UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR observations
on the draft Act on Granting International Protection to Foreigners of Estonia
(*Välismaalasele rahvusvahelise kaitse andmise seaduse eelnõu, 25-0698/01*)

I. Introduction

1. These observations are provided by the Representation of the United Nations High Commissioner for Refugees (UNHCR) for the Nordic and Baltic Countries in relation to the draft Act on Granting International Protection to Foreigners (the Bill),[1] which was shared by the Ministry of the Interior of Estonia (MoI) for public consultation on 26 June 2026. UNHCR appreciates the transparent consultation process and the opportunity to provide observations and recommendations for consideration.

2. UNHCR has a direct interest in law proposals in the field of asylum, as the agency entrusted by the United Nations 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 Refugees[4] and its 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as "the 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]

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 subsequent Guidelines on International Protection ("UNHCR Handbook").[6] UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

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[1] Ministry of the Interior, *Draft Act on Granting International Protection to Foreigners (the Bill and the Explanatory Memorandum)*, *Välismaalasele rahvusvahelise kaitse andmise seaduse eelnõu*, reference No 25-0698/01, 26 June 2025, https://eelnoud.valitsus.ee/main/mount/docList/8fe06c71-91d1-44d0-b4a2-85dd9a14669a#RGXCeoIO.

[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*, October 2002, http://www.refworld.org/docid/4fe405ef2.html, pp. 7–8.

[4] UN General Assembly, *Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series*, No. 2545, vol. 189, http://www.unhcr.org/refworld/docid/3be01b964.html. According to Article 35 (1) of the 1951 Geneva 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 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] 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, February 2019*, HCR/1P/4/ENG/REV. 4, https://www.refworld.org/docid/5cb474b27.html.

II. General remarks

4. The Bill aims to align Estonia's international protection legislation with the European Union Pact on Migration and Asylum (EU Pact), replacing the current Act on Granting International Protection to Aliens (AGIPA)[7] and introducing a consolidated legal framework on international and temporary protection. It is accompanied by a comprehensive Explanatory Memorandum[8] and includes amendments to other relevant national legal acts.

5. In line with the objectives of the EU reform, the Bill consolidates and revises national provisions on international and temporary protection procedures. It clarifies the role of state authorities in registration, asylum adjudication, reception, and return processes. It further outlines resettlement and solidarity mechanisms with other EU Member States and sets outs obligations related to reception and integration programmes. Administrative review procedures are aligned with procedural standards and timeframes in the EU Pact.

6. UNHCR welcomes this legislative initiative as a positive step toward enhancing Estonia's refugee protection framework and facilitating the effective implementation of the EU Pact. UNHCR supports protection-sensitive, fair, and efficient procedures, and stands ready to provide technical expertise and engage in further consultations with the Ministry of the Interior and other relevant authorities.

III. Specific observations

Definition of "family member" (§6 and §71 of the Bill)

7. **§6(1)** of the Bill foresees the same definition for family members of applicants (asylum-seekers) and beneficiaries of international protection.[9] In contrast, **§71(1)** of the Bill provides for a different definition of family members for beneficiaries of temporary protection, and in cases involving other close family members, the provision requires that such individuals have lived with and depended on the temporary protection beneficiary in the country of origin.[10]

8. The definition of family members is central to upholding the right to family life and the principle of family unity, which are vital for effective reunification of refugees and beneficiaries of subsidiary and temporary protection. Although temporary protection is designed as a short-term measure, in many cases, there is no meaningful difference in terms of flight experience and protection needs, and in practice it is often applied for extended periods (e.g. the current war in Ukraine). Whilst recognizing that

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[7] Riigikogu (Parliament), *the Act on Granting International Protection to Aliens (AGIPA)*, 14 December 2005, last amendments 06 July 2023, https://www.riigiteataja.ee/akt/106072023119.

[8] See note 1 above, the Explanatory Memorandum to the Bill on Granting International Protection to Foreigners.

[9] See note 1 above: ***§6 Family member: (1)*** *The family members of the applicant and the beneficiary of international protection are: 1) his/her spouse or civil partner; 2) he/she or his/her spouse or registered partner's unmarried and minor child; 3) an unmarried and adult child of his/her spouse or registered partner, if the child is unable to cope independently due to a state of health or disability; 4) a dependent parent or grandparent of his/her spouse or civil partner, if there is no support from other family ties in the country of origin; 5) his/her parent or guardian if the applicant is a minor, unless his/her legal capacity has been extended for the purpose of marriage and his/her spouse is considered to be a member of his/her family; 6) his/her parent or guardian or other family member if the applicant is an unaccompanied minor, unless this would be contrary to the rights and interests of the minor.*

[10] See note 1 above: ***§71 Family reunification (1)*** *A family member of a beneficiary of temporary protection is: 1) his/her spouse or civil partner; 2) he/she or his/her spouse or registered partner's unmarried and minor child; 3) a close relative not listed in points 1 and 2 who lived with and depended on him or her in the country of origin.*

the text of §71(1) of the Bill aligns with Article 15(1) of Council Directive 2001/55/EC ('the Temporary Protection Directive'), UNHCR encourages states to adopt aconsistently broad definition of family members for all international and temporary protection beneficiaries to guarantee equal and effective access to family reunification.[11]

9. The definition of family members refers to married and unmarried children of applicants and beneficiaries of international protection and their spouse or civil partner. However, the Bill nor the Explanatory Memorandum specify whether adoptive, foster, as well as children who are under legal or customary custody are also covered by the definition.[12] UNHCR encourages the Estonian authorities to clarify this matter in the Bill and urges that these groups are included within the definition of family members.

