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## 1. INTRODUCTION

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The European Parliament (the Parliament) plenary has approved its final negotiating positions on the instruments of the EU Pact on Migration and Asylum (the Pact). These positions will now be negotiated in trilogue with the Commission and Council, with the aim of completing negotiations on all the Pact instruments by the end of the current parliamentary term in April 2024. The Pact was originally presented by the European Commission in September 2020 in a communication, which introduced five pieces of legislation aimed to 'bring together policy in the areas of migration, asylum, integration and border management'. The Pact builds on the existing Common European Asylum System and comprises five Regulations: Screening Regulation; Asylum Procedures Regulation (APR); Regulation on Asylum and Migration Management (RAMM); Eurodac Regulation; and Crisis Management Regulation. ENS published a [detailed analysis with recommendations on the rights of stateless people](#) in response to the original proposals in January 2021. This paper now provides an updated analysis of protections for stateless people in the regulations as adopted by the Parliament in April 2023.

Although there is still scope for improvement, the Parliament's agreed positions represent some welcome progress towards protecting the rights of stateless people since the original proposals. It is crucial that the amendments put forward by the Parliament that have a positive impact in the protection of stateless people are maintained in further negotiations. This includes, for example, measures have been introduced to the Screening Regulation that will ensure that some stateless people are protected from human rights violations. However, in other instruments, there is still significant progress needed to ensure that stateless people receive the protection they are entitled to under international law.

The trilogue negotiations provide an opportunity to further mainstream the recognition that Member States must uphold and fulfil the specific rights of stateless people, which must be protected in EU asylum systems. This will help to resolve many of the problems that arise from a failure to identify and address issues facing forcibly displaced stateless people.

## 2. WHY ADDRESS STATELESSNESS IN THE PACT?

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Not being recognised as a national of any country leaves some adults and children in migration at real risk of serious rights violations. Unless States adequately identify stateless people and grant them protection, they may be left unable to settle, integrate and contribute fully to host societies. According to Eurostat data, around 2% of people applying for asylum in EU Member States are recorded as stateless or of 'unknown nationality', although this almost certainly represents an under-estimate given a lack of awareness and failure to properly identify and record statelessness. The EU has the competency to address statelessness in international protection systems and ensure stateless people are identified so their protection needs can be determined and their rights respected.

Almost all EU Member States are party to the 1954 UN Convention on the Status of Stateless Persons (the 1954 Convention) and other international legal instruments aimed at the prevention and reduction of statelessness. The 1954 Convention stipulates, alongside the definition of a stateless person, a clear set of rights and entitlements for stateless people in a migratory context. However, inconsistent practices across the EU and the simple failure to recognise that some people entering EU asylum systems are stateless, inhibit the good functioning of these systems and result too often in a failure to uphold these international commitments. More effectively identifying and addressing statelessness in a migratory context, will help Member States to reduce delays in decision-making and will provide more clarity about the population present on the territory to facilitate planning and allocation of resources.

Importantly, identifying statelessness is crucial to ensuring that national law and policy are in line with international law and in particular the 1954 Convention, the 1961 UN Convention on the Reduction of Statelessness, and the 1989 UN Convention on the Rights of the Child:

- **Identifying statelessness is essential to determining a person's asylum claim.** Although statelessness *per se* does not give rise to refugee status, there are instances where statelessness may constitute a form of persecution or contribute to a risk of harm. For example, where denial or withdrawal of nationality is linked to persecution as a member of a particular ethnic or social group, or where the denial of economic and social rights on the basis of nationality status is so severe that it amounts to persecution. For both procedural and substantive reasons, it is therefore essential to identify statelessness at the earliest possible opportunity. A good understanding of statelessness issues among asylum and border officials and clear referral mechanisms between asylum and statelessness determination procedures are essential to efficient and quality asylum decision-making.
- **Where a stateless person is found not to qualify for international protection, it is vital that statelessness is identified and determined, and a protection status granted.** This ensures that time and resources are not misdirected towards the detention and attempted removal of a stateless person where this would be contrary to international law as there is no realistic prospect of removal being achieved. If no Statelessness Determination Procedure and dedicated protection status is in place, stateless people who have been refused asylum can be left in a situation of limbo, unable to leave the territory, but with no legal route to stay. This can result in criminal exploitation due to their precarious situation. Where serious obstacles to removal exist, it is in the interests of all parties for a person's status to be resolved with a right to stay.
- **If statelessness is not identified, it is perpetuated.** The Convention on the Rights of the Child establishes that every child has the right to a legal identity and nationality, yet UNHCR estimates that around the world a child is born stateless at least every ten minutes. Children in migration are at particular risk of statelessness due to gaps and conflicts in nationality laws and barriers to birth registration. In the context of EU asylum systems, Member States must identify where a child is stateless or at risk of statelessness and consider this in the determination of their best interests. To ensure no child is born stateless in Europe, States must also ensure safeguards are in place in law and practice to prevent statelessness at birth.

