

CHAPTER I

BEYOND BORDERS: A COMPARATIVE ANALYSIS OF “MIGRANT” AND “REFUGEE” PROTECTIONS IN INTERNATIONAL AND EU LAW



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Abstract

This chapter presents a comparative analysis of the terms “refugee” and “migrant” and the forms of protection they are granted under international and European Union (EU) laws. The text also includes information and insights into the Serbian, Croatian, Slovenian, Romanian, Czech, Slovak, Hungarian, and Polish legal frameworks. First, the chapter begins with a concise introduction, outlining the general subject and scope of the study. Second, the manner in which globalisation is the basis for migration and refugees is analysed and presented. Third, the levels of regulation and types of legislation defining the migration and refugee processes were addressed. Fourth, a review of the EU legislation on migration, including asylum laws, is presented. Fifth, the legal stages of the migrant and refugee concepts were examined. Sixth, general considerations of the concepts of migrants and refugees are presented. Seventh, a legal and comparative account of migration and refugee terms is discussed. Eighth, definitions of migration and refugees in international and EU laws are presented. The focus on international and EU law should not be taken as an indication of the author’s position regarding the nature of EU law as either an autonomous branch or a part of international law; the distinction is made solely to aid in clarity. The chapter concludes with a concise summary of the overall conclusions, which are presented at 10 key points. Finally, the author’s main thesis on this topic is presented.

Keywords: migrant, refugee, comparative analysis, international law, EU law.

Marcin Wielec (2024) ‘Beyond Borders: A Comparative Analysis of “Migrant” and “Refugee” Protections in International and EU Law’. In: Anikó Raisz (ed.) *Migration and Central Europe. Challenges and Legal Responses*, pp. 19–82. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2024.armac_e_1

1. Introduction

In recent years, broadly defined migration and refugee issues have come to the forefront. Undoubtedly, migration and refugeeism – generally speaking, phenomena in which people move from one place to another – bring together many interesting and controversial issues. Constructing the causes and aspects of a person's change in location and residence has interesting consequences. There are many scientific approaches to this issue in domains other than law, and it is clearly a multidisciplinary problem.¹

Within the scope of the concepts of migration and refugeeism, a variety of issues can be recognised, some of which have significant impacts. There is no doubt that migration and refugees are linked to issues related to State security, the social structure of a State, and cultural and worldview issues, all of which imply further issues related to the development of State economies, the preservation of traditions, national unity, and even the history of States. Each of these areas comprises knotty issues connected with the proper functioning of individual States.

This article delineates the conceptual underpinnings of “migrant” and “refugee” statuses as defined by pivotal legal instruments such as the 1951 Refugee Convention and its 1967 Protocol, alongside relevant EU directives and national legislation. Through a meticulous analysis of these legal texts, this study reveals the complexities and nuances involved in categorising individuals facing adverse conditions, highlighting the necessity of legal frameworks to adapt to the dynamic nature of global migration. Engaging with contemporary issues, this manuscript underscores the impact of globalisation, climate change, and the COVID-19 pandemic on migration patterns, advocating legal and policy responses that are sensitive to the evolving geopolitical context of the second decade of the 21st century. Through this analysis, this article contributes to the scholarly discourse on migration and refugee law by offering insights into potential directions for future legal and policy developments. This study aims to inform and influence policymakers, legal scholars, and practitioners by providing a nuanced understanding of the legal categorisations of migrants and refugees and encouraging a more empathetic and informed approach to addressing the challenges they face.

¹ See, for example: Vourc'h, De Rudder and Tripier, 1999, cited in Wrench, Rea and Ouali, 1999, pp. 72–92; Vlachopoulos et al., 2016, cited in Munyangayo, Webb and Rabadán-Gómez, 2016, pp. 213–234; Sandoz, 2019, pp. 53–93; Hoffmeyer-Zlotnik, 2003, cited in Alba, Schmidt and Wasmer, 2003, pp. 255–268; Lodzinski, 1999, cited in Iglicka and Sword, 1999, pp. 66–89; Jahn, 2015, pp. 75–90; Heitmeyer, 1993, cited in Björge and Witte, 1993, pp. 17–28; Münz and Ulrich, 2003, cited in Alba, Schmidt and Wasmer, 2003, pp. 19–43; D'Amato, 2015, cited in Burchardt and Michalowski, 2015, pp. 285–301; Wasmer and Koch, 2003, cited in Alba, Schmidt and Wasmer, 2003, pp. 95–118; Guiraudon, 1998, cited in Rothstein and Steinmo, 1998, pp. 129–156; Kajita, 1998, cited in Weiner and Hanami, 1998, pp. 120–147.

2. Globalisation as a basis for migration and refugees

There is no doubt that both migration and refugeeism have a global dimension and thus go well beyond any single entity or direction of movement; they are deeply influenced by geopolitical factors such as conflicts, economic instability, and political tensions, which continue to force individuals to seek refuge outside their home countries. Globalism is a unique feature of modern times. The concept of globalism and, by extension, globalisation, has, in the first instance, strict economic connotations; however, the term has also been applied to other areas, including social relations. The situation is further complicated by the role of climate change in exacerbating the migration and refugee crises and the recent global disruptions caused by the COVID-19 pandemic. A general feature of global phenomena is their rapid dynamics in different areas as well as their interpenetration or interdependence. This leads to increased interconnectedness and interdependence among the world's economies, societies, and cultures, which significantly influences migration patterns. For example, the markets for goods, services, production, industry, technology,² and knowledge are subject to globalisation; this also applies to patterns of consumption and mass culture as well as the directions of development of entire communities.³ It has been argued that ‘at the core of the globalisation process lies not only the market economy, but also a civilisation and cultural system, derived from the broader civilisation of Europe’.⁴

It is precisely the civilisation of Europe that has grown and achieved considerable economic success and has become a crucial area and key target of human transfer processes. Due to the pandemic, Europe is now faced with the challenges of ensuring robust health and safety protocols, equitable access to healthcare, and the inclusion of migrant and refugee populations in national and international response strategies. There is a lot of truth in the view that ‘at the same time globalisation is becoming a very controversial phenomenon, especially from the point of view of income redistribution, the economic sovereignty of countries, or the availability of raw materials’.⁵ Elsewhere, it is pointed out that while globalisation involves the integration of countries and people in order to facilitate movement and relationships by overcoming barriers, it also contributes to the displacement of populations by intensifying economic disparity, conflict, and environmental degradation. The author absolutely agrees that ‘one of the negative phenomena that globalisation is associated with is ever-widening social inequalities’.⁶

The determinants of the decision to emigrate or become a refugee include social policies, standards of living, security, and increased certainty about one's future life.

2 For new technology law, see, e.g., Oręziak, 2020, pp. 187–194; Karski and Oręziak, 2021, pp. 242–261; Oręziak and Świerczyński, 2019, pp. 257–275; Karski and Oręziak, 2021, pp. 55–69.

3 Maśloch, 2005, p. 18.

4 Kleer, 2008, p. 38.

5 Ciborowski, 2003, p. 163.

6 Iwaszczuk, Łamasz and Orłowska-Puzio, 2016, p. 161.

This complexity emphasises the need for a broader perspective on the current era, particularly focusing on the globalisation impact of globalisation on these issues. The globalisation we discuss here undoubtedly motivates and shapes the forms of both migration and refugeeism in a fundamental way.

3. Levels of regulation and types of legislation in defining migration and refugee processes

Having pointed out that migration and refugees have a global character, it is now worth considering the power that may prevail over these two phenomena—that is, the legal treatment of these two concepts. Importantly, although both phenomena may benefits to individual States, they may also pose threats. Therefore, it is necessary to develop precise mechanisms to control migration and refugee processes so that they are kept under strict control and conducted in a predictable and safe manner. A central point here is that a person who decides to migrate or become a refugee should be aware of his or her position, which is completely transformed by such a decision. Such decisions result in new responsibilities and rights. Clarity regarding the position of migrants and refugees must be provided elsewhere. The only effective tool here is, of course, the law, which is understood as a set of rules of conduct and orders and sets the boundaries of these two social processes. Transparency and control over migration and refugeeism can be introduced through legal regulations.

The terms migration/migrant and refugee were ambiguous. Clearly, there are substantial differences between the reasons and prerequisites for the decision to migrate and become a refugee. This is why legal regulations are so important and should be the exact instructions for the migration or refugee model.

The first level of regulation that defines these two phenomena is the domestic law. This is the first source area and perhaps the most important from the perspective of the State's interests. Domestic law should benefit the communities in a State. Domestic law must synchronise the needs and requirements of communities within a State with the requirements and future challenges faced by the State's authorities. Any legislation regarding the process of migration or refugeeism must take into account this synchronisation. Migration and refugee processes are ever-present; these processes have been, are, and will continue to be active. Therefore, it is imperative to create a workable legal mechanism that allows for the positive use of migration or refugeeism for the common good of a country's communities. Therefore, national law determines specific solutions for migration and refugee processes by considering the country's specificities, traditions, and needs. Accordingly, national migration and refugee legislation must determine the rationale, course, and components of these processes as well as the conditions for the assimilation of migrants and refugees.

The second level of regulation is international law. This is also an inevitable area because, as indicated in the Introduction, both the migration and refugee processes have a global scope, necessitating international regulations. International cooperation is essential and laws must provide reciprocal rules underpinning such cooperation. Notably, international cooperation is much more important for refugees who are not primarily driven by individual needs, as in the case of migration. Migration generally has a volitional basis; it depends on the needs and goals of the migrating individual, and the migrant is rarely forced to make such a decision. In the case of becoming a refugee, there are large-scale factors often influence the decision to migrate when becoming a refugee. For example, warfare, the initiation and conduct of which are not under the control of the individual – would clearly influences the decision to become a refugee. Hence, the role of international legislation is very important in this regard.

