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Vulnerability Under the New Pact on Migration and Asylum and Implications for Portugal

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Abstract

Inspired by the struggles faced during the 2015 Refugee ‘Crisis’, the New Pact on Migration and Asylum aims to manage migration in a more unified and efficient way and reform the common asylum system at the EU level, while simultaneously upholding the core values of the Union. This ambitious description, set forth by the European Commission, has been regarded with scepticism by both civil society actors and academia. Particularly, vulnerability - which is essential to guarantee effective participation in migration and asylum processes - is left largely undefined by the New Pact and is not sufficiently integrated into the system’s architecture. Using Portugal as a case study, this report traces the evolution of the concept up to the New Pact, explores the relevant legal landscape under the New Pact, and outlines the potential harms posed to human rights standards.

Keywords: EU law, migration, asylum, New Pact on Migration and Asylum, vulnerability, human rights, Portugal.

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1 Introduction

According to a report by the European Commission, 90% of people who arrive in the European Union (EU) irregularly turn to smugglers.¹ Vulnerable migrants, especially unaccompanied children and adolescents, are particularly at risk. The 2015 refugee ‘crisis’ and other challenges faced at the EU’s external borders revealed several shortcomings of the EU migration and asylum system.²

In this context, the von der Leyen Commission took on itself the mission to establish a new framework to manage migration and asylum, which led to the New Pact on Migration and Asylum (hereafter referred to as the ‘New Pact’), a set of ten legislative acts.³ The New Pact entered into force on 11 June 2024 and will become applicable in 2026.

Although there is a considerable focus on greater harmonization in the New Pact, it is likely that inequalities and differences between Member States will persist, particularly with regard to the solidarity mechanism established by the New Pact. This mechanism has been criticized for its flexibility in relation to the type of Member States’ contributions, potentially encouraging a preference for financial contributions over relocation of asylum seekers. Where relocation pledges fall short, the system resorts to secondary solidarity in the form of mandatory responsibility offsets, but this does not fully compensate for the lack of actual relocations. Eleni Karageorgiou and Gregor Noll argue that the system may function more as a protective measure against perceived external threats of irregular migration than as a genuine mechanism of solidarity.⁴

The structure of the New Pact reflects an attempt to reconcile conflicting political interests. It is organized around four pillars: secure external borders; fast and efficient procedures; effective system of solidarity and responsibility; and international partnerships.⁵ They intend to respond to perceived institutional failures in the context of the 2015 refugee crisis but have raised concerns about potential human rights violations in the name of procedural coherence and effectiveness. Section 2 explores how these pillars and their legal instruments define and operationalise vulnerability.

¹ European Commission, ‘EU Fight Against Migrant Smuggling and Exploitation’ (Report, 29 September 2021).

² European Commission, Striking a Balance on Migration: An Approach That Is Both Fair and Firm (COM(2024) 126 final, 12 March 2024, 2024).

³ Ibid.

⁴ Eleni Karageorgiou and Gregor Noll, ‘What Is Wrong with Solidarity in EU Asylum and Migration Law?’ (2022) 4 *Jus Cogens* 131.

⁵ European Commission, Directorate-General for Migration and Home Affairs, ‘Pact on Migration and Asylum’ (21 May 2024).

Across these pillars, the New Pact repeatedly refers to the need to protect 'vulnerable persons' but the concept remains undefined. This lack of legal clarity, despite the New Pact's stated ambition to enhance it, creates uncertainty and unclear application across Member States. Since the concept of vulnerability plays a central role in determining protections and procedural guarantees under EU law, the ambiguous nature of the concept raises questions about the Pact's capacity to protect those most at risk. This report therefore asks how the concept of vulnerability is treated under the New Pact of Migration and Asylum, and what implications it may have for its legal and practical application in Portugal, particularly in terms of human rights protections, procedural safeguards, and institutional capacity.

For the purpose of the following analysis, a desirable definition of vulnerability will be understood as one that captures the interaction between individual characteristics, such as age, gender or trauma, and contextual factors, including detention or exposure to violence,⁶ which together diminish an individual's ability to engage in and benefit from asylum procedures.

Section 2 of this report discusses the definition of vulnerability (or lack thereof) in the New Pact and its instruments, analysing its evolution over time and setting the foundations to assess the (in)effectiveness and coherence of the Pact's approach to vulnerability. Section 3 examines the normative and operational consequences of the Pact's approach to vulnerable migrants and asylum seekers, focusing on how the lack of a cohesive definition leads to harms, particularly against LGBTQIA+ individuals, survivors of gender violence, or unaccompanied minors. Section 4 examines the potential implications of the New Pact in the Portuguese context, considering how Portugal already identifies vulnerabilities and its present gaps in reception, health care, detention facilities, and mental health. Finally, Section 5 provides an overview of the main findings, as well as procedural and institutional recommendations based on them.

⁶ Theodora Gazi, 'The New Pact on Migration and Asylum: Supporting or Constraining Rights of Vulnerable Groups?' (2021) 6(1) *European Papers – A Journal on Law and Integration* 167.

2 Legal Framework of the New Pact

The term vulnerability has become increasingly important in international and European legal contexts. However, despite its significance, there is no common understanding of vulnerability to this date.

2.1 Origins and Evolving Interpretation

Although not explicitly mentioned in the 1951 Refugee Convention,⁷ vulnerability has been understood by the UN High Commissioner for Refugees as centrally - though not exclusively - linked to the risk of persecution or *refoulement*.⁸ Although the European Court of Human Rights (ECtHR) and the UN Human Rights Committee share this conception of vulnerability,⁹ EU law has a more restrictive approach, under which only some- and not all - asylum seekers are perceived as vulnerable.

The ECtHR recognised asylum seekers as an inherent vulnerable group in its landmark case *M.S.S. v. Belgium and Greece*. The Court defined asylum seekers as members of 'a particular underprivileged and vulnerable population group in need of special protection' and noted the 'existence of a broad consensus at the international and European level concerning this need for special protection as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the Reception Directive.'¹⁰

At the EU level, vulnerability identification is based on the principle of equality before the law,¹¹ meaning that vulnerability is selective - only certain asylum seekers are considered vulnerable, and only some of them are considered to have special needs. Vulnerability is seen as a functional limitation to effective participation, not a moral or humanitarian category.

Despite the divergent understandings of vulnerability, Pinto and Leal identify two convergence points: on the one hand, 'vulnerability refers to the degree of susceptibility of

⁷ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

⁸ UNHCR and International Detention Coalition, *Identifying and Addressing Vulnerability: A Tool for Asylum and Migration Systems* (Vulnerability Screening Tool, UNHCR, 2016) ISBN 978-0-9924831-0-4.

⁹ Martina Catanzariti, 'The Juridification of Vulnerability in the European Legal Culture' (2022) 12(6) *Oñati Socio-Legal Series* 1391.

¹⁰ *MSS v Belgium and Greece App no 30696/09 (ECtHR, 21 January 2011)*, para 263. See also *Tarakhel v Switzerland App no 29217/12 (ECtHR, 4 November 2014)*, para 9. *A.S. v Switzerland App no 39350/13 (ECtHR, 30 June 2015)*. para 29.

¹¹ European Asylum Support Office and IARMJ-Europe, *Vulnerability in the Context of Applications for International Protection – Judicial Analysis* (Publications Office of the European Union, 2021) DOI: 10.2847/2759.

individuals or groups to harm;’ on the other hand, the definitions generally agree that structural and circumstantial factors can further deepen vulnerability.¹² These two elements underpin many of the procedural obligations in the Common European Asylum System (CEAS) and the New Pact.

2.2 Early Vulnerability Protection in the CEAS

In the context of the Common European Asylum System (CEAS), the existence of vulnerability has been acknowledged ever since the adoption of the initial set of EU legislative acts. For example, the 2003 Reception Conditions Directive,¹³ the 2004 Qualification Directive,¹⁴ the Asylum Procedures Directive¹⁵ and the Dublin III Regulation¹⁶ already referred to individuals who might be considered vulnerable. This was recognised by the 2010-2014 Stockholm Programme.¹⁷

There was, however, no exhaustive list of categories of vulnerable persons and no uniform definition. These instruments also distinguished between vulnerability and special needs, the latter triggering additional safeguards and procedural accommodations.

Vulnerability under the Common European Asylum System was conceived from its origins as a dynamic concept, the evaluation of which had to depend on individual circumstances. This, coupled with the discretion of Member States for the implementation of EU Directives, led to inconsistencies and gaps in protection.

¹² Carolina M Pinto and Fernanda Leal, ‘Vulnerability: An Emerging Norm in Migration and Asylum Law?’ (Nova Refugee and Migration Clinic Blog, 2023).

