Acquis or not acquis: statelessness in the context of forced migration

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Abstract: In all the complexity of issues arising in the context of forced migration, statelessness remains a hidden phenomenon. Yet, this violation of the human right to a nationality should be equally understood as a consequence of, or a catalyst for conflicts, crises and forced displacement.
Despite unresolved endemic statelessness in certain EU member states, most of the legislation provides safeguards related to prevention; thus, it should not be possible to be born stateless in the 'area of freedom, security and justice'. The external cases not covered by prevention mechanisms are more complex, especially when they complicate asylum procedures and throw a shadow on what might come after: from family reunification to potential return. The question arises is to what extent the EU can address statelessness in the context of forced migration. The answer might concern various aspects on governing through uncertainty arising from ambiguity related to competences of the EU in the question to uncertain status of persons concerned.
Within the framework of the notion of *de jure* statelessness, and comparing the four EU national systems, the paper would aim to identify the policy (in)coherence between the EU and Member States and the policy gaps in addressing statelessness, in particular arising within the context of forced migration. Departing from the ambitious UNHCR's intent to bring an end to statelessness by 2024, the paper would aim to explain the necessity of the 'right to have rights' in the area of free movement and would focus on what can be done by the EU to show its welcoming of the UNHCR campaign on the policy level.

Keywords: Statelessness; forced migration; European Union; CJEU

1. Introduction.

Remaining in shadow of other disciplines and gradually established as a separate research area1, statelessness imperceptibly appeared in a wider public discussion long after gaining its distinctive place in academia. The situation of Rohinghya refugees and the people of India's north-eastern state of Assam attracted international attention in 2019, while the outbreak of COVID-19 crisis later on only aggravated the situation. Territorial shifts in conflict-affected areas, the growing risk of climate change-related movement caused by disappearing island states2, and other factors contributing to forced displacement occur in the context

[1] See M. Manly, L. Van Waas, *The State of Statelessness Research. A human Rights Imperative*, in 19 *Tilburg Law Review* 1-2, 2014, 3-10.
[2] J. McAdam, *Climate Change-related Displacement of Persons*, in K. R. Gary, R. Tarasofsky, C. Carlane (Eds), *The Oxford Handbook of International Climate Change Law*, Oxford, 2016.

of securitization of migration, while the worldwide changes anticipate legislative developments. Against this backdrop, the phenomenon of statelessness, invisible as stateless persons in a citizen register, becomes more apparent. The legal vacuum, which represents the gravest violation of human right to a nationality, gradually emerges on the policy-making agenda.

Considering the instances of unresolved endemic statelessness, the question is whether the European Union can address *de jure* statelessness in the context of forced migration, given the fact that this context retains a prominent place on the political scene. Acknowledging the methodological challenges of interdisciplinary research, this paper limits its scope to mainly legal analysis. Aiming to identify policy (in)coherence between the EU and its Member States and the policy gaps in addressing statelessness, the paper compares four legal systems: German, Italian, Hungarian and Polish. The data for the case studies is derived from the Statelessness Index[3] – a comparative tool established and managed by the European Network on Statelessness.

Notwithstanding uncertainty in governance raising from the complex issue of EU competence that is not explicitly listed in the 'catalogue' of the Treaty of the Functioning of the European Union[4], up to the uncertainty of the status of the persons concerned with a great variability depending on the legal systems, there is a space to regulate. An analysis of the fragmentation of policies and actions across the EU Member States indicates possible field for supranational or intergovernmental action. The approximation of certain parts of the legislation, such as statelessness determination procedures, might be addressed at the EU level. In spite of an apparent lack of EU competences in the field of nationality, there are both international obligations and a legal basis which empowers the EU to take an active role in addressing statelessness.

The UNHCR-defined framework includes 10 actions to end statelessness, however not all of them relate to statelessness in the context of forced migration. An overview of the selected EU Member States requires narrowing the actions described by UNHCR. The present paper thus structures the analysis around the policies related to the prevention of new cases of statelessness from emerging, and to the identification and protection of stateless persons. In these areas subject-matter uncertainty may be resolved with tangible harmonised measures.

Prior to analysing the cases of the selected Member States, the paper first describes the international legal framework and the EU's place in it, including the judicial developments that limited an absolute state discretion in nationality matters. After reviewing the policies of the chosen countries related to statelessness prevention, and to statelessness determination procedures, the paper concludes on the necessity to achieve the Sustainable Development Goals' (SDG)

[3] Statelessness Index, available at https://index.statelessness.eu/, accessed on 7-7-2020.
[4] See Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU), art. 3-6.