### 3. A FRAMEWORK FOR MAINSTREAMING STATELESSNESS THROUGHOUT THE PACT

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The key to unlocking many of the issues impacting stateless refugees and migrants in Europe is improved identification. The identification of statelessness needs to be embedded at all stages of the asylum process, including initial screening, vulnerability assessments, and border procedures. If initial indications of statelessness are identified and recorded at the earliest opportunity, this can be considered in decision-making and the person can be referred at an appropriate point to have their statelessness or nationality determined.<sup>1</sup> The focus of the amendments ENS proposes to the Pact instruments is therefore to:

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<sup>1</sup> Statelessness determination should be conducted either in parallel with or following refugee status determination, with due regard to the primacy of the asylum claim and the principle of confidentiality for refugees in statelessness determination procedures (see [UNHCR Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons](#), 2014).

1. Explicitly include (risk of) statelessness as a factor to be identified, recorded, and considered at all stages of the asylum process;
2. Ensure that stateless people and those at risk of statelessness are excluded from accelerated returns and all border procedures, which are inappropriate and unworkable for them. If stateless people are subject to border procedures, there should be solid mechanisms in place to identify statelessness or risk of statelessness as a vulnerability factor and immediately refer the person away from the border to adequate procedures to determine statelessness, including in crisis situations.

Guided by these two principles, below we analyse the improvements already made to the Parliament's position, which must be maintained during trilogue discussions. Critically, we also outline what further amendments are required to ensure full respect for the rights of stateless refugees and migrants. This focuses on four key instruments: the Screening Regulation, the Asylum Procedures Regulation, RAMM, and the Crisis Regulation. For an analysis of the proposed amendments to other instruments, see ENS' [detailed analysis with recommendations on the rights of stateless people](#) (January 2021).

### 3.1. Definition of a stateless person

According to Article 67(2) of the Treaty on the Functioning of the European Union, stateless persons shall be treated as third-country nationals in the area of freedom, security and justice, but it is crucial to take into consideration the particular protection needs of stateless persons, as well as their rights under international and human rights law. The international legal definition of a stateless person found in Article 1 of the 1954 Convention is considered customary international law<sup>2</sup> and is enshrined in EU law.<sup>3</sup>

The introduction of the following definition in all instruments across the Pact is welcome and allows for a distinction in treatment between third-country nationals and stateless persons where applicable: *"stateless person' means a person who is not considered as a national by any State under the operation of its law, as referred to in the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954."*

Positive amendments in the Parliament's consolidated text to be supported are:

- It is welcome that the definition of a stateless person has been included in the Screening Regulation (Article 2(1)(5b)) and RAMM (Article 2(1)(aa)).

#### RECOMMENDATIONS FOR FURTHER AMENDMENTS

- The definition of a stateless person should also be included in the APR and Crisis Regulation, if these instruments are approved.

### 3.2. Screening Regulation

We still share the general concerns articulated by other civil society organisations on the Screening Regulation,<sup>4</sup> around the introduction of a complex new procedure that will create large-scale detention at the border for those seeking protection in Europe, and the limited procedural safeguards, including the lack of a right of appeal for the outcome of the screening

<sup>2</sup> United Nations, [Draft Articles on Diplomatic Protection with commentaries](#) (2006), p. 49.

<sup>3</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. See also Judgment of the Court of 11 October 2001, *Khalil and Others*, Joined Cases C-95/99 to C-98/99 and C-180/99, ECLI:EU:C:2001:532: in this judgment concerning a regulation on the application of social security schemes, the Court of Justice stated that the Council cannot be criticised for having also included stateless persons and refugees resident on the territory of the Member States in the regulation in order to take into account the Member States' international obligations, including in light of the 1954 Convention.

<sup>4</sup> [Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations \(EC\) No 767/2008, \(EU\) 2017/2226, \(EU\) 2018/1240 and \(EU\) 2019/817.](#)

procedure.<sup>5</sup> However, the current proposal is much improved with respect to the rights of stateless people, and most of our recommendations have been adopted in the Parliament's consolidated text.

