

# BRIEFING #3: Protection gaps for stateless refugees from Ukraine



European  
Network on  
Statelessness

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## 1. Introduction

This third advocacy briefing in our [series](#) on statelessness and the Ukraine crisis draws on [country briefings](#) produced with our members and local lawyers to provide an update on current protection gaps for refugees from Ukraine who are stateless or at risk of statelessness (including those with undetermined nationality).

Our [analysis](#) of routes to protection for refugees from Ukraine in 17 European countries<sup>1</sup> shows that there are significant protection gaps across Europe for stateless people. To prevent discrimination, avoid over-burdening asylum procedures, and facilitate eventual safe return to Ukraine, it is imperative that these gaps are addressed by national and regional authorities.

### Populations affected by statelessness in Ukraine include:

- **Romani people** who lack civil documentation to acquire/confirm their Ukrainian nationality
- **Former citizens of the USSR** who were unable to acquire Ukrainian nationality in 1991 and have remained stateless due to lack of access to legal aid and other factors
- **People from non-Government-controlled areas and Crimea** and those **internally displaced** prior to the current conflict who have been unable to obtain or renew personal documents since 2014, including children whose births have not been registered
- **Asylum-seekers, refugees, and migrants** (and their children) residing in Ukraine who were stateless prior to leaving their countries of origin or have since become stateless due to displacement, discrimination, State succession, or deprivation of nationality

For more detail on who is affected by statelessness in Ukraine, see [Briefing #1](#) & [Briefing #2](#).

## 2. Access to the territory

Most European countries permit entry to everyone fleeing Ukraine on humanitarian grounds regardless of their documentation or residence status in Ukraine (as [mandated by the EU](#)). In some of the countries we reviewed, refugees must demonstrate a link to Ukraine or further identity checks may be carried out if they lack identity documents. Good practice (e.g., in **Italy**), is for this to be a flexible procedure and for non-documentary evidence such as oral testimony to be accepted as proof of links to Ukraine. However, in some countries, including **France, Portugal, Switzerland**, and the **UK**, it is still unclear whether all those fleeing Ukraine may enter the territory regardless of documentation status.

**Everyone fleeing the war in Ukraine should be guaranteed access to the territory regardless of documentation or residence status, as mandated by the EU and UNHCR, and in line with international law principles including the right to claim asylum.**

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<sup>1</sup> Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Hungary, Ireland, Italy, Moldova, Poland, Portugal, Romania, Slovakia, Spain, Switzerland, and the UK.

### 3. Access to protection in Europe

A form of temporary protection for refugees from Ukraine is being implemented in most of the 17 countries reviewed, except for **Moldova** and the **UK**, where other routes to protection are available (although in the **UK** these are very restricted). In **Hungary**, the EU Temporary Protection Directive is being implemented in a very restrictive way and alternative routes to protection (including asylum) are not available to stateless people fleeing Ukraine. Routes to protection for stateless people from Ukraine are also very limited in **Austria**.

In other EU countries, implementation of the Temporary Protection Directive varies. No country has extended eligibility to all stateless people and those at risk of statelessness to include those who cannot prove prior legal residence in Ukraine. In most EU countries, in addition to Ukrainian nationals, eligibility for temporary protection is limited to (stateless) people who held international protection (or equivalent) or permanent residence in Ukraine, and their family members. The widest scope of application is in **Spain** and **Portugal** where temporary protection is extended to those fleeing Ukraine who had permanent *or temporary* stay (Spain), or permanent *or temporary stay or a long-stay visa* (Portugal) in Ukraine and are unable to return to a country or region of origin. However, this still does not account for most stateless people and those with undetermined nationality *from Ukraine* who do not have links to any other country. Positively, the **Czech Republic**, **Belgium**, and **Spain** have specified that people recognised as stateless under Ukraine's Statelessness Determination Procedure are eligible for temporary protection, but in other countries this is still unclear. As the Ukrainian authorities continue processing applications for statelessness status submitted prior to 24 February 2022, there is a growing number of people recently recognised as stateless in Ukraine but who are unable to obtain [documentary proof](#) of that status if they have fled Ukraine or been internally displaced.

In most European countries, those ineligible for temporary forms of protection may apply for international protection under regular asylum or subsidiary protection procedures. Some countries have dedicated Statelessness Determination Procedures providing a route to protection for stateless people. Others offer at least a form of temporary admission or 'tolerated stay' if the person cannot be removed to their country of origin. However, these are often complex and lengthy procedures, sometimes with very limited rights, and often prevent onward travel and/or return to Ukraine. In some cases, applicants have no rights during the procedure at all and may face detention and expulsion.

