

STATELESSNESS IN THE EUROPEAN UNION

EMN INFORM

2020

1. INTRODUCTION

UNHCR's *Global Trends - Forced Displacement in 2018* reports data on approximately 3.9 million stateless people worldwide.¹ Statelessness is a global phenomenon which is also present in the European Union. At the end of 2018, UNHCR estimated the total number of stateless persons in the European Union plus Norway at 399 283 individuals. This includes both stateless individuals and persons of undetermined nationality.² UNHCR and UNICEF also estimate that, in 2017, there were 2 100 children registered stateless in Europe, a fourfold increase since 2010.³ Article 1 of the 1954 [Convention Relating to the Status of Stateless Persons](#) defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law'.

Statelessness is a legal anomaly, which can prevent those concerned from accessing fundamental human, civil, political, economic, social and cultural rights. As a result, such persons often live in conditions of protracted marginalisation and discrimination, facing numerous difficulties, such as the inability to receive medical assistance, enrol in educational programmes, acquire property, obtain legal employment, marry or open a bank account.

Even though statelessness can occur in various contexts, its most common causes include state succession, ill-defined or discriminatory nationality laws, and arbitrary deprivation of nationality. Statelessness can also be a consequence of forced displacement and forced migration

and can result when people face difficulties accessing civil registration documents, including birth certificates, necessary to acquire or confirm nationality.

Sarah

Sarah was born in the Democratic Republic of Congo as a dual national, to a Congolese mother and a Rwandan father. After her parents were arrested on allegations of spying, Sarah fled to Europe (country X), aged 15. Her asylum application was rejected but the authorities were unable to remove her. While applying for a temporary residence permit (the only option for 'non-returnable' people in her situation) she realised she had lost both her previous nationalities and was stateless. Because both countries refused to provide her with identity documents, she was also unable to obtain the temporary residence permit in country X. Now, more than twelve years later, she remains in the same situation, unable to (re)acquire Congolese or Rwandan nationality. Because country X currently has no procedure to recognise or regularise stateless persons, Sarah has no solution in sight. She is unable to study, work or start a family.

The European Migration Network (EMN) was entrusted by [JHA Council Conclusions of 3 and 4 December 2015](#) with the creation of a platform to exchange information and good practices in the field of statelessness.

1 <https://www.unhcr.org/en-ie/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>

2 Data extracted from UNHCR "Global Trends - Forced Displacement 2018" Annex - Table 7. "With respect to persons under UNHCR's statelessness mandate, this figure includes persons of concern covered by two separate Latvian laws. 174 persons fall under the Republic of Latvia's Law on Stateless Persons of 17 February 2004. 224,670 of the persons fall under Latvia's 25 April 1995 Law on the Status of those Former USSR Citizens who are not Citizens of Latvia or Any Other State ("Non-citizens"). In the specific context of Latvia, the "Non-citizens" enjoy the right to reside in Latvia ex lege and a set of rights and obligations generally beyond the rights prescribed by the 1954 Convention relating to the Status of Stateless Persons, including protection from removal, and as such the "Non-citizens" may currently be considered persons to whom the Convention does not apply in accordance with Article 1.2(ii)."

3 "UNHCR and UNICEF urge action in Europe to end childhood statelessness" 14 February 2019. Available at: <https://www.unhcr.org/en-ie/news/press/2019/2/5c654e634/unhcr-unicef-urge-action-europe-end-childhood-statelessness.html>

This EMN Inform is an update to the EMN Inform on Statelessness in the EU, published in November 2016. It updates the information in the first Inform via an EMN Ad-Hoc Query⁴ which was jointly launched by the IE and LU NCPs in March 2019 in preparation for their jointly-organised technical conference in Dublin in May 2019.⁵ The Ad-Hoc Query and conference focused on the nexus between the granting of a stateless status and residence permits.

This Inform also draws on the results of earlier work including ad-hoc queries launched by the LU EMN NCP in 2015⁶ and the LU EMN NCP and COM in 2016⁷, and the policy brief resulting from the LU EMN NCP conference “Tackling statelessness: Exchange of Experiences and Good Practices” organised in Luxembourg on 15 April 2016. The Inform was updated with the collaboration of UNHCR and also draws on other sources of information⁸ which helped to fill certain gaps in the analysis.



2. KEY FINDINGS

This Inform identifies the following main findings:

- 25 Member States plus Norway are party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and 21 Member States are party to the 1961 Convention on the Reduction of Statelessness (1961 Convention). Since the first edition of this Inform, **Cyprus** has introduced a bill to the Parliament in order to accede to the 1954 Convention. **Malta** acceded to the 1954 Convention on 11th December 2019.⁹ Two Member States have finalised accession to the 1961 Convention – **Luxembourg** on 21 September 2017 and **Spain** on 25 September 2018.¹⁰
- There is no homogeneity among Member States as regards the procedures they use to determine statelessness. The diverse ways in which States determine statelessness include:
 - dedicated administrative determination procedures;¹¹
 - general administrative procedures or inside another administrative procedure;
 - Ad-hoc administrative procedures; and
 - Judicial procedures (**BE** and **IT**¹² – in cases when the applicant is not a legal resident in the country).
- It is still the case that in the **majority of Member States** there is no direct link between the determination of statelessness and the issuing of a specific residence permit. So, the individual who has been recognised as stateless, does not have an automatic right to stay in the country that carried out the statelessness determination.¹³ Only a few Member States¹⁴ grant a residence permit to an individual as a consequence of his/her recognition as a stateless person. In the large majority of Member States, recognised stateless persons must apply for a residence permit on other grounds if they wish to regularise their status. In some cases, this can be complicated because recognised stateless persons may not fulfil the criteria (i.e. they do not have the financial means or cannot meet the evidence requirements).
- Access to the labour market, education and training as well as health care and social aid does not depend on the determination of statelessness but on the residence permit that the stateless person can obtain. This can place stateless persons who are not able to obtain a residence permit in a legal vacuum in certain Member States.
- Most Member States facilitate to a certain extent access to nationality for children born stateless in their territory. In most Member States the principle of *ius soli* applies for granting nationality at birth to children born stateless in the country, albeit under certain conditions. Most Member States not applying the *ius soli* principle at birth facilitate the acquisition of nationality via naturalisation at a later stage (e.g. NL). However, only half of the Member States have full safeguards in place against statelessness at birth, other Member States’ legislation contains no or partial safeguards, which results in children being born stateless.¹⁵
- There is no dedicated determination procedure for stateless unaccompanied minors that would take account of the specific vulnerability of this group. Most Member States that have a determination procedure for adults and apply it to cases of unaccompanied minors without adapting it in any way. Nevertheless, in most cases a guardian is appointed to accompany the minor and in those Member States with a dedicated

4 This ad hoc query was entitled “The nexus between recognition of stateless status and the right of residence” and received replies from 24 countries: AT, BE, BG, HR, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, LV, LT, LU, MT, NL, PT, SK, SE, UK and NO. However, the AT answer is not for wider dissemination and that is the reason that the updated information is not reflected on the text. However, the new information concerning Austria was updated with the assistance of UNHCR.

5 Technical conference “Exploring the interrelationship between recognition of statelessness, residence permits and associated rights in the EU Member States and Norway” Dublin, 7 May 2019.

6 This ad hoc query was answered by 23 countries: AT, BE, CZ, EE, FI, FR, DE, HR, HU, IE, LT, LU, MT, NL, PL, SK, SI, ES, SE, UK and NO.

7 The first ad-hoc query was an update to the ad-hoc query launched in 2015. It received replies from 25 MS: AT, BE, BG, HR, CY, CZ, EE, FI, FR, DE, HU, IE, IT, LV, LT, LU, NL, PL, PT, SK, SI, ES, SE, UK, NO. The second ad-hoc query was entitled “On statelessness: minors born in exile and unaccompanied minors”. It received replies from 21 MS: AT, BE, HR, CZ, EE, FI, FR, DE, HU, IT, LV, LT, LU, NL, PL, PT, SK, SI, SE, UK and NO.

8 For example, the LIBE Committee, Practices and Approaches in EU Member States to Prevent and End Statelessness, European Parliament, Study, 2015.

9 Malta’s Instrument of Accession to the 1954 Convention Relating to the Status of Stateless Persons has been signed on 8th November 2019 and deposited, with reservations, at the Office of the UN Secretary General on 11th December 2019. Accession will become effective on the ninetieth day following the date of deposit of the Instrument of Accession.

10 United Nations Treaties Collection <https://treaties.un.org>

11 BG, ES, FR, HU, IT, LU, LV and UK.

12 In Italy this applies when the applicant does not legally reside in the State. More specifically, in Italy, while the administrative procedure is only available for those who legally reside in Italy (therefore in general it may concern the case of occurred statelessness), the judicial procedure does not depend on this prerequisite. However, there is nothing to prevent the filing of a petition for statelessness even in cases where the applicant holds a residence permit.

13 Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with dedicated statelessness determination procedures. UNHCR, Handbook on Protection of Stateless Persons, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa.html>, para 147-152.

14 FR, HU, IT, LV, ES and UK

15 Information provided by UNHCR for the updating of this inform.

statelessness determination procedure, legal aid is provided (except in LV and UK). However, the burden of proof during the determination procedure remains with the minor, as in the case of adult applicants.

- With the exception of a few Member States, there is mostly no provision for children born *en route* to the EU who arrive without a birth certificate to obtain one or an equivalent document in the country of arrival.

3. THE STATE OF PLAY OF THE 1954 AND 1961 CONVENTIONS ON STATELESSNESS

The two most important international instruments addressing statelessness are the [1954 Convention relating to the Status of Stateless Persons](#) and the [1961 Convention on the Reduction of Statelessness](#). The 1954 Convention provides the definition of a “stateless person” and constitutes the foundation of the international legal framework for addressing statelessness. The 1961 Convention is the leading international instrument that sets rules for the conferral and withdrawal of citizenship provided that certain conditions are met which aim to prevent and reduce statelessness. Not all the EU Member States are signatories of these conventions.

