



National
Council of
Ethics for the
Life Sciences

122/CNECV/2023

**OPINION ON THE DRAFT DECREE-LAW
REGULATING LAW NO. 90/2021, OF 16
DECEMBER, WHICH ALTERS THE REGIME
APPLICABLE TO GESTATIONAL SURROGACY**

April 2023



OPINION 122/CNECV/2023 ON THE DRAFT DECREE-LAW REGULATING LAW NO. 90/2021, OF 16 DECEMBER, WHICH ALTERS THE REGIME APPLICABLE TO GESTATIONAL SURROGACY

Executive Summary

The National Council of Ethics for the Life Sciences (CNECV) unanimously approved, at its 276th Plenary Meeting held on 21 April, Opinion No. 122/CNECV/2023 on the draft decree-law that regulates Law No. 90/2021 of 16 December, which alters the legal regime applicable to gestational surrogacy (GS). The present opinion was prompted by a request addressed to the Council as a matter of urgency by His Excellency the Minister of Health.

The CNECV had the opportunity to provide an Opinion on a first version of the Draft Regulatory Decree on Law No. 90/2021 of 16 December, at the request of the Commission for the Regulation of the Law in May 2022. In the same month, the CNECV issued Opinion 115/CNECV/2022 with reference to the legal regime on Medically Assisted Reproduction (MAR) in respect of GS.

With regard to the new legislative text, the CNECV notes as positive the clarification of aspects highlighted by the previous reflection (Opinion 115/CNECV/2022), in some cases with the acceptance, in whole or in part, of its recommendations. However, the introduction of new aspects and the persistence of issues requiring clarification justify, due to their ethical relevance, a new pronouncement of the Council - particularly those relating to the procedure, the powers of the entities involved, the rights and duties of both the beneficiaries and the surrogate and the protection of the child to be born as a result of the application of MAR techniques using gestational surrogacy.

With its reflection, the CNECV intends to contribute to the unequivocal clarification of the surrogacy process, from its beginning to the crucial moment of civil registration and family welcoming of the child. In particular, the CNECV considers it necessary to consider the relationship between the beneficiaries and the surrogate and, above all, between the latter and the child, both in the context of the strict fulfilment of the gestation contract and in the circumstance of unilateral revocation of the same contract by the surrogate.



The Council also points out that issues such as the establishment of a reasonable period of time for the exercise of the right of withdrawal of consent or the unilateral revocation of the contract by the surrogate, while respecting free will, in the interests of the unborn child and taking into account the expectations of potential beneficiaries, still remain to be regulated.

In the event of unilateral revocation by the surrogate, it is necessary to consider the strong impacts of this decision, namely taking the child born from the beneficiaries who welcomed her immediately after the birth, as well as the revision of the birth certificate and registration, carried out by the beneficiaries, favouring the best interests of the child. In this case, and if the biological parents can and wish to include their name in the child's civil register, there should be unequivocal identification of the duties and rights to which they are entitled.

The CNECV also defends that the specialized opinions issued respectively by the Order of Physicians and by the Order of Psychologists should be mandatory in this context.

In any case, the CNECV draws attention to the need to safeguard, in all circumstances, the best interests of the child born as a result of the application of MAR techniques.

Lisbon, April 21st, 2023.

National Council of Ethics for the Life Sciences

The Chair, Maria do Céu Patrão Neves.

Rapporteurs: André Dias Pereira, Maria do Céu Patrão Neves, Margarida Silvestre.

This opinion was unanimously approved on 21 April 2023, at the 276th Plenary Session of the CNECV