

UNHCR Observations on the Legislative Proposals in the Report “The Pact on Migration and Asylum”

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) would like to thank the Government of Sweden for the invitation to provide observations on the legislative proposal in the report, “The Pact on Migration and Asylum” (“Migrations- och asylopakten”, Ds 2025:30) – hereafter referred to as the “Proposal”.¹
2. UNHCR has a direct interest in law proposals in the field of asylum, as the agency entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.² Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,³ whereas the 1951 Convention relating to the Status of Refugees⁴ and its 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Convention”) oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol).⁵ The General Assembly has also entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and for preventing and reducing statelessness.⁶
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and

¹ Ministry Publications Series, “The Pact on Migration and Asylum”, Ds 2025:30, Full report (in Swedish): [Migrations- och asylopakten, Ds 2025:30](#).

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V) <https://www.refworld.org/docid/3ae6b3628.html> (“the Statute”).

³ Ibid, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, pp. 7-8, October 2002 <https://www.refworld.org/reference/research/unhcr/2002/en/86884>.

⁴ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189 <https://www.refworld.org/legal/agreements/unga/1951/en/39821>. According to Article 35(1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

⁵ UNHCR’s supervisory responsibility has also been reflected in European Union (“EU”) law, including by way of general reference to the 1951 Convention in Article 78 (1) of the Treaty on the Functioning of the EU.

⁶ UNGA Resolutions A/RES/49/169 of 23 December 1994, A/RES/50/152 of 21 December 1995, and A/RES/61/137 of 19 December 2006. The 1995 resolution endorses UNHCR’s Executive Committee Conclusion No. 78 (XLVI), *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, 20 October 1995, <http://www.refworld.org/docid/3ae68c443f.html>.

subsequent Guidelines on International Protection (“UNHCR Handbook”).⁷ With respect to statelessness, guidelines are included in the UNHCR Handbook on Protection of Stateless Persons (UNHCR Handbook on Statelessness).⁸ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of forcibly displaced and stateless persons.

II. General observations

4. The stated aim of the Swedish Government with the present report is to analyse the need to adapt Swedish law to implement the legal acts of the European Union Pact on Migration and Asylum (EU Pact). The stated aim is further to propose legislative measures deemed necessary for the effective and appropriate application of the legal acts, with the starting point that it should not go beyond the minimum level required under EU law.⁹
5. As mentioned in the Proposal, some of the provisions of the EU Pact have already been addressed in other Swedish legislative proposals. For example, the interim report “Cancellation of the permanent residence permit and amendment of relevant Swedish regulations to meet the minimum level required under EU law”¹⁰ assessed, among other things, the need for amendments to Swedish law in relation to the provisions of the EU Pact concerning legal advice and legal assistance and representation. UNHCR has already provided law comments¹¹ to the interim report which remain valid.
6. In the following observations on specific aspects of the Proposal, UNHCR will focus its comments on the following issues: a) screening and identification of persons with vulnerabilities b) statelessness determination procedure c) accelerated and border procedures d) detention and restrictions of movement in the context of border procedures and e) detention of children. UNHCR’s concluding recommendations are set out in Section IV. of this submission.

⁷ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4

<https://www.refworld.org/policy/legalguidance/unhcr/2019/en/123881>.

⁸ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014,

<https://www.refworld.org/policy/legalguidance/unhcr/2014/en/122573>

⁹ Proposal, p. 223.

¹⁰ Swedish Government Official Reports, “Cancellation of the permanent residence permit and amendment of relevant Swedish regulations to meet the minimum level required under EU law”, SOU 2025:31 Full report (in Swedish): [Utmönstring av permanent uppehållstillstånd och vissa anpassningar till miniminivån enligt EU:s migrations- och asylopakt, SOU 2025:31](#).

¹¹ UNHCR, *Observations on the Legislative Proposals in the interim Report “Cancellation of the permanent residence permit and amendment of relevant Swedish regulations to meet the minimum level required under EU law”*, 18 June 2025, <https://www.refworld.org/legal/legcomments/unhcr/2025/en/150306>.

