



Council of the
European Union

Brussels, 10 April 2017
(OR. en)

8044/17

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NOTE

From:	Presidency
To:	Delegations
Subject:	Cross-cutting definitions: Qualification Regulation, Asylum Procedures Regulation, Dublin Regulation, Reception Conditions Directive

Delegations will find in Annex modifications suggested by the Presidency for cross-cutting definitions from the Qualification Regulation, Asylum Procedures Regulation, Dublin Regulation, Reception Conditions Directive and Eurodac Regulation.

The changes in the text are marked as follows: text added with regard to the original Commission proposal is marked in **bold** and underline and text deleted from the original Commission proposal is marked in **bold** and single ~~strikethrough~~.

Comments made by delegations on the Commission proposal text, orally and in writing, appear in the footnotes of the Annex.

Qualification Regulation:

Article 2

Definitions

- (7) '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 as seeking refugee status or subsidiary protection status;
- (8) '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;
- (9) 'family members' means, in so far as the family already existed before the applicant arrived on the territory of the Member States¹, the following members of the family of the beneficiary of international protection who are present **on in the territory of the** same Member State **as the beneficiary at the time of the lodging of his or her application in relation to the application for international protection:**
- (a) 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;

¹ **DE, HU, PT:** scrutiny reservation. **AT, BG, CZ, FI, IE, SI:** reservation on the extension of the scope of the definition of "*family members*". **BG:** the extension of the definition could lead to and would complicate the implementation of checks. Such a situation should be regulated by the procedure for family reunification. **AT:** redraft as follows: "*family members' means, in so far as the family already existed in the country of origin [...], the following members ...*". **SI:** the extension of the scope will make more difficult the proof of family membership. **FI:** the definition of a "*family member*" is already stabilised in Finland and it is the same for all migrant groups. Different definitions for different migrant groups would cause problems on how to apply them and would add costs. **SE:** need to specify on when the family members referred to shall be present in the MS (at the time of application for asylum? at the time of the decision?).

- (b) the minor children of the couples referred to in point (a) 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;
- (c) 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;
- (10) 'minor' means a third-country national or stateless person below the age of 18 years;²
- (11) '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, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (14) 'withdrawal of international protection' means the decision by a determining authority to revoke, end or refuse to renew refugee status or subsidiary protection status of a person;
- (16) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection and competent to take decisions at ~~first instance in such cases~~ the administrative stage of the procedure;
- ~~(19) 'guardian' 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.~~

² LU: scrutiny reservation given the link with Art. 21 APR.

Asylum Procedures Regulation:

Article 4

Definitions

- (a) '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 as seeking refugee status or subsidiary protection status;
- (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 **made taken**;
- (e) '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 the administrative stage of the procedure**³;
- ~~(f) 'guardian' means a person or an organisation appointed to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well-being in procedures provided for in this Regulation and exercising legal capacity for the minor where necessary;~~
- (g) 'withdrawal of international protection' means the decision by a determining authority to revoke, end or refuse to renew refugee status or subsidiary protection status of a person;
- (x) 'minor' means a third-country national or a stateless person below the age of 18 years;
- (xa) '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;

³ **DE:** scrutiny reservation.

Dublin Regulation:

(g) ‘family members’ means, insofar as the family already existed before the applicant arrived on the territory of the Member States ⁴ ~~in the country of origin~~, the following members of the applicant’s family who are present on the territory of the Member States:

- 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.

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~~the sibling or siblings of the applicant;~~

(i) ‘minor’ means a third-country national or a stateless person below the age of 18 years;

⁴ **AT:** widening of the definition will pose a considerable challenge to the competent authorities in verifying alleged or claimed family relations of applicants. The existing definition of Regulation 604/2013 is balanced by the discretionary clause which allows considering wider family ties as well. **CY, IE:** do not support extending the scope of the definition of “family members” as there is a risk of abuse of the system.

- (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;
- (n) 'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by **national** law⁵, to believe that an applicant or a third-country national or a stateless person **or a beneficiary of international protection** who is subject to a transfer procedure may abscond;

Reception Conditions Directive:

Article 2

Definitions

(1) '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 as seeking refugee status or subsidiary protection status.

~~**(1)(a) 'application for international protection': means an application for international protection as defined in Article 2(h) [4(2)(a)] of Directive 2011/95/EU Regulation (EU) No XXX/XXX [Procedures Regulation];**~~

(2) '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.

⁵ CZ: delete words "defined by law". All decisions to detain the person in question must be taken on the individual basis, therefore it is not possible to define in law all situations where there is a risk of absconding. If the decision on detention contains criteria upon which the police decided on detention, it is enough. The reference in the Regulation to the national law is inappropriate and unclear (missing time limit for adoption into national law).

~~(2)(b)~~ 'applicant': means ~~⇒ an applicant as defined in Article [4(2)(b)] of Regulation (EU) No XXX/XXX [Procedures Regulation] ⇐ 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;~~

(3) 'family members'⁶: means, in so far as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the same Member State as the applicant:

(a) 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;

(b) the minor children of the couples referred to in point (a) 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;

(c) 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;

⁶ **BG, DE, HU, FI:** scrutiny reservation. **BG:** the expansion of the definition would be a precondition for abuse with the right of international protection and would complicate the implementation of checks. Such a situation should be regulated by the procedure for family reunification. **IE, LV:** reservation on the extension of the scope. **HU:** the justification of family relations which were formed during the transit is more problematic than in case of family relations existing already in the country of origin. It is not obvious, whether the proposed article which generates more administrative burdens, will have the desired result. **AT:** as in the Dublin Reg: no reason for extension.

~~(3)(e)~~ ‘family members’: means ~~⇒ family members as defined in Article [2(9)] of Regulation (EU) XXX/XXX [Qualification Regulation]; ⇐~~, ~~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:~~

~~— 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;~~

~~(4)(d)~~ ‘minor’: means a third-country national or stateless person below the age of 18 years ~~⇒ a minor as defined in Article [2(10)] of Regulation (EU) No XXX/XXX [Qualification Regulation] ⇐~~ third-country national or stateless person below the age of 18 years;⁷

⁷ SE: scrutiny reservation.

~~(5)(e)~~ ‘unaccompanied minor’: means ~~a~~ ~~a~~ ~~an~~ ~~unaccompanied~~ 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; as defined in Article [2(11)] of Regulation (EU) No XXX/XXX [Qualification Regulation] 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;

(11) ‘risk of absconding’: means the existence of reasons in an individual case, which are based on objective criteria defined by national law, to believe that an applicant may abscond;

~~(12)(i)~~ ‘~~guardian~~ ~~representative~~’: means a person ~~as defined in Article [4(2)(f)] of Regulation (EU) No XXX/XXX [Asylum Procedures Regulation]~~ ~~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;~~

Eurodac⁸

- (a) 'applicant for international protection' means a third-country national or a stateless person who has made an application for international protection as defined in Article 2(h) of Directive 2011/95/EU in respect of which a final decision has not yet been taken;
 - (c) '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 national of a State which participates in this Regulation by virtue of an agreement with the [...] Union;
 - (e) '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;
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⁸ These definitions proposed by the Commission were not amended in the partial general approach agreed by the Council.