¹³ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [2003] OJ L31/18, paras. 18-25.

¹⁴ Council Directive 2004/83/EC of 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 [2004] OJ L304/12, paras. 12-23.

¹⁵ 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) [2013] OJ L180/60, paras. 60-95.

¹⁶ 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) [2013] OJ L180/31.

¹⁷ Jakub Hamel, ‘The Evolving Nature of the Vulnerability Concept in European Union Asylum Law’ (Charles University in Prague Faculty of Law Research Paper No 2024/I/3, 13 April 2024) <<https://ssrn.com/abstract=4796488>> accessed 7 July 2025.

2.3 Legislative Reforms under the New Pact

The recast instruments under the New Pact refer to vulnerability as part of an effort to strengthen procedural obligations. In the words of the European Commission, its ultimate goal is to strengthen and integrate 'key EU policies on migration, asylum, border management and integration', while supporting the Union's core values.¹⁸ The New Pact builds on and reforms previously established EU law, such as the Dublin III Regulation¹⁹, replaced by the Asylum and Migration Management Regulation.²⁰ The Pact's emphasis on procedural efficiency and border control does not, however, sit well with the normative protective aspiration embedded in the concept of vulnerability.

In its communications, the Commission has stressed the importance of protecting children and other vulnerable groups, highlighting the importance in the new management system to detect and accommodate special needs.²¹ Several legal instruments are particularly relevant to the issue of vulnerability: the Asylum and Migration Management Regulation, the Screening Regulation, the Asylum Procedure Regulation, the recast Reception Conditions Directive, the Qualification Regulation, and the Crisis and Force Majeure Regulation.¹

Some of these instruments — such as the Screening Regulation, Asylum Procedures Regulation, and the Crisis and Force Majeure Regulation — fall under the pillar of secure borders. This means that, within these instruments, the New Pact has prioritised control over protection, with measures like mandatory screening or rapid timelines.² Such logics make the proper identification of vulnerabilities and needs often impossible, especially in the case of non-visible vulnerabilities such as trauma, sexual orientation or PTSD, which go unchecked in frontline procedures.

¹⁸ European Commission, 'Pact on Migration and Asylum' (n 5).

¹⁹ Regulation (EU) No 604/2013 (n 16).

²⁰ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 [2024] OJ L/1351.

²¹ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum' COM (2020) 609 final, 23 September 2020, 7-9.

¹ Gazi (n 6).

² Catherine Warin and Valeria Ilareva, 'Vulnerability in the New Pact: An Empty Promise to Protect, or an Operational Concept?' (EU Immigration and Asylum Law and Policy blog, 2024) <<https://eumigrationlawblog.eu/vulnerability-in-the-new-pact-an-empty-promise-to-protect-or-an-operational-concept/>> accessed 1 September 2025.

2.4 Absence of Legal Definition and Fragmented Categorisation

Similarly to previous EU legislation, the instruments of the New Pact do not provide a specific and cohesive definition of vulnerability.³ However, various provisions convey a consistent recognition of the need to identify vulnerable individuals and address their special needs, in view of mitigating any adverse effects on the applicant's ability to participate effectively in the relevant procedures. These fragmented obligations seem to imply an operational definition based on early identification and procedural accommodations.

As an example of this rationale, Article 20 of the Asylum Procedure Regulation requires authorities to carry out a vulnerability assessment 'as early as possible', since the qualification of an individual as vulnerable allows exemptions from accelerated border or examination procedures under Article 21.²⁵ However, this pressure for fast procedures (which falls under the second pillar, that of efficiency), can be a double-edged sword. Fast procedures risk flattening complex cases²⁶ and, while it hopes to protect vulnerable persons, it places vulnerable asylum seekers at risk of being fast-tracked without individualized assessments²⁷.

Despite the absence of a definition, the New Pact lists categories of vulnerable persons. However, these are inconsistent between acts and sometimes within the same instrument. Warin and Ilareva mention, as an illustration, the preliminary vulnerability check required by Article 12(3) of the Screening Regulation, which refers to potential stateless persons, vulnerable persons or victims of torture or inhuman or degrading treatment, or persons with special needs within the meaning of other instruments of the New Pact. This provision is complemented by Recital 38, which stresses some vulnerability grounds in a non-exhaustive manner and allows for a broader pool of factors than the ones mentioned in Article 12(3)²⁸. This inconsistency risks legal uncertainty and unequal treatment across Member States. In this sense, the New Pact fails to fulfil one of its most pressing goals, that of enhancing clarity.

³ Daniel Thym and Odysseus Academic Network (eds), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (Nomos 2022). <<https://doi.org/10.5771/9783748931164>>.

²⁵ Warin and Ilareva (n 23).

²⁶ Jeremy J Sarkin and Tiago Morais, 'The Role of the European Union's Securitisation Policies in Exacerbating the Intersectional Vulnerability of Refugees and Asylum Seekers' (2024) 29(2) *The International Journal of Human Rights* 282.

²⁷ Amnesty International, 'EU: Migration and Asylum Pact reforms will put people at heightened risk of human rights violations' (4 April 2024) <<https://www.amnesty.org/en/latest/news/2024/04/eu-migration-asylum-pact-put-people-at-risk-human-rights-violations/>> accessed 1 September 2025.

²⁸ Warin and Ilareva (n 23).

2.5 Structural Risks, Accelerated and Border Procedures

Key innovations in the New Pact that align with the security logic of control relate to the screening and border procedures under the Screening Regulation²⁹ and the Asylum Procedures Regulation.³⁰ Border procedures are fast-tracked processes in which asylum applications are assessed directly at or near external borders (for example, in transit zones) and under strict time limits, prioritising speed over effective protection and procedural safeguards.

Article 42 of Regulation (EU) 2024/1348 establishes the legal grounds under which applicants for international protection shall be subjected to accelerated procedures: making irrelevant, unfounded or inconsistent claims; intentionally misleading authorities; applying to delay removal; coming from a safe country of origin; security risks or prior expulsion on security grounds; entering or staying unlawfully without a timely presentation to the relevant authorities; delaying application for international protection; being from a country with a low recognition rate (below 20%). The article also limits the application of accelerated procedures in the case of unaccompanied minors, allowing their use only under specific circumstances and without making them mandatory. Article 42 can be used in conjunction with Article 43, which provides for the use of an asylum border procedure. Under Article 43, certain categories of applicants can be processed under shortened timelines, where procedural safeguards are reduced compared to both standard and accelerated asylum procedures. The combined filters of applicant profile (Article 42) and location (Article 43) may limit the identification of vulnerabilities in the applications by reducing the opportunities for detection during the early stages of the procedure. Additionally, Article 45 makes the use of the asylum border procedure mandatory when specific conditions are met, i.e., application made to delay return, being from a third country with a low recognition rate or posing a danger to national security or public order.

This represents important structural risks for vulnerable applicants due to the potential misclassification of their profiles in a context of reduced procedural guarantees.³¹ Short timelines may hinder the appropriate legal or psychological support applicants may require and can even lead to a significant risk of non-refoulement if assessments are rushed or inaccurate.³²

²⁹ Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 [2024] OJ L1356/1.

³⁰ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU [2024] OJ L1348/1.

³¹ Gazi (n 6).

³² Vasiliki Apatzidou, 'Bordering Asylum: Examining the EU's Border Procedures under the Asylum Procedures Regulation (EU) 2024/1348' (International Journal of Refugee Law, advance access, 17 June 2025) <<https://doi.org/10.1093/ijrl/eeaf014>>.

For asylum seekers with compounded vulnerabilities (the layering of individual, contextual, and systemic disadvantages), accelerated and asylum border procedures may have particularly troubling implications.³³ This is the case for unaccompanied minors, women survivors of violence, LGBTQIA+ individuals, or persons with disabilities, among others. Human rights organisations have continuously expressed their concerns about the possible negative consequences of the New Pact on certain asylum seekers, with Amnesty International recognising that it could ‘set back European asylum law for decades to come, cause greater suffering, and put more people at risk of human rights violations’³⁴ Similarly, Human Rights Watch questions if the proposals are ‘able to guarantee in law and in practice compliance with international and EU legal standards’.³⁵

2.6 Child Protection as a Partial Exception

Despite these structural concerns, the New Pact includes more careful and detailed provisions for the protection of certain groups, especially children, whose protection is recognised as a priority by the Commission³⁶ and has been crystallised into EU law. Compared to the asylum system in force prior to the New Pact, the provisions on minors’ protection are more detailed, referring more explicitly to the United Nations Convention on the Rights of the Child³⁷ and Article 24 of the Charter of Fundamental Rights of the European Union³⁸.