10. Further, **§6(1)(3)** of the Bill provides that an unmarried and adult child is considered a family member if the child is unable to cope independently *due to a state of health or disability.*[13] Whilst recognizing that this aligns with Article 4(2)(b) of Council Directive 2003/86/EC ('the Family Reunification Directive'), UNHCR encourages the Estonian authorities to take a wider view of 'dependency' when defining family members. UNHCR's position is that the concept of dependency is central to the factual identification of family members. However, in UNHCR's opinion, a dependent is someone who depends for their existence substantially and directly on a relative, in particular for economic reasons, but also taking into account material, health-related, social and emotional considerations, as well as cultural norms. Thus, the notion of dependency goes beyond reasons related to health or disability only.

Recommendations:

- Provide for the same definition of family members of applicants for temporary protection, as is the case for applicants for international protection, refugees, beneficiaries of subsidiary.
- Ensure that the definition of children covers all children, included adopted and foster children as well as children under legal or customary custody.
- Widen the description of dependency beyond a state of health and disability to also include material, social and emotional dependency.

Personal data collection, protection and processing (§8 and §9 of the Bill)

11. **§8** of the Bill provides for guarantees related to data protection, confidentiality, and information sharing in the framework of international and temporary protection procedures.[14] The current version of AGIPA explicitly obliges interpreters and other

[11] UN High Commissioner for Refugees (UNHCR), *UNHCR Guidelines on international legal standards relating to family reunification for refugees and other beneficiaries of international protection*, December 2024, paragraph 8, https://www.refworld.org/policy/legalguidance/unhcr/2024/en/149243.

[12] *Ibid*., paragraph 12.

[13] See note 9 above: ***§6 (1) Family member***, under point 3).

[14] See note 1 above: ***§8 Protection of information in temporary protection and international protection proceedings***
(1) The temporary protection and international protection procedures are not public.
(2) Information containing the applicant's data is recognized as information intended for internal use within the meaning of the Public Information Act. The processing of information containing the data of the said foreigner is allowed only for the performance of the tasks prescribed by law.
(3) Forwarding of data collected about the applicant to a foreign country and collection of data about the applicant from a foreign country is allowed for the performance of an obligation arising from an international agreement, European Union law or this Act. When transferring data to a foreign country, it is ensured that the information is not forwarded to the applicant's country of origin.

individuals to maintain confidentiality and comply with personal data protection standards with regard to applicants' information.[15] However, this important safeguard does not appear to be reflected in the Bill.

12. **§9(1-2)** of the Bill authorizes the competent authorities to process the applicant's personal data without their consent and impose the requirement on them to provide such data.[16] The Explanatory Memorandum, referring to Article 1 of *Regulation 2024/1358*, clarifies that direct coercive measures may be used only as a last resort, in line with procedures under the *Law Enforcement Act*.[17]

13. UNHCR acknowledges that asylum-seekers have an obligation and duty to cooperate during asylum procedures. Authorities should collect biometric and other personal data following effective counselling and information provision. Trauma, fear, or cultural misunderstandings may lead to concerns, reluctance or non-cooperation. These factors must be addressed through expert counselling to help applicants understand why biometric and personal data are collected and why compliance matters. When it comes to children, their identification and registration must be done in a child-sensitive and protective manner. UNHCR encourages states to use their discretion to not use coercion to obtain a child's fingerprints and facial images.[18]

14. **§9(4-6)** of the Bill sets out the grounds for restricting an applicant's right to receive information and access their personal data, including data stored in the database.[19] These restrictions limit the data subject's ability to obtain information about how their data is processed, who receives it, whether it has been transferred or breached,

(4) If the data collected in the course of the proceedings for temporary protection and international protection are forwarded to an authority other than that specified in this Act, the obligations arising from subsections (2) and (3) of this section shall also apply to the said authority and its officials and employees.

[15] See note 7 above, AGIPA ***§13 Protection of information in international protection proceedings and temporary protection proceedings***[..] (2) The Police and Border Guard Board, the Ministry of Social Affairs and the agencies within its area of government, the detention centre, the accommodation centre for applicants for international protection, *as well as the interpreter and other relevant persons are required to keep the information they have learned about the applicant confidential and to comply with the requirements for the protection of personal data when processing the personal data of the said foreigner*.[..]

[16] See note 1 above: ***§9 Protection of information in temporary protection and international protection proceedings***
(1) In the course of the procedures provided for in this Law, the competent administrative bodies may process personal data, including special categories of personal data, without the consent of the person.
(2) A foreigner shall be obliged to provide the competent administrative bodies with the information specified in subsection (1) for the performance of the tasks provided for in this Act.[..]

[17] Riigikogu, *Law Enforcement Act*, 23 February 2011, https://www.riigiteataja.ee/akt/114032023029.

[18] UNHCR, *UNHCR Comments on the European Commission Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) - COM (2016) 272*, May 2017, pages 6-8, https://www.refworld.org/legal/intlegcomments/unhcr/2017/en/114509.

[19] See note 1 above: ***§9 Protection of information in temporary protection and international protection proceedings***
[..] **(4)** The data subject's right to receive information and access to the personal data collected about him/her, as well as the right of access to the data entered about him or her in the database, including the procedural file, may be restricted if it may: 1) prevent or impair the prevention, detection, prosecution or execution of a punishment of an offence; 2) harm the rights and freedoms of another person; 3) endanger the security of the Republic of Estonia, another Member State of the European Union, a Member State of the Schengen Convention or a Member State of the North Atlantic Treaty Organization; 4) endanger the protection of public order.
(5) The restriction on disclosure of data specified in subsection (4) of this section applies to the following rights of the data subject: 1) find out about the processing of their personal data, including what personal data is being processed, as well as the method, method, purpose, legal basis, scope or reason for the processing; 2) find out the recipients of their personal data and the categories of personal data disclosed, as well as whether their personal data will be transferred to a foreign country or an international organization; 3) request the restriction of the processing of their personal data; 4) object to the processing of their personal data; 5) become aware of a breach of their personal data.
(6) The restriction on the disclosure of data specified in subsection (4) of this section may also be applied to data received from a foreign state or an international organization.[..]

contrary to the principle of transparency. Such restrictions limit also their ability to object to or request limitations on such processing. More important, if applied broadly the current limitation to the right to receive information may hinder the ability of asylum-seekers to defend their case on appeal, thereby undermining their right to due process.

