

## ENS BRIEFING

# IMPLEMENTING THE STATELESSNESS PROVISIONS IN THE EU PACT ON MIGRATION AND ASYLUM OCTOBER 2024

### KEY TAKEAWAYS

**Building on our [May 2024 briefing](#), this new briefing makes detailed recommendations to support implementation of the Pact's new statelessness provisions in line with international law concerning the protection of stateless persons and prevention and reduction of statelessness.**

The new Pact provisions for the first time introduce a legal requirement in EU law to identify and record indications of statelessness, pending a determination. This constitutes important progress towards improved identification and protection of stateless applicants and beneficiaries of international protection in Europe provided there is now full and robust implementation.

To support effective implementation of these new legal requirements, ENS recommends that:

- **The European Commission** highlights the new statelessness provisions in its engagement with Member States, ensures Pact monitoring assesses how the statelessness provisions in the Screening Regulation and Asylum Procedures Regulation are being implemented, resources their effective implementation, reflects these provisions in the five-year Strategy on Migration and Asylum, and develops practical tools to support the identification and determination of statelessness in the asylum context
- **Member States** make necessary adjustments to their national regulatory frameworks and operational policy and guidance and skill-up officials to ensure indications of statelessness are identified and recorded at screening and registration, that this information is shared and considered as appropriate in all asylum, return, and detention decisions including in border procedures in order to uphold the specific rights of stateless persons under international law, monitor the specific fundamental rights of stateless persons, and facilitate pathways to determine statelessness at an appropriate juncture in international protection proceedings
- **EU Agencies (EU Asylum Agency, FRA, Frontex, EU-Lisa)** ensure that the legal requirement to identify and record indications of statelessness is mainstreamed across all relevant products and activities, recognising its crosscutting nature, and that mechanisms are in place to uphold the specific rights of stateless persons under international law
- **Eurostat** ensures that data collection mechanisms provide for the possibility to identify and record indications of statelessness
- **The European Parliament** monitors and provides oversight of implementation of the statelessness provisions and protection of the fundamental rights of stateless persons
- **UNHCR and civil society** actors incorporate recommendations on statelessness into relevant publications and advocacy interventions at regional and national levels, and ensure their teams are equipped to support stateless individuals and those with undetermined nationality to access their rights

We are calling for collaborative action between all stakeholders including affected communities to implement the new statelessness provisions and guarantee the full rights and support owed to stateless applicants and beneficiaries of international protection under international law.

## BACKGROUND

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 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 have two years to put the new laws into practice. The European Commission published a [common implementation plan](#) and [operational checklist](#) on 12 June 2024 to assist Member States in this process. Member States have until 12 December 2024 to publish their national implementation plans.

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 applicants and beneficiaries of international protection. 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 invisibility of statelessness in the Pact.

While 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.

We published our [analysis and recommendations](#) for implementation of the Pact provisions on statelessness in May 2024. This second briefing now provides more detail on how to implement the new statelessness provisions and makes recommendations to support this.

## 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

---

<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.

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 because they are unlikely to have documentary proof of their identity and family links. It also has a significant impact on an individual's ability to return to a country of former residence. The failure to identify and determine statelessness can therefore lead to unlawful detention and futile and costly attempts to enforce return. 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.

## WHAT DO THE COMMISSION'S COMMON IMPLEMENTATION PLAN & OPERATIONAL CHECKLIST SAY ABOUT STATELESSNESS?

The [Common Implementation Plan](#) organises implementation of the Pact into 10 'Building Blocks'. The new statelessness provisions are mentioned under Building Block 2 (A new system to manage migration flows at the EU external borders) and Building Block 4 (Fair, efficient, and convergent asylum procedures). Building Block 9 (New safeguards for applicants for international protection and vulnerable persons, and increased monitoring of fundamental rights) is also particularly relevant as this focuses on the identification of vulnerabilities and special procedural and reception needs, as well as children's rights, and monitoring fundamental rights.

