

**Re-evaluating Vulnerability in the
Common European Asylum System:**
Towards a More Sensitive and Effective
Identification and Assessment Approach
for Vulnerable Asylum Seekers

Anna Andreyeva

*The International PhD Programme in Law, Ethics & Economics for
Sustainability | University of Milan*

*Маме — с благодарностью и любовью.
Папе — в память.*

Acknowledgements

I warmly thank my tutors, Professor Chiara Ragni, Professor Irene Pellizzone, and co-tutor Professor Dan Kuwali, for their guidance, patience, and unwavering support throughout this research journey.

I am also sincerely grateful to Professor Francesca Ippolito and Professor Barbara Giovanna Bello for their thoughtful and helpful feedback during the review stage of this thesis.

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Abstract

This thesis re-examines the place and function of vulnerability in the Common European Asylum System (CEAS), where the concept has become increasingly central yet remains theoretically fragile and operationally inconsistent. Although European Union (EU) legislation and European Union Agency for Asylum (EUAA) guidance invoke vulnerability as a basis for special reception and procedural safeguards, they continue to rely predominantly on categorical indicators—such as age, disability, unaccompanied status, or SOGIESC (Sexual Orientation, Gender Identity and Expression, and Sex Characteristics). This approach obscures intersectional harms, reinforces reductive assumptions, and often generates new vulnerabilities through administrative design, evidentiary expectations, reception arrangements, and externalised procedures.

To address these shortcomings, the thesis develops a conceptual-legal framework that conceptualises vulnerability as layered, intersectional, and mediated by law. Drawing on feminist ethics, legal philosophy, socio-legal scholarship, and the work of Fineman, Butler, Mackenzie, Luna, Gilodi, and Moreno-Lax & Vavoula, the thesis reconceptualises vulnerability as: (i) universal yet unevenly distributed; (ii) dynamic and relational across structural, situational, relational, and experiential layers; and (iii) shaped—and sometimes produced—by legal categories, institutional practices, and procedural environments. Intersectionality is employed as a multi-level methodological tool (inter-, intra-, and anti-categorical) to uncover internal diversity within groups, analyse systemic patterns across groups, and interrogate the categories through which CEAS governs protection.

Empirically, the framework is grounded in insights from the Vulnerability Under the Global Protection Regime (VULNER) project, a multi-country empirical study on vulnerability in migration and asylum, which illuminate how vulnerability is identified, overlooked, or created within asylum systems and how credibility, trauma, stigma, and positionality shape applicants' interactions with institutions. Doctrinally, the framework is applied to CEAS legislation—including the 2024 CEAS reform package, EUAA soft-law tools, and the externalisation practices that increasingly structure European asylum governance. Its practical value is illustrated through analytically constructed case analyses drawing on recurring patterns documented in VULNER project, United Nations High Commissioner for Refugees (UNHCR) guidance, and intersectional scholarship.

The thesis argues for a continuum model of vulnerability, designed for periodic reassessment, and calls for embedding layered, intersectional reasoning into CEAS identification and assessment mechanisms, procedures, and accountability structures, both within EU territory and in externalised settings. In doing so, it outlines a pathway

toward a more conceptually coherent, normatively grounded, and operationally responsive approach to vulnerability in European asylum governance.

1. Chapter 1: Setting the Stage: Introduction to the Research Question.

1.1. Background

The Common European Asylum System (CEAS) emerged as part of the European Union (EU)'s broader integration project at the end of the 1990s.¹ Building on the removal of internal borders under Schengen agreement, the EU sought to create a coherent framework for asylum governance capable of regulating access, allocating responsibility, and ensuring minimum standards across the EU Member States. From its inception, however, CEAS evolved through cycles of harmonisation and fragmentation. The first legislative phase (1999–2004) introduced minimum standards through the Dublin II and Eurodac Regulations and the initial Directives on reception, qualification, and procedure. These instruments laid important foundations but were quickly criticised for definitional ambiguity, uneven transposition, and inadequate safeguards for applicants with special reception needs or special procedural guarantees - concerns acknowledged even in the European Commission's own evaluations.

The second phase (2008–2013), shaped by the Lisbon Treaty and the elevation of EU asylum policy to a constitutional level, sought to move towards uniform standards. The recast Directives and the establishment of the European Asylum Support Office (EASO), now European Union Agency for Asylum (EUAA), promised greater coherence and improved procedural safeguards. Yet assessments remained ambivalent: while reforms strengthened some rights, they also reproduced earlier inconsistencies and left substantial discretion to national authorities. Underlying structural tensions persisted, especially regarding responsibility-sharing, access to procedures, and the treatment of applicants deemed “vulnerable.”

The 2015–2016 influx of people seeking protection exposed these weaknesses and intensified pressure for reform. The Commission's proposals from 2015 onward, culminating in the New Pact on Migration and Asylum, introduced screening mechanisms, expanded the use of border procedures, and advanced a shift from directives to regulations. These reforms aim at deeper harmonisation but simultaneously reinforce the external dimension of EU asylum governance.

¹ This background section provides a general, descriptive overview of the evolution of the CEAS. Full doctrinal references, source citations, and detailed analysis of the relevant legal instruments (Directives, Regulations, Communications, and evaluations) are provided in Chapter 4. The intention here is to outline the historical trajectory without duplicating the technical discussion that follows.

Externalisation—cooperation with third countries, off-territorial processing, and the increasing use of border zones—has become a defining feature of CEAS. It reshapes institutional environments, restricts oversight, and alters where and how vulnerability manifests.

Throughout these developments, vulnerability has become one of the central organising concepts within CEAS law and practice. The Reception Conditions Directive and the Asylum Procedures Directive require the identification of applicants with “special reception needs” or “special procedural guarantees”, and the Qualification Directive recognises that vulnerability may affect both protection needs and the enjoyment of rights. The categories listed in these instruments—minors, unaccompanied children, persons with disabilities, elderly persons, pregnant women, single parents, survivors of torture, rape, trafficking, or serious illness—offer important procedural markers. Yet they remain non-exhaustive and conceptually undefined, functioning as administratively constructed indicators rather than as substantive normative frameworks.

This creates a structural tension at the heart of CEAS. On the one hand, EU law increasingly embeds vulnerability in legislation, operational standards, and EUAA guidance. On the other, CEAS continues to rely primarily on categorical and visibility-based indicators—age, disability, unaccompanied status, or observable distress—together with characteristics that affect procedural capacity, such as SOGIESC. This approach tends to overlook less legible, relational, or intersectional forms of harm and limits the institutional legibility of certain experiences. It also risks what vulnerability theorists call pathogenic effects: procedures intended as safeguards may inadvertently produce additional harm, for example through fragmented assessments, credibility expectations that penalise trauma, or reception arrangements unsuited to applicants’ needs.

Moreover, CEAS uses the terms “special reception needs” and “special procedural guarantees” in ways that do not always align with theoretical debates in international human rights law, feminist ethics, and socio-legal scholarship. As Chapters 2 and 3 show, these fields conceptualise vulnerability as universal, dynamic, relational, and law-mediated, shaped by structural conditions, social norms, interpersonal interactions, and the institutional environment itself. The case law of United Nations (UN) treaty bodies, the European Court of Human Rights (ECtHR), and the Court of Justice of the European Union (CJEU), increasingly deploy vulnerability as an interpretive criterion, albeit unevenly. These developments reveal a growing recognition that vulnerability is not merely an attribute of predefined groups, but a condition emerging from the interaction between individuals and the institutions that govern them.

Against this background, the central puzzle of this thesis emerges: despite its increasing prominence in CEAS legislation and soft-law, vulnerability remains

conceptually underdeveloped and operationally inconsistent. Lists of categories provide procedural anchors but fail to explain how vulnerability arises, evolves, or interacts with asylum processes. They also obscure intersectional dynamics, relational harms, and law-mediated forms of disadvantage.

For this reason, the thesis proposes a framework that reconceptualises vulnerability as layered, intersectional, and mediated by legal and institutional structures. This approach builds on contemporary scholarship (e.g., Fineman, Butler, Luna, Mackenzie et al., Gilodi et al., Moreno-Lax & Vavoula) and empirical insights such as those from the VULNER project. It provides the conceptual foundations for analysing vulnerability within CEAS law and practice, tracing how it is recognised, overlooked, or produced across legislative instruments, operational guidance, and externalised governance. This sets the stage for Chapter 2, which develops the layered, intersectional, law-mediated model that frames the analysis throughout the thesis.

1.2. Research Question

This thesis examines whether the current use of “vulnerability” in the Common European Asylum System (CEAS) adequately reflects the realities of asylum seekers, or whether it should be re-evaluated to enable more accurate, inclusive, and context-sensitive identification and assessment mechanisms. The central question guiding the study is:

How should vulnerability be re-evaluated in the Common European Asylum System to establish more accurate, inclusive, and context-sensitive identification and assessment mechanisms, and thereby improve the protection of asylum seekers while holding law accountable for the vulnerabilities it produces?

This inquiry is structured around four sub-questions:

1. Conceptualisation and operationalisation:
How is vulnerability currently defined, understood, and operationalised within CEAS legal instruments?
2. Multidimensionality:
To what extent does the CEAS framework accommodate a layered and dynamic understanding of vulnerability—structural, situational, and experiential—rather than reducing it to categorical proxies?
3. Intersectionality:
How can an intersectional approach strengthen the accuracy, inclusivity, and contextual sensitivity of CEAS identification and assessment?

4. Reform and accountability:

What legal and procedural reforms to CEAS identification and assessment mechanisms would make them more responsive to applicants' needs, while ensuring accountability for the vulnerabilities produced by law itself?

Together, these questions set the stage for the thesis's contribution: moving CEAS beyond categorical checklists toward a layered, intersectional framework that is both conceptually robust and practically implementable.

1.3. Thesis Structure

This thesis is organised into six chapters: an introduction (Chapter 1), four substantive chapters (Chapters 2–5), and a conclusion (Chapter 6).

Chapter 2 develops the analytical framework that guides the thesis. Drawing on legal theory, feminist philosophy, and empirical vulnerability studies, it conceptualises vulnerability as a layered, intersectional, and law-mediated condition. The chapter critically assesses existing uses of vulnerability in legal and policy discourse and formulates three analytical dimensions—structural, situational, and experiential—that are applied in later chapters. This framework directly addresses the first and second research questions by clarifying how vulnerability can be operationalised in legal analysis beyond static group-based categories, and it serves as the conceptual foundation for the doctrinal and empirically informed investigations that follow, including the intra-, inter-, and anti-categorical sensibilities through which intersectionality is operationalised throughout the thesis.

Chapter 3 examines how vulnerability has been interpreted and given legal effect within international and European human rights law. Drawing on authoritative doctrinal reconstructions—particularly Ippolito's analysis of UN treaty-body practice, Chapman and Carbonetti's empirical study of CESCER reasoning, and Halme-Tuomisaari's interpretive work on the Human Rights Committee—the chapter traces the emergence of vulnerability as an evolving, transversal interpretive criterion in UN monitoring practice. It then turns to the European regional context, contrasting the ECtHR's open-textured and jurisprudentially dynamic use of vulnerability with the CJEU's more codified, category-based approach under the CEAS. Throughout, the chapter employs the layered, intersectional, and law-mediated framework developed in Chapter 2 as an interpretive lens for assessing how UN treaty bodies and European courts conceptualise vulnerability, and whether these conceptualisations carry juridical relevance for asylum governance. The chapter also shows how these interpretive practices both respond to and participate in the law-mediated production of vulnerability, as understood within the analytical model.

Chapter 4 addresses the core of the research: the treatment of vulnerability within the reformed CEAS. Using the framework developed in Chapter 2, it examines the text, structure, and evolution of CEAS instruments, including the 2024 reform package, together with EUAA operational soft-law tools. The chapter also integrates the analysis of externalisation as a governance strategy, examining how border procedures, screening mechanisms, and cooperation with third countries reconfigure the production and distribution of vulnerability. This enables a systemic evaluation of how layered and intersectional vulnerabilities are recognised, transformed, or obscured in CEAS legislation and governance.

Chapter 5 applies the framework to a specific context: asylum applications by individuals with diverse SOGIESC. It first unpacks SOGIESC-related vulnerability through the layered, intersectional, law-mediated model, drawing on UNHCR guidance, intersectionality-based scholarship, and empirical findings from the VULNER project. It then analyses how third-generation CEAS instruments and externalised asylum processing address, or fail to address, these vulnerabilities in reception and refugee status determination procedures. The chapter concludes with two case illustrations that synthesise recurring empirical patterns to demonstrate how structural, situational, and experiential vulnerabilities accumulate and remain (in)visible in both territorial and externalised settings. In this way, Chapter 5 tests the practical value of the framework and provides the analytical bridge to the concluding chapter.

Chapter 6 concludes the thesis. It restates the research questions, synthesises the main findings from Chapters 2–5, and reflects on their normative and practical implications. On this basis, it advances recommendations for how EU asylum law and practice, both within CEAS territory and in externalised procedures, could move towards a more layered, intersectional, and structurally responsive approach to vulnerability, and identifies avenues for future research.

1.4. Method

This thesis adopts a qualitative, interpretive, and doctrinal methodology informed by legal theory, feminist philosophy, and empirical vulnerability studies. Its aim is not to generate new empirical data, but to develop and apply a conceptual–legal framework capable of explaining how vulnerability is conceptualised, operationalised, and mediated within international human rights law and EU asylum governance. Because vulnerability emerges relationally—through the interaction of legal status, institutional design, social norms, and individual life trajectories—the research design prioritises methods attentive to structure, interpretation, and context over descriptive or quantitative approaches.

The methodology is grounded in four disciplinary pillars, each contributing a distinct analytical function.

Legal theory provides tools for understanding how law constructs subjectivity, institutional dependence, and the conditions under which individuals can exercise agency.

Feminist philosophy—particularly the work of Fineman, Butler, and Mackenzie et al.—offers relational, embodied, and structural accounts of vulnerability and autonomy, highlighting how legal and institutional contexts shape exposure to harm. Socio-legal and empirical vulnerability research, especially the VULNER project, illuminates how vulnerability is lived, narrated, silenced, or produced in asylum systems, drawing attention to stigma, institutional routines, and the interpretive practices through which vulnerability is recognised or obscured. International and EU doctrinal analysis supplies the normative and jurisprudential foundation for examining interpretive practices, State duties, and the structural conditions governing asylum seekers.

Intersectionality forms a core methodological component of this thesis. As developed in Chapter 2, it is not used as a label for “multiple identities,” but as an analytic approach for examining how structures of power interact to shape vulnerability and how institutional categories mediate what becomes legible as harm. Intersectionality functions as a refining lens within the layered vulnerability model: it sharpens how the structural, situational, and experiential layers relate to one another and clarifies how vulnerability emerges at their intersection, rather than as an inherent attribute of individuals. Building on Crenshaw’s account of intersecting harms and institutional blind spots, the thesis attends to the ways in which legal and administrative arrangements can render certain constellations of disadvantage invisible. McCall’s intra-, inter-, and anti-categorical heuristics provide a flexible set of tools for working with and against CEAS categories, informing the intra-categorical attention to heterogeneity within administratively constructed groups, the inter-categorical mapping of how CEAS templates organise vulnerability, and the anti-categorical awareness of the risks of reifying the labels through which vulnerability is governed. Building on Yuval-Davis’s multi-level lens (experiential, institutional, symbolic), the analysis traces how a person’s biography meets institutional practice and broader structures, and how that meeting point generates specific configurations of vulnerability within legal and procedural contexts. In this way, intersectionality operates as a connective analytic lens within the layered, law-mediated framework, increasing the descriptive resolution and evaluative precision of the analysis without displacing the core focus on how law and institutions produce, recognise, or obscure vulnerability.

The methodological approach also draws on scholarship that conceptualises the role of law in shaping vulnerability. Following Moreno-Lax, the thesis understands law not merely as a framework responding to vulnerability but as a force that actively produces

and distributes it through legal status, procedural design, and institutional arrangements. This informs the law-mediated dimension of the conceptual model developed in Chapter 2, where vulnerability is understood as emerging through the interaction between individuals and legal structures. In addition, the thesis engages with the insights of Moreno-Lax and Vavoula, whose analysis of vulnerability's ambivalent role in migration governance highlights how vulnerability can operate both as a basis for protection and as a classificatory tool that may obscure or manage applicants' needs. These contributions refine the methodological orientation by emphasising that vulnerability must be assessed not only in terms of individual characteristics but also through the institutional and normative frameworks that shape its recognition or erasure.

In the context of CEAS, a wide range of groups are administratively designated as having "special reception" or "special procedural" needs, and many of them could, in principle, be analysed through the layered, intersectional, and law-mediated framework developed in this thesis. Because it is not feasible to examine all categories within a single study, the choice of case context requires a clear methodological justification. The thesis therefore focuses on SOGIESC-diverse applicants in Chapter 5. This group provides an analytically rich setting for testing the framework because their vulnerabilities are often invisible or non-verifiable through visible markers, shaped by stigma, trauma, disclosure constraints, and normative expectations. Their internal heterogeneity makes them well suited to an intra-categorical analysis, while their interaction with CEAS's categorisation and credibility structures offers a revealing context for examining the limits of visibility-based identification and administratively defined vulnerability templates. The SOGIESC case thus serves as a methodologically strategic illustration of how layered vulnerabilities can materialise within legal and institutional structures.

The research design consists of four mutually reinforcing components:

Conceptual analysis (Chapter 2).

The thesis synthesises insights from the disciplinary pillars above to conceptualise vulnerability as layered, intersectional, and law-mediated. The resulting framework—structural, situational, and experiential layers—provides the analytical architecture for all subsequent chapters. Intersectionality functions here as the lens through which these layers are understood as relational and mutually reinforcing, ensuring that the model captures how legal categories, social norms, and institutional designs interact to shape exposure to harm. The framework also clarifies how law produces or exacerbates vulnerability, enabling later doctrinal and operational critique.

Doctrinal and interpretive analysis of international human rights law (Chapter 3).

Rather than conducting new case-law coding, the thesis relies on authoritative

doctrinal reconstructions—especially Ippolito’s interpretive analysis of UN treaty-body practice, Chapman and Carbonetti’s work on CESCR, and Halme-Tuomisaari’s ethnographic and hermeneutic scholarship on the Human Rights Committee. These sources are used because they capture the interpretive logics that human rights bodies themselves use to give juridical meaning to vulnerability. Interpreting these regimes through Article 31 VCLT (context, object and purpose, systemic integration) reflects how vulnerability operates as a transversal interpretive criterion in treaty-body practice.

Systemic doctrinal analysis of CEAS legislation and governance (Chapter 4).

Using the conceptual framework, the thesis undertakes a cross-instrument analysis of the reformed CEAS, including the 2024 regulatory package, and EUAA operational soft-law tools. It evaluates how vulnerability is framed, identified, and operationalised through legislative design, procedural obligations, screening and border mechanisms, and externalisation practices. This systemic method moves beyond provision-by-provision analysis to reveal structural gaps, inconsistencies, and the legal–institutional production of vulnerability.

Analytically constructed case illustrations (Chapter 5).

To test the layered, intersectional, law-mediated framework, the thesis applies it to structured case illustrations grounded in recurring patterns documented across the VULNER project, UNHCR Guidelines Nos. 1 and 9, EUAA guidance, and intersectionality-based scholarship (e.g., Venturi 2023; Raimondo et al. 2023). These cases—non-binary applicants navigating procedural environments, and male survivors of sexual violence—are not reconstructions of individual lives but analytical tools that show how structural, situational, relational, and experiential layers of vulnerability accumulate within CEAS and externalised settings. This method is consistent with the VULNER project’s reflexive approach to interpretation and the analytical choices involved in translating empirical patterns into legal analysis.

Material selection followed principled criteria. Conceptual sources were chosen for their foundational contributions to vulnerability theory (Fineman, Luna, Mackenzie, Butler, Ricoeur). Intersectionality scholarship was selected for its ability to analyse how categories mediate institutional recognition and structural harm, with key contributions from Crenshaw, McCall, and Yuval-Davis informing both the conceptual model (Chapter 2) and case analysis (Chapter 5). Doctrinal sources were chosen for their authority and capacity to illuminate interpretive practice (Ippolito; Leboeuf; Chapman & Carbonetti). Empirical studies were included for their capacity to reveal lived vulnerability and institutional dynamics (VULNER project). CEAS legislation and EUAA soft-law tools were examined because they structure asylum seekers’ legal reality. UNHCR and EUAA guidance, and treaty-body materials were used due to their interpretive significance for SOGIESC-related claims and vulnerability analysis.

Scholarship highlighting the productive role of law—particularly Moreno-Lax and Vavoula, also Venturi—was integrated to articulate the law-mediated dimension of vulnerability and to refine the interpretive criteria applied in Chapters 4 and 5.

Overall, the methodological design privileges conceptual clarity, interpretive rigour, and systemic comparison rather than empirical generalisation. This is appropriate for a field in which vulnerability is not a fixed attribute but a dynamic, relational, and law-mediated condition generated through institutional design and normative structures. By integrating conceptual, doctrinal, interpretive, and empirically informed methods, the thesis constructs a robust analytical framework for understanding how vulnerability is recognised, obscured, or produced within CEAS and externalised asylum governance.