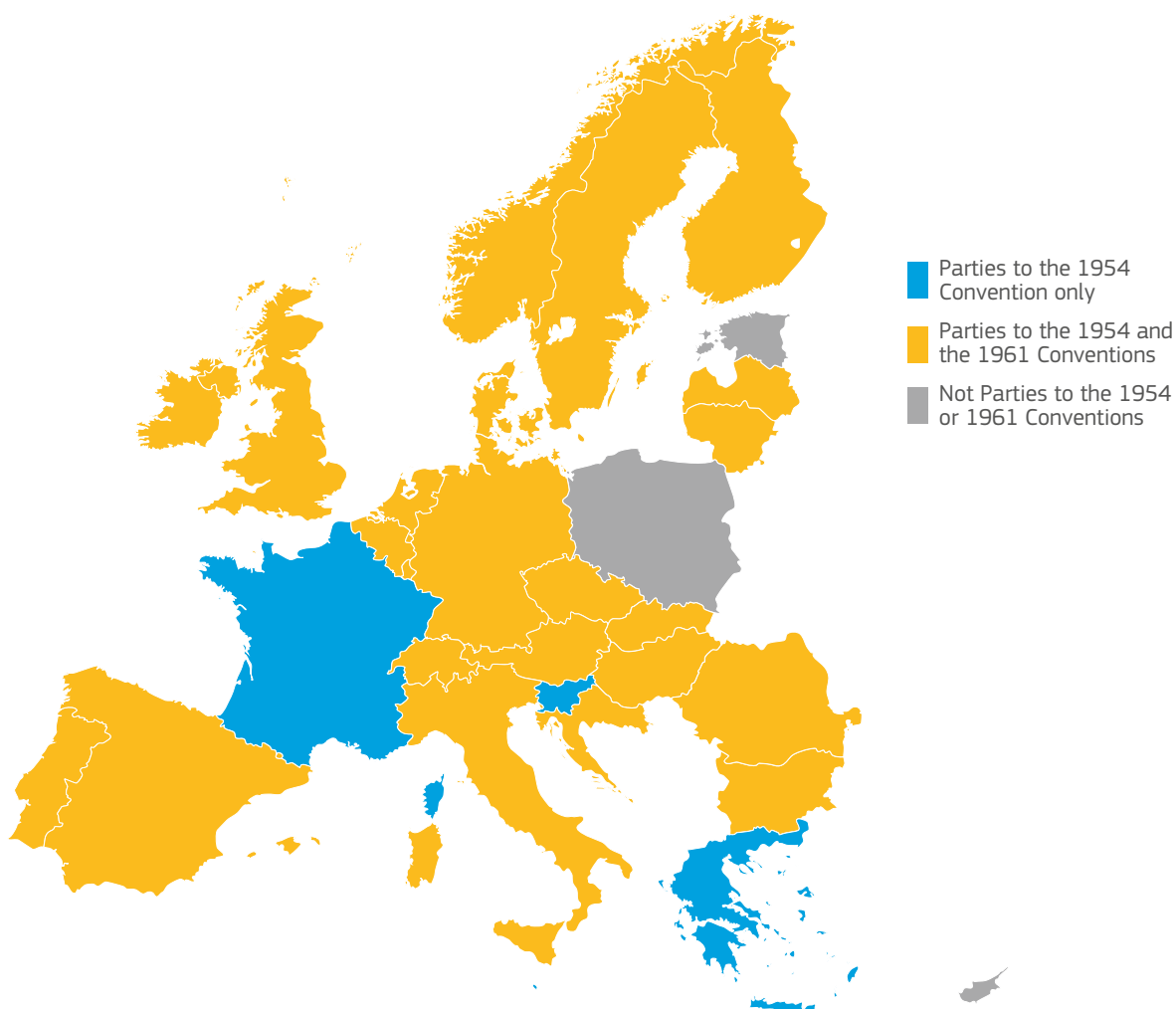
3.1. Accession to the 1954 Convention

At present, 25 Member States¹⁶ plus Norway are party to the 1954 Convention. Cyprus, Estonia and Poland have not (yet) acceded to it.¹⁷

3.2. Accession to the 1961 Convention

To date, 21 Member States¹⁸ and Norway have acceded to the 1961 Convention, an increase of two

Figure 1: States party to the Statelessness Conventions in Europe



Source: UNHCR, 4 October 2018. Updated by EMN as at 31st December 2019

¹⁶ AT, BE, BG, HR, CZ, DK, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, NL, MT, PT, RO, SK, SI, ES, SE and UK

¹⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en

¹⁸ AT, BE, BG, HR, CZ, DK, FI, DE, HU, IE, IT, LV, LT, LU, NL, PT, RO, SK, ES, SE, UK

Member States since November 2016. France signed this Convention but has not yet ratified it; six Member States¹⁹ have not (yet) acceded to it.²⁰

Luxembourg and Spain acceded to the 1961 Convention, respectively, on 21 September 2017 and 25 September 2018.²¹

Malta acceded to the 1954 Convention on 12th December 2019.

Cyprus introduced a bill relating to accession to the 1954 Convention in 2011 but there has not been any result yet.²²

Five Member States (EE, FR²³, MT, PL and SI) reported that they do not intend to accede to the 1961 Convention. The reasons put forward by these Member States include:

- **Estonia** points out that their Citizenship Law is partially in conflict with the Convention.²⁴



4. STATELESSNESS DETERMINATION PROCEDURES²⁶

A Statelessness Determination Procedure, that is, a mechanism for determining whether an individual is stateless, is a practical prerequisite for ensuring the protection of stateless persons. The 1954 Convention relating to the Status of Stateless Persons establishes the international legal definition of “stateless person” but does not prescribe a particular mechanism for determining statelessness. Yet, it is implicit that States party to the Convention must identify who qualifies as a stateless person under Article 1 for the purpose of affording them the standard of treatment set forth in the Convention. The identification of stateless persons may also occur through administrative, judicial or other procedures which are not specifically designed for this purpose.

Currently, a majority of Member States²⁷ and Norway, do not have a specific determination procedure for stateless persons in place. While the **Slovak Republic** does not have an administrative procedure, there is a legal basis for the possibility of granting permanent residence for 5 years to stateless persons.

Eight Member States (BG, FR²⁸, HU, IT, LV, LU²⁹, ES and UK) have a dedicated determination procedure. **Bulgaria** introduced its dedicated procedure in December 2016.³⁰ In April 2019, amendments introduced to the Law on Foreigners in the Republic of Bulgaria envisaged the possibility of issuing a continuous residence permit to recognised stateless persons, which will enable their legal stay. The amendments entered into force in October 2019. The Implementing Regulation to the Law on Foreigners in

- **France** wishes initially to retain the possibility of withdrawing French nationality if considered necessary.²⁵
- **Malta** considers that Maltese legislation already incorporates some of the major provisions of the 1961 Convention; however, a decision on accession, based on full consideration of the impact of the Convention, is still to be taken.
- **Poland** considers that accession would put stateless persons in a privileged position in comparison to foreigners already legally residing in Poland.
- **Slovenia** has reservations about the application of article 12 of the 1961 Convention in regards with article 1. However, their current legislation contains most of the provisions of the Convention and under certain circumstances provides easier conditions for the acquisition of citizenship.

the Republic of Bulgaria will provide for the specific rules for the implementation of these changes.

In **Greece**, a draft Presidential Decree setting out the details of a statelessness determination procedure is currently under examination by the Ministry of Citizen Protection and Ministry of Interior.

The **Netherlands** issued a draft law establishing a statelessness determination procedure in October 2016 but the law has not yet been submitted to Parliament.

There is no standardised procedure for the determination of statelessness amongst Member States. While some do have a dedicated procedure in place, others use general administrative procedures, an administrative practice or apply the determination procedure within other administrative procedures (i.e. citizenship, residence permit, international protection procedures or ex-officio). In order to illustrate this divergence, a mapping of Member States practices with regards to statelessness determination is provided below (see Section 5.1).

4.1. Dedicated statelessness determination procedures

The specific determination procedures that are established in law have been developed (e.g. in BG, FR, HU, IT, LV, ES and UK) vary significantly.

Bulgaria has a dedicated statelessness determination procedure, but applications can only be made in writing (in Bulgarian). The procedure is free of charge, applicants have a

19 CY, EE, EL, MT, PL and SI

20 Ibid.

21 Ibid.

22 Compilation of the joint COM and LU EMN NCP ad-hoc query on statelessness (Part 1), launched on 4th May 2016.

23 The current French government does not intend to submit a proposal for its ratification to the French Parliament

24 EE considers that EE citizenship law is based on the *ius sanguinis* principle and the convention foresees granting citizenship to a person born in its territory who would otherwise be stateless (*ius solis*). However, according to UNHCR the 1961 Convention does not prescribe which mode of acquisition States parties should adopt.

25 France sought initially to retain the possibility of withdrawing French nationality if considered necessary. However, when signing this convention, France (and all signing countries) must comply with the “aim and spirit” of this convention (in application of principle of good faith). Thus, the law of 16 March 1998 on nationality has a provision which prohibits any decision of deprivation of nationality if this implies that the person becomes stateless.

26 This information is collected from the EMN Inform of November 2016 and updated from the answers to the EMN ad-hoc query launched on 18 March 2019.

27 AT, BE, HR, CZ, EE, FI, DE, IE, LT, MT, NL, PL, SK, SI, SE

28 The law 2015-925 of 29 July 2015 introduced a dedicated chapter in the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA) for stateless persons (articles L. 812-1 to 812-8 of the CESEDA).

29 Luxembourg does not have a dedicated procedure established in the law, only in administrative instructions.

30 European Network on Statelessness (December 2016) “Bulgaria introduces a statelessness determination procedure in national law” <https://www.statelessness.eu/news-events/news/bulgaria-introduces-statelessness-determination-procedure-national-law>

right to an interview and to appeal, and free legal aid is provided by NGOs. The burden of proof lies with the applicant. The standard of proof is higher than in asylum procedures. No protection status is provided to applicants during the procedure, applicants have no access to basic services and may be detained during the procedure. If a person is recognised stateless s/he may receive a right of residence.³¹

In **France**, the applicant personally files the application form duly signed (in French). The application should be supported by two pictures, a travel document (if the applicant has one), and civil status documents. All these documents should be submitted to the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which is the competent authority for determining statelessness.³² The OFPRA can invite the applicant to a personal interview (but it is not mandatory). The applicant can express himself/herself in a language of his/her choosing and can be assisted by a translator if necessary and be accompanied by a lawyer or a representative of an association.³³ The burden of proof is shared but the standard of proof is higher than in asylum cases. The OFPRA can assist by contacting relevant competent authorities in other countries. All types of evidence are accepted.