15. It is important to note that Article 23(2) of the General Data Protection Regulation (GDPR)[20] requires that any legislative measure restricting data subject rights must specify, *inter alia*, the link between the restriction and the specific purpose of processing (Article 23(2)a)), the scope of the restriction (Article 23(2)c)), and the potential risks to the rights and freedoms of data subjects.[21] The Bill's current formulation may fall short of these requirements.

16. Further, as **§9(5)(5)** provides that restrictions on disclosure of data may apply to an applicant's right to become aware of a breach of their personal data. This provision could significantly impair an applicant's ability to mitigate serious risks arising from such a personal data breach.[22]

Recommendations:

- Include in **§8** of the Bill explicit confidentiality obligations for interpreters and other individuals involved in asylum procedures.
- Ensure that biometric and other personal data are collected and processed only after effective counselling, in a manner that is age, gender, and culture-sensitive, respecting the necessary fundamental rights safeguards.
- Do not employ coercive biometric data collection methods with children and require child-sensitive procedures, ensuring that information is provided by appropriately trained officials in child-friendly environments and in line with international child protection standards.
- Revise **§9(4–6)** to ensure Article 23(2) GDPR requirements to link each restriction to a specific processing purpose; define the scope and duration of restrictions; and assess and disclose risks to data subjects' rights and freedoms.
- Ensure transparency in data breaches, uphold individuals' rights to correct or erase inaccurate or unlawfully recorded data, and maintain access to complaint and legal remedies regarding personal data.

Effective legal remedies and legal aid (§15 of the Bill)

17. **§15** of the Bill establishes the framework for state-provided legal aid to asylum-seekers. It is commendable that the provision enhances access of asylum-seekers to legal assistance during the administrative asylum procedure.[23] According to the

[20] GDPR: *Article 70 (1) (e) of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC*, https://gdpr-info.eu/.

[21] European Data Protection Board, *Guidelines 10/202 on restrictions under Article 23 GDPR*, Version 2.1, 13 October 2021, edpb_guidelines202010_on_art23_adopted_after_consultation_en.pdf.

[22] For example, if an applicant's personal data were to fall into the hands of a persecuting agent in their country of origin, broadly interpreted provisions, such as §9(4) and §9(5) (*see note 19 above*), could be used to withhold this information from the affected individual. As a result, the applicant would be unable to take protective measures for themselves or their family members who remain in the country of origin.

[23] See note 1 above: ***§15 State legal aid***
(1) Legal aid is granted to applicants for international protection pursuant to the procedure provided for in the *State Legal*

Explanatory Memorandum, the provision is based on a thorough analysis of the current system and proposes improvements aimed at mainstreaming asylum-seekers into the general legal aid framework, while ensuring quality, independence, effectiveness, and cost-efficiency of legal services.[24]

18. UNHCR appreciates that its comments, suggestions, and relevant materials have been considered and reflected in the Explanatory Memorandum,[25] and wishes to reiterate the importance of accessible, professional, independent, and continuous legal aid throughout all stages of asylum procedures. Given language barriers, limited knowledge of procedures, and the short timeframe for appeal, it is important to ensure continuous and efficient legal assistance mechanism for asylum-seekers. Currently, lawyers report difficulties preparing for court hearings due to the limited timeframe and lack of engagement with clients in the first instance, which negatively impacts the ability to adequately prepare for the appeal stage. Additionally, it is important to consider the allocation of sufficient resources to administrative, human, and infrastructure capacity is essential for the effective delivery of qualified legal services.

19. **§15(3-5)** of the Bill specify exceptions to the applicant's ability to access free legal assistance and representation, such as cases where the applicant has sufficient financial means, the appeal lacks a tangible prospect of success, or the application is deemed abusive.[26] UNHCR encourages the Estonian authorities to exercise the discretion provided in the corresponding provisions of Regulation (EU) 2024/1348 ('the Asylum Procedures Regulation') to exclude the category of cases deemed to have no tangible prospect of success from those which may not access free legal assistance and representation. In UNHCR's view, exceptions to the provision of free legal assistance and representation should only be made where the applicant has adequate financial means. To exclude cases where there is 'no tangible prospect of success' suggests a 'merits test' which risks making an essential procedural safeguard dependent on a pre-screening of the case. UNHCR's 2010 APD study highlighted that in some Member States, merit tests were applied in ways which could lead to arbitrary restriction of access to legal assistance on appeal.[27]

Aid Act, taking into account the specifications provided for in this Act.
(2) An applicant for international protection is entitled to state legal aid: 1) to represent oneself in international protection proceedings; 2) in administrative court proceedings, if the foreigner contests a decision made on the basis of Regulation (EU) 2024/1348 of the European Parliament and of the Council on the procedure, or Regulation (EU) 2024/1351 of the European Parliament and of the Council on migration management; 3) in administrative court proceedings, where the foreigner contests a decision restricting his material reception conditions, no permission was granted to leave the territory of the county of his place of accommodation or supervision measures were applied; 4) in administrative court proceedings, if the foreigner contests his or her detention on the grounds provided for in this Act. [..]

[24] See note 1 above, the *Explanatory Memorandum*, page 48.

