



National
Council of
Ethics for the
Life Sciences

115/CNECV/2022

**OPINION 115/CNECV/2022 ON THE PRELIMINARY
DRAFT REGULATORY ACT OF LAW NO. 90/2021
OF 16 DECEMBER ON GESTATIONAL SURROGACY**

May 2022



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Executive Summary

The present opinion was prompted by a request from the Commission for the Regulation of Law no. 90/2021, of 16th December, addressed to the National Council of Ethics for the Life Sciences (CNECV), with a view to examining a first version of the Draft Regulatory Decree of Law no. 90/2021, of 16th December, which amends the legal regime of medically assisted procreation (MAP), approved by Law no. 32/2006, of 26th July, with regard to the legal regime of gestational surrogacy (GS).

In Portugal, the definition of GS inscribed in Law no. 32/2006 generates for the surrogate woman two main obligations: (1) "to bear pregnancy on behalf of a third party" and (2) "to deliver the child after birth, thus renouncing the powers and duties proper of maternity" (article 8, no. 1 of Law no. 32/2006). It is regarding this second obligation that a difference between (1) the parental project according to which the technique was performed and (2) the possibility that the surrogate would repent and revoke her consent vis-à-vis a phenomenon she experiences, physically and psychologically, over several months may occur.

The CNECV recognizes the complexity of the issue and believes that the Regulation of Law no. 90/2021 of 16 December should contribute to the unequivocal clarification of the relationship between beneficiaries and surrogates, throughout the GS process, as well as between them and the child born as a result of the GS until civil registration takes place. It should also promote the transparency of the procedures regarding the various intervening entities.

Thus, the CNECV considers that the proposed Draft Regulation

1. leaves unregulated several situations affecting the parties involved in the context of the current MAP Law, namely:

- establishing the child's paternity in case the surrogate revokes her consent;
- the clarification of the child's civil registration process vis-à-vis the surrogate's right to revoke her consent;



- the provision for adequate psychological counselling as an option available to the surrogate, but also to the beneficiaries throughout the whole process;

2. does not sufficiently safeguard the care and well-being of the unborn child, whose best interests must be respected in the process of surrogacy, particularly by:

- recommending that the age limit for surrogate women should be 40 years;
- defining the circumstances under which a woman who has not previously been a mother can be a surrogate;

- the possibility of breast-feeding during the reflection period, if the surrogate so wishes;

- the definition of the time, conditions and procedure by which the child is handed over to the beneficiaries;

3. it does not duly specify the material and procedural conditions concerning the opinions that must accompany the surrogacy processes, issued, respectively, by the Medical and Psychological Associations.

A regime of impediments should also be established in order to defend transparency and to avoid conflicts of interest regarding the members of the institutional bodies that regulate the process, as well as the professional associations.

Lisbon, 25 May 2022.

National Ethics Council for the Life Sciences.

The President, Maria do Céu Patrão Neves.

Rapporteurs: André Dias Pereira, Maria do Céu Patrão Neves and Rui Nunes.

Support for the opinion's work: Cíntia Águas.

The present opinion was adopted on 25 May 2022 at the 265th plenary meeting of the CNECV.