In **Hungary**, applications can be initiated in writing or orally by the person concerned at the regional Directorates of the Office of Immigration and Nationality (OIN) where the applicant resides. The applicant must make an oral statement which is registered. If the application is submitted verbally and the applicant cannot speak Hungarian, the competent regional authority shall provide an interpreter who speaks his/her native language or a language s/he understands. The interpreter is not required if the officer in charge of the case speaks the applicant's native language or another language s/he understands, and if the applicant agrees in writing. The submission is free of charge. The interpretation costs as well as legal aid costs are paid by the State. The applicant shall attend the proceedings in person and shall be interviewed. The legal representative of the applicant can be present during the interview. UNHCR can participate at any stage of the determination procedure. The burden of proof lies principally with the applicant but under procedural rules, the authorities should also actively contribute. *Ex-officio* guardians are appointed for unaccompanied minors.

After the decision of the Constitutional Court³⁴ and a resolution from 30 September 2015, the statelessness determination procedure has become available for all stateless persons, not just for those who are lawful residents in Hungary.

In **Italy**, there are two determination procedures: one is judicial, the other administrative. In the administrative procedure, the individual files an application before the Ministry of the Interior. The applicant must include his/her birth certificate, a certificate proving lawful residence in Italy and any document that proves his/her statelessness. The standard of proof is the same as in the asylum procedure but in the administrative procedure, the applicant

carries the burden of proof, while in the judicial one, it is shared. No legal aid is provided in the administrative procedure. The Ministry of Interior is in charge of the administrative procedure.

In the judicial procedure, the rules of the ordinary civil court proceedings are applied with the Ministry of the Interior as a counterparty. Judicial proceedings may be initiated even if an applicant does not hold a residence permit, but they must be assisted by a lawyer for lodging the application before the Civil Court.³⁵ The burden of proof is shared, the applicant should provide all the available documents to back his/her claim, while the judge has the duty to make use of investigative powers in order to fill evidentiary gaps. With the reform introduced by Law N.46/2017, the judicial procedure was decentralised to the 26 Specialised Sections for international protection, migration and statelessness of the Civil Courts. To this end, the law n. 46/2017 states that the responsibility of the specialised section of migration, international protection and free movement of EU Citizens also extends to disputes concerning the determination of statelessness. Free legal aid is available depending on certain eligibility criteria.

In **Latvia**, statelessness is determined within the framework of a dedicated statelessness determination procedure, available to all stateless persons, irrespective of whether they are residing legally in the country or not. The procedure is free of charge. The applicant must file a written application (applicants receive assistance from the competent authority when filling out the application form) and submit his/her personal identification document, birth certificate, certificate issued by a foreign competent authority that the person is not a citizen of the relevant State or a document proving that s/he cannot obtain this document and any other relevant document. After filing the application, the applicant is allowed to stay in the country.

According to the Law on Stateless persons, legal residence is not a precondition for filing the application.³⁶ The burden of proof lies with the applicant but in practice, it is shared with the Office of Citizenship and Migration Affairs. In case of an applicant who has been detained because s/he is an irregular migrant without valid travel documents, the State Border Guard may assist by contacting foreign embassies to retrieve the necessary documents. After filing the application, the applicant is allowed to stay in the country. A decision on granting or refusal to grant the status of a stateless person is made within three months of lodging the application. This time period may be extended up to one year.

In **Luxembourg** a special administrative determination procedure has been established since November 2016.³⁷ A foreigner, who cannot claim the nationality of any State and is resident in the Grand-Duchy of Luxembourg, must file a specific application form duly signed³⁸ to the Foreigners Service of the Directorate of Immigration, including his/her personal information and a detailed explanation of the reasons why he/she does not have a nationality. The applicant must attach all sufficient and serious evidence to

31 Article 211 paragraph 4 of the Law of Foreigners states that a person with a stateless status in the Republic of Bulgaria, who does not meet the conditions for allowing permanent or long-term residence, may be allowed a prolonged residence for up to one year in accordance with the regulation for the implementation of the Law of Foreigners.

32 Article L. 812-2 of the CESEDA created by the Decree n° 2015-1166 of 21 September 2015.

33 Article R. 812-2 of the CESEDA created by the Decree n° 2015-1166 of 21 September 2015 and modified by the Decree n° 2018-1159 of 14 December 2018

34 Resolution 6/2015 (III.25.) that the term 'lawfully' in Subsection (1) of Section 76 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereafter: RRTN) is contrary to the Fundamental Law and annulled it with effect from 30 September 2015.

35 The rule in court proceedings is that all cases must be introduced with the assistance of a lawyer (there are some exceptions, but the procedure for the determination of statelessness does not is among them). The applicant must pay a unified contribution of € 259 plus legal costs. If the person is unable to bear these costs, he or she may apply to the Lawyers' National Order for admission to the free legal aid system.

36 A stateless person who applies for the recognition of statelessness does not have a valid travel document and cannot leave the country.

37 [http://www.guichet.public.lu/citoyens/fr/immigrati on/cas-specifiques/apatri de/demande-statut-apatri de/index.html](http://www.guichet.public.lu/citoyens/fr/immigrati%20on/cas-specifiques/apatri%20de/demande-statut-apatri%20de/index.html)

38 The application can be filed by a third-party with a power of attorney or by a lawyer.

back up his/her claims.³⁹ The Foreigners' Service examines all the evidence provided by the applicant, and collects any other relevant information to allow the determination of which countries (if any) could confer citizenship on the applicant. If required, the applicant may be invited to an interview or to present additional evidence or supplementary information. The burden of proof lies with the applicant, but it is limited to determining that s/he does not have the nationality of any relevant country e.g. the country in which he/she was born, in which his/her family members reside, where he/she lived before. The authorities, with the consent of the applicant, can request supplementary information from different countries to which the applicant may be linked. During the examination of the application, the applicant does not have the right to reside in the country. A removal order can be issued if his/her immigration status is irregular.⁴⁰ The Foreigners Service may take a decision within three months of the application being filed. This deadline can be extended if the case is complex.

In **Spain** the applicant must submit an application at the Spanish Office for Asylum and Refuge (OAR), at an Aliens Office or at a police station within one month of his/her arrival on Spanish territory. The application must explain the reasons why the person does not have a nationality and submit all the documents that are relevant to the case. The burden of proof lies with the applicant but is shared in practice. If needed, and should an interview be required, the applicant is assisted by an interpreter. The Minister of the Interior takes the decision on the application within three months of it being filed.

Finally, the **United Kingdom** has a determination procedure for stateless persons established in its Immigration Rules. The responsible authority for Visas and Immigration (part of the United Kingdom Government Home Office) has a dedicated, centralised Statelessness Unit. This procedure is totally independent from the asylum procedure and any asylum claim takes priority over a statelessness application. Consideration under the statelessness determination procedure will only occur after the asylum claim has been determined or withdrawn. For the statelessness determination procedure, the applicant must submit a pre-printed form and any supporting documents which may be relevant in supporting a claim of statelessness such as: birth certificate, marriage certificate, etc. The application must be sent by post to the Home Office. The burden of proof is on the applicant, but decision makers are obliged to carry out research and enquiries, particularly for child applicants. The evidence is assessed with regard to the individual's personal circumstances obtained in writing (and at the interview where requested), and takes into consideration the law and practice in the country in question, both with regard to the individual concerned, and also to the group (or groups) of individuals to which the applicant belongs. Caseworkers should be ready to undertake research or make relevant inquiries with other national authorities from which the applicant has been unable to obtain relevant information. A caseworker may contact consular authorities of countries with which the applicant has had links if this is deemed necessary in order to provide evidence of whether the applicant is stateless. They will only do this with the applicant's consent.

4.2. Judicial procedures used by the Member States for the determination of statelessness

In the case of **Belgium**, only the family courts, established in the seat of a court of appeal (in the jurisdiction of which the applicant has his/her place of residence or, for lack thereof, where the applicant finds him/herself) are the competent authority for the recognition of statelessness in accordance with the new article 632bis of the Judicial Code.⁴¹ The decision can be appealed to the Court of Appeal. During the procedure, the applicant is not entitled to a temporary legal status and does not derive any rights from his or her recognition as stateless. The burden of proof lies with the applicant, who has to prove that s/he never had the nationality of the countries with which the s/he has ties. The countries with which the applicant-stateless person has ties could be among others: 1) country of residence; 2) country of birth; or 3) country where family members have nationality. If not, the applicant has to prove that s/he has lost it and is unable to access it again.

For the judicial procedure in **Italy**, the applicant does not need to provide specific documents to access the procedure, but they must be assisted by a lawyer for lodging the application before the Civil Court. Hearings are scheduled by the Judge taking into consideration the complexity of the case. See also Section 5.1.

4.3. General administrative procedure or a determination within another administrative procedure

There is no common approach to how Member States determine statelessness through a general administrative procedure or as a determination within another administrative procedure. Some Member States use general administrative procedures, an administrative practice or make the determination within another administrative procedure (i.e. citizenship, residence or international protection applications).

In the **Czech Republic**, statelessness status can be determined through the general administrative procedure or the asylum procedure. The competent authority is the Department of Asylum and Migration Policy of the Ministry of the Interior. Since 18 December 2015, an amendment to the Asylum Act was introduced, which allows for the Asylum Act mechanisms for refugee status determination to be applicable also to applications under the 1954 Convention.

In **Finland**, an administrative procedure is used to determine the citizenship of a person or whether the person is stateless. The Finnish Immigration Service (MIGRI, acting at the request of the applicant or a public authority, determines the citizenship status of an individual who resides in Finland. In order to determine citizenship, the MIGRI uses identification documents, place of birth, place of previous residence, the national legislation of the countries, and compares practices on acquisition of citizenship in

³⁹ If these documents are not written in English, German or French an official translation by a sworn translator must be attached to the application.