1.5. Terminology

Asylum and International Protection

Asylum refers to the legal protection granted by a country to foreign nationals fleeing persecution in their home countries. In international law, international protection encompasses the broader framework of protection provided by international and human rights law, particularly to those who qualify as refugees or who face serious harm if returned to their country. In EU law, by contrast, international protection has a specific meaning and consists of refugee status and subsidiary protection status under the Qualification Directive/Regulation.

Asylum Seeker

An individual who has left their home country, seeks protection in another country, and is awaiting a decision on their request for refugee status or international protection.

Refugee

A person who has been forced to flee their country due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, and who has been granted protection under international law, notably the 1951 Refugee Convention.

Refugee Status Determination / Examination of an Application for International Protection

The procedure through which authorities assess whether an applicant qualifies for protection. In international law, this process is commonly referred to as Refugee Status Determination (RSD) and focuses on determining whether a person meets the refugee definition under the 1951 Refugee Convention. In EU law, the equivalent procedure is termed the examination of an application for international protection, encompassing decisions on both refugee status and subsidiary protection

status under the Qualification Directive/Regulation and the Asylum Procedures Directive/Regulation.

Asylum Reception or Reception Procedure

Reception Conditions refer to the process and services provided by a host country to asylum seekers upon their arrival, including housing, food, legal assistance, and access to healthcare, while their claims for asylum are being processed. This terminology follows the Reception Conditions Directive/Regulation.

Subsidiary Protection

Protection granted to individuals who do not qualify as refugees but who still face a real risk of serious harm if returned to their home country, including torture, inhuman or degrading treatment, the death penalty, or indiscriminate violence in situations of armed conflict, as defined in the Qualification Directive/Regulation.

Mobility Partnership Agreements

Bilateral or multilateral agreements between the European Union and non-EU countries aimed at managing migration flows, enhancing cooperation on legal migration, and strengthening the return and reintegration of migrants, often linked to externalisation strategies.

SOGIESC (Sexual Orientation, Gender Identity, Expression, and Sex Characteristics)

The term SOGIESC is more inclusive and preferred in use than LGBTIQ+. LGBTIQ+ is an inclusive umbrella term for lesbian, gay, bisexual, trans, intersex and queer where "+" represents other minority gender and sexual identities. For the purposes of this study, the terms SOGIESC and LGBTIQ+ will be used interchangeably with the understanding that SOGIESC has a wider analytical scope. The term LGBTIQ+ represents different identities and it has been commonly used for decades in policy and research, also in a great number of international documents and for this reason cannot be erased from use.

1.6. Limitations

This thesis is subject to several methodological, conceptual, and material limitations that should be acknowledged. These limitations do not undermine the analysis; rather, they delineate its scope and clarify the interpretive choices that shape the findings.

First, the thesis does not generate new empirical data. Instead, it relies on existing empirical studies, most notably the VULNER project, as well as soft-law instruments, academic literature, and doctrinal analyses. While this approach is appropriate for the aims of the study, it limits the ability to make claims about quantitative prevalence, administrative variation across Member States, or the lived experiences of all SOGIESC-diverse applicants. The case illustrations in Chapter 5 are therefore

analytical constructions grounded in documented patterns, not reconstructions of individual life stories, and they can only approximate the layered and intersectional configurations of vulnerability described in the conceptual framework.

Second, the thesis does not perform comprehensive jurisprudential coding or primary case-law analysis. Chapter 3 relies on authoritative doctrinal syntheses, particularly Ippolito's analysis of UN treaty bodies, Chapman and Carbonetti's treatment of CESCR practice, and Halme-Tuomisaari's interpretive ethnographies of the Human Rights Committee. This choice reflects the thesis's interpretive–conceptual orientation, but it also means that some variability or nuance in the primary corpus may be filtered through secondary perspectives. These sources were selected for their methodological rigour and alignment with the analytical framework, yet their use necessarily involves an interpretive lens.

Third, the analysis of CEAS practice focuses on legal structures, regulatory logic, and soft-law guidance, not on systematic empirical evaluation of implementation across all Member States. Given the significant divergence in national administrative practice, the thesis offers a systemic reading of how CEAS is normatively designed to recognise, reproduce, or obscure vulnerability. Accordingly, conclusions about “CEAS practice” refer to structural design and procedural logic, not to harmonised behaviour across Member States.

Fourth, the analysis of externalisation explores the legal, conceptual, and procedural implications of cooperation frameworks and mobility partnerships but does not include field-based research in partner States or a comparative mapping of third-country asylum systems. The hypothetical case in Chapter 5 offers a conceptual extrapolation grounded in evidence from VULNER project materials, UNHCR documents, and rights-monitoring bodies. It serves to test the transnational applicability of the layered, intersectional, and law-mediated framework, but it cannot offer an exhaustive account of extraterritorial practices.

Fifth, the case illustrations in Chapter 5 also introduce specific limitations. Their purpose is demonstrative rather than exhaustive: they are designed to show how the layered, intersectional, and law-mediated model can be operationalised in practice, not to map the full range of SOGIESC-related experiences or to catalogue all potential vulnerability patterns. The choice to focus on a single group reflects the scope of an interpretive–conceptual study, where in-depth analysis allows the analytical framework to be tested, refined, and made visible in operation. Even within SOGIESC diversity, the range of structural, situational, and experiential constellations is far broader than what can be captured through two analytically constructed cases. They also cannot capture the cultural, regional, or legal-contextual diversity within SOGIESC applicants, whose experiences of vulnerability may differ significantly across countries of origin and transit. These illustrations therefore highlight how the model works and what it reveals about identification and assessment practices within CEAS, while recognising

that they cannot represent the entire spectrum of vulnerability patterns either within SOGIESC populations or across other CEAS-recognised groups.

Finally, an inherent limitation of the thesis lies in the use of conceptual abstraction. The layered, intersectional, law-mediated model was designed to resist reductive categorisations, but like any analytical framework, it cannot fully capture the complexity of lived experience. Reflexivity is thus essential: the interpretive choices involved in selecting, translating, and framing empirical insights—particularly those drawn from VULNER project materials and other narrative-based sources—necessarily shape the conceptual output. Vulnerability is not simply described here; it is co-constructed through legal and analytical language, and its institutional production cannot be fully captured by an abstract model even when carefully operationalised.

2. Chapter 2: Conceptualising Vulnerability in the Asylum Context. Conceptual Framework.

2.1. Introduction

This chapter develops the conceptual lens through which vulnerability will be analysed in the Common European Asylum System (CEAS). While “vulnerability” has become a central reference point in EU asylum law, it is often treated as a self-evident label, tied to predefined categories of applicants deemed to have “special needs.”² Such categorical framings can provide a measure of protection, but they risk producing reductive and exclusionary effects: reinforcing dependency, overlooking intra-group diversity, and missing the dynamic ways in which migrants experience harm and resilience along their journeys. By contrast, scholarship in philosophy, feminist ethics, and legal theory has elaborated much richer accounts of vulnerability—as universal, relational, layered, and structurally embedded. This chapter meets that challenge by bringing conceptual sophistication into dialogue with the operational demands of CEAS and proposing a more nuanced framework for identification and assessment.

The argument rests on three propositions that run throughout the chapter. First, vulnerability is universal yet unevenly distributed: all humans are embodied and interdependent, but social and institutional arrangements expose some groups disproportionately to harm. Second, vulnerability is not reducible to fixed traits but arises relationally across structural, situational, and experiential dimensions. Third, law itself is not a neutral tool of recognition but an active co-producer of vulnerability through the categories, procedures, and hierarchies it establishes. Taken together, these insights unsettle categorical approaches and call for a layered, intersectional account that can capture the complex realities of asylum seekers.

The chapter makes two main contributions. Analytically, it reframes vulnerability as a continuum rather than a checklist of traits, embedding the structural, situational, and experiential layers within an intersectional perspective attentive to gender, race, age, disability, sexuality, and legal status. Normatively, it positions law and institutions as accountable not only for responding to pre-existing vulnerability but also for preventing the production of new harms through their own practices. This dual recognition—that

² Reference to “special needs” in CEAS: e.g. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96 (RCD (recast)), recital 14, art 2(k), art 11, art 17(2), arts 18(3) and (5), art 19(2), and arts 21–25; 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 (APD (recast)), recitals 29–30, art 2(d), art 15(3)(a), arts 24–25, and art 31(7)(b).

vulnerability is both lived and legally constructed—is central to the framework developed here.

The structure follows this logic. Section 2.2 traces the evolution of vulnerability theory from essentialist associations with weakness to dynamic, layered, and structural accounts. Section 2.3 examines how vulnerability has been mobilised in migration governance, with particular attention to CEAS instruments. Section 2.4 introduces intersectionality as a methodological tool capable of connecting structural, situational, and experiential dimensions. Section 2.5 grounds this analysis in empirical findings, especially from the VULNER project, which reveal how vulnerability is identified, missed, or produced in practice. Finally, Section 2.6 synthesises these strands into a CEAS-tailored, layered–intersectional framework for vulnerability identification and assessment.

2.2. Foundational Theories of Vulnerability

Vulnerability is one of the most widely invoked yet deeply contested concepts in contemporary scholarship. Although it has been the subject of sustained engagement in law, ethics, feminist philosophy, and sociology, there remains no single agreed definition. Rather, its meaning and implications shift across disciplinary contexts, generating competing interpretations and raising important questions about how vulnerability should shape institutional and normative responses. As Brown, Ecclestone, and Emmel (Brown, Ecclestone, & Emmel, 2017, p. 497) observe, there has been a growing “*vulnerability zeitgeist*” across academic fields, with the concept deployed as a way of naming inequality, fragility, or hardship. Yet they caution that this proliferation risks turning vulnerability into a mere “*buzzword*,” creating an illusion of shared understanding while obscuring the tensions and contradictions embedded in its use. This warning is of particular importance in asylum law, where the rhetorical invocation of vulnerability often precedes careful conceptual work, producing legal categories that can appear both arbitrary and reductive.

Historically, vulnerability was primarily associated with weakness or harm, derived from the Latin root *vulnus*, meaning “wound” (Mackenzie, Rogers, & Dodds, 2014). Within this framing, vulnerability became equated with fragility, dependency, and lack of autonomy, especially when applied to groups such as women, children, or persons with disabilities (Malgieri & Niklas, 2020). In much of early social policy, vulnerability was therefore treated as an inherent characteristic of “weaker” groups, producing fixed, essentialist, and often paternalistic representations (Fineman, 2012; Knowles, 1996; Phillips, 2010; Lenhardt, 2004; Cole, 2016). This essentialist perspective cast vulnerability as a permanent deficit, justifying protective but disempowering interventions. In the migration context, traces of this framing remain visible in EU asylum law’s reliance on predefined “vulnerable groups,” a practice that risks depicting protection seekers primarily as passive objects of care rather than rights-bearing

agents. This essentialist framing thus highlights the limits of static categorisations and the need for more developed conceptualisations of vulnerability.

From the late twentieth century onward, essentialist accounts came under sustained challenge, giving way to more dynamic and relational conceptualisations. Gilson (2016) reconceptualises vulnerability as a condition of openness to being affected, emphasising relational exposure rather than innate weakness. Goodin (1985) similarly reframes vulnerability in normative terms, defining it as the possibility of preventable harm, which creates corresponding obligations for protection. Both interventions are important for legal analysis: they shift the focus from vulnerability as an individual trait to vulnerability as a relational condition that generates institutional responsibility. This reorientation begins to open the space for viewing vulnerability as socially mediated, situational, and subject to political contestation. Together, these theories mark a conceptual turning point: vulnerability ceases to denote personal fragility and instead becomes a normative and relational lens for assessing institutional duties. Francesca Ippolito's work (2020, pp. 8–15) is particularly important in this regard. She draws on Robert Chambers's definition of vulnerability as "exposure to contingencies and stress and difficulty coping with them" (Chambers, 1989, pp. 1 - 7), interpreting risk as the mediating concept between human fragility and legal obligation. In Ippolito's framework, vulnerability becomes both a condition of exposure and a criterion for determining when state inaction constitutes a breach of duty. She integrates this risk-based understanding with feminist accounts of relational autonomy (Nedelsky, 1989, 1993; Holroyd, 2009; Mackenzie, Rogers & Dodds, 2014), treating autonomy not as detachment but as agency sustained through social relations and institutional support. By connecting risk and relational autonomy, Ippolito constructs a bridge between ethical and legal theory: vulnerability is not merely a moral state of exposure but a normative trigger for preventive and protective obligations. This risk-relational model deepens the turn toward institutional responsibility already present in Goodin and Fineman: it translates philosophical notions of dependence into doctrinal standards of due diligence and state care. On this basis, Ippolito develops the notion of a "moral responsive State", whose legitimacy rests on its capacity to organise social structures so as to reduce avoidable risks and support individuals' ability to cope with contingencies (Ippolito 2020, pp. 15–19).

Judith Butler (2004, 2009, 2016) highlights that vulnerability is both "existential" and a "socially induced condition" that becomes visible when "those infrastructural conditions characterizing our social, political and economic lives start to decompose" (Butler, 2016, pp. 12, 19, 25). As Baumgärtel (2020, p. 15) observes, this insight is particularly relevant for migration, where crossing borders may be experienced in radically different ways—producing an "alien" or an "expat" life, resulting in deportation or protection, and labelled either as "migration" or as "mobility." In this sense, vulnerability must be understood as situational and context-dependent, emerging through specific social, political, and institutional conditions. At the same time, Butler politicises vulnerability by rejecting the assumption that it stands in opposition to agency. Instead,

she argues that vulnerability can ground resistance and collective mobilisation, challenging the masculinist ideal of the self-sufficient subject who must “overcome” vulnerability to act politically. Vulnerability, understood as a shared exposure to precarity, can enable solidarity and serve as a resource for social struggle and transformation. Importantly, Butler underscores that while vulnerability is universal, it is also unequally distributed, as systemic and institutional structures expose some groups disproportionately to harm. This ambivalence is crucial in the asylum context: vulnerability may disempower when reduced to a passive condition, but it can also empower when recognised as a basis for resilience and collective agency—dimensions often overlooked in CEAS procedures. In sum, Butler’s approach redefines vulnerability as a political condition that simultaneously reveals social dependency and enables resistance — bridging human fragility with the potential for collective empowerment.

Martha Fineman’s work brings together both a critical and a universalist dimension. On the one hand, she frames vulnerability analysis as “a means of interrogating the institutional practices that produce the identities and inequalities in the first place” (Fineman, 2008, p. 16), positioning law and policy as central actors in the reproduction of inequality. On the other hand, she develops a universalist and ontological account of vulnerability as a constant feature of the human condition, rooted in embodiment and dependency across the life course (Fineman, 2008, 2010, 2017). The two dimensions are inseparable: Fineman’s “vulnerable subject” is not merely a descriptive category but a heuristic device that both exposes structural inequalities and demands a “responsive state” to distribute resilience-building resources such as healthcare, housing, and education (Fineman 2010, pp. 267–270; Peroni & Timmer, 2013). This dual role—ontological and heuristic—makes vulnerability particularly powerful for interrogating how legal systems distribute resources and responsibilities. For asylum governance, Fineman’s model challenges the individualised notion of “special needs” and shifts the focus toward state responsibility in producing resilience and addressing structural inequalities. Fineman’s framework thus anchors vulnerability in human embodiment while expanding it into a normative standard of governance, linking universality with institutional accountability.

Paul Ricoeur’s relational philosophy complements this universalist turn by embedding vulnerability within a broader account of human capability and fragility. Although not a vulnerability theorist, Ricoeur frames the subject as both capable and fragile, with autonomy understood not as a fixed state but as a task shaped by social and institutional contexts (Ricoeur, 2007, pp. 72–83). Vulnerability arises when the capacities that enable agency—the “bundle of capacities” through which individuals author their lives—are diminished or denied (Ricoeur, 2007, p. 75). This narrative identity is not only personal but situated within broader historical and cultural frameworks, meaning that the capacity to “tell one’s own story” depends on symbolic and institutional recognition (Ricoeur, 2007, pp. 78–80). When displacement or

exclusion interrupts recognition, the subject's vulnerability is compounded³, undermining both material security and symbolic agency. In migration contexts, this perspective reveals how asylum procedures not only expose applicants to material precarity but also disrupt their ability to maintain narrative continuity, thereby compounding their vulnerability. Ricoeur enriches the debate by showing that vulnerability is not only material but also narrative and symbolic: to be vulnerable is to risk losing one's story and the social recognition that sustains it. Ippolito's engagement with relational autonomy resonates with this Ricoeurian strand, to the extent that she emphasises how vulnerability concerns not only bodily exposure but also the conditions that sustain or undermine individuals' capacity to exercise agency within legal and social structures (Ippolito 2020, pp. 13–15). Taken together, these accounts reveal that vulnerability encompasses not only bodily exposure but also relational, narrative, and institutional dimensions — paving the way for more fine-grained taxonomies developed in feminist bioethics

Building on these ontological and philosophical perspectives, feminist bioethics has sought to refine the conceptual vocabulary of vulnerability through taxonomies and layered models. Mackenzie, Rogers, and Dodds (2014) distinguish between three sources of vulnerability—inherent, situational, and pathogenic—and between dispositional (standing susceptibilities) and occurrent (presently manifest) states. Particularly significant is pathogenic vulnerability, which arises when social injustice or even protective interventions exacerbate rather than mitigate harm. This taxonomy is directly relevant to asylum law, where measures such as detention or accelerated procedures can themselves generate pathogenic vulnerabilities. By distinguishing between sources and states, this framework clarifies the diverse obligations that different forms of vulnerability generate.

Florencia Luna (2009, 2019) develops this further by advancing a “layered” model, rejecting static or categorical understandings and instead conceptualising vulnerability as relational, dynamic, and shifting across contexts. As Luna (2009) observes, vulnerability should not be reduced to a “permanent and categorical condition [...] that persists throughout its existence,” but must instead be analysed in terms of the specific situations that “make or render someone vulnerable” (Luna, 2009, p. 129). On this account, vulnerability emerges through the dynamic interplay of contextual conditions and individual characteristics, rather than through fixed group membership. Layers of vulnerability may accumulate, overlap, or recede depending on time, place, and context. This temporal and relational framing underscores the inadequacy of categorical approaches in migration governance, where asylum seekers' vulnerabilities evolve at different stages of their journeys, yet legal frameworks frequently treat them as fixed.

³ For an account of *compound discrimination* in equality law, see Sandra Fredman, *Discrimination Law* (2nd edn, OUP 2011); see also FRA, *Multiple Discrimination in EU Law* (2011).

This critique has led to the articulation of structural accounts of vulnerability, which highlight the systemic social, political, and institutional conditions through which vulnerability is produced and sustained. A growing body of scholarship has examined these dynamics, showing how vulnerability is generated and perpetuated by broader systems rather than by individual traits (Cole, 2016; Quesada et al., 2011; Szkupinski Quiroga et al., 2014; Virokannas et al., 2020). At the core of this approach lies the recognition that every individual or group is always situated within specific social, political, and cultural contexts, and that their exposure to vulnerability is shaped by these contextual dynamics (Brown, 2011; Casadei, 2018; Luna, 2009; Virokannas et al., 2020). Structural theories therefore complete the conceptual circle: they relocate vulnerability from the individual body to the social body, exposing how law and policy can generate or perpetuate harm.

Recognising vulnerability as structural has clear normative implications. As Casadei (2018) and Monno & Serreli (2020) argue, it shifts attention away from individuals alone and toward the broader systems that generate precarity—turning vulnerability into a critical political tool for revealing and challenging entrenched inequalities. Scholars also stress the paradoxical nature of vulnerability: it is described as both universal and particular, individual and categorical, inherent and situational. It can contribute to the normalisation of oppression when reduced to fixed traits, yet it can also serve as a means of liberation when mobilised as a critical tool (e.g., Brown et al., 2017; Peroni & Timmer, 2013; Virokannas et al., 2020; Moreno-Lax, 2022). This ambivalence is not a weakness but a reminder that vulnerability cannot be captured by a single definition. For the purposes of asylum law, it underscores why categorical framings risk oversimplifying what is in reality a complex, relational, and contested condition.

Taken together, these foundational accounts chart the conceptual evolution of vulnerability: from essentialist associations with weakness and dependency, to dynamic and relational framings that highlight exposure and preventable harm; from universalist and ontological models grounded in embodiment and dependency, to layered and structural approaches that emphasise shifting contexts and systemic inequalities. Each model offers insights but also carries limitations, and together they underscore the contested, multidimensional, and dynamic character of vulnerability. For the purposes of this thesis, their significance lies in the way they collectively challenge static or categorical understandings, instead presenting vulnerability as a relational and context-sensitive condition. Yet, as later chapters will show, these theoretical insights are only partially reflected in CEAS practice, where vulnerability continues to be operationalised through rigid categories and observable indicators. This evolving theoretical landscape provides both the foundation and the critical lens for assessing whether CEAS frameworks truly reflect the complex realities of asylum seekers, or whether they risk falling back on rigid categories and overly technical approaches. The conceptual evolution of vulnerability reflects a shift away from

notions of inherent fragility toward an emphasis on relational responsibility — from “being weak” to “being owed protection.”

On the basis of the foregoing analysis, it is possible to propose an interim analytical definition of vulnerability for the purposes of conceptual clarity within this chapter: a relational, dispositional, and risk-mediated condition of exposure to preventable harm, rooted in universal human dependency yet shaped by social and institutional relations that sustain or constrain autonomy. This definition is analytical rather than normative—it summarises the convergent insights of philosophical and ethical theories discussed above and serves as a reference point for the subsequent examination of how vulnerability is operationalised in migration and asylum contexts.

