

EU strategy on the rights of the child (2021-24)

European Network on Statelessness public consultation submission

The European Network on Statelessness is a civil society alliance of over 150 organisations and individual experts in 41 countries committed to ending statelessness and ensuring that everyone in Europe without a nationality can access the rights they are entitled to under international law. At the heart of our strategy is an understanding of the need to raise awareness about statelessness, support legal and policy development and build civil society’s capacity to act. We are dedicated to working alongside stateless people and their communities to strengthen their voices and together advocate for full respect of their human rights.

The Convention on the Rights of the Child obliges all European states to fulfil the right of every child to acquire a nationality, a right that is upheld in a number of international and regional standards in the fields of human rights, child rights and statelessness. Yet, across Europe today, children are still being born into statelessness because States are failing to take adequate steps to ensure that all children born on their territory or to their nationals abroad acquire a nationalityⁱ.

Many have inherited their statelessness from parents who were stateless before them, while others are the first in their family to experience statelessness, as the unsuspecting victims of a gap or conflict in nationality laws. They are members of minority groups, who have always lived in the same place (sometimes for generations), like 13 year-old Lirije and her family, from North Macedonia’s Romani communityⁱⁱ. They are also children and young people, who have either themselves moved across borders or fled conflict in other parts of the world, or were born to parents who have done soⁱⁱⁱ. Children of same-sex couples, children born through international commercial surrogacy and children who have been abandoned can also face the risk of being born without a nationality.

Not having a nationality can make it difficult for children to access some of the most fundamental rights, such as healthcare, education, birth registration, social welfare, and housing. When they are older, many struggle to access employment and livelihood opportunities. Stateless children and young people may also be at particular risk of immigration detention. It is harder to protect children and young people from trafficking, child labour, exploitation, early marriage, and other types of abuse if they are stateless and lack key identity or civil registration documents.

Whatever the circumstances in which childhood statelessness arises, the vast majority of those affected have been stateless since birth. They have never known the protection or sense of belonging which a nationality bestows. Yet, childhood statelessness is entirely preventable.

The new EU strategy on the rights of the child provides an opportunity to ensure that stateless children and young people are better protected and that future cases of childhood statelessness in Europe (and beyond) are prevented. In line with the new strategy’s proposed thematic priorities, the European Network on Statelessness proposes the following recommendations for action to be included in the new strategy towards ensuring every child’s right to a nationality is upheld:

(i) The rights of the most vulnerable children

	Key actions
<p>Recommendation: <i>Build the capacity of frontline officials in Member States and</i></p>	<p>European Commission:</p> <p>i. In order to contribute to more effective asylum and migration procedures, allocate specific funds towards activities to build the capacity of frontline officials to identify, record and respond to statelessness and nationality problems in the migration/asylum</p>

relevant EU agencies to respond to statelessness and nationality problems in the migration/asylum context, including among children, and prioritise accurate identification and recording of nationality status, strengthened screening for protection needs/vulnerabilities and appropriate referrals

context, including when identifying nationality and when screening for specific protection needs/vulnerabilities. This should include appropriate referrals to Statelessness Determination Procedures/other relevant procedures. Such activities towards improved capacity to identify and record statelessness should also prevent the detention of children, including stateless children who have no country of nationality to which they can be returned.

- ii. In line with the 2015 Council Conclusions on Statelessness, use the European Migration Network Statelessness platform to monitor the situation of identification and recording of stateless people, including children, and facilitate sharing of best practice between Member States.
- iii. In line with the Commission Communication on the Protection of Children in Migration^{iv}, promote standardisation among Member States and relevant EU agencies of data collected on statelessness during identification, registration and screening procedures for refugees and migrants on arrival, and throughout migration and international protection procedures.

EU Asylum Agency:

- i. Incorporate relevant information on childhood statelessness across the work of its Information and Analysis Unit, in its Country of Origin Information, in its training development and delivery, and in its operations.
- ii. Include specific guidance on the identification and recording of statelessness, including in relation to children, in practical tools being developed to support and guide relevant stages of the asylum process (e.g. registration, pre-entry screening, de-briefing form, identification of vulnerability).

Frontex:

- i. Mainstream statelessness-specific knowledge and resources in its training and handbooks (for example, the VEGA Handbook on Children at Airports) to ensure that border guards identify stateless children or children at risk of statelessness in pre-entry screening and border procedures, and refer them to the appropriate authorities and services.
- ii. Include stateless children in the agency's definition of children at risk/vulnerable to abuse and exploitation in line with UNHCR and EU Asylum Agency guidance.

