

Ad-Hoc Query from Luxembourg and the European Commission

Requested on 4th May 2016
Compilation produced on 11th August 2016

**Statelessness:
minors born in exile
and unaccompanied
minors (part 2)**



Responses from:

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (21 in total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

Statelessness as a legal anomaly it prevents people from accessing fundamental human, civil, political, economic, social and cultural rights. Hence, most of the current 10 million stateless persons scattered around the world are living in conditions of protracted marginalization and discrimination, facing numerous difficulties, such as the inability of receiving medical assistance, enrolling in educational programs, acquiring property, being legally employed, becoming married or opening up a bank account. The Luxembourgish government has been very interested on the issue of statelessness and asked the LU EMN NCP to launch an ad-hoc query on recognition of statelessness on 12 March 2015. This ad-hoc query allowed to determine the state of play on the recognition procedures in the EU. The LU EMN NCP following the Justice and Home Affairs Council conclusions of 3 and 4 December 2015 which considered the EMN as a platform for exchange of information and good practices, decided to dedicate this year conference to the subject of statelessness. The conference entitled "Tackling Statelessness: Exchange of Experiences and Good Practices", on the 15th of April 2016, grappled with the issue of statelessness. Although the framework was interdisciplinary (policy makers, academics, lawyers, NGOs and international organizations) and hence, the presentations variegated throughout the panels, the strategies and approaches intended to efficiently prevent statelessness emerged as common themes. Certain groups, among which migrants and refugees, minorities and more specifically minors are particularly vulnerable and hence jeopardized. Following these conclusions, COM and the LU EMN NCP would like to update the ad-hoc query launched and enhance knowledge on minors born in exile as well as unaccompanied minors particularly at risk of being stateless. For these reasons the present ad-hoc query will be launched in two parts. The first one will comprehend general questions and the second part comprehends questions regarding minors born in exile and unaccompanied minors.

Questions:

Children born in exile:

- 1. How does your MS deal with children who were born during the travel to Europe and who do not have a birth certificate? Does your MS provide any type of documents for these children?**
- 2. In case a child is born stateless in the territory of your MS (for example because the parents cannot transfer their nationality to their child, parents are stateless or foundlings), can that child obtain your MS nationality based on the principle of *ius solis* or s/he will be considered stateless?**

Unaccompanied minors:

- 1. Does your Member State have a special determination procedure to determine the nationality of unaccompanied minors that claim to be stateless? If not, does your Member State use the same determination procedure that you use for adults?**
- 2. Does your MS have any data for the period 2012 to 2015 on how many stateless unaccompanied minors or unaccompanied minors whose nationality was registered as undetermined or unknown resided in the territory of your MS? If yes, can you please provide the data for those years.**
- 3. In case your MS uses the normal determination procedure, please answer the following questions:**
 - a. Does your MS appoint an ad-hoc administrator or guardian to represent the minor during the proceedings to determine nationality?**
 - b. Does your MS provide legal aid to the minor so s/he will be represented during the proceedings to determine nationality?**
 - c. In these cases, who carries the burden of proof? What is the standard of proof required to determine nationality? (in these cases we have to take into consideration that minors under the age of 12 years old in most of the legal systems do not have legal capacity to act).**

2. Responses

	Wider Dissemination?	
Austria	YES	<p>1. The competent civil registry issues a birth certificate for any child born in Austria. Children arriving in Austria without any documents only receive a birth certificate if they are recognized refugees within the meaning of the Geneva Convention on Refugees. Source: Federal Ministry of the Interior.</p> <p>2. Austria has no ius soli as such. Such a child is stateless but can become naturalized under simplified requirements for obtaining citizenship. Individuals born in Austria can become naturalized citizens after an uninterrupted six-year period of legal residence. A stateless person born in Austria can as of the age of 18 request citizenship to be granted under the following conditions: A stateless person born in Austria can as of the age of 18 request citizenship to be granted, provided that person was born within the territory of Austria and has had their primary residence within the territory of Austria for at least ten years, of which an uninterrupted period of at least five years must have been immediately prior to being granted citizenship. The stateless person must not have been convicted with final effect to imprisonment for five or more years either by an Austrian or foreign court of law. Punishable acts serving as the basis for any conviction by a foreign court must be punishable pursuant to Austrian law by an Austrian court and the conviction must be handed down in proceedings complying with Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958. The stateless person must also not have been convicted by an Austrian court of law under any of the legal provisions listed below: a) Art. 103, 124, 242, 244, 246, 248, 252 bis 254, 256, 257 para 2, 258, 259, 260, 269, 274 to 276, 278a to 278d, 279 to 285 and 320 Criminal Code (Strafgesetzbuch), Federal Law Gazette No. 60/1974; b) Art. 277 and 278 Criminal Code, where the act was committed in connection with a criminal act pursuant to Art. 103 Criminal Code; c) Art. 286, where the act was committed in connection with any of the criminal acts listed under a); d) Art. 3a and 3b as well as 3d to 3g of the 1947 National Socialism Prohibition Act. An exception to the lack of any ius soli in Austria is the provision specifying that foundlings in Austria are to be considered Austrian citizens until proven otherwise. This helps avoid cases of statelessness. Source: Federal Ministry of the Interior.</p> <p>3. No. No, because no such procedure exists for adults. Austria currently sees no need to introduce a uniform procedure for determining nationality. Source: Federal Ministry of the Interior.</p> <p>4. No statistics of this kind are available. Source: Federal Ministry of the Interior.</p> <p>5. Austria has no procedure for determining nationality, hence these questions cannot be answered from the viewpoint of citizenship policy. Source: Federal Ministry of the Interior.</p>

