



## Identifying stateless persons in the European Union.

Intervention by Vincent Cochetel, UNHCR Director of the Bureau for Europe, on the occasion of the meeting of the Strategic Committee on Immigration, Frontiers and Asylum in Brussels, 25 April 2017.

Ladies and gentlemen,

On behalf of the UN High Commissioner for Refugees, I would like to thank the Maltese Presidency for tabling this important but often misunderstood and underreported topic today.

I will start by telling you about **Roman** who came to our attention through the European Network on Statelessness. He was a stateless person in the EU. Roman's father was from the former Yugoslavia and his mother was from the former Soviet Union. He never acquired the nationality of one of the successor States. He arrived in an EU Member State in Central Europe in the early 1990s. He did not qualify for refugee status or any other form of protection. As there was no protection mechanism in place for stateless persons, he stayed unlawfully in the country. He lived on the streets and was not allowed to work legally or to access the national health insurance scheme. The EU Member State never managed to deport him to any country despite several attempts. He was arrested over 25 times, and spent days, weeks and months in immigration detention on about seven occasions. In the 20 plus years that he lived in this EU Member State, they never regularized his situation. He and his partner of 15 years, a national of the EU Member State, were never allowed to marry because Roman lacked any identity document. He died destitute and desperate in 2015.

Late 2015, we welcomed the first ever **Council Conclusions** on statelessness<sup>1</sup> and its call for action to EU Member States to identify and protect stateless persons. We have worked closely with the European Migration Network to follow-up on these conclusions and will continue to do so, in the context of UNHCR's Global Campaign to end Statelessness by 2024. When discussing statelessness with EU Member States, we sometimes face questions and comments that indicate **a lack of awareness of the impact of statelessness and why this is a concern in the EU**. A stateless person is someone without a nationality.

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<sup>1</sup> Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness, 04 December 2015, available at <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04-council-adopts-conclusions-on-statelessness/>

Someone who is told that he or she doesn't belong anywhere, in any country.

Today, I would like to use this opportunity to remind ourselves of the main **reasons why it is important to identify stateless persons** and the risk of statelessness among refugees and migrants in the EU. You will see that it is important not only because it is in their own interests, but also **because it is in the interests of the State**. I will also elaborate on the **problems we have identified throughout the EU** that impede the protection of stateless persons and the prevention of statelessness. And I will finish by sharing some **recommendations for EU Member States** and the EU to tackle this human rights problem.

## 1. REASONS TO IDENTIFY STATELESS PERSONS

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So why should we care? And how is it **in the interests of the State** to identify stateless persons among refugees and migrants in the EU?

First of all, simply because stateless persons are here, in the EU. They may not let their voices be heard and they may not be visible, but stateless persons like Roman are here, among us, **in every single EU Member State**. And it is in the interests of the State to **understand exactly who is on their territory**.

### Stateless refugees

Many stateless persons have arrived in the EU fleeing war, conflict and persecution, and are seeking asylum. Among them are Kurds, Bidoon, Rohingya or persons of mixed Ethiopian and Eritrean descent, to name a few. The biggest group of asylum seekers recorded as stateless by EU Member States are of Palestinian origin. The data shown in this graph<sup>2</sup> shows that the number of first time asylum applicants in the EU recorded as stateless has gone up from 3,190 in 2012 to 19,065 in 2015 and 9,950 in 2016. It is important to identify and acknowledge the **statelessness of asylum applicants as this may be essential when assessing their asylum claim**. It may explain their well-founded fear of persecution. In addition, statelessness is a relevant fact to be aware of once the situation in the country of origin changes and **cessation of refugee status and voluntary repatriation** are envisaged. Whether someone is stateless or a national of that country impacts their protection prospects in the country of origin, and their possibility of return.

### Stateless non- refugees

While many stateless persons in the EU benefit from refugee status or subsidiary protection, every EU Member State also has **stateless persons on its territory who do not qualify for protection** on these or any other ground in national law.

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<sup>2</sup> See Annex 1: Asylum applications by stateless persons in EU Member States (2012 to 2016).

**If there is no proper identification and protection mechanism in place specifically for stateless persons, they are likely to seek protection through the asylum system anyway, even if they have no fear of persecution.**

Of all the stateless persons we have spoken to in Europe, the vast majority has gone through one or several asylum procedures. Even if they had no objective reasons to do so, it was the only way for them to try to find protection, in the absence of protection mechanisms for stateless persons. Upon one or several failed asylum procedures, they may have received deportation orders that could not be implemented. They may have turned to unlawful employment because they were unlawfully on the territory. They risked exploitation and abuse. They may have been arrested repeatedly and detained for longer periods for failing to return to a country that does not consider them as one of their own.