2.3. Vulnerability in the Migration Context

Against the theoretical background set out above, migration has become a key arena for applying—and contesting—the concept of vulnerability. The literature has expanded rapidly since 2015, but scholars broadly agree that the term remains diffuse and under-specified. In EU asylum law, vulnerability is increasingly embedded in the Common European Asylum System (CEAS), especially in provisions on applicants with “special needs” (Leboeuf, 2022; Pétin, 2016). In practice, however, it is often operationalised as a classificatory device: applicants are sorted into predefined boxes by reference to a narrow set of traits, frequently without clear conceptual grounding (Sòzer, 2019, 2020; Turner, 2021). This encourages assumptions of innate vulnerability—especially for women, children, older persons, and persons with disabilities—prompting protective yet paternalistic responses that risk reinforcing dependency (Flegar, 2018). In short, migration governance becomes a site where vulnerability is not only named but actively shaped by law and bureaucracy (Moreno-Lax & Vavoula, 2022, 2024). In this way, the migration field provides a concrete setting in which the theoretical tensions identified in Section 2.2 are translated into bureaucratic practice. This categorical logic has prompted mounting critique from scholars who underscore its reductive and exclusionary effects.

A comprehensive critique of this categorical approach is offered by Gilodi, Albert, and Nienaber (2024). Treating vulnerability as a fixed, self-evident condition produces several well-known effects. Labels can stigmatise and discriminate when complex social and structural dynamics are reduced to single traits (Brown et al., 2017; Smith & Waite, 2019; Turner, 2021; Virokannas et al., 2020). Paternalistic framings marginalise agency, casting migrants as passive recipients of care (Butler, 2016; Freedman, 2019; Heidbrink, 2020). Vulnerability may be mobilised to justify control, enabling surveillance and exclusion under humanitarian cover (Brown, 2011; Casadei, 2018; Lind, 2019; Turner, 2021). Prioritising “the most vulnerable” narrows access and produces uneven distributions of rights (Heidbrink, 2020; Hruschka & Leboeuf, 2019; Sòzer, 2020). And fixed labels reify groups, erasing intra-group differences and obscuring context and change over time (Luna, 2009). Put simply, defining

vulnerability in rigid categories may seem convenient, but it rarely helps us understand or address real situations. This is clear in gender-related claims, where policies often move applicants from being invisible to being narrowly defined as “visible,” without recognising the complexity of their lives (Freedman, 2019). Such approaches create a cycle where people are either overlooked or stereotyped, missing how gender interacts with race, legal status, age, disability, and sexuality in practice. These critiques underscore the tension between recognition and reduction. While vulnerability highlights specific needs, it can also be instrumentalised to limit protections.

Hruschka and Leboeuf (2019) emphasise that vulnerability is ambivalent: while it highlights specific risks faced by certain groups, it can also be instrumentalised to narrow State duties and to erode existing protection standards. In response, Gilodi et al. (2024) advocate a multidimensional conceptualisation: vulnerability is layered, dynamic, and embedded, shaped by intersecting structural, situational, biographical, and psychological factors over time. Their model spans macro (structural and bureaucratic), meso (institutional and relational), and micro (experiential) levels, and introduces “experiential vulnerability” to capture subjective, interpretive, and agentic dimensions—including resistance and social transformation. The warning is clear: bureaucratising vulnerability risks reproducing exclusion, disempowerment, and stigma; an intersectional and temporally sensitive approach is needed that centres migrants’ agency. Crucially, these conceptual critiques have interpretive consequences for legal doctrine.

Ippolito (2020) reconstructs how “vulnerability” is used as an interpretive argument across International Human Rights Law (IHRL) bodies and instruments and argues that it can operate as a regulatory criterion within the methods of treaty interpretation aimed at ensuring effectiveness (*effet utile*) under Vienna Convention on the Law of Treaties 1969 (VCLT) art. 31, with consequences for how State responsibility is framed. In doctrinal terms, this marks a shift from vulnerability as a descriptive label to vulnerability as an interpretive standard that shapes which harms attract positive obligations. This doctrinal trend reinforces the point that vulnerability does not merely describe harm *ex post*; it helps constitute which harms become legally cognisable *ex ante*.

The ambivalence of law is further highlighted by critical legal scholars. Building on Fineman’s universal subject, Luna’s layered model, and Butler’s relational account, Moreno-Lax and Vavoula (2022) show that law both protects and produces vulnerability. In migration governance, legal frameworks decide who counts as “vulnerable,” which harms are cognisable, and which needs become visible; they also constitute legal statuses (e.g., “asylum seeker,” “irregular migrant”) that can entrench precarity and legitimise exclusion. Vulnerability is thus legalised: juridical categories, procedures, and thresholds make some vulnerabilities actionable while obscuring others. Subsequent work further elaborates vulnerability’s “legal life,” tracing how

governance regimes selectively recognise and organise need, thereby stabilising hierarchies of protection (Moreno-Lax & Vavoula, 2024). In practice, selective recognition interacts with scarcity logics to stratify access to safeguards (e.g., European Council on Refugees and Exiles (ECRE) / Asylum Information Database (AIDA) country reports⁴). These insights confirm that vulnerability is not only a pre-legal condition but also a product of legal design and migration control.

This insight is operationalised in European human-rights jurisprudence through the concept of “migratory vulnerability” coined by Baumgärtel’s (2020). Rejecting innate framings, he locates vulnerability in civic stratification and exclusionary governance (including proliferating statuses and unequal rights). Drawing on Fineman while resisting group essentialism, he proposes a context-sensitive, empirically grounded framework capable of capturing migrants’ lived realities—opening space to reorient equality and non-discrimination analysis toward systemic harms (see also Baumgärtel & Ganty, 2024). This shift can be traced in key cases where structural exposure—not group proxies—does the work: ECtHR *M.S.S. v Belgium and Greece* (GC, 2011), *Tarakhel v Switzerland* (GC, 2014)⁵, *Ilias and Ahmed v Hungary* (GC, 2019); CJEU *N.S. (C-411/10)*⁶, *C.K. and Others (C-578/16 PPU)*⁷, *Jawo (C-163/17)*⁸. These cases illustrate how courts increasingly rely on structural rather than categorical reasoning, reinforcing the theoretical developments outlined in 2.2. A more detailed case-law analysis will follow in subsequent chapters.

In legal terms, vulnerability is embedded in the CEAS through two main pillars:

- (i) reception standards mandating early identification and tailored accommodation and support (Reception Conditions Directive 2013, arts 21–25), and
- (ii) procedural guarantees for applicants whose ability to benefit from rights or comply with obligations is limited by individual circumstances (Asylum Procedures Directive 2013, arts 24–25).

Both instruments contain indicative, non-exhaustive lists (age, disability, serious illness, experience of violence), designed to signal but not exhaust possible vulnerabilities. However, the absence of a coherent, standardised methodology for

⁴ See, for example, AIDA Country Reports, available at <https://asylumineurope.org/reports/> accessed 31 August 2025; European Asylum Support Office (EASO), *Judicial Analysis: Vulnerability in the Context of Applications for International Protection* (EASO Professional Development Series for Members of Courts and Tribunals, produced by IARMJ-Europe under contract to EASO, 2021); European Council on Refugees and Exiles (ECRE), *The Concept of Vulnerability in European Asylum Procedures* (Comparative Report, 31 August 2017) available via Refworld or the Asylum Information Database, accessed 31 August 2025.

⁵ *Tarakhel v Switzerland* [GC] App no 29217/12 (ECtHR, 4 November 2014).

⁷ *C.K. and Others* (n 10); *Jawo* (n 11). See Kathryn Allinson, ‘Vulnerability in the CJEU: A Humanitarian Corrective to Dublin Transfers?’ (2025) 43(1) *Yearbook of European Law* 1, 10–12.

⁸ *Jawo v Bundesrepublik Deutschland* Case C-163/17, EU:C:2019:218.

identification across Member States has been repeatedly documented in Commission and independent evaluations, leading to inconsistency and arbitrariness (ECRE, 2017; FRAME, 2016). The architecture thus gestures toward differentiated protection, yet practice often reverts to categorical proxies and checklist-driven assessments. Similar dynamics are observable in implementation and in readmission-oriented reforms (Costello & Mouzourakis, 2016).

Meanwhile, the legal–policy context of the CEAS continues to evolve. At the international level, the Global Compact for Safe, Orderly and Regular Migration calls on States to “reduce the vulnerabilities in migration” (UNGA Res 73/195, 2019; Atak, I., Nakache, D., Guild, E., & Crépeau, F., 2018). At the EU level, the Communication on a New Pact on Migration and Asylum similarly foregrounds the need to address “special needs” in both procedures and reception (European Commission, COM(2020) 609 final). The 2024 CEAS reform package reinforces these commitments, requiring Member States to ensure timely identification and assessment of reception and procedural needs, to review evolving needs, and to provide an adequate individual response (e.g. Regulation (EU) 2024/1348 establishing a common procedure for international protection [OJ L, 22.5.2024]; Regulation (EU) 2024/1356 introducing screening of third-country nationals at external borders [OJ L, 22.5.2024]; Regulation (EU) 2024/1351 on asylum and migration management [OJ L, 22.5.2024]; see also EUAA, 2024a, b).

Beyond legislation in the abstract, practice is increasingly shaped by administrative instruments. Most recently, between 2023 and 2025, a notable step forward in the conceptualisation of vulnerability in the asylum context has been introduced by the European Union Agency for Asylum (EUAA) through a suite of soft-law tools aimed at operationalising vulnerability. These include the *Tool for the identification of persons with special needs (IPSN)*⁹, the *Guidance on reception: Operational standards and indicators* (2024a), and the *Guidance on vulnerability in asylum and reception: Operational standards and indicators* (2024b).

In the latter, vulnerability is defined functionally as a condition affecting an applicant’s ability to understand and present their case or to participate effectively in procedures and benefit from reception conditions (EUAA, 2024b, p. 131). The Guidance further emphasises that vulnerability “is not a fixed feature” and may be alleviated or aggravated depending on environmental and support factors (EUAA, 2024b, pp. 19–20). Terminologically, it prefers the phrase “person in a (situation of) vulnerability” over “vulnerable person” to avoid essentialising labels (EUAA, 2024b, p. 16). Furthermore, the Guidance introduces a balancing model that weighs risk and harm factors against

⁹ European Union Agency for Asylum. (n.d.). *Tool for the identification of persons with special needs (IPSN)*. European Union Agency for Asylum. <https://euaa.europa.eu/practical-tools-and-guides/tool-identification-persons-special-needs>

coping mechanisms and protective factors (EUAA, 2024b, pp. 41–42), and highlights that vulnerability factors may “coexist and intersect” (EUAA, 2024b, p. 19). These developments echo the layered, relational, and non-essentialist perspectives discussed in 2.2 and reflect an explicit attempt to move away from purely categorical framings toward a needs-based, temporally sensitive approach.

Yet despite this shift in terminology and framing, certain structural features endure. While this signals awareness of complexity, the reliance on indicative lists inherited from the Reception Conditions Directive (2013) and the Asylum Procedures Directive (2013) remains. Intersectionality is not defined or operationalised as a methodological tool, but mentioned descriptively without integration into assessment procedures (EUAA, 2024b, p. 19). Overall, the Guidance represents incremental change. It advances a more situational and flexible understanding of vulnerability, yet continues to rely on categorical indicators. Whether these textual commitments will translate into a re-conceptualisation of vulnerability within the CEAS, and into more consistent practice across Member States, will be examined in Chapter 4.

Even with the 2024 reforms, variation persists in intake and assessment practices: Member States diverge in timing (pre-screening versus post-lodging), evidentiary thresholds (self-report versus corroboration), and the breadth of indicators considered. These divergences generate patterned gaps for less legible harms (EUAA, 2024a; ECRE, 2017; FRAME, 2016). Monitoring and disaggregated data collection also remain uneven (EUAA, 2024a, 2024b; ECRE, AIDA country reports), limiting comparability and accountability across national systems.

Against this backdrop, the thesis narrows its analytical lens to the identification and assessment phases of the EUAA “special needs” mechanism—the critical early moments when vulnerability is first recognised, interpreted, and translated into legal and procedural relevance. These are precisely the sites where normative ideas about human fragility, resilience, and harm are negotiated through administrative tools and staff discretion. Referral and response matter for delivery, but they depend on the accuracy and inclusivity of initial recognition; if vulnerability is missed or mischaracterised at the outset, downstream measures will likely fail. Focusing here allows a direct test of the core claims advanced in Chapter 2: that vulnerability is layered (structural–situational–experiential), intersectional, and partly produced by law; and that CEAS tools remain tied to additive, category-based logics. This underscores how the migration field shows how vulnerability is simultaneously a heuristic and a technology of governance: it reveals inequality yet, when compressed into checklists, can help constitute it. The analysis that follows applies an intersectional, layered lens to show where discretion, templates, and scarcity logics interact—and to explore whether CEAS identification and assessment can be re-read to capture dynamic, situated vulnerability without reifying categories.

2.4. Intersectional Approach to the Study of Vulnerability

The limits of categorical framings and the failure to account for lived experience make clear that any meaningful re-conceptualisation of vulnerability in asylum law must use an approach that captures its multidimensional, dynamic, and context-specific character. Intersectionality offers precisely such a framework. Originating in Black feminist thought (Crenshaw, 1991) and developed across legal, political, and sociological theory (McCall, 2005; Yuval-Davis, 2006, 2011; Weldon, 2008), it shows how axes of power—race, gender, class, age, sexuality, disability, and legal status—interact to produce distinct configurations of disadvantage and privilege. The point is not to “stack” identity markers, but to see how their interaction yields something qualitatively different. In this sense, intersectionality is not a theory of identity but a theory of structure and relation—it traces how multiple systems of power converge to shape individual and institutional experiences of vulnerability.

Analytically, this thesis treats intersectionality as an approach, not a single theory. Following McCall (2005), the analysis primarily adopts an inter-categorical stance—working with existing CEAS categories to map patterned inequalities—while drawing intra-categorically on heterogeneity within those categories (e.g., differences among “LGBTIQ+ applicants” or “unaccompanied minors”), all the while remaining mindful of anti-categorical critiques that warn against reifying the very labels under scrutiny. This mixed strategy is pragmatic for CEAS, where fixed templates and checklists structure decision-making. However, intersectionality is employed here as a complementary analytic device within the vulnerability framework rather than as an autonomous paradigm: it refines how structural, situational, and experiential layers interact and how axes of inequality configure exposure to harm within each layer.

Methodologically, intersectionality functions as a refining lens within the layered vulnerability model. Vulnerability remains the primary organising concept—understood as a relational, dispositional, and risk-mediated condition operating across structural, situational, and experiential layers—while intersectionality sharpens the analysis by tracing how axes of power such as gender, race, age, disability, sexuality, and legal status shape the distribution and intensity of vulnerability within and across these layers. In this sense, intersectionality does not compete with or replace the layered framework; it increases its descriptive resolution and evaluative precision.

Intersectionality also connects the structural, situational, and experiential layers set out earlier. Building on Yuval-Davis’s multi-level lens (experiential, institutional, symbolic), it helps track how a person’s biography meets institutional practice and broader structures—and how that meeting point can generate harm or, at times, resilience (Yuval-Davis, 2006, 2011). This aligns with Baumgärtel’s idea of migratory vulnerability as context-bound and temporary (Baumgärtel, 2020) and with experiential vulnerability, which stresses that people interpret and respond to similar conditions

differently (Gilodi et al., 2024, as cited in Gamsakhurdia, 2018, p. 549). Operationally, intersectionality serves as the connective logic of the layered framework: it allows the analysis to remain attentive to how vulnerabilities accumulate across structural exclusion, situational disadvantage, and experiential meaning without collapsing them into a single explanatory register.

Crucially, intersectionality makes visible the productive role of law. As Moreno-Lax and Vavoula (2022) show, asylum rules do not simply respond to pre-existing vulnerability; they help construct it—through the categories they create, the hierarchies they stabilise, and the selective safeguards they attach. Intersectionality lets us follow how these legal definitions interact with gender, race, sexuality, age, disability, and status to produce uneven inclusion and exclusion. For example, “LGBTIQ vulnerability” labels can render some applicants visible while erasing intersectional realities tied to race or precarious status (Venturi, 2023). Read through a “whole-of-person/whole-of-system” interpretive lens, intersecting norms and statuses must be analysed together rather than in silos (Moreno-Lax, 2020). This perspective resonates with Ippolito’s (2020) doctrinal analysis, where vulnerability functions as a criterion for interpreting obligations of prevention, protection, and participation. Intersectionality complements this doctrinal insight by showing how such obligations operate differently when multiple axes of inequality converge.

The contribution of this thesis lies here: using intersectionality as a bridge between theoretical re-conceptualisations of vulnerability and CEAS operational guidance. It enables a move from additive logics (“stacking” special needs) to a transformative view. As Moreno-Lax (2020, p. 4) argues, intersectionality is not additive ($A + B$) but transformative ($A + B = C$): different axes combine to produce new forms of vulnerability irreducible to their parts. These propositions supply evaluation criteria for CEAS identification and assessment: rules and tools are adequate only if they capture intersectional configurations across axes, allow periodic reassessment, enable safe disclosure of less legible harms, and support proportionate, disaggregated accountability without reifying labels. Thus understood, intersectionality functions not as an ever-expanding list of categories but as a method for mapping how axes of inequality interact with procedural position and institutional design.

In practical terms, adopting an intersectional approach means more than expanding lists of “vulnerable groups.” It requires viewing vulnerability as a continuum rather than a binary status; embedding narrative and biographical elements in assessment; and checking procedures for pathogenic effects (where safeguards or interviews inadvertently generate harm), in Mackenzie et al.’s sense of “pathogenic vulnerability” (Mackenzie et al, 2014). It also implies creating space for less legible vulnerabilities (e.g., sexuality, trauma, relational dependencies) to be disclosed safely, and using categories strategically for accountability (e.g., disaggregated monitoring) without treating them as natural facts. This practical dimension foreshadows the operational translation developed in § 2.6, where intersectionality and the layered model are

synthesised into a coherent analytical framework for the identification and assessment of vulnerability within CEAS procedures.

This framework requires empirical grounding. The VULNER project's findings on personal, situational, and administrative dimensions of vulnerability map closely onto this layered account but risk remaining siloed if treated separately. Read through an intersectional lens, however, these findings connect conceptual insights with operational practice.

Section 2.5 therefore turns to VULNER evidence to test and refine the framework, bridging theory with the lived realities of asylum systems.

In conclusion, § 2.4 clarifies that intersectionality is the methodological “glue” of the thesis: a refining lens that connects and sharpens the structural, situational, and experiential layers of vulnerability, ensuring that the layered approach captures how compounded inequalities shape exposure to harm in CEAS.

2.5. Bridging Theory and Practice: Empirical Perspectives on Vulnerability

The theoretical accounts surveyed so far provide a rich conceptual vocabulary for rethinking vulnerability in asylum law. Yet they remain incomplete without empirical grounding—evidence of how vulnerability is actually identified, operationalised, and lived in asylum systems. As Marchetti, Brun, Crine, Flamand, and Raimondo (2025) emphasise, such empirical work is never neutral: positionalities shape how vulnerability is seen, categorised, and addressed. Recent studies, and especially the VULNER project, show both sides of the coin: law and policy invoke vulnerability to justify safeguards, yet new vulnerabilities can be produced through bureaucratic routines, institutional environments, and wider structural inequalities. In other words, vulnerability is not only recognised by law; it is also constructed and mediated through it.

This thesis does not report original fieldwork; it draws on existing empirical work to illuminate how legal and administrative mechanisms shape—and sometimes miss or exacerbate—lived vulnerability. VULNER is especially instructive because of its design: multi-country, mixed-method, and situated at the interface between doctrine and practice. Across Belgium, Germany, Italy, Norway, Lebanon, and Uganda, it combined doctrinal analysis with ethnographic fieldwork and interviews with migrants, front-line officials, and decision-makers (Marchetti & Palumbo, 2021; Kluth et al., 2021; Saroléa et al., 2021; Lidén et al., 2021; Marchetti, Brun, Crine, Flamand, & Raimondo, 2025). A companion special issue of the *European Journal of Migration and Law*—an output of VULNER—likewise synthesises lived vulnerability as emerging from the

interaction of (i) personal or embodied features (e.g., age, health), (ii) situated/interpersonal dynamics, and (iii) structural factors, which maps closely onto the layered account adopted here (Raimondo, Leboeuf, & Venturi, 2023). That special issue also notes that four profiles are repeatedly singled out in European practice—unaccompanied minors, survivors of torture, LGBTIQ+ persons, and victims of trafficking—yet stresses that such “headline” categories must be read intersectionally to avoid flattening context and compounding harms (Raimondo et al., 2023).

