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**OPINION ON THE DRAFT LAW REGULATING LAW NO.
90/2021 OF 16 DECEMBER - AMENDING THE LEGAL
REGIME APPLICABLE TO SURROGATE PREGNANCY**

September 2023



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Executive Summary

The present opinion was prompted by a request addressed to the National Council of Ethics for Life Sciences (CNECV) by the Office of His Excellency the Minister of Health. The Council's assessment and opinion was requested on the Draft Decree-Law that regulates Law no. 90/2021, of 16 December, which amends the legal framework for medically assisted procreation (MAR), approved by Law no. 32/2006, of 26 July (LPMA), with regard to the legal framework for surrogate pregnancy.

In the report that precedes the opinion, it is emphasised: "between the second and third proposals for regulation, there is a significant involution from an ethical point of view, having eliminated the contextual specificity of the complex and sensitive matter that needed to be regulated and replaced it with a formal legal article, focused on the bureaucratic procedure that goes with it and its digitalisation." The reflection points out that there has been an "artificial simplification of a naturally complex reality" by referring all decisions relating to surrogacy to "the contract to be concluded between the designated beneficiaries and the surrogate woman", leaving both unprotected in case of unforeseen events that are not covered by the contract, and which regulations also fail to take into account. As a result, particularly sensitive issues "are referred to a mere contract or 'legal business', a common expression in law, but ethically inappropriate in the context of a surrogacy contract".

In its reflection, the Council maintains its concerns about the need to define a reasonable period of time for the surrogate to exercise her right to regret handing the child over to the biological parents. In this case, it emphasises the importance of determining the family relationships, namely the kinship of the child born through surrogacy with the beneficiaries, as well as the determination, by law, of the latter's rights and duties in relation to the child, with the child's best interests always being safeguarded.

The CNECV also argues that it is necessary to "maximise the level of protection of the child to be born through surrogate gestation, in any and all situations that may occur during this process and until it is handed over to the beneficiaries", and reinforces the need for "full and unequivocal clarification of the rights and duties" of the child, beneficiaries and surrogate, but also of the obligations of professionals, advisory bodies and institutions.



The CNECV believes that this process has "eliminated the greatest merit of the second proposal for regulation" related to "discouraging the surrogate from withdrawing consent" and has ignored "the best interests of the child born through surrogacy, especially in its relationship with the biological and contracting parents and the surrogate", especially in the event that the latter invalidates the contractual agreement.

Lisbon, 5th September 2023.

National Ethics Council for Life Sciences.

The President, Maria do Céu Patrão Neves.

Rapporteurs: André Dias Pereira and Margarida Silvestre.

Support for the opinion drafting: Cíntia Águas.