⁴⁰ The procedure modifies the jurisprudence established by the Administrative Court, n° 36744C of 27 October 2015 that said that neither regular residence, nor regular presence, constitute necessary conditions for applying and recognizing statelessness.

⁴¹ The Law regarding the simplification, harmonisation, computerisation and modernisation of provisions of civil law, civil procedure, law and notaryship, as well as regarding various provisions with regard to justice (Potpourri V Law) was approved by the Chamber of Representatives on 6 July 2017 introducing article 632bis into the Judicial Code. The law came into force on 3 August 2017.

different States. The burden of proof is shared between the applicant and MIGRI. It also has to rely on the statement of the applicant himself as well as any available information on the citizenship of their family members (especially, parents). Statelessness does not constitute an independent ground for legal protection in Finland.

In **Germany**, there is no dedicated procedure in place but statelessness can be identified during other administrative processes, such as refugee status determination. Outside the context of the asylum procedure, the responsible local aliens' authorities examine the application and request clarification regarding citizenship issues in the framework of the procedure on residence permits, the issuance of travel documents or during the naturalisation procedure of the applicant. In the framework of the asylum procedure the question of citizenship/non-possession of citizenship is clarified only to the extent needed to establish against which country a well-founded fear of persecution has to be assessed. The asylum authority is not permitted to contact the authorities of the (alleged) country of origin in order to clarify questions of citizenship and other personal data. In case a stateless person is determined to be a refugee, the respective residence permit for refugees is issued.

In the **Slovak Republic**, an administrative procedure requires that the applicant demonstrates that s/he does not hold any citizenship of the state: a) in which s/he was born; b) in which s/he has had previous residence or stay; and c) whose citizenship his/her parents and other family members have. The burden of proof lies with the applicant, and the decision is taken after the competent authority assesses the documentation which has been provided. The authorities may decide to contact consular authorities on a case-by-case basis.

In **Slovenia**, statelessness may be identified in the course of the application for citizenship, residence permit or status for international protection.

Luka

Luka was born in Ukraine when it was still a part of the former USSR. After growing up in an orphanage, he moved to the EU (country X) in 1991 when he was only 15 years old. He has never possessed any documents establishing his nationality. As a result, since becoming an adult, Luka has been repeatedly detained in country X. Attempts to remove him have proved fruitless because Ukraine refuses to accept him as a national. On the last occasion Luka was detained for 14 months and released in 2010. When ordering his release, the court found that his expulsion from country X was not possible and Luka was finally granted tolerated stay. However, his problems are far from over. Despite having lived in country X for over 20 years, Luka is still not recognised as being stateless and his tolerated stay does not allow him to work or to have health insurance. He cannot marry his partner or be registered officially as the father of his son. Recently his application to renew his tolerated stay was refused due to his inability to submit new documents from the Ukrainian embassy. He was subsequently fined for his unlawful stay. This cycle shows no sign of ending.

In **Sweden**, statelessness may be determined when an application for a residence permit is filed with the Swedish Migration Agency (SMA) or when a person registers with the tax authorities. In this case, the tax authorities have the possibility to make further investigations regarding the statelessness of the applicant. Neither of the two institutions have a dedicated procedure with a specific aim to determine statelessness nor consistent administrative guidelines.⁴² As there is no specific statelessness determination procedure in Sweden, the burden and standard of proof applied when assessing an individual's potential statelessness will depend on the procedural standards and guidelines governing such assessments in the procedure in question.

In the case of **Norway**, while not having a dedicated procedure in place, an individual's statelessness can be assessed as part of the identity determination process carried out during the asylum or other immigration processes. The identity assessment is made according to the documentation requirements, procedures and criteria used to determine a claim to establishing nationality.

4.4. Ad-hoc administrative procedures

Several countries do not have a dedicated procedure in place⁴³ and apply ad-hoc procedures. In **Croatia**, statelessness is assessed ad-hoc upon submission of an application for asylum, legal residence or citizenship. All relevant elements of the application will be assessed, including the applicant's statements and all the documentation at the applicant's disposal regarding his/her nationality(ies). The Ministry of the Interior (MOI) is the competent body (i.e. for the asylum procedure, regulating foreigner's status, and the procedure for acquiring Croatian nationality). For the determination of statelessness, the consular authorities of countries with which the applicant has links may be contacted. If it is determined during a procedure that an applicant is stateless, s/he will be considered a stateless person for the purposes of that procedure. Furthermore, a person who is undoubtedly determined to be stateless, if granted a temporary or permanent residence, can be issued with a travel document for a stateless person.

In **Malta**, when necessary, the authorities may require from the applicant, on an ad-hoc basis, information regarding the individual's nationality status. The decision on the stateless status is taken on the basis of the available documentation. However, Malta is currently examining the possibility of setting up a formal determination mechanism/procedures to identify statelessness.

In **Poland**, statelessness can be identified through alternative administrative procedures for general identity and citizenship determination procedures within the return procedure. However, the outcome of these procedures may result in the protection of stateless persons through the national form of protection – permit for tolerated stay or humanitarian stay.

In **Ireland** determination of statelessness in accordance with the 1954 Convention is also made on an ad-hoc

⁴² The definition of "a stateless person" as set out in Article 1(1) of the 1954 Convention is not incorporated into Swedish legislation. This may lead to inconsistent outcomes in registering stateless persons and contribute to the high number of persons in Sweden registered as having an "unknown" nationality.

⁴³ BG, IE, HR, MT, PL.

basis, with regards to the circumstances of each individual case.

In **Bulgaria** the procedure for granting a stateless status is initiated when a person, who wants to be recognised as stateless, personally submits a written application to the Directorate of Migration or to the Migration Sectors and Groups at the Regional Directorates of the Ministry of Interior. When submitting the application, these authorities inform the applicant of his procedural rights and obligations. In the course of the proceedings related to the recognition of statelessness, the applicant must prove of substantiate his or her status as a stateless person, in particular: 1. His place of birth; 2. Previous residence; 3. Citizenship of family members and his/her parents. A birth certificate shall be attached to the application. To clarify the facts and circumstances of the statelessness procedure, the Directorate of Migration or Migration Sectors and Groups at the Regional Directorates of the Ministry of Interior may, after conducting an interview, provide a copy of the documents to the Ministry of Foreign Affairs for administrative assistance. The latter then provides the requested information if received. The evidence collected is shared between the administrative authority and the applicant.

Boban

Boban is a stateless Roma person from North Macedonia. Having faced discrimination his whole life - denied access to secondary school education, the right to work, the right to marry or to access social security - he decided to travel to claim asylum in the EU (country X) in 2005. His claim was rejected so he tried to claim asylum in another member state but was returned to country X under the Dublin Regulation. In 2008 he applied for regularisation as a stateless person. The statelessness status was granted in 2009. However, his new status still gave him no right to stay in country X. It granted him no permission to work and no entitlement to housing or social assistance. Living destitute, his only option was again to apply for asylum. When this was refused, he tried to claim asylum in two other EU member states but on both occasions, he was sent back to country X. On his return he claimed asylum a sixth time. After this was rejected he was detained for three weeks even though the authorities of country X already had confirmation from North Macedonia that he was not a citizen so he could not be returned there. Although now out of detention, he remains in limbo and with no hope for the future.



5. DETERMINATION OF STATELESSNESS AND THE RESIDENCE PERMIT⁴⁴

Stateless persons will not be granted immediately or automatically an authorisation of stay or a residence permit in most of the Member States as a consequence of their recognition as a stateless person.

5.1. The situation across the Member States and Norway

In over one third of Member States (AT⁴⁵, EE⁴⁶, EL, IE, LT, NL, PL, PT, SI, SK) and Norway a stateless person is considered as a third-country national, and s/he can apply for any type of residence permit.

Poland provides for a temporary residence permit for minors abandoned by their biological parents in Poland.⁴⁷ For the purpose of the temporary or permanent residence permit procedures a stateless person may present a Polish ID card for foreigners. This document may be issued to a stateless person who resides on the territory of Poland.

In **Estonia**, persons with undetermined citizenship⁴⁸ benefit from slightly preferential conditions for receiving a residence permit, compared with other third-country nationals. The only conditions that do apply are that the person has to have a permanent legal income to ensure subsistence in Estonia and no facts exist which are the basis for the refusal to issue a residence permit.

In **Greece**, pending the enactment of the above-mentioned Presidential Decree, it is not possible at the moment to apply for stateless status under the 1954 Convention.

However, a stateless person may apply for a residence permit on other grounds that may apply to his/her situation, such as an application for international protection, application for a work permit or humanitarian residence permit.

In **Ireland**, residence permits in general are open to stateless persons if they fulfil the relevant criteria. In Ireland, stateless people have been issued with leave to remain permissions⁴⁹ which has led to partial or full resolution of their case. Permission to remain may be granted to applicants for international protection.⁵⁰ Such permissions are granted at the discretion of the Minister of Justice who determines what rights to grant and for what period of time. In many cases where such a permission is granted it is not explicitly granted on the basis of statelessness. Once a permission is granted, it remains at the discretion of the Minister as to whether that permission is to be renewed and on what terms.

Similarly, in **Luxembourg**, the recognition of statelessness does not imply the automatic authorisation to stay. The individual is granted a biometric travel document for stateless persons and is notified of the need to apply for a residence permit fulfilling the conditions foreseen by the Immigration Law.

In **Croatia, Finland, Germany, Sweden and Norway**, a stateless person can obtain a residence permit depending on the type of residence permit s/he is applying for according to usual rules for granting this residence permit.

44 Information in this section is sourced from the EMN Inform of 2016 and updated by the responses to the 2019 EMN ad-hoc query.

45 See e.g. Art. 2 para 4 subparagraph 1 Aliens Police Act; Art. 2 para 1 subparagraph 1 Residence and Settlement Act.

46 In EE the term in use is « persons with undetermined citizenship ».

47 Article 186(1)(2) Act on Foreigners.

48 The vast majority of persons with undetermined citizenship are aliens who have settled in Estonia before 1 July 1990 and who habitually reside since in Estonia and their descendants.

49 Section 3 of the Immigration Act 1999. Whilst this legislation makes no specific reference to stateless persons, it refers to humanitarian considerations or other compelling grounds. However, a Leave to Remain application can only be made when the Minister is considering issuing a deportation order.