Belgium	Yes	<p>1. The number of asylum seekers arriving in Belgium with birth certificates is negligible. So it makes no difference whether they were born in the country of origin or on the way to Belgium.</p> <p>2. Yes, 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 â€œemancipationâ€ 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 â€œemancipatedâ€. Unlike other provisions in the Belgian Nationality Code, there is no requirement to have a residence permit to be granted nationality. The provision applies even if the whole family is residing unlawfully in Belgium. Note: A newborn child of which one does not know who the parents are, and that is found in Belgium, is Belgian. The child is believed to be born in Belgium, unless the contrary is proved. These children retain the Belgian nationality as long as it is not proven that they have a different nationality. Once of age (or emancipated) they retain the Belgian nationality.</p> <p>3. See question 2: under certain conditions, such as to prevent statelessness, a (unaccompanied) minor child can obtain the Belgian nationality without having to take specific steps. The Belgian nationality will be granted "automatically". In this case it is not necessary that first the Court of First Instance establishes the statelessness of the child. Concerning the determination procedure, the same procedure is used as for adults.</p> <p>4. No</p> <p>5. a) The Guardianship Service has the mission to ensure judicial protection of all unaccompanied minors - asylum seekers or not - staying in Belgium, by systematically appointing a guardian. The guardian represents the minor during the proceedings to determine nationality and ensures that the child has suitable legal representation to deal with all jurisdictional or administrative procedures. b) The guardian appoints a lawyer for the child. c) The burden of proof lies with the applicant, i.e. he/she must present documents from the embassy or another diplomatic post of the countries with which he/she has ties, or submit the legislation of those countries on nationality. Countries with which he/she has ties can be the country where he/she was born, where he/she has stayed, of which his/her spouse is a national, etc. Based on these documents, it must be proved that the applicant has never had a nationality or that he/she has lost his/her nationality and has no possibility of getting it back. The legal capacity to act is transferred to the guardian. The guardian is the legal representative and represents the UAM in all these steps during the proceedings to determine nationality.</p>
Croatia	Yes	<p>1. Yes, in case child was born in the hospital. Hospital is responsible to register birth of child to the Register Office. Towards received application Register Office will issue birth certificate to the new-born child.</p> <p>2. Yes. According to the Article 7 of the Law on Croatian Citizenship a child born or found within the area of the Republic of Croatia, whose both parents are unknown or of unknown citizenship or without citizenship, acquires Croatian citizenship.</p> <p>3. There is no special determination procedure for both, unaccompanied minors and adults. The nationality of unaccompanied minors is determined only during the asylum procedure and it is the same for minors and adults. In the procedure regarding regulating temporary residence (which can be granted under humanitarian grounds) of minor who was abandoned, or who was a victim of organized crime, or who, for some other reasons, remained without parental protection, guardianship or who remained unaccompanied, all relevant elements will be assessed in each case, and consular authorities of countries with which the applicant has links to, can be contacted. If it is determined during a procedure that an applicant is stateless, he/she will be considered a stateless person for the purposes of that procedure.</p>