[25] *Ibid*. page 51.

[26] See note 1 above: ***§15 State legal aid***
[..] **(3)** In the case specified in clause 1 of subsection (2) 1) of this section, state legal aid shall not be granted to a foreigner specified in Article 16(3) of Regulation (EU) 2024/1348 of the European Parliament and of the Council on the procedure.
(4) In the case specified in clause 2 of subsection (2) of this section, state legal aid shall not be granted to a foreigner if the condition provided for in Article 17 (2) of Regulation (EU) 2024/1348 of the European Parliament and of the Council on the procedure is met or if the foreigner is not staying in Estonia.
(5) In the case specified in clause 3) of subsection (2) of this section, state legal aid is not granted to a foreigner if the foreigner has sufficient financial means to pay for legal aid or if, due to the circumstances, the foreigner's opportunity to protect his or her right is obviously limited.[..]

[27] UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation, April 2019, available at: https://www.refworld.org/legal/intlegcomments/unhcr/2019/en/122595

20. **§15(6-8)** of the Bill outlines the application process for legal aid.[28] Application for legal aid in asylum procedures should be submitted to the PBGB together with the asylum application and if eligible, are forwarded to the administrative court. During judicial appeal, the application is submitted directly to the court together with the appeal. Legal aid requests may be submitted in Estonian or English. In this regard, UNHCR encourages to consider a user-friendly, accessible mechanism (leveraging modern technologies) to ensure that asylum-seekers who do not speak Estonian or English can apply for legal assistance independently, at any stage, and without technical or linguistic barriers.

21. UNHCR further notes that other applicants with specific needs, such as survivors of torture or serious violence, persons with disabilities, older people, single parents with young children, victims of trafficking, and persons with severe physical or mental health conditions, may also face significant barriers to accessing and navigating asylum procedures without individual assistance. UNHCR recommends that in the case of applicants in need of specific procedural guarantees and unaccompanied children, access to free legal assistance and representation is provided systematically, irrespective of the applicant's request.[29] Assistance should commence as early as possible, ideally before the first substantive interview, and include preparation of the claim, support in evidence gathering, and ensuring necessary procedural accommodations.[30]

22. Article 6 of the APR provides that UNHCR and its partners have access to applicants, including those in reception centres, in detention, at the border and in transit zones. In view of possible exceptions to accessing legal aid, UNHCR recommends that the Bill also explicitly guarantees unhindered access for other relevant NGOs to persons at the border, in transit zones, and in detention facilities to deliver legal counselling and other forms of assistance. Such access is essential to ensure procedural safeguards and uphold the right to an effective remedy.

Recommendations:

- Guarantee accessible, professional, independent, and continuous legal aid throughout all stages of asylum procedures and consider allocation of sufficient resources for provision quality legal services.
- Guarantee the automatic provision of legal aid to asylum-seekers with specific needs, including individuals with disabilities, victims of trauma, and unaccompanied children.
- Provide unhindered access also for relevant NGOs to persons at the border and detention facilities to deliver assistance and legal counselling.

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[28] See note 1 above: ***§15 State legal aid***
[..]**(6)** A foreigner submits an application for legal assistance for representation in international protection proceedings to the Police and Border Guard Board together with the application for international protection. If, in the opinion of the Police and Border Guard Board, there are no circumstances precluding the granting of state legal aid provided for in subsection (3) of this section, the application shall be forwarded to the administrative court specified in subsection 10 (31) of the State Legal Aid Act together with the information specified in clauses 12 (1) 1)–3) and 6) to (8) of the State Legal Aid Act.
(7) An application for legal aid for representation in administrative court proceedings is submitted to the administrative court together with an appeal.
(8) Applications for state legal aid may be submitted in English.[..]

[29] UNHCR, *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, COM (2016) 467, April 2019, page 15 https://www.refworld.org/legal/intlegcomments/unhcr/2019/en/122595.

[30] UNHCR, *Effective processing of asylum applications: Practical considerations and practices*, March 2022, paragraphs 24-29, https://www.refworld.org/policy/opguidance/unhcr/2022/en/124059.

Rights of applicants for international protection (§16-17 of the Bill)

23. **§16 and §17** of the Bill set out the rights of applicants for international protection, including the right to stay in Estonia. It is commendable that applicants for international protection are entitled, *inter alia*, to receive information in the language and form that addresses their specific needs (e.g. in person, visual, child-friendly, etc.), receive support based on their special needs, and communicate with international organizations, NGOs and UNHCR.[31]

24. **§16(3)8)** of the Bill stipulates that asylum-seekers are entitled to work if, within six months of the registration of their application for international protection, no decision has been made for reasons beyond their control.[32] It is important to note that despite *"no later than six months after registration"* standards offered in the Reception Conditions Directive, Member States can allow access earlier.[33] UNHCR advocates for earlier access of asylum-seekers to the labour market.[34] Early access to employment enhances dignity, reduces vulnerability, facilitates integration and contributes positively to host communities.[35] Furthermore, in conjunction with **§18(5)** of the Bill,[36] this is particularly relevant for *"sur place"* asylum-seekers, who have a valid permit for work should not lose this right simply because they need to apply for international protection.