Interestingly, factors to determine the best interests of the child were expanded under the New Pact.³⁹ Notably, the Asylum and Migration Management Regulation adds two factors: the information presented by the unaccompanied minor’s representative, and any other relevant reasons. Consequently, but only if children are indeed identified as minors, there is a wider spectrum of factors to consider for determining the best interest of the child, at least when it comes to the criteria for determining the Member State responsible for the

³³ Sarkin and Morais (n 26).

³⁴ Amnesty International, ‘EU: Migration and Asylum Pact reforms’ (n 27).

³⁵ Human Rights Watch and others, ‘The Pact on Migration and Asylum: To Provide a Fresh Start and Avoid Past Mistakes, Risky Elements Need to Be Addressed and Positive Aspects Need to Be Expanded’ (NGO Joint Statement, October 2020) <https://www.hrw.org/sites/default/files/media_2020/10/NGO-Statement-Pact-Oct-2020-FINAL.pdf> accessed 2 September 2025.

³⁶ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum’ COM (2020) 609 final, 23 September 2020.

³⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

³⁸ Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 24.

³⁹ Warin and Ilareva (n 23).

examination of the application for international protection. The identification of children as minors, coupled with an overall lack of political will to enhance compliance with fundamental rights, makes this progress only partial.

2.7 Civil Society Warnings

Although the Commission claims that the New Pact should uphold the foundational values of the Union, this perspective clashes with existing warnings on the possible negative practical and human rights implications of the New Pact.

Academic voices have emphasized issues such as the discretion left to the authorities in vulnerability assessments.⁴⁰ Indeed, each individual Member State maintains the responsibility to identify special needs, which can lead to uneven implementation and marginalisation of at-risk populations.⁴¹ Others have stressed the inexistence of an intersectional approach,⁴² and the possible lack of detection of structural⁴³ and contextual vulnerabilities.⁴⁴ These issues must be taken into account for the interpretation and application of the New Pact in EU Member States, to ensure the protection and effective participation of vulnerable individuals in migration and asylum proceedings.

Moreover, civil society actors operating in Member States expose the inadequacy of the new legal instruments to address the special needs of vulnerable individuals, thus limiting their access and participation in migration and asylum proceedings. In a collective statement, more than 50 non-governmental organisations working in the field of migration and asylum in Europe accuse the Commission of "fallacies", exposing the New Pact's tendency to aggravate the risks of externalisation, deterrence, containment and return, consequently resulting in potential human rights violations.⁴⁵ On the topic of vulnerability, this open letter raises the concern of the lack of clarity in the detection of needs and consequent action, as well as the leeway provided to Member States on the responsibility for conducting vulnerability screenings.

⁴⁰ Thym and Network (n 24).

⁴¹ Warin and Ilareva (n 23).

⁴² Sarkin and Morais (n 26).

⁴³ Alessia Gilodi, Isabelle Albert and Birte Nienaber, 'Vulnerability in the Context of Migration: A Critical Overview and a New Conceptual Model' (2024) 7 Human Arenas 620.

⁴⁴ Warin and Ilareva (n 23).

⁴⁵ Caritas Europa and others, 'An Open Letter to Negotiators in the European Commission, the Spanish Presidency of the Council of the European Union, and the European Parliament Ahead of the Final Negotiations on the EU Pact on Migration' (Open Letter, January 2024) <<https://www.caritas.eu/wp-content/uploads/2024/01/Open-letter-FINAL-2.pdf>> accessed 2 September 2025.

The open letter mentions the issue of externalisation, linked to the fourth pillar, international partnerships. This issue can lead to reduced oversight in vulnerability screening,⁴⁶ increasing the risk that Member States' obligations towards vulnerable people are displaced onto third countries where safeguards are scarce.⁴⁷

Together, the legal instruments under the New Pact produce a system that lacks clear safeguards for the protection of vulnerable people and their fundamental rights. The discretionary nature of screening, the impact of fast-track procedures, the nuanced flexibility in solidarity and processes of externalisation raise considerable risks of perpetuating vulnerability as an ill-defined exception instead of a central tenet around which the pact should have been designed. This raises the normative question of whether vulnerability is treated as a human condition deserving care, or a bureaucratic hurdle to be streamlined. Despite warnings from academic and civil society actors, the Commission seems committed to a framework that institutionalises these very risks.

3 Security and Fundamental Rights Challenges in the New Pact

The New Pact marks a pivotal moment in EU migration and asylum policy, reflecting a shift further away from human rights-based protection and toward a logic of increased migration control. In other words, while security-driven approaches predate the Pact, it reinforces and amplifies this rationale.

Gamze Ovacık and François Crépeau point out the striking difference between the way states 'talk' about migration and asylum, and how they 'walk'.⁴⁸ Despite accepting 'universal tenets' such as the right to seek asylum, states behave differently when confronted with 'foreigners' at their borders, often taking restrictive migration and asylum measures and consequently obstructing human mobility. The New Pact carries forward and amplifies this gap.

The New Pact represents, in this sense, a step forward in the containment and security paradigm,⁴⁹ further reversing the EU's rhetorical alignment to the Global Compacts'

⁴⁶ Amnesty International, 'EU: Migration and Asylum Pact reforms' (n 27).

⁴⁷ European Council on Refugees and Exiles (ECRE), *Tightening the Screw: Work of EU External Policies and Funding for Asylum and Migration* (Policy Note 34, March 2021) <<https://ecre.org/wp-content/uploads/2021/03/Policy-Note-34.pdf>>

⁴⁸ Gaye Ovacık and François Crépeau, 'Global Compacts and the EU Pact on Asylum and Migration: A Clash Between the Talk and the Walk' (2025) 14(2) *Laws* 13.

⁴⁹ Carmen González Enríquez, 'The EU Pact on Migration and Asylum: Context, Challenges and Limitations' (Elcano Royal Institute Analysis, 28 May 2024) <<https://www.realinstitutoelcano.org/en/analyses/the-eu-pact-on-migration-and-asylum-context-challenges-and-limitations/>>

emphasis on safe and rights-based migration. This growing trend reflects what Gilodi Albert and Nienaber describe as the creation of 'structural vulnerability' across the migration/asylum continuum.⁵⁰ The authors link the rise of far-right political views with the increase in domestic policies that render migrants and potential asylum seekers vulnerable in countries of origin, transit, and arrival alike.⁵¹ The New Pact embeds this logic into its operational core, prioritising deterrence and containment over inclusion.

3.1 Defining Vulnerability: Operational vs Legal Gaps

As previously mentioned in Section 2, the concept of vulnerability remains largely undefined within the New Pact despite its centrality in procedures.

For the purpose of this analysis, vulnerability has been defined as a condition arising from the interaction of individual characteristics, such as age, gender or trauma, and contextual factors, like detention or exposure to violence,⁵² which diminish an individual's ability to engage in and benefit from asylum procedures. This aligns with the operational standards established by the United Nations Refugee Agency (UNHCR)⁵³ and the European Union Agency for Asylum (EUAA).⁵⁴

However, Luc Leboeuf raises concerns about the 'juridification' of vulnerability, the process by which complex human experiences are translated into legal or bureaucratic categories in an attempt to codify, define, and process vulnerability. If vulnerability is treated as something that must be proven, migrants and asylum seekers who do not fall under these categories are likely to not receive any safeguards, even if they might need them.⁵⁵ Moreover, the process of juridification risks treating vulnerability as an exception instead of a structural feature of asylum.

⁵⁰ Gilodi, Albert, and Nienaber (n 43).

⁵¹ Ibid.

⁵² Gazi (n 6).

⁵³ UN High Commissioner for Refugees (UNHCR), *Better Protecting Refugees in the EU and Globally: UNHCR's Proposals to Rebuild Trust through Better Management, Partnership and Solidarity* (December 2016) <<https://www.europarl.europa.eu/cmsdata/114503/unhcr-better-protect.pdf>>.

⁵⁴ European Union Agency for Asylum (EUAA), *Guidance on Vulnerability in Asylum and Reception: Operational Standards and Indicators* (Publications Office of the European Union, May 2024) <https://euaa.europa.eu/sites/default/files/publications/202405/Guidance_vulnerability_operational_standards_and_indicators.pdf>.

⁵⁵ Luc Leboeuf, 'The Juridification of "Vulnerability" through EU Asylum Law: The Quest for Bridging the Gap between the Law and Asylum Applicants' Experiences' (2022) 11(3) *Laws* 45.