Under Building Block 9, the Commission's Operational Checklist highlights that Member States must assess, and if necessary, address their capacity to identify and assist persons with vulnerabilities across all screening and border procedures. This includes a direct reference to the new provisions requiring identification of indications of statelessness in Article 12(3-4) of the Screening Regulation. Member States must therefore ensure that they have the capacity at the national level to identify, assess, and follow-up cases of (potential) statelessness.

## DETAILED RECOMMENDATIONS TO IMPLEMENT THE STATELESSNESS PROVISIONS IN THE PACT

To implement the new statelessness provisions effectively, ENS recommends that:

### 1. The European Commission

- Continues to highlight the new statelessness provisions in its engagement with Member States, providing support to national authorities to include and reflect these new provisions in their national implementation plans and national strategies, and to operationalise these, including by producing guidance on how to identify indications of statelessness, for example by developing standalone, accessible, operational guidelines for frontline officials
- Considers the new statelessness provisions and incorporates relevant information to facilitate their implementation when revising the Practical Handbook for Border Guards and bringing together border guards, asylum officials, and return case workers to ensure a common understanding between key actors of how to identify and record initial indications of statelessness pending a determination

- Ensures that monitoring of Pact implementation specifically addresses and assesses how the statelessness provisions are being implemented in practice and identifies areas where additional support may be needed, including to ensure that stateless persons are channelled to appropriate procedures to determine their statelessness (APR Art 27(2)) and do not end up in situations of limbo when there is no prospect of return/removal
- Ensures that adequate resourcing is available to support the implementation of the new statelessness provisions, including resourcing for civil society initiatives
- Ensures that statelessness and nationality matters are raised and discussed as appropriate in relevant expert/network meetings especially those relating to Building Block 9 of the Common Implementation Plan
- Ensures that statelessness is adequately reflected in the five-year European Strategy on Migration and Asylum, as well as national strategies on migration and asylum due to be published in 2025

## **2. The EU Asylum Agency**

- Carefully considers the new statelessness provisions and seeks input from statelessness experts when revising and updating its products and activities to reflect the changes under the Pact
- Ensures that appropriate information and guidance on how to implement the new statelessness provisions are incorporated into any new products relating to vulnerability, screening/registration, border procedures, and other relevant areas, and that national authorities and Agency staff have access to appropriate tools to support the implementation of these new provisions
- Works with civil society experts to ensure the European Asylum Curriculum includes appropriate information and training on statelessness for all relevant officials including those responsible for screening, asylum determination, information provision, and other relevant areas. This should include guidance on how to identify indications of statelessness, for example by developing and/or incorporating standalone, accessible, operational guidelines for frontline officials
- Ensure that statelessness is mainstreamed across all relevant products and activities, recognising the crosscutting nature of statelessness

## **3. The Fundamental Rights Agency**

- Revises its guidance for Member States on Fundamental Rights Monitoring to support monitoring of the specific rights of stateless persons in national independent fundamental rights monitoring mechanisms to ensure access to the rights and protections enshrined in the 1954 Convention Relating to the Status of Stateless Persons and other fundamental rights, including Article 7 of the Convention on the Rights of the Child
- Ensure that when updating its Guidance on Minors/Guardianship that this reflects the new provisions on statelessness and incorporates adequate information to support the identification of indications of statelessness among minors and referral to appropriate procedures for the determination of statelessness/nationality

#### **4. Frontex**

- Ensures that all Frontex staff have received training on statelessness and are equipped with adequate knowledge of statelessness when conducting operations
- Ensures that it has adequate capacity, knowledge, and training on statelessness to provide operational support to Member States on screening, in particular to support the training of screening authorities to implement their obligations to identify and record indications of statelessness

#### **5. Eurostat**

- Ensures 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
- Facilitates improved harmonisation and reporting of data on statelessness, including clear definitions for the use of nationality categories (for example, avoiding potentially overlapping categories such as 'Palestinian' and 'stateless', ensuring clear guidance is provided to Member States to improve the quality of data) to support monitoring of the implementation of new statelessness provisions

#### **6. European Parliament**

- Ensures that in its monitoring and oversight role, the statelessness provisions and fundamental rights of stateless persons are being fully and adequately implemented
- Passes resolutions that call on Member States to introduce stronger safeguards and protections for stateless persons in line with international law and human rights standards