50 Section 49 of the International Protection Act 2015 which also provides for the consideration of humanitarian considerations.

In Finland and Sweden, statelessness does not constitute an independent ground for legal protection.

In **Germany**, a specific residence permit based on the fact that a person is stateless, is not foreseen. Outside the asylum procedure, a stateless person can obtain a residence permit depending on the type of residence permit s/he is applying for according to the usual rules for granting this residence permit. In addition, the following rule applies: A foreign national (including a stateless person) who does not possess a residence permit and is prevented from leaving the federal territory through no fault of his/her own, may be granted a residence permit (at least after 18 months of possessing a toleration permit).

In **Finland**, a stateless person can be granted a residence permit on compassionate grounds⁵¹, or if the person cannot be returned to their previous country of permanent residence. A condition for this permit is that the person is not intentionally refusing or obstructing the return.⁵²

Belgium does not grant a specific residence permit to stateless persons following the determination of their statelessness. However, once statelessness is determined the applicant can use the humanitarian regularisation procedure⁵³ on the grounds that it is impossible to return to his or her country of origin and if granted, the stateless person receives a temporary right of residence.

In **Bulgaria**, following the amendments to the Law on Foreigners that entered into force in October 2019, a continuous residence permit is issued to recognised stateless persons providing them with legal stay in the country.

In **Cyprus** a stateless person usually submits an application for international protection.

In the **Czech Republic** the large majority of stateless persons apply for international protection.⁵⁴

The Member States that automatically grant a residence permit once the statelessness status is granted are:

France (beneficiary of the stateless status), **Hungary** (humanitarian residence permit), **Italy** (stateless status residence permit or other typology of residence permit), **Latvia** (temporary residence permit), **Spain** (statelessness status card⁵⁵) and the **United Kingdom** (a limited leave to remain is granted).

France introduced a new law on 10 September 2018, which has been applied since 1 March 2019. Stateless persons are now issued a multi-annual residence permit, for a maximum of four years, stating “beneficiary of the stateless status” when they receive their stateless status. On expiry of this permit, under the new law, a 10-year permit will be issued. Family members of recognised stateless persons will be granted a multiannual residence permit stating “family member of a beneficiary of the stateless status.”

5.2. The duration of validity of the residence permit granted to stateless persons

The duration of validity of the residence permit granted to a stateless person varies between Member States and depends on the kind of residence permit granted. Among the Member States which grant a specific residence permit to stateless persons following the determination of their statelessness, the duration varies from 1 year in **Bulgaria** (up to 4 years in **France**) to a residence permit that can be renewed for an unlimited number of years (renewable for 10 years in **France**, 2 years in **Italy**, 2.5 years in the **United Kingdom**, 3 years in **Hungary**, 5 years in **Latvia** and the **Slovak Republic**, and unlimited in **Belgium** after a period of 5 years⁵⁶).

In the **Slovak Republic** recognised stateless persons are also entitled to apply for a permanent residence permit for an unlimited period of time.



6. SUPPORT PROVIDED TO STATELESS PERSONS APPLYING FOR RESIDENCE PERMITS⁵⁷

In **Croatia**, the largest number of persons with undetermined citizenship concerns the Roma population. The Action Plan for the Implementation of the National Roma Inclusion Strategy adopted by the Government of the Republic of Croatia in July 2019, established a measure relating to the verification of the Roma citizenship status in the country of origin, to determine whether they are stateless or not.

In **Latvia**, the procedure to receive a travel document and to apply for the residence permit is set out in the decision issued in respect of recognition of statelessness. There is a reduced state fee for the temporary residence permit of a stateless person.

In **Lithuania**, support is available with certain state fees, including that persons under the age of 16 are exempt from the fee for issuing and changing a stateless person’s travel document, and municipalities cover certain fees relating to citizenship documents or residence permits for stateless persons who are long-term residents.

In the **United Kingdom**, the applications for stateless leave, and for settlement leave after five years limited leave, are free of charge.

In some other Member States⁵⁸ and Norway, no particular supports (for example, eligibility waivers, information campaigns, (free) legal assistance) are provided to stateless persons to help them apply for residence permits.

51 Section 52 of the Finnish Aliens Act.

52 Section 51 of the Finnish Aliens Act.

53 Article 9bis of the Immigration Act.

54 Those who would like to regularise their stay by other means can use standard procedure for aliens foreseen in the Foreigners Act; those whose removal is not possible may ask for special long term tolerance visa.

55 *Tarjeta acreditativa del reconocimiento de apátrida.*

56 In Belgium, once statelessness is determined, the applicant can use the humanitarian regularisation procedure on the grounds that it is impossible to return to his or her country of origin and if granted, the stateless person receives a certificate of temporary registration into the Register of Foreigners” or the so-called temporary electronic A card. This certificate is first limited in time and replaced by an unlimited electronic B card after a period of five years.

57 The information in this section is derived from the 2019 EMN ad-hoc query.

58 BG, BE, CY, DE, ES, FI, FR, HR, IE, LU, PT, SE



7. TRAVEL DOCUMENTS⁵⁹

There are two types of travel documents granted to stateless persons by Member States:

Alien passport: **AT, CZ** (inside of the document the 1954 Convention is mentioned), **EE, FI, NL, SI, SE** (except if the person obtains refugee status) and Norway⁶⁰.

A 1954 Convention travel document for stateless persons: **BE, DE, FR⁶¹, HR, HU, IT, LV, LT, LU, SK⁶², ES** and **UK**.



8. RIGHTS GRANTED TO RECOGNISED STATELESS PERSONS⁶³

The 1954 Convention sets out a range of rights for stateless persons, including in relation to employment and education. Its article 32 provides that State Parties are to facilitate as much as possible the naturalisation of stateless persons. The rights granted to a recognised stateless person vary between Member States.⁶⁴ As mentioned before, where there is no specific determination procedure, the recognition of a person as stateless does not automatically lead to the granting of a residence permit in most EU Member States. There is no direct link between the status and the residence permit in most EU Member States and as a consequence, this influences the rights that stateless persons can have in each Member State.

8.1. Access to the labour market

Generally, access to the labour market depends on the type of residence permit which the stateless person has been granted. In most of the cases, this access is granted under the same conditions as those which apply to third-country nationals.

In 15 Member States (**AT⁶⁵, BE, CZ, DE, EE, FI, FR, HR, IE, LT, LU, NL, SK, SE** and **SI**) and Norway, stateless persons will enjoy the same access to the labour market as any third-country nationals legally residing in the country, which will depend on the type of residence permit s/he is granted.

In **Belgium** if the stateless person is granted a certificate of registration into the Register of Foreigners (electronic A card – or later on B-card), s/he has access to the labour market without having to obtain a work permit.

The new multi-annual permit for stateless persons in **France** allows for the right to engage in professional activity and the option to sign the Republic Integration Contract.

The temporary residence permits issued for humanitarian reasons and non-returnable persons in **Finland** carry with them the right to work.

In **Cyprus**, rights are linked to rights associated with international protection – either those granted to asylum seekers or to persons with protection status – this includes access to employment.

In **Hungary**, there are no specific provisions regarding labour market access for stateless persons. Normally access to the labour market depends on the type of

residence permit which the stateless person has been granted. Recognized stateless persons have the right to work, but the statelessness status ensures only limited access to the labour market, as stateless persons need to obtain a work permit (*munkavállalási engedély*) prior to their employment, which is burdensome in practice. In most of the cases, this access is granted under the same conditions for third-country nationals.

In **Italy, Spain** and the **United Kingdom** stateless persons have access to the labour market. In **Latvia** stateless persons have access to the labour market if they have obtained a residence permit.

In **Bulgaria**, the continuous residence permit, which is granted upon recognition following amendments introduced in October 2019, gives very limited labour market access to rights, apart from legal stay. There is no right to access employment. If a stateless person has other grounds on the basis of which they can be granted a long-term or permanent residence permit, they will have access to a larger set of rights.

In **Norway**, stateless persons who are either recognised as refugees, or are granted a resident permit on humanitarian status have access to the labour market on the same basis as Norwegian citizens.

8.2. Access to education and training

In most Member States recognised stateless persons have access to education and training. Access to education and training is mainly guaranteed under the same conditions as those which apply to third-country nationals staying legally in the Member States and/or depending on the type of residence permit they obtain (**AT⁶⁶, EE, EL, ES, FI, FR, IE, DE, LT, LV, LU, NL, SI, SE** and **NO**).

In the the **United Kingdom** stateless persons have access to education and vocational training.

In **Austria** if the stateless person has been granted international protection s/he has access to education and vocational training under the same conditions as any other beneficiary of international protection.

In **Belgium** adults can benefit from vocational training if they have been authorised to reside in the country. In

⁵⁹ Information in this section is taken from the EMN Inform of 2016.

⁶⁰ If relevant Norway will issue an alien passport or other relevant travel document.

⁶¹ Valid for one or two years depending on the type of residence permit issued.

⁶² Only in case the stateless person is granted a permanent residence permit for unlimited period of time.

⁶³ The information in this section is based on the EMN Inform of 2016 as updated by the 2019 EMN ad-hoc query.

⁶⁴ Although Estonia has not acceded to the conventions, people with undetermined citizenship are guaranteed the rights mentioned in the following chapters.

⁶⁵ In case the stateless person does not apply for international protection.

⁶⁶ This applies under the condition that they receive a permit of residence according to the Settlement and Residence Act.

Finland they will enjoy the same access as any other foreigner legally residing in the country.

In **Germany, Lithuania and Slovenia**⁶⁷ stateless persons have the right to attend school and they have the right to access vocational training under the same conditions as third-country nationals.

Hungary guarantees access to education (primary and secondary education) to stateless children. **Italy** allows access to all levels of education (including higher education) and training courses.

Luxembourg allows access to education and vocational training depending on the residence permit the stateless person obtains. Recognition of a person as stateless does not imply granting automatic access to education or vocational training.

In the **Slovak Republic** they have the same access to education as Slovak citizens provided they are legally staying in the territory.