3.2 Delay and Group-Specific Exclusion

LGBTQIA+ asylum seekers often delay disclosing their sexual orientation or gender identity due to internalised trauma, stigma, or fear of further persecution.⁵⁶ In fast-track asylum procedures, these delays can be interpreted as opportunistic or dishonest, which affects the credibility assessment of their claims. The need to disclose their identity early in the process can penalise applicants who are unable or unwilling to do so,⁵⁷ thereby compounding procedural injustice with identity-based marginalisation.

Similarly, women fleeing gender-based violence may lack the psychological safety, privacy, or gender-sensitive support structures necessary to articulate their experiences within the narrow procedural windows, as explained by Moira Dustin.⁵⁸ Dustin points out how incomplete narratives of gender-based violence (GBV) or trauma-inhibited disclosures penalise female asylum seekers, lacking the mechanisms to identify complex and overlapping vulnerabilities.⁵⁹

3.3 Procedural Timelines vs. Protection Needs

As mentioned in Section 2, asylum border procedures, now connected to border returns,⁶⁰ can be another cause of compounded injustice in the CEAS.

Procedures begin with a screening process, whose stated purpose is to ensure that everybody is swiftly referred to the relevant procedure.⁶¹ Regulation (EU) 2024/1356⁶² establishes that this process should not take more than seven days when at the external border and not more than three days within the territory⁶³, and includes preliminary health

⁵⁶ Sabine Jansen and Thomas Spijkerboer, *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe* (COC Netherlands and Vrije Universiteit Amsterdam, September 2011).

⁵⁷ Ibid.

⁵⁸ Moira Dustin, 'Pathways to Refugee Protection for Women: Victims of Violence or Genuine Lesbians?' (2022) 41(3) *Refugee Survey Quarterly* 393.

⁵⁹ Ibid.

⁶⁰ Evangelia Tsourdi, *The New Screening and Border Procedures: Towards a Seamless Migration Process?* (Policy Study, Foundation for European Progressive Studies and Friedrich-Ebert-Stiftung with European Policy Centre, June 2024) ISBN 978-2-931233-92-4 <<https://library.fes.de/pdf-files/bueros/bruessel/21268.pdf>> accessed 2 September 2025.

⁶¹ Council of the European Union, 'A New Screening Regulation' (Council of the EU, 7 February 2025) <<https://www.consilium.europa.eu/en/policies/screening-regulation/>> accessed 2 September 2025.

⁶² Regulation (EU) 2024/1356 (n 29).

⁶³ Ibid.

and vulnerability and security checks, identity verification, and biometric data registration, as well as a screening form.⁶⁴

The screening phase itself can be problematic, since vulnerability is examined based on observation by authorities, which may disregard the diverse nature of vulnerability and discriminates against groups whose vulnerability is not obvious.⁶⁵ This risks reducing complex psychosocial conditions to surface-level assessments. A policy brief signed by 23 NGOs operating in Greece claims that the practice of vulnerability assessments on the Aegean islands is ineffective and problematic, further aggravated by the restrictive timelines imposed by the New Pact.⁶⁶

3.4 Disability and Infrastructural Exclusion

It is also important to highlight the many group-specific challenges that arise from structural inequalities. The persistent inaccessibility in border and reception facilities by persons with disabilities is a prime example, as the EUAA points out.⁶⁷ Many reception facilities lack physical infrastructure (such as ramps or accessible bathrooms), trained personnel or appropriate technologies to communicate with or accommodate persons with disabilities.⁶⁸ As a result, disabled persons are often processed through generic procedures that disregard their specific needs, violating not only the spirit but also the letter of the United Nations Convention on the Rights of Persons with Disabilities,⁶⁹ to which all EU states are bound. In this case, the lack of infrastructural adaptation marginalizes the persons that legal vulnerability is meant to protect.

3.5 Externalisation: Evasion Through Outsourcing

Through its fourth pillar, the EU continues to strengthen the external dimension of the New Pact and its migration policy through externalisation strategies - the shift of migration

⁶⁴ Tsourdi (n 60).

⁶⁵ Gazi (n 6).

⁶⁶ Fenix Humanitarian Legal Aid, *For a Europe That Truly Protects: Joint NGO Policy Brief on the Screening Regulation Proposal* (May 2021) < https://0f380284-e922-4fe3-bbf9-a684c5ec0e43.filesusr.com/ugd/a9ddf9_d778f43d906c490a864a62d6c5c2702d.pdf > accessed 2 September 2025.

⁶⁷ European Union Agency for Asylum (EUAA), *Persons with Disabilities in Asylum and Reception Systems: A Comprehensive Overview* (January 2024).

⁶⁸ Ibid.

⁶⁹ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

control beyond EU borders through bilateral or multilateral agreements with third countries.⁷⁰ As previously noted, this might result in the displacement of Member States' obligations towards vulnerable people onto third countries.

A striking example is the 2023 'deal' between Italy and Albania, implemented in 2025. Under this partnership, Italian authorities can transfer migrants intercepted in international waters to centres in Albania, over which Italy claims jurisdiction. This agreement means the deterritorialisation of asylum border procedures, which prevents physical access to the Italian territory.⁷¹ The fact that the detention centres are located outside EU territory introduces significant legal and ethical ambiguities. In April 2025, the first group of 40 individuals was transferred to Albania without any prior assessment of their protection claims, raising concerns about international asylum standards.⁷²

NGOs and other civil society groups have shown their concern for the physical and psychological health conditions of migrants and asylum seekers, as well as their treatment more generally, in the context of the Italy-Albania deal. According to a collective statement shared on the SOS Humanity website, the 'deal' is against medical ethics and human rights standards.⁷³

3.6 Solidarity without Responsibility

The solidarity mechanism introduced under the New Pact is nuanced in the choice it gives Member States between different types of contribution. There are two levels of solidarity: primary solidarity options and a secondary solidarity in the form of responsibility offsets. The first level is triggered when a Member State is under migratory pressure, risk of such pressure, or in a 'significant migratory situation'. In such scenarios, other Member States must contribute to solidarity by choosing one of the three options: relocation, financial contributions or alternative measures (such as logistical and operational support).⁷⁴

⁷⁰ Salvatore Fabio Nicolosi, 'Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law' (2024) 71(1) Netherlands International Law Review 1.

⁷¹ Kristina Millona, 'What awaits for Italy-Albania migrant deal?' (Heinrich-Böll-Stiftung Analysis, 20 February 2025) <<https://gr.boell.org/en/2025/02/20/what-awaits-italy-albania-migrant-deal>> accessed 2 September 2025.

⁷² ANSA, 'Rights Organisation Points Out "Serious Issues" with Italy's Repatriation Center in Albania' (InfoMigrants, 16 April 2025) <<https://www.infomigrants.net/en/post/64029/rights-organization-points-out-serious-issues-with-italys-repatriation-center-in-albania>> accessed 2 September 2025.

⁷³ SOS Humanity, 'The Italy-Albania Deal Violates the Code of Medical Ethics and Human Rights' (SOS Humanity, 15 November 2024) <<https://sos-humanity.org/en/our-mission/change/italy-albania-deal-medical-ethics/>> accessed 2 September 2025.

⁷⁴ European Commission, 'Effective System of Solidarity and Responsibility' (Pact on Migration and Asylum factsheet, April 2024)

This choice exists within limits, since alternative measures require the consent of the benefitting Member State. If the Commission determines that a Member State's solidarity contributions are insufficient, responsibility offsets are triggered: the state is forced to take responsibility for a certain number of asylum seekers or for their processes.⁷⁵

Although this solidarity framework appears flexible, it ultimately undermines the principle of fair responsibility-sharing.⁷⁶ Since the 'Dublin III' system is preserved, frontline states like Italy, Greece and Spain will continue to shoulder a disproportionate share of asylum caseloads. In other words, the Asylum and Migration Management Regulation perpetuates a structural imbalance in which certain Member States are more likely to be recurrently reliant on solidarity mechanisms. This might consolidate the existence of challenging conditions for vulnerable persons in these countries, with decreased access to specialised care, longer processing times, and more exposure to violence.⁷⁷

These observations indicate that vulnerability might be reduced to a procedural label or viewed as an obstacle to efficiency in Member States that continue to face disproportionate numbers of asylum seekers.⁷⁸ This is yet another manifestation of the double-edged logic of the New Pact, where the pursuit of fast and efficient procedures is accompanied by the curtailment of migrants' and asylum seekers' rights⁷⁹ rather than the protection of those least able to assert them.⁸⁰

<<https://ec.europa.eu/commission/presscorner/api/files/attachment/878137/Effective%20system%20of%20solidarity.pdf>> accessed 2 September 2025; European Council on Refugees and Exiles (ECRE), *ECRE Comments on the Regulation of the European Parliament and of the Council on Asylum and Migration Management, Amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and Repealing Regulation (EU) No 604/2013* (May 2024) <https://ecre.org/wp-content/uploads/2024/05/ECRE_Comments_Asylum-and-Migration-Management-Regulation.pdf> accessed 2 September 2025.