16.9 target to enable the 'right to have rights' defined by Hanna Arendt nearly seven decades ago.

2. Understanding statelessness in the context of forced migration.

The complexity of statelessness requires an interdisciplinary approach. Although international law provides a definition of a 'stateless person', there is no exhaustive formal definition of statelessness *per se*, as there is arguably no universal understanding of this phenomenon. Academic discussions highlight two major terms – *de jure* (by law) statelessness and *de facto* (by fact) statelessness.

A *de jure* stateless person, as defined in the United Nations Convention relating to the Status of Stateless Persons (hereinafter: 1954 Convention) stipulates that 'the term "stateless person" means a person who is not considered as a national by any State under the operation of its law'. *De facto* statelessness is a wider concept, with an ambiguous definition because of the absence of a clear legal framework unifying its usage[5]. It may be described as an 'ineffective citizenship' – in cases when a person possesses a nationality[6] of a state, but is not able to access protection of this state and resides outside of its borders. The context of forced migration sets the stage for both notions; however the paper focuses on *de jure* statelessness to avoid disproportionate conceptualization.

Paradoxically, just as in the case of nationality, statelessness can be both inherited and acquired. And as the opposite side of citizenship, statelessness is broadly perceived as a consequence, source or a catalyst of human rights violations. Stateless persons are not only deprived of freedom of movement, they usually cannot access healthcare or education, inherit or buy property, find official employment or register a marriage.

The main causes of statelessness include issues with nationality laws (gaps or discriminatory provisions[7]), geopolitical changes (shifting borders, state successions), migration-related outcomes (conflicting principles of citizenship acquisition[8], issues arising from problems with birth registration) and deprivation of citizenship (denationalisation).

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[5] J. Tucker, *Questioning de facto Statelessness by Looking at de facto Citizenship*, in 19 *Tilburg Law Review* 1-2, 277 (2014).

[6] Terminological differences between 'citizenship' and 'nationality' are widely discussed (cf. B. Manby, *Citizenship in Africa The Law of Belonging*, Oxford, 2018; O. Vonk, *Dual nationality in the European Union : a study on changing norms in public and private international law and in the municipal laws of four EU member states*, Leiden, 2012). While acknowledging the complexity of this deliberation, the subject matter discussed in the present paper does not allow for a detailed examination, thus, both notions would be used interchangeably.

[7] For example, gender-based discriminatory provisions in 25 counties that do not allow women to transfer nationality to their children, see: UNHCR, *Background note on Gender Equality, Nationality Laws and Statelessness 2019*, 2, available at www.refworld.org/pdfid/5c8120847.pdf accessed on 7-7-2020.

[8] *Jus soli* ('right of the soil') and *jus sanguinis* ('right of blood') are the principles of citizenship acquisition in different jurisdictions. In cases when a child born in the country with *jus sanguinis* principle from parents who are citizens (or non-citizens) of *jus soli* jurisdictions, a risk of statelessness arises, as the citizenship is not granted automatically.

Each of the above-mentioned causes may be relevant in the context of forced migration, whether statelessness occurred before or after displacement. At the same time, the attempts to measure the size of the stateless population traditionally lead to a dichotomous division: *in situ* stateless and stateless migrants[9]. And whether addressing statelessness within the former category is 'superficially' subjected to improving legislation of the country in question as to allow for nationalisation of its endemic stateless persons, the latter is perceived as a greater challenge, coming from external countries. Both of them, however, represent a grave human rights violation that should be addressed at all possible levels.

A historical analysis of the development of the UNHCR mandate to address statelessness may indicate that those two categories are interlinked, despite the apparent differences in possible policy responses. In the last century, dual nationality was regarded as an equally negative phenomenon as statelessness[10], with the development in human rights law the former became increasingly tolerated[11], whereas the latter, being a violation of a human right to a nationality, gained a greater degree of attention. In 1995, nearly four decades after the adoption of the 1961 Convention on the Reduction of Statelessness (hereinafter 1961 Convention), UNHCR assumed its global mandate to address statelessness. This did not happen during the Cold War, however the reluctance of the international community to confer a global mandate to UNHCR diminished due to emergence of statelessness cases in Eastern Europe[12]. Thus, it may be concluded that a situation of *in situ* stateless population rather than a situation of stateless migrants became a trigger for the international community to provide UNHCR with a greater role in nationality-related issues.