A central finding across VULNER is that vulnerability operates as an interpretive practice shaped by the positionality of those who “see” and label it. Assumptions, stereotypes, and institutional routines often weigh more than formal guidance. In many settings, “common practice” overrides written law, embedding gendered, racialised, or securitised expectations into decisions (Marchetti et al., 2025, pp. 52–56; Camassale & Marchetti, 2022; Lidén et al., 2021; Nakueira, 2021). At the same time, intersectionality cannot be used as a blanket slogan: it is a lens for exposing compounded harms and power relations, but it must be tied to strategies that change practices and tackle structural drivers—an emphasis repeatedly made in the special issue (Raimondo et al., 2023). This resonates with case-based analyses of LGBTIQ+ claims, which show how category-based “LGBTIQ vulnerability” can obscure racialised, status-based, or procedural dimensions of harm unless assessed through an intersectional prism (Raimondo et al., 2023; Venturi, 2023).

System design also shapes outcomes. Reception conditions, geographic isolation, delay, and resource constraints influence what kinds of need become legible—and who qualifies for what. As a result, vulnerability can become a competitive and selective classification that overlooks intersectional realities and, in some cases, generates new forms of disadvantage through procedural environments and spatial segregation (Brun & Maalouf, 2022; Camassale & Marchetti, 2022; Kluth et al., 2021; Lidén et al., 2021; Marchetti & Palumbo, 2021; Nakueira, 2022; Saroléa et al., 2021, 2022).

The first recurring gap concerns invisibility. Less legible vulnerabilities—linked to sexuality, trauma, or religious identity—are routinely missed by rigid templates. As the Uganda report shows:

“My field assistant and I met with a group of over 100 male refugees who had undergone sexual violence at the hands of male and female perpetrators in their home countries. (...) In their narratives, interlocutors emphasized their need of dedicated medical interventions. Some were left incapable of fulfilling their conjugal rights due to the psychological trauma. (...) Others confessed to not telling their spouses that they were victims of sexual violence, out of fear of losing their respect. Some mentioned that they were rejected by their family members and places of worship, who associate them to queer people because of their traditional belief that men cannot be raped. (...) All complained that aid agencies failed to respond to their needs that relate, for

example, to the access of adequate healthcare and surgery to repair the consequences of SGBV (such as anal bleedings, erectile dysfunction, and so forth). They attributed the social stigma of being labelled as gay men by other refugees to the dominant belief that men could not be victims of sexual violence.” (Nakueira, 2022, p. 22, as cited in Marchetti, Brun, Crine, Flamand, & Raimondo, 2025, p. 57).

Survivors of male sexual violence or torture were denied appropriate care due to entrenched stereotypes or institutional blind spots. “Context-dependent” vulnerabilities also emerge from specific legal and socio-political environments, as in Norway and Lebanon, where status and delay shape access to rights; and relational vulnerabilities—in VULNER’s interpersonal sense, not the philosophical sense of relational autonomy¹—often fall outside recognition frames (Nakueira, 2022; Camassale & Marchetti, 2022; Brun & Maalouf, 2022; Lidén, Paasche, & Damsa, 2022; Saroléa, Raimondo, & Crine, 2022).

The second recurring gap concerns procedural pathogenicity. Many interviewees described interviews as dehumanising, overly standardised, and adversarial—marked by disbelief, pressure to give “the right” answers, and intrusive questioning. Lawyers and NGOs corroborate the lack of empathy and individualised attention (Saroléa et al., 2022, pp. 50–51; Camassale & Marchetti, 2022, p. 33). In Mackenzie, Rogers, and Dodds’ terms, this is pathogenic vulnerability: safeguards or procedures that inadvertently generate harm (2014).

The third recurring gap concerns structural exposure through reception conditions. Large centres were associated with isolation, lack of privacy, and harassment, with particular risks for transgender and non-binary residents (Saroléa et al., 2022, pp. 58–59; Camassale & Marchetti, 2022, p. 40). Added to this is the sense of arbitrariness: criteria for protection or accommodation often remain opaque. In Italy, Afghan refugees arriving independently were excluded from centres reserved for evacuees by plane, despite comparable needs (Camassale & Marchetti, 2022, p. 47). In Norway, years in legal limbo left applicants feeling “treated like a case,” with life put on hold (Lidén et al., 2022, p. 55). Reports from Norway and Uganda also describe distrust of aid workers and systemic corruption, further undermining protection (Lidén et al., 2022, p. 58; Nakueira, 2022, p. 51).

Across the VULNER reports, three interacting dimensions recur—personal, situational, and administrative—rather than discrete boxes (Marchetti et al., 2025, pp. 66–67; Marchetti & Palumbo, 2021; Kluth et al., 2021; Saroléa et al., 2021, 2022; Lidén et al., 2021, 2022; Camassale & Marchetti, 2022; Brun & Maalouf, 2022; Nakueira, 2021, 2022). These roughly correspond to the experiential, situational, and structural layers developed in §§ 2.2–2.4, confirming that empirical patterns map onto the layered model of vulnerability proposed in this thesis.

It also confirms why categorical indicators and standardised procedures struggle to capture vulnerability as it is lived—dynamic, relational, and produced at the crossing point of biography, institutional practice, and structural context. Empirical findings thus give concrete evidence of (i) co-production of vulnerability across layers, (ii) intersectional patterning of disadvantage, (iii) categorical blind spots that obscure less legible harms, and (iv) procedural pathogenicity—four elements that strengthen the need for a layered, intersectional model.

These empirical insights therefore support the shift argued for in this chapter: from static labels and one-off screening toward a continuum model of vulnerability, periodically reassessed; from siloed categories to intersectional reasoning; from formal safeguards to pathogenicity checks on procedures; and from headline groups to disaggregated monitoring that tracks intersecting axes of disadvantage. The next section (2.6) builds on this evidence to propose a CEAS-tailored framework that treats vulnerability not as a fixed label or binary status, but as a layered, dynamic condition—structural, situational, and experiential—assessed through intersectional reasoning and responsive procedure.

2.6.A Layered – Intersectional Framework for CEAS

Identification and Assessment Mechanism

Building on the philosophical, doctrinal, and empirical insights developed throughout this chapter, this section sets out the analytical framework that will guide the thesis’s assessment of vulnerability in CEAS identification and assessment mechanisms. The aim is not to prescribe an ideal model but to articulate a clear set of conceptual and methodological tools against which CEAS law and practice can be examined in later chapters. Methodologically, the framework defines how the thesis will observe, classify, and evaluate vulnerability: it identifies the analytical dimensions to be examined, the questions through which they will be interrogated, and the criteria against which CEAS tools will be assessed. This ensures that the framework operates not as a theoretical abstraction but as the organising method through which Chapters 3 and 4 engage with legal texts, soft-law instruments, and empirical material.

Before setting out its components, it is important to clarify terminology: the thesis uses concepts such as “relational,” “risk-mediated,” “context-dependent,” “dispositional,” and “layered” not as competing definitions but as complementary analytic dimensions that capture different aspects of vulnerability. Together, they constitute the vocabulary through which CEAS practices will be interpreted and evaluated.

First, the framework adopts a layered understanding of vulnerability. Drawing on the taxonomies and theories discussed in § 2.2 (Mackenzie et al., 2014; Luna, 2009, 2019;

Fineman, 2008, 2010; Butler, 2016) and the empirical evidence in § 2.5, vulnerability is treated as operating across three interrelated layers:

- Structural vulnerability, rooted in legal, political, and socio-economic arrangements that differentially expose individuals and groups to risk (e.g., migration control regimes, reception conditions, civic stratification).
- Situational vulnerability, arising from specific contexts, procedures, and interactions—such as interviews, detention, or reception settings—where institutional choices can either mitigate or exacerbate harm.
- Experiential vulnerability, capturing how individuals perceive, narrate, and live their exposure to harm, including feelings of fear, loss of control, misrecognition, and resistance.

This tripartite model synthesises the universal and structural emphasis of Fineman, the temporal and relational dimensions highlighted by Luna and Mackenzie et al., and the narrative and political insights of Butler and Ricoeur: vulnerability is at once embodied, institutional, and lived. Empirical findings confirm this layered approach by demonstrating that vulnerability is co-produced across these levels, rather than merely identified ex post, thereby anchoring the framework in observable practice.

Second, vulnerability is conceptualised as a relational, dispositional, and risk-mediated condition, in line with the interim analytical definition formulated at the end of § 2.2. It refers not to an inherent deficit but to a context-dependent exposure to preventable harm, shaped by social and institutional relations that sustain or constrain autonomy. This risk-relational conception, reconstructed from Goodin's focus on preventable harm and Ippolito's integration of risk and relational autonomy, provides the normative link between the descriptive layers of vulnerability and the duties of care, prevention, and recognition that legal systems may be required to assume.

Third, intersectionality functions as a complementary diagnostic lens within this layered framework. As clarified in § 2.4, intersectionality is used here to trace how axes of power—such as gender, race, age, disability, sexuality, and legal status—interact across structural, situational, and experiential levels. Rather than adding new categories, it interrogates how existing legal and administrative categories shape exposure to harm and access to safeguards. Methodologically, intersectionality strengthens the layered model by revealing how patterned inequalities emerge across layers, and by illuminating compounded harms that single-axis analyses or categorical proxies systematically miss. In this sense, intersectionality sharpens the analysis of

vulnerabilities within and across layers without displacing vulnerability as the primary organising concept of the thesis.

Fourth, the framework incorporates a law-sensitive account of vulnerability. Building on Moreno-Lax and Vavoula's notion of the "legal life" of vulnerability and Ippolito's reconstruction of vulnerability as an interpretive device serving the principle of effectiveness, the thesis treats law not merely as a response to vulnerability but as a producer of it. This means that CEAS rules, categories, and procedures are analysed both in terms of their protective potential and their capacity to generate pathogenic or structural vulnerabilities—for instance, through accelerated procedures, detention, or restrictive reception conditions. This law-sensitive dimension ensures that the analysis captures not only how law recognises vulnerability but also how legal design, thresholds, and administrative routines may exacerbate or silence it.

In practical terms, this layered, intersectional, and law-sensitive framework yields a set of guiding questions for the analysis of CEAS and EUAA tools:

- Structural layer: Which vulnerabilities become legally visible through CEAS instruments and EUAA guidance, and which remain invisible or under-recognised? How do legal categories (e.g., "vulnerable applicants," "persons with special needs") organise access to safeguards and resources?
- Situational layer: How do identification, assessment, and referral procedures shape applicants' exposure to harm or protection in concrete settings? Under what conditions do procedures generate pathogenic vulnerabilities?
- Experiential layer: How do applicants' own accounts of fear, dependence, agency, and misrecognition align—or fail to align—with institutional understandings of vulnerability coded into CEAS tools?
- Intersectional patterns: How do gender, age, disability, sexuality, race, and legal status intersect across these layers to produce compounded or specific forms of vulnerability, and are these configurations captured or obscured by existing indicators and templates?

These questions translate the abstract components of the framework into operational criteria that can be applied to the analysis of legal texts, soft-law instruments, and empirical material in subsequent chapters. They also align directly with the research

questions introduced in Chapter 1, ensuring methodological coherence across the thesis.

Finally, the framework is explicitly pre-evaluative. It does not presuppose that CEAS and EUAA tools are purely categorical or inherently deficient. Instead, it provides a structured lens for examining to what extent existing mechanisms allow for: (i) the recognition of layered and evolving vulnerabilities; (ii) the safe and context-sensitive disclosure of less legible harms; and (iii) accountability for vulnerabilities produced or exacerbated by law itself. In this sense, the framework is both diagnostic and normative: it organises observation and supplies benchmarks for assessing whether identification and assessment mechanisms are accurate, inclusive, and context-sensitive, in line with the research questions set out in Chapter 1. By remaining pre-evaluative, the framework ensures conceptual clarity while leaving room for empirical and doctrinal nuance in later chapters.

In conclusion, § 2.6 consolidates the chapter's contribution: it moves from a fragmented theoretical and empirical debate to a coherent analytical framework—a layered, intersectional, and law-sensitive understanding of vulnerability—that will structure the thesis's examination of CEAS norms and EUAA operational tools in Chapters 3 and 4. It thereby provides the methodological backbone of the dissertation, defining how vulnerability will be interpreted, operationalised, and assessed throughout the analysis.

3. Chapter 3: Exploring Vulnerability: Perspectives from International Law and European Regional Context.

3.1. Introduction

This chapter examines how vulnerability has been interpreted and given legal effect within international and European human rights law. Although the term does not appear explicitly in the foundational texts of UN or European instruments, it has increasingly been used by monitoring bodies and courts to interpret rights, adjust evidentiary thresholds, and define the scope of State obligations. The aim here is not to conduct original case-law analysis, but to synthesise and critically evaluate the most relevant academic reconstructions of how vulnerability operates in practice—focusing on its interpretive functions, normative limits, and legal consequences.

The chapter proceeds in two main steps. Section 3.2, drawing on Ippolito's interpretive reconstruction together with other doctrinal and empirical analyses, examines the practice of UN treaty bodies and traces how vulnerability has evolved from a rhetorical label into an emerging, transversal interpretive criterion—particularly in individual communications and General Comments. Section 3.3 turns to the European context, contrasting the ECtHR's open-textured jurisprudential use of vulnerability with the CJEU's codified, category-based application under the Common European Asylum System (CEAS). These two regimes are examined not only for their doctrinal relevance, but also because of their direct institutional and legal influence on EU asylum law—the central concern of this thesis.

Other regional human rights systems (such as the Inter-American or African frameworks) are not addressed in detail, not due to irrelevance, but because they fall outside the normative and institutional scope of CEAS governance. The European framework—through the ECtHR and CJEU—offers the most appropriate doctrinal bridge to the CEAS analysis in Chapter 4.

Throughout, the chapter applies the conceptual framework developed in Chapter 2. It examines whether and how vulnerability has been understood as a layered, intersectional, and law-mediated condition, rather than as an inherent trait of predefined groups. In doing so, it contributes to the thesis's core research questions by clarifying the extent to which international and European legal systems have begun

to recognise complex, relational forms of harm—and whether these recognitions carry juridical weight in asylum governance.

3.2. Vulnerability in International Human Rights Law

This section systematises how vulnerability has been interpreted and operationalised within UN human-rights monitoring bodies, drawing on the most relevant doctrinal and empirical scholarship. It does not reproduce original case-law analysis, but evaluates the existing academic reconstructions of treaty-body practice. The aim is to determine how far current UN approaches reflect—or fail to reflect—the layered, intersectional, and law-mediated understanding of vulnerability developed in Chapter 2.

The scholarship reviewed reveals three broad dynamics identified in the literature and synthesised for this thesis. First, earlier analyses identified vulnerability as a largely descriptive, group-based label with limited juridical impact. Second, more recent studies highlight persistent conceptual gaps in how treaty bodies identify and articulate vulnerability, especially in the Committee on Economic, Social and Cultural Rights (CESCR)'s practice. Third and most importantly, comprehensive reconstructions—above all Ippolito's work—show that, through cumulative practice in individual communications and thematic interpretations, some treaty bodies have begun to use vulnerability as a functional interpretive tool that affects threshold-setting, proportionality, due diligence and the shaping of positive obligations. The following subsections synthesise these contributions in a structured way.

One of the earliest systematic efforts to trace the concept of vulnerability in international human rights law is A.H.E. Morawa's work (2003). His analysis spans a broad array of primary legal sources—UN core treaties, UNHCR guidelines, selected case law, and regional instruments—to examine how vulnerability is invoked across different legal texts without acquiring a stable legal meaning. Rather than developing a normative theory, Morawa's objective is to assess whether vulnerability functions as a legal category with interpretive or operational consequences. His findings are clear: although vulnerability appears frequently in the language of special protection, applied to women, children, detainees, refugees, and minorities, it does so in a fragmented and rhetorical manner. Vulnerability is treated as a descriptive signal rather than a criterion capable of shaping rights interpretation, evidentiary thresholds, or the scope of State obligations. Across the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)—as well as in UNHCR guidelines and selected case law—he finds no doctrinal clarity on how vulnerability should be operationalised in legal reasoning. This absence leads him to classify vulnerability as not merely a *terminus technicus* (...) but

a qualifying factor that can have concrete consequences in the context of human rights litigation” (Morawa, 2003, p.150). For this thesis, Morawa’s work establishes an important conceptual baseline: while vulnerability was already present in international human rights discourse by the early 2000s, it lacked legal precision, interpretive guidance, or systematic relevance beyond a moral register.¹⁰

In their empirical–doctrinal study of the CESCR, Chapman and Carbonetti (2011) conduct a systematic content analysis of three core categories of CESCR output: the 1991 and 2008 reporting guidelines, all General Comments and Statements adopted between 1989 and 2009, and 135 Concluding Observations (COs) from 1997–2009 (pp. 686–687). This methodology enables them to trace how vulnerability is identified, invoked, and operationalised in the Committee’s practice. Despite frequent references to “vulnerable,” “disadvantaged,” or “marginalised” populations, their analysis finds no coherent conceptualisation of vulnerability—no consistent definitional criteria, no systematic explanation of legal consequences, and no integrated interpretive logic (pp. 687–688, 691–692).

Rather, vulnerability is deployed in an ad hoc fashion, primarily as a demographic label applied to commonly listed groups—such as women, children, persons with disabilities, older persons, indigenous peoples, and migrants—without clarifying why these categories are vulnerable or how this should affect State obligations (pp. 694–695, 691–693). General Comments frequently call for “special measures,” “priority protection,” or “enhanced monitoring” for these groups, yet seldom specify the content of these duties or their doctrinal basis under the ICESCR (pp. 695–698). Their large-scale review of Concluding Observations further confirms this conceptual fragmentation: vulnerability is mentioned often, but its usage varies across countries, is influenced by developmental indicators, and is rarely embedded in legal reasoning or structural analysis (pp. 701–703).

¹⁰ Morawa’s doctrinal analysis is based on a combination of international treaties, UNHCR soft law, regional instruments, and selected case law, supported by thematic secondary literature. Primary legal texts explicitly analysed include: the *International Covenant on Civil and Political Rights* (ICCPR, 1966), with focus on special protection clauses relevant to detainees and minorities (pp. 139–140); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966), for poverty-related vulnerabilities (pp. 139–140); the *Convention on the Rights of the Child* (CRC, 1989), extensively discussed as the main treaty institutionalising vulnerability as a legal concept (pp. 140–143); the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979), for gender-based disadvantage (p. 140); and the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD, 1965), cited regarding protection of racial minorities (pp. 139–140). UNHCR soft law instruments include the *Guidelines on the Protection of Refugee Women* (1991) and *Refugee Children* (1994), which frame vulnerability in humanitarian terms (pp. 141–142). The *Council of Europe Convention on the Exercise of Children’s Rights* (1996) is referenced to show similar regional trends (p. 141). Case law is cited illustratively, including *Bleier v. Uruguay* (HRC Comm. No. 30/1978), invoked in the context of prisoners’ vulnerability (p. 145), and indirect references to European prisoner-rights jurisprudence (p. 145). Secondary sources include academic literature on poverty, HIV/AIDS, discrimination, and social vulnerability (pp. 139–140), children’s rights and special protection regimes (pp. 140–143), and minority protection and penal vulnerability (pp. 145–147).

Chapman and Carbonetti conclude that while the Committee shows sustained rhetorical engagement with vulnerability, it lacks a stable conceptual framework and should adopt a dedicated General Comment to provide normative guidance and analytical coherence (pp. 687, 702). They argue that the Committee's use of vulnerability is descriptively rich but conceptually shallow—serving more as a rhetorical device than a basis for legal reasoning or structural critique.¹¹ They urge the adoption of a dedicated General Comment to define vulnerability, integrate it into legal obligations, and enable more coherent and context-sensitive State assessments (pp. 702–703). These findings reinforce the critique, developed in Chapter 2, that categorical approaches to vulnerability risk reinforcing surface-level descriptions without interrogating deeper structural or law-mediated harms.

Halme-Tuomisaari (2022) offers a legal-anthropological perspective on how vulnerability becomes visible—or remains obscured—within the institutional machinery of UN treaty bodies. Drawing on ethnographic fieldnotes from the 108th session of the Human Rights Committee (HRC), informal NGO briefings, and internal drafting routines, she shows that interpretive outputs such as Concluding Observations are shaped less by legal doctrine than by procedural logics, bureaucratic constraints, and the politics of visibility (Halme-Tuomisaari, pp. 318–321). These dynamics include media responsiveness, the need to appear active and legitimate, and the pressures of limited enforcement powers (Halme-Tuomisaari, pp. 322–323). Vulnerability, in this view, is not simply interpreted through legal norms, but constructed institutionally—as procedural filters favour visible, narratable harms and marginalise complex or intersectional experiences (Halme-Tuomisaari, pp. 317–318, 321).¹² This

¹¹ Chapman and Carbonetti (2011) base their empirical analysis on 135 documents produced by the UN Committee on Economic, Social and Cultural Rights (CESCR) between 1997 and 2009. These include the Revised General Guidelines on Reporting (1991) and the 2008 Treaty-Specific Reporting Guidelines (E/C.12/2008/2), both analysed in detail at pp. 688–690. The authors examine all 21 General Comments adopted by CESCR between 1989 and 2009, including GC Nos. 1 (1989, Reporting), 2 (1990, International Assistance), 3 (1990, State Obligations), 4 (1991, Adequate Housing), 5 (1994, Persons with Disabilities), 6 (1995, Older Persons), as well as GC Nos. 7, 9, 10, 11, 12, 13, 14 (Right to Health), 15 (Right to Water), 16 (Women and Equality), 17, 18, 19, 20 (Non-Discrimination), and 21 (Cultural Life), with interpretive commentary across pp. 690–698. They further analyse sixteen CESCR Statements adopted between 1995 and 2008, such as the Statement to the Fourth World Conference on Women (1995), Statement on Globalisation (1998), Statement on Poverty and the ICESCR (2001), and the Statement on Maximum Available Resources under the Optional Protocol (2007), cited and discussed on pp. 699–701. The dataset also includes 135 Concluding Observations from 1997–2009, disaggregated by regional distribution and Human Development Index categories, reviewed at pp. 701–703. Their analysis is supported by selected academic sources, including Donnelly (1989), Chapman (1996), Castellino (2009), Chatterjee & Sheoran (2007), Sen (1999), Sengupta and Gewirth (2007), the OHCHR (2004) study on *Human Rights and Poverty*, the Icelandic Human Rights Centre (2009), and indirect references to UNICEF's *Adjustment with a Human Face* materials (pp. 683–695).