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		<p>4. Regarding asylum procedure we didn't have stateless unaccompanied minors. In 2015, no temporary residence status under humanitarian grounds was granted to minor who was abandoned, or who was a victim of organized crime, or who, for some other reasons, remained without parental protection, guardianship or who remained unaccompanied.</p> <p>5. a) Yes. b) Yes. c) Unaccompanied minors are being provided guardians appointed by the Center for social welfare to represent the minor in the proceedings to grant international protection.</p>
Czech Republic	Yes	<p>1. The Czech Republic does not provide a birth certificate to these children because they were not born in the territory of the Czech Republic. If they ask for international protection, they obtain an asylum seeker card. Subsequently, if they are granted protection, they get residence cards and travel documents. If they do not ask for international protection, similar documents are issued to them. The law in certain situations allow for issuing of the travel identity card (it is not an official passport) for persons who are not holders of valid passports on their request.</p> <p>2. The Act on State Nationality recognizes two ways of acquiring Czech nationality under certain conditions for stateless children: 1. Acquisition by birth – if a child is born in the Czech Republic and would be stateless on condition both parents are stateless and at least one of them has a legal residence in the Czech republic longer than 90 days. 2. Acquisition on request – if a child is born in the Czech republic and would be stateless on condition at least one of the parents has a legal residence in the Czech republic longer than 90 days and on condition the child is not stateless due to failure of his parents to act towards their country of origin in order their child can obtain that nationality. This condition is not valid for beneficiaries of international protection.</p> <p>3. No special procedure.</p> <p>4. 0 as for asylum seeking UAMs. The number of UAMs not seeking asylum are not available, but the estimate is that the number is also very low.</p> <p>5. If no evidence to confirm the existence of any nationality or confirming stateless are present and the child seeks protection, the administrative authority tries to verify the nationality claimed by the child during the asylum procedure by posing specific questions to the child. The state authorities of the state claimed are not contacted in order to verify it if a child is an asylum seeker. Usually the result is that the administrative authority accepts the status the child claims. Similar steps are taken if a child is not an asylum seeker and his stay is legalised via Aliens act. a. There is a guardian that represents a child during the asylum or residence procedure. b. NGOs regularly visit most facilities where UAMs are placed and can represent a child (together with a guardian). However it is up to the guardian to protect all interests of the child. He can ask for legal representative if needed. c. There is no separate procedure; the state nationality determination is a part of other procedures. As mentioned above, the tools to verify the nationality or statelessness are usually very insufficient so the administrative authority mainly accepts the status claimed by the child.</p>

Estonia	Yes	<p>1. Estonian embassy/consulate may issue a permit of return on the basis of a birth certificate, to a child of less than one year of age and who was born in a foreign state to an alien residing in the Republic of Estonia on the basis of a residence permit. The permit of return is issued for entering Estonia. The child has a right to Estonian citizenship via naturalization (see q 2).</p> <p>2. As of 1st of January 2016 new amendments were enforced in the Citizenship Act, which stipulated that 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, provided his/her parents or single parent whom no state recognises under valid laws as its citizen have or has lawfully resided in Estonia for at least five years by the moment of the child's birth. Thus, children born to stateless persons in Estonia should be granted Estonian citizenship automatically via naturalization. Parents may opt out on behalf of their child within one year from birth.</p> <p>3. No special determination procedure exists in Estonia for unaccompanied minors.</p> <p>4. We haven't had any stateless unaccompanied minors.</p> <p>5. Estonia does not have a statelessness determination procedure in place.</p>
Finland	Yes	<p>1. Finland uses the information, that the parents give. The personal information is unconfirmed in that case. If the child is born in Finland, the child is issued a similar certificate that a child born in Finland to a Finnish citizen receives.</p> <p>2. Yes, in Finland the country of birth principle is used as the secondary principle in transferring the nationality (this was already indicated in Part I of the ad hoc -query).</p> <p>3. The same determination procedure as with adults is used.</p> <p>4. It is very hard to get accurate numbers. Please find enclosed a few figures a) unaccompanied minor asylum seekers, whose nationality is unknown or marked as stateless b) population statistics (without nationality or unknown).</p> <p>5. a) Not for the determination procedure in particular. An unaccompanied minor is appointed a representative when he/she has entered the country. b) No c) The authorities use country of origin information and nationality legislation, and also information that the child has given.</p>
France	Yes	<p>1. No concrete case has, so far, been submitted to the Office.</p> <p>2. Article 19-1 of the French Civil Code provides that: - A child born in France of stateless parents is French, - A child born in France of foreign parents who can not transmit their nationality is French.</p> <p>3. The procedure for determination of statelessness is the same for minors and for adults. From 2012 to 2014, all the statelessness applicants heard at the French Office for the Protection of Refugees and Stateless Persons (OFPRA) were over 18 years old.</p> <p>4. Between 2012 and 2014 no unaccompanied child under 17 years has filed a statelessness application. The only two unaccompanied minors, who filed such a request, did it a few weeks before their eighteenth birthday and were, therefore, received the Office as adults.</p>