25. According to **§17(6)** of the Bill, asylum-seekers submitting a first repeated application for international protection solely to delay deportation may stay in Estonia only until the PBGB issues a refusal decision. Judicial appeal does not suspend expulsion and all further repeat applications do not grant the applicant the right to stay in Estonia.[37] While the Asylum Procedures Regulation allows Member States to derogate from the right to remain, this is without prejudice to the principle of non-

[31] See note 1 above, the Bill: ***§16 Rights of applicants for international protection*** [..] **(3)** In addition to subsection (2) of this section, an applicant for international protection has the right to: *1) receive, as soon as possible, but no later than five days after the date of publication of the request for international protection, in writing on a form provided by the European Union Agency for Asylum and, if necessary, orally or visually and in a language or in a way that it understands, information on its rights and obligations, including information on legal assistance, assistance with reception conditions, information on the organizations providing information, the timetable for the procedure for international protection and the consequences of non-compliance; 2) stay in Estonia until a final decision is made on the application for international protection, except in the cases provided for in this Act; 3) receive assistance related to reception conditions, in particular access to health services, the labour market and education, to the extent and pursuant to the procedure provided for in this Act; 4) receive support based on their special needs; 5) communicate with family members, legal counsel, representatives of the relevant competent national authorities, international or non-governmental organizations, and the UNHCR;[..]*

[32] See note 1 above, the Bill: ***§16 Rights of applicants for international protection*** [..] **(3)** In addition to subsection (2) of this section, an applicant for international protection has the right to: [..] *8) work in Estonia if, within six months of the registration of the application for international protection, no decision has been made on his or her application for reasons beyond his or her control.* [..]

[33] EU, 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, Reception Conditions Directive 2024/1346 (2024/1346 RCD), 14 May 2024, Article 17(1), https://eur-lex.europa.eu/eli/dir/2024/1346/oj/eng.

[34] UNHCR, *Emergency Handbook: Livelihoods and Economic Inclusion | UNHCR*, 29 January 2025; and UNHCR Bureau for Europe, *UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, April 2015, section 14, https://www.refworld.org/legal/intlegcomments/unhcr/2015/en/104806.

[35] International Labour Organization, *Document - ILO - Compendium on employment and decent work in refugee and other forced displacement contexts, 9 December 2020.*

[36] See note 1 above, the Bill: ***§18 Applicants responsibilities*** [..]**(5)** An applicant is not allowed to work or engage in business in Estonia during the international protection procedure, except in the case provided for in this Act. In the event of a violation of the prohibition on working or engaging in business, the liability provided for in the Aliens Act applies.[..]

[37] See note 1 above, the Bill: ***§17 Rights of applicants for international protection*** [..]**(6)** By way of derogation from the provisions of subsections (1) to (5) of this section, in the case of the first repeated application for international protection, which was submitted only for the purpose of postponing or hindering the execution of the obligation to leave, the alien has the right to stay in Estonia until the Police and Border Guard Board makes a refusal decision on his or her application. An application submitted to the administrative court of an alien for stay in Estonia does not suspend his or her deportation. The submission of the second and subsequent repeated applications for international protection does not give the applicant the right to stay in Estonia.[..]

refoulement. UNHCR advocates for a narrow application of the lack of suspensive effect, only to cases of a second subsequent application.[38]

26. **§17(7-8)** of the Bill introduces the so-called *"fiction of non-authorization to enter the territory,"* in line with the Screening Regulation and the Asylum Procedures Regulation.[39] It is worth noting that according to these instruments, key guarantees under the Common European Asylum System remain applicable, including provisions in the Reception Conditions Directive and certain provisions of the Return Directive. However, it is important to clarify in addition that international and EU legal obligations, including the *1951 Convention*, the ECHR and the EU Charter, also remain applicable to persons who are undergoing screening or to whom the border procedure applies.

Recommendations:

- Consider early access to the labour market and ensure that applying for asylum does not lead to revocation or suspension of a valid work permit.
- Clarify that, despite the fiction of non-authorization to enter the territory, international and EU legal obligations, including the *1951 Convention*, the ECHR and the EU Charter, remain applicable to persons under the border procedure.

Identity verification, including DNA test (§§22-27, 29 and 615 of the Bill)

27. The proposed **§§22-27** of the Bill set out procedures for identification and verification of the identity of applicants for international protection. Identification is primarily based on valid identity documents and other supporting evidence, including testimony from a legal representative for children under 15 when no document is available. Where documents are lacking, the PBGB and the Internal Security Service may collect and process biometric data, such as fingerprints and facial images.

28. Further, **§25** of the Bill provides that in order to identify a person and verify their identity, a DNA sample may be taken from a foreigner, and the relevant data may be processed, if it is not possible to identify the foreigner or verify their identity in any other way. In such cases, applicants are obliged to provide a DNA sample, and law enforcement may use direct coercion only when strictly necessary.[40] While the Explanatory Memorandum describes cases of the use of DNA tests as a last resort

[38] UNHCR, *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, COM (2016) 467, April 2019, pages 14-15, https://www.refworld.org/legal/intlegcomments/unhcr/2019/en/122595.

[39] See note 1 above, the Bill: ***§17 Rights of applicants for international protection*** [..]**(7)** Applicants for international protection do not have the right to stay in Estonia if they are subject to a background check pursuant to the procedure provided for in Regulation (EU) 2024/1356 of the European Parliament and of the Council on background checks. During the background check, the applicant for international protection is staying at the location designated by the Police and Border Guard Board and it is deemed that he or she has not been granted permission to enter Estonia.
(8) An applicant for international protection does not have the right to stay in Estonia if his or her application is being examined in border proceedings on the basis provided for in Article 43(1) of Regulation (EU) 2024/1348 of the European Parliament and of the Council on the procedure. International protection is delayed in carrying out border proceedings the applicant at the location determined by the Police and Border Guard Board and it is deemed that he or she has not been granted permission to enter Estonia.