¹² Halme-Tuomisaari (2022) draws on a range of primary UN legal instruments and institutional documents, including the *International Covenant on Civil and Political Rights* (ICCPR), arts. 36 and 39; and *Status of the Human Rights Treaty Body System: Report of the Secretary-General*, UN Doc. A/71/118 (2016). Her analysis is grounded in ethnographic observations of the Human Rights Committee's 108th session, NGO shadow reporting, informal briefings, and the production of Concluding Observations. She references core treaty body mechanisms under Article 40 ICCPR, as well as informal visibility-oriented practices such as press briefings and internal coordination.

supports the thesis's core argument that vulnerability is law-mediated: shaped not only by doctrinal content, but by the communicative, bureaucratic, and political structures through which law is enacted and made intelligible.

A complementary empirical insight comes from Viveros-Uehara (2022), who examines how the CESCR receives claims concerning vulnerable populations in the context of the right to water. Using a multi-method design—qualitative content analysis of reports from Argentina, Ecuador, and Uruguay, and semi-structured interviews with Committee members and civil society actors—she traces which civil society voices are echoed in the Committee's outputs (Viveros-Uehara, pp. 907–913). Her findings show that while the CESCR is receptive to concerns raised by multiple actors (especially on Indigenous peoples' access to water), it systematically overlooks one-off submissions—even where they describe acute or intersectional vulnerability, such as that of Indigenous women, girls with disabilities, migrants, or prisoners (Viveros-Uehara, pp. 918–920). The study identifies professionalisation and repetition as key mechanisms of visibility: claims must be echoed across actors and cycles to be taken up, privileging well-networked NGOs and excluding grassroots or marginalised groups (Viveros-Uehara, pp. 920–921).¹³ This confirms that the legal recognition of vulnerability is not neutral or comprehensive, but conditioned by procedural legibility and advocacy dynamics. It reinforces the thesis's claim that legal recognition of vulnerability is not only normative but also filtered through institutional practices that regulate whose harms are heard, and which forms of suffering become legally intelligible.

Several recent contributions provide a systematic conceptual map of vulnerability's interpretive potential and normative risks within human rights law, particularly in relation to equality, discrimination, and stereotyping. One of the most comprehensive is a structured literature review by Mayrhofer (2025), who explicitly maps how vulnerability has been theorised across legal, sociological, climate-change, and human-rights literatures, but only where it is linked to equality or discrimination.¹⁴ She

¹³ Viveros-Uehara (2022) bases her empirical legal analysis on primary sources such as the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), especially Art. 16 reporting procedures; CESCR General Comments (Nos. 1, 3, 4, 15); Statements on climate and vulnerability; SDG 6 indicators (DIHR, 2021); and procedural documents including the *Guidelines on NGO Participation in the CESCR* (UN ECOSOC, 2000), the *Simplified Reporting Procedure* (UNGA, 2014), and OHCHR materials on Committee composition.

¹⁴ Mayrhofer's (2025) analysis is grounded in a purposive literature review that systematically maps how vulnerability has been conceptualised in relation to equality and non-discrimination. Her work draws on a carefully selected body of legal instruments and UN treaty-body documents that explicitly link vulnerability to equality-related obligations, including: *International Covenant on Civil and Political Rights* (ICCPR, 1966), Art. 26; *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966), Art. 2(2); *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD, 1965), Art. 1(1); *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979), Art. 5; *Convention on the Rights of Persons with Disabilities* (CRPD, 2006), Art. 8; and the *Paris Agreement* (2015). She also examines General Comments from the ESCR Committee (2005, 2009), the CERD Committee's (2005) Concluding Observations, and soft-law outputs from the CEDAW (2010, 2018) and CRPD Committees (2016, 2018a), along with climate-related reports from the UNHCHR (2018) and HRC (2009).

identifies four distinct conceptual strands: (1) vulnerability as a stronger path to substantive equality; (2) inequality and discrimination as root causes of vulnerability; (3) vulnerability as a problematic or even harmful concept; and (4) vulnerability as a prioritisation tool used for resource allocation or policy targeting (Mayrhofer, 2025, pp. 5–17). Vulnerability, she concludes, does not operate as a coherent legal concept but as a contested analytical frame whose normative effects depend on how it is deployed. Without structural anchoring, it can reproduce paternalism, essentialisation, and deservingness narratives—especially in asylum, social policy, or climate governance contexts (Mayrhofer, pp. 12–18). Broad or vague vulnerability labels, Mayrhofer warns, may obscure power relations and perpetuate stigma rather than dismantle it. These findings reinforce the thesis’s argument in Chapter 2 that vulnerability becomes juridically meaningful only when explicitly tied to intersectional inequality and duties of proactive redress.

A compatible position is developed by Pariotti (2023), who approaches the issue from a theoretical–hermeneutic angle. She argues that concerns frequently associated with the vulnerability turn—semantic vagueness, risks of stereotyping, judicial discretion—do not stem from the concept itself but from its misapplication.¹⁵ Central to her argument is a distinction between vulnerability as an ascriptive label (which risks reinforcing stigma) and vulnerability as a heuristic and hermeneutic lens that reveals how domination and deprivation emerge from relational and contextual conditions (Pariotti, 2023, pp. 13–16). Her analysis supports an ontological and socially embedded conception of vulnerability: a universal human condition that manifests in different degrees and forms depending on both internal and external factors (Pariotti, pp. 6–8). Human rights, she argues, share this relational character—they are not merely protections for autonomous individuals but social constructs shaped by interdependence, institutional frameworks, and the politics of recognition (pp. 17–19). In this sense, vulnerability becomes not a legal standard or principle, but an interpretive device with three interlinked functions: heuristic (detecting hidden risks), critical (exposing systemic failures), and constructive (guiding the development of legal norms and policies)—all of which depend on structural and relational awareness (pp. 23–25).

Taken together, the approaches of Mayrhofer (2025) and Pariotti (2023) confirm and deepen the conceptual framework developed in Chapter 2: vulnerability must be understood as layered, relational, and law-mediated. Both reject simplistic or static

¹⁵ Pariotti’s (2023) conceptual–theoretical inquiry into vulnerability in human rights law draws on both primary legal sources and a wide range of secondary literature. Her analysis focuses on how vulnerability—particularly in its ontological and relational formulations—can serve as a hermeneutic device within rights reasoning. Key legal references include General Comments by the UN Committee on Economic, Social and Cultural Rights (Nos. 1, 5, 12–15, 16, 18, 20, and 21), especially those identifying vulnerable groups such as women, children, refugees, stateless persons, persons with HIV, minorities, elderly persons, Roma/Sinti/Gypsies, and LGBT persons; the Convention on the Rights of Persons with Disabilities (CRPD), particularly Articles addressing relational autonomy; and indirect references to ECtHR jurisprudence illustrating both the potential and pitfalls of vulnerability reasoning.

notions of “vulnerable groups” and instead propose a dynamic model of vulnerability as a lens through which structural harm and institutional failure can be legally addressed.

The most comprehensive doctrinal reconstruction of vulnerability in international human-rights law to date is provided by Ippolito (2020), who develops a constructivist, interpretive account grounded in Article 31 VCLT and the principle of effectiveness. Her work marks a decisive departure from earlier scholarship, both in scope and methodological ambition. Rather than analysing vulnerability through isolated treaty provisions or relying on empirical frequency counts, Ippolito develops a constructivist, hermeneutic approach grounded in Article 31 of the Vienna Convention on the Law of Treaties (VCLT) and oriented by the principle of effectiveness (pp. 23-44). Her aim is explicitly interpretive: to assess whether and how vulnerability has begun to function as a meaningful legal concept within the evolving practice of UN treaty bodies and regional courts. Importantly, Ippolito does not frame these developments as a closed or formalised doctrinal taxonomy. Rather, she traces an interpretive evolution that emerges inductively through cumulative practice and the hermeneutic techniques derived from Article 31 VCLT.

Her methodology combines three complementary analytical layers. First, she conducts a systematic examination of core UN human-rights treaties—including the ICCPR, ICESCR, CRC, CEDAW, CERD, CAT and CRPD—alongside the 1951 Refugee Convention and relevant soft-law instruments, mapping the normative spaces where vulnerability appears or could be inferred (pp. 63-80). Second, she undertakes a close doctrinal reading of treaty-body jurisprudence, focusing particularly on individual communications, General Comments and Concluding Observations, to track how vulnerability is used in interpretive practice (pp. 176-249; 318-385). Third, she situates her findings within a comparative framework, drawing especially on ECtHR jurisprudence (and, to a more limited extent, the IACtHR) to test whether similar interpretive functions emerge across regional human-rights systems (pp. 250-319).

The following three-stage structure does not reproduce a categorisation explicitly formulated by Ippolito. Rather, it constitutes an analytical reconstruction developed in this thesis to systematise and clarify the interpretive tendencies that emerge across the treaty-body practice she examines. Read through the conceptual lens of this thesis—and grounded in Ippolito’s cumulative doctrinal reconstruction—this three-part structure reflects broad patterns in the juridical use of vulnerability within international human-rights law.

(1) Descriptive and categorical use.

In its earliest manifestations, vulnerability functions as a rhetorical label attached to predetermined categories—children, women, refugees, persons deprived of liberty, minorities — closely mirroring the fragmentation identified by Morawa (2003) and

empirically documented by Chapman and Carbonetti (2011). At this stage, vulnerability is not linked to legal standards or doctrinal consequences: it does not affect evidentiary thresholds, due-diligence requirements, or interpretive outcomes. It signals concern but remains normatively inert (Ippolito, 2020, pp. 66-84).¹⁶

(2) Contextual and relational use.

Through cumulative jurisprudential practice—especially in individual communications—vulnerability begins to acquire functional meaning:

- In HRC cases on detention, protest, family life and non-refoulement, vulnerability is invoked to contextualise arbitrariness review, increase scrutiny of State justifications, and lower evidentiary thresholds.
- In CAT Article 3 jurisprudence, markers such as past torture, mental fragility or precarious migration status trigger heightened due-diligence obligations and a more rigorous risk-assessment standard.
- CEDAW and CRC jurisprudence mobilise vulnerability to highlight gender- and age-specific harms, reinforcing the duty to prevent violence, ensure procedural guarantees, and adopt protective measures.
- In CRPD communications, vulnerability is explicitly linked to the social model of disability, embedding structural inequality and accessibility barriers directly into legal reasoning (Ippolito, 2020, pp. 123–147, 185–248, 250–318).

This second pattern resonates with the layered and relational understanding developed in Chapter. Here, treaty bodies begin—albeit inconsistently—to treat vulnerability as emerging both from situational exposure (e.g., detention, migration, disability) and from deeper structural conditions (e.g., patriarchal norms, systemic discrimination, institutional neglect).¹⁷

¹⁶ The corpus of early treaty-body materials examined by Ippolito to illustrate vulnerability's descriptive, categorical use includes instances in which the Human Rights Committee invokes vulnerability primarily as a status-based label (e.g., childhood, detention, minority position) without attaching explicit interpretive consequences. These early communications, as reconstructed in her analysis, show that vulnerability initially appeared rhetorically rather than as a criterion influencing evidentiary thresholds, due-diligence duties, or proportionality review. Examples discussed in this phase include *Borisenko v. Hungary* (CCPR/C/76/D/852/1999); *Zhuk v. Belarus* (CCPR/C/109/D/1910/2009); *Kovaleva v. Belarus* (CCPR/C/106/D/2120/2011); *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008); *Pichugina v. Belarus* (CCPR/C/108/D/1592/2007); as well as foundational Article 9 decisions such as *van Alphen v. The Netherlands* (CCPR/C/39/D/305/1988) and *Vuolanne v. Finland* (CCPR/C/13/D/265/1987), and early Uruguay cases including *Celiberti de Casariego v. Uruguay* and *Saldías de López v. Uruguay*. These examples illustrate the type of early practice that Ippolito identifies, in which vulnerability is referenced mainly through formal status categories rather than as a doctrinal criterion guiding interpretation or obligations.

¹⁷ The materials listed here illustrate the second phase identified in Ippolito's doctrinal reconstruction and correspond to the jurisprudence she analyses, where treaty bodies begin to deploy vulnerability in a contextual and relational manner—particularly in arbitrariness review, proportionality, evidentiary assessment, and risk evaluation. The examples reflect the representative cases discussed across her mapping of HRC, CAT, CEDAW, and CRC practice. HRC: Examples include *Kitenge Baruani v.*

(3) Emerging transversal interpretive criterion.

In the most advanced phase, Ippolito argues, vulnerability is no longer merely descriptive but begins to operate as an interpretive device with transversal reach. It:

- lowers thresholds for inhuman or degrading treatment under ICCPR and CAT jurisprudence;
- intensifies proportionality review in balancing exercises;
- constrains the margin of appreciation, particularly in situations of heightened risk; and
- influences the definition and scope of positive obligations, especially in areas such as non-refoulement, violence against women, child protection and disability-related discrimination (Ippolito, 2020, pp. 125–147, 200–211, 259–284, 309–316).

While Ippolito stops short of presenting vulnerability as a crystallised general principle of international law, she convincingly demonstrates that it now functions as a recurrent normative consideration—a transversal criterion—guiding treaty-body reasoning across multiple rights domains and institutional contexts.

Two aspects of her contribution are particularly salient for this thesis. First, Ippolito provides the doctrinal depth that earlier accounts lacked. Where Morawa identified rhetorical usage and Chapman and Carbonetti revealed conceptual fragmentation, Ippolito shows that cumulative practice—especially in individual communications—has begun to transform vulnerability into a functional tool of contextual and teleological interpretation. Second, her work strongly reinforces the thesis’s claim that vulnerability is law-mediated: its legal meaning does not pre-exist adjudication but is co-produced

Democratic Republic of the Congo (CCPR/C/110/D/1890/2009); *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012); and *Spakmo v. Norway* (CCPR/C/67/D/631/1995), where contextual factors such as detention, dependency, or structural disadvantage inform the Committee’s assessment. CAT: Examples include *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010); *Niyonzima v. Burundi* (CAT/C/53/D/514/2012); *Ktiti v. Morocco* (CAT/C/46/D/419/2010); *Nikolov Keremedchiev v. Bulgaria* (CAT/C/41/D/257/2004); *Blanco Abad v. Spain* (CAT/C/20/D/59/1996); *PE v. France* (CAT/C/29/D/193/2001); and *Ntikarahera v. Burundi* (CAT/C/52/D/503/2012), where the Committee links markers of vulnerability (past torture, trauma, precarious migration status) to enhanced due-diligence obligations. CEDAW and CRC Committees: Examples include *A.T. v. Hungary* (CEDAW/C/36/D/2/2003); *Goekce v. Austria* (CEDAW/C/39/D/5/2005); *Zhen Zhen Zheng v. The Netherlands* (CEDAW/C/42/D/15/2007); and *D.D. v. Spain* (CRC/C/80/D/4/2016), which illustrate how gender- and age-specific vulnerabilities begin to shape obligations in relation to domestic violence, child migration, and detention. These examples demonstrate the kind of relational, context-sensitive use of vulnerability identified by Ippolito, where exposure to harm is evaluated in light of lived conditions and structural disadvantages.

through the interaction of legal principles (such as Article 31 VCLT), institutional mandates and interpretive practice. Vulnerability is neither purely social nor ontologically fixed—it becomes juridically relevant only when courts and treaty bodies translate it into structured legal reasoning.

Yet, her analysis also confirms several limitations discussed in Chapter 2. Recognition of vulnerability remains uneven across treaty bodies; structural and intersectional harms are often acknowledged only indirectly; and vulnerability is still frequently treated as a fixed group attribute rather than as a relational and institutional condition shaped by legal frameworks. Even so, Ippolito's work provides the clearest doctrinal and conceptual bridge between early descriptive uses of vulnerability and its more developed interpretive functions—a transition this chapter seeks to trace. The three-stage reconstruction presented here is therefore an analytical framework devised in this thesis, drawing on but not replicating Ippolito's findings, and used to clarify how vulnerability is beginning to operate as a layered, intersectional and law-mediated interpretive criterion. This framework will be further operationalised in the CEAS context in Chapters 4 and 5.

3.3. Framing Vulnerability in European Jurisprudence

3.3.1. Divergent Juridical Logics: The ECtHR and CJEU Approaches to Vulnerability

Although neither the European Convention on Human Rights nor EU primary law makes explicit reference to vulnerability, the concept has acquired increasing doctrinal relevance within European jurisprudence. Over the past two decades, both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have invoked vulnerability to interpret rights and obligations—albeit through markedly different legal methodologies. This divergence reflects not only institutional mandates, but also two distinct juridical logics: one grounded in interpretive flexibility and evolving judicial reasoning, the other anchored in legislative precision and codified categories. These differences shape how vulnerability is juridified,¹⁸ as well as its normative reach and limitations.

At Strasbourg, ECtHR, vulnerability functions as an open-textured interpretive principle. It is not defined in the Convention text but has emerged inductively through

¹⁸ On “juridification,” Leboeuf uses the term to describe the process through which vulnerability—initially an uncoded and largely rhetorical notion—acquires juridical meaning through repeated judicial or quasi-judicial use, progressively shaping evidentiary thresholds, proportionality review and State obligations in practice (Leboeuf, 2022, pp. 3–5). Catanzariti similarly frames juridification as a broader socio-legal dynamic through which courts incorporate social facts into legal reasoning, transforming vulnerability from a descriptive condition into an operative factor within the ECtHR's decision-making architecture (Catanzariti, 2022, pp. 1391–1399). In both accounts, juridification does not denote codification, but the gradual embedding of vulnerability into legal interpretation and institutional culture.

adjudication, guiding the application of existing rights. The Court deploys vulnerability to recalibrate the threshold for inhuman and degrading treatment (notably under Article 3), to narrow the state's margin of appreciation, and to activate positive obligations in response to heightened forms of disadvantage (Boutier, 2024, p. 29). This interpretive logic allows the Court to acknowledge how specific applicants—such as Roma, migrants, children, or victims of domestic violence—are exposed to harm in ways that require differentiated protection.

Ippolito (2020, pp. 389–416) conceptualises vulnerability as a regulatory interpretative criterion operating within the principle of effectiveness (Article 31(1) VCLT). On this view, vulnerability “regulates” the interpretive process: it refines the object-and-purpose analysis of human-rights treaties, ensuring that the protection of those most exposed to harm becomes a benchmark for effective implementation. As Boutier (2024, pp. 30–31) and Leboeuf (2022, p. 3) emphasise, such usage transforms vulnerability from moral appeal into a doctrinal device that legitimises intensified scrutiny and context-sensitive obligations.

By contrast, the CJEU engages vulnerability primarily through EU secondary law. Within the Common European Asylum System (CEAS), explicit provisions require Member States to identify and support individuals with “special reception” or “procedural” needs—such as children, torture survivors, and persons with disabilities. The CJEU enforces these provisions purposively, invoking the *effet utile* principle to guarantee their practical effect. In cases such as *Saciri, C.K.*, and *Jawo*, the Court has interpreted codified categories of vulnerability to impose binding obligations on Member States.¹⁹

This codified approach enhances legal certainty and enforceability but also reveals conceptual constraints. As Leboeuf (2022, pp. 6–7) observes, vulnerability in the CJEU’s reasoning risks crystallising into a fixed status tied to predefined categories, rather than functioning as a relational condition. It privileges administrative recognisability and procedural compliance, sometimes at the expense of contextual responsiveness or intersectional nuance (Boutier, 2024, pp. 34–36; Leboeuf, 2022, pp. 6–7). More broadly, scholars warn that EU migration governance increasingly relies on managerial and systematising logics, where legal categories operate as instruments of administrative ordering rather than structural critique (Moreno-Lax & Vavoula, 2022, pp. 286–288).