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		<p>5. a) Does not apply, insofar as all the statelessness applicants heard at the Office between 2012 and 2014 were adults.</p> <p>b) The two applications filed by minors (17 years old), were introduced by the specialized services of child protection a few weeks before their majority. Both applicants when they reach the age of 18, were heard alone in interview. In case of rejection of their applications for stateless status by OFPRA, applicants may, under certain conditions, be granted legal aid to appeal on the ground of abuse of authority, before the administrative courts of common law, benefiting from the assistance of a lawyer.</p> <p>c) First, it should be noted that the OFPRA did not receive any unaccompanied minors in the context of a procedure for determining the stateless. Regarding the burden of proof, it rests on the applicant. However, the Office may decide on the ground of evidence of the case and under certain conditions, to take steps with the competent authorities, French or foreign, to determine whether the applicant is eligible for citizenship.</p>
Germany	Yes	<p>1. As a matter of principle, the state responsible for issuing the required documents is the state of which the child's parents are citizens. The German authorities will initially only issue the generally required certificate and/or residence permit for the child which is relevant for the respective stage of the procedure in accordance with the German refugee law and/or the child's status in accordance with the German residence law; this document will - if required - carry a note that the personal data are based on information given by the child himself or herself (or its parents).</p> <p>2. Yes, it can. The enforcement law mentioned in our response to question no. 2 in the first part of the request sets out in its article 2 the nationalisation of people who were born in the German territory, taking into account the conditions mentioned therein.</p> <p>3. There is no special procedure in order to identify the status of statelessness. The question of nationality and/or statelessness is subject to a clarification in the individual case - independent of the person's age - by the competent authority in the framework of its decision on the residence status of the person concerned or during the nationalisation procedure.</p> <p>4. See attached document</p> <p>5. a. In Germany, unaccompanied minors are placed under the official custody of the Jugendamt [Youth Welfare Office] and a guardian is regularly appointed in order to guarantee the minors's legal representation. b. If required, the competent Youth Welfare Office or the guardian will appoint a lawyer. c. 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 interested minor; this will be done in his or her favour.</p>
Hungary	Yes	<p>1. When it is certain that the child was born outside Hungarian territory, none of the Hungarian birth registrars have jurisdiction, therefore no Hungarian birth registration may take place.</p> <p>2. A) Until proven otherwise the children born in Hungary to stateless persons residing in Hungary, shall be regarded as Hungarian citizens. [Act LV of 1993 on Hungarian Citizenship, Article 3, (3) section, point a)]</p> <p>B) A person shall acquire Hungarian citizenship by submitting a written declaration addressed to the President of the Republic of Hungary as of the date of submission of the declaration if he or she was born in the territory of the country and did not acquire his or her parents' foreign citizenship at birth under the foreign law applicable to the parents's citizenship, provided that he or she resided in Hungary on the date of his or her birth and has been residing in Hungary for at least five consecutive years prior to the submission of the declaration. Such a declaration may be submitted by the person concerned before reaching the age of nineteen. [Act LV of 1993 on Hungarian Citizenship, Article 5/A, (1) section, point b)]</p> <p>3. Hungary uses the same determination procedure both for adults and unaccompanied minors.</p> <p>4. No data.</p>

		<p>5. A) An ad-hoc guardian is appointed to represent the unaccompanied minor during the statelessness determination procedure. B) No, but every petitioner shall have the opportunity to consult a legal representative irrespectively of the fact that he/she is a minor. C) The petitioner carries the burden of proof in every case irrespectively of the fact that he/she is a minor. If the petitioner is a minor the ad-hoc guardian will represent him/her. Consequently, the ad-hoc guardian will proceed instead of the minor in every act of the procedure. We would like to note that the standard of proof is rather low in the Hungarian statelessness determination procedure since it is enough for the petitioner to substantiate the stateless status, with particular regard to the State:</p> <ul style="list-style-type: none"> a) where his/her place of birth is located; b) where his/her previous permanent or habitual residence is located; and c) of the nationality of his/her family members and parents.
Italy	Yes	<p>1. In Italy, the possibility of giving any type of document to children who were born during a travel to Europe depends on the legal status that will be granted to their parents accompanying them.</p> <p>2. Article 1 of Law No 91/1992 on citizenship provides for the granting of citizenship to children born within Italian territory when: «Both parents are unknown or stateless, or if the child does not acquire the parents's nationality according to the law of the State they belong to». Under the same article, «the child of unknown parentage, found within the territory of the Republic is an Italian national, if the possession of another nationality is not proved».</p> <p>3. No, the determination of citizenship for unaccompanied minors who claim to be stateless, required for the determination of statelessness, is made under Law 306/1962 regarding the determination of statelessness status for foreigners who have no citizenship . In Italy, in fact, there are no specific provisions on the determination of statelessness status for unaccompanied minors. Therefore, the same determination procedure provided for in Law 306/1962 is used for unaccompanied minors, for foreign adults and for accompanied minors.</p> <p>4. Data is not available at the moment.</p> <p>5. a. Like in all administrative or judicial procedures involving minors with no one who has legal parental responsibility for them, the process for establishing whether they possess any nationality requires the appointment of a guardian. This appointment is made by the guardianship judge, who is based at the ordinary civil court. b. Even though there are no specific provisions in this area, in practice an applicant may have legal aid during the proceedings for determining nationality and statelessness status. c. During the procedure for the determination of statelessness status, the applicant has the burden of proving he or she is not a citizen of any State. To this end, the foreigner, or a legal representative in the case of minors, should produce all documentation needed to prove the absence of nationality. To do so, a statement of the Embassy or Consulate of the country from which the foreigner comes from is usually produced, certifying that he or she is not registered at any national registry office.</p>