Member States:

- i. Improve and standardise procedures for identifying and recording statelessness and nationality problems during registration and screening procedures for refugees and migrants on arrival, and throughout migration and international protection procedures, in order to provide children with the protection and rights enshrined in international law (e.g the 1954 Convention relating to the Status of Stateless Persons). No child should be detained, including where they are stateless and have no country of nationality to which they can be returned. Improved procedures for identifying and recording statelessness must include the prevention of detention of stateless children, and referral to appropriate protection mechanisms.

	<ul style="list-style-type: none"> ii. Work in cooperation with civil society to build the capacity of frontline officials, service providers and support organisations in the migration context to facilitate an improved response to statelessness and nationality problems among children in migration, prevent new cases of statelessness arising, and ensure that statelessness is accurately identified, recorded and the rights of children respected. iii. Clearly define the category of ‘unknown nationality’ and have an established and timely procedure for determining the child’s nationality and whether they would otherwise be stateless, with the child able to acquire a nationality as soon as possible in line with international law (e.g the Convention on the Rights of the Child, the 1961 Convention on the Reduction of Statelessness etc.), and obligations under the EU Charter of Fundamental Rights^v.
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Key actions	
<p>Recommendation: <i>Promote and ensure universal access to birth registration and certification both within the EU and in third countries</i></p>	<p>European Commission</p> <ul style="list-style-type: none"> i. Monitor and assess Member States’ commitments made under the new EU Roma Strategic Framework for equality, inclusion and participation, and subsequent implementation reports, for progress made on addressing civil registration barriers and other challenges that Romani people face in accessing a nationality. Provide guidance and support where improvements are needed to ensure every child’s right to immediate birth registration and to acquire a nationality. ii. In implementing the new EU Roma Strategic Framework for equality, inclusion and participation, continue to support countries in the Western Balkans to implement the Poznan Declaration commitment to address the civil registration issues faced by Romani populations, ensuring that systemic barriers to civil and birth registration, and equal access to nationality are addressed. iii. Continue measures taken to address free movement and cross border issues as part of the Commission’s List of Actions to advance LGBTI equality, through continued dialogue with relevant Member States in order to remove obstacles concerning the recognition of birth certificates of children born of same-sex couples in another Member State, and any consequences on acquisition of nationality for the child. iv. Continue supporting the development of civil registration systems in third countries through EU and national external cooperation instruments (e.g Thematic Programme for Cooperation with Third Countries in the areas of Migration and Asylum, European Development Fund, Instrument for Pre-Accession Assistance, European Neighbourhood and Partnership Instrument & the geographic programmes of the Development Cooperation Instrument). <p>EU Fundamental Rights Agency:</p> <ul style="list-style-type: none"> i. Consider the inclusion of childhood statelessness and birth registration in data collection, research and analysis as well as capacity building support to policy makers in relevant areas of work, such as equality, non-discrimination and racism (in particular, children, Roma, sex, sexual orientation and gender), and asylum, migration & borders. <p>Member States:</p>

	<p>Take measures to improve access to immediate, free birth registration and certification for all children, regardless of their parents’ documentation or residence status, or other aspects of their identity (e.g same-sex parents, belonging to an ethnic minority) – including to:</p> <ul style="list-style-type: none"> i. Introduce flexibility in documentation requirements and birth registration processes. ii. Remove mandatory reporting requirements that deter people from accessing healthcare and/or civil registration; introduce a “firewall” to prohibit information sharing for the purpose of immigration control to ensure access to birth registration for migrants. iii. In line with the EU Roma Strategic Framework for equality, inclusion and participation, and the 2020 resolution on the implementation of National Roma Integration Strategies, National Roma strategic frameworks should: end statelessness among Roma by ensuring universal birth registration and access to identity documents and universal access to services. iv. Also in line with the Strategic Framework’s call on Member States to take measures to prevent and combat discrimination and its root causes, build the capacity of civil registry and healthcare officials to identify and eliminate discrimination in birth registration practices, ensuring that Roma children do not face discrimination of any kind in accessing birth registration and certification.
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<p>Recommendation: <i>Promote and support Member States to take measures to introduce, improve and implement legal safeguards in national law to prevent childhood statelessness</i></p>	<p>Key actions</p>
	<p>European Commission:</p> <ul style="list-style-type: none"> i. Implement the pledge made by the EU in 2012 at the High Level Meeting on the Rule of Law^{vi} for all EU Members States yet to accede to the 1961 Convention to explore doing so, and periodically report on progress towards this goal. ii. Allocate specific funds towards activities supporting best practice among Member States in the effective implementation of legal safeguards to prevent childhood statelessness and ensure every child’s right to acquire a nationality. In line with the 2015 Council Conclusions on Statelessness, use the European Migration Network Statelessness platform to lead the facilitation of sharing of information and best practice with and among Member States. Also explore and utilise other forums to share information and knowledge about childhood statelessness among Member States such as DG JUST’s informal expert group on the rights of the child. <p>Member States:</p> <ul style="list-style-type: none"> iii. Fulfil pledges made at UNHCR’s 2019 High Level Segment on Statelessness and Global Refugee Forum^{vii}, by introducing and/or improving safeguards in their nationality laws (in line with the 1961 Convention and the European Convention on Nationality) to ensure that any child who would otherwise be stateless acquires a nationality as soon as possible, including those born on the territory, born to nationals