⁷⁵ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 [2024] OJ L1351/1.

⁷⁶ Karageorgiou and Noll (n 4).

⁷⁷ Amnesty International, 'EU: Migration Pact Agreement Will Lead to a "Surge in Suffering"' (20 December 2023) <<https://www.amnesty.org/en/latest/news/2023/12/eu-migration-pact-agreement-will-lead-to-a-surge-in-suffering/>> accessed 2 September 2025.

⁷⁸ Leboeuf (n 55).

⁷⁹ Judith Sunderland, 'EU's Migration Pact is a Disaster for Migrants and Asylum Seekers' (Human Rights Watch, 21 December 2023) <<https://www.hrw.org/news/2023/12/21/eus-migration-pact-disaster-migrants-and-asylum-seekers>> accessed 2 September 2025.

⁸⁰ Daphne Panayotatos, *Undermining Protection in the EU: What Nine Trends Tell Us About the Proposed Pact on Migration and Asylum* (Refugees International, 2 June 2021) <<https://www.refugeesinternational.org/reports-briefs/undermining-protection-in-the-eu-what-nine-trends-tell-us-about-the-proposed-pact-on-migration-and-asylum/>> accessed 2 September 2025.

4 The Case of Portugal

4.1 Introduction: A shifting Governance Landscape

Portugal has long been recognised as a particularly compassionate and human rights-oriented country within the EU. Its early adoption of inclusive asylum practices, alignment with EU directives,⁸¹ and the involvement of civil society organisations,⁸² support its reputation for a humane migration and asylum policy.⁸³ A report by the Overseas Development Institute (ODI) claims Portugal as a ‘champion’ for the implementation of the Global Compact for Migration.⁸⁴

Similarly to developments in other EU Member States, Portugal is undergoing a political and administrative shift. In recent years, migration discourse has hardened significantly, with growing emphasis on control, return and enforcement.⁸⁵ This tension between supposedly humane practices and increasingly restrictive rhetoric exposes the structural and political limitations that shape the governance of vulnerability.

In this context, the New Pact poses a challenge as it reflects the amplification of a control logic,⁸⁶ which appears to align with the broader hardening of political rhetoric. This raises renewed concerns about the effective protection of vulnerable migrants and asylum seekers under this new framework, particularly in cases where existing infrastructures are ill-equipped to safeguard their rights.

In this section, the report will explore how Portugal’s national asylum framework might interact with the new obligations introduced by the New Pact, with particular attention to the treatment of vulnerable asylum seekers. It assesses whether the existing institutional, legal, and civil society infrastructures are adequately equipped to uphold fundamental rights in light of the evolving EU legal landscape.

⁸¹ Caterina Mazzilli and Christina Lowe, *Public Narratives and Attitudes towards Refugees and Other Migrants: Portugal Country Profile* (ODI Country Study, Overseas Development Institute, May 2023) <https://media.odi.org/documents/ODI-Public_narratives_Portugal_country_study_08Jun23.pdf> accessed 2 September 2025.

⁸² Portuguese Refugee Council (CPR) and European Council on Refugees and Exiles (ECRE), *AIDA Country Report: Portugal – 2023 Update* (2024), Sect A.4 ‘Determining Authority’ in the ‘Asylum Procedure’ section.

⁸³ Organisation for Economic Co-operation and Development (OECD), *Finding Their Way: The Integration of Refugees in Portugal* (OECD 2019) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/12/the-integration-of-refugees-in-portugal_af100fe8/d61fc5a7-en.pdf> accessed 7 July 2025.

⁸⁴ Mazzilli and Lowe (n 81).

⁸⁵ Ibid.

⁸⁶ Tsourdi (n 60); Apatzidou (n 32); Sarkin and Morais (n 26).

To analyse how Portugal manages asylum in practice, this section draws on the work of Marta Fineman⁸⁷ and several reports by key institutions such as the Portuguese Refugee Council (CPR)⁸⁸ and the EUAA.

4.2 Legal and Institutional Framework on Asylum

The Portuguese asylum system rests on a multi-layered legal framework encompassing the Constitution, national legislation, and international treaties. At its core is Article 33 of the Portuguese Constitution,⁸⁹ which guarantees the right to asylum for individuals facing the risk of persecution "as a result of their activities in favour of democracy, social and national liberation, peace among peoples, freedom or the rights of the human person". This provision seeks to reflect Portugal's international commitments, including its ratification of the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol⁹⁰.

Portugal is also a signatory of other international treaties, such as the Convention on the Rights of the Child,⁹¹ and the Convention on the Rights of Persons with Disabilities.⁹² These texts contribute to the broader legal framework that shapes the treatment of migrants and asylum seekers in Portugal.

A central component of the Portuguese asylum legal system lies in the transposition of EU law, primarily through Law No. 27/2008 — commonly referred to as the 'Asylum Act'⁹³ —which incorporates into national legislation the Procedures Directive (2013/32/EU) and the Reception Conditions Directive (2013/33/EU), among others. The Asylum Act is further complemented by other relevant legislation, including Law No. 23/2007, which provides a broader framework for the legal status of foreign nationals in Portugal.

In alignment with several EU reforms but also considering some challenges specific to the Portuguese context, Law No. 27/2008 has gone through major amendments. The first

⁸⁷ Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 Yale Journal of Law and Feminism 1.

⁸⁸ Portuguese Refugee Council (CPR) and European Council on Refugees and Exiles (ECRE), *AIDA Country Report: Portugal – 2023 Update* (2024).

⁸⁹ Constituição da República Portuguesa 1976 (Portuguese Constitution, 1976) art 33.

⁹⁰ Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

⁹¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁹² Convention on the Rights of Persons with Disabilities (n 69).

⁹³ Lei n.º 27/2008, de 30 de junho, Diário da República, 1.ª série, n.º 124 (30 June 2008).

major revision occurred through Law No. 26/2014, which transposed the recast Directives 2011/95/EU, 2013/32/EU and 2013/33/EU, aligning with the reforms of the CEAS system in matters of procedural safeguards, reception conditions, and subsidiary protection.⁹⁴ In 2022 and 2023, several additional reforms took place. Act no. 18/2022 of 25 August was mainly focused on the right to work by guaranteeing asylum seekers immediate access to the labour market upon the submission and registration of an asylum application.⁹⁵ The Decree-Law no. 41/2023 of 2 June⁹⁶ established an institutional overhaul in the Portuguese migration and asylum system with the creation of the Integration, Migration and Asylum Agency (AIMA), merging the former Foreigner and Border Service's (SEF) asylum functions with the integration duties carried out by the High Commission for Migration (ACM). Act no. 41/2023 of 10 August incorporated the definition of stateless person in the 2008 Asylum Act (article 2(1)(ai) and regulated the recognition and cessation of this status. Lastly, Act No. 53/23⁹⁷ transposed the Directive 2021/1883 (EU Blue Card Directive), while introducing several amendments to the Asylum Act in relation to issues such as the regime applicable to "safe third country", the deadline for asylum seekers to reply to the report on their application, the material reception conditions of asylum seekers.

The Portuguese asylum legal system operates in a particular institutional architecture composed of several key actors. The following account is not exhaustive but is meant to provide an overview of some of the most important actors in relation to asylum in the Portuguese context.

AIMA is the main institutional actor in the Portuguese migration and asylum system. It was created in 2023, assuming the functions previously held by SEF and ACM, and is responsible for registering asylum claims, assessing asylum applications, and managing reception services in coordination with other relevant bodies.⁹⁸ In this sense, there is an expectation for AIMA to be the primary responsible in identifying and addressing the needs of vulnerable asylum seekers and persons with special needs. However, in an announced effort to address backlog issues, delayed processing times and weak institutional capacity⁹⁹, which it inherited from SEF, the government has committed approximately €6 million euros

⁹⁴ Lei n.º 26/2014, de 5 de maio, Diário da República, 1.ª série, n.º 86 (5 May 2014).

⁹⁵ Lei n.º 18/2022, de 25 de agosto, Diário da República, 1.ª série, n.º 164 (25 August 2022) 2–137.

⁹⁶ Decreto-Lei n.º 41/2023, de 2 de junho, Diário da República, 1.ª série, n.º 107 (2 June 2023) 20–106.

⁹⁷ Lei n.º 53/2023, de 31 de agosto, Diário da República, 1.ª série, n.º 169 (31 August 2023) 7–24.

⁹⁸ CPR and ECRE (n 82) 'Overview of the Main Changes since the previous report update'.