8.3. Access to health care and social aid

Access to health care and social aid exists:

Belgium, France, Italy⁶⁸, **Slovenia**⁶⁹ the **United Kingdom** and **Norway** allow access to health care and social aid to recognised stateless persons who legally reside in the country. In **France**, beneficiaries of the stateless status have access under the same conditions as French nationals and legally residing third-country nationals. In the **Czech Republic**, there is access to free health insurance if the person has no means to pay for commercial health insurance, and access to certain minimum social benefits is also possible.

In **Austria** if the stateless person is a beneficiary of international protection (BIP), s/he has access to social security services. However, as of January 2019, full access to social services for recognised refugees will be tied to substantive German language skills, which might limit the respective access in practice; beneficiaries of subsidiary protection will receive considerably less support (as foreseen for asylum-seekers in self-organised accommodation). If the stateless person is not a BIP, s/he is treated as a third-country national and access will depend on the type of residence permit that the person has obtained.

Estonia⁷⁰, **Finland, Lithuania**⁷¹, the **Netherlands, Spain**, and **Sweden** allow access to these services for stateless persons with lawful residence under the same conditions as for any third-country national.

In **Belgium** recognised stateless persons who did not receive a residence permit, can obtain social aid if allowed by a labour court.

In **Hungary** entitlement to social security services (including health care) is usually linked to employment or other

income generating activities. If the stateless person does not have employment, s/he does not have access to health care or social aid with the exception of basic public health care services.

Six Member States (DE, EL, IE, LU, SE and SK) allow access to health care and social aid depending on the type of residence permit they are granted.

In **Latvia**, access to social security system services is determined by the type of the residence permit obtained by the stateless person and his/ her employment status. Medical assistance shall be provided against payment from insurance companies, employers or directly by the patients. Only persons with a permanent residence permit has the right to health care granted by the State.

8.4. Access to citizenship

Access to citizenship can be simplified for stateless persons in 15 Member States (BE, HR, CZ, EE, EL, DE, HU, IE, IT, LT, NL, SK, SI, SE, UK).

Belgium allows recognised stateless persons to use the exceptional naturalisation procedure, according to which the House of Representatives grants the Belgian nationality to recognised stateless persons as a favour⁷².

In Bulgaria a stateless person may acquire Bulgarian citizenship⁷², if s/he fulfils the conditions⁷³ established in the Law of Bulgarian citizenship and has a permit for permanent or long-term residence in Bulgaria of at least 3 years from the date of submission of the application for naturalisation.

In **Croatia** access to citizenship for stateless persons is facilitated, as no guarantee of admission to Croatian citizenship is issued to them in the procedure.

In the **Czech Republic** the law allows certain exceptions for stateless persons concerning conditions that have to be fulfilled in order to obtain citizenship. These exceptions concern the required length of stay and the participation in the social security system due to insufficient income.

Eight Member States (DE, EL, HU, IT, NL, SK, SI, SE) and Norway facilitate access to citizenship for stateless persons by easing the required conditions.

The Nationality Code in **Greece**, provides for a preferential pathway to naturalisation for stateless persons including a reduced residence period (3 years instead of 7), and a reduced deposit fee.

In **Hungary** stateless persons can apply for naturalisation in the most preferential category after 3 years of registered domicile in the country. However, stateless persons can establish a domicile only (i) after a minimum of three years following the recognition of their status, and (ii) after the acquisition of the permanent residence permit.

Italy reduced the length of stay required for the naturalisation of a recognized stateless person to 5 years

67 There are limitations on the right to education for stateless children, especially for those who are not in possession of a residence permit. Stateless children with only permission to stay (issued by Police to individuals who cannot be removed from the country) have access to primary education.

68 Same conditions as for Italian nationals apply.

69 Slovenia allows access to emergency health care and financial assistance to stateless persons with permission to stay. The range of rights broadens, if the person is granted a residence permit (temporary residence/permanent residence).

70 Estonia allows access to health care and social aid for persons with undetermined citizenship with lawful residence under the same conditions as for any third-country national.

71 In Lithuania stateless persons with a residence permit have the right to attend school and to access vocational training under the same conditions as third-country nationals.

72 Article 14 of the Law on Bulgarian Citizenship.

73 These conditions are laid in article 12 paragraph 1, items 1, 3, 4 and 5 of the Law on Bulgarian Citizenship.

(instead of 10). In the **Netherlands** this term is 3 years; here stateless persons do not have to submit a valid travel document to naturalise and they pay a reduced fee for naturalisation. The **Slovak Republic** requires that the stateless persons have resided in the country for 3 years instead of 8 years for other third-country nationals. In **Slovenia** the length of stay is 5 years. In **Sweden** the length of stay required for stateless persons to acquire Swedish citizenship is 4 years instead of 5 years for other third-country nationals.

In **Norway** the length of stay required to acquire Norwegian citizenship is reduced to 3 years, instead of 7 years. Norway grants Norwegian nationality at birth to children born in the territory who would otherwise be stateless after a period of three years of habitual residency

Seven Member States (CY, FI, FR, LV⁷⁴, LU, PL and ES) do not foresee simplified access to nationality for stateless persons.

A significant number of Member States (including AT, HR, CY, FI, FR, LT, LU, LV, MT, PT, RO and ES⁷⁵) require that

stateless persons meet the same general conditions as other persons applying for citizenship.

In the **United Kingdom** recognised stateless persons can obtain indefinite leave to remain after 5 years of continuous residence and 12 months after that they can apply for citizenship.

While preferential conditions for naturalisation do exist in many Member States, there may still be a difficulty in the stateless person proving their status in the absence of a dedicated determination procedure. In **Ireland**, the onus is on the applicant to prove that s/he is stateless to benefit from the discretionary waivers.⁷⁶ In **Greece**, there is a requirement for a permit or travel document clearly stating that the person is stateless, in order to benefit from facilitated naturalization under the Greek Nationality Code. However, situations where an individual is registered by a civil service of the Hellenic Republic as stateless without being in possession of the previously mentioned documents (i.e. asylum applicants registered by the Asylum Service), applications are examined on an ad hoc basis when the individual claims the favourable treatment reserved for stateless persons under the legislation.



9. THE SITUATION OF STATELESS MINORS

9.1. Children born stateless in the member states⁷⁷

Some Member States facilitate access to their nationality for children born stateless on their territory. The large majority facilitate access to nationality through the application of the principle *ius soli*, which is applied automatically at birth or is subject to certain conditions and modalities. Other Member States facilitate access to nationality under different procedures. However, in most Member States, there are gaps in the legal framework which mean that some children born stateless on their territory cannot have access to nationality.

In 19 Member States (AT, BE⁷⁸, CZ, DE, EL, EE⁷⁹, FI, FR⁸⁰, HR⁸¹, HU, IE⁸², IT⁸³, LU⁸⁴, NL, LT, MT⁸⁵, PL, PT, SE, UK) and NO a child born stateless in the country may obtain the nationality of that country, in different ways and under different conditions.

In the **Netherlands** the child can obtain citizenship after 3 years of legal residence.

In several Member States, it is required that the child born in the Member States and his/her parents fulfil the condition of having a lawful residence. In **Hungary**, until proven otherwise the children born in Hungary from stateless persons residing in Hungary, shall be regarded as Hungarian citizens.

In the **Czech Republic** a stateless child born in the country obtains Czech citizenship, if both parents are stateless and one of the parents has to have a legal residence longer than 90 days.

In **Spain**, according to the Civil Code, any child born in the country of foreign parents, if both of them should be without nationality or if the legislation of neither should grant a nationality to the child, is considered a Spaniard by birth

⁷⁴ In Latvia, a stateless person can naturalize under general conditions as any other foreigner. These conditions include, inter alia, five years of permanent residence (calculated from the date of obtaining the permanent residence permit), fluency in Latvian language and knowledge of the Constitution, legal source of income, etc.

⁷⁵ 10 years' residence requirement also applies to stateless persons. However, one years' residence shall be sufficient for a person born outside of Spain from a father or mother who were originally Spanish but lost their nationality in the process of decolonisation.

⁷⁶ The waiver applies to applications for certificates of naturalisation. See Section 16 of the Irish Nationality and Citizenship Act 1956. In practice this section generally operates as a waiver in relation to the length of reckonable residence required. In the case of a stateless person, the Minister will normally waive 2 of the 5 years' reckonable residence requirement. The administrative fee associated with certificates of naturalisation (in most cases €950) are also normally waived for stateless people by virtue of Regulation 13(2)(a) of the Irish Nationality and Citizenship Regulations 2011 (S.I. 569 of 2011).

⁷⁷ The information on this section is from the EMN Inform of November 2016.

⁷⁸ According to Article 10 of the Belgian Nationality Code, a child born in Belgium obtains the Belgian nationality by attribution which under the Belgian Nationality Code gives the child access to nationality by operation of the law (also known as *ex lege* acquisition), if s/he would otherwise be stateless at any time before the age of 18 (or before the "emancipation" of the child before that age). The provision thus applies not only to children who are stateless at birth but also to (rarer) situations where they may become stateless before they reach the age of 18 or are "emancipated". Unlike other provisions in the Belgian Nationality Code, there is no requirement to have a residence permit to be granted nationality in these cases. The provision applies even if the whole family is residing unlawfully in Belgium.

⁷⁹ Subject to conditions stipulated in Article 13 of the Citizenship Act.

⁸⁰ For FR, it applies to children born in France of stateless parents or of parents who cannot transmit their nationality.

⁸¹ Only if the parents are unknown, of unknown citizenship or stateless.

⁸² A person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country (Section 6(3) of the Irish Nationality and Citizenship Act 1956). There is also a presumption of Irish citizenship from birth for deserted new born infants, unless the contrary is proved (Section 10).

⁸³ Italian law grants the recognition of the citizenship to those who were born in Italy cannot acquire citizenship from both their parents (Art. 1, law n.91/1992). According to the law, children born in Italy who have both parents who are stateless, or who are unable to follow their parents' nationality according to the law of the State to which they belong or who are foundlings, are citizens by birth, considering the impossibility to prove the possession of another nationality.

⁸⁴ In LU this happens even when the parents are stateless or that they cannot transfer their nationality to the child. The same happens in FR.