While I am aware that Member States face difficulties with **uncooperative migrants** who refuse to return to their countries of origin, most of the stateless persons that UNHCR and our partners have met present a **fundamental difference**. They had only one wish: to be allowed to live in a country that they can call home, whether in the EU or anywhere else in the world where they previously resided.

Stateless persons who turn to procedures that will not provide them with a solution creates an **unnecessary burden on the asylum and immigration systems** in the EU Member States. It negatively affects the **efficient management of these systems**. It raises the question of the **additional costs on national administrations** who don't adequately identify and protect stateless persons, like the costs of complex, lengthy and repeated asylum procedures and the costs of detention. And I am not even mentioning the **effect that a life in limbo has on the stateless individuals themselves**.

Instead of letting them waste their lives and unnecessarily burden the national administrations, we have a duty to protect stateless persons and to give them a chance to contribute to the societies they live in. Due to the very nature of their predicament, most stateless persons are here for the longer term. **Ignoring the problem doesn't make it go away.**

In addition to these reasons for properly identify stateless persons in the EU, allow me to also draw your attention to the **real risk of creating statelessness** within the EU if preventive action is not taken.

Statelessness is **passed on from generation to generation** if nobody breaks the cycle. Stateless parents give birth to stateless children in the EU. Similarly, children may be born stateless in Europe to refugee or migrant mothers who cannot transfer their nationality. As you may know, Syrian and Iraqi women, and

women from other 24 countries in the world are not allowed under the nationality laws of their countries to pass on their nationality to their child as men do. These children born stateless in an EU Member State may be entitled to acquire a nationality under the nationality law of the country of birth. It is therefore important to be aware of the risk of statelessness when working with refugees and migrants in the EU. **Again, ignoring the problem will not make it go away.**

## 2. CHALLENGES & GAPS

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While there are many reasons and even international obligations for EU Member States to identify and protect stateless persons, we are aware of a number of challenges and gaps in this regard. They include the following:

### Lack of clear data

There is a **lack of clear data** on stateless persons in Europe, mainly because of the problematic recording of statelessness in the different migration contexts. This has also been raised as a concern in the recent Communication from the European Commission “*on the Protection of Children in Migration*”<sup>3</sup>. UNHCR reports approximately 400.000 stateless persons in the EU but the mapping studies that we and our partners have carried out in at least half the EU Member States show a wide **diversity in registration practices between authorities and between countries, as well as gaps**. This number includes a large number of persons in Latvia and Estonia, considered to be ‘non-citizens’ or ‘persons with undermined nationality’ who enjoy rights above those foreseen in the 1954 Convention. We also noticed that nationality verification efforts, supported by Frontex for example, are often focused on assigning the person a nationality, while the person may come from a certain country but not be a national of that country.

Some countries record someone as stateless based on that person’s claim. Other countries only record someone as stateless based on documentary evidence of their statelessness, which is virtually impossible to do for stateless persons who are asked to prove a negative. Yet in other countries there simply is no practical possibility to register someone as stateless under the ‘nationality’ category. The increased number of asylum applicants recorded as stateless that I mentioned earlier comes from only 15 EU Member States in 2016. **Thirteen countries did not report any stateless asylum applicants while it is highly likely that stateless persons also sought asylum there.**

This leads to the situation where stateless persons end up being recorded as nationals of the country they fled, or under a category like ‘nationality unknown’.

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<sup>3</sup> Communication from the Commission to the European Parliament and the Council, *The protection of children in migration*, COM(2017) 211 final, 12 April 2017, available at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412\\_communication\\_on\\_the\\_protection\\_of\\_children\\_in\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf)

Indeed, **the data<sup>4</sup> shows an almost tenfold increase of the number of persons seeking asylum being recorded as nationality unknown, in 14 EU Member States using this category.** The number went from 2,400 in 2012 to over 20,000 in 2016. We are not saying that all these persons are stateless but we do raise the question: who are these people, can their nationality, or lack thereof, be clarified? These are potentially complex cases for whom it is difficult to determine the country of origin. They deserve proper measures to assess their situation, instead of parking them in a rest category.