As highlighted above, it is vital to identify statelessness as early as possible in asylum procedures. A vulnerability assessment should always be performed at screening, and indications of statelessness should be clearly recorded pending a full determination of whether the individual is stateless in a separate procedure at an appropriate time. For stateless people, who may face additional hurdles to proving their identity and protection needs, it is critical that there are safeguards in place to ensure that screening authorities facilitate access to international protection procedures and/or to dedicated statelessness determination procedures. Caseworkers and border officials should be equipped to identify and record statelessness, including through the use of practical guides and identification tools published by EUAA, UNHCR, and civil society.<sup>6</sup>

Positive amendments in the Parliament's consolidated text are:

- Introduction of the definition of a stateless person – Article 2(1)(5b).
- Statelessness and risk of statelessness are explicitly included as a vulnerability factor to be assessed during the screening process – Article 9(2).
- When there are indications of statelessness or a person claims to be stateless, this must be clearly registered – Article 9(3).
- The debriefing form must include information about an initial indication of nationality or statelessness, and any special reception or procedural needs identified in the preliminary vulnerability assessment – Article 13(1).
- When a person is identified as stateless or at risk of statelessness, they must be referred to the competent authorities to determine whether they are stateless and be offered adequate protection in accordance with national law – Article 14(7a).

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<sup>5</sup> ECRE, '[Screening out rights? Delays, detention, data concerns and the EU's proposal for a pre-entry screening process](#)' (Policy Note, December 2020).

<sup>6</sup> See EUAA's [Practical Guide to Registration](#), Forum réfugiés' [Guide for the identification, support and guidance of persons at risk of statelessness in France](#), UNHCR's [Tool for the identification and protection of stateless persons in detention](#).

## RECOMMENDATIONS FOR FURTHER AMENDMENTS

- Member States' obligation to provide information to people subject to screening should be extended to include information about the right to apply for protection on the grounds of statelessness and other grounds;
- On completion of the screening, people who expressed a wish to apply for compassionate, humanitarian, statelessness status, or residence on other grounds should not be referred to return procedures.

Screening Regulation	
Parliament's Consolidated Text	ENS comments and proposals
<p>Article 8(1):</p> <p>1. Member States shall inform third-country nationals subject to the screening about the purpose, duration and the modalities of the screening, including:</p> <p>(a) the steps of the screening as well as possible outcomes of the screening;</p> <p>(aa) the right to apply for international protection, in particular in the circumstances specified in Article 30 of Regulation (EU) xxxx/202x [Asylum Procedure Regulation];</p> <p>[...]</p>	<p>Support and amend Article 8(1)(aa) further:</p> <p>(aa) the right to apply for international protection <b>or other permits for compassionate, humanitarian, statelessness or other reasons as applicable in national law</b>, in particular in the circumstances specified in Article 30 of Regulation (EU) xxxx/202x [Asylum Procedure Regulation];</p> <p>[...]</p>
<p>Article 14(1):</p> <p>Once the screening is completed, or when the period for carrying out the screening in accordance with Article 6(6b) or (6c) ends, third-country nationals referred to in Article 3(1) point (a) and (b) of this Regulation who:</p> <p>have not expressed a wish to make an application for international protection [...] shall be referred to the competent authorities to apply procedures in accordance with Directive (EU) 2008/115/EC [Return Directive], without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399 [Schengen Borders Code].</p>	<p>Amend Article 14(1) – subparagraph 1 – indent 1:</p> <p>"have not expressed a wish to make an application for international protection <b>or other permits for compassionate, humanitarian, statelessness or other reasons as applicable in national law</b>, [...]" shall be referred to the competent authorities to apply procedures in accordance with Directive (EU) 2008/115/EC [Return Directive], without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399 [Schengen Borders Code].</p>

### 3.3. Asylum Procedures Regulation

The APR proposal<sup>7</sup> has not been significantly improved under the Parliament's negotiating mandate. As articulated by others, the APR introduces an 'unworkable labyrinth of procedures', which will likely result in a larger number of applicants being held in detention while their asylum applications are examined in an asylum border procedure.<sup>8</sup> It also fails to provide adequate procedural safeguards, including the right to an effective remedy and the right to be heard, and applicants who are refused protection are channelled to a return border procedure. Following on from the requirement to identify and record statelessness as a factor increasing vulnerability and requiring special procedural considerations (as incorporated in the new text of the Screening Regulation), ENS reiterates its recommendation that stateless persons should be excluded from the asylum border procedure and the return border procedure.

