

BRIEFING #4: Update on access to protection in Europe for stateless people fleeing Ukraine



European
Network on
Statelessness

February 2024

1. Introduction

This briefing provides an update on access to protection in Europe (both EU and non-EU countries) for stateless people fleeing the war in Ukraine. It draws on information gathered from our members and local lawyers, published in our [updated country briefing series](#). Stateless refugees from Ukraine continue to face specific challenges and protection gaps. Two years on from the full-scale Russian invasion of Ukraine and as discussions are underway about [what next](#) following the expiry of protection under the EU Temporary Protection Directive (TPD), this new briefing summarises these challenges and makes a series of recommendations.

There are at least 35,000 stateless people in Ukraine according to UNHCR. [Other sources](#) suggest there could be many tens of thousands more. Many of these people have links only to Ukraine (and in many cases were born in Ukraine) but lack the documents to prove this. Ukraine has a statelessness determination procedure (operational since May 2021), which enables stateless people to apply to be recognised as stateless and acquire a temporary residence permit. After two years, they may acquire permanent residence. However, recognition levels are still low. As of September 2023, 790 people had been granted a temporary residence permit through the procedure. While the introduction of an SDP is welcome, obstacles to access have been reported.

2. Eligibility for Temporary Protection

The 2022 EU Council Decision implementing the Temporary Protection Directive (TPD) granted immediate protection in the EU to Ukrainian nationals and people who had international protection in Ukraine prior to 24 February 2022. Stateless people who can prove they held permanent residence in Ukraine before 24 February 2022 and '*cannot safely return to their country or region of origin*' are eligible for Temporary Protection, but EU Member States can choose whether to apply the TPD or '*adequate protection under national law*'. EU Member States may also extend Temporary Protection to others, including stateless persons who were '*residing legally*' in Ukraine. As a result, EU Member States are not currently required to extend Temporary Protection to most stateless people and those at risk of statelessness who are/were living in Ukraine (i.e. people without proof of permanent residence or international protection in Ukraine). Accordingly, alternative routes, such as asylum, may be the only option, but they have drawbacks and are limited in some countries. Several non-EU countries have adopted temporary protection mechanisms in line with the EU Council Decision, with similar eligibility criteria. This has led to significant protection gaps for stateless people and people at risk of statelessness fleeing Ukraine, particularly those (the vast majority) who do not have documentary proof of residence or nationality status in Ukraine.

3. Access to the territory

Most European countries allow entry into their territory for people fleeing Ukraine on humanitarian grounds regardless of their identification documents or residence status in Ukraine. This includes countries that allow entry for the purpose of an application for international protection or statelessness status, as is the case, for example, in **France, Romania, and Moldova**. In some European countries, those leaving Ukraine must demonstrate a connection to Ukraine, or further inquiries may be carried out if they lack the required evidence to enter. Good practice, as seen in **Italy**, for example, is for access to other European territories to be a flexible procedure and for non-documentary evidence, such as oral testimony, to be accepted as adequate proof of

links to Ukraine. Moreover, in **Georgia**, border guards have discretion to grant access to the territory and, in practice, entry is permitted for people with habitual residence in Ukraine, whether permanent or temporary, including stateless people and people with expired documents.

However, in some countries, including **Ireland** and the **UK**, it is unclear whether all those fleeing Ukraine may enter the territory regardless of documentation status. Furthermore, **Hungary** has strengthened its border-control measures since January 2023, making it unlikely that non-Ukrainians, including stateless people, are granted access to the Hungarian territory unless they possess valid travel documents, are not subject to an entry ban, or did not enter Ukraine after 24 February 2022.

Instances of refusal of entry due to a lack of documentation have been reported in **Bulgaria** and **Poland**. In **Bulgaria**, while the law provides that people not eligible for temporary protection may apply for international protection at the border, in practice, it is highly unlikely that they will be able to and might be pushed back. Undocumented stateless people are also at risk of detention in **Bulgaria** and **Poland**, where a lack of documentation is considered 'irregular'. As of October 2023, 49 people with undetermined nationality were recorded as being permitted entry but placed in detention by court order in **Poland**.

Moreover, there have been cases of imputed (people being assigned an assumed nationality) Ukrainian or other nationality to stateless people or people at risk of statelessness fleeing Ukraine, including in **Poland** and **Romania**.

4. Access to protection

A form of temporary protection for refugees from Ukraine is being implemented in almost all countries covered by our [Statelessness Index](#), but implementation and eligibility for stateless people vary significantly.