#### Lack of dedicated statelessness determination procedures

These gaps related to data collection. We also see problems around **a lack of dedicated procedures** that provide solutions for stateless persons. Twenty four of the twenty eight EU Member States have committed themselves to protecting these persons by becoming State Parties to the 1954 Convention relating to the Status of Stateless Persons. Only Cyprus, Estonia, Malta and Poland have not done so yet. In order to be able to know who should benefit from the protection of this Convention, States should know who the stateless persons are in the territory. As mentioned earlier, only a handful of countries in the EU operate a statelessness determination procedure that allows to clarify someone's statelessness, or nationality for that matter. These procedures result in a protection status for identified stateless persons, allowing access to rights under the 1954 Convention. We describe these countries in our Good Practices Paper on statelessness determination procedures<sup>5</sup>. In the EU, they include France, Spain, Italy, the UK, Hungary and Latvia. In most EUMS, stateless persons have no way of being identified as such and accessing protection.

#### Misunderstandings

**Another misunderstanding** is that we are sometimes told by our interlocutors that stateless persons can access rights **under alternative statuses, which are variants of the so-called 'tolerated stay'**. We see however that these procedures lack the adequate safeguards to ensure the proper identification of all stateless persons. In addition, generally, the rights granted to persons with tolerated stay provide a level of protection that is below the minimum standards of the 1954 Convention.

Last but not least, we are concerned about the **lack of awareness and understanding** of statelessness and of the risks thereof among staff who work with refugees and migrants. This includes police and border guard officials, asylum authorities, staff and deployees of Frontex and EASO, civil registry officials, NGOs, lawyers and interpreters, and even our own UNHCR colleagues.

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<sup>4</sup> See Annex 2: Asylum applications by stateless persons and persons with unknown nationality in EU Member States (2012 to 2016).

<sup>5</sup> UN High Commissioner for Refugees (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>

This leads to misconceptions around the implications of protecting stateless persons in the EU. Countries fear they will be flooded by persons claiming protection as stateless persons or that all those whose asylum claim fails will turn to the statelessness determination procedure.

The experience in the handful of countries that operate statelessness determination procedures shows that this fear of a **pull factor** is unfounded. Data<sup>6</sup> shows the significant number of refugees and the relatively small and manageable numbers of stateless persons in the UK, France, and Hungary, all EU Member States that have a statelessness determination procedure in place.

### 3. SO WHAT SHOULD BE DONE?

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**First of all**, States should **improve their registration systems** from the onset of the migration cycle to allow statelessness to be recorded. It should be possible everywhere to record someone as stateless based on the claim of the person, just as nationality is now recorded based on someone's claim. The implementation of the Eurodac regulation and the work towards a common EU registration system should take into account this reality.

**Second**, to verify and determine whether someone is indeed stateless and requires protection on that ground, States should **establish dedicated procedures**. Doing so will not open the floodgates and it will not block the immigration systems. On the contrary, it will give clarity to the State on who is on their territory and to the individuals concerned. It will avoid situations like that of Roman where stateless persons are stuck in a vicious circle and do become a burden on the State.

Experience from a few Member States shows that **establishing a procedure does not have to be a complicated nor costly matter**. With a few efforts, it can be incorporated in existing legislation on foreigners or migration, and in existing immigration bodies. States can learn from the peers, learn from those few countries that do have a procedure in place. We therefore call **on Cyprus, Estonia, Malta and Poland** to accede to the 1954 Convention and on all EU Member States to ensure that stateless persons enjoy their basic human rights.

I'd like to ask you, what EU Member States have done since the adoption of the Council Conclusions in 2015. The initiatives of the European Migration Network are welcome but it is the **EU Member States themselves that need to take action to resolve statelessness. What do you intend to do?** Will you include the recording of statelessness in the new Eurodac regulation and an upcoming

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<sup>6</sup> See Annex 3: Refugees and stateless persons in France, Italy and the United Kingdom in 2014, 2015 and Mid-year 2016.

