

## ENS BRIEFING

# STATELESSNESS AND THE EU PACT ON MIGRATION AND ASYLUM: ANALYSIS AND RECOMMENDATIONS FOR IMPLEMENTATION

MAY 2024

## INTRODUCTION

In September 2020, the European Commission presented a [new Pact](#) on Migration and Asylum setting out a '*comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management*'. After nearly four years of debate and negotiations, the Pact was finally adopted by the [European Parliament](#) on 10 April 2024, and by the [Council](#) on 14 May 2024. A total of 10 legislative acts were adopted, which '*reform the entire European framework for asylum and migration management*'. Member States will now have two years to put the new laws into practice. The European Commission is in the process of developing a common implementation plan to assist Member States in this process.

Statelessness was invisible in the original Pact proposals. In response to this omission, ENS published [detailed analysis and recommendations](#) with suggested amendments to protect the rights of stateless refugees and migrants. We followed this up in June 2023, with [updated analysis](#) and recommendations to inform trilogue negotiations. We have engaged extensively with the European Parliament, Council, and Commission throughout the negotiations to address the Pact's blind spot on statelessness.

Whilst the Pact as adopted raises significant concerns<sup>1</sup> about the EU's approach to migration and asylum more broadly, it is welcome that several of our calls to address statelessness were heard and incorporated in the various instruments adopted. These now need to be fully implemented so that statelessness is properly identified, and stateless people's rights are respected in EU asylum systems.

This briefing analyses the new statelessness provisions and makes recommendations to support their implementation.

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<sup>1</sup> Some of the key concerns raised to date include that the new rules will significantly increase the number of people (including children) subject to detention; that many more people seeking safety will be subject to fast-track procedures with limited safeguards; that States will be permitted to deviate from minimum legal standards in crisis situations; that the widespread use of the 'legal fiction of non-entry' poses significant risks to upholding the rule of law and fundamental rights; and that the 'safe third country' concept increases externalisation of Europe's borders and responsibilities.

## WHY IS STATELESSNESS RELEVANT?

To be stateless, is to have no nationality. For the more than 10 million stateless people around the world, this can mean denial of many basic rights most people take for granted. In Europe, [statelessness affects over half a million people](#) – both recent migrants and those who have lived in the same place for generations. Statelessness is often intertwined with other root causes of forced displacement, such as the persecution of ethnic, religious, or other members of minority groups, armed conflicts, and discrimination.

Among the stateless people living in Europe today are individuals who arrived seeking international protection and were either stateless prior to leaving their country of origin or have since become stateless. According to [Eurostat](#), on average, around 3% of first-time asylum applicants to the European Economic Area each year are recorded as being stateless or of 'unknown nationality'. This is very likely an underestimate due to the limited awareness, capacity, and tools to accurately identify and record statelessness in the migratory context to date. A high proportion of refugees come from countries (such as Syria, Iraq, Iran, Afghanistan, Eritrea, Somalia, and Sudan, among others) where, as a result of discrimination in nationality laws, State succession, or deprivation of nationality practices, they or their children may be stateless or have undetermined nationality.

The fact that an asylum applicant may be stateless is often critical when assessing their claim for international protection. Whether someone is stateless or a national of their country of origin not only impacts on the decision-making process, but also on the nationality rights of their children, and access to procedures such as family reunification, resettlement, or naturalisation (as well as the possibility of return) because they are unlikely to have documentary proof of their identity and family links. Stateless people are due [specific rights under international law](#) and risk further discrimination and rights violations if their statelessness is not identified and acted upon.

## WHAT ARE THE NEW STATELESSNESS PROVISIONS IN THE PACT?

### SCREENING REGULATION

The Screening Regulation includes under Article 2(5) the international customary law definition of a stateless person - '*a person who is not considered as a national by any State under the operation of its law*' - albeit without explicit reference to its source, the 1954 UN Convention relating to the Status of Stateless Persons. As part of preliminary vulnerability checks, Recital 37 provides that '*indications... of being stateless*' should be identified, Article 12(3) provides that the screening be carried out '*with a view to identifying whether a third-country national might be a stateless person*', and Article 17, the '*Screening form*', includes the field '*indication of nationalities or statelessness*'.

### ASYLUM PROCEDURES REGULATION (APR)

The APR in Recital 24 reminds Member States to '*respect their international obligations towards stateless persons, in accordance with international human rights law instruments including where applicable under the [1954 Convention]*', advising that they '*should endeavour to identify stateless persons and strengthening their protection thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment*'. Article 3(15) includes the international legal

definition of a stateless person. Article 27(2) provides for the consequence of identification of statelessness, stating that where an individual claims not to have a nationality, that fact shall be clearly registered pending the determination of whether the individual is stateless. Consequently, Article 29(4)(a) cites the requirement to include '*nationalities or, if applicable, an indication of statelessness*' in documents issued to confirm an asylum application.

### REGULATION ON ASYLUM AND MIGRATION MANAGEMENT (RAMM)

The AMMR in Recital 49 includes the same text that appears in the APR recitals requiring respect for international obligations towards stateless persons, reference to the 1954 Convention, and strengthening protection and avoiding discrimination. Article 2(2) also incorporates the international legal definition of a stateless person.

### REGULATION ON THE ESTABLISHMENT OF EURODAC

In Recital 56, the Eurodac Regulation references the 2015 [Council Conclusions on Statelessness](#) and recalls the commitment that all Member States have made to accede to the 1954 Convention.