The third area is European Union (EU) legislation. The EU is a union of States in which legislation plays an important role. The law must be created on the basis of a series of consensuses and compromises reached among the EU Member States. As a result, the EU has only the competencies conferred on it by Treaties (the principle of conferral). According to this principle, the EU can only act within the limits of the competencies granted to it by EU countries under the Treaties to achieve the objectives contained therein. Competencies not conferred on the EU by the Treaties are the responsibilities of individual EU countries. The EU has only those competences conferred on it by the Treaties and cannot increase, limit, or modify its competences by its own power, which are decided by its Member States. Changes to the scope of competences conferred on the EU in the Treaties can only take place through the ordinary procedure for amending the Treaties, as provided for in Art.s 48(2) to (5) of the Treaty of the European Union (TEU).⁷ Amendments are enforced after they are ratified by all Member States, in accordance with their respective constitutional requirements. This process is generally based on so-called strategic priorities, including the so-called policies of the EU, one of which is *the migration policy*.⁸ The European Council plays a large role, which develops courses of action based on these and provides a mandate for negotiations with third countries. Hence, the European Union has adopted many large-scale legal regulations related to the management and control of migration processes (procedures for processing asylum applications and procedures for returning illegal migrants).

⁷ Consolidated versions of the TEU and the Treaty on the Functioning of the European Union (TFEU) Consolidated version of the Treaty on European Union Consolidated version of the Treaty on the Functioning of the European Union Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Tables of equivalences (OJ C 202, 7.6.2016, p. 1-388).

⁸ See, e.g., Stalker, 2002, pp. 151–179; Niemann and Natascha, 2023, pp. 2965–2985; Straubhaar and Zimmermann, 1993, pp. 225–241.

It is also worth noting that within these two areas of national and international law, there are particular types of rules, namely, substantive and formal. The former are categorised as substantive laws, that is, laws that determine the basis of a given regulation or institution. The second type constitutes formal law, that is, the regulation of how these regulations or institutions are applied. Substantive law is a set of legal norms directly defining the relations between individuals; it specifies the prerequisites for the emergence, change, or termination of these relations. Accordingly, legal norms that regulate certain obligations, prohibitions, orders, and sanctions are sometimes envisaged for non-compliance to these regulations. Formal law, on the other hand, is the designation of the body of legal norms regulating the principles and manner of conduct (procedure) of a specific body in deciding matters.⁹ Formal law, often referred to as procedural law, aims to implement substantive laws. Since substantive law contains definitions, formal law already contains rules on how to apply such definitions by determining, for example, how to acquire refugee status.

For example, in Poland, migration issues are closely related to the definition of foreigners. While there is no law in the Polish legal system regulating issues such as immigration, the Act of 12 December 2013 provides the basis for defining foreigners.¹⁰ According to this Act (based on Art. 3), foreigners are any person who does not have Polish citizenship. This is an example of a substantive law provision as it defines the relationship between the State and the individual. In this particular State, this relationship is regulated in the legal system by recognising who is a foreigner and who is not. As a result, anyone who does not have Polish citizenship is considered a foreigner in legal terms in Poland and thus also a stateless person.¹¹ This is an example of substantive law. Furthermore, the procedures for acquiring and losing Polish citizenship are regulated by the Act of 2 April 2009¹² which contains many formal provisions related to the commencement, course, and completion of the process of acquiring or losing Polish citizenship.

In light of the background discussed above, two vast blocks of legal regulations have emerged, which can be accurately referred to as migration law and refugee law; both blocks contain legal regulations. In general, both blocks are areas of international law and EU law, but, above all, are national laws. A fundamental issue is the scope of regulations, which differs between migrants and refugees. While migrants move for private purposes, refugees, driven by circumstances completely beyond their control, flee from war, persecution, or general ill treatment. In addition, it may be noted that the law, as a reflection of values, presupposes the realisation of different values at various levels of regulation. That is, owing to their distinct definitions, different values underlie the regulations related to migrants and refugees.

9 Available at: <https://encyklopedia.pwn.pl/haslo/prawo-formalne;3961851.html> (Accessed: 5 November 2023).

10 Consolidated text: Journal of Laws from 2023 items 519, 185, 547.

11 See, e.g., Kerber, 2007, pp. 1–34; Berkeley, 2009, pp. 3–15; Kane, Gezy and Miho, 2023, pp. 261–278.

12 Consolidated text: Journal of Laws from 2023, item 1989.

4. Review of EU legislation on migration law, including asylum law

By referring in detail to areas of EU law, it can be seen that a common asylum policy is an integral part of the EU's objective of establishing and systematically enlarging an area which is open to all those whose circumstances force them to seek legal protection. Nevertheless, asylum law issues are generally only a part of migration law in general. Therefore, given the current level of migration in Europe,¹³ it seems justified to present an overview of EU legislation on migration laws to fully illustrate the scope of the issue under discussion. All such activities, both now and in the past, have focused on increasing the degree and sophistication of legal protection for migrants in the EU.¹⁴ The effect of such activities is ultimately to harmonise the protection standards found in the various Member States, which are served by EU secondary law. Nevertheless, relevant provisions can also be found in EU primary law, more specifically, in the Treaty on the Functioning of the European Union (TFEU).¹⁵

Art. 20 of the TFEU establishes EU citizenship. An EU citizen is one who holds the nationality of an EU member. This adds to, but does not replace, national citizenship. EU citizens enjoy these rights and are subject to obligations stipulated by primary law. This means that they have, *inter alia*, the right 1) to move and reside freely within the territory of the Member States; 2) to vote and stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State; 3) to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any other Member State, on the same conditions as the nationals of that State; and 4) to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights are exercised in accordance with the conditions and limits laid down by primary and secondary EU law. In turn, under Art. 21 of the TFEU, every EU citizen has the right to move and reside freely within the territory of Member States, subject to the limitations and conditions laid down by primary or secondary EU law. Conversely, if attaining this objective requires EU action and the EU primary law does

13 Also called the migration crisis: Szymańska, 2017, p. 164; Korczak, 2017, cited in Pasamonik and Markowska-Manista, 2017, p. 69; Zygałiewicz, 2016, p. 17.

14 Some EU legislation no longer in force is also included.

15 Consolidated versions of the TEU and the TFEU Consolidated version of the Treaty on European Union Consolidated version of the Treaty on the Functioning of the European Union Protocols Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Tables of equivalences (OJ C 202, 7.6.2016, p. 1-388).

not provide the necessary powers, the European Parliament and Council of the European Union, acting in accordance with ordinary legislative procedures, may adopt provisions to facilitate the exercise of these rights. In addition, for exactly the same purposes, and where primary law does not provide for powers to act, the Council of the European Union, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. In such cases, the Council of the European Union acts unanimously after consulting the European Parliament. In contrast, in light of Art. 78 of the TFEU, the EU shall develop a common policy on asylum, subsidiary protection, and temporary protection with a view to granting appropriate status to any third-country national requiring international protection and with a view to ensuring compliance with the principle of non-refoulement. This policy must be in line with the Geneva Convention of 28 July 1951¹⁶ and the Protocol of 31 January 1967 relating to the Status of Refugees,¹⁷ as well as with other relevant Treaties. For this purpose, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a Common European Asylum System comprising 1) a uniform status of asylum for third-country nationals, valid throughout the Union; 2) a uniform status of subsidiary protection for third-country nationals who, without obtaining European asylum, are in need of international protection; 3) a common system of temporary protection for displaced persons in the event of a massive inflow; 4) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; 5) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; 6) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection; and 7) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

In the event of one or more Member States being confronted by an emergency characterised by a sudden inflow of third-country nationals, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. In this case, the Council acts after consulting the European Parliament. In turn, in accordance with Art. 79 of the TFEU, the EU shall develop a common immigration policy aimed at ensuring, at all stages, the effective management of migration flows, fair treatment of third-country nationals legally residing in Member States, and the prevention and enhanced fight against illegal immigration and human trafficking. To achieve this, the European Parliament and the Council of the European Union, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas: 1) conditions of entry and residence and standards on the issue of long-term visas and residence permits by Member States, including those for the purpose of family reunification; 2) the definition of the rights of third-country nationals residing legally in a Member State,

¹⁶ Journal of Laws from 1991 no. 119, item 515.

¹⁷ Journal of Laws from 1991 no. 119, item 517.

including the conditions governing freedom of movement and residence in other Member States; 3) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation; and 4) combating human trafficking, in particular of women and children. The EU may also conclude agreements with third countries for the readmission of third-country nationals who do not fulfil the conditions for entry, presence, or residence in the territory of one Member State to their countries of origin or arrival.

In addition, the European Parliament and Council, acting in accordance with ordinary legislative procedure, may establish measures to encourage and support the action of Member States taken to promote the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States. It is worth stressing, however, that Art. 79 of the TFEU is not prejudiced to the right of Member States to determine the volume of admission of third-country nationals entering their territory in search of employment or self-employment.

Several pieces of EU secondary legislation were intended to harmonise Member States' national migration laws, including asylum or refugee laws, as detailed below.

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 established the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one Member State by a third-country national or stateless person (Dublin III Regulation),¹⁸ which aims to establish criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one Member State by a third-country national or stateless person.

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers,¹⁹ which establish standards for the reception of applicants for international protection in EU Member States. This Directive was repealed by Directive 2013/33/EU of the European Parliament and Council on 26 June 2013 which laid down standards for the reception of applicants for international protection.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification,²⁰ which aims to define the conditions for exercising the right to family reunification of third-country nationals residing lawfully in the territories of Member States.

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents,²¹ the purpose of which is to lay down a) the conditions for granting and withdrawing long-term resident status by a Member State to third-country nationals legally residing within its territory, as well

18 OJ L 180, 29.6.2013, pp. 31–59.

19 OJ L 31, 6.2.2003, pp. 18–25.

20 OJ L 251, 3.10.2003, pp. 12–18.

21 OJ L 16, 23.1.2004, pp. 44–53.

as the rights attached to that status; and b) the conditions of residence in Member States other than the one which granted long-term resident status to third-country nationals enjoying that status.

Council Directive 2003/110/EC on 25 November 2003 on assistance in cases of transit for the purposes of removal by air,²² the purpose of which is to define measures concerning assistance which may be taken by competent authorities at airports of transit in Member States with regard to escorted and unescorted removals by air.

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States,²³ which aims to establish a) the conditions governing the exercise of the right of free movement and residence within the territories of the Member States by Union citizens and their family members; b) the right of permanent residence in the territories of the Member States for Union citizens and their family members; and c) the limits placed on the rights set out in (a) and (b) on the grounds of public policy, public security, or public health.