The identification of statelessness and improved procedures to ensure stateless people can access adequate protection benefits everyone. If granted protection, stateless people can contribute to the societies in which they live and States can find solutions for people who would otherwise remain irregularly on their territory. Indications of statelessness should be clearly recorded when registering a person's application for international protection,<sup>9</sup> and a referral made to the competent authorities for a formal determination of statelessness and to offer adequate protection in accordance with national law (with due respect for the principle of confidentiality and primacy of the asylum claim).

Positively, the consolidated Parliament's text specifies that return decisions can only be issued provided that the person is ineligible to apply for a residence permit or another status under national law. This amendment is welcome and an important protection for stateless people. Depending on the Member State they find themselves in, stateless people may have a route to protection through a statelessness determination procedure even if they do not qualify for refugee or subsidiary protection.

Positive amendments in the Parliament's consolidated text are:

- Introduction of a recital requiring respect for the 1954 Convention relating to the Status of Stateless Persons – Recital 20a.
- A return decision shall not be issued if the applicant who was refused international protection is eligible to apply for a residence permit or other authorisation offering a right to stay on compassionate, humanitarian, or other grounds under the applicable national legal framework – Article 35.

Positive amendments in the 2018 Parliament's proposal<sup>10</sup> are:

- Provision requiring the registration of nationality or statelessness in the application for international protection – Article 27(1)(a).
- Referral to a full determination of whether the individual is stateless when the individual claims not to have a nationality – Article 27(1a)(new).

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<sup>7</sup> [Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.](#)

<sup>8</sup> ECRE, 'Editorial: EU Asylum Reform: Parliament Agrees its Positions; Council Enters Wild Terrain' (April 2023).

<sup>9</sup> See EUAA's [Practical Guide to Registration](#); Forum réfugiés' [Guide for the identification, support and guidance of persons at risk of statelessness in France](#); and UNHCR's [Tool for the identification and protection of stateless persons in detention](#).

<sup>10</sup> REPORT on the proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 22.5.2018 - (COM(2016)0467 – C8-0321/2016 – 2016/0224(COD)).

## RECOMMENDATIONS FOR FURTHER AMENDMENTS

- Introduce the definition of a stateless person.
- Exclude stateless persons from the application of the border procedures.

Asylum Procedures Regulation	
Parliament's Consolidated Text	ENS proposed amendments
[not included]	add Article 4(1)(new point):  <b>"stateless person' means a stateless person as defined in Article 1 of the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954, in its original version;"</b>
Article 35: Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive], provided that the applicant does not fulfil the conditions to apply for a residence permit or other authorisation offering a right to stay on compassionate, humanitarian or other grounds under the applicable national legal framework and that her or his return would not lead to a risk of a breach of the principle of non-refoulement, of other fundamental rights under the Charter of Fundamental Rights of the European Union (the 'Charter') and of other Union and international obligations. [...]	Support this amendment and recommend adding:  "Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive XXX/XXX/EU [Return Directive], provided that the applicant does not fulfil the conditions to apply for a residence permit or other authorisation offering a right to stay on compassionate, humanitarian, <b>statelessness</b> or other grounds under the applicable national legal framework and that her or his return would not lead to a risk of a breach of the principle of non-refoulement, of other fundamental rights under the Charter of Fundamental Rights of the European Union (the 'Charter') and of other Union and international obligations. [...]"
Article 41(3a): Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where: [...] <p>(d) the applicant has been identified as a vulnerable person or as a person with special procedural or reception needs and the necessary support cannot be provided in the locations referred to in paragraph 14; [...]</p>	Support this amendment and recommend adding:  "(d) the applicant has been identified as a vulnerable person, <b>a stateless person, a person at risk of statelessness</b> , or as a person with special procedural or reception needs and the necessary support cannot be provided in the locations referred to in paragraph 14;"



### 3.4. Crisis Management Regulation

ENS shares the concerns of others around the implications of the Crisis Management Regulation<sup>11</sup> extending the scope of the asylum border procedure in situations of crisis and extending time limits,<sup>12</sup> although we note that some improvements have been made by the Parliament's amendments.

However, as noted above, Member States' obligations under the 1954 Convention cannot be met in the context of the proposed border procedures, which remain the basis for the operation of the Crisis Management Regulation in the Parliament's position. Border procedures should not be extended in situations of crisis, and stateless persons should be excluded from all border procedures. Statelessness or risk of statelessness should be identified as a vulnerability factor and result in an immediate referral away from the border and to adequate procedures to determine statelessness, including in crisis situations. The competent authorities should then conduct a full determination of whether the individual is stateless and offer adequate protection, in accordance with national law, in a fair procedure away from the border.