[40] See note 1 above, the Bill: ***§25 Identification of persons based on DNA data*** **(1)** In order to identify a person and verify their identity, a DNA sample may be taken from an alien and the relevant data may be processed, if it is not possible to identify the alien or verify their identity in any other way.
(2) When deciding whether to take DNA samples from a minor, the rights and interests of the minor are taken into account.
(3) A person is obliged to allow DNA sampling at the request of an administrative authority.
(4) Taking DNA samples from a person is based on the procedure established on the basis of subsection 33 (5) of the Law Enforcement Act.

primarily for establishing family relationships, including in cases involving unaccompanied or separated children, the Bill also allows DNA collection for identity verification.[41]

29. In the EU Pact instruments, it is only the Asylum and Migration Management Regulation (AMMR) which makes reference to DNA testing. Article 19(1)(s) of the AMMR allows for DNA or blood testing to prove the existence of family links or to carry out an assessment of the age of the applicant. Such measures may only be requested when circumstantial evidence is not coherent, verifiable, or sufficiently detailed.[42]

30. It is important to highlight that refugees fleeing persecution often arrive without valid documents or authorization, or with documents that are insufficient, false, or obtained through irregular means. This lack of documentation should not be held against them in asylum procedures.[43] In many cases, the applicant's statements may be the only available evidence.[44] For the purpose of asylum procedures, evidence may be oral (e.g. the applicant's own statements or testimony provided by witnesses and experts), or it may be documentary, including written, graphic, digital, or visual materials. It can also include COI, physical exhibits such as objects or bodily scarring, and audio or visual recordings. Evidence may be submitted by the applicants to support their claim or gathered independently by the asylum authority. It encompasses any material that affirms, corroborates, challenges, or otherwise relates to the facts.[45]

31. UNHCR recalls that while the burden of proof generally lies with the applicant, the responsibility to establish and assess all relevant facts is shared with the asylum authority. Given the challenges in providing evidence, especially without valid identification documents, authorities may need to actively assist in gathering information. Therefore, the requirement for evidence should be applied flexibly, recognizing the challenges asylum-seekers face in proving their claims.[46]

32. DNA testing is not considered as evidence in asylum procedures, and it is not specified as a requirement under the EU Pact. DNA testing may assist in verifying biological relationships through genetic comparison of their respective DNA material, but it is irrelevant for non-biological ties. Given its intrusive nature, implications to the right to privacy and family unity, DNA testing is conducted as a last resort to verify

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[41] See note 1 above, *the Explanatory Memorandum*, page 67.

[42] EU, *Asylum and Migration Management Regulation (AMMR)*, *2024/1351, Regulation 2024/1351 of the European Parliament and of the Council of May 14, 2024, on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013*, Recital 54, Article 19(1)(s), Regulation - EU - 2024/1351 - EN - EUR-Lex.

[43] UNHCR, *Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/24/14, 23 September 2024, paragraph 4, https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632; (UNHCR), *Beyond Proof, Credibility Assessment in EU Asylum Systems : Full Report (UNHCR Beyond Proof)*, May 2013, page 213, https://www.refworld.org/reference/regionalreport/unhcr/2013/en/104283;

[44] UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity*, 23 October 2021, paragraph 64, https://www.refworld.org/policy/legalguidance/unhcr/2012/en/89548.

[45] UNHCR, *UNHCR Statement on credibility assessment in asylum procedures issued in the context of the preliminary reference to the Court of Justice of the European Union in the cases of Ramadi (C-7/25) and Kirkuk (C-8/25)*, August 2025, paragraph https://www.refworld.org/jurisprudence/amicus/unhcr/2025/en/150432; and see note 43 above, UNHCR *Beyond Proof*, note 10 above, pages 27-28.

[46] See note 6 above, *UNHCR Handbook*, paragraphs 196-197.

family relationships.[47] For DNA testing to be necessary and proportionate, other means of verification of family links must first have proven to be insufficient, or there must be strong indications of fraud or serious doubts as to the genetic relationship.[48] A rights-based, age and gender sensitive, and non-discriminatory approach should be applied instead, with strict regulations and confidentiality in place to ensure that the individuals' dignity and right to privacy are safeguarded. Informed and explicit consent is necessary from the persons concerned before any test is conducted.[49]

33. Additionally, the cost of a DNA test should be borne by the State requiring the test, so that the possibility for family reunification is not obstructed.[50] In any case, the requirement for administrative assistance to refugees precludes States from imposing charges for DNA testing on refugees and other beneficiaries of international protection that are higher than levied on their nationals for such testing in analogous circumstances.[51]

Under the GDPR, processing of sensitive personal data must be necessary and proportionate, and subject to legal safeguards and human rights assessments.[52] In the context of verifying family relationships, only data strictly necessary for that purpose should be extracted from DNA samples. The information must not be used for other purposes, such as medical testing or criminal investigations. All materials should be destroyed once a decision is made, unless informed consent is obtained for further storage, with clear information on the reasons and location.[53]

Recommendations:

- Ensure that DNA testing in asylum procedures is used only as a last resort, when family relationships cannot be verified through other means or there is a strong indication of fraud or serious doubts as to the genetic relationship.
- Guarantee legal safeguards, including informed and explicit consent, before conducting any DNA test.
- Limit DNA data collection strictly to what is necessary for verifying family relationships and prohibit the use of DNA thus collected for other purposes, such as medical or criminal investigations.
- Destroy DNA-related materials once a decision is made, unless informed consent is obtained for retention.
- Ensure the cost of DNA testing is covered by the requesting State and not imposed on applicants for international protection.

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[47] UNHCR, *UNHCR Guidelines on international legal standards relating to family reunification for refugees and other beneficiaries of international protection*, December 2024, paragraphs 37-39, https://www.refworld.org/policy/legalguidance/unhcr/2024/en/149243; UNHCR, *Note on DNA Testing to Establish Family Relationships in the Refugee Context*, June 2008, paragraph 16, www.refworld.org/policy/legalguidance/unhcr/2008/en/59326.