Council Directive 2004/81/EC on 29 April 2004 on the residence permit issued to third-country nationals who are victims of human trafficking or who have been the subject of an action to facilitate illegal immigration, who cooperate with competent authorities;²⁴ this aims to define the conditions for granting temporary residence permits (the duration of which is linked to the length of the relevant national proceedings) to third-country nationals who cooperate in the fight against human trafficking or the facilitation of illegal immigration.

Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data²⁵ aimed at combating illegal immigration and improving border controls through the transmission of advance passenger data by carriers to competent national authorities.

Council Directive 2004/83/EC on 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,²⁶ which aims to define the minimum standards for the qualification of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. This Directive was repealed by Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, which sought a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted.

22 OJ L 321, 6.12.2003, pp. 26–31.

23 OJ L 158, 30.4.2004, pp. 77–123.

24 OJ L 261, 6.8.2004, pp. 19–23.

25 OJ L 261, 6.8.2004, pp. 24–27.

26 OJ L 304, 30.9.2004, pp. 12–23.

Council Directive 2005/85/EC on 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status,²⁷ which aims to define minimum standards on procedures in Member States for granting and withdrawing refugee status. This Directive was repealed by Directive 2013/32/EU of the European Parliament and the Council on 26 June 2013 on common procedures for granting and withdrawing international protection.

Council Directive 2004/114/EC on 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training, or voluntary service,²⁸ which aimed to lay down: a) the conditions of admission of third-country nationals to the territory of the Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training, or voluntary service; and b) the rules concerning the procedures for admitting third-country nationals to the territory. This Directive was repealed by Directive (EU) 2016/801 of the European Parliament and the Council on 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects, and au pairing.

Council Directive 2005/71/EC on 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research,²⁹ aims to lay down the conditions for the admission of third-country researchers in Member States for more than three months to carry out a research project based on a hosting agreement with a research institution. This Directive was repealed by Directive (EU) 2016/801 of the European Parliament and the Council on 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects, and au pairing.

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States to return illegally staying third-country nationals,³⁰ which aims to define common standards and procedures to be applied in Member States to return illegally staying third-country nationals in accordance with fundamental rights as general principles of community law and international law, including refugee protection and human rights obligations.

Council Directive 2009/50/EC on 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment,³¹ which aims to define a) the conditions of entry and residence of third-country nationals and EU Blue Card holders in the territory of Member States for more than three months for the purposes of highly qualified employment as well as the conditions of entry and residence of their family members; and b) the conditions of entry

27 OJ L 326, 13.12.2005, pp. 13–34.

28 OJ L 375, 23.12.2004, pp. 12–18.

29 OJ L 289, 3.11.2005, pp. 15–22.

30 OJ L 348, 24.12.2008, pp. 98–107.

31 OJ L 155, 18.6.2009, pp. 17–29.

and residence of third-country nationals and their family members referred to above in the territory of Member States other than the first Member State.

Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 provided minimum standards on sanctions and measures against employers of illegally staying third-country nationals,³² which aims to prohibit the employment of illegally staying third-country nationals to combat illegal immigration. To this end, it lays down common minimum standards on sanctions and measures to be applied in Member States against employers who infringe upon this prohibition.

Directive 2011/95/EU of the European Parliament and Council on 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted,³³ aims to define standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State,³⁴ which aims to establish: a) a single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status; and b) a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection,³⁵ which aims to establish common procedures for granting and withdrawing international protection under Directive 2011/95/EU.

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection,³⁶ which aims to establish standards for the reception of applicants for international protection in Member States.

Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the

32 OJ L 168, 30.6.2009, pp. 24–32.

33 OJ L 337, 20.12.2011, pp. 9–26.

34 OJ L 343, 23.12.2011, pp. 1–9.

35 OJ L 180, 29.6.2013, pp. 60–95.

36 OJ L 180, 29.6.2013, pp. 96–116.

purpose of employment as seasonal workers,³⁷ which aims to define the conditions of entry and residence as well as the rights of third-country nationals for the purposes of seasonal employment.

Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of workers’ freedom of movement,³⁸ which aims to facilitate the uniform application and enforcement of the rights conferred under Art. 45 TFEU (Freedom of movement for workers) and Art. 1-10 of Regulation (EU) No 492/2011 of the European Parliament and of the Council on 5 April 2011 on freedom of movement for workers within the union.³⁹ This Directive applies to EU citizens exercising these rights, as well as their family members.

Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intracorporate transfer,⁴⁰ which aims to define: a) the conditions of entry to and residence for more than 90 days within the territory of Member States of third-country nationals and of their family members in the framework of an intracorporate transfer, as well as their rights; b) the conditions of entry and residence, and the rights of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national intracorporate transferee permit on the basis of the Directive.

Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services,⁴¹ which aims to ensure that an adequate level of protection of the rights of workers posted for the cross-border provision of services is respected; in particular, the enforcement of the terms and conditions of employment applicable in the Member State where the service is to be provided, in accordance with Art. 3 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning⁴² the posting of workers in the framework of the provision of services. This facilitates the exercise of freedom by service providers to provide services and seeks to promote fair competition between service providers, thereby supporting the functioning of the internal market.

Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing,⁴³ which aims to define: a) the conditions of entry to and residence for a period exceeding 90 days within the territory of the Member States

37 OJ L 94, 28.3.2014, pp. 375–390.

38 OJ L 128, 30.4.2014, pp. 8–14.

39 OJ L 141, 27.5.2011, pp. 1–12.

40 OJ L 157, 27.5.2014, pp. 1–22.

41 OJ L 159, 28.5.2014, pp. 11–31.

42 OJ L 18, 21.1.1997, pp. 1–6.

43 OJ L 132, 21.5.2016, pp. 21–57.

of third-country nationals, and where applicable their family members, for the purpose of research, studies, training, or voluntary service in the European Voluntary Service, and where Member States so decide, pupil exchange schemes or educational projects, voluntary service other than the European Voluntary Service, or au pairing (as well as the rights of such third-country nationals); and b) the conditions of entry and residence, and the rights, of researchers, and where applicable their family members, and students, referred to in point (a), in Member States other than the Member State which first grants the third-country national an authorisation on the basis of the Directive.

The general overview above focuses on EU legislation in terms of migration laws, which is the matrix for a specific section of asylum or refugee laws. It follows that the core of asylum law, which is an integral part of the EU's goal of establishing and systematically enlarging the space open to all those whose circumstances compel them to seek legal protection in the EU, currently consists of: Art. 79 TFEU; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection; and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. This approach reveals the EU's steadfast commitment to fostering an inclusive environment for individuals compelled to seek refuge because of adverse circumstances. This legislative landscape, which is intricately woven with the principles of solidarity and protection, is manifested through a harmonious blend of primary and secondary EU laws. These rules demonstrate the EU's comprehensive approach to managing migration and providing asylum by outlining not just the rights of EU citizens but also offering protection to people of third countries who need such protection.

5. Legal stages of the migrant and refugee concepts

The levels of legal regulations relating to migrants and refugees, particularly in the area of EU law discussed in detail above, have specific components. It has three components: qualification, reception, and procedures.

Qualification refers to the criteria for recognising whether a person can be legally recognised as a refugee or migrant (qualifying conditions, e.g. whether someone is fleeing war, looking for work, or an EU citizen). Reception refers to the description of rules for the treatment of persons undergoing migration or the refugee process. In other words, it defines the rules for receiving foreigners when they arrive in a country (reception conditions).

Both qualification and reception are largely norms of substantive law, which require the norms of formal law to be activated, realised, and applied. Hence, the third component precisely comprises the procedure (formal law), that is, the legal norms providing for a procedural model related to the granting or receiving of refugee status and the realisation of migrant status, as well as the norms providing for international protection (refugees) or rules of temporary residence (migrants).

The proposed distinction among qualification, reception, and procedures is derived from legal regulations on international protection. An example of qualification is the regulations of Directive 2011/95/EU of the European Parliament and of the Council on 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). An example of reception can be found in the regulations of Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). Finally, an example of the procedure is the regulations of Directive 2013/32/EU of the European Parliament and Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

In summary, this section meticulously delineates the essential legal processes – qualification, reception, and procedures – that frame the EU’s approach to managing migrants and refugees. Through the lens of significant directives, it outlines the criteria for recognising refugees or migrants, standards for their treatment, and procedural guidelines for granting these statuses. This examination prompted vital consideration regarding the adequacy of these stages in addressing the complexities of migration and asylum. As we proceed to a general discussion of the concepts of “migrant” and “refugee”, it becomes imperative to reflect on how these legal frameworks align with the broader dynamics of global migration. This progress invites a deeper enquiry into the efficacy and adaptability of existing legal norms in the face of evolving global challenges, establishing a foundation for the comprehensive exploration of migration and refugee issues from a wider perspective.

6. The concepts of migrant and refugee: a general perspective

Starting with the term refugees, it should be pointed out that this concept is universally defined. Specifically, this notion is taken from the system of international law as defined in the 1951 Geneva Refugee Convention and the 1967 New York Protocol. Based on these international legal acts, a refugee is a person who resides outside his or her country of origin, of which he or she is a national or in which he or she has had his or her permanent residence, who has a well-founded

fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and because of this fear is unable or unwilling to avail himself or herself of the protection of his or her country of origin, and no exclusion clauses apply to him or her.⁴⁴

As a result of the above-mentioned legal acts, foreigners are granted *refugee status* if, due to a well-founded fear of persecution in the country of origin on any of the grounds listed above, they cannot or do not wish to avail themselves of the protection of that country. In addition, foreigners may be granted *subsidiary protection* where the return to their country of origin may expose them to a) a real risk of suffering serious harm through capital punishment or execution, torture, inhumane and degrading treatment, or punishment; or b) a serious and individualised threat to life or health resulting from the widespread use of violence against the civilian population in a situation of international or internal armed conflict. Due to this risk, they cannot or do not wish to enjoy the protection of their country of origin.⁴⁵ In this light, the terms migration/migrant and refugee are distinct. Thus far, the only commonality is that both refugees and migrants have left their place of residence in their country of origin; however, they have done so for different reasons. In the context of analysing the term “refugee”, it is also worth mentioning the Universal Declaration of Human Rights,⁴⁶ which in Art. 14(1.1) unambiguously indicates that every human being has the right to seek and enjoy asylum in another country in the event of persecution. In Poland, the comprehensive process of granting international protection is based on the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland.⁴⁷

Conversely, it is difficult to find a definition of the term “migrant” in the legal order. Accordingly, one may come to the conclusion that in the Polish legal system the word that mostly aptly describes both refugees and migrants is “foreigner”. As discussed above, the basis for defining foreigners in Poland is the Act of 12 December 2013,⁴⁸ according to which a foreigners as any person who does not have Polish citizenship (Art. 3). According to Art. 56(1) of the Constitution of the Republic of Poland,⁴⁹ foreigners may benefit from the right of asylum in the Republic of Poland based on the principles set out in the Act. In turn, pursuant to Art. 56(2) of the Constitution of the Republic of Poland, foreigners who seek protection from persecution in the Republic of Poland may be granted the status of refugees in accordance with international agreements binding on the Republic of Poland.