Taken together, these divergent judicial approaches illuminate the tension at the heart of European asylum governance: between a conceptually expansive but occasionally

¹⁹ *Court of Justice of the European Union (CJEU), Saciri and Others v. Federaal Agentschap voor de opvang van asielzoekers (Fedasil), Case C-79/13, 27 February 2014, EU:C:2014:103; CJEU, C.K., H.F. and A.S. v. Republika Slovenija, Case C-578/16 PPU, 16 February 2017, EU:C:2017:127; CJEU, Ibrahim Mohamed Jawo v. Bundesrepublik Deutschland, Case C-163/17, 19 March 2019, EU:C:2019:218.*

inconsistent interpretive model and a codified but potentially reductive regulatory framework. For the purposes of this thesis, vulnerability is understood as a doctrinal criterion that (i) recalibrates rights thresholds, (ii) activates differentiated state obligations, and (iii) connects individual harms to broader structures of exclusion. This definition maintains coherence across regimes while remaining sensitive to institutional variation. It also preserves continuity with the layered and relational account of vulnerability developed in Chapter 2, providing the conceptual anchor for the following analysis of its deployment within ECtHR jurisprudence. This doctrinal and conceptual alignment becomes particularly visible when read alongside Boutier's recent analysis. As she recent analysis makes clear, the ECtHR's jurisprudence partially reflects but does not fully realise the layered and intersectional structure of vulnerability developed in Chapter 2. She emphasises that vulnerability is "a result of social construction, shaped by a confluence of personal, environmental and social elements" (Boutier 2024, p. 30), directly mirroring the structural and situational dynamics analysed in §§ 2.2–2.6. At the same time, she notes that Strasbourg "does not use intersectionality to understand inequalities (...) or how it leads to exclusions or specific experiences" (Boutier 2024, p. 33), thereby confirming the limits of the Court's largely categorical and administratively legible approach. Bringing Boutier into dialogue with the theoretical framework clarifies both the doctrinal possibilities and the conceptual constraints that shape European vulnerability jurisprudence.

3.3.2. Functions of Vulnerability in ECtHR Reasoning

Within the Strasbourg system, vulnerability has evolved into a doctrinal mechanism through which the Court recalibrates its legal reasoning in response to unequal exposure to harm. Although not a formal legal category, its meaning has crystallised inductively through case law—particularly in areas concerning detention, asylum, minority rights, gender-based violence, and socio-economic deprivation. This jurisprudential evolution reveals a shift toward a relational understanding of rights: one that foregrounds applicants' lived experiences, dependency, and situational disadvantage rather than abstract equality before the law. In this respect, the Court's practice corresponds to the experiential and situational layers of vulnerability outlined in Chapter 2, capturing how context and institutional design mediate individual exposure to risk. At the same time, as Boutier (2024) demonstrates, this context-sensitive approach often stops short of engaging with the structural and intersectional dynamics that produce such disadvantage—an omission that ultimately limits the transformative potential of the concept.

(a) Narrowing the Margin of Appreciation

Once the Court recognises an applicant as vulnerable, the margin of appreciation narrows accordingly (Leboeuf, 2022, p. 5). Scholars such as Baumgärtel (2020) and

Heri (2021) confirm this pattern: vulnerability functions as an intensifier of judicial scrutiny. The clearest illustration is *Tarakhel v. Switzerland*, where the Court required individualised guarantees before transferring a family with minor children under the Dublin system. The applicants' vulnerability triggered stricter review, reducing the discretion normally afforded to States. Catanzariti (2022, p. 1399) similarly notes that once acknowledged, vulnerability becomes a "facilitating factor" compelling heightened protection.

This dynamic corresponds directly to the situational and institutional layers of vulnerability: once the Court recognises the applicant's heightened exposure to harm, state discretion contracts in proportion.²⁰

(b) Activating Positive Obligations

Vulnerability also serves as a trigger for positive obligations. As Leboeuf (2022, p. 5) and Boutier (2024, pp. 40–41) demonstrate, most vulnerability-related case law arises under Article 3, where preventive duties are intrinsic to the Convention's protective logic. The Court's reasoning in *Opuz v. Turkey* illustrates how gender-related exposure to violence shapes the assessment of state inaction, while in *D.H. v. Czech Republic*, the vulnerability of Roma children—rooted in systemic discrimination—operates as an aggravating factor under Article 14. Catanzariti (2022, p. 1398) notes that vulnerability can function as a condition facilitating discrimination, raising the level of justification required from the State.

These developments resonate with the law-mediated layer of vulnerability developed in Chapter 2: legal frameworks do not merely respond to vulnerability but actively participate in producing the conditions that necessitate protective duties.²¹

(c) Uneven Integration Across Convention Rights

Despite these advances, vulnerability remains unevenly integrated across Convention rights. Leboeuf (2022, pp. 6–7) notes that its influence is strongest under Articles 3, 5, and 6, while Article 14 remains significantly underdeveloped. Boutier's dataset reinforces this: the Court relies heavily on vulnerability in ill-treatment cases but far less frequently in discrimination claims (2024, pp. 38–41).

This asymmetry has two principal consequences. First, it limits the Court's capacity to engage with intersectionality: as Boutier (2024) shows, the Court tends to fragment intersecting axes of disadvantage rather than examine their cumulative effects.

²⁰ *Tarakhel v. Switzerland*, App no 29217/12 (ECtHR, 4 November 2014); analysed in Leboeuf (2022, p. 5), Baumgärtel (2020, pp. 19–20), and Catanzariti (2022, p. 1399).

²¹ *Opuz v. Turkey*, App no 33401/02 (ECtHR, 9 June 2009); discussed in Leboeuf (2022, p. 5). *D.H. v. Czech Republic*, App no 57325/00 (ECtHR, 13 November 2007); analysed in Boutier (2024, p. 41) and Catanzariti (2022, p. 1398).

Second, this pattern encourages paternalistic reasoning, as warned by Catanzariti (2022, pp. 1391–1396): applicants are sometimes cast as passive recipients of care rather than rights-bearers embedded within structural hierarchies. From the perspective of Chapter 2’s layered model, these gaps reveal that while the Court captures situational and experiential vulnerability, it struggles to integrate the structural and intersectional dimensions most relevant to systemic inequalities.²²

(d) Toward Structural Awareness

Recent case law shows tentative movement toward structural reasoning. In *Ilias and Ahmed v. Hungary*, the Grand Chamber recognised that vulnerability may arise not only from personal characteristics but also from the systemic features of border detention. Although the applicants were ultimately not classified as vulnerable, scholars view the judgment as a conceptual step toward acknowledging institutional sources of harm (Boutier, 2024, p. 42).

Similarly, *Dragan Kovačević v. Croatia* reveals sensitivity to institutional failures and entrenched social patterns—including disability-related exclusion and gender-based violence. These developments resonate with the structural layer of vulnerability identified in Chapter 2: the recognition that legal and institutional arrangements can function as generators of disadvantage rather than mere responders to pre-existing fragility.

This trajectory aligns with broader scholarship (Moreno-Lax & Vavoula, 2024; Turner, 2021) emphasising the law- and policy-mediated production of vulnerability. Yet, as Leboeuf (2022, pp. 6–7) and Boutier (2024, pp. 46–47) underscore, the Court’s engagement remains inconsistent—structural vulnerability is acknowledged in some judgments and absent in others, leaving unclear doctrinal criteria and uneven protection.²³

Strasbourg’s vulnerability jurisprudence reveals both doctrinal potential and conceptual limits. Vulnerability enables relational, context-sensitive protection and narrows state discretion, but its limited engagement with structural and intersectional inequalities means that the Court’s reasoning falls short of the layered, intersectional, law-mediated account developed in Chapter 2. This analysis provides the foundation for Chapters 4 and 5, where the operationalisation of vulnerability within the CEAS is examined against these strengths and shortcomings.

²² See: Leboeuf (2022, pp. 6–7); Boutier (2024, pp. 38–41); Baumgärtel (2020, pp. 17–20); Catanzariti (2022, pp. 1391–1396).

²³ *Ilias and Ahmed v. Hungary*, App no 47287/15 (ECtHR, 21 November 2019); analysed in Boutier (2024, p. 42).

Dragan Kovačević v. Croatia, App no 49281/15 (ECtHR, 12 March 2021); discussed in Boutier (2024, pp. 42–43).

3.3.3. Structural Limits and Ambivalences

Despite its expanding doctrinal footprint, the ECtHR's engagement with vulnerability remains marked by structural selectivity, asymmetry in rights-protection, and conceptual fragility. These limitations mirror the concerns identified in Chapter 2, particularly the risks of flattening vulnerability into a categorical status and the Court's difficulty in operationalising intersectional and structural layers of disadvantage.

(a) Selective Visibility and Reliance on Administratively Legible Categories

The Court tends to attribute vulnerability primarily to applicants who fall within recognised and administratively legible groups—children, Roma, asylum seekers, persons with disabilities—while overlooking diffuse or intersectional forms of marginalisation. Leboeuf notes that the Court often relies on pre-existing categories of vulnerability rather than examining how vulnerability is produced through legal status or institutional arrangements (Leboeuf, 2022, pp. 7–9). Boutier further demonstrates that the Court's practice “does not use intersectionality to understand inequalities or how they lead to exclusion or specific experiences” (Boutier, 2024, p. 33). This mirrors the concern developed in Chapter 2 that categorical framings of vulnerability risk obscuring the layered and relational processes through which harm materialises. Peroni and Timmer's seminal analysis similarly warns that the ECtHR's “vulnerable group approach” can essentialise vulnerability, reifying it into a fixed identity status rather than recognising it as relational and dynamic (Peroni & Timmer, 2013, pp. 1064–1068). This reproduces the first pitfall identified in the thesis's analytical model: static group labels displace the contextual and structural factors that generate disadvantage.²⁴

(b) Hierarchies of Deservingness and the Passivisation of Applicants

Reliance on fixed categories also produces hierarchies of deservingness. Krivenko argues that the Court often portrays asylum seekers as passive victims, as seen in its analysis of *M.S.S. v. Belgium and Greece*, which reduces agency and obscures the structural and legal forces that contribute to marginalisation (Krivenko, 2022, pp. 203–208). Leboeuf identifies a similar pattern: vulnerability is used as an attribute that justifies concern but does not translate into a deeper engagement with the institutional production of harm (Leboeuf, 2022, pp. 6–8). These critiques align with the experiential and situational layers in Chapter 2's model, showing how the Court acknowledges individual harms while failing to interrogate the structural layer—namely the legal and administrative systems that produce vulnerability in the first place.

²⁴ *M.S.S. v. Belgium and Greece*, App no 30696/09 (ECtHR, 21 January 2011); analysed in Krivenko (2022, pp. 203–209); Leboeuf (2022, pp. 6–8); Peroni & Timmer (2013, pp. 1066–1069). *D.H. v. Czech Republic*, App no 57325/00 (ECtHR, 13 November 2007); analysed in Peroni & Timmer (2013, pp. 1076–1079) and Boutier (2024, p. 41).

(c) Underdeveloped Equality Reasoning and the Marginal Role of Article 14

A major doctrinal weakness is the Court's limited integration of vulnerability into equality jurisprudence. As Leboeuf argues, vulnerability rarely informs a substantive equality analysis and remains confined to proportionality or dignity considerations (Leboeuf, 2022, pp. 4–5, 10). Boutier's dataset reinforces this pattern: vulnerability appears frequently in Article 3 case law but remains marginal under Article 14 (Boutier, 2024, pp. 38–41). Baumgärtel likewise warns that the ECtHR rarely confronts systemic discrimination, even when it is evident (Baumgärtel, 2020, pp. 17–20). Peroni and Timmer argue that this reluctance undermines the transformative potential of vulnerability, preventing it from functioning as a tool of substantive equality capable of addressing structural injustice (Peroni & Timmer, 2013, pp. 1080–1082). Krivenko (2022) further notes that the Court's approach in *M.S.S.* fails to articulate how intersecting legal statuses, racialisation, and socioeconomic precarity jointly shape asylum seekers' disadvantage (pp. 207–209). These gaps reveal the Court's difficulty in integrating the structural layer of vulnerability central to the thesis's analytical model.²⁵

(d) Vulnerability as a Managerial or Bureaucratic Tool

Moreno-Lax and Vavoula offer a powerful systemic critique: vulnerability increasingly operates as an “administrative technology” within migration governance, functioning “as a classificatory device rather than a tool of structural redress” (2024, pp. 4–6). They warn that in both ECtHR and EU asylum governance, vulnerability can become a managerial label—used to sort or triage applicants according to bureaucratic needs—rather than a normative principle capable of exposing institutionalised inequalities (2024, pp. 7–10). This diagnosis corresponds directly to warnings raised in Chapter 2 that vulnerability can become a law-mediated instrument of governance rather than a framework for confronting structural injustice.²⁶

(e) Political Contingency and Doctrinal Fragility

Finally, vulnerability remains politically contingent. Leboeuf notes that without institutionalisation into enforceable legal standards, vulnerability can be expanded or retracted depending on political climate (Leboeuf, 2022, pp. 10–11). Krivenko similarly documents inconsistency in the ECtHR's approach to asylum seekers, particularly after 2015, where earlier protections have been weakened (2022, pp. 210–212). This fragility aligns with the thesis's conceptual concerns in Chapter 2: unless vulnerability

²⁵ General doctrinal pattern discussed in Leboeuf (2022, pp. 4–11) and Krivenko (2022, pp. 207–212).

²⁶ Systemic critique drawn from Moreno-Lax & Vavoula (2024, pp. 4–10).

is anchored structurally, it becomes discretionary, unpredictable, and susceptible to political winds.²⁷

Taken together, these patterns reveal a broader tension within the Strasbourg system. On the one hand, vulnerability enables a more context-sensitive and relational form of human-rights reasoning; on the other, it remains constrained by selective recognition, limited equality integration, and political instability. The ECtHR thus approximates—but does not yet fully realise—the layered and intersectional conception of vulnerability developed in Chapter 2, where structural, situational, and experiential dimensions interact to produce complex forms of precarity. While the Court’s case law opens important avenues for doctrinal innovation, it has not yet consolidated vulnerability as a structural problem demanding systemic remedies. These ambivalences serve as a critical lens and a cautionary precedent for the assessment developed in Chapter 4, which examines how EU asylum governance operationalises—and at times transforms—vulnerability within its legal and institutional frameworks.

3.3.4. Between Group Recognition and Individualised Harm: Dual Axes of Vulnerability in ECtHR Reasoning

A distinctive feature of the ECtHR’s vulnerability jurisprudence is its dual deployment of the concept: on one axis, as an attribute of structurally marginalised social groups; on the other, as a condition inferred from an individual’s embodied experience of harm (Leboeuf, 2022, pp. 3–5). This bifurcated approach constitutes both a doctrinal resource and a site of tension (Leboeuf, 2022, pp. 4–5). Group-based recognition enables the Court to highlight systemic disadvantage, while individualised assessment facilitates context-specific protection. However, the interaction between these modes is far from seamless. At best, they coalesce to offer layered and responsive reasoning; at worst, they produce rigid categorisations or depoliticised framings that obscure the dynamic, relational character of vulnerability (Leboeuf, 2022, pp. 5, 8; Catanzariti, 2022, pp. 1394–1396). This duality already resonates with the layered framework developed in Chapter 2, but the Court rarely articulates these links explicitly.

Group-based vulnerability appears most prominently in cases concerning minorities such as the Roma. In *Chapman v. the United Kingdom*, the Grand Chamber recognised the Roma as a vulnerable minority, using this recognition to narrow the state’s margin of appreciation under Article 8. Similarly, in *D.H. and Others v. the Czech Republic*, the Court acknowledged systemic discrimination against Roma children in education. These rulings advance the visibility of structural inequality (Leboeuf, 2022, pp. 4–6), but critics caution against the essentialising risks of identity-based vulnerability. As Peroni and Timmer (2013) argue, judicial reliance on fixed identity markers risks reifying vulnerability into a status—categorical rather than

²⁷ Leboeuf (2022, pp. 10–11); Krivenko (2022, pp. 210–212).

contextual, static rather than relational. Catanzariti (2022, pp. 7–8) reinforces this concern, showing how such identity-based framings in ECtHR case law may obscure intersectional disadvantage and reduce complex experiences into administratively legible but normatively shallow categories. This reflects a key concern raised in Chapter 2: group labels can obscure the structural and situational processes that actually generate harm.

These risks are especially acute in the Court's treatment of children. This cautions against construing childhood as intrinsically vulnerable, arguing that such framing can obscure the need for proactive and tailored legal obligations. Symbolic recognition must translate into responsive duties that address the situational dynamics of disadvantage (Leboeuf, 2022, pp. 5, 8).

Running alongside this group-based logic is a more individualised mode of vulnerability recognition (Leboeuf, 2022, pp. 6–7). Here, the Court evaluates harm through the applicant's particular circumstances—exposure to neglect, degradation, or confinement. *M.S.S. v. Belgium and Greece* exemplifies this approach: the applicant's vulnerability as an asylum seeker and as a destitute individual shaped the Court's proportionality analysis under Article 3. Yet even in this nuanced reasoning, the applicant was framed largely as a passive subject, not as a rights-holder embedded in intersecting regimes of exclusion (Leboeuf, 2022, p. 7; Krivenko, 2022). Iglesias Sánchez (2015) adds that legal status itself—such as irregular migration—can constitute and reinforce vulnerability, underscoring law's role in producing the very harms it later adjudicates. This demonstrates how the experiential and situational layers of vulnerability are sometimes acknowledged, while the structural layer remains underexamined.

The Court's most promising interventions occur when it bridges these two axes. *Tarakhel v. Switzerland* stands out as an instance of jurisprudential maturity. There, the Court recognised the applicants as members of a vulnerable group (families with children) and simultaneously required individualised guarantees regarding their reception conditions. This integration of structural diagnosis and situational remedy avoids both abstraction and paternalism (Leboeuf, 2022, pp. 5, 10; Boutier, 2024). Yet such cases remain exceptions. Hierarchies of recognition persist: Roma, children, and asylum seekers are routinely identified as vulnerable, while others—such as racialised non-Roma migrants or gender-nonconforming individuals—remain juridically invisible (Catanzariti, 2022, pp. 1396–1397).

This partial visibility reflects broader critiques of institutional practice. As Brandl and Czech (2015) argue in the EU asylum context, categorisations of “special needs” can bureaucratised vulnerability into administrative checklists, reducing it to a compliance mechanism rather than a dynamic legal concept. This reification echoes concerns raised in Chapter 2: when vulnerability is detached from its relational and structural

dimensions, it risks functioning as a classificatory tool rather than a normative principle (Leboeuf, 2022, pp. 5, 10; Catanzariti, 2022, pp. 1392–1393, 1398–1400).

In sum, the ECtHR’s dual approach offers significant jurisprudential potential, but its emancipatory promise is only partially realised. Group-based recognition can expose systemic harm but may essentialise identity; individualised reasoning can capture embodied experience but risks depoliticisation. The most effective jurisprudence holds these modes in productive tension—linking collective diagnosis with personalised remedy, and combining experiential insights with structural critique. The extent to which this layered reasoning can be institutionalised across legal systems is the focus of Chapter 4.

3.3.5. Vulnerability in the Jurisprudence of the CJEU: Between Codification and Constraint

Unlike the ECtHR’s flexible, interpretive use of vulnerability, the CJEU’s engagement is rooted in codified legal frameworks, particularly within the Common European Asylum System (CEAS). This divergence reflects two fundamentally different juridical logics: where Strasbourg constructs vulnerability as an interpretive principle, Luxembourg deploys it as a statutory trigger embedded in secondary legislation. As Leboeuf (2022, pp. 3–4) notes, this codification-oriented approach aligns with the CJEU’s institutional preference for legal certainty and procedural autonomy.

Vulnerability enters CJEU jurisprudence through specific legal obligations—most notably in the Reception Conditions Directive (2013/33/EU, Arts. 21–25) and the Asylum Procedures Directive (2013/32/EU, Arts. 24–25). These provisions require Member States to identify and safeguard applicants with “special reception” or “procedural” needs, including children, survivors of torture, and persons with disabilities. Leboeuf (2022, pp. 3–4) underlines that such codified entry points limit interpretive discretion but offer legal clarity. The CJEU applies these safeguards purposively, invoking the principle of *effet utile* to ensure their practical implementation. In *Saciri*, the Court clarified that cash allowances offered in lieu of housing must actually meet the needs of vulnerable applicants, thus affirming the enforceability of socio-economic guarantees (Leboeuf, 2022, p. 5).

The jurisprudence extends to procedural settings as well. In *C.K.*, the Court suspended a Dublin transfer due to the transferee’s severe illness, recognising that vulnerability could render removal inhuman or degrading. Similarly, *Jawo and K.A. and Others*²⁸ reaffirmed that reception conditions, family unity, and individual circumstances must

²⁸ *K.A. and Others v Belgium* Case C-82/16, EU:C:2018:308.

shape procedural decisions. These cases illustrate a consistent doctrinal trajectory: vulnerability operates within legislatively defined categories, yet the Court emphasises that these categories must be interpreted in light of individual circumstances (Leboeuf, 2022, pp. 5–7).

While this model offers legal precision and enforceability, it also imposes significant limitations. Tying protection to predefined categories may exclude individuals whose experiences do not align with codified profiles. Scholars such as Diciotti (2018), Besson (2014), and Moreno-Lax (2021) warn that legal formalism may fail to capture diffuse or intersectional harms—such as gendered trauma, psychosocial precarity, or legal liminality—that resist checklist capture. This reflects a broader dynamic in European human-rights law, where juridification risks turning vulnerability into a technical or bureaucratic label detached from lived social complexity (Catanzariti, 2022, pp. 1391–1393; 1411–1413; Boutier, 2024, pp. 36–39). Leboeuf (2022, p. 10) reinforces this critique, noting that codified vulnerability categories in EU asylum law struggle to accommodate overlapping or context-specific harms that fall outside institutional recognition. This risks reproducing forms of exclusion within legal systems ostensibly designed to ensure protection.