⁸⁵ In accordance with the Maltese Citizenship Act a person shall be entitled, on making application to the Minister in the prescribed manner, to be granted a certificate of naturalisation as a citizen of Malta if he satisfies the Minister that he is and always has been stateless, and that he was born in Malta. He shall not be so entitled if he has not been ordinarily resident in Malta throughout the period of five years ending with the date of the application; or he has either been convicted in any country of an offence against the security of the State or has been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years.

Greece applies the *ius soli* principle only in cases of stateless children born in the country. More specifically, according to the Greek Nationality Code “a person born on Greek territory shall acquire the Greek nationality by birth, provided that:

- he/she does not acquire any foreign nationality by birth, nor can he/she acquire such nationality by declaration of his/her parents to the relevant foreign authorities, if the law of his/her parents’ nationality requires such a declaration to be submitted, or
- he/she is of unknown nationality, on condition that the failure to establish any foreign nationality acquired by birth is not due to his/her parents’ refusal to cooperate”.

In **Estonia** a minor under 15 years of age who was born in Estonia or who immediately after birth takes up permanent residence in Estonia together with his or her parent(s) is granted Estonian citizenship by naturalisation as of the moment of his or her birth, in case his or her parents whom no state recognises as its citizen have or has lawfully resided in Estonia for at least five years by the moment of the child’s birth. In order to renounce the Estonian citizenship granted, the parents are entitled to submit an application before the child turns one; otherwise the child is granted Estonian citizenship by naturalisation automatically.

In **Lithuania**, the child of stateless persons who legally reside in Lithuania on a permanent basis obtains citizenship independently of where s/he was born. The child can also obtain citizenship if s/he is of unknown parents.

In **Latvia**, in case of a new-born child there is a requirement for lawful residence in Latvia of a parent who claims registration. The new-born child can be registered as a citizen of Latvia simultaneously with registration of the fact of birth (based on the request of one parent). The child shall have lawful residence in Latvia if she/he was registered as a stateless person and afterwards claimed a citizenship. If the child was registered as stateless (parents did not claim citizenship when the birth of the child was registered) and they claim citizenship after the birth was registered, there is a requirement that the parent, who claims citizenship for the child, has been resident for at least five years.

In **Slovenia** the administrative unit responsible for citizenship application may, under the UN Convention on Child Rights, grant Slovenian citizenship to a child born in Slovenia, if citizenship is not acquired through parents and if such decision is taken in the line with the best interest of the child.

A child born in the **Slovak Republic** obtains nationality provided that the parents are stateless or they cannot transfer their nationality to the child.

Austria in general does not apply the principle of *ius soli*, with the exception of foundlings up to the age of six months. A stateless child born in Austria can apply for citizenship upon turning 18 under simplified requirements, but only if several other criteria are met and within a two-year-window.

In **Norway** stateless children born in Norway who apply for citizenship prior to turning 2 years old, have an immediate right to Norwegian citizenship, so long as the child’s

parents have permanent residence permits in Norway. The same rule applies if during the previous three years the child’s parents have had the right to residence in accordance to the EEA regulations. Finally, stateless children born in Norway and who are residents in Norway at the time of citizenship application and who at the same time have had a permanent residence in Norway for three years, have a right to Norwegian citizenship. An actual residence permit is not required for this period, but the child cannot have been outside the country for more than seven months of the previous three years.

In **Sweden** a stateless child cannot obtain nationality based on the principle of *ius soli*. For this reason, a stateless child who is born in Sweden can become a Swedish citizen by submitting a notification if s/he: a) has a permanent residence permit, right of residence or residence card in Sweden b) has lived two years in Sweden and c) has not turned 18.

The requirement of permanent residence status is not in line with Article 1(2)(b) of the 1961 Convention, which stipulates the requirement of *habitual residence* in order to acquire citizenship.

A child born stateless in the **United Kingdom** may have an entitlement to British citizenship if:

- Either parent becomes a British citizen or settled in the United Kingdom before the child reaches the age of eighteen; or
- He or she lives in the United Kingdom for the first ten years of his or her life.
- He or she is and has always been stateless, is under the age of 22 and has lived in the United Kingdom for a continuous period of five years.

9.2. Children born in exile

One of the major problems that the EU is facing as a result of the migration crisis is the large numbers of children who were born during the journey from their parents’ countries of origin or residence to the EU. Most of these children do not have travel documents or even birth certificates. To these children we have to add the minors who have arrived without papers. However, there is little information on how states deal with these children who physically exist but not legally.

HU, LT, LU and **SI** confirmed that they cannot issue a birth certificate to these children.

In **Austria** and **Belgium**, children arriving without documents will be issued a birth certificate if they are recognised as refugees or in case of statelessness or undetermined citizenship status, if their habitual residence is in Austria or Belgium.

All children born in Austria, irrespective of their migration status, are issued a birth certificate.

Furthermore, stateless persons will be issued documents in the asylum procedure such as a temporary residence permit for the duration of the procedure, a travel document in case a status has been granted or a document regarding tolerated stay. However, the latter will only be issued to persons not removable through no fault of their

own and a high threshold of substantiation is applied in this respect.⁸⁶

In the **Czech Republic**, children who arrive without a birth certificate do not get a birth certificate but if they are granted international protection they obtain a residence permit and a travel document. Even if they do not request international protection they can be granted a travel identity card.

In **Greece**, all children born in Greece, irrespective of their migration status are issued a birth certificate.

In **Germany**, the authorities issue the required permission to remain pending the asylum decision or a residence permit for the child which is relevant for the respective stage of the procedure in accordance with German refugee and residence law.

Finland uses the information that the parents provide in the course of their immigration procedure. The personal information is unconfirmed in that case. However, in FI citizenship can be acquired on the basis of the *ius soli* principle in certain cases: if the child is unable to acquire citizenship through the parents or the citizenship of the child or the child's parents is unknown.⁸⁷

In **France** such situation occurs rarely, although it is not possible to determine the number of cases. Regarding the persons under the OFPRA protection, the children who entered France without document will be issued a birth certificate. In the other cases, French courts can issue judgments declaring birth or suppletive judgements in order to determine a child's civil status.

In **Italy**, the possibility of granting any type of document to children born during the travel to Europe depends on the legal status given to their parents.

In **Lithuania**, if an alien's child is born during the travel to Europe, the parents must contact their country's embassy for issuing a travel document. If the parents are stateless persons, they must contact the embassy of the country of their permanent place of residence.

Stera

Stera and Mohamed were born in 2005 and 2008 in the EU in country X to Kurdish parents from Syria. Their father has always been stateless. Though their mother is a Syrian national, she cannot pass on her nationality to her children. The nationality law of country X contains a little-known provision allowing children born stateless in the country to apply for nationality after five years of ordinary residence. Stera and Mohamed's parents were made aware of this provision only in 2014.

Latvia can register the birth of a child who is born outside of Latvia, if a medical certificate issued by a medical institution or a physician is drafted and the birth of the child is not registered in the country of birth.

The **Netherlands** only permits for children born outside the Netherlands who do not have a birth certificate to apply for a judicial declaration that states the particular

of the birth. This judicial declaration substitutes the birth certificate.

Sweden only issues documents if the child is granted a residence permit in Sweden.

In the **Slovak Republic**, the minor is entitled to obtain tolerated stay.

The **United Kingdom** grants the child, who is recognised as stateless and meets the requirements for "stateless leave", a "leave to remain" and in consequence the child will receive a biometric residence permit.

Norway also grants documents if the child is recognised as a refugee (refugee travel document) or if the child obtains a residence permit based on humanitarian grounds, an Aliens passport will be issued.

Portugal expressed that they have not been confronted with this situation.

9.3. Determination procedure of children born in exile or stateless children arriving in the territory of Member States

No Member State has any specific statelessness determination procedure adapted for these minors.

Belgium, the **Czech Republic**, **Finland**, **France**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Slovenia**, **Sweden**, the **United Kingdom**⁸⁸ and **Norway** use the same determination procedure as for adults. **Germany** makes the determination as part of another type of procedure (i.e. asylum application, residence application of citizenship).

In **Croatia** the determination takes place in an ad-hoc procedure.

9.4. Legal Representation for Children

Most Member States applying the administrative procedure used for adults guarantee the legal representation of the minor during the administrative proceedings if s/he is an unaccompanied minor (UAM).

In seven Member States (FI, IT⁸⁹, LV, LT, LU, SI, SE) and Norway a representative (guardian or ad-hoc administrator is appointed) when an UAM enters the country, not only for the determination procedure. Also legal representation is provided.

In **Belgium** the Guardianship Service has the responsibility to ensure judicial protection for unaccompanied minors (UAM) (not only in determination procedures). In the case of a stateless child, the appointed guardian represents the minor during the proceedings to determine nationality and ensures that the child has suitable legal representation during the judicial proceedings.

⁸⁶ Information provided by UNHCR on 13 December 2019.

⁸⁷ Section 9 and Section 12 of the Nationality Act

⁸⁸ The UK applies the same determination procedure than adults but apply the principle of the best interest of the child.

⁸⁹ In all administrative or judicial proceedings. More specifically, the law n. 47/2017 the procedural and procedural guarantees to protect the foreign child are implemented through the guarantee of affective and psychological assistance of unaccompanied foreign minors in every stage and degree of the proceedings (art. 15) and into the recognition of the right of the minor to be informed of the opportunity to appoint a trusted legal counsel, including through the appointed guardian or legal representatives of the host communities, and to avail himself of legal aid in every state and degree of the proceedings (art. 16).

In the **Czech Republic**, NGOs visit most facilities where UAMs are placed and can represent a child together with a guardian. However, it is the guardian who represents the interests of the minor and can ask for a legal representative if needed.

In **Germany**, UAMs are placed under the official custody of the Youth Welfare Office (*Jugendamt*) and a guardian is appointed in order to guarantee their legal representation. If necessary, the Youth Welfare Office appoints a lawyer.

Andreea

Andreea is eight years old. She was born and lives with her father and siblings in country X within the EU. At the time Andreea was born her mother had lost her ID documents and so Andreea's birth could not be registered because both parents need to prove their identity through legal documents. When her mother acquired a new identity document, more than a year had passed since Andreea's birth and her parents did not know how to file for late birth registration. Andreea's mother left to work in the capital and the family has not heard from her since. As a result of Andreea's lack of documentation she cannot go to school, does not receive any state allowances and cannot visit a doctor free of charge. Her father says: "She had a bad flu recently so we went to a clinic to get a prescription for medication, but to get the check-up and medication we used the certificate of her younger sister. It's good they have no ID yet, the birth certificate has no picture on it, and she is quite thin and small so she can pass as being younger".