Nearly two decades after assuming its global mandate, UNHCR issued the *Global Action Plan to End Statelessness*[13]. The document features ten actions to end statelessness, which may be divided among four main topics: resolving existing situations; preventing new ones, identifying and protecting stateless persons. Acknowledging the limitations of the scope of the paper deriving from the context of forced migration and the general topic of the special issue which reflects on the idea of governing through uncertainty, the further analysis focuses on the actions

[9] Institute on Statelessness and Inclusion (ISI), The World Conference on Statelessness, Grand Challenge 5 Session, 26 – 28 June, the Hague, the Netherlands, available at www.institutesi.org/conference accessed on 7-7-2020.
[10] See e.g. League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930 in League of Nations, 179 Treaty Series 4137, 89, available at: https://www.refworld.org/docid/3ae6b3b00.html accessed on 7-7-2020.
[11] O. Vonk, *Dual nationality in the European Union: a study on changing norms in public and private international law and in the municipal laws of four EU member states*, Martinus Nijhoff Publishers, Leiden, 2012,157.
[12] M. Seet, *The Origins of UNHCR's Global Mandate on Statelessness*, in 28 *International Journal of Refugee Law* 1, 23 (2016).
[13] UNHCR, *Global Action Plan to End Statelessness*, 2014, available at www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html accessed on 7-7-2020.

and possible policy responses related to prevention, identification and protection. The action concerning resolving statelessness relates mostly to *in situ* stateless population, as the goal of the action was defined in the document as 'all major non-refugee stateless situations resolved'[14].

By analysing compatibility of the accomplishments in addressing statelessness, it would be also possible to draw a parallel with the SDGs. One of the targets of Goal 16 aims at providing 'legal identity for all, including birth registration'.

a. Legal framework.

Admittedly, determining individual statelessness is the mixed question of fact and law[15]. Institutional effectiveness, however, relies on clear guidelines and legal coherence, thus sociological, psychological and anthropological perspectives are not discussed in detail within the scope of this paper, in spite of their utmost importance in statelessness research.

Notwithstanding the fact that legal certainty is not the only component required to comprehensively address statelessness, a clear legal framework is indispensable to do so.

The main pillars in international law – the 1954 and 1961 Conventions contain the crucial provisions, however their impact is limited because of the low amount of countries that ratified them and because of the lack of monitoring mechanism to support their implementation[16]. The impact of regional instruments, such as the European Convention on Nationality (hereinafter ECN) or the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession encounter the same limitations: a lack of enforcement mechanisms and a low number of ratifications. In spite of these obstacles, the Council of Europe contributed to the development of regional customary law, for example by advancing the principle of gender non-discrimination in citizenship laws[17]. Growing concern about the problem of statelessness and denial of nationality led the Member States of the African Union to the initiation of the *Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*[18] .

[14] *Ibidem*, 7.
[15] B. Manby, *Citizenship in Africa The Law of Belonging*, Oxford, 2018, 20.
[16] F. Costamagna, *Statelessness in the context of state succession*, in A. Annoni, S. Forliati (Eds), *The Changing Role of Nationality in International Law*, London and New York, 2013, 39.
[17] O. Vonk, *Dual nationality in the European Union: a study on changing norms in public and private international law and in the municipal laws of four EU member states*, Leiden, 2012, 90.
[18] African Union, *Draft Protocol to the African Charter on Human And Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*, 2018, available at www.achpr.org/public/Document/file/English/draft_citizenship_protocol_en_sept2015_achpr.pdf, accessed on 7-7-2020.

The document is ambitious in many aspects[19], however its impact would only be possible to evaluate upon implementation, which may encounter the same obstacles as the other regional instruments.

b. The EU context.

The potential role of the EU in addressing *de jure* statelessness seems marginal, as the competence on citizenship matters has not been conferred to the EU by its Member States. 'There are no signs that the EU aspires to acquire competences in this field, but the call for minimum harmonization in the academic literature is becoming louder'[20].