#### RECOMMENDATIONS FOR FURTHER AMENDMENTS

- Border procedures should not be extended in situations of crisis;
- Exclude stateless persons from all border procedures;
- Introduce a referral mechanism to statelessness determination procedures.

Crisis Management Regulation	
Parliament's Consolidated Text	ENS comments and proposals
[not included]	<p>Add Article 4(1aa) (new paragraph):</p> <p><b>Where necessary, the treatment of stateless persons should be distinguished from third-country nationals with due consideration to their particular protection needs. Persons identified as stateless or at risk of statelessness shall be referred to the competent authorities to conduct a full determination of whether the individual is stateless and offer adequate protection, in accordance with national law.</b></p>

### 3.5. Regulation on Asylum and Migration Management

Positively, Recital 39 in RAMM<sup>13</sup> proposes that Council Directive 2003/109/EC<sup>14</sup> be amended to shorten the period of time that beneficiaries of international protection should have to wait to obtain long-term resident status to three years, and specifies that this should also apply to beneficiaries of statelessness status. It also introduced the definition of a stateless person, which is key to ensuring that statelessness is mainstreamed in the proposed Migration Preparedness and Crisis Blueprint. A further positive addition in the Parliament's position ensures that the monitoring reports the Commission is required to publish under the RAMM framework will include a section dedicated to statelessness. It is also positively noted that return

<sup>11</sup> [Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum](#).

<sup>12</sup> ECRE, 'Editorial: EU Asylum Reform: Parliament Agrees its Positions; Council Enters Wild Terrain' (April 2023); Meijers Committee, 'Meijers Committee Comments on the Migration Pact – Crisis and Force Majeure Regulation' CM2013 (November 2020).

<sup>13</sup> [Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive \(EC\) 2003/109 and the proposed Regulation \(EU\) XXX/XXX \[Asylum and Migration Fund\]](#).

<sup>14</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016, 23.1.2004, p. 44.

sponsorship has been removed as a solidarity contribution. However, some concerns raised by other organisations remain valid, including on the significant discretion that is allowed to Member States in methods of implementation, which is likely to lead to unpredictable outcomes.<sup>15</sup>

Positive amendments in the Parliament's consolidated text are:

- Introduction of the definition of a stateless person – Article 2(1)(aa).
- Introduction of a recital requiring respect for the 1954 Convention relating to the Status of Stateless Persons – Recital 44a.
- The shortening of the period of residence required to obtain long-term resident status to three years should also apply to beneficiaries of protection under the 1954 Convention Relating to Stateless Persons – Recital 39.
- Deletion of return sponsorship.

## 4. CONCLUSION

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The negotiations on the Pact instruments are now entering their key final phase, with outcomes that will powerfully impact the most vulnerable people entering the EU and the good governance of a highly salient political issue across Member States. It is crucial that the opportunity is not missed to raise the bar and live up to Europe's values. The recommendations in this briefing aim to mainstream a harmonised approach to fulfilling the rights of stateless people across EU asylum and migration law and policy. This begins with improved identification and recording of (indications of) statelessness at the border, through to referral to appropriate procedures for status determination (including dedicated statelessness determination procedures), access to protection, and inclusion.

The EU undoubtedly has a key role to play and a responsibility to uphold in this regard – under the new Spanish Presidency, ENS is hopeful we will see a renewed energy brought to this issue, and a successful resolution of negotiations with coherent, workable instruments that facilitate the meaningful upholding of international obligations for the protection of people on the move.

The importance of the changes outlined in this analysis is clear for both stateless people and EU Member States, and they are urgently needed. They will allow Member States to better fulfil their legal obligations and manage more efficient asylum systems, as well as to end the protracted limbo and human rights violations too often experienced by stateless migrants. A Common European Asylum System capable of commanding the trust of EU citizens must operate efficiently and humanely, ensuring that all applicants are able to participate fully in asylum procedures and avoiding people being left in protracted situations of limbo without a clear status and pathway to a durable solution. The coming negotiations will no-doubt be rigorous and fast-paced, but they must be grounded in these principles if their outcomes are to be workable and humane for stateless people.

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<sup>15</sup> ECRE, '[ECRE Comments on the Commission proposal for a Regulation on Asylum and Migration Management COM\(2020\) 610 2020/0279 \(COD\)](#)' (February 2021).

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