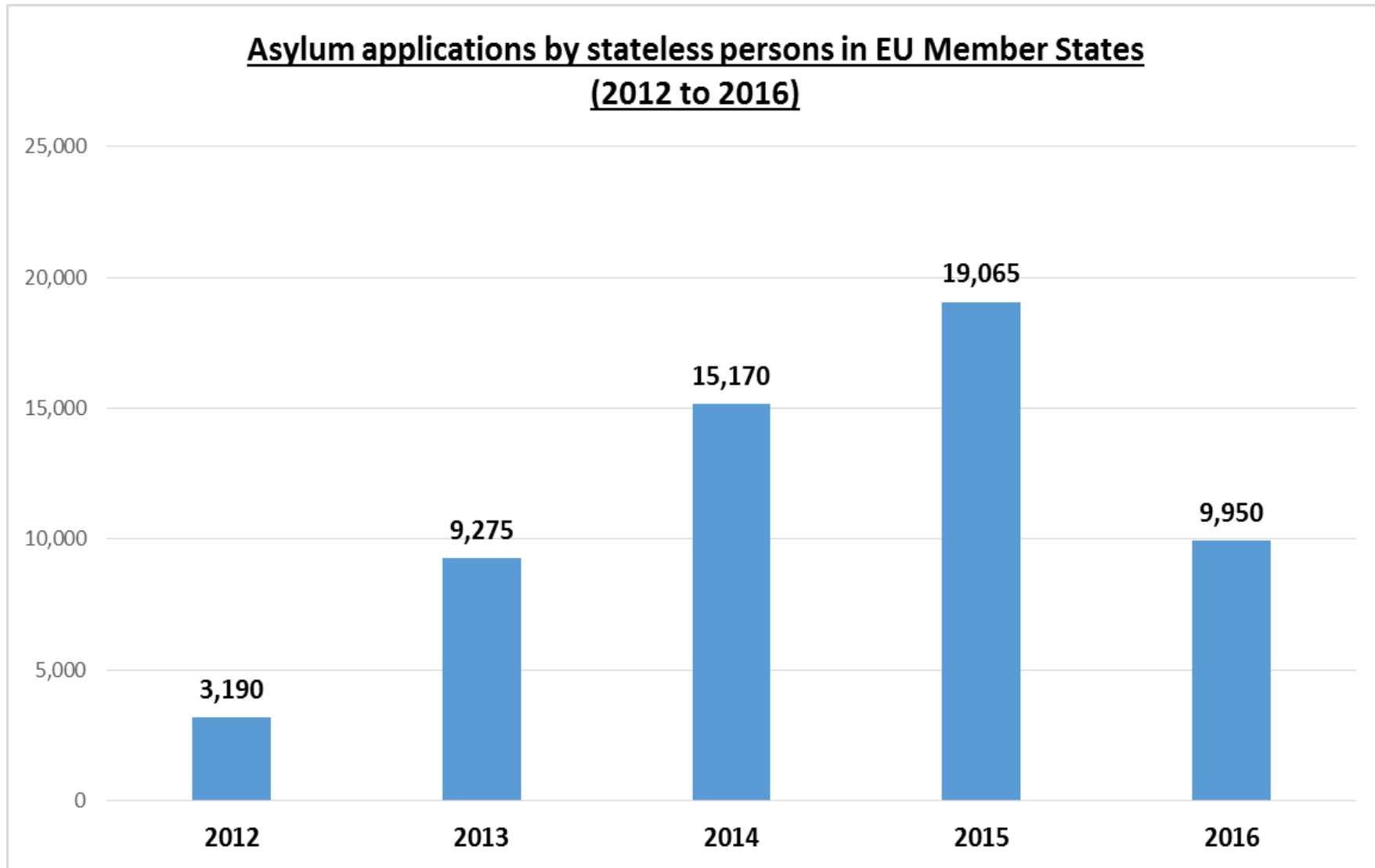
common registration system? Will you make sure that stateless persons arriving on the shores of Greece and Italy are identified as such from the onset?

UNHCR is ready to provide support to those EU Member States willing to improve their registration systems, and will ask **Eurostat, EASO and Frontex** to contribute to the process in their respective capacities. We are ready to support those EU Member States that are willing to establish a procedure, as we have done in recent years in Bulgaria and the Netherlands for example. **Solving statelessness is 90% political will, 10% action.** Despite the fact that identifying stateless persons is in the interest of States as well as the individual, at the moment, the political will is the main ingredient that is missing in the remaining EU Member States.

Stories of stateless persons like Roman who live a life of despair and destitution in the EU are not unique. We receive *kafkaesque* and shameful testimonies from all over the Union. We all have a moral obligation to do something about it. I count on your support and commitment to end this anomaly in the European Union in the years to come.