⁹⁹ Rui Polónio and Pedro Araújo, "Junho foi uma catástrofe." Tribunal recebe mais de 30 mil novos processos contra AIMA no último mês' (TSF, 6 July 2025) <<https://www.tsf.pt/4884213764/junho-foi-uma-catastrofe-tribunal-recebe-mais-de-30-mil-novos-processos-contr-aima-no-ultimo-mes/>> accessed 2 September 2025.

to operationalising decentralisation, improving public services, and fostering partnerships with municipalities and civil society organisations.¹⁰⁰

AIMA's functions go beyond the asylum procedure, encompassing the reception conditions as well. Portuguese Law states that the Ministry in charge of Migration (which oversees AIMA) must provide material provisions. As the asylum authority, AIMA has the core obligation to ensure the existence of a single reception and integration system for asylum applicants. Nonetheless, there has been little to no effort to promote this goal of harmonising procedures, thus compromising the application of special procedural guarantees (17-A Asylum Act) and special reception conditions (56(2) Asylum Act).

The UN Refugee Agency (UNHCR) in Portugal also has an institutional mandate and considerable presence as an advocate for asylum seekers' rights by supporting capacity building and offering technical assistance.¹⁰¹ It provides technical advice to Portuguese authorities on reception conditions, vulnerability identification and child protection, as well as training sessions for municipal and government workers on key themes such as trafficking, child protection and vulnerability screening. It partners with the CPR to ensure that migrants and asylum seekers have free access to legal assistance and is a carrier of information regarding application processes, due process rights and services available. The UNHCR's advisory role can help compensate for the lack of standardised vulnerability protocols, not to mention compliance is more likely due to training by the UNHCR. The CPR is a non-governmental and non-profit organisation, which is UNHCR's operational partner in Portugal. It also holds an institutional and legally mandated role in asylum procedures. Specifically, CPR is entrusted with monitoring the asylum system in Portugal. In accordance with articles 13(3), 24(1), 33(3) and 33-A(3) of the Asylum Act, all asylum applications presented in Portugal must be communicated to CPR. In addition, CPR may submit observations to the authorities on individual cases whenever it deems necessary, according to article 28(5) of the Asylum Act. Furthermore, the CPR runs three reception centres and provides free legal, social and integration support to asylum applicants in

¹⁰⁰ Filipe Eduardo Varela, 'Governo destina quase 6 milhões à AIM/A IMA para acelerar residência de imigrantes' (Público Brasil, 21 January 2025) <<https://www.publico.pt/2025/01/21/publico-brasil/noticia/governo-destina-quase-6-milhoes-aima-acelerar-residencia-imigrantes-2119577>> accessed 2 September 2025.

¹⁰¹ European Union Agency for Asylum (EUAA), *Overview of the Role of UNHCR in EU+ Countries: Who is Who in International Protection in the EU+, Issue No 7* (December 2024).

Portugal.¹⁰² Despite occasionally contracting with AIMA, CPR's ability to sustain support remains fragile, because of financial and operational constraints.¹⁰³

Santa Casa da Misericórdia de Lisboa (SCML), a charitable institution operating under the tutelage of the Portuguese state, provides additional reception and social support, assisting those who have lodged an appeal¹⁰⁴ and managing and supplementing reception for asylum seekers and migrants.¹⁰⁵ It has a technical social intervention team with social workers and psychologists to provide material and psychological support when necessary.¹⁰⁶ Furthermore, the SCML complements the work of CPR, by providing assistance to asylum seekers who have submitted an appeal against a Dublin decision or first instance decision, with the exception of a first instance decision in the regular procedure.

The Jesuit Refugee Service (JRS), a non-governmental non-profit organization, provides medical, social, psychological and legal support to refugees and asylum seekers and establishes several initiatives to address mental health needs and social integration.¹⁰⁷ It provides social and psychological services and legal counselling in the sole temporary detention centre on national territory – the Unidade Habitacional de Santo António-UHSA. It has repeatedly showed its commitment to the defence of human rights of migrants in detention centres.⁴ The JRS plays a key role in ensuring conformity with human rights standards in detention settings, which is especially crucial for vulnerable individuals and their access to health care in the same condition as Portuguese citizens, as guaranteed by Article 43 of the Asylum Act.⁵ Healthcare interaction is essential to identify latent vulnerabilities like trauma, mental illness or gender-based violence. However, the SNS, the Portuguese National Health Service, has repeatedly struggled to deliver adequate services

¹⁰² Portuguese Refugee Council (CPR), *Submission to the Committee on Economic, Social and Cultural Rights regarding the 5th periodic review of Portugal for consideration at the 73rd session* (January 2023).

¹⁰³ CPR and ECRE (n 82) 'Reception Conditions'.

¹⁰⁴ CPR and ECRE (n 82) 'Overview of the Main Changes since the previous report update'.

¹⁰⁵ Santa Casa da Misericórdia de Lisboa, *Input by Civil Society Organisations to the Asylum Report 2024: Santa Casa* (EUAA consultation submission, November 2023) <<https://euaa.europa.eu/consultations/asylum-report-2024/1bb45cfe-f5a8-4cc6-a855-cc4b26cda968>> accessed 8 July 2025.

¹⁰⁶ CPR and ECRE (n 82) 'Reception Conditions'.

¹⁰⁷ Maria José Rebelo, 'Portugal: Mental Health Support Against a Backdrop of Destitution and Exclusion' (JRS USA, 23 November 2013) <<https://www.jrsusa.org/story/portugal-mental-health-support-against-a-backdrop-of-destitution-and-exclusion/>> accessed 2 September 2025.

⁴ JRS Portugal, 'Declaration of Commitment to Defend the Human Rights of Foreign Citizens and Asylum Seekers in Detention Centres in Portugal' (JRS Europe, 17 May 2024) <<https://jrseurope.org/en/news/declaration-of-commitment-to-defend-the-human-rights-of-foreign-citizens-and-asylum-seekers-in-detention-centres-in-portugal/>> accessed 2 September 2025.

⁵ Lei n.º 27/2008 (n 93).

to migrants, asylum seekers and refugees, mainly due to language barriers, irregular or delayed referrals or bureaucratic obstacles.¹¹¹

The asylum process in the Portuguese context, where AIMA operates as the primary responsible authority, can generally be divided into five core stages: 1) application and registration; 2) reception and support; 3) assessment and decision; 4) appeals; 5) integration or removal. A visual summary of the Portuguese asylum system's legal and institutional structure is provided in Annex 1.

The application and registration stage suffers from continuous delays due to bureaucratic backlog and poor coordination. Ideally, during this stage vulnerability checks should be performed in order to identify special needs.¹¹²

During the reception stage, AIMA carries out its substantive assessment under EUAA guidance, while border procedures apply fast-track timelines to specific cases. Simultaneously, AIMA cooperates with civil society organisations. Until 2024, CPR was the sole organisation that provided reception conditions on behalf of the State. However, from late 2023 onwards, this responsibility was extended to other entities, given the limited capacity of CPR's infrastructures.¹¹³ It is important to note that, during the assessment and decision stage AIMA holds the responsibility for identifying vulnerability and special needs of asylum applicants, and ensuring the implementation of special procedural guarantees, according to article 17-A of the Asylum Act.

During the appeals stage, asylum seekers can contest decisions by AIMA through administrative courts, usually supported by NGOs and other actors, which provide them free legal assistance, such as the CPR, in accessing the legal aid system. Positive decisions lead to access to effective integration services, while rejected applicants risk detention or forced return.

Despite the presence of a well-established network of actors—JRS having a permanent presence in detention, SCML providing psychosocial support, and SNS ensuring access to healthcare—there are no interlinking protocols or standardized procedures for identifying vulnerable groups. This gap undermines compliance with the obligations laid down in Articles 17-A and 52(2) of the Asylum Act.

¹¹⁰ Pedro Perista, *Portugal: Improving the Access of Migrants and Refugees to Healthcare during the Pandemic*, ESPN Flash Report 2020/32 (European Social Policy Network/European Commission, June 2020); Portuguese Refugee Council (CPR) and European Council on Refugees and Exiles (ECRE), *AIDA Country Report: Portugal – 2023 Update* (2024), Ch D 'Health Care' in the 'Reception Conditions' section.

¹¹¹ CPR and ECRE (n 82) Ch D.1 'Identification' in the 'Asylum Procedure' section.

¹¹² CPR and ECRE (n 82) 'Reception Conditions'

Moreover, the institutional ordered systematic vulnerability screening remains inconsistent. Each section functions with different protocols, time frames, and resource constraints, hence, the early signs of trauma, gender-based violence, or trafficking might go unnoticed. In the next section, we examine the gap between the law's commitment to special procedural guarantees and the reality of their implementation.