## PROTECTION GAPS AND ISSUES REQUIRING FURTHER ATTENTION

Improved provisions in the Pact on identification of statelessness are a critical first step to ensuring that the rights of stateless refugees are protected. However, identification will be ineffective if this does not lead to follow-up action including referral to an adequate procedure to determine statelessness (or nationality) and grant the rights and protections enshrined in the 1954 Convention where an individual is determined to be a stateless person.

The outcome of screening is therefore a significant area of concern. It remains unclear what the consequences of the identification of initial indications of statelessness during vulnerability checks under the Screening Regulation will be. If there are no grounds for international protection, a stateless person may not be considered to have entered the territory and may be simultaneously issued a return decision, with no route to a procedure - such as a [Statelessness Determination Procedure](#) - to determine whether they are in fact stateless and realise their rights as such.

It is also concerning that the '*safe third country*' concept in Article 61(5) APR explicitly includes stateless people to facilitate their return to a country where they were '*formerly habitually resident*'. To implement this provision in line with international law, there would need to be specific safeguards in place to examine in each individual case of a stateless person whether protection can be considered available in another country in line with [UNHCR guidance](#) in this regard.

Close monitoring and scrutiny will be needed to ensure that where indications of statelessness are recorded this prevents a return decision or application of the '*safe third country*' concept from being applied pending a full and definitive determination of whether the individual is stateless, consistent with obligations under the 1954 Convention.<sup>2</sup> A failure to identify statelessness can [put people, including children, at risk](#)

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<sup>2</sup> 25 of the 27 EU Member States are party to the 1954 Convention relating to the Status of Stateless Persons (Poland and Cyprus are not yet signatories).

[and cause serious human rights violations](#). It can also cause delays to decision-making, errors in data collection, and lead to unlawful detention and futile and costly attempts to enforce return. To resolve this, more EU Member States can adopt dedicated Statelessness Determination Procedures (SDPs). Such procedures already exist in [six EU Member States](#). Other Member States have partial procedures or are in the process of introducing SDPs. In others, it is possible to identify and determine statelessness in the context of other administrative procedures.<sup>3</sup>

In addition to these fundamental points of concern, there were also missed opportunities to systematically mainstream statelessness as a cross-cutting issue throughout the Pact. The definition of a stateless person and provisions to identify and record (indications of) statelessness were not included in all instruments. In particular, the Eurodac Regulation, which regulates data collection, references '*nationality or nationalities*' throughout without reference to recording data on statelessness nor providing for mechanisms to harmonise recording of those who lack a nationality or whose nationality is undetermined.

## RECOMMENDATIONS FOR IMPLEMENTATION AND NEXT STEPS

In light of the above, ENS recommends that:

1. **The European Commission** should include reference to the new statelessness provisions in its common implementation plan signalling to Member States the need to take action to reflect these new provisions in their own national implementation plans.
2. **The European Commission, EU Asylum Agency, European Parliament, UNHCR, and other relevant stakeholders** should ensure that any monitoring of Pact implementation specifically addresses and assesses how the statelessness provisions are being implemented in practice.
3. **The EU Asylum Agency, Member State authorities, and other relevant stakeholders** should ensure that all asylum officials and other frontline refugee response actors have access to training on statelessness and tools to support identification, including the EASO Practical Guide on Registration, ENS national toolkits to identify and address statelessness (where available), and other relevant tools.
4. **Eurostat, Member State authorities, and other relevant stakeholders** should ensure that data collection mechanisms provide for the possibility to identify and record (indications of) statelessness with a separate field for this purpose, as well as to record different nationalities or statelessness for different family members including children.
5. **Member States** should consider and implement routes to determine statelessness (or nationality) as an outcome of identifying indications of statelessness at screening. As the Asylum Procedures Regulation establishes, the fact that a person may be stateless must be registered pending a determination. Such a determination should be carried out by trained personnel in a dedicated procedure with procedural safeguards at an appropriate juncture in international protection proceedings to protect the confidentiality and primacy of an asylum

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<sup>3</sup> For detailed comparative information on law, policy, and practice relating to statelessness determination in 30 European countries, see ENS's [Statelessness Index](#).

claim. If it is determined that an individual is stateless, this must be formally recognised to ensure the individual can access the rights and protections enshrined in the 1954 Convention.

6. **Member State authorities, and other relevant stakeholders** should ensure that statelessness is adequately considered in individual return and detention decisions given that stateless people are very likely to have no country to which they can return.
7. **Member States, the European Commission, the EU Asylum Agency, and other relevant stakeholders** should engage with and resource statelessness experts, including from civil society and communities affected by statelessness to support effective implementation of the new Pact provisions on statelessness, as well as necessary improvements to national and regional frameworks for the protection of recognised stateless persons.

Effective implementation of the new statelessness provisions and improved protection for stateless refugees will require the Commission, EU Agencies, and Member States to work with relevant experts such as UNHCR, ENS, and our members – including stateless individuals and community representatives, and others – to channel necessary expertise into monitoring and implementation. We stand ready to support this process to ensure that this welcome progress on paper turns into action on the ground to improve the lives of stateless refugees and migrants in Europe.

**For further information please contact:**

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## ◀ STATELESS JOURNEYS ▶

Statelessness is often overlooked in asylum and migration debates. It is a hidden but very real issue affecting many refugees and migrants in Europe.

The #StatelessJourneys campaign – led by the European Network on Statelessness – calls for full access to rights and support for stateless refugees, and for this to be better prioritised as part of international protection responses.

<https://statelessjourneys.org>

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European  
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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.