With the case-law of the Court of Justice of the European Union (CJEU), there were few developments regarding EU citizenship. First established in the Treaty on European Union[21], signed in Maastricht[22] on 7 February 1992 (Official Journal C191, Vol.35, 1992), the citizenship of the European Union, with its rights and obligations failed to become a component of a dual citizenship[23] evolved into something that Kristīne Krūma described as 'belonging beyond the state'[24]. Judicial developments, starting from pre-EU citizenship period with *Micheletti* case[25] were continuously, but fragmentarily restricting the absolute state discretion in the nationality matters. Whereas in 1992 the European Court of Justice (ECJ) ruled that (…) '*it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality*'[26], nearly two decades after, in the *Rottmann* case[27], the ECJ ruled that modalities of

[19] E.g. by widening a definition of statelessness: 'stateless person" means a person who is not considered as a national by any State under the operation of its law, including a person who is unable to establish a nationality'; by potentially simplifying procedures by using 'habitual residence' instead of adopting the terms related to 'legality of stay', or 'appropriate connection' instead of 'genuine link".

[20] O. Vonk, *Dual nationality in the European Union: a study on changing norms in public and private international law and in the municipal laws of four EU member states*, Leiden, 2012, 160-161.

[21] Art. 17 EC began with the establishment of the Citizenship of the Union, which was followed by its definition. In the current wording (art. 9 TEU), which begins with the EU obligation to observe principle of equality of its citizens, it is defined as follows: "Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship".

[22] The Maastricht Treaty of 7 February 1992, *Official Journal* C191, vol. 35, 1992.

[23] Art. 5 of the preliminary draft Constitutional Treaty, drawn up by the Presidium (CONV 369/02, Brussels, 28 October 2002 OR.fr) defined Union citizenship as 'every citizen of a Member State is a citizen of the Union; enjoys dual citizenship, national citizenship and European citizenship; and is free to use either, as he or she chooses; with the rights and duties attaching to each' (cf. H. Van Eijken, *European Citizenship and the Competence of Member States to Grant and to Withdraw the Nationality of Their Nationals, Merkourios*, 27 *Utrecht Journal of International and European Law* 72, 66 [2010])

[24] K. Krūma, *EU Citizenship, Nationality and Migrant Status An Ongoing Challenge*, Leiden, 2014, 412.

[25] EJC, 7-7-1992, C-369/90, *Micheletti and Others v. Delegación del Gobierno en Cantabria.*

[26] Case C-369/90, para 10.

[27] EJEU, 2-3-2010, C-135/08, *Rottmann.*

de-naturalisation that may put a person at risk of loss of EU citizenship and statelessness '*falls, by reason of its nature and its consequences, within the ambit of European Union law*'[28]. In 2017, in the case *Staatssecretaris van Veiligheid en Justitie*[29], the CJEU ruled on the application of the provision related to stateless minors, and opted for teleological interpretation. Two years later, with the *Tjebbes* case[30], the CJEU had another opportunity to pronounce in nationality matters. The latter case has not resurrected the concept of independence of EU citizenship from the national citizenship, which was buried in the early stages of the EU Constitution project. However, the fact that yet another example contributed to the EU case law on nationality matters, may be relevant in statelessness matters with further juridical developments. Arguably, the case *Staatssecretaris van Veiligheid en Justitie* might become acknowledged as one of the landmark cases related to statelessness in the context of forced migration.

Within the broader context of international law, the EU had several attempts to show its involvement in addressing statelessness. The pledge, made by the EU Delegation to the United Nations in 2012[31], included an entire paragraph (out of four in the section on 'strengthening the rule of law at the international level') dedicated to addressing the issue of statelessness. Interestingly enough, the formulation used in the document – 'the European Union and its Member States' - implies that the question concerned shared competences, otherwise it would have been formulated in a different manner ('the European Union' in the domain of EU exclusive competences and the 'Member States of the European Union' for the domains that do not fall under EU competences). Three years later, the pledge has been referred to in the Council conclusions[32]. The promise by the 'EU Member States which have not yet done so' to ratify the 1954 Convention and to consider the ratification of the 1961 Convention was recalled in the Council document. The *note verbale* and the Council conclusions – both non-legally binding documents, have not produced immediate results. As of mid-2020, among the EU Member States, there were only 20 ratifications of the 1961 Convention and 24 ratifications of the 1954 Convention (whereas Cyprus, Estonia and Poland have not acceded to it[33]). Nevertheless, several practical implications occurred, such as transforming the already existing