44 Wierzbicki, 1993, p. 9; Pluta, 2008, cited in Czerniejewska and Main, 2008, p. 35.

45 For more information, see: <https://www.gov.pl/web/udsc/prawa-i-obowiazki--wnioskodawca> (Accessed: 14 December 2023).

46 The Universal Declaration of Human Rights, 1948.

47 Journal of Laws from 2023, item 1504.

48 Journal of Laws from 2023, items 519, 185, 547.

49 Journal of Laws from 1997 no. 78, item 483, from 2001 no. 28, item 319, from 2006 no 200, item 1471, from 2009, no. 114, item 946.

The word migrant is certainly directly related to the process of migration, that is, the movement of people from one place to another, most often caused by the search for better, more stable, and secure living conditions.⁵⁰ Migration as a process has various aspects, namely, its purpose (improvement of living conditions), its course (choice of place of movement), and the factors causing the decision to move.⁵¹ In this sense, migration takes the form of both emigration, leaving one’s place of residence and moving elsewhere, and immigration, arriving at a new place of residence. In national territories, migration may take the form of internal or external migration. The former describes movement within a given national territory, while the latter describes movement beyond the borders of the country of origin and therefore has an international dimension. The factors driving these movements are very difficult to fully catalogue; economic or environmental issues are frequently cited, although these are the only examples, and each individual story may be different.

Against this background, the term “migrant” appears as an inevitable component of the migration process, though it does not have a single, universal definition.⁵² Among these definitions, for statistical purposes, Poland defines the term migrant as a person who goes abroad and comes to a country to reside either permanently or temporarily.⁵³ The definition of migrants and refugees developed by the United Nations Department of Economic and Social Affairs (UN DESA) can also be used.⁵⁴ According to this organisation, although the terms “refugee” and “migrant” are often used interchangeably by the general public, they are fundamentally different. Refugees are people who are outside their country of origin because of fear of persecution, conflict, generalised violence, or other circumstances that have seriously disturbed the public order in their country of origin; as a result, they require international protection. Definitions of refugees can be found in the 1951 Convention and regional refugee instruments, as well as the UNHCR’s Statute. The term “migrant”, on the other hand, is more complicated. While there is no formal legal definition of an international migrant, most experts agree that an international migrant is someone who changes his or her country of residence, irrespective of the reason for migration or legal status. Generally, a distinction is made between short-term or temporary migration, covering movements lasting between three and 12 months, and long-term or permanent migration, referring to a change in the country of residence for a duration of one year or more. Based on this definition, it can be concluded that a migrant is a person who changes the country in which he or she resides, or in which he or she will reside, for a specified period of time or permanently.

50 Pilich, 2022, pp. 11–42.

51 Eisenstadt, 1953, p. 1.

52 Staniszewski, 2023, p. 9.

53 For more information, see: <https://stat.gov.pl/metainformacje/slownik-pojec/pojecia-stosowane-w-statystyce-publicznej/213,pojecie.html> (Accessed: 23 November 2023).

54 For more information, see: <https://refugeesmigrants.un.org/definitions> (Accessed: 23 November 2023).

In contrast, according to the Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Assembly of Heads of State and Government at its sixth ordinary session in Addis Ababa on 10 September 1969 the term “refugee” shall mean every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing the public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. In the case of a person who has several nationalities, the term “a country of which he is a national” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.⁵⁵

In conclusion, this section has delineated the distinct legal frameworks surrounding “migrants” and “refugees”, which are rooted in international conventions. While refugees are defined by their need for protection from persecution, migrants are characterised by their pursuit of improved living conditions; they do not necessarily face direct threats. This differentiation prompted us to consider the adequacy of current global policies in addressing the complex realities of migration and asylum. How do these definitions influence the rights and protections of individuals navigating cross-border challenges? The following section expands on this discussion by exploring how these concepts are uniquely interpreted and applied within the Central European legal landscape.

7. A legal and comparative account of migration and refugee terms

It is also appropriate to briefly present a comparative legal treatment of migration- and refugee-related terms. This provides a broader view of the issue at hand and enriches our conclusions. This analysis encompasses a detailed examination of legal provisions regarding migration and refugees across seven countries: Serbia, Croatia, Slovenia, Slovakia, the Czech Republic, Romania, and Hungary. Each nation

⁵⁵ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.

represents a unique perspective within the Central European context, providing a diverse spectrum of legal interpretations and applications of migration and refugee terms. All of the observations made in this subsection and the information presented are drawn from materials made available by members of the research group “Migration Challenges – Legal Responses” as part of the activities of the Central European Professors’ Network coordinated by the Central European Academy. This collaborative effort enabled a comprehensive compilation and analysis of relevant legal frameworks, offering insights into the differences and similarities in how migration and refugee issues are addressed within these jurisdictions. Through this comparative lens, we aim to shed light on the complexities of migration laws in Central Europe, contributing to a deeper understanding of the region’s legal landscape in relation to global migration and asylum challenges.

7.1. Serbia

In Serbia, the Law on Migration Management contains many definitions of migration or refugees.

First, “migration” is defined as the voluntary or forced departure from the country of origin or residence, for the purpose of temporary or permanent residence in the Republic of Serbia, as well as the voluntary or forced leaving of the Republic of Serbia, for the purpose of temporary or permanent residence in another country (external migration). It also refers to changing the place of permanent residence within the territory of the Republic of Serbia or changing the place of temporary residence within the territory of the Republic of Serbia if the change occurred forcibly (internal migration).

Second, “immigration” refers to external migration into the Republic of Serbia, which lasts or is expected to exceed 12 months.

Third, “emigration” refers to external migration from the Republic of Serbia, which lasts or is expected to exceed 12 months.

Fourth, “migration management” refers to the collection, analysis, processing, organising, exchange, storage, and protecting of data relevant to migration management, the determination of indicators and data relevant to migration management, the establishing of a unified system and other mechanisms for the sharing of operational migration data, defining and proposing objectives and priorities for migration policy, proposing and taking measures for the implementation of migration policy, and coordinating the authorities performing activities related to migration management. All of this contributes to the operation of other migration management mechanisms established by law.

Fifth, a “unified system” is a system of collecting, analysing, processing, organising, exchanging, storing, and protecting data obtained from information data sub-systems (databases) that authorities are competent in relation to particular areas of migration collection, processing, use, protection, and development in the field of migration management, in accordance with the law.

Sixth, “returnee under readmission agreement” is a citizen of the Republic of Serbia for whom the competent authority gave its consent for return on the basis of readmission agreement concluded by the Republic of Serbia.

In addition to this Act, Serbia also has a Law on Foreigners which contains relevant definitions. Among the most pertinent, “foreigner” means any person who does not have citizenship of the Republic of Serbia. “Stateless person” means a person who is not considered a national by any country’s legislation. “Vulnerable persons” include people with disabilities; the elderly; pregnant women; single parents with minor children; victims of torture, rape, or other severe forms of violence (including domestic violence and intimate partner violence related to sex, gender, sexual orientation, and gender identity); victims of human trafficking; persons faced with the threat of torture, inhumane and degrading treatment, or punishment in their country of origin because of their sexual orientation or gender identity; minors; and unaccompanied minors.

In addition to the acts presented above, the Law on Asylum and Temporary Protection is also in force in Serbia; it states, *inter alia*, that: “asylum” shall be understood to mean the right to residence and protection accorded to a foreigner who has been granted refuge or subsidiary protection, on the basis of a decision by the competent authority; a “foreigner” shall be understood to mean any person who is not a citizen of the Republic of Serbia, irrespective of whether he/she is a foreign national or a stateless person; an “asylum seeker” shall be understood to mean a foreigner who has filed an application for asylum in the territory of the Republic of Serbia, and where no final decision has yet been taken; a “refugee” shall be understood to mean a foreigner who, owing to a well-founded fear of being persecuted for reasons of race, sex, language, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his/her origin, and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country, as well as a stateless person who is outside the country of his/her habitual residence, and who is unable or, owing to such fear, unwilling to return to that country; “subsidiary protection” shall be understood to mean a form of protection granted by the Republic of Serbia to a foreigner who would be, if returned to the country of his/her origin or habitual residence, subjected to serious harm, and who is unable or unwilling to avail himself/herself of the protection of that country; and “temporary protection” shall be understood to mean a form of protection granted by a decision of the Government of the Republic of Serbia in the case of a mass influx of displaced persons who cannot be returned to their countries of origin or habitual residence.

7.2. Croatia

Croatia has established the Aliens Act, which, among other things, regulates that: “stateless person” shall mean a person who is not considered a national by any State’s national legislation; “alien” shall mean a person who does not hold Croatian citizenship; “seasonal worker” shall mean a third-country national who retains his

permanent residence in a third country while staying legally and temporarily in the Republic of Croatia to carry out an activity dependent on the passing of the seasons, under one or more fixed-term contracts of employment concluded directly with an employer established in the Republic of Croatia; “return” shall mean voluntary departure or forcible removal of a third-country national staying illegally in the Republic of Croatia to a third country; and “international protection” shall mean protection granted to a third-country national or a stateless person, which includes asylum and subsidiary protection in line with the legislation governing international protection.