Institutional dynamics further shape the Court’s approach. As Tinière (2023) observes, the CJEU’s selective engagement with ECtHR jurisprudence is not merely doctrinal but strategic—intended to preserve jurisdictional autonomy and consolidate interpretive authority. Leboeuf (2022, pp. 9–10) highlights that the CJEU interprets vulnerability within a rigid, codified framework, reflecting an institutional logic that prioritises legal certainty and procedural compartmentalisation over contextual sensitivity. This insulation reinforces a codification-first approach, where procedural clarity outweighs interpretive adaptability.

In contrast to the ECtHR, which uses vulnerability to recalibrate human-rights thresholds, the CJEU requires applicants to demonstrate that their harm falls within a recognised legislative category. As Boutier (2024) and Mayrhofer, Ammer, Wladasch (2025) and Leboeuf (2022) observe, this yields stronger enforceability but a narrower interpretive aperture. The result is a model that secures formal rights for certain categories of applicants but risks rendering invisible the complex, layered vulnerabilities that exceed administrative classifications.

In conclusion, the CJEU’s jurisprudence demonstrates that codification can institutionalise vulnerability effectively—but only within the limits of legislative design. As a statutory concept, vulnerability functions well in terms of enforcement, but it lacks the interpretive flexibility needed to register less visible or intersectional forms of harm - a gap that reflects broader concerns that juridification may reduce vulnerability to rigid legal categories, depriving it of its social depth (Leboeuf, 2022, p. 10; Catanzariti, 2022, p. 1412; Boutier, 2024, pp. 36–37). Whether EU asylum governance can bridge this gap is the central concern of Chapter 4.

3.4. Final Synthesis: Vulnerability as a Juridical Concept in Formation

The analysis developed in this chapter shows that vulnerability has gradually acquired doctrinal relevance across international and European human-rights systems, but in uneven and often incomplete ways. Within UN treaty bodies, early uses of vulnerability remained descriptive and group-based; over time, cumulative interpretive practice—especially in individual communications—has begun to transform vulnerability into a transversal interpretive criterion capable of lowering evidentiary thresholds, intensifying proportionality review, shaping positive obligations, and contextualising risk assessments. These developments resonate strongly with the layered, relational, and law-mediated conception of vulnerability articulated in Chapter 2. At the same time, empirical and legal-anthropological studies reveal that this evolution is filtered through institutional visibility practices, epistemic hierarchies, and procedural routines, which determine whose claims of vulnerability are recognised and how. The result is an emerging but still inconsistent framework, in which structural and intersectional harms are acknowledged intermittently and often only indirectly.

A parallel dynamic appears within the European Court of Human Rights. Strasbourg has developed the most sophisticated vulnerability jurisprudence in Europe, deploying the concept to narrow the margin of appreciation, activate positive obligations, and recalibrate thresholds of harm—particularly in cases involving asylum seekers, Roma, children, victims of gender-based violence, and persons with disabilities. Yet this case law also exhibits persistent structural limits: vulnerability is frequently tied to administratively legible groups; intersectional harms are under-theorised; equality reasoning under Article 14 remains underdeveloped; and vulnerability risks being framed as a humanitarian attribute rather than a relational condition embedded in law and institutions. As a result, the Court recognises experiential and situational vulnerability more readily than the structural dimensions that generate and perpetuate inequality. These ambivalences highlight both the doctrinal potential and the normative fragility of vulnerability as a judicial tool.

The Court of Justice of the European Union adopts a markedly different approach. Here, vulnerability enters through codified legislative categories within the CEAS, generating clear enforceability but limited conceptual elasticity. While the CJEU interprets vulnerability purposively and occasionally extends protection through individualised assessments, its reasoning remains anchored in pre-defined statutory categories. This ensures legal certainty but constrains the recognition of diffuse, intersectional, or situational harms that escape administrative classification. The Court's institutional logic thus produces a narrower interpretive horizon than that of

Strasbourg, even as it secures stronger formal guarantees for those who fall within enumerated categories.

Across these systems, a common pattern emerges. Vulnerability has become a meaningful juridical concept, but its legal salience depends on how institutions mediate recognition, translate lived experience into legally cognisable harm, and embed the concept within doctrinal structures. Where interpretive practice integrates structural and intersectional dimensions—most visible in advanced treaty-body jurisprudence and isolated ECtHR judgments—vulnerability functions as a tool of substantive equality. Where it remains tied to fixed categories or institutional routines, its potential is reduced to a classificatory device or managerial tool.

For the purposes of this thesis, these findings provide two essential insights. First, they confirm that vulnerability can serve as a dynamic interpretive device—one capable of addressing layered and relational harms—when courts treat it as a contextual and structural criterion rather than a fixed group attribute. Second, they expose the doctrinal risks that arise when vulnerability becomes fragmented, overly categorised, or detached from structural analysis. These insights form the analytical baseline for Chapter 4, which examines how EU asylum governance operationalises vulnerability in legislative frameworks, procedural design, soft-law practices, and the externalisation of asylum functions. The chapter now turns to this task.

4. Chapter 4: Understanding Vulnerability within the Common European Asylum System.

4.1. Introduction

This chapter examines how vulnerability is governed within the Common European Asylum System (CEAS). Building on the layered, intersectional, and law-mediated framework developed in Chapter 2 and the doctrinal analysis in Chapter 3, the chapter shifts from understanding vulnerability as a legal concept to analysing how it is implemented through CEAS structures. The focus is on how legislation, administrative tools, and policy choices shape the environments in which vulnerability is identified, assessed, and addressed.

Three elements guide the analysis. First, the chapter traces the evolution of vulnerability provisions across the three generations of CEAS legislation, including the 2024 reforms, showing how protection has gradually expanded but remains tied to categorical understandings of “special needs.” Second, it examines the rise of externalisation as a governance vector that relocates procedures beyond EU territory and generates new structural and situational vulnerabilities through legal uncertainty and fragmented accountability. Third, it analyses the EUAA’s soft-law tools—especially the IPSN Tool and the 2024 Operational Standards and Indicators—which represent the most explicit attempt to operationalise vulnerability through indicators, assessment models, and procedural safeguards.

Methodologically, the chapter combines legal analysis with institutional and governance perspectives, assessing CEAS instruments through the evaluative lens developed in Chapter 2. The question is whether CEAS mechanisms reflect a dynamic, relational understanding of vulnerability or whether they continue to reproduce static, category-based logics. By mapping these dynamics, the chapter establishes the foundation for Chapter 5, where the framework is applied to the specific context of SOGIESC-diverse applicants.

4.2. The Common European Asylum System. Historical overview.

The Common European Asylum System (CEAS) represents a comparatively new effort dedicated to refugee protection in contrast to similar regional initiatives. The

CEAS was primarily established in 1999 while Africa and Latin America had already embraced regional instruments several decades prior, exemplified by the 1969 Convention Covering Specific Aspects of Refugee Challenges in Africa and the 1984 Cartagena Declaration on Refugees, along with several other supplementary agreements.²⁹ The most significant difference between the CEAS and other mentioned regional instruments derives from their main purpose. The African and Latin American regional instruments in the sphere of refugee protection have been adopted to clarify and complement the Geneva Convention, while the CEAS had an ambition to create a common system that elaborates on different components of the refugee protection and particularly, the asylum process in a clear and logical manner.³⁰ The CEAS design includes various elements of the asylum process, such as reception of asylum seekers, refugee status determination and qualification procedures, withdrawal of application, guidance regarding the State responsible for processing of asylum application and as well as other procedural elements. Also, the CEAS expands the forms of international protection by introducing subsidiary protection and temporary protection. Those forms of international protection are not included in the Geneva Convention and, thus, are not available on the territory of the States that operate solely on the basis of the Geneva Convention. Consequently, the CEAS stands as an ambitious initiative to systematize and standardize asylum procedures, offering definitive guidance to European Member States.

Additionally, the endeavour to establish a common asylum system is an essential component of a broader framework, which is inherently tied to the EU construction, abolition of internal borders and the need for control where asylum and the fight against criminality have been put on equal footing.³¹

The development of the CEAS is intricate, and it continues to evolve. The groundwork for establishing a common system to oversee asylum procedures in the EU began over three decades ago. The EU cooperation on asylum policy, particularly the necessity for additional measures to regulate the movement of asylum seekers, became a shared priority among Member States between 1985 and 1990, caused by the abolition of internal borders under the Schengen Conventions.³² To avoid "asylum shopping" the Member States agreed on a common mechanism to determine which

²⁹ UNHCR. (1984). *Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984*. <https://www.unhcr.org/fr-fr/en/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central>; Organisation of African Unity. (1969). *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Addis Ababa.

³⁰ Vincent Chetail, 'The Common European Asylum System: Bric-à-Brac or System?' (14 February 2015) 3–4 <https://papers.ssrn.com/abstract=2564990> accessed 16 March 2025.

³¹ *ibid* 4.

³² P Boeles and others, 'European Migration Law' [2009] Performance Evaluation - PE. Boeles P et al. (2014) *European Migration Law*. Morsel: Intersentia. 2nd edition, 246-247, Hemme Battjes, *European Asylum Law and International Law* (M Nijhoff 2006) 30.

Member State was responsible for processing asylum applications.³³ The mechanism was first laid down in the 1990 Convention Implementing the Schengen Agreement, which was later replaced by the Dublin Convention 1997.³⁴

The Maastricht Treaty of 1992 formed the foundation for the European Union (EU), structured around three fundamental pillars: the European Communities, the Common Foreign and Security Policy, and Cooperation in Justice and Home Affairs. Harmonization of Member States' asylum policies was formally recognized as a common priority within the third pillar devoted to the Cooperation in the Fields of Justice and Home Affairs.³⁵ Later in 1997, the Treaty of Amsterdam brought about a significant change by transferring asylum matters from the third pillar, "Inter-governmental", to the first pillar, "Community".³⁶ Therefore, asylum fell under the jurisdiction of the European Community, initiating the progression of the harmonization process.³⁷ However, the notion of CEAS was not yet mentioned in the Treaty of Amsterdam. It was introduced later in 1999 by the European Council in its Tampere Conclusions, which constitute the founding act of the CEAS.³⁸³⁹

The first phase of the development of the CEAS (1999 - 2004) is characterized by the intention of the legislator to set "minimum standards" for the asylum measures as well as establishing the rules governing the determination of the Member State responsible for examining an asylum application.⁴⁰ During the first phase of CEAS, between 1999 and 2004, the following legislative acts were adopted:

- Dublin II regulation⁴¹
- Eurodac Regulation⁴²
- Reception Condition Directive⁴³
- Qualification Directive⁴⁴
- Asylum Procedures Directive⁴⁵.

³³ On "asylum shopping" see: Crawley, H., Duvell, F., Jones, K., McMahon, S., & Sigona, N. (2016). Destination Europe?: Understanding the dynamics and drivers of Mediterranean migration in 2015

³⁴ Convention Implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders (Schengen Implementing Convention), 19 June 1990 [2000] OJEU L 239/19.; Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention) [1997] OJEU C254/1.

³⁵ Treaty of Maastricht, Title VI on Cooperation in the Fields of Justice and Home Affairs, and attached Declaration on Asylum

³⁶ The Amsterdam Treaty. EUR-Lex' <<https://eur-lex.europa.eu/EN/legal-content/summary/the-amsterdam-treaty.html>> accessed 16 March 2024.

³⁷ Chetail, 2015, p. 10.

³⁸ *ibid* 11.

³⁹ Council of the European Union (1999) Presidency Conclusions. Tampere European Council. 15-16 October 1999.

⁴⁰ *ibid* 11–12.

⁴¹ Regulation (EC) 343/2003.

⁴² Regulation (EC) 2725/2000

⁴³ Directive 2003/9/EC.

⁴⁴ Directive 2004/83/EC.

⁴⁵ Directive 2005/85/EC.

The first phase CEAS represents a major legislative achievement in the sphere of European asylum law as, firstly, the material scope of the legislative package was particularly broad and inclusive, as secondly, it identified four main categories of persons in need of protection and clarified their respective legal status: asylum-seekers, refugees, beneficiaries of subsidiary protection and temporary protection.⁴⁶

The issues regarding vulnerable asylum seekers received some attention during the first phase of the CEAS. The European Commission in the communication following the Tampere Conclusions proposed the challenges and objectives to be met by the Member States, highlighting the importance “to identify those who genuinely need protection and respond properly to situation of vulnerability”.⁴⁷ Furthermore, the document called the Member States to adopt a “special approach in view of the vulnerability of certain protected persons due to the experience of political persecution or prison, torture and the circumstances of their flight”.⁴⁸

Despite the adoption of numerous instruments, the first phase of the CEAS has drawn criticism from various stakeholders, including the UNHCR, non-governmental organizations (NGOs), academics, and even the European Commission.⁴⁹ The critique was primarily focused on the limits inherent to the adoption of “minimum” standards, also the stakeholders questioned the compatibility of the EU legislation and the Geneva Convention.⁵⁰ The evaluation of the first phase of the CEAS was offered in a series of reports presented by the Commission, as well as the “Green Paper” on the future of the CEAS.⁵¹ The Green Paper addressed the necessity for an appropriate

⁴⁶ Chetail 2015, p. 12.

⁴⁷ European Commission, ‘Communication from the Commission to the Council and the European Parliament, Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum’ COM (2000) 755 final para 1.2.

⁴⁸ European Commission, ‘Communication from the Commission to the Council and the European Parliament, Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum’ COM (2000) 755 final para 3.3.

⁴⁹ See f.ex. European Council on Refugees and Exiles ECRE, *Broken Promises, Forgotten Principles: An ECRE Evaluation of the Development of EU Minimum Standards for Refugee Protection, Tampere 1999 - Brussels 2004* (European Council on Refugees and Exiles 2004); Madeline Garlick, ‘Asylum Legislation in the European Community and the 1951 Convention: Key Concerns Regarding Asylum Instruments Adopted in the ‘First Phase’ of Harmonization’, *Security Versus Freedom?* (Routledge 2006); Elspeth Guild, ‘Seeking Asylum: Storm Clouds between International Commitments and EU Legislative Measures’ [2004] *European Law Review* - EUR LAW REV 198; Steve Peers, ‘Human Rights, Asylum and European Community Law’ (2005) 24 *Refugee Survey Quarterly* 24; UNHCR, ‘The European Union, Asylum and the International Refugee Protection Regime: UNHCR’s Recommendations for the New Multiannual Programme in the Area of Freedom, Security and Justice’ <<https://www.unhcr.org/libraries/pdf.js/web/viewer.html?file=https%3A%2F%2Fwww.unhcr.org%2Fsites%2Fdefault%2Ffiles%2Flegacy-pdf%2F43661f352.pdf>> accessed 21 March 2024.

⁵⁰ Chetail 2015, p. 14.

⁵¹ Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system, COM (2007) 299 final; ‘Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers’ COM (2007) 745 final; ‘Report from the Commission to the European Parliament and the Council on the application of Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee

response to situations of vulnerability, along with other shortcomings identified in the evaluation of the first phase of the CEAS. The European Commission in the Green Paper highlighted that "serious inadequacies exist with regard to the definitions and procedures applied by Member States for the identification of more vulnerable asylum seekers"⁵². Furthermore, the Commission acknowledged the necessity "to prescribe in more depth and detail the ways in which the special needs of the most vulnerable asylum seekers should be identified and addressed in all stages of the asylum process".⁵³

The second phase of the CEAS was prearranged during the 1999 Tampere Conclusions, where the first package of asylum legislation was conceived as an initial step toward eventually establishing a common procedure and status.⁵⁴ The aims of establishing a common asylum procedure and a uniform status were clearly emphasized by the European Council in both its 2004 Hague Programme and the 2009 Stockholm Programme.⁵⁵ In 2005, the Commission Action Plan Implementing the Hague Programme was adopted.⁵⁶ Later in 2008 the Commission proposed amendments and revisions of the first phase instruments in its Policy Plan on asylum: An Integrated Approach across the EU.⁵⁷

The second phase of the CEAS made notable progress influenced by the Treaty of Lisbon signed in 2007 and entered into force in 2009. This resulted in three key milestones for the common asylum policy in the European union. Firstly, the notion of the CEAS was formally outlined in Article 78 TFEU and thus, the establishing of a common asylum system became a specific legal duty binding upon Member States and EU institutions.⁵⁸ Secondly, the core elements of the CEAS have become primary EU legal objectives, and set no longer merely 'minimum' but 'common' or 'uniform' standards.⁵⁹ Article 78 (2) TFEU introduced seven core components of the CEAS, specifying partnership and cooperation with third countries as a distinct element, which later emerged as primary areas of focus during the CEAS development phase (more in Chapter 5 on the future of the CEAS and externalisation). Thirdly, amended by the Lisbon Treaty, Article 6 (1) TFEU has established the CFREU of 7 December 2000

status' COM (2010) 465 final; European Commission 'Green Paper on the future Common European Asylum System' COM (2007) 301 final (Green Paper 2007).

⁵² Green paper 2007, para 2.4.1

⁵³ Green paper 2007, para 2.4.1

⁵⁴ Chetail 2015, p. 17.

⁵⁵ The Hague Programme: strengthening freedom, security and justice in the European Union [2005] OJEU C 53/1; Stockholm Programme: an open and secure Europe serving and protecting citizens [2010] OJEU C 115/1.

⁵⁶ Council and Commission Action Plan Implementing the Hague Programme on Strengthening Freedom, Security and Justice in the European Union, 2005 OJ C 198/1.

⁵⁷ Commission of European Communities, Policy Plan on Asylum, EU [COM(2008) 360 final.

⁵⁸ Chetail 2015, 19–20., see also European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum – An Integrated Approach to Protection Across the EU' COM (2008) 360 final.

⁵⁹ *ibid* 20.

with equal legal status as the EU founding treaties, marking a positive step in embedding refugee rights within the framework of human rights law.⁶⁰ Generally, the second phase of the development of the CEAS is characterised by the establishment of a legal normative frame set by the Lisbon Treaty. By the end of the second phase a recast of the Qualification Directive⁶¹, the Reception Conditions Directive⁶², the Asylum Procedures Directive⁶³, the Dublin Regulation⁶⁴ and the Eurodac Regulation⁶⁵ were adopted.

Another achievement of this phase was the establishment of the European Asylum Support Office (EASO) in 2010. Founding of the EASO was supported by the EU Regulation 439/2010.⁶⁶ Initially, EASO's mandate encompassed supporting practical cooperation among EU Member States regarding asylum issues, providing operational assistance to those facing specific challenges in asylum matters and promoting a consistent implementation of the CEAS.⁶⁷ According to the EU Regulation 439/2010, one way of providing technical support to the Member States was development of technical documents as guidelines and operating manuals, which must give due regard to relevant UNHCR guidelines, when addressing matters concerning international refugee law.⁶⁸ Some of the documents developed by the EASO address vulnerability in the context of the CEAS. "Activities on vulnerable applicants" which contained practical support tools, guides and information material to assist the operational activities of the Member States were included in EASO's Work Programming document for 2018 – 2020.⁶⁹ In 2019 EASO developed a "Tool for Identification of Persons with Specific Needs" to help the practitioners to assess special needs of asylum seekers using vulnerability indicators.⁷⁰ The tool is based on the group-based approach to vulnerability and repeats the indicators enshrined in the CEAS instruments as for example, age, sex, family status, physical and psychological indicators of special needs. Although the tool could be valuable for the asylum authorities of the Member States, it lacks the ability to offer conceptual insights into vulnerability. The supporting information provided on the official website of the tool

⁶⁰ *ibid.*

⁶¹ Directive 2011/95/EU

⁶² Directive 2013/33/EU

⁶³ Directive 2013/32/EU

⁶⁴ Regulation (EU) 604/2013

⁶⁵ Regulation (EU) 603/2013

⁶⁶ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a

European Asylum Support Office (25 May 2010) OJ L 132/11.

⁶⁷ Regulation (EU) No 439/2010, 13

⁶⁸ EU Regulation 439/2010, Article 12 (2).

⁶⁹ EASO, 'EASO Single Programming Document 2018 – 2020, Amendment 1' (31 July 2018), 73.

⁷⁰ The tool was initially developed within the EASO Quality Matrix process, 'EASO Tool for Identification of Persons with Special Needs. Currently it is available under EUAA tools: <https://ipsn.euaa.europa.eu/ipsn-tool?q=ipsn-tool> (accessed March 2024)

underlines that “this practical tool can in no way replace the need for training and efforts to raise awareness about potential special needs in the asylum context”.⁷¹

Another initiative accomplished by the EASO that addresses vulnerability in the asylum context is the establishment of a “Vulnerability Expert Network” in 2018. The network aims to promote alignment with EU standards regarding the identification, evaluation, and assistance provided to vulnerable individuals within national asylum and reception systems. The group is composed by the representatives from different Member States authorities, UNHCR, EU Commission and Fundamental Rights Agency. The work of the group is based on discussion and sharing of practical experiences and challenges related to vulnerable persons; exchange of good practices, data analysis on vulnerable persons from internal and external sources.⁷² Later, since its establishment, the EUAA has progressively expanded its operational toolkit, including the Identification of Persons with Special Needs Tool (IPSN), the Special Needs and Vulnerability Assessment Tool (SNVA), and the 2024 Operational Standards and Indicators on Reception and on Vulnerability, which now serve as core instruments for harmonising vulnerability identification and assessment across Member States (analysed in 4.4).