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Latvia	Yes	<p>1. Latvia provides children with birth certificate, if a child is born in the territory of Latvia. If the child is born outside Latvia, we can register the birth of the child, if a medical certificate issued by a medical treatment institution or a medical practitioner that confirms the fact of birth is presented and birth of child isn't registered in country of birth.</p> <p>2. A child who is born in Latvia after 21 August 1991 and whose permanent place of residence is in Latvia and his or her parents are stateless persons whose permanent place of residence is Latvia: 1) shall be recognised as a citizen of Latvia simultaneously with registration of the fact of birth of the child in the respective Civil Registry Office (based on the intent expressed by one parent); 2) shall be recognised as a citizen of Latvia until the child reaches the age of 15 (by applying to the OCMA) if the child is not registered as a citizen of Latvia simultaneously with registration of birth based on the application by one parent; If person doesn't submit this application, a child will be registered as a stateless person, if he or she isn't a citizen of another country or citizenship of another country isn't guaranteed.</p> <p>3. There is the same procedure for all applicants.</p> <p>4. There have been no such cases identified in Latvia</p> <p>5. a. Unaccompanied minors are provided by a guardian who represents the interests of the child in all matters. b. In the legal status determination procedure legal aid can be obtained at persons own expense or with support from NGOs. At the same time OCMA works in close cooperation with the person and provides all the necessary information and helps the person to get the necessary information and documents. c. According to law burden of proof lies on the applicant, but in practice it is a shared burden of proof and OCMA helps the person to receive all the necessary documents and information regarding application. In cases of minor child a guardian always is involved.</p>
Lithuania	Yes	<p>1. If an alien's child is born during the travel, his parents should contact their country's embassy for issuing a travel document to him. If the parents are stateless persons, they should contact the embassy of the country of their permanent place of residence.</p> <p>2. A child of stateless persons who lawfully reside in the Republic of Lithuania on a permanent basis (uninterrupted residence in the Republic of Lithuania for a specified period of time holding a specified document confirming the right to reside in the Republic of Lithuania; at least six months within one year) is a citizen of the Republic of Lithuania regardless of whether he was born in the Republic of Lithuania or outside the country, provided that he has not acquired the nationality (citizenship) of another state by birth. A child whose one parent is a stateless person lawfully residing in the Republic of Lithuania on a permanent basis and the other parent is unknown is a citizen of the Republic of Lithuania regardless of whether he was born in the Republic of Lithuania or outside the country, provided that he has not acquired the nationality (citizenship) of another state by birth. This is stipulated by Article 15 of the Law on Citizenship. Article 16 of the Law on Citizenship stipulates that a child found or living in the territory of the Republic of Lithuania, both of whose parents are unknown, is considered to be born in the territory of the Republic of Lithuania and acquires the citizenship of the Republic of Lithuania, unless it transpires that the child has acquired citizenship of another state or other circumstances are discovered by reason of which the child would acquire the citizenship of another state. This provision applies also to children where their both parents or single parent are/is deceased or have/has been declared missing or where their both parents or single parent have/has, in accordance with the established procedure, been declared legally incapable or where the parental (paternal or maternal) authority of their parents or single parent has been restricted for an indefinite period of time and a child has been taken into permanent guardianship/curatorship.</p> <p>3. The nationality (citizenship) of unaccompanied minor aliens would be determined in the same way as that of adults, no special procedures apply.</p>