[28] C-135/08, para 42
[29] EJEU, 12-4-2018, C-550/16, *A and S.*
[30] EJEU, 12-3-2019, C-221/17, *Tjebbes and Others.*
[31] Delegation of the European Union to the United Nations, *Pledge registration form of the European Union and its Member States*, New York, 19 September, 2012, 3, available at www.un.org/ruleoflaw/files/Pledges%20by%20the%20European%20Union.pdf, accessed 7-7-2020.
[32] Press release 893/15: Conclusions on statelessness adopted by the Council and the Representatives of the Governments of the member states, 2015, available at www.consilium.europa.eu/en/press/press-releases/2015/12/04-council-adopts-conclusions-on-statelessness/, accessed 7-7-2020.
[33] Noteworthy is the fact that Malta accessed the treaty in 2019, while the United Kingdom has withdrawn from the European Union, thus leaving the number of EU Member States – parties to the 1954 Convention unchanged.

European Migration Network into a platform to exchange best practices between the Member States related to *i.a.* statelessness determination procedures, followed by two comprehensive publications on the matter.

A study commissioned by the European Parliament's Policy Department for Citizen's Rights and Constitutional Affairs at the request of the LIBE Committee[34] outlined the major possible legal basis for EU action in the field of statelessness. Within three different (joint) provisions of TFEU[35], two of them may be applicable in the context of forced migration. The study pointed to art. 78 TFEU, which determines the procedure for adopting legislation in the field of common policy on asylum, subsidiary and temporary protection, and art. 79 TFEU, which allows the EU to legislate on the EU immigration policy. Legal basis to legislate on identification and protection of stateless persons was found in art. 67(2) TFEU, and art. 352 TFEU could be relied on as an additional legal basis. Recommendations to initiate a European Union directive on statelessness determination procedures, however, did not result in any visible action as of mid-2020.

Furthermore, according to art. 205 TFEU, EU external action should be guided by the principles laid down in art. 21 TEU that include 'the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the United Nations Charter of 1945 and international law', thus, statelessness matters, as a considerable human rights concern, might be included in the EU's external agenda.

The focus of the paper is, however, on the domestic scene, which requires a closer look to the situation in the Member States.

3. Comparative observations in selected Member States.

In order to assess the (in)coherence between the EU Member States and to identify policy gaps in addressing statelessness, it is indispensable to understand three layers of the subject: firstly, the international legal framework, *i.e.* adherence to relevant international and regional instruments, secondly, whether the relevant provisions were incorporated into national legislation, and thirdly, whether the allegedly implemented mechanisms work in practice.

Studying each state of the EU to give a detailed picture of the general situation would be excessive for the purposes of this paper. Moreover, limitations related to data availability create a significant obstacle. Nevertheless, a comparison of more than two countries may already give an indication whether statelessness-

[34] European Parliament, DG for Internal Policies, Policy Department Citizens' Rights and Constitutional Affairs, *Practices and Approaches in the EU States to Prevent and End Statelessness*, G-R. De Groot, K. Swider, O. Vonk, study for LIBE Committee, 2015, available at www.europarl.europa.eu/RegData/etudes/STUD/2015/536476/IPOL_STU(2015)536476_EN.pdf, accessed 7-7-2020.
[35] *Ibidem*, 54.

related policies are coherent across the EU. Relying on data, available through the instrument created by the European Network on Statelessness (INS), namely Statelessness Index (hereinafter SI) as of mid-2020, the paper compares the main instruments related to addressing statelessness (and their implementation) in four countries. Within the forced migration context, the main thematic areas selected from UNHCR's *Global Action Plan* relate to the prevention of new cases of statelessness and the identification and protection of stateless population. Diversity of legislation (or gaps in legislation) complicates the comparison of countries, thus countries with a similar (lack of) statelessness determination procedures would point out to the main challengers better than the ones with different legislation and practices. Germany, Hungary, Italy and Poland were also chosen because of their significance as transit or destination countries notably after the beginning of the Syrian Civil War which caused mass displacement through *i.a.* the Eastern Mediterranean route from 2011 onwards. Prior to the outbreak of the conflict, Syria (being also one of the 25 countries with gender-based discriminatory provisions in its nationality laws) had more than 800,000 stateless individuals residing at its territory composed mainly of Kurds from the Hassaka Governorate and stateless Palestinian refugees[36].