7.3. Slovenia

In Slovenia, the Temporary Protection of Displaced Persons Act, the International Protection Act, and Foreigners Act are in force.

According to the Temporary Protection of Displaced Persons Act, *inter alia*: “temporary protection” shall mean an exceptional procedure, in the event of a current or imminent mass influx of displaced persons from third countries who are unable to return to their countries of origin, for the provision of immediate temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects to the efficiency of its operation, in the interests of the persons concerned and other persons requesting protection. “Mass influx” refers to the arrival of a large number of displaced persons from a specific third country or region, regardless of whether their arrival in the Republic of Slovenia is spontaneous or organised. “Vulnerable groups of persons” shall mean people with special needs, in particular unaccompanied minors, persons with disabilities, elderly persons, pregnant women, unaccompanied women, single parents with minor children, victims of sexual abuse, and victims of torture or organised violence.

According to the International Protection Act, among other things: “international protection” shall mean refugee status and subsidiary protection status; “refugee” shall mean a third-country national or a stateless person who has been granted protection; “stateless person” shall mean a person who is not considered a citizen by any country’s legislation; “vulnerable person” with special needs shall mean, in particular, a minor, an unaccompanied minor, a disabled person, an elderly person, a pregnant woman, a single parent with a minor child, a victim of human trafficking, a person with a mental health disorder or mental health problems, or a victim of rape, torture, or other severe forms of psychological, physical, and sexual abuse.

According to the Foreigners Act, *inter alia*: “foreigner” shall mean a person who is not a citizen of the Republic of Slovenia and “stateless person” shall mean a foreigner who is not considered a citizen by any country under its legal acts.

7.4. Romania

In Romania, two pieces of legislation relate to the present analysis: the Law on the Regime of Aliens and the Law on Asylums.

According to the former, among others: an “alien” is a person who does not have Romanian citizenship, citizenship of another Member State of the EU or of the European Economic Space, or citizenship of the Swiss Confederation and a “stateless person” is an alien who does not have citizenship of any State.

According to the latter, among others: “alien” is a foreign citizen or stateless person; “refugee status” is a form of protection recognised by the Romanian State for foreign citizens or stateless persons who fulfil the conditions stipulated in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, as well as to the Protocol on Status of Refugees; “subsidiary protection” is form of protection granted by the Romanian State to a foreign citizen or a stateless person for reasons other than those named in the Geneva Convention; and “temporary protection” is an exceptional procedure meant to ensure, in the case of a current or imminent massive influx of persons displaced from third countries who cannot return to their country of origin, immediate and temporary protection for such persons, especially if there is a risk that the asylum system cannot process this influx without negative side effects to its efficient operation, in the interest of the aforementioned persons and of other persons in need of protection.

7.5. Czech Republic

The Czech Republic has two pieces of legislation on migration and asylum: the Act on the Residence of Foreign Nationals in the Territory of the Czech Republic and the Act on Asylum.

According to the former, among other things, a “foreign national” means a natural person who is not a citizen of the Czech Republic (including citizens of the EU).

Under the latter, among other things: “international protection” means protection provided to foreign nationals within the territory in the form of asylum or subsidiary protection; a “vulnerable person” means especially an unaccompanied minor, a parent or family with a minor child or a parent or family with a minor child with a medical disability, a person over 65 years of age, a person with a medical disability or a serious illness, a pregnant woman, a victim of human trafficking, or a person that has suffered torture or rape or been subjected to serious forms of mental, physical, or sexual violence; a “recognised refugee” means a foreign national who has been granted asylum under Chechia law; and a “person enjoying subsidiary protection” means a foreign national who has been granted subsidiary protection, for the term of validity of the decision to grant or extend subsidiary protection. The latter term also refers to foreign nationals who, while the decision to grant or extend subsidiary protection was valid, made an application for extension of subsidiary

protection; this shall apply until the Ministry’s decision on such an application gains a legal effect.

7.6. Slovakia

In Slovakia, there is the Act on Residence of Foreigners and Amendment and Supplementation of Certain Acts, according to which, inter alia: a “foreigner” shall be understood as anybody who is not a State citizen of the Slovak Republic; a “vulnerable person” is especially a minor, a disabled person, a victim of human trafficking, an older person (typically older than 65 years, though in justified cases even a person younger than 65 years), a pregnant woman, a single parent with an underage child, or a person subjected to torture, rape, or other serious forms of psychical, physical, or sexual violence. Slovakia also has an Act on Asylum, according to which, inter alia: “international protection” means granting asylum or subsidiary protection; “asylum” means protection of an alien against persecution on the grounds laid down in an international Treaty or a separate regulation; and “subsidiary protection” means protection against serious harm in the country of origin.

7.7. Hungary

Hungary has an Act on Asylum, according to which, among other things: a “foreigner” is a non-Hungarian citizen and a stateless person; a “stateless person” is a person who is not recognised by any State as its citizen under the operation of its own law; “asylum” is legal grounds for staying in the territory of Hungary and simultaneous protection against refoulement, expulsion, and extradition; “subsidiary protection” is the totality of the rights due to and the obligations lying with a beneficiary of subsidiary protection; “temporary protection” is the totality of the rights due to and the obligations lying with a beneficiary of temporary protection; and the “principle of non-refoulement” is observed in accordance with the Geneva Convention.

8. Definitions related to migration and refugees in international and EU law⁵⁶

Any analysis involving the presentation of definitions related to migration and refugees must include regulations under international and EU laws, given that the definitions contained in these legal acts may determine the content of the definitions

⁵⁶ This subsection intentionally omits some of the legislation discussed in subsection 4, “Review of EU legislation on migration law, including asylum law” due to the irrelevance of the definitions contained therein.

contained in national law. Although national regulations were generally developed earlier, from the perspective of the hierarchy of sources of law, they are lower than international and EU laws (with the exception of supreme acts such as constitutions). It is also often the case that if an issue is regulated nationally, States choose to regulate the issue in accordance with international and EU law to strengthen, unify, or harmonise it in some way. This is particularly true for the effectiveness of regulations on cross-border issues. Examples include cross-border crimes and issues related to the freedom of the EU's internal market. It is impossible to introduce regulations that pass tests of effectiveness, efficiency, and interoperability solely at the national level from a cross-border perspective. What is needed here is cooperation between two or more States, and for this, we need regulations that constrain how States behave toward each other. The regulations that have this effect are the rules or legal norms of international and EU law. Accordingly, it seems reasonable to present definitions related to migration and refugees in international and EU law. These definitions can be divided into systemic, procedural, and substantive definitions (with the latter including substantive family norms, that is, substantive norms related to the family members of migrants and refugees). Within the framework of relevant acts, it is possible to group definitions according to the adopted division (systemic, procedural, and substantive), referring to the above observations. To this end, the analysis encompasses 14 legal acts, each of which is meticulously analysed and presented in the form of a table. The author believes that such a grouping of definitions is essential to fully illustrate the subject matter. While this approach may appear overly informational, the author intentionally employed it to ensure a comprehensive and structured presentation of the complex legal landscape surrounding migration and refugees.

First, the 1951 Refugee Convention laid the groundwork for further legislation, it was supplemented by the 1967 Protocol. Many pieces of legislation refer to this Convention, either directly or indirectly. This piece of international law has effectively acquired benchmark status; the definition of refugees contained therein has not only influenced national law, but also other pieces of international and EU law. The Convention contains important substantive and procedural definitions. The grouping process is presented in Table 1.⁵⁷

57 Regarding the scope of this act of international law see, e.g., Weis, 1961, pp. 255–264; Blay and Tsamenyi, 1990, pp. 527–561; Abell, 1999, pp. 60–83.

Table 1. Groupings of definitions from the Convention relating to the Status of Refugees⁵⁸

Convention relating to the Status of Refugees adopted 28 July 1951 by United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950	
Definition	Group
<p><u>Article 1 – Definition of the term “refugee”</u></p> <p>A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:</p> <p>(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;</p> <p>Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;</p> <p>(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.</p> <p>In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.</p> <p>B. (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either (a) “events occurring in Europe before 1 January 1951”; or (b) “events occurring in Europe or elsewhere before 1 January 1951”; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.</p>	Subs- tantive

⁵⁸ Source: Author’s own elaboration.

Convention relating to the Status of Refugees adopted 28 July 1951 by United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950	
Definition	Group
<p>(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.</p> <p>C. This Convention shall cease to apply to any person falling under the terms of section A if:</p> <p>(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or</p> <p>(2) Having lost his nationality, he has voluntarily reacquired it; or</p> <p>(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or</p> <p>(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or</p> <p>(5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;</p> <p>Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;</p> <p>(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence;</p> <p>Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.</p>	Substantive

Convention relating to the Status of Refugees adopted 28 July 1951 by United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950	
Definition	Group
<p>D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.</p> <p>When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.</p> <p>E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.</p> <p>F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:</p> <p>(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</p> <p>(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;</p> <p>(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.</p> <p>Article 31 – Refugees unlawfully in the country of refuge</p> <p>(1) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.</p> <p>2. the Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.</p>	Subs- tantive

Convention relating to the Status of Refugees adopted 28 July 1951 by United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950	
Definition	Group
<p><u>Article 32 – Expulsion</u></p> <p>(1) The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.</p> <p>(2) The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.</p> <p>(3) The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.</p> <p><u>Article 33 – Prohibition of expulsion or return ('refoulement')</u></p> <p>1. no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.</p> <p>(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.</p> <p><u>Article 34 – Naturalization</u></p> <p>The Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.</p>	Proce- dural

Second, the 1967 Protocol relating to the Status of Refugees significantly supplemented the 1951 Refugee Convention. In particular, it involved abolishing the deadline of 1 January 1951 thus opening up the provisions of the 1951 Refugee Convention to all refugees (and not only those who became refugees before the deadline). The Protocol relating to the Status of Refugees contains important substantive definitions. The grouping process is summarised in Table 2.⁵⁹

Table 2. Groupings of definitions from the Protocol relating to the Status of Refugees⁶⁰

Protocol relating to the Status of Refugees adopted 16 December 1966 by the General Assembly in resolution 2198 (XXI)	
Definition	Group
<p><u>Article 1 – General provision</u></p> <p>(1) The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.</p> <p>(2) For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words “As a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events”, in article 1 A (2) were omitted.</p> <p>(3) The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (I) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.</p>	Substantive

Third, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁶¹ differs slightly. Rather than refugees, it covers migration, specifically migration, as profiled through labour objectives. The Convention aims to protect migrant workers by setting standards for their protection in various areas and obligations for sending and receiving countries. What seems important is that this piece of international law defines the rights of

⁵⁹ Regarding the scope of this act of international law, see, e.g., Hamlin and Wolgin, 2012, pp. 586–624; Tsamenyi, 1989, pp. 180–198; Skinner, 2008, pp. 270–299.