The evaluation of the second phase resulted in varied and divergent opinions from the stakeholders. The most enthusiastic view was expressed by the UNHCR in its statement of June 2013 where the agency welcomed the new asylum legislative package and highlighted its potential to contribute to harmonised asylum systems and to improve refugee protection standards across the Union.⁷³ In contrast to optimistic appraisal of the CEAS instruments, some NGOs proposed a critical position, empathising the lacks of legal clarity and the ambiguity of provisions that grant Member States excessive discretion, thereby presenting challenges to achieving harmonization across the Member States.⁷⁴

⁷¹ EUAA tools: <https://ipsn.euaa.europa.eu/ipsn-tool?q=ipsn-tool>, “About this tool”, “How does the tool relates to other EASO support tools?”.

⁷² See EUAA, Vulnerability, <https://euaa.europa.eu/asylum-knowledge/vulnerability#:~:text=The%20EUAA%20Vulnerability%20Experts%20Network,in%20need%20of%20international%20protection> (accessed March 2024)

⁷³ UNHCR, ‘Moving Further Toward a Common European Asylum System. UNHCR’s Statement on the EU Asylum Legislative Package. June 2013’ (UNHCR) <<https://www.unhcr.org/media/moving-further-toward-common-european-asylum-system-unhcrs-statement-eu-asylum-legislative>> accessed 21 March 2024.

⁷⁴ ‘Joint_ngo_statement_asylum_package_10_june_2013.Pdf’ <https://www.enar-eu.org/wp-content/uploads/joint_ngo_statement_asylum_package_10_june_2013.pdf> accessed 21 March 2024. AEDH, Amnesty International, Caritas Europa, Churches’ Commission for Migrants in Europe, European Council on Refugees and Exiles, International Catholic Migration Commission, International Rehabilitation Council for Torture Victims, Jesuit Refugee Service, Quaker Council for European Affairs, Save the Children, *Establishing a Common European Asylum Syatem: Still a Long Way to Go*. NGO Statement on the Occasion of the Final Vote on the Asylum Package, Brussels, 10 June 2013.

The spectrum of academic opinions was less dramatic and contained balanced viewpoints, acknowledging certain enhancements, yet also maintaining scepticism regarding the accomplishments of this phase.

Steve Peers, in his paper “The Second Phase of the Common European Asylum System: A Brave New World or a Lipstick on a Pig?” concludes:

“Taken as a whole, the second-phase legislation provides for very limited improvements as regards reception conditions, modest improvements as regards procedures and qualification, no real improvement as regards the Dublin rules and a significant reduction in standards as regards Eurodac. On balance the overall scoreboard is modestly positive, but as regards the Dublin rules in particular there have only been cosmetic changes to the previous objectionable legislation. This legislation in particular deserves the description of being merely ‘lipstick on a pig’.”⁷⁵

Even other scholars as H. O’Nions, F. Toscano, F. Ippolito and S. Velluti shared similar viewpoints regarding the progress made through the second phase of the CEAS.⁷⁶ Chetail explains the deviation in the opinions of stakeholders regarding the second phase of the CEAS through epistemology, referring to the subjectiveness of the relevant interpretive community and their own perception of what should be the CEAS.⁷⁷ The scholar concludes:

“While improving the previous instruments in several respects, the second phase of the CEAS is nonetheless neither a revolution nor an evolution. Instead, it is both a consolidation and a specification of the asylum *acquis* inherited from the first phase instruments. [...]. The recast instruments must be viewed more modestly as a new and important step – but not the last one – toward the establishment of a truly uniform status and common procedures”.⁷⁸

The next phase of the CEAS was influenced by the refugee influx to the European continent in 2015 – 2016, which exposed the structural weaknesses and shortcomings within the EU’s asylum and migration policies. The European Parliament started actively developing proposals for further development of the asylum system enhance

⁷⁵ Steve Peers, ‘The Second Phase of the Common European Asylum System: A Brave New World – or Lipstick on a Pig?’ (2013) 220 *Statewatch* 16. p 16

⁷⁶ Francesca Ippolito and Samantha Velluti, ‘The Recast Process of the Eu Asylum System: A Balancing Act Between Efficiency and Fairness’ (2011) 30 *Refugee Survey Quarterly* 24; Helen O’Nions, ‘Asylum – A Right Denied: A Critical Analysis of European Asylum Policy | International Journal of Refugee Law | Oxford Academic’ <<https://academic.oup.com/ijrl/article-abstract/27/3/522/2362524>> accessed 21 March 2024; F Toscano, ‘The Second Phase of the Common European Asylum System: A Step Forward in the Protection of Asylum Seekers? IES WORKING PAPER 7/2013’ (2013) <<https://www.semanticscholar.org/paper/The-Second-Phase-of-the-Common-European-Step-Forward-Toscano/1136f8a533ac98d3c2073ee197b61c51976c6c3c>> accessed 21 March 2024.

⁷⁷ Chetail 2015, p. 27.

⁷⁸ *ibid.*

border security, facilitate legal labour migration, and foster the integration of refugees.⁷⁹ On 13 May 2015, the European Commission proposed a comprehensive strategy to tackle the immediate challenges of the migration crisis in the European Agenda on Migration.⁸⁰ In April 2016, the European Commission adopted a communication, “Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe”.⁸¹ The document reaffirmed the need to put in place the tools to better manage migration in times of normal and high migratory pressure, and achieving greater convergence on CEAS rules across EU Member States. As a result, two package proposals to complete the reform of the CEAS were introduced by the commission. The first package of reforms was adopted on 4 May 2016 and included proposals for the reform of Dublin system, Eurodac system and a proposal for establishing a European Union Asylum Agency, which would replace the EASO.⁸² The second package was adopted on 13 July 2016 and included proposals for new regulations to replace the Asylum Procedures Directive and the Qualification Directive, also a proposal for a recast of the Reception Conditions Directive.⁸³ The process of reforming the CEAS from 2016 until today has been marked by challenging negotiations among Member States, reflecting the intricate dynamics within the European Union's political and social landscape.⁸⁴

On 23 September 2020, the European Commission presented a New Pact on Migration and Asylum which continued the reform of the CEAS. The Pact is a set of policy proposals that was aimed at creating a fairer, more efficient and more sustainable migration and asylum process in the European Union. It adopts a “humane approach” and promotes solidarity between the Member States and seeks to address various challenges faced by the EU in managing migration flows and promoting solidarity among the EU Member States.⁸⁵

The negotiation of the legislative instruments included in the Pact has taken more than three years. Finally in December 2023 the European Parliament and the Council reached an agreement on the final version of the Pact. Later in February 2024, the

⁷⁹ European Parliament, The EU response to migration and asylum, <https://www.europarl.europa.eu/topics/en/article/20170629STO78629/the-eu-response-to-migration-and-asylum>

⁸⁰ European Commission, Communication on a European Agenda on Migration, COM (2015) 240.

⁸¹ European Commission, ‘Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe’ COM (2016) 197 final.

⁸² European Commission ‘Towards a sustainable and fair Common European Asylum System’ (Press Release) (4 May 2016);

⁸³ European Commission ‘Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy’ (Press Release) (13 July 2016).

⁸⁴ See for example: Geddes, A. (2018). *Refugee and Asylum Policy: The Challenge of Reform*. Oxford University Press; Kneebone, S. (2020). The European Union's asylum and migration policy: squaring the circle. *Journal of European Public Policy*, 27(5), 674-692.

⁸⁵ European Commission, Communication on a New Pact on Migration and Asylum COM(2020) 609 (23 September 2020)

Pact was approved by the EU Member States' representatives. The Pact consists of five key laws which reform the EU asylum and migration system:

- Eurodac Regulation: a revised common database gathering more accurate and complete data to detect unauthorised movements.⁸⁶
- Screening Regulation: uniform rules concerning the identification of non-EU nationals upon their arrival at the external EU border.⁸⁷
- Asylum Procedures Regulation: a new more effective mechanism for asylum, return and border procedures.⁸⁸
- Asylum and Migration Management Regulation: a new solidarity mechanism amongst Member States to balance the responsibility for asylum applications within the European Union which replaces the Dublin Regulation.⁸⁹
- Crisis and Force Majeure Regulation: a new mechanism to ensure the EU preparedness for situations of crisis.⁹⁰

Moreover, the Pact introduces new versions of the Reception Conditions Directive, Qualification Regulation, Return Border Regulations and introduces a Regulation Establishing a Union Resettlement Framework.⁹¹ At the moment of writing (March 2024), all the approved legislative instruments still need to be formally adopted by the European Parliament and the Council.

⁸⁶ Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of "Eurodac" for the comparison of biometric data for the effective application of Regulation (EU) No 604/2013 and Directive 2001/55/EC, for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240, (EU) 2019/818 and (EU) 2017/2226. 6366/24 9 February 2024

⁸⁷ Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817. 6403/24 9 February 2024

⁸⁸ Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. 6375/24 9 February 2024

⁸⁹ Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund]. 6365/24 9 February 2024

⁹⁰ Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum. 6379/24 9 February 2024

⁹¹ Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast). 6381/24 9 February 2024; Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. 6367/24 9 February 2024; Proposal for a Regulation (EU) .../... of the European Parliament and of the Council of ...establishing a return border procedure and amending Regulation (EU) 2021/1148. 6377/24 9 February 2024; Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council. 6368/24 9 February 2024

The new structure of the CEAS clearly indicates a shift from directives to regulations proposed by the Pact. This transition aims to enhance the harmonization and standardization of asylum procedures across EU Member States. By improving efficiency, effectiveness, and legal clarity within the asylum system, while fostering cooperation and solidarity among Member States, this evolution demonstrates the EU's commitment to establishing a more unified and equitable framework for asylum protection throughout the European Union.⁹²

Under EU law, the difference between directives and regulations lies in their direct applicability. While regulations directly become part of the national law of the Member States and are directly applicable and enforceable, directives have a different legal nature. Directives do not have direct applicability and require transposition into the national laws of Member States. They set out specific goals or results that Member States are required to achieve; they allow flexibility in how those goals are achieved through national laws. This distinction has significant implications for how the concept of vulnerability is understood and assessed by the Member States.

The protection of vulnerable groups is one of the key aspects of the Pact. The Pact introduces enhanced protection for the vulnerable asylum seekers in the processes of relocation between the Member States, vulnerability assessments during the pre-entry screening process and exemptions in the context of border procedures. The Commission identified children in migration as particularly vulnerable and highlighted the need of their protection in line with international refugee law and the EU Charter of Fundamental Rights.⁹³ Furthermore, in relation to vulnerability protection, the Pact emphasises the risks for women and girls of becoming victims of trafficking for sexual exploitation and other forms of gender-based violence, both along the migration routes and in the reception centres. The Commission identifies on the need for early identification of potential non-EU victims of trafficking in human beings, as a separate theme for vulnerability assessment during the asylum procedures.⁹⁴

The externalisation of asylum processing is analysed independently in sub-chapter 4.5.

The New Pact on Migration and Asylum calls for solidarity, responsibility and respect for human rights and it represents the latest and the most advanced step in the EU migration and asylum policy. The legislative instruments of the Pact will be further analysed in the next sub-chapters. Furthermore, as the Pact sets the ground for the

⁹² European Commission, 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe' COM (2016) 197 final.

⁹³ European Commission, Communication on a New Pact on Migration and Asylum COM(2020) 609 (23 September 2020), 2.4

⁹⁴ European Commission, Communication on a New Pact on Migration and Asylum COM(2020) 609 (23 September 2020), 2.4

EU external action (in particular, externalisation of asylum procedures), it will be further analysed in sub-chapter 4.5.

4.3. Vulnerability in the evolution of the Common European Asylum System.

The following subsections examine the development of the concept of vulnerability within each component of the CEAS across its three legislative phases. The analysis aims to evaluate both the conceptual advancements and the practical value of vulnerability in the European asylum process and its role in the protection of vulnerable asylum seekers. The analysis seeks to understand *who* and *why* is vulnerable under the CEAS. Additionally, it investigates the effectiveness of the guidance provided to Member States in the CEAS legislative tools for operational procedures.

4.3.1. Vulnerability in the evolution of the Reception Condition Directive

The first phase Reception Condition Directive was presented in the Directive 2003/9/EC adopted in 2003 and implemented by the Member States in 2005. The 2003 Reception Condition Directive lays down the minimum standards for the reception of asylum seekers, including accommodation, livelihood, education, access to labour market and other important aspects related to asylum seekers' reception by the EU Member States during the time their asylum claim is being processed. The language of the 2003 Reception Condition Directive doesn't extensively incorporate the term "vulnerability", instead, it addresses the needs of vulnerable asylum seekers through the provisions that outline requirements for groups with "special needs." This drafting choice reflects an early, categorical framing of vulnerability—recognising need via group labels rather than via a layered, relational analysis (Chapter 2)—and anticipates many of the operational tensions that follow.

The examination of the 2003 Reception Condition Directive reveals that this legislative tool includes provisions designed to protect the needs of vulnerable applicants and to take into consideration individual aspects of each case. The Preamble of the 2003 Reception Condition Directive states that "[r]eception of groups with special needs should be specifically designed to meet those needs".⁹⁵ Article 13 calls the Member States to "ensure that the standard of living is met in the specific situation of persons who have special needs" and requires an individual assessment of the reception needs of vulnerable asylum seekers.⁹⁶ Further, Chapter IV of the 2003 Reception Condition Directive provides a set of provisions for persons with special needs. Article

⁹⁵ RCD Preamble

⁹⁶ RCD 2003, art 13 (2)

17 (1) of the 2003 Reception Condition Directive calls the Member States to take into account the "specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subject to torture, rape or other serious forms of psychological or sexual violence [...] in implementing the provisions [...] relating to material reception conditions and health care."⁹⁷ Article 17 (2) clarifies further that clause 17 (1) "shall apply only to persons found to have special needs after an individual evaluation of their situation". Thus, the first phase Reception Condition Directive provides initial guidance to the Member States on which categories should be taken into account during the vulnerability assessment. The legislator refers to the categories of vulnerable applicants using "such as" formulation, which makes the proposed list open-ended and allows the Member States to include additional categories of vulnerable applicants within the context of a "specific situation".⁹⁸ Moreover, the legislator gives a particular attention to the special needs of categories as minors, unaccompanied minors and victims of torture addressing violence them in separate provisions.⁹⁹ Read through the lens of Chapter 2, this combines a non-exhaustive categorical signal ("such as...") with a case-by-case assessment hook, but without specifying how structural or experiential factors should be captured or weighed.

Analysis of the first phase Reception Condition Directive through the prism of the conceptual framework proposed by this thesis reveals the following observations. Firstly, the conceptualisation of vulnerability in the first phase Reception Condition Directive includes the group-based and the individual dimensions of vulnerability, aligning with the conceptual framework proposed by this research. On one hand the legislative tool provides a non-exhaustive list of categories of vulnerable applicants, that can be directly used by the Member States in operational procedures, on the other hand the Directive clarifies that the official recognition of vulnerability for individuals with special needs is a subject to a thorough evaluation of their personal circumstances on a case-by-case basis. Secondly, in relation to the sources of vulnerability, the formulation of the provisions includes both inherent (through the provided list of categories) and situational (through the emphasis on the "specific situation of persons who have special needs" in Art. 17 (1)) factors that influence individual experience of vulnerability. Even though the legislative instrument does not address the sources of vulnerability in a clear manner, and the relevant provisions lack the explanation on what exactly leads to vulnerability and special reception needs, the chosen wording of the legislative text slightly echoes the points reflected in the academical discussion in relation to the sources of vulnerability. However, experiential dimensions (e.g., disrupted biography, recognition, and agency) are not articulated, and structural generators of vulnerability (e.g., dispersal, detention,

⁹⁷ RCD 2003, art 17 (1)

⁹⁸ RCD 2003, art 17 (1)

⁹⁹ RCD 2003, art 18-20

scarcity) are not named—leaving operational actors without an anchor for layered analysis. Thirdly, despite the mentioned advancements, the conceptualisation of vulnerability in the first phase Reception Condition Directive provides a rigid and static understanding of the concept. The legislation does not reflect the dynamic character of vulnerability neither it prepares the operational staff of the Member States to understand that the “special needs” might change throughout time and situations. In Chapter 2’s terms, there is no temporal review logic or trigger points, which increases the risk of pathogenic effects if initial classifications are treated as fixed.

In relation to the practical value of the tool, the 2003 Reception Condition Directive makes some positive steps towards the protection of vulnerable asylum seekers. It calls the Member States to take into account the specific circumstances of vulnerable persons, provides a non-exhaustive list of examples of vulnerable categories and sets a requirement for the official recognition of vulnerability for individuals with special needs upon an evaluation carried out by the Member States. The major deficiency of the tool regarding vulnerability assessment is its failure to include guidance for the Member States on how vulnerability should be identified. The only indicator given is the requirement to take into account personal circumstances on a case-by-case basis. As a result, despite the right intention of the legislator to provide enhanced protection to vulnerable asylum seekers, the tool generates definitional ambiguity that challenges the implementation of the Directive and weakens its protective effect. Even though the definition of vulnerable persons remains open to interpretation by the Member States as the list of examples is non-exhaustive, it is not clear which criteria should be applied to identify vulnerability. Operationally, this produces two concrete risks: under-identification (less legible harms are missed) and over-reliance on visible proxies (checklists substitute for analysis). Both risks are documented in later Commission evaluations and mirror the concerns about categorical governance raised in Chapter 2.

The European Commission’s evaluation of the application of the 2003 Reception Condition Directive by the Member States underscored several areas where Member States’ response to “asylum seekers with special needs” was lacking.¹⁰⁰ The findings of the report proved that “addressing the needs of vulnerable persons has been identified as one of the main deficiencies in the application of the Directive”.¹⁰¹ In relation to the definition of vulnerable groups, or persons with “special needs”, some Member States incorporated the examples provided in Article 17 of the Directive in their national legislation, while other Member States addressed the examples of

¹⁰⁰ European Commission ‘Report from the Commission to the Council and to the European Parliament on the Application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers’ (26th November 2017) COM (2007) 745 final

¹⁰¹ European Commission ‘Report from the Commission to the Council and to the European Parliament on the Application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers’ (26th November 2017) COM (2007) 745 final, para 3.5.1

persons with "special needs" in part or failed to address them at all.¹⁰² In relation to the identification procedure, some Member States did not establish any identification procedure for persons with "special needs", which led to further doubts as to how and whether persons with special needs are actually identified in those Member States.¹⁰³ The Commission's evaluation concluded that "identification of vulnerable asylum seekers is a core element without which the provisions of the Directive aimed at special treatment of these persons will lose any meaning".¹⁰⁴ Furthermore, the Commission found that there have been shortcomings in how the Member States address special needs after vulnerability has been identified. This confirms the diagnosis above: without a method, duties remain aspirational; without review points, needs go stale; and without role clarity, measures are inconsistently applied.

The next phase of the Reception Condition Directive was presented in the European Commission's proposal in 2008 which emphasised the need to address special needs as "the most serious concern in the area of reception of asylum seekers".¹⁰⁵ The proposal called the Member States to put in place national measures to identify special needs.¹⁰⁶ However, the proposal was not implemented in its original version as the Member States were not able to agree on the final text of the CEAS instruments. The subsequently amended proposal was introduced in 2011 and required the States to "establish a mechanism with a view to identifying whether the applicant is a vulnerable person and, if so, has special needs, also indicating the nature of such needs".¹⁰⁷ It clarified that "[i]dentifying special reception needs not only has a bearing on access to appropriate treatment, but could also affect the quality of the decision-making process. The modified proposal aims to ensure that national measures are put in place for the swift identification of the special reception needs of vulnerable persons and the continuous support and monitoring of individual cases".¹⁰⁸ The summary of the proposed action establishes an important connection between identification of special needs, appropriate treatment and quality of decision-making process, also the need of continuous support and monitoring of individual cases. Therefore, the proposal contained a more structured guidance for the action required from the Member States, regarding identification of special needs. However, the final text of the 2013 Reception Condition Directive was further amended and it removed the obligation on the Member States to establish a mechanism for vulnerability identification.¹⁰⁹ Instead, Article 22

¹⁰² EU Commission report 2007, 3.5.1

¹⁰³ EU Commission report 2007, 3.5.1

¹⁰⁴ EU Commission report 2007, 3.5.1

¹⁰⁵ Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast), COM(2008) 815 final p 6, issue 5

¹⁰⁶ Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast), COM(2008) 815 final p 6, issue 5

¹⁰⁷ Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast), COM(2011) 320 final, article 22

¹⁰⁸ Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast), COM(2011) 320 final, para 3.1.3

¹⁰⁹ Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), article 22

of the Directive referred directly to the process of assessment of special needs of vulnerable persons and provided some procedural guidance encouraging the States to initiate the assessment within a reasonable period of time, to ensure that the special needs are addressed, including situation when they become apparent at a later stage in the asylum procedure, and it calls the Member States to provide for appropriate monitoring of the situation of applicants with special needs throughout the duration of the asylum process. The 2013 Reception Condition Directive repealed the 2003 Reception Condition Directive and the Member States had to incorporate it into national laws by 21 July 2015. The list of "vulnerable persons" was extended to victims of trafficking, people with serious illnesses and mental disorders, and victims of female genital mutilation. Conceptually, two improvements stand out: explicit temporalisation ("later stage," "monitoring") and the nascent idea that identifying the nature of special needs informs both treatment and decision quality. This nudges practice toward the Chapter 2 model (linking sources - assessment