argument for the legal recognition of parenthood is duplicitous because the persons seeking such recognition first premeditatedly subject the child to legal uncertainty amounting even to statelessness, thus disregarding his or her best interests, and then use the child's legal uncertainty to demand concessions from an EU Member State. Adoption, on the other hand, is a rigorous and intensive process that prioritises the child's wellbeing at the necessary cost of long wait times. All couples must pass an arduous process to be approved for adoption and confirmed in their capacity to execute the responsibilities of parenthood. In other words, the best interest of the child must be evaluated by third parties, i.e., public and/or judicial authorities, in charge of assessing the capacity for parenthood of the couple. This implies the impossibility of accepting any kind of automatic recognition. On the contrary, by facilitating access to surrogacy over adoption in one way or another, legislators create a highway towards a new kind of parental recognition. This would also demonstrate the primacy of individualistic desires over the best interest of children. It is thus insincere to jeopardize the wellbeing of children through surrogacy and an automatic recognition of parenthood from the EU and its Member States. Not only does the surrogacy shortcut to parenthood endanger the children born of surrogate mothers, but it also intensifies the marginalisation of the children waiting to be adopted, creating two parallel legal systems.

FAFCE and its Members strongly support the principle of subsidiarity as a key principle for social peace in Europe. They are also committed to raising awareness about the concerning phenomenon of surrogate motherhood and all the other practices undermining the dignity of human procreation. The roots of this situation are certainly in extreme consumerism and the profound crisis of hope faced by millions of EU citizens who have seen the pandemic lay waste to their livelihoods. Together, these trends make of the human person a disposable good. For these reasons, we cannot accept any abuse of European Law or attempt to abuse European Law. Such abuses must strongly be condemned because not only the supreme interest of the child but also human dignity itself are at stake in this matter.

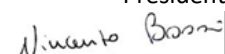
The rule of law is one of the most fundamental values of the Union, enshrined in Article 2 of the Treaty on the European Union. In light of the division of competences, any action to circumvent the national rule of law would constitute a worrying threat for the balance and the legitimacy of the EU legal system and overall for the safeguarding of democracy in Europe, especially if this concerns the practice of surrogacy, which has been repeatedly condemned by the European Parliament². On the contrary, based on the EU competence on transnational matters, the European Commission must support EU Member-States in safeguarding their internal public order and thus in fighting the practice of surrogacy.

Having considered the above threats that surrogacy poses, such as the *de facto* severe undermining national and EU laws by EU citizens who can afford to circumvent them, the increased marginalisation of the children and couples engaged in the adoption process, and the creation of a parallel, preferential legal system, we would like to ask you to inform us of the following:

- **How does the Commission intend to support EU Member-States in preventing transnational surrogacy practices?**
- **Regarding the current discussions on surrogacy at the Hague Conference on Private International Law, could the Commission provide more information about its position and more transparency on the process?**

Sincerely Yours,

Vincenzo Bassi
President



² European Parliament resolution of 21 January 2021 on the [EU Strategy for Gender Equality](#) (2019/2169(INI)).

European Parliament resolution of 17 December 2015 on the [Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter](#) (2015/2229(INI)).

European Parliament resolution of 5 April 2011 on [Priorities and outline of a new EU policy framework to fight violence against women](#) (2010/2209(INI)).