4.3 Detecting Vulnerability: Gaps Between Law and Practice

Following the guidelines established at the EU level, Portuguese legislation identifies applicants for international protection as the category of individuals whose ability to enjoy rights and fulfil duties required by law is diminished due to the specific vulnerabilities of their situation.¹¹³ This is the case for unaccompanied minors, victims of human trafficking, disabled persons, mother-to-be, and victims of violence.¹¹⁴ Identifying these individuals should occur as soon as possible in the course of the procedure and they are exempt from accelerated/border procedures, as established by Article 17-A of Law No. 27/2008.¹¹⁵

Although this identification obligation exists, there are 'no (specific) mechanisms, standard operating procedures, or units in place to systematically identify asylum seekers who need special procedural guarantees.'¹¹⁶ In fact, according to the CPR, there are few instances when asylum seekers and migrants can disclose any perceived vulnerabilities, and most questions direct applicants to health-related issues. There is also no clear link between the answers to these questions and any special mechanisms or guarantees. The CPR also denounces the lack of caseworkers trained in systematic vulnerability detection. According to information provided by AIMA to the CPR, a standardised identification of vulnerabilities is mostly conducted in the context of relocation and resettlement programmes.

This lack of mechanisms to identify vulnerabilities has significant negative consequences for migrants and asylum seekers arriving in Portugal. Invisible vulnerabilities are often missed, such as LGBTQIA+ individuals, survivors of gender-based violence, trauma or trafficking,¹¹⁷ especially since there is a growing reliance on self or informal

¹¹³ CPR and ECRE (n 82) Ch E 'Special Reception Needs of Vulnerable Groups' in the 'Reception Conditions' section.

¹¹⁴ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, OUP 2021)

<<https://doi.org/10.1093/law/9780198808565.001.0001>> accessed 2 September 2025.

¹¹⁵ Lei n.º 27/2008 (n 93) art 17-A.

¹¹⁶ CPR and ECRE (n 82) ch D.1 'Identification' in the 'Asylum Procedure' section 93.

¹¹⁷ Ana Paula Costa, *Discriminação de Pessoas Imigrantes nos Serviços Públicos em Portugal: Relatório do Projeto #MigraMyths – Desmistificando a Imigração*, 3ª Edição (Casa do Brasil de Lisboa, December 2022).

declarations.¹¹⁸ This lack of a standardised approach can lead to inconsistencies and delays in providing support. In the past, authorities have failed to identify the presence of vulnerable migrants, such as one case involving an unaccompanied minor and the absence of any attempts to identify cases of trafficking, abuse, or violence.¹¹⁹

The fragmentation of the process between different agencies leads to difficulty in vulnerability detection and delays in care and referrals, which in turn hinders early detection. Even more concerning is AIMA's incapability to lead by establishing standard operation procedures for vulnerability detection, therefore allowing vulnerability to be addressed mostly post-registration or during appeals,¹²⁰ missing the critical window for intervention.¹²¹ Border procedures risk bypassing detection entirely, especially for those applicants who are subjected to fast-track due to their nationality.

4.4 Reception Conditions: Between Humanitarian Norms and Systemic Limits

According to article 61(1) of the Asylum Act, the primary responsibility for the provision of material conditions is assigned to the Ministry in charge of Migration, which oversees AIMA. AIMA, as the asylum authority, is responsible for ensuring the existence of a single reception and integration system for asylum applicants. The Portuguese asylum authority has the power to promote special reception conditions to vulnerable persons and persons with special needs, in accordance with article 56(2) of the Asylum Act. Although AIMA bears the primary responsibility for the single system of reception and integration, the provision of material conditions to asylum applicants may be transferred to the Ministry of Employment, Solidarity and Social Security only when asylum applicants pass the admissibility procedure and are in the regular procedure¹²²

In addition, although AIMA holds primary responsibility for the provision of material conditions, the asylum authority may cooperate with civil society organisations to guarantee the provision of reception conditions on behalf of the State. In this sense, the CPR is often

¹¹⁸ CPR and ECRE (n 82) ch D.1 'Identification' in the 'Asylum Procedure' section.

¹¹⁹ Provedoria da Justiça, *Relatório à Assembleia da República – 2022, Mecanismo Nacional de Prevenção* (Provedoria da Justiça 2022) <https://www.provedor-jus.pt/documentos/Relatório_MNP_2022.pdf> accessed 2 September 2025.

¹²⁰ CPR and ECRE (n 82) ch D.1 'Identification' in the 'Asylum Procedure' section.

¹²¹ Provedoria de Justiça (n 119).

¹²² CPR and ECRE (n 82) 'Overview of the Main Changes since the previous report update' 27.

responsible for providing reception and social support to asylum seekers in the admissibility procedure,¹²³ and to unaccompanied children.¹²⁴ SCML ensures that asylum seekers are properly received after their initial accommodation by the CPR or assists those who have made an appeal against a Dublin decision or a first instance decision.¹²⁵ Lastly, JRS focusses primarily on integration¹²⁶ and provides psychological, medical, and legal assistance or housing.¹²⁷ Recognising the increased vulnerability of unaccompanied children, CPR also provides material reception conditions for unaccompanied minors through the *Centro de Acolhimento para Crianças Refugiadas* (CACR), with the capacity to accommodate 13 children between the ages of 13 and 18.¹²⁸ The general reception network, *Casa de Acolhimento para Refugiados* (CAR), provides accommodation for isolated adults and families.¹²⁹

The reception system in Portugal faces significant challenges, as highlighted by the Portuguese Refugee Council. In 2023, CPR reported an issue with overcrowding in specialised accommodation, being unable to accept new unaccompanied minors due to full capacity, and many were transferred to general reception facilities.¹³⁰ There is also a high rate of absconsion by unaccompanied minors (15%)¹³¹ due to lack of child-specific support and poor facilities. This suggests a lack of safe and child-friendly environments.

Asylum seekers are also legally entitled to free healthcare via SNS - Article 52(1) of Law No. 27/2008 establishes this right.¹³² This includes the right to tailored health care, including for mental conditions.¹³³ Several challenges hinder their effective access to medical assistance, including language, cultural barriers and bureaucratic constraints.¹³⁴ it is important to note that there is a scarcity of mental health professionals with capacity to

¹²³ United Nations High Commissioner for Refugees (UNHCR) Portugal, 'Asylum Seekers – As a registered asylum seeker in Portugal, these are your rights and obligations' (UNHCR Portugal) <<https://help.unhcr.org/portugal/rights/rights-asylum-seekers/>> accessed 2 September 2025.

¹²⁴ CPR and ECRE (n 82) 'Overview of the Main Changes since the previous report update'.

¹²⁵ Ibid.

¹²⁶ CPR and ECRE (n 82) Ch G.1 'Provision of Information on the Procedure' in the 'Asylum Procedures' section.

¹²⁷ Jesuit Refugee Service (JRS) Portugal, 'Portugal' (JRS International website) <<https://jrs.net/en/country/portugal/>> accessed 2 September 2025.

¹²⁸ Portuguese Refugee Council (CPR), 'Casa de Acolhimento para Crianças Refugiadas (CACR)' (CPR, accessed 2 September 2025) <<https://cpr.pt/casa-de-acolhimento-para-criancas-refugiadas-cacr/>>.

¹²⁹ CPR and ECRE (n 82) Ch A.1 'Criteria and Restrictions to Access Reception Conditions' in the 'Reception Conditions' section.

¹³⁰ CPR and ECRE (n 82) 'Overview of the Main Changes since the previous report update'.

¹³¹ European Union Agency for Asylum (EUAA), *Input by Civil Society to the 2022 Asylum Report* (2022) <<https://euaa.europa.eu/sites/default/files/2022-03/asylex.pdf>> accessed 2 September 2025.

¹³² Lei n.º 27/2008 (n 93) art 52(1).

¹³³ CPR and ECRE (n 82) Ch D 'Healthcare' in the 'Reception Conditions' section.

¹³⁴ Ibid.

address trauma-related disorders, as there is an evident lack of a national mental health policy that addresses mental health disorders in asylum seekers and migrants, adapted to address their special needs.