Hungary appoints an ad-hoc guardian to represent the UAM during the statelessness determination procedure and the UAM is entitled to consult a legal representative.

In **Italy**, the Legislative Decree no. 220/2017 (subsequent to Law no. 47/2017 dedicated to UAMs) has assigned to

the Juvenile Court of Justice the competence to open the guardianship and appoint the guardian, so as to concentrate all procedural steps courts relating to unaccompanied foreign minors before the same court⁹⁰.

In **Latvia**, legal aid can only be obtained at the applicants' own expense or through a NGO. Nevertheless, the Office of Citizenship and Migration Affairs works in close cooperation with the person and provides all the necessary information and helps the person to get the necessary information and documents.

The **United Kingdom** appoints a guardian but legal aid is not available for citizenship applications.

Croatia, Poland and **Norway** appoint a legal representative in cases of application for international protection.

9.5. Burden of proof in the determination procedure

In the countries applying the determination procedure for adults to unaccompanied minors the burden of proof lies with the applicant.

Only in **Germany** there is a discretionary power of the authorities to make the determination. In the framework of the discretionary decision in order to identify statelessness, the competent authority will take into account an assumed lack of evidence (*anzunehmender Beweisnotstand*) with regard to the concerned minor. This is done in his/her benefit (best interest of the child).

In the **Czech Republic**, as the tools to verify the nationality or the statelessness are usually insufficient, hence the administrative authority mainly accepts the status claimed by the child.

In Latvia as it was mentioned above, the burden of proof is shared. The Office of Citizenship and Migration Affairs works in close cooperation with the applicant and supports him/her in gathering all the necessary documentation.

⁹⁰ Moreover, Art. 16 of Law 47/2017 adds paragraph 4 quater to art. 76 of Presidential Decree 115/2002 and provides expressly: "Unaccompanied foreign minors involved in any capacity whatsoever in judicial proceedings have the right to be informed of the desirability of appointing a trusted lawyer (...), and to avail oneself, in accordance with the legislation in force, of legal aid at any stage and level of the proceedings".

ANNEX 1: BEST PRACTICE MODEL ON STATELESSNESS DETERMINATION PROCEDURE (UNHCR, HANDBOOK FOR THE PROTECTION OF STATELESS PERSONS, 2014)

Considerations when establishing a statelessness determination procedure⁹¹

Statelessness determination procedures assist States in meeting their commitments under the 1954 Convention relating to the status of stateless persons. States have broad discretion in the design and operation of such procedures as the 1954 Convention is silent on such matters. Current Member States' practice varied with regard to the type of statelessness determination procedure and the responsible competent authority. States may choose between a centralised procedure or one that is conducted by local authorities.

Determining whether a person is stateless can be complex and challenging but it is in the best interest of both States and stateless persons that determination procedures be as **simple, fair and efficient** as possible. To this end, States may consider adapting existing administrative procedures to include statelessness determination. Factors to consider include administrative capacity, existing expertise on statelessness matters, as well as expected size and profile of the stateless population the State.

Procedural safeguards: In any combined procedure it is essential that the definition of a stateless person is clearly understood and properly applied and that procedural safeguards and evidentiary standards are respected.

Competent authorities: Some States might elect to **integrate statelessness determination procedures** within the competence of immigration authorities. Other States may place statelessness determination within the body responsible for nationality issues (i.e. Ministry of Justice), for example naturalization applications or verification of nationality requests. As some stateless persons may also be refugees, States may consider combining

statelessness and refugee determination in the same procedure.

Confidentiality requirements for applications by asylum seekers and refugees must be respected regardless of the type or location of the statelessness determination procedure in a State.

Simplified procedure and access: Ensuring easy access for applicants located in different parts of a State can be facilitated through various measures: permitting written applications/ printed form to be submitted to local offices for onward transmission to the central determination body, which can coordinate and guide the appropriate examination of relevant facts at the local level, including the personal interview with the applicant; oral applications with a translator, etc.

Resource considerations, both financial and human, will be significant in the planning of statelessness determination procedures. The costs involved can be balanced against savings made from freeing up other administrative mechanisms to which stateless persons may otherwise resort (i.e. residence permit, naturalization, etc.)

The following flowchart describes the steps of a standard statelessness determination procedure, including the procedural safeguards and matters of burden and standard of proof which may be used as a best practice where deemed relevant and appropriate by EU Member States.

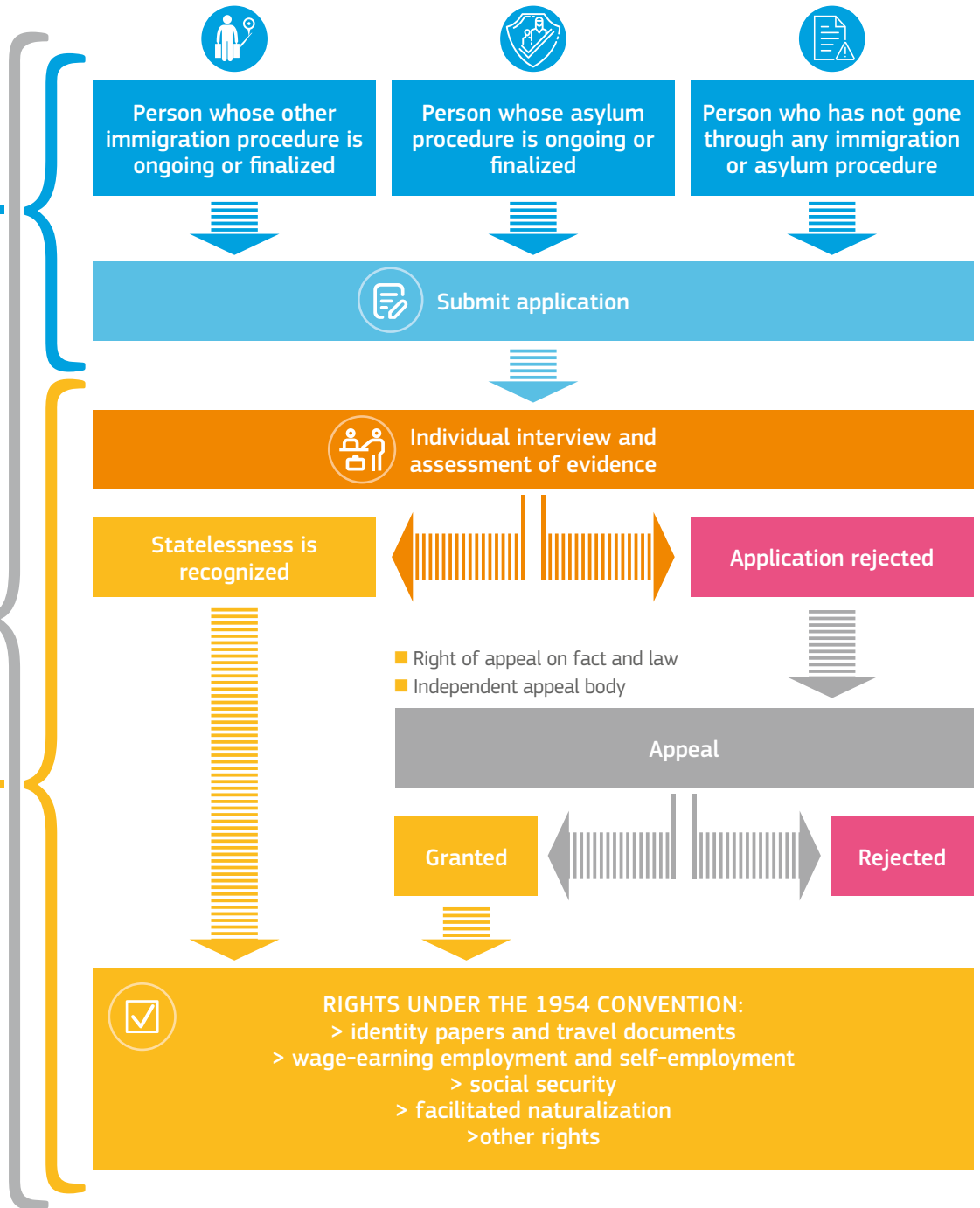
91 UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html> See for more information about existing statelessness determination procedures: UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>

ANNEX 2: FLOWCHART FOR A STANDARD DETERMINATION PROCEDURE

- Allow for individual application and ex officio referral
- Ensure easy access to the procedure to everyone
- No time limit for application

- Access to legal aid
- Access to interpretation
- Ensure that confidentiality requirements for refugees and asylum seekers are upheld
- Rights of the applicants during the procedure (social assistance and non-removal etc)

- Centralized procedure
- Reasonable time limit
- Shared burden of proof
- Standard of proof: reasonable degree





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EMN National Contact Points

Austria www.emn.at

Belgium www.emnbelgium.be

Bulgaria www.emn-bg.com

Croatia www.emn.hr

Cyprus www.moi.gov.cy

Czech Republic www.emncz.eu

Denmark https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/denmark_en

Estonia www.emn.ee

Finland www.emn.fi

France <https://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM>

Germany www.emn-germany.de

Greece <http://emn.immigration.gov.gr>

Hungary www.emnhungary.hu

Ireland www.emn.ie

Italy www.emnitalyncp.it

Latvia www.emn.lv

Lithuania www.emn.lt

Luxembourg www.emnluxembourg.lu

Malta <https://homeaffairs.gov.mt/en/mhas-information/emn/pages/european-migration-network.aspx>

Netherlands www.emnnetherlands.nl

Poland www.emn.gov.pl

Portugal <http://rem.sef.pt>

Romania www.mai.gov.ro

Slovakia www.emn.sk

Slovenia www.emm.si

Spain <http://extranjeros.empleo.gob.es/en/redeuropeamigracion>

Sweden www.emnsweden.se

United Kingdom https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/united-kingdom_en

Norway www.emnnorway.no