III. Specific observations

a. Screening and identification of persons with vulnerabilities

7. According to the Proposal, both screening authorities, namely the Swedish Police Authority and the Swedish Migration Agency, will carry out the vulnerability checks. The Proposal notes that these authorities have competence related to detecting vulnerabilities. It further explains that the Swedish Migration Agency's staff should be considered specialised in accordance with Article 12(3) Screening Regulation, due to their experience in investigating an applicant's grounds for asylum, e.g. through the asylum interview. UNHCR recalls that screening authorities should receive training and capacity building to ensure they are able to appropriately identify vulnerabilities. UNHCR underscores the importance of investments in adequate resources and specialised expertise regarding, for example, medical, mental health and psychosocial services, gender-based violence prevention and response, and child protection – to enable the effective identification of vulnerabilities.¹²
8. UNHCR recalls that an initial vulnerability screening must be complemented with an in-depth vulnerability assessment as foreseen in the Asylum Procedure Regulation and Reception Conditions Directive. Notwithstanding references to 'visible signs' and to statements made by the applicant, UNHCR cautions that vulnerability assessments should not be limited to a superficial examination, which would entail a risk of failing to identify non-visible specific needs.¹³ UNHCR further recalls that the absence of self-declaration should not prevent nor discourage any further attempts to identify vulnerabilities. Therefore, UNHCR recommends that persons subject to the screening procedure are given the possibility to disclose their protection needs at any stage of the procedure.

b. Statelessness Determination Procedure

9. The Screening Regulation mandates preliminary vulnerability checks by trained personnel to identify individuals who may be stateless.¹⁴ UNHCR notes that the definition of a stateless person set out in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons (hereinafter referred to as the "1954 Convention"), as well as Article 2(5) of the Screening Regulation and Article 3(15) of the Asylum Procedure Regulation¹⁵, has

¹² Ibid, p. 3.

¹³ UNHCR, *UNHCR Advocacy Brief: Screening and identification of persons with vulnerabilities under the European Union Pact on Migration and Asylum*, September 2025, <https://www.refworld.org/legal/intlegcomments/unhcr/2025/en/150580>.

¹⁴ European Union: Council of the European Union, European Union: European Parliament, *Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817*, 32024R1356, 14 May 2024, <https://www.refworld.org/legal/reglegislation/council/2024/en/148013>, Recital 37 and Article 12(3).

¹⁵ Further see European Union: Council of the European Union, European Union: European Parliament, *Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU "Asylum Procedure Regulation"*, 32024R1348, 14 May 2024, <https://www.refworld.org/legal/reglegislation/council/2024/en/148004>, Recital 24: "Member States should

not been incorporated into Swedish legislation and is not addressed in the Proposal. UNHCR therefore recommends that Sweden incorporates the international legal definition of a stateless person into its national legislation to ensure consistent identification, and appropriate referral to the statelessness determination procedure.

10. UNHCR notes that statelessness can significantly affect asylum claims, especially when linked to persecution or serious rights violations, such as denial of nationality based on ethnicity, religion, or social status. Identifying statelessness is essential not only for accurate asylum assessments but also to ensure access to rights under the 1954 Convention, particularly for those who do not qualify for refugee or subsidiary protection. Sweden does not have a dedicated statelessness determination procedure with the relevant burden and standard of proof that considers the difficulties inherent in proving statelessness. This leads to inconsistent outcomes in registering stateless persons and contributes to the high number of persons, mainly children, being registered as having an “unknown” nationality. Further, statelessness in itself is not considered a legal ground to grant a residence permit and stateless people are unable to enjoy the rights stipulated in the 1954 Convention. UNHCR thus recommends that Sweden introduce a dedicated referral mechanism to ensure that individuals who are identified as potentially stateless are systematically referred to an appropriate procedure to have their status determined and are able to effectively access the rights afforded to them under the 1954 Convention.

c. Accelerated and Border Procedures

11. The Proposal provides that the application of border procedures should not be limited to the situations in which they are mandatory under the Asylum Procedure Regulation but also be extended to all situations in which they may be applied.¹⁶ Furthermore, the Proposal introduces an exemption to applying border procedures where “exceptional circumstances” apply. According to the Proposal, such an exemption should be able to address both individual and practical or organizational circumstances. This could be the case if there is a significant increase in the number of people seeking international protection in Sweden within a short period of time, technical or logistical problems and security-related events, as well as reasons attributable to the applicant that are particularly noteworthy and that do not fall within the exceptional provisions of the Asylum Procedure Regulation.¹⁷
12. UNHCR recalls that under the Asylum Procedure Regulation, border procedures are, in many cases, also accelerated procedures. Member States should restrictively interpret grounds for including cases in accelerated procedures and apply a low threshold to redirect cases to the regular procedure on the basis of complexity. Such an approach would enhance the efficiency of accelerated procedures by focusing on the most simple and

respect their international obligations towards stateless persons, in accordance with international human rights law instruments including where applicable under the Convention relating to the Status of Stateless Persons, signed in New York on 28 September 1954. Where appropriate, Member States should endeavour to identify stateless persons and strengthening their protection thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment.”.