	<p>abroad, surrogacy arrangements, foundlings and adopted children. Provisions should cover all children who would otherwise be stateless, regardless of the residence status of the child or their parents, they should be accessible to children in detention or in care, and should ideally be automatic so that no additional procedure nor action on the part of the parents or a representative are required.</p>
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(ii) The promotion of child friendly justice

<p>Recommendation: <i>Promote activities aimed at introducing and improving (child rights-based) statelessness determination procedures to enable States to meet their international obligations towards stateless people in a migratory context, ensure protection in line with children’s best interests, and the realisation of their right to acquire a nationality.</i></p>	<p>Key actions</p>
	<p>European Commission:</p> <ul style="list-style-type: none"> i. Including through the European Migration Network Statelessness Platform, and in line with the 2015 Council Conclusions on Statelessness^{viii}, support and resource activities aimed at introducing or improving statelessness determination procedures. This should include sharing information and good practices on child rights-based procedures, and how referral mechanisms between international protection and statelessness determination procedures should operate, building the capacity of Members States to better meet their international obligations under the 1954 Convention. <p>European Guardianship Network</p> <ul style="list-style-type: none"> i. With funding and support from the European Commission, build the capacity of guardianship services to understand and identify risks of statelessness for unaccompanied children, and to work with competent authorities at national level to ensure that unaccompanied children are provided with a guardian throughout statelessness determination procedures. <p>Member States:</p> <ul style="list-style-type: none"> i. Introduce dedicated child rights-based statelessness determination procedures and stateless protection status in line with the 1954 Convention on the Status of Stateless Persons and UNHCR guidance, to allow them to identify and protect stateless children on their territory until they acquire nationality (as soon as possible). Where indications that a child (or their parents) may be stateless arise in migration or international protection procedures, a referral should be made at an appropriate point in proceedings to a procedure to determine their statelessness. The child and/or their guardian should be provided with information and quality legal assistance throughout relevant procedures. ii. Where a statelessness determination procedure already exists, adapt this to be child-rights based in line with UNHCR guidance, taking into consideration the best interests of the child. iii. Statelessness determination procedures should only be carried out by a competent decision-making authority and with procedural guarantees in place in line with UNHCR Guidance, ensuring that confidentiality requirements for refugees who might also be stateless are upheld.

ⁱ ENS report ‘No Child Should be Stateless’: <https://www.statelessness.eu/resources/no-child-should-be-stateless>. Also see ENS’ Statelessness Index for comparative information on 24 European countries’ law policy and practice: <https://index.statelessness.eu/>

ⁱⁱ <https://www.statelessness.eu/blog/i-feel-i-belong-too-stateless-roma-europe#lirije>

ⁱⁱⁱ ENS policy briefing (2020) No child should be stateless: Ensuring the right to a nationality for children in migration: <https://www.statelessness.eu/updates/publication/no-child-should-be-stateless-ensuring-right-nationality-children-migration>

^{iv} https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf

^v Gábor Gyulai, ECRE (2017). ‘The right to a nationality of refugee children born in the EU and the relevance of the EU charter of fundamental rights.’ Available from: <https://www.ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf>

^{vi} <https://www.un.org/ruleoflaw/blog/document/pledges-by-the-european-union-high-level-meeting-on-the-rule-of-law-2012/>

^{vii} Results of the High Level Segment on Statelessness: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

^{viii} <https://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>