⁶⁰ Source: Author’s own elaboration.

⁶¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2005.

all workers and their family members regardless of whether such migration is legal or illegal. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families addresses the entire migration process of all migrant workers (legal and illegal) and their family members. There are important substantive definitions in the Act under question. The grouping process is presented in Table 3.⁶²

Table 3. Groupings of definitions from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁶³

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted 18 December 1990 by General Assembly resolution 45/158	
Definition	Group
<u>Article 2</u> 2. (A) The term “frontier worker” refers to a migrant worker who retains his or her habitual residence in a neighbouring state to which he or she normally returns every day or at least once a week.	Substantive

Fourth, turning to EU law and starting with the TFEU, it must be noted that the TFEU is an act of primary EU law. This is of great importance in terms of interpretation and the power to influence national law. The TFEU is one of the foundations of the EU, systematising it institutionally and defining the EU’s competences and objectives. The TFEU contains many legal provisions related to migration and refugees. Definitions can also be found in these legal provisions, although they are not apparent at first glance. The definitions contained in the TFEU are systemic. The grouping process is presented in Table 4.⁶⁴

62 Regarding the scope of this act of international law see, for example: Hune, 1991, pp. 800–817; Edelenbos, 2005, pp. 93–98; Lönnroth, 1991, pp. 710–736.

63 Source: Author’s own elaboration.

64 Regarding the scope of this act of EU law see, e.g., Papagianni, 2013, pp. 283–299; Thym and Hailbronner, 2016, pp. 1023–1053.

Table 4. Groupings of definitions from the Treaty on the Functioning of the European Union⁶⁵

Consolidated version of the Treaty on the Functioning of the European Union⁶⁶	
Definition	Group
<p><u>Article 77 (ex Article 62 TEC)</u></p> <p>1. The Union shall develop a policy with a view to:</p> <p>(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;</p> <p>(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;</p> <p>(c) the gradual introduction of an integrated management system for external borders.</p> <p>(2) For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:</p> <p>(a) the common policy on visas and other short-stay residence permits;</p> <p>(b) the checks to which persons crossing external borders are subject;</p> <p>(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;</p> <p>(d) any measure necessary for the gradual establishment of an integrated management system for external borders;</p> <p>(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.</p>	Systemic

⁶⁵ Source: Author's own elaboration.

⁶⁶ OJ C 326, 26.10.2012, pp. 47–390.

Consolidated version of the Treaty on the Functioning of the European Union ⁶⁶	
Definition	Group
<p>(3) If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.</p> <p>(4) This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.</p> <p><u>Article 78 (ex Articles 63, points 1 and 2, and 64(2) TEC)</u></p> <p>(1) The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.</p> <p>(2) For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:</p> <p>(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;</p> <p>(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;</p> <p>(c) a common system of temporary protection for displaced persons in the event of a massive inflow;</p> <p>(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;</p> <p>(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;</p>	Systemic

Consolidated version of the Treaty on the Functioning of the European Union ⁶⁶	
Definition	Group
<p>(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;</p> <p>(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.</p> <p>(3) In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.</p> <p><u>Article 79 (ex Article 63, points 3 and 4, TEC)</u></p> <p>The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.</p> <p>(2) For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:</p> <p>(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;</p> <p>(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;</p> <p>(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;</p> <p>(d) combating trafficking in persons, in particular women and children.</p>	Systemic

Consolidated version of the Treaty on the Functioning of the European Union ⁶⁶	
Definition	Group
(3) The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.	
(4) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.	
(5) This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.	

Fifth, moving on to EU secondary legislation and starting with Directive 2011/95/EU of the European Parliament and Council on 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), it should be noted that this piece of legislation is of significant importance in the EU for matters related to international protection. In particular, it contains the conditions for determining the eligibility of a particular person for refugee or subsidiary protection. The purpose of this Directive was to establish standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status of refugees or persons eligible for subsidiary protection, and for the content of the protection granted. There are several substantive (separated into substantive family related definitions) and procedural definitions. The grouping process is presented in Table 5.⁶⁷

⁶⁷ Regarding the scope of this EU Act see, e.g., Morgese, 2012, pp. 255–275; Gordanić, 2012, pp. 60–67; Aldea, 2018, pp. 141–148.

Table 5. Groupings of definitions from Directive 2011/95/EU⁶⁸

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)⁶⁹	
Definition	Group
<p><u>Article 2 – Definitions</u></p> <p>(a) ‘international protection’ means refugee status and subsidiary protection status as defined in points (e) and (g);</p> <p>(b) ‘beneficiary of international protection’ means a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g);</p> <p>(c) ‘Geneva Convention’ means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;</p> <p>(d) ‘refugee’ means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;</p> <p>(e) ‘refugee status’ means the recognition by a Member State of a third-country national or a stateless person as a refugee;</p> <p>(f) ‘person eligible for subsidiary protection’ means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;</p>	Subs- tative

68 Source: Author’s own elaboration.

69 OJ L 337, 20.12.2011, pp. 9–26.

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ⁶⁹	
Definition	Group
<p>(g) ‘subsidiary protection status’ means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;</p> <p>(h) ‘application for international protection’ means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;</p> <p>(i) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;</p> <p>(n) ‘country of origin’ means the country or countries of nationality or, for stateless persons, of former habitual residence.</p>	Substantive
<p><u>Article 2 – Definitions</u></p> <p>(j) ‘family members’ means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:</p> <ul style="list-style-type: none"> – the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals, – the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law, – the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried; 	Substantive family

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)⁶⁹	
Definition	Group
(k) ‘minor’ means a third-country national or stateless person below the age of 18 years.	Substantive family
(l) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.	
<u>Article 2 – Definitions</u>	Procedural
(m) ‘residence permit’ means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State’s law, allowing a third-country national or stateless person to reside on its territory.	

Sixth, the same is true of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 which laid down standards for the reception of applicants for international protection (recast). Similarly, this legislation concerned the reception stage. Reception conditions are important for the smooth functioning of a coherent international protection system across the EU. The purpose of this Directive was to establish standards for the reception of applicants for international protection in Member States. This Directive contains several important procedural and substantive definitions (as mentioned above, substantive family related definitions are separated). The grouping process is presented in Table 6.⁷⁰

70 Regarding the scope of this EU Act see, for example: Barry, 2021, pp. 223–242.

Table 6. Groupings of definitions from Directive 2013/33/EU⁷¹

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)⁷²	
Definition	Group
<p><u>Article 2 – Definitions</u></p> <p>(a) ‘application for international protection’: means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;</p> <p>(f) ‘reception conditions’: means the full set of measures that Member States grant to applicants in accordance with this Directive;</p> <p>(g) ‘material reception conditions’: means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;</p> <p>(h) ‘detention’: means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement.</p>	Procedural
<p><u>Article 2 – Definitions</u></p> <p>(b) ‘applicant’: means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;</p> <p>(i) ‘accommodation centre’: means any place used for the collective housing of applicants;</p> <p>(j) ‘representative’: means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;</p> <p>(k) ‘applicant with special reception needs’: means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.</p>	Substantive

71 Source: Author’s own elaboration.

72 OJ L 180, 29.6.2013, pp. 96–116.

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ⁷²	
Definition	Group
<p><u>Article 2 – Definitions</u></p> <p>(c) ‘family members’: means, in so far as the family already existed in the country of origin, the following members of the applicant’s family who are present in the same Member State in relation to the application for international protection:</p> <ul style="list-style-type: none"> – the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals; – the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law; – the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried; <p>(d) ‘minor’: means a third-country national or stateless person below the age of 18 years;</p> <p>(e) ‘unaccompanied minor’: means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.</p>	Substantive family

Seventh, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) contains a non-negligible addition of procedural issues to the two previous pieces of legislation. This concludes the system of operation of international protection and its framework, based on a distinction between the qualification, reception, and procedural stages. The purpose was to establish common procedures for granting and withdrawing international protection under Directive 2011/95/EU. However, the Directive under discussion contains not only procedural definitions but also definitions of a substantive nature, including family related substantive definitions. The grouping process is presented in Table 7.⁷³

73 Regarding the scope of this EU Act see, for example: Spalding, 2014, pp. 483–487.

Table 7. Groupings of definitions from Directive 2013/32/EU⁷⁴

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)⁷⁵	
Definition	Group
<p><u>Article 2 – Definitions</u></p> <p>(a) ‘Geneva Convention’ means the Convention of 28 July 1951 Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967;</p> <p>(g) ‘refugee’ means a third-country national or a stateless person who fulfils the requirements of Article 2(d) of Directive 2011/95/EU;</p> <p>(h) ‘person eligible for subsidiary protection’ means a third-country national or a stateless person who fulfils the requirements of Article 2(f) of Directive 2011/95/EU;</p> <p>(i) ‘international protection’ means refugee status and subsidiary protection status as defined in points (j) and (k);</p> <p>(j) ‘refugee status’ means the recognition by a Member State of a third-country national or a stateless person as a refugee;</p> <p>(c) ‘applicant’ means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;</p> <p>(d) ‘applicant in need of special procedural guarantees’ means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances;</p> <p>(p) ‘remain in the Member State’ means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined.</p>	Substantive

74 Source: Author’s own elaboration.

75 OJ L 180, 29.6.2013, pp. 60–95.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)⁷⁵

Definition	Group
<p><u>Article 2 – Definitions</u></p> <p>(b) ‘application for international protection’ or ‘application’ means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately;</p> <p>(e) ‘final decision’ means a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;</p> <p>(f) ‘determining authority’ means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;</p> <p>(k) ‘subsidiary protection status’ means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;</p> <p>(n) ‘representative’ means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;</p> <p>(o) ‘withdrawal of international protection’ means the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with Directive 2011/95/EU;</p> <p>(q) ‘subsequent application’ means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).</p>	<p>Procedural</p>

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ⁷⁵	
Definition	Group
<u>Article 2 – Definitions</u> (l) ‘minor’ means a third-country national or a stateless person below the age of 18 years; (m) ‘unaccompanied minor’ means an unaccompanied minor as defined in Article 2(l) of Directive 2011/95/EU.	Substantive family

Eighth, another important piece of legislation in the EU was Council Directive 2001/55/EC on 20 July 2001 on minimum standards for providing 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.⁷⁶ The purpose of this Directive is to enact minimum standards for providing temporary protection in the event of a mass influx of displaced persons from third countries who cannot return to their country of origin, and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Relevant procedural and substantive definitions (including substantive family related definitions) can also be found in legislation. The grouping process is presented in Table 8.⁷⁷

⁷⁶ OJ L 212, 7.8.2001, pp. 12–23.