¹⁶ The Proposal, p. 39 and pp. 363-370.

¹⁷ The Proposal, pp. 363-370.

straightforward cases, while protecting applicants whose claims are not suited for accelerated processing.

13. Under the Asylum Procedure Regulation, border procedures must cease to apply if the national authorities consider “necessary support” cannot be provided to applicants with special procedural guarantees or applicants with special reception needs.¹⁸ The Proposal does not elaborate on how to interpret “necessary support”. In UNHCR’s view, the provision of “necessary support” for certain groups with specific protection needs, such as survivors of trauma or trafficking, persons with psychosocial or intellectual impairments, and unaccompanied or separated children would, in practice, be extremely difficult to ensure within the framework of accelerated or border procedures. Accordingly, UNHCR considers that such applicants should be automatically exempted from border procedures.¹⁹
14. The Proposal further introduces the concept of the so-called “legal fiction of non-entry” in line with the Screening Regulation and the Asylum Procedure Regulation. During the screening and border procedure, key guarantees under the Common European Asylum System remain applicable, including provisions in the Reception Conditions Directive and certain provisions of the Return Directive. It is important to emphasise that international and EU legal obligations, including the 1951 Convention, the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights, also remain applicable to persons who are undergoing screening or to whom the border procedure applies. UNHCR therefore encourages Sweden to make these legal obligations explicit in the legal text and accompanying guidance.

d. Detention and Restrictions of Movement in the context of Border Procedures

15. The Proposal introduces a new detention ground in Swedish legislation in the context of border procedures which corresponds to Article 10(4)(d) of the Reception Conditions Directive. UNHCR welcomes that the Proposal explicitly states that detention should not be used automatically for persons directed to the border procedure.²⁰ When detention is applied in the context of border procedures on an individual basis, it must comply fully with the procedural guarantees and reception standards set out in EU and international law. This includes ensuring that detention is based on a legal ground, is necessary, reasonable, and proportionate, and that it follows an individual assessment. Before resorting to detention, less restrictive alternatives must be thoroughly considered.²¹

¹⁸ European Union: Council of the European Union, European Union: European Parliament, *Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU "Asylum Procedure Regulation"*, 32024R1348, 14 May 2024, <https://www.refworld.org/legal/reglegislation/council/2024/en/148004>, Article 21(2), 53(2)(c) & 53(2)(b).

¹⁹ UNHCR, *UNHCR Advocacy Brief: Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum*, September 2025, <https://www.refworld.org/legal/intlegcomments/unhcr/2025/en/150579>.

²⁰ The Proposal, p. 827.

²¹ UNHCR, *UNHCR Advocacy Brief: Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum*, September 2025, <https://www.refworld.org/legal/intlegcomments/unhcr/2025/en/150579>.

16. The Proposal further foresees that asylum applicants within the border procedure are only allowed to stay at a specific location decided by the Swedish Migration Agency. According to the Proposal, decisions imposing such restrictions on movement are not subject to appeal.²²
17. UNHCR underscores that the decision to impose restrictions on an applicant's freedom of movement must be taken on an individual basis, taking into account all relevant aspects of the individual's situation including any specific reception needs, and must comply with the principle of proportionality.²³ Applicants must be informed of such decision in writing, with reasons set out in fact and law (if applicable), the consequences of non-compliance, and the procedures for challenging the decision. Moreover, this information must be provided in a language that the applicant understands.²⁴ UNHCR also underlines that, in line with Article 29 of the Reception Conditions Directive, any decision regarding restrictions on freedom of movement must be subject to the right to appeal.
18. Furthermore, it is important to note that restrictions to freedom of movement should not amount to de facto detention as a result of their intensity or cumulative effects. Such measures must comply with the principles of necessity and proportionality.²⁵

e. Detention of Children

19. According to the Proposal, the detention of children for immigration-related purposes should continue to be a possibility in Sweden. The maximum duration for detention of children stated in the Proposal is 12 days.²⁶
20. UNHCR's position is that children should not be detained for immigration related purposes, irrespective of their legal/migratory status or that of their parents, as detention is never in their best interests.²⁷ When children are accompanied by family members, appropriate accommodation should be provided that allows families to remain together, without resorting to detention.²⁸

²² The Proposal, pp. 809-811.

²³ European Union: Council of the European Union, European Union: European Parliament, *Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) "Reception Conditions Directive"*, 32024L1346, 14 May 2024, <https://www.refworld.org/legal/reglegislation/council/2024/en/148002>, Article 9(4).