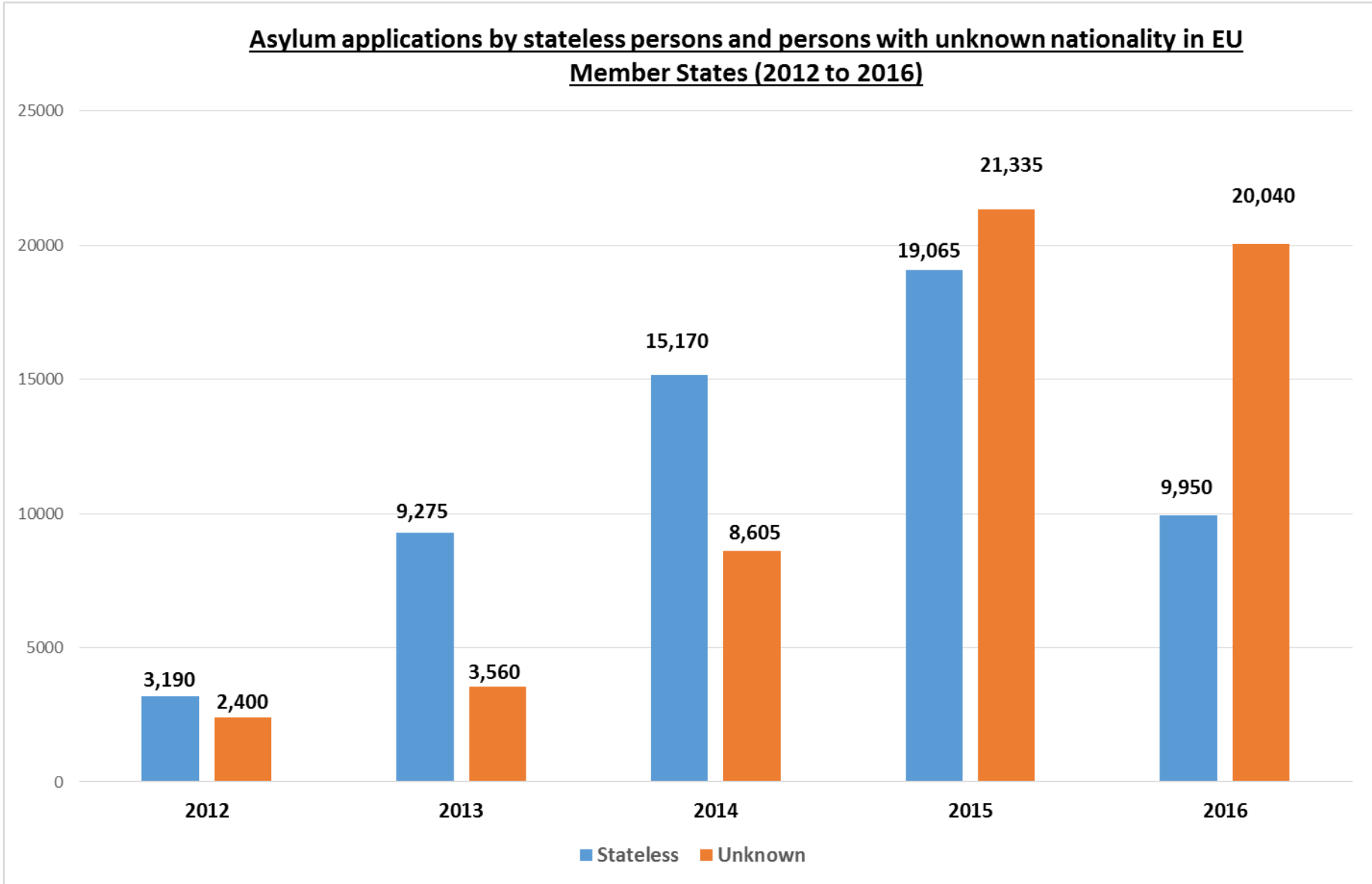
Thank you for your attention.

**Annex 1:** Asylum applications by stateless persons in EU Member States (2012 to 2016), source: eurostat.





**Annex 2:** Asylum applications by stateless persons and persons with unknown nationality in EU Member States (2012 to 2016), source: eurostat.



**Annex 3:** Refugees and stateless persons in France, Italy and the United Kingdom in 2014, 2015 and Mid-year 2016, source: UNHCR.