Most countries extend a form of temporary protection to stateless people who held international protection, equivalent national protection, or permanent residence in Ukraine, and their family members. The widest scope of application is in **Albania, Bulgaria, Georgia, Montenegro, Spain, and Switzerland**, where temporary protection is extended to those fleeing Ukraine who had permanent or temporary stay and are unable to return to a country of origin. Some countries used to have a wider scope of application, but restrictions now apply. For example, in **the Netherlands**, people who had a temporary residence permit in Ukraine were eligible for temporary protection if they registered at a Dutch town hall before 19 July 2022, but no longer receive temporary protection as of 4 September 2023. In **Portugal**, since December 2022, stateless people with a temporary residence permit or long-term visa from Ukraine are no longer entitled to temporary protection. Positively, **Belgium, Croatia, Czechia, France, Georgia, Hungary, Moldova, 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. Some EU countries implement the TPD in a very restrictive way. For example, **Austria** and **Hungary** do not even extend temporary protection to stateless people who had a valid permanent residence permit in Ukraine, and other routes of protection are very limited.

5. Discrimination and antigypsyism

Discrimination and antigypsyism continue to be reported by those seeking to access to other European countries from Ukraine, as well as in access to temporary protection, services, and support faced by Romani people fleeing Ukraine, including in **Czechia, Moldova, and Poland**. A significant proportion of this population lacks identity documents and proof of nationality, which are often required to access safety and protection, and as such many are confronted with unequal access to rights and protection in host countries.

6. Lack of disaggregated data

There is still 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 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 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.

ENS members providing legal assistance to people fleeing Ukraine have reported cases of stateless people from Ukraine in **Belgium, Czechia, Germany, Hungary, Moldova, Poland, Romania, Spain, Sweden, and Switzerland**. Some data is available for **Poland** where, since the outbreak of the war until mid-2023, 4,415 stateless people and people with undetermined nationality from Ukraine were recorded as having entered the territory, and, as of December 2022, 62 stateless people and 26 people with undetermined nationality from Ukraine had been granted temporary protection.

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 categories of 'citizenship', '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.

7. Longer-term challenges

Longer-term issues for stateless people and those at risk of statelessness include the right to return to Ukraine, which may be challenging in the absence of proof of links to the country. Access to birth registration and prevention of childhood statelessness among children born to refugees is also an important consideration for the future. For example, it is reported that children born in **Hungary** to parents fleeing the war are registered as having 'unknown nationality' on their birth certificates, which leads to an increased risk of statelessness if the child's nationality remains undetermined for a long period of time. Parents may face difficulties obtaining proof of their child's nationality or statelessness, and the risk of statelessness is heightened for children born to parents of a nationality other than Ukrainian, including beneficiaries of international protection or stateless parents. Temporary Protection under the EU TPD has been extended until March 2025, but an important and increasingly urgent question remains as to what longer-term solutions will be applied after that date in both EU and non-EU countries, and whether these solutions will provide adequate protection for stateless people and people at risk of statelessness.

8. Recommendations

Given these remaining challenges, ENS makes the following recommendations for national governments, the EU, and other regional institutions to ensure that the rights of all those affected by statelessness and nationality problems in and from Ukraine are fully realised:

- 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.

- EU Member States, EU agencies, and frontline refugee response actors must be sensitised to statelessness and should identify and record statelessness or nationality as accurately as possible to ensure access to adequate protection, assistance and services.
- EU Member States and other countries in Europe should extend temporary forms of protection to all stateless people and those with undetermined nationality fleeing Ukraine who cannot meet current eligibility requirements due to their statelessness or documentation status.
- All European States (both EU and non-EU), the European Commission, and other mandate-holders should be vigilant and take action to address any segregation, discrimination, and antigypsyism, and ensure equal access to rights and protection for all those fleeing Ukraine.
- The EU, national governments (both EU and non-EU), 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.
- All European States (both EU and non-EU) should ensure that every child acquires a legal identity and nationality as soon as possible after birth in line with their obligations under the Convention on the Rights of the Child and other human rights treaties.
- The EU and national governments (both EU and non-EU) should ensure that longer-term solutions, including after the expiry of the EU TPD, are found and designed, including to provide adequate protection for stateless people and people at risk of statelessness.

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The [European Network on Statelessness \(ENS\)](http://www.statelessness.eu) is a civil society alliance of over 180 organisations and individuals working to address statelessness in 40 European countries.