²⁴ European Union: Council of the European Union, European Union: European Parliament, *Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) "Reception Conditions Directive"*, 32024L1346, 14 May 2024, <https://www.refworld.org/legal/reglegislation/council/2024/en/148002>, Article 9(5). Also see Article 29.

²⁵ UNHCR, *UNHCR Advocacy Brief: Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum*, September 2025, <https://www.refworld.org/legal/intlegcomments/unhcr/2025/en/150579>.

²⁶ The Proposal, pp. 819-844.

²⁷ UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, <https://www.refworld.org/policy/legalguidance/unhcr/2017/en/115250>.

²⁸ UNHCR, *UNHCR Advocacy Brief: Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum*, September 2025, <https://www.refworld.org/legal/intlegcomments/unhcr/2025/en/150579>.

21. UNHCR further wishes to highlight that all appropriate alternative care arrangements should be considered in the case of children, not least because of the well-documented deleterious effects of detention on children's well-being, including on their physical and mental development.²⁹ Studies have indicated that detention of children can undermine their psychological and physical well-being and compromise their cognitive development.³⁰ Furthermore, children held in detention are at risk of suffering from depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. There is strong evidence that detention has a profound and negative impact on children's health and development, regardless of the conditions in which children are held, and even when detained for short periods of time or with their families. The risk of exposure to others forms of harm, including sexual and gender-based violence, are also significant in many detention contexts.³¹
22. Therefore, UNHCR recommends that Sweden refrains from detaining children due to their status of displacement or statelessness or that of their parents.

IV. Concluding recommendations

23. Based on the above observations, UNHCR invites the Government of Sweden to consider the following recommendations:
- a. Ensure that screening authorities are equipped with adequate resources and specialized expertise, including in areas such as medical, mental health and psychosocial care, gender-based violence prevention and response and child protection, as these competencies are essential for accurate vulnerability identification and appropriate referral;
 - b. Guarantee that individuals subject to the screening procedure are given the opportunity to disclose protection needs at any stage of the procedure, recalling that the absence of self-declaration should never prevent nor discourage further efforts to identify vulnerabilities;
 - c. Incorporate the international legal definition of a stateless person as set out in Article 1(1) of the 1954 Convention, into all relevant national legislation to ensure consistent identification, referral to the relevant determination procedure and access to rights under the 1954 Convention;
 - d. Establish a dedicated statelessness determination procedure;

²⁹ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776>, para. 53.

³⁰ Human Rights Watch has documented, over more than 10 years in Europe and beyond, serious violations of children's rights arising from immigration detention of children; highlighting that children may be arbitrarily detained, held in cells with unrelated adults, and subjected to brutal treatment by police, guards and other authorities and are often held in poor conditions that fall far short of international standards governing appropriate settings for children deprived of their liberty, <https://www.hrw.org/topic/childrens-rights/refugees-and-migrants>.

³¹ UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, <https://www.refworld.org/policy/legalguidance/unhcr/2017/en/115250>.

- e. Exempt survivors of trauma or trafficking, persons with psychosocial or intellectual impairments, and unaccompanied or separated children from accelerated and border procedures, recognizing that “necessary support” for these groups cannot, in practice, be provided within such procedures;
- f. Include explicit reference in the legislative text and accompanying guidance to the continued applicability of international and regional legal obligations regarding the legal fiction of non-entry, during the screening and border procedure;
- g. Ensure that decisions imposing restrictions on freedom of movement are subject to the right to appeal;
- h. Ensure that decisions regarding restrictions on freedom of movement are provided in writing, taken on an individual basis, take into account the relevant aspects of the applicant’s situation including any specific reception needs, and comply with the principle of proportionality;
- i. Ensure that restrictions on freedom of movement do not amount to de facto detention;
- j. Refrain from detaining children on the basis of their own displacement or statelessness, or that of their parents.

24. UNHCR remains ready to continue supporting the Ministry of Justice and other competent authorities through technical advice, capacity building, and sustained dialogue throughout the implementation process, to ensure procedures are fair, efficient, and responsive to the specific protection needs of applicants.

UNHCR Representation for the Nordic and Baltic Countries
5 January 2026



UNHCR

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**RE: UNHCR Observations on the legislative proposals in the report
“The Pact on Migration and Asylum”**

Dear Sir/Madam,

The UNHCR Representation for the Nordic and Baltic Countries is pleased to submit to the Ministry of Justice of Sweden its observations on the legislative proposals in the report “The Pact on Migration and Asylum”.

UNHCR appreciates the constructive dialogue with the Swedish Government, and we thank you for your consideration of this important matter. We remain at your disposal for any clarification required.

Yours sincerely,

P.P.

Annika Sandlund
Representative