4.5 Detention Practices: Legal Safeguards and Practical Failures

Article 35-A of Law No. 27/2008 prohibits the detention of persons solely for applying for asylum but allows detentions in cases of national security, public order or risk of absconding, as well as for border cases or Dublin transfers.¹³⁵

Greater safeguards are established for vulnerable individuals in Article 17-A(1) and (2),¹³⁶ since they are exempt from accelerated procedures and detention.¹³⁷ However, because the identification of vulnerabilities does not follow a standard operational procedure, their specific needs are often overlooked, and practical compliance is often inconsistent. In fact, CPR has raised concerns regarding the systematic detention of applicants for international protection at the border, including vulnerable persons.¹³⁸

The detention facility at Humberto Delgado Airport, in Lisbon, is one of the most relevant detention spaces of applicants for international protection.¹³⁹ A report by *Provedoria da Justiça* revealed its poor conditions, including a lack of basic material conditions, such as panic buttons and a vigilance system in all interview rooms, as well as a lack of privacy in the shower area.¹⁴⁰ Additionally, the report highlighted concerning situations that contradict fundamental rights and human dignity - for example, some detained migrants lacked access to translated information (including the reason for their detention). Another report by the Global Detention Project also notes that Portugal has been known to detain children and that this is a growing practice.¹⁴¹

Border procedures—and their associated detention in designated facilities— have been suspended for approximately 3 and a half years before being resumed in early

¹³⁵ Lei n.º 27/2008 (n 93) art 35-A.

¹³⁶ Ibid art 17-A(1) and (2).

¹³⁷ CPR and ECRE (n 82) Ch B.3 ‘Detention of Vulnerable Applicants’ in the ‘Detention of Asylum Seekers’ section.

¹³⁸ CPR and ECRE (n 82) ‘Overview of the Main Changes since the previous report update’.

¹³⁹ CPR and ECRE (n 82) Ch C.2 ‘Conditions in Detention Facilities’ in the ‘Detention of Asylum Seekers’ section.

¹⁴⁰ Provedoria de Justiça (n 119).

¹⁴¹ Global Detention Project, *Immigration Detention in Portugal: Resettling Refugees, Detaining Asylum Seekers* (Country Report, June 2019) <<https://www.globaldetentionproject.org/wp-content/uploads/2019/06/Immigration-Detention-in-Portugal-June-2019-Online.pdf>> accessed 2 September 2025.

November 2023.¹⁴² During this period, asylum seekers were detained mostly when they “were previously detained pending a removal procedure”.¹⁴³ When border procedures were resumed, due to capacity shortages in the detention centre of the Lisbon airport, many asylum seekers and migrants who were refused entry were held in the transit zone of the Lisbon airport in undignified conditions, a space not intended for detention.¹⁴⁴ The police recorded 11 people being held in the transit zone between 29 October 2023 and 31 December 2023, for an average period of 48 hours, but NGOs and media revealed higher numbers and longer periods.¹⁴⁵ According to some, there were almost permanently between 15 and 20 people living in the transit area while awaiting a place in a detention facility, with access to hygiene facilities dependant on police escort.¹⁴⁶ These practices reveal weak safeguards, especially for vulnerable applicants, as border procedures are set to expand under the New Pact.

4.6 Solidarity, Discretion and Shared Responsibility

The solidarity mechanism under the New Pact is intentionally flexible, allowing Member States to contribute to the CEAS through relocation, financial support or operational assistance, which will lead to uneven participation across the EU.

Portugal is known to have supported this concept of ‘flexible compulsory solidarity’,¹⁴⁷ and has shown a clear and strong commitment to the EU solidarity mechanisms. Between 2020 and 2022, Portugal pledged to receive 1709 refugees that requested asylum in Egypt, Turkey and Jordan, as well as providing assistance with resettlement by conduction health assessments, managing the movements of refugees and supporting initial integration.¹⁴⁸ Portugal has also been known to participate in the reallocation of migrants and asylum seekers, particularly from Italy and Malta.¹⁴⁹ Like many other Member States, Portugal may

¹⁴² CPR and ECRE (n 82) Ch A ‘General’ in the ‘Detention of Asylum Seekers’ section.

¹⁴³ Ibid.

¹⁴⁴ CPR and ECRE (n 82) Ch C.4. ‘General (scope, time, limits)’ in ‘Border procedure (border and transit zone)’ section.

¹⁴⁵ CPR and ECRE (n 82) Ch C ‘Place of Detention’ in the ‘Detention conditions’ section.

¹⁴⁶ Valentina Marcelino, ‘Requerentes de asilo "dormem em bancos" no aeroporto. Sindicato da PSP denuncia situação "caótica"’ *Diário de Notícias* (Lisbon, 3 December 2023) <<https://www.dn.pt/arquivo/diario-de-noticias/requerentes-de-asilo-dormem-em-bancos-no-aeroporto-sindicato-da-psp-denuncia-situacao-caotica--17438294.html>> accessed 2 September 2025.

¹⁴⁷ Plataforma portuguesa, ‘The Vital Role of the Portuguese Presidency for the New Pact on Migration and Asylum’ (Concord Europe, 4 February 2021) <<https://presidency.concordeurope.org/the-vital-role-of-the-portuguese-presidency-for-the-new-pact-on-migration-and-asylum/>> accessed 2 September 2025.

¹⁴⁸ International Organization for Migration (IOM) Portugal, ‘Resettlement of Refugees (2024–2026)’ (IOM Portugal, 2025) <<https://portugal.iom.int/resettlement-refugees-2024-2026>> accessed 2 September 2025.

¹⁴⁹ UNHCR Portugal, ‘Asylum Seekers – Rights and Obligations’ (n 123).

face growing challenges if other countries opt for financial contributions instead of reallocations. Financial support alone does not reduce the number of people in need of transfer, and without effective relocations, pressure on national infrastructures persists across the EU, most acutely in frontline States such as Italy, Greece, and Spain. Yet the weakening of the relocation mechanism also has implications for Portugal: despite receiving comparatively few applicants, its reception and integration systems are limited in scale, meaning that even moderate increases in relocated applicants could generate disproportionate strain. This dynamic not only risks exposing the fragility of Portugal's system but also undermines the credibility of the EU's solidarity framework as a whole.

The public perception could also become a problem, since it may shift in host countries, feeding the anti-migrant sentiment as the nation feels as if it is being left alone to manage refugee integration. The New Pact's emphasis on fast procedures can also lead to human rights violations of vulnerable persons if processes are not properly managed. Philippe De Bruycker notes that the principle of the 'country of first entry' continues to burden frontline Member States more disproportionately, especially considering that other countries can choose how they contribute other than by receiving and accommodating migrants.¹⁵⁰ The European Council of Refugees and Exiles (ECRE) also believes that the solidarity mechanism of the New Pact falls short of addressing existing needs and that the burden continues to fall on Member States on EU's external borders.¹⁵¹

5 Conclusion: The double-edged challenge

The New Pact consolidates ten legislative acts aimed at reforming EU asylum and migration governance, with an emphasis on border management, solidarity, and procedural efficiency. Although vulnerability is acknowledged in most instruments, no unified definition or standardised protocol for assessment was created, which can lead to inconsistent recognition and protection of vulnerable individuals. Because discretion is left to national authorities and there is a clear absence of intersectional frameworks, there are higher risks of overlooking complex and layered vulnerabilities.

¹⁵⁰ Philippe De Bruycker, *The New European Solidarity Mechanism: Towards a Fair Sharing of Responsibility between Member States?* (FEPS, FES EU Office Brussels and EPC, September 2024).

¹⁵¹ ECRE, 'Comments on the Regulation on Asylum and Migration Management' (n 74).

The Portuguese migration and asylum system is caught between rights-based obligations and longstanding control-oriented dynamics, which have been further reinforced under the New Pact. Although a robust normative framework sets out how the system should function—for example, by mandating the identification of vulnerabilities—there remains a wide gap between legal standards and bureaucratic practice. In practice, vulnerable migrants are detained due to the absence of effective vulnerability screening, children are held in detention or accommodated in inadequate facilities, and procedures often exceed the time limits prescribed by law.

Portugal's institutional capacity is fragile and frequently overstretched, meaning its aspirations to act as a humanitarian outlier are not matched by consistent practice—particularly in areas such as early vulnerability detection, reception, and mental health support. A central flaw of its migration and asylum system is the absence of a standardized vulnerability screening mechanism. As a result, the vulnerability logic embedded in EU law is often reduced to a mere formality, lacking meaningful institutional or practical translation, and thereby undermining the protection of those most in need.

Portugal has embraced the flexible solidarity mechanism of the New Pact, yet this very flexibility carries risks—particularly if other Member States opt out of relocations, leaving frontline actors under-supported. Portugal's commitment to relocation stands in contrast to the minimal redistribution achieved across the EU, exposing the inequalities inherent in the burden-sharing system. This creates a double challenge for Portugal: sustaining its humanitarian reputation within an increasingly securitised EU asylum regime, while also dealing with growing domestic pressures for tighter control.

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Annex 1: Schematic Overview of the Portuguese Asylum System