[48] UNHCR, *Amicus curiae of the Office of the United Nations High Commissioner for Refugees in the case X and THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL*, 11 December 2019, Record No. 2019/137, paragraphs 35-39, , www.refworld.org/jurisprudence/amicus/unhcr/2019/en/123231; *X -v- Minister for Justice & Equality & ors*, [2020] IESC 30, Ireland: Supreme Court, 9 June 2020, paragraph 115, https://www.refworld.org/jurisprudence/caselaw/irlsc/2020/en/123234; F. Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition, pp. 82-85, www.refworld.org/reference/research/unhcr/2018/en/122578.

[49] See Note 47 above, Note on DNA Testing, paragraphs 17-19.

[50] See Note 47 above, Note on DNA Testing, paragraphs 32.

[51] The *1951 Convention*, Articles 25(4) and 29 (1).

[52] GBPR Article 5.1.c) and Article 9.

[53] See Note 47 above, Note on DNA Testing, paragraphs 26-27.

Detention, including during border procedures

34. **§§50-51** of the Bill provides for supervisory measures (alternatives to detention) and grounds for detention of applicants for international protection. Notably, compared to the current provisions of AGIPA, the Bill expands the range of non-custodial alternatives and introduces a non-exhaustive list of such measures.[54] However, for legal clarity, it is essential to explicitly affirm that detention must be based on an individual assessment, used only as a last resort, and considered only after all alternative measures have been exhausted.[55]

35. It is positive that **§54** of the Bill explicitly specifies that children may be detained only in exceptional circumstances and based on individual assessment, as a last resort, and when less coercive alternatives are proven ineffective. Nevertheless, the provision also notes that detention must be *"determined to be in the child's best interests."*[56] As such, it may apply in cases where the child's parent or guardian is detained, or where detention is necessary to ensure the safety of an unaccompanied child. UNHCR wishes to underline that detention of children is never in the best interests of the child. Children should not be detained for immigration related purposes, and that alternatives to detention and care arrangements are recommended instead.[57]

36. According to **§58** of the Bill, the PBGB and the Internal Security Service may detain applicants for international protection for up to seven days without court permission to verify the legal basis for their arrival and stay. Any extension of detention must be authorized by a court and may last up to four months.[58] The current wording of the provision appears to allow detention to be used broadly for all applicants for international protection and to permit detention for a reason which is not elaborated at Article 10(4) of Directive (EU) 2024/1346 ('the Reception Conditions Directive').

37. It is important to emphasize that detention during border procedures should not be automatic. It must remain an exceptional measure of last resort, applied only in narrowly defined circumstances and with strong procedural safeguards. Moreover, in

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[54] See note 1 above, the Bill: ***§50 Supervisory measures* (1)** The Police and Border Guard Board may apply the following supervisory measures to the applicant in order to carry out the international protection procedure in an expedient, efficient, simple and fast manner: *1) residence in a specified place, taking into account the provisions of subsection (2) of this section; 2) appearing at specified intervals for registration with the Police and Border Guard Board, taking into account the provisions of subsection (3) of this section; 3) depositing a foreign travel document or other identity document with the Police and Border Guard Board; 4) the provision of financial security, or 5) other proportionate supervision measure that ensures that the applicant is available to the Police and Border Guard Board for conducting proceedings.*

[55] See note 33 above, *2024/1346 RCD*, Recital 33.

[56] See note 1 above, the Bill: ***§54 Detention of minors and unaccompanied minors* (1)** A minor may be detained in exceptional cases, as a measure of last resort, and only after it has been established that alternative less coercive measures cannot be applied effectively and if it has been determined that detention is in the minor's best interests: *1) in the case of an unaccompanied minor, if the minor's parent or primary guardian has been detained; 2) in the case of an unaccompanied minor, if the detention ensures his or her safety.*

[57] *IOM, UNHCR and UNICEF advocacy messages Implementation of EU Asylum and Migration Pact [EN/BG] - World | ReliefWeb*, February 2025.

[58] See note 1 above, the Bill: ***§58 Accommodation and detention of an applicant for international protection in an emergency*** [..] **(2)** In order to verify the legal bases for the arrival and stay of an applicant for international protection in Estonia, the Police and Border Guard Board or the Internal Security Service may detain an applicant for international protection for up to seven days without the permission of an administrative court.
(3) In the case of detention of an applicant for international protection in an emergency, the detention protocol shall document at least the name or names of each applicant for international protection, the legal and factual basis and justification for the detention, the date, time and place, and the name of the administrative authority that issued the protocol and the name of the official.
(4) If an applicant for international protection needs to be detained for more than seven days on the grounds provided for in subsection 51 (2) of this Act and taking into account the principles specified in subsection (1) of this Act, the Police and Border Guard Board or the Internal Security Service shall apply to the administrative court for permission to detain the applicant for international protection for up to four months.[..]

UNHCR's opinion, border procedures should not apply to unaccompanied or separated children, victims of trauma or trafficking, or persons with psychosocial or intellectual disabilities.

Recommendations:

- Ensure that detention of asylum-seekers is only used as a measure of last resort and that children are never detained for immigration related purposes.
- Encourage the use of alternatives to detention, including during border procedures.
- Guarantee that border procedures should not apply to unaccompanied and separated children, victims of trauma or trafficking and persons with psychosocial or intellectual disabilities.

Refusal to apply temporary protection and residence permit (§63 of the Bill)

38. **§63** of the Bill, *inter alia*, sets out the grounds for refusal of temporary protection. The formulation of some exclusion grounds diverges from the corresponding provision of the Temporary Protection Directive (TPD).