⁷⁷ Regarding the scope of this EU Act see, for example: Mazur, 2022, pp. 279–300.

Table 8. Groupings of definitions from Directive 2001/55/EC⁷⁸

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 thereof⁷⁹	
Definition	Group
<p><u>Article 2</u></p> <p>(a) “temporary protection” means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;</p> <p>(g) “residence permit” means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State’s legislation, allowing a third country national or a stateless person to reside on its territory;</p>	Proce- dural
<p><u>Article 2</u></p> <p>(b) “Geneva Convention” means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;</p> <p>(c) “displaced persons” means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:</p> <p>(i) persons who have fled areas of armed conflict or endemic violence;</p> <p>(ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;</p>	Subs- tative

78 Source: Author’s own elaboration.

79 OJ L 212, 7.8.2001, pp. 12–23.

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 thereof⁷⁹	
Definition	Group
(d) “mass influx” means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme;	Substantive
(e) “refugees” means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention.	
<u>Article 2</u>	Substantive family
(f) ‘unaccompanied minors’ means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States;	
(h) “sponsor” means a third-country national enjoying temporary protection in a Member State in accordance with a decision taken under Article 5 and who wants to be joined by members of his or her family.	

Ninth, another relevant piece of legislation is Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. This Directive sets out common standards and procedures for returning illegally staying third-country nationals in accordance with fundamental rights as general principles of community and international law, including refugee protection and human rights obligations. Definitions of substantive and procedural nature can be found in the legislation. The grouping process is presented in Table 9.⁸⁰

⁸⁰ Regarding the scope of this EU Act see, for example: Mazur, 2022, pp. 279–300; Rojo, 2016, pp. 233–258.

Table 9. Groupings of definitions from Directive 2008/115/EC⁸¹

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals⁸²	
Definition	Group
<p><u>Article 3 – Definition</u></p> <p>1. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;</p> <p>2. ‘illegal stay’ means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;</p> <p>7. ‘risk of absconding’ means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond;</p> <p>9. ‘vulnerable persons’ means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.</p>	Substantive
<p><u>Article 3 – Definition</u></p> <p>3. ‘return’ means the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to:</p> <ul style="list-style-type: none"> – his or her country of origin, or – a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or – another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted; <p>4. ‘return decision’ means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;</p>	Procedural

81 Source: Author’s own elaboration.

82 OJ L 348, 24.12.2008, pp. 98–107.

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals⁸²	
Definition	Group
5. 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State;	Procedural
6. 'entry ban' means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;	
8. 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.	

Tenth, another relevant piece of legislation in the EU secondary law system is Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one Member State by a third-country national or a stateless person (recast). As an EU Regulation, this directly affects the legal systems of its Member States. This Regulation establishes the criteria and mechanisms for determining the Member States responsible for examining an application for international protection lodged in one Member State by a third-country national or stateless person. Definitions of substantive (including family related) and procedural nature can be found in this piece of legislation. The grouping process is shown in Table 10.⁸³

⁸³ Regarding the scope of this EU Act see, for e.g., Di Pascale, 2021, pp. 272–298; Giménez, 2013, pp. 191–192; Boroi, 2018, pp. 55–59.

Table 10. Groupings of definitions from Regulation No 604/2013⁸⁴

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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 (recast)⁸⁵	
Definition	Group
<p><u>Article 2 – Definitions</u></p> <p>(a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not national of a State which participates in this Regulation by virtue of an agreement with the European Union;</p> <p>(c) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;</p> <p>(f) ‘beneficiary of international protection’ means a third-country national or a stateless person who has been granted international protection as defined in Article 2(a) of Directive 2011/95/EU;</p> <p>(l) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;</p> <p>(n) ‘risk of absconding’ means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond.</p>	Subs- tantive

84 Source: Author’s own elaboration.

85 OJ L 180, 29.6.2013, pp. 31–59.

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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 (recast) ⁸⁵	
Definition	Group
<p>Article 2 – Definitions</p> <p>(b) ‘application for international protection’ means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;</p> <p>(d) ‘examination of an application for international protection’ means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;</p> <p>(e) ‘withdrawal of an application for international protection’ means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly;</p> <p>(k) ‘representative’ means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor, in accordance with this Regulation;</p> <p>(m) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:</p> <ul style="list-style-type: none"> – ‘long-stay visa’ means an authorisation or decision issued by one of the Member States in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than three months, – ‘short-stay visa’ means an authorisation or decision of a Member State with a view to transit through or an intended stay on the territory of one or more or all the Member States of a duration of no more than three months in any six-month period beginning on the date of first entry on the territory of the Member States, – ‘airport transit visa’ means a visa valid for transit through the international transit areas of one or more airports of the Member States. 	Procedural

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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 (recast) ⁸⁵	
Definition	Group
<p>Article 2 – Definitions</p> <p>(g) ‘family members’ means, insofar as the family already existed in the country of origin, the following members of the applicant’s family who are present on the territory of the Member States:</p> <ul style="list-style-type: none"> – the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals, – the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law, – when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present, – when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present; <p>(h) ‘relative’ means the applicant’s adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;</p> <p>(i) ‘minor’ means a third-country national or a stateless person below the age of 18 years;</p> <p>(j) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States.</p>	Substantive family

Eleventh, the next relevant EU Regulation is Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration, and Integration Fund (for the period from 1 January 2021 to 31 December 2027), which lays down the objectives of the fund, the budget for the period from 1 January 2021 to 31 December 2027 the forms of union funding, and the rules regarding the allocation of such funding. Definitions of a substantive nature, including family related definitions, as well as procedural definitions, can be found in this legal act. The grouping process is presented in Table 11.

Table 11. Groupings of definitions from Regulation 2021/1147⁸⁶

Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund⁸⁷	
Definition	Group
<p><u>Article 2 – Definitions</u></p> <p>(3) ‘blending operation’ means actions supported by the Union budget, including within blending facilities within the meaning of point (6) of Article 2 of the Financial Regulation;</p> <p>(5) ‘humanitarian admission’ means the admission following, where requested by a Member State, a referral from the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (‘UNHCR’), or another relevant international body, of third-country nationals or stateless persons from a third country to which they have been forcibly displaced to the territory of the Member States, and who are granted international protection or a humanitarian status under national law that provides for rights and obligations equivalent to those of Articles 20 to 34 of Directive 2011/95/EU for beneficiaries of subsidiary protection;</p> <p>(6) ‘operating support’ means a part of a Member State’s allocation which may be used as support to the public authorities responsible for carrying out the tasks and providing the services which constitute a public service for the Union;</p> <p>(7) ‘removal’ means removal as defined in point (5) of Article 3 of Directive 2008/115/EC;</p>	Proce- dural

⁸⁶ Source: Author’s own elaboration.

⁸⁷ PE/56/2021/INIT, OJ L 251, 15.7.2021, pp. 1-47.

Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund⁸⁷	
Definition	Group
<p>(8) ‘resettlement’ means the admission following a referral from the UNHCR of third-country nationals or stateless persons from a third country to which they have been displaced, to the territory of the Member States, and who are granted international protection and have access to a durable solution in accordance with Union and national law;</p> <p>(9) ‘return’ means return as defined in point (3) of Article 3 of Directive 2008/115/EC;</p> <p>(10) ‘specific actions’ means transnational or national projects that bring Union added value in line with the objectives of the Fund for which one, several or all Member States may receive an additional allocation to their programmes;</p> <p>(13) ‘Union actions’ means transnational projects or projects of particular interest to the Union implemented in accordance with the objectives of the Fund.</p>	Proce- dural
<p><u>Article 2 – Definitions</u></p> <p>(1) ‘applicant for international protection’ means an applicant as defined in point (c) of Article 2 of Directive 2013/32/EU of the European Parliament and of the Council;</p> <p>2) ‘beneficiary of international protection’ means a beneficiary of international protection as defined in point (b) of Article 2 of Directive 2011/95/EU of the European Parliament and of the Council;</p> <p>(11) ‘third-country national’ means any person, including a stateless person or a person with undetermined nationality, who is not a citizen of the Union as defined in Article 20(1) TFEU;</p> <p>(14) ‘vulnerable person’ means any person defined as a vulnerable person under the Union law relevant to the policy area of action supported under the Fund.</p>	Subs- tative
<p><u>Article 2 – Definitions</u></p> <p>(4) ‘family member’ means any third-country national defined as a family member under the Union law relevant to the policy area of action supported under the Fund;</p> <p>(12) ‘unaccompanied minor’ means an unaccompanied minor as defined in point (l) of Article 2 of Directive 2011/95/EU;</p>	Subs- tative family

In 2020, the European Commission tabled new legislative proposals on migration and asylum issues within the framework of a new act on migration and asylum. Although this is not currently a law, regardless of the success of the legislative process, the content of legislative proposals is known. Accordingly, it can be surmised that potential future legislation in the EU will include definitional provisions. Substantive definitions, including family related and procedural definitions, can be found in these proposals. The grouping process has been presented in Tables 12, 13 and 14 separately for each legislative proposal of the European Commission.⁸⁸

Table 12. Groupings of definitions from Proposal COM/2020/610 final⁸⁹

Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund].⁹⁰	
Definition	Group
<p>Article 2 – Definitions</p> <p>(a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty and who is not a person enjoying the right to free movement under Union law as defined in Article 2, point (5) of Regulation (EU) 2016/399 of the European Parliament and of the Council;</p> <p>(c) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a decision has not been taken, or has been taken and is either subject to or can still be subject to a remedy in the Member State concerned, irrespective of whether the applicant has a right to remain or is allowed to remain in accordance with Regulation (EU) XXX/XXX [Asylum Procedure Regulation], including a person who has been granted immediate protection pursuant to Regulation (EU) XXX/XXX [Regulation addressing situations of crisis and force majeure in the field of asylum and migration];</p>	Substantive

88 Regarding the scope of the New Pact on Migration and Asylum see, for example: Gazi, 2021, pp. 167–175; Mouzourakis, 2020, pp. 171–180; Doliwa-Klepacka, 2021, pp. 9–21.