#### **7. Member States**

- Carefully consider and incorporate the necessary adjustments to their national regulatory frameworks and operational policy and guidance to ensure the effective application of the new stateless provisions, in particular under the Screening and Asylum Procedures regulations
- Ensure sufficient capacity to identify and record indications of statelessness and the specific needs of stateless applicants and those with undetermined nationality, including minors, and to share the necessary information to be able to address these needs across all steps of the asylum procedure, including sufficient and adequately trained staff, tools and resources to support identification and accurate recording of indications of statelessness
- Consider and implement, in line with Article 27(2) APR, pathways to determine statelessness (or nationality) by trained personnel in a dedicated procedure with procedural safeguards at an appropriate juncture in international protection proceedings as an outcome of identifying indications of statelessness at screening
- Apply Article 42(2) APR by automatically transferring cases to the regular procedure when the time limit is exceeded and as soon as complex questions of fact or law emerge, including in relation to statelessness, to minimise the risk of applicants being left in limbo

- Ensure that statelessness is adequately considered in all relevant procedures, including the Return Border Procedure, and action taken to facilitate access to the territory where appropriate given that stateless people are very likely to have no country to which they can return and are at particular risk of ending up in limbo and arbitrary detention if found to be unreturnable
- Consider applying a higher standard than EU law to facilitate access to the territory if complex questions of fact or law emerge during the Asylum Border Procedure, and in order to facilitate access to a statelessness determination procedure at an appropriate juncture in international protection proceedings
- Ensure that the specific international law standards relating to the protection of stateless persons and prevention and reduction of statelessness are reflected in their independent fundamental rights monitoring mechanisms
- When developing information materials, ensure that these include specific information for stateless applicants and those with undetermined nationality
- Ensure that where they are developing new mechanisms for free legal counselling, these include adequate capacity and training to provide counselling on the specific rights and procedures for stateless persons and those with undetermined nationality

## **8. UNHCR**

- Incorporates language and recommendations on statelessness into publications, tools, messaging, and advocacy interventions at regional and national levels to ensure statelessness is mainstreamed across UNHCR's engagement with the EU and Member States on Pact implementation
- Undertakes activities to ensure that the Pact is implemented in accordance with international law and UNHCR guidance, in particular the Handbook on Protection of Stateless Persons

## **9. Civil society, legal, and other support providers**

- Ensure they have adequate knowledge and capacity to support stateless individuals and those with undetermined nationality to be properly identified and to access their rights and appropriate routes to protection and/or to signpost them to specialist providers
- Adequately mainstream statelessness knowledge, capacity, and information in their services, programmes, training, resources, and advocacy relating to implementation of the Pact
- Identify current and future gaps on the protection of stateless persons within Pact implementation, and where relevant, challenge Member States and EU bodies through advocacy to act in addressing such gaps
- Work with ENS and its members to develop specialist tools and resources to support implementation of the statelessness provisions, including toolkits for the identification of statelessness, and other resources

Effective implementation of the new statelessness provisions and improved protection for stateless applicants and beneficiaries of international protection 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. The perspectives of stateless individuals and community representatives

must be central to this engagement and should be sought out by all stakeholders when devising regional and national implementation strategies. We stand ready to support this process to ensure that this welcome progress on paper turns into action on the ground to improve the identification and protection of stateless applicants and beneficiaries of international protection in Europe.

**For further information please contact:**

Nina Murray  
Head of Policy & Advocacy, European Network on Statelessness  
[Nina.murray@statelessness.eu](mailto:Nina.murray@statelessness.eu)  
[www.statelessness.eu](http://www.statelessness.eu)

**◀ 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>

London, United Kingdom  
Media: +44 7522 525673  
[info@statelessness.eu](mailto:info@statelessness.eu)  
[www.statelessness.eu](http://www.statelessness.eu)



*The European Network on Statelessness (ENS) is a civil society alliance of over 180 organisations and individuals working to address statelessness in 40 European countries.*