39. Specifically, **§63(1)(4)** of the Bill refers to cases where there is *"a suspicion"* that the individual's arrival in Estonia may endanger national security,[59] whereas Article 28(b) of the TPD requires a *"reasonable ground for regarding him or her as a danger to the security"*. [60] The threshold of *"suspicion"* appears to be lower and less clearly defined than the *"reasonable ground"* standard set by the Directive.

40. **§63(1)(5)** refers to *"serious crimes,"*[61] while Article 28(b) of the TPD specifies *"particularly serious crimes."* The omission of the qualifier *"particularly"* in the Bill may broaden the scope of exclusion beyond what is envisaged under the TPD.

Recommendation:

- Amend **§63(1)(4)** and **§63(1)(5)** to align them with Article 28(b) of the Temporary Protection Directive.

Integration and adaptation programme

41. UNHCR welcomes the Bill's provisions supporting the integration of beneficiaries of international protection, including the role of the Ministry of Culture in organizing adaptation programmes.[62] In UNHCR's view, integration is an essential component of the international protection system and should be embedded in national law and policy from the earliest stages of the asylum process.[63]

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[59] See note 1 above, the Bill: ***§63 Refusal to apply temporary protection and refusal to issue or extend a residence permit*** (1) The Police and Border Guard Board refuses to apply temporary protection and does not issue a residence permit to an alien or renew it for an alien: [..] *4) in the case of whom there is a suspicion that their arrival in Estonia may endanger national security;[..].*

[60] European Union, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof,* 20 July 2001, Article 28(b), Directive - 2001/55 - EN - EUR-Lex.

[61] See note 1 above, the Bill: ***§63 Refusal to apply temporary protection and refusal to issue or extend a residence permit*** (1) The Police and Border Guard Board refuses to apply temporary protection and does not issue a residence permit to an alien or renew it for an alien: [..]*5) who have been finally convicted of committing a serious crime and who pose a threat to public safety;[..].*

[62] See note 1 above, the Bill: ***§82 Participation of a foreigner in an adaptation programme***.

[63] UNHCR Integration Handbook |

42. According to **§82(13) of the Bill,** beneficiaries of temporary or international protection may be required to reimburse the cost of language training if they fail to reach specific proficiency levels within set timeframes.[64]

43. In UNHCR's view, while language learning is essential for refugee integration, it is a gradual process influenced by many factors. UNHCR is concerned that penalizing refugees for not completing Estonian language courses may contradict the spirit of the *1951 Convention* and risk discouraging participation in language learning. Given their often-precarious financial situation upon arrival, the prospect of reimbursing course costs could delay or deter refugees from enrolling.

44. Additionally, UNHCR would like to refer to *Case C-158/23* of the Court of Justice of the European Union. The Court ruled that while Member States may require beneficiaries of international protection to pass civic integration exams, such requirements must be proportionate and tailored to individual circumstances. Automatic fines or full cost burdens that create unreasonable financial hardship are incompatible with Article 34 of Directive 2011/95/EU.[65]

Recommendation:

- Ensure that integration programmes are inclusive, accessible, and responsive to individual needs, with safeguards against punitive measures that may undermine participation.
- Revise the reimbursement clause in §82(13).
- Develop flexible, accessible language programmes that accommodate work and care responsibilities.

Statelessness determination procedures

45. The EU Pact includes important provisions for identification of statelessness in migration contexts, helping to protect stateless individuals and prevent the emergence of new cases. 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.[66]

46. International and temporary protection procedures may be considered as effective mechanisms for identification of stateless persons. If it is established that an individual is stateless, it is important to ensure relevant protection in Estonia. The EU Pact provides an important opportunity to strengthen the identification and protection

[64] See note 1 above, the Bill: ***§82 Participation of a foreigner in an adaptation programme*** [..] **(13)** A beneficiary of temporary protection or a beneficiary of international protection residing in Estonia may be required to reimburse the sums spent on the provision of language training if he/she: *1) has not acquired the language proficiency level A1 provided for in the Language Act within one year of being granted a residence permit on the basis of temporary protection or international protection; 2) has not acquired the language proficiency level A2 provided for in the Language Act within two years of being granted international protection; 3) has not acquired the language proficiency level B1 provided for in the Language Act within five years of being granted international protection.[..]*

[65] Court of Justice of the European Union, EUR-Lex - 62023CA0158 - EN - EUR-Lex, 31 March 2025.

[66] See note **Error! Bookmark not defined.** above, *2024/1348 APR*, Recital 24, Article 3(15), Article 27(2), Article 29(4)(a); *Eurodac*, Recital 56, *Screening Regulation*, Recital 37, Articles 2(5), 12(3) and 17(1)(b); *AMMR*, Recital 49, Article 2(2) and 9(3)(a);

of stateless persons, including through the establishment and enhancement of statelessness determination procedures. Combating childhood statelessness will also remain a priority, with initiatives to be undertaken to address this issue, such as a joint compilation of good practices.[67]

Recommendation:

- Consider the development of harmonized standards for referral mechanisms and statelessness determination procedures in Estonia.

IV. Conclusion

UNHCR stands ready to continue its close cooperation with the Ministry of the Interior and other stakeholders in Estonia by providing technical support and expertise. UNHCR looks forward to engaging in further consultations to ensure that the Bill fully reflects Estonia's obligations under international refugee and human rights law, contributes to a harmonized EU asylum system, and upholds the highest protection standards for refugees and other forcibly displaced and stateless persons.

UNHCR
12 September 2025

[67] UNHCR, *Statelessness and the EU Pact on Asylum and Migration | UNHCR Europe*, February 2025; European Network on Statelessness (ENS), *Implementing the Statelessness Provisions in the EU Pact on Migration and Asylum*, October 2024; and European Network on Statelessness (ENS), *Statelessness and the EU Pact on Migration and Asylum: Analysis and Recommendations for Implementation*, May 2024.