		<p>4. In 2015, one person claiming to be an unaccompanied minor Libyan citizen was accommodated at the Refugee Reception Centre in Rukla. Later, upon completing the age assessment procedure and identifying him as an adult he was detained at the Foreignersâ Registration Centre, where he introduced himself as a Moroccan citizen. Previously, statistical data on such issues were not collected.</p> <p>5. In the event of detection in the territory of the Republic of Lithuania of an unaccompanied minor alien and in the course of follow-up procedures (e.g., during an interview, etc.), participation of a person providing state-guaranteed legal aid and, if necessary, an official in charge of protection of the rights of children is ensured. Upon accommodating the unaccompanied minor alien at the Refugee Reception Centre in Rukla, he is taken into temporary guardianship/curatorship in accordance with the procedure laid down by laws. Thus, in all procedures, including the determination of his nationality (citizenship) or identity, the minor is represented by his guardian/curator.</p>
Luxembourg	Yes	<p>1. No. According to the Luxembourgish Civil Code, the birth of a child has to be certified by the municipality where s/he is born.</p> <p>2. The law of 23 October 2008 on Luxembourgish nationality grants automatically the Luxembourgish nationality in the following cases: a) To the child born in the territory who does not any nationality because his/her parents are stateless; b) To the child born in the territory from foreign parents and their parents cannot transfer to them their nationality because the laws of their country of origin do not allow to transfer the nationality in any way.</p> <p>3. a. No. b. Yes. The administrative mechanism for determination of stateless persons was described on the LU answer to the LU EMN NCP ad-hoc query recognition of statelessness launched on 12 March 2015.</p> <p>4. No.</p> <p>5. a. Yes. b. Yes. Normally in Luxembourg the ad-hoc administrator appointed to unaccompanied minors are lawyers and they represent the child during all the procedure. The child benefits of legal aid (assistance juridique). c. In these cases, who carries the burden of proof? What is the standard of proof required to determine nationality? (in these cases we have to take into consideration that minors under the age of 12 years old in most of the legal systems do not have legal capacity to act). The burden of proof remains with the applicant. The judgment of 27 October 2015 the Administrative Court held that the burden of proof is on behalf of the applicant, but it is limited to determine that s/he does not have any of the nationality of the pertinent countries for him/her meaning the country in which he was born, in which his family members reside, where he lived before. A regular residence, nor a regular presence constitute necessary conditions necessary for applying and recognizing statelessness.</p>
Netherlands	Yes	<p>1. Children that are born outside of the Netherlands that do not have a birth certificate, may apply for a judicial declaration that states the particulars of their birth (article 1:25 c of the Dutch civil code). This declaration will then serve as a substitute birth certificate. However, this procedure is not available for everyone. The applicant has to hold the Dutch nationality, an asylum permit, a permit for an unlimited period, or a permit based on EU-law.</p> <p>2. A child that is born stateless in the Netherlands and that is stateless from birth, is considered stateless. The ius soli principle does not apply. However this child can obtain Dutch nationality by option after three years of legal residence. Currently a legal procedure is being drafted to extend this right of option to children born stateless in the Netherlands after five years of stable and factual stay.</p> <p>Minors an adults: 4. Data cannot be provided.</p> <p>5. A determination procedure is currently being drafted. The general rules on legal representation and legal aid will be applicable</p>