89 Source: Author’s own elaboration.

90 COM/2020/610 final.

Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund].⁹⁰

Definition	Group
<p>(l) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;</p> <p>(q) ‘risk of absconding’ means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that an applicant who is subject to a transfer procedure may abscond;</p> <p>(w) ‘migratory pressure’ means a situation where there is a large number of arrivals of third-country nationals or stateless persons, or a risk of such arrivals, including where this stems from arrivals following search and rescue operations, as a result of the geographical location of a Member State and the specific developments in third countries which generate migratory movements that place a burden even on well-prepared asylum and reception systems and requires immediate action;</p> <p>(x) ‘resettled or admitted person’ means a person who has been accepted by a Member State for admission pursuant to Regulation (EU) XXX/XXX [Union Resettlement Framework Regulation] or under a national resettlement scheme outside the framework of that Regulation;</p> <p>(aa) ‘illegally staying third-country national’ means a third-country national who does not fulfil or no longer fulfils the conditions of entry as set out in Article 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in a Member State.</p>	Subs-tantive

Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund].⁹⁰	
Definition	Group
<p>Article 2 – Definitions</p> <p>(b) ‘application for international protection’ or ‘application’ means a request for protection made to a Member State by a third-country national or a stateless person, who can be understood as seeking refugee status or subsidiary protection status;</p> <p>(m) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States, including:</p> <p>(i) an authorisation or decision issued in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than 90 days,</p> <p>(ii) an authorisation or decision issued in accordance with its national law or Union law required for entry for a transit through or an intended stay in that Member State not exceeding 90 days in any 180-day period,</p> <p>(iii) an authorisation or decision valid for transit through the international transit areas of one or more airports of the Member States;</p> <p>(p) ‘absconding’ means the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant’s control;</p> <p>(u) ‘relocation’ means the transfer of a third-country national or a stateless person from the territory of a benefiting Member State to the territory of a contributing Member State;</p> <p>(z) ‘return decision’ means an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC of the European Parliament and of the Council.</p>	Proce- dural

Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund].⁹⁰	
Definition	Group
<p>Article 2 – Definitions</p> <p>(g) ‘family members’ means, insofar as the family already existed before the applicant or the family member arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the Member States:</p> <p>(i) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,</p> <p>(ii) the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,</p> <p>(iii) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,</p> <p>(iv) where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present,</p> <p>(v) the sibling or siblings of the applicant;</p> <p>(h) ‘relative’ means the applicant’s adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;</p> <p>(i) ‘minor’ means a third-country national or a stateless person below the age of 18 years;</p> <p>(j) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States.</p>	Substantive family

Table 13. Groupings of definitions from Proposal COM/2020/612 final⁹¹

Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817⁹²	
Definition	Group
<u>Article 2 – Definitions</u> 1. 'unauthorised crossing of the external border' means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399.	Proce- dural
<u>Article 2 – Definitions</u> 5. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article, 2 Point 5, of Regulation (EU) 2016/399.	Subs- tantive

Table 14. Groupings of definitions from Proposal COM/2020/613 final⁹³

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and force majeure in the field of migration and asylum⁹⁴	
Definition	Group
<u>Article 1</u> (a) an exceptional situation of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations, being of such a scale, in proportion to the population and GDP of the Member State concerned, and nature, that it renders the Member State's asylum, reception or return system non-functional and can have serious consequences for the functioning of the Common European Asylum System or the Common Framework as set out in Regulation (EU) XXX/XXX [Asylum and Migration Management], or (b) an imminent risk of such a situation.	Subs- tantive

91 Source: Author's own elaboration.

92 COM/2020/612 final.

93 Source: Author's own elaboration.

94 COM/2020/613 final.

These carefully constructed tables, which synthesise definitions relevant to these topics from 14 legal acts, provide a thorough overview of how international and EU laws shape the notions of migration and refugees. A fundamental standard was set by the 1951 Refugee Convention and its 1967 Protocol, which impacted other international and EU legal instruments, in addition to national laws. This is also reflected in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which emphasises the protection of all migrant workers regardless of their legal status and broadens the conversation to encompass labour migration. These criteria are further refined by the TFEU and other EU directives, which cover several phases of immigration and asylum processes, from qualifying and reception to procedure. This comprehensive compilation highlights the intricate and interrelated nature of legal terminology, underscoring the need for a unified approach to immigration and refugee legislation across the EU. By presenting this research in tabular form, the author hopes to demystify these complex legal environments and emphasise how crucial it is to have a cohesive legal framework to properly handle migration and asylum.

9. Conclusion

Using 10 key points to summarise the complex web of difficulties around migration and refugees, this section captures the multidimensional character of these processes from several fields. This research highlights the significant role of the law in managing the intricacies of migration- and refugee-related issues, emphasising its ability to justify and control these worldwide movements. Exploring the wide-ranging effects of globalisation leads to a detailed comprehension of specific legal terms in international and EU contexts. In addition to illustrating the complexities of the law, these 10 observations emphasise the need for an integrated strategy that combines national and international collaboration to successfully handle the benefits and problems posed by migration and refugee movements. This synthesis not only improves our understanding but also lays forth a future-focused agenda for legislative and policy change in this dynamic environment.

First, concepts such as migration and refugees, and the entire conceptual grid associated with them are interdisciplinary, incorporating psychological, sociological, political, and legal sciences. Nevertheless, as a social phenomenon and regulatory tool of the State, it seems that the law has the power to control the highly sensitive and complex phenomena of migration and refugeeism. By defining and limiting how migration and refugeeism occur, the law rationalises these phenomena.

Second, globalism forms the basis of migration and refugee phenomena. Clearly, these phenomena do not refer to and accommodate purely internal State affairs; they

involve direct cross-border situations involving at least two States and typically far more State actors. Therefore, these phenomena exhibit global characteristics.

Third, the phenomena of migration and refugees are governed by various types and areas of law. This includes substantive and formal law as well as national, international, and EU law. This shows that migration- and refugee-related issues are of particular importance, requiring not only a systemic approach, but also enhanced international or EU cooperation.

Fourth, there is a broad regulatory framework within the EU dealing specifically deals with migration and refugee issues. We are talking here about provisions not only of EU primary law, but also, and perhaps especially, of EU secondary law. Many pieces of legislation touch, sometimes minute, the issue at hand. It is also important to note that most provisions of EU secondary law take the legal form of directives. Evidently, this means that, currently, the responsibility for building an efficient, effective, and coherent migration and asylum system in the EU lies not only with the EU but also (and, it seems, overwhelmingly) with EU Member States.

Fifth, the normative core defining the stages of the legal concepts of migrant and refugee is the so-called triad of directives: Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast); Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast). These stages are qualification, reception, and procedure.

Sixth, the content and form of definitions contained in national law, insofar as a particular State belongs to an international organisation or is a party to the relevant international agreements, depends on the definitions contained in international or EU law. This can be seen in the national regulations presented in this study. It is clear from their internal and external similarities that they are derived from international and EU regulations.

Seventh, there are many definitions of migration and refugees in international and EU law. We are talking here not only about the main terms but also about the slightly more peripheral ones, which together form an overall international or EU conceptual grid. This conceptual grid has a significant impact. In terms of international law, many States are parties to international agreements. In terms of EU law, EU primary and secondary laws directly affect all EU Member States. This leads to a conclusion similar to the previous one, namely, that international regulations at the EU-level level currently determine the direction of the definitional grid related to migration and refugees.

Eighth, the terms' migrant and refugee were not legally identical. The term migrant refers to someone who moves from one country to another or a third country

for various reasons. Thus, the term is extremely broad and covers many categories of foreigners. These categories can be defined differently. For example, considering the physical aspects of migrants, they can be categorised as children, vulnerable persons, older adults, or people with serious illnesses. One can also categorise migrants according to their purposes and reasons for migration, such as migrant workers or refugees. Hence, the term migrant encapsulates the concept of refugees such that not every migrant is a refugee, but every refugee is a migrant.

Ninth, while the term refugee has a legal definition, the term migrant does not. This does not mean that the term migrant is legally irrelevant, but that the law does not define it. Regarding the legitimacy of creating a definition of migrant, it seems that this is not necessary because of the settled dictionary meaning and common understanding of the term. After all, it is not the case that the law defines or should define every word used. Such a conclusion is obviously unwarranted in relation to the term refugee, a concept that requires strong intervention by legislators.

Tenth, the above leads to the conclusion that the concept of migrant does not require a legal definition, while the concept of refugee has required such normative clarification. The reason for this state of affairs is the decision to leave that particular state. In the case of a migrant, this can be for various purposes (e.g. economic, work-related, or leisure), but always refers to settling for an extended period. For refugees, the decision to leave the country is compelled by external forces. Thus, what differs between migrants and refugees from a legal perspective is whether the decision to migrate was made voluntarily or under compulsion.

Ultimately, it is important to recognise that migration is not necessarily negative; its effects depend on its magnitude and how it is managed. The core issue does not lie with the sovereignty of State actors but with the approach to and perception of migration. Conversely, the circumstances compelling refugees to flee their homes are indeed dire, but the situations in which they escape – not the refugees themselves – are fraught with negativity. These scenarios necessitate concerted global efforts to address the root causes of forced migration, primarily wars and armed conflicts. We hope that, through the formulation and implementation of robust legal frameworks, we can effectively address these challenges and ensure that every individual's dignity and human rights are upheld.

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