During the Ministerial Intergovernmental Event on Refugees and Stateless Persons in 2011, Hungary was the most 'generous' in pledges concerning (legislative) steps to address statelessness (UNHCR, 2012, p.81), while the pledges of Germany did not concern the issue of statelessness *per se*[37], and Italy and Poland did not make any pledge on the occasion of the UNHCR ministerial meeting in question. The European Union stated its commitment 'to support UNHCR efforts and to prevent and end statelessness in compliance with the principles of the 1961 Convention on the Reduction of Statelessness'[38]. Nearly a decade later, the four EU Member States exposed differences in their approach to the issue of statelessness.

a. International and regional instruments.

As of mid-2020 and considering the 1954 and 1961 Conventions as a starting point, Germany, Italy and Hungary were parties to both of them, while Poland was not a State Party to either. As to the regional instruments, the only relevant document in question which was signed, but not ratified by Poland, was the ECN. According to the SI, Germany retained two reservations to 1954 Convention

[36] Institute of Statelessness and Inclusion, European Network on Statelessness, SteunpuntVluchtelingen (ASKV), *From Syria to Europe: Experiences of Stateless Kurds and Palestinian Refugees from Syria Seeking Protection in Europe*, 2019, 8, available at www.institutesi.org/resources/from-syria-to-europe-experiences-of-stateless-kurds/, accessed on 7-7-2020.
[37] UN High Commissioner for Refugees (UNHCR), *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, 85, available at: www.refworld.org/docid/50aca6112.html, accessed on 7-7-2020.
[38] *Ibidem*, 70.

related to administrative measures (identity papers) and social welfare. Italy and Hungary, in turn, did not have any significant reservations to the main UN instruments. However as to the regional instruments, the former has signed, but not ratified the ECN, whereas the latter had major reservations concerning the acquisition of Hungarian nationality. Germany, being a State Party to the ECN, kept significant reservations allowing for de-nationalisation.

Further analysis should be done through the prism of the adherence or lack of ratification of the relevant international and regional instruments, as the selected countries perform differently depending on their international commitments.

b. Prevention.

In the chosen Member States, across the elements possible to compare as to prevention of the new cases of statelessness to occur, the context of forced migration implies the following categories out of the wider selection available in the SI: stateless born on territory, foundlings, access to birth registration, late birth registration and reduction of the risk of statelessness.

A comparison between those categories in these four counties may suggest that the efforts to prevent statelessness and to reduce the risk of statelessness are mixed. The least ambiguous cases relate to the foundlings – in all four domestic legal systems foundlings acquire citizenship (with a minor reservation in Italy, which does not create an obstacle in practice of the application of law). The situation is different for stateless persons born on the territory of the respective countries, as only Italian law contains a possibility for a child of stateless parents or parents who cannot confer their nationality, to acquire citizenship at birth, and even that provision is not implemented automatically. Thus, legislation of all the four countries contains gaps that might allow for childhood statelessness.

The situation is even more aggravated concerning access to birth registration and late birth registration, where only Poland does not have legal obstacles or practical barriers in both cases. Access to sound birth registration procedures are crucial in preventing and eradicating statelessness. For instance in Germany, which is perceived as a destination country, in spite of procedural possibilities to obtain late birth registration, there are practical obstacles to accomplish it.

As regards to the reduction of the risk of statelessness, in all for countries there is no evidence of any government campaigns to promote civil birth registration.

The common feature between the selected countries is not only an absence of exhaustive legal mechanisms that would allow for full prevention of the statelessness cases and reduction of the risk of statelessness, but also in case of the existence of such procedural safeguards, their application might encounter obstacles.

c. Identification and protection.

In the context of forced migration, given the low rate of adherence to the main international instruments on statelessness, protection of stateless individuals may happen the framework of the provisions in national law deriving from transposition of the 1951 Convention relating to the Status of Refugees (hereinafter 1951 Convention). Even the definition of a refugee in the 1951 Convention contains a reference to statelessness: '(…) *who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*'. Moreover, there are limitations of protection on the basis of the 1954 Convention, such as a lack of non-penalisation for unauthorised entry and lack of *non-refoulement*[39]. However, the modalities of transposition of the 1951 Convention vary from country to country, and cannot fully address the peculiarity of a legal vacuum created by statelessness. Asylum procedures should not replace statelessness determination procedures, not only because the status of a stateless person does not necessarily derive from forced displacement. The establishment of a statelessness status might be decisive in asylum procedure and in what might come after: from family reunification to potential return.