[UNHCR](#) has recommended that European States take an inclusive approach and grant temporary protection to stateless people, including those who did not have permanent residence status in Ukraine. However, stringent documentation requirements and the policies currently applied throughout Europe are excluding from protection significant parts of the Ukrainian population, which defeats the objective of temporary protection and may frustrate longer term return, re-integration, and re-building efforts.

**This urgently needs fixing if the European Commission and European States are to fulfil their stated intention of extending protection to everyone fleeing Ukraine. EU Member States and other European countries must extend temporary forms of protection to all stateless people and those with undetermined nationality who cannot meet current eligibility requirements, due to their statelessness or documentation status. Our analysis further evidences the need for the European Commission to revise the Operational Guidelines for implementation of the Temporary Protection Directive and call on EU Member States to extend protection to everyone fleeing Ukraine.**

### 4. Discrimination and antigypsyism

Reports are continuing to emerge of antigypsyism and discrimination in access to the territory, temporary protection, services, and support faced by Romani people fleeing Ukraine, including in [Poland](#), [Moldova](#), and the [Czech Republic](#). A significant proportion of the Romani population ([estimates range from 10-20%](#)) from Ukraine lack identity documents and proof of nationality, adding to the barriers they face in accessing safety and protection outside Ukraine.

**The European Commission and European States must take urgent action to address segregation, discrimination, and antigypsyism, and ensure equal access to rights and protection for Romani refugees fleeing Ukraine.**

## **5. Lack of disaggregated data**

Our analysis shows there is very limited data on the nationality status of refugees from Ukraine. Issues with identification of nationality or statelessness at border crossings and registration points have been reported, as well as cases of imputed nationality (people being assigned an assumed nationality) during protection procedures, meaning it is very hard to get an accurate picture of who is fleeing Ukraine and whether stateless people or people with undetermined nationality have been able to apply for or access protection. Crucially, there are also issues with how nationality data is recorded during birth registration procedures, which creates an additional risk of new cases of statelessness emerging among children whose nationality is not being accurately determined at birth.

No official published data on nationality could be found from registration/border points. ENS members providing legal assistance to people fleeing Ukraine have reported cases of stateless people from Ukraine in **Switzerland, Romania, Poland, Moldova, Hungary, Germany, the Czech Republic, and Belgium**. Disaggregated Eurostat data is available for some EU countries on first instance grants of temporary protection and total beneficiaries of temporary protection. This includes the 'citizenship' categories 'stateless', 'unknown', and 'recognised non-citizens', as well as 'Palestine' and 'Western Sahara'. However, even where disaggregated data is available, ongoing failures in identification are likely to hide the true number of stateless people and those at risk of statelessness affected. The lack of data also makes it challenging to assess the situation facing stateless people in Ukraine, including where their lack of (proof of) nationality may have prevented them from fleeing the conflict.

**There is an urgent need for improved disaggregated data on the nationality status of refugees fleeing Ukraine, to tailor policy responses and prevent discrimination on grounds of statelessness or nationality status.**

## **6. Recommendations**

Political commitments to ensuring everyone fleeing Ukraine can access temporary protection - and action already taken by many States to make this a reality - are welcome. However, our analysis shows that many stateless people from Ukraine are falling through the cracks, finding themselves outside the scope of this protection. It is regrettable that our calls for improved access to protection for stateless people - including in our [open letter](#) to the EU Commissioner for Home Affairs Ylva Johansson - remain unanswered. The further analysis we have conducted in 17 countries since then reinforces why action is so urgently needed. As set out in this briefing, we recommend that:

- i. Everyone fleeing the war in Ukraine should be guaranteed access to the territory regardless of documentation or residence status, as mandated by the EU and UNHCR, and in line with international law principles including the right to claim asylum.
- ii. EU Member States and other European States should extend temporary forms of protection to all stateless people and those with undetermined nationality who cannot meet current eligibility requirements, due to their statelessness or documentation status. To help facilitate this, the European Commission should revise the Operational Guidelines for implementation of the Temporary Protection Directive to better address the particular protection needs of stateless people.
- iii. The European Commission and European States should take urgent action to address segregation, discrimination, and antigypsyism, and ensure equal access to rights and protection for Romani refugees fleeing Ukraine.

- iv. The European Commission, European States and other relevant refugee response actors should urgently address the need for improved disaggregated data on the nationality status of refugees fleeing Ukraine, to tailor policy responses and prevent discrimination on grounds of statelessness or nationality status.

Delay in actioning these recommendations not only risks leaving a proportion of the population displaced from Ukraine in limbo at risk of human rights violations, but also risks creating new cases of statelessness. The failure to properly identify and resolve statelessness now undermines efforts towards inclusion and/or return to Ukraine in the future.

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European  
Network on  
Statelessness

The [European Network on Statelessness \(ENS\)](#) is a civil society alliance of over 170 organisations and individuals working to address statelessness in 41 European countries.