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Poland	No	
Portugal	Yes	<p>1. PT doesnât have any experience regarding these cases.</p> <p>2. Yes, children can obtain the Portuguese nationality based on the principle of ius solis. According to the point f) of Article nÂº 1 of Law 37/81 of October 3, the individuals born in Portuguese territory and who donât have any other nationality are Portuguese.</p> <p>3. No.</p> <p>4. No data available.</p> <p>5. a) The prosecutor is responsible for the representation and protection of unaccompanied minors. b) - c) -</p>
Poland	No	
Slovak Republic	Yes	<p>1. If a minor is found on the territory of the Slovak Republic, a police officer, in line with the Act on Residence of Aliens, transfers the minor to the Department of Social Protection of Children and Social Guardianship of the locally competent office of labour social affairs and family, in the area where minor was found. No exceptions from this legal procedure, are possible- this means, that the police department cannot give the minor foreigner to another adult, who declares that he/she will take care of the minor. At the same time no administrative expulsion from the territory of Slovakia, on the basis of readmission agreement to the territory of other countries, is possible. According to the Act on Residence of Aliens, if a minor foreigner found in the territory of the Slovak Republic, he/she is entitled to obtain the tolerated stay. There is no specific procedure for determining the citizenship. In terms of identification, Bureau of Border and Alien Police is competent to take the fingerprints of the UAM older than 10 years for MIGRA Information System. In the presence of the representative of Department of Social Protection of Children and Social Guardianship a record is written with the UAM. In case of asylum application, the Department of Asylum of Police Force conducts the hearing.</p> <p>2. According to the Act on Citizenship of the Slovak Republic: â ¶ Children acquire Slovak citizenship if they are born in the territory of the Slovak Republic and their parents are stateless, or their parents are citizens of another country but it is proved that the child did not acquired citizenship of any of them. â ¶ Unless another citizenship is proved, children acquire Slovak citizenship if they are born or found in the territory of the Slovak Republic and their parents are not know and it is proved that the child did not acquire another state citizenship by birth. â ¶ Children acquire Slovak citizenship also if it is proved later that their parent is not a Slovak citizen.</p> <p>3. Neither the Migration Office of the Ministry of Interior of the Slovak Republic, nor the Bureau of Border and Alien Police has a specific procedure to determine nationality.</p> <p>4. The Bureau of Border and Alien Police did not register any case of a stateless minor.</p> <p>5. a. Nationality is determined only within other procedures, there are no separate proceedings to determine nationality. During judicial proceedings, this is within the competence of the Ministry of Justice of the Slovak Republic who is responsible for the appointment of a guardian and in case of administrative proceedings, the Ministry of Interior is the responsible authority. However, there have not been yet any proceedings to determine nationality. b. See above - there are no separate proceedings to determine nationality. c. See above - there are no separate proceedings to determine nationality.</p>

Slovenia	Yes	<p>1. Not specific document is issued.</p> <p>2. Any child born or found in the territory of the Republic of Slovenia shall be granted citizenship of the Republic of Slovenia if their parents are unknown, of unknown citizenship, or stateless. If parents cannot transfer their citizenship to their child, child shall be granted citizenship of the Republic of Slovenia due to Convention on the Rights of Child.</p> <p>3. A same determination procedure is foreseen for adult and unaccompanied minor.</p> <p>4. No such data available.</p> <p>5. a.) For each unaccompanied minor the guardian is appointed and he/she is responsible to providing him/her support and help also during procedure for determination of nationality. b.) Yes if necessary a legal representatives is appointed as well. c.) Guardian or/and legal representatives.</p>
Sweden	Yes	<p>1. Documents are not provided, unless the child is granted residence permit in Sweden.</p> <p>2. The child can not obtain Swedish nationality based on the principle of ius solis. She/he will be considered stateless.</p> <p>3. a. No b. Yes When it comes to citizenship, special rules apply for children who are stateless and born in Sweden. The main objective in Sweden is to avoid children becoming stateless. For this reason, a stateless child that is born in Sweden can become a Swedish citizen by submitting a notification. The child can become a Swedish citizen through notification if the child has a permanent residence permit, right of residence or residence card in Sweden and has lived in Sweden with a residence permit for settlement for three years or, if the child is stateless, for two years and has not turned 18.</p> <p>4. NA</p> <p>5. a. Yes b. Yes c. The burden of substantiating a claim lies with the claimant (in these cases, the child). The effects of the child's age, maturity, ability to recall events, and potentially limited knowledge of the asylum process are taken into consideration when assessing the child's claims.</p>
United Kingdom	Yes	<p>1. If the child is also recognised as a stateless person and meets the requirements for a grant of stateless leave they will be granted leave to remain. All applicants aged six or over are required to give their biometrics. These will be scans of all fingerprints and a digital photograph. Applicants who are under six are not required to provide their fingerprints. All migrants granted leave to remain are issued with a Biometric Residence Permit (BRP) as evidence of their leave in the UK.</p> <p>2. Those born in the UK before 1 January 1983 (apart from a few exceptions) automatically acquired British citizenship, regardless of their parent's immigration status at the time of birth. Under the British Nationality Act 1981 a person born in the UK on or after 1 January 1983 can only acquire British citizenship at birth if, at the time of their birth, either parent is a British citizen or is settled in the UK. See http://www.legislation.gov.uk/ukpga/1981/61 A child born in the UK may have an entitlement to British citizenship if: either parent becomes a British citizen or settled in the UK before the child reaches the age of eighteen; or he or she lives in the UK for the first ten years of his or her life. and he or she is and has always been stateless, is under the age of 22 and has lived in the UK for a continuous period of five years. There is also the option to register a child under 18 as a British citizen at the Home Secretary's discretion.</p>

Ad-Hoc Query:
Statelessness: minors born in exile
and unaccompanied minors (part 2)

		<p>3. The UK uses the same determination procedures as for adults. There is no separate procedure for children, however the UK government is committed to ensuring that the rights and welfare of children are safeguarded. The Asylum Policy Instruction Statelessness and applications for leave to remain (2016) explains: Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. Caseworkers must not apply the actions set out in this guidance either to children or to those with children without considering the individual circumstances of the case and the impact on children. The instruction 'Every Child Matters - Change for Children' sets out the key principles to take into account. The statutory duty to children includes the need to demonstrate that applications are dealt with in a timely and sensitive manner where children are involved. In accordance with the UN Convention on the Rights of the Child (UNCRC) and the Supreme Court judgment in ZH (Tanzania) (FC) (Appellant) v SSHD, the best interests of the child are a primary consideration, although not necessarily the only consideration, when making decisions affecting children. This applies whether the child is the direct subject of the application, or an adult applicant is the primary parent or guardian of a child in the UK, or has genuine and subsisting family life with a child in the UK. Article 7 of the UNCRC provides that children have the right to a nationality. Children, especially unaccompanied children, may face acute challenges in communicating basic facts about their nationality. Close attention must always be given to the welfare and best interests of the child when considering their nationality status and potential that they may be stateless. This involves the same procedural and evidentiary safeguards for child claimants as apply in asylum claims, including priority processing of their claims and the provision of appropriately trained interviewers, legal representatives and interpreters, where an interview is undertaken. It also requires the caseworker to assist in the determination of statelessness by making enquiries which the child is not in a position to undertake. Consideration of the welfare and best interests of the child also applies where a child is included as a dependant in a stateless leave application. Ultimately, whether or not parents or children are stateless is a mixed assessment of fact and law. Where statelessness is accepted for any members of the family and the question of admissibility is at issue, whilst the best interests of any children will be a primary consideration, a decision as to whether or not they qualify for leave under stateless provisions will depend on whether they are admissible to another country for purposes of permanent residence there. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501509/Statelessness_AI_v2.0_EXT_.pdf</p> <p>4. We do not record this information in a manner that would enable accurate data to be provided.</p> <p>5. a. No. An application for Nationality can be made by a parent/guardian on behalf of the child. Children who are in the care of the local authority will be represented by them. b. No. There is no legal aid for citizenship applications. c. The standard of proof in establishing nationality is balance of probabilities. The Immigration Act 1971 puts the burden of proving a status on the applicant or claimant. Section 3(8) of the 1971 Act, as amended, provides that: "When any question arises under this Act whether or not a person is a British citizen [or otherwise has the right of abode] ... it shall lie on the person asserting it to prove that he is."</p>
Norway	Yes	<p>1. Norwegian Immigration Authorities have no special arrangements in place for issuing documentation to stateless children in the described situation. If such a family applies for asylum, their claims will be considered on the basis of all information and documentation provided in their case. Are they recognized as refugees according to the Norwegian Immigration Act section 28 and otherwise meet the criteria, they may be granted refugee travel documents according to section 64, subsection 1. Lack of documentation like a birth certificate for a child will be considered in light of all the circumstances of the case, including any given explanation. Should they be denied asylum but granted residence permits on humanitarian grounds, they may be granted immigrant's passports according to subsection 2, provided the criteria there are met.</p>

2. A foundling who is discovered in the territory of Norway is a Norwegian national until it is otherwise established. However, the Norwegian Nationality Act does not provide for (automatically) granting Norwegian nationality to children born stateless in the territory of Norway.
3. We have no special determination procedure for nationality/statelessness for either adults or minors. Determinations of nationality for asylum applicants are done as part of the ordinary evaluations of evidence in such cases. Account shall, however, be taken of the fact that the claimant is a child, see section 28 of the Norwegian Immigration Act, subsection 3.
4. Norway has statistics on accompanied, and unaccompanied minors: stateless asylum seekers 2012-2015: see attached document.
5. As stated above under 3, Norway has no determination procedure designated to determining nationality/statelessness for either adults or minors. Nationality is determined as part of the regular determinations of whether a claimant fulfills the criteria for protection.
 - a. The county governor appoints a representative for an unaccompanied minor that applies for protection. The representative shall safeguard the minor's interests in the asylum case and otherwise perform such duties that are imposed on a guardian.
 - b. Unaccompanied minor applicants for protection have the right to free legal advice during the asylum procedure.
 - c. In general, the asylum applicant has the burden of proof. Burden of proof is, however, shared by the authorities. If the claimant risks persecution/serious harm if his claim is believed, the standard of proof (regarding facts) is generally met if the claim appears to be reasonably likely. As mentioned under Q.3 above, it will be taken into account whether the applicant is a child or not.