Hungary and Italy both have statelessness determination procedures. In case of the former, it derives out of secondary law, but is narrower than in the 1954 Convention. In case of the latter, it is based on the direct effect of the 1954 Convention, which has, however, a vague implementation in practice. Protection during the procedure is highly limited in Hungary and inconsistently applied in Italy. Access to citizenship for recognised stateless individuals, despite the reduction of years prior to naturalisation, retains considerable practical obstacles.

In Germany and Poland, where there is no statelessness determination procedure as such, protection is limited. Although the definition of a stateless person in German law is in line with the 1954 Convention (as opposed to Poland, where there is no definition of a stateless person in the law), in the both countries a 'tolerated stay' is the maximum level of protection, which enables access to a right to work, social assistance and healthcare in Poland, and basic assistance and restricted employment in Germany.

d. Sustainable Development Goal 16.9: 'provide legal identity for all, including birth registration'.

The EU's policies and actions supporting specific SDG 16 targets include both external and internal aspects. However contributions to the 16.9 target focus mainly on the former[40]. A description of the general legal framework and of the

[39] cf. ISI, *op.cit.*, Grand Challenges 5: *Foster Informed Decisions and Actions.*
[40] The three main components include European neighbourhood instrument, Instrument for pre-accession assistance (IPA II) and Integration of non-EU nationals (cf. European

EU's competences in the field allows for the identification of the reasons of that approach. A comparative analysis of a selection of EU Member States' legislation results in a nuanced understanding of the fragmentation of the system across several policies, from the prevention of new statelessness cases to the identification and protection of stateless persons.

Regardless of the interpretation of the concept of 'legal identity' and its components, there is already a clear diversity in the practices related to birth registration in the selected Member States. As the above comparison has shown, not only the (lack of) adherence to key international instruments differs across the countries, but also the practical obstacles in obtaining legal status, even if it concerns a status of a *de jure* stateless person, should be taken into consideration while assessing the access to legal identity.

Providing legal identity would be a first step, or even the main step to grant the 'right to have rights' to the ones who are stateless, and whose numbers are growing.

4. Conclusion.

Statelessness remains a hidden phenomenon among the challenges caused by forced displacement. International recognition of the necessity to address this legal vacuum led to the adoption of instruments that have, however, a limited impact. The 1954 and 1961 Conventions have not been ratified by a significant amount of the countries, including by several EU Member States.

Given the apparent lack of competence in Member States' nationality matters, the role of the EU in addressing statelessness in the context of forced migration seems to be negligible. This impuissance is not constant: not only has the CJEU pronounced on a number of cases related to citizenship, therefore restricting absolute state discretion in the matter, there are also provisions in the Treaties related to immigration and asylum that might serve as a legal basis for the EU involvement in statelessness issues.

Considering the context of forced migration, a comparative analysis of the legal framework and practice related to prevention of new causes of statelessness and identification and protection of stateless persons in four selected Member States showed a lack of coherence in addressing statelessness in the EU. The case studies of Germany, Italy, Hungary and Poland illustrated gaps in the legislative framework related to statelessness. Imperfect legislation combined with an inconsistent application of the law may imply a possibility of being born stateless in the 'area of freedom, security and justice'. A lack of harmonized statelessness determination procedures allows for incoherence in the identification of statelessness and further obstacles in the protection of stateless persons. Even without thorough conceptualisation of 'uncertainty', entire matter reflects

Commission, Sustainable Development Goals), therefore only the latter refers to internal measures.

ambiguity of statelessness in the context of forced migration. The paper shows that the lack of nationality matters in the 'competence catalogue' does not and should not prevent the EU from governance in statelessness-related fields.

In order to follow the commitments made on the international level (including the pledges to the UN and willingness to contribute to achievement of the SDGs), the action is indispensable from the side of both the EU and its Member States. The former, having a transparent legal basis to initiate relevant legislation, should aim at addressing incoherence on the policy level. The Member States should put in place, or improve statelessness determination procedures in order to change the issues arising from invisibility of the problem and to guarantee sufficient level of protection to both *in situ* stateless population and to stateless migrants. Securing legal certainty for *de jure* stateless individuals, even if provided by a well-defined status of a stateless person, allows for an increase in human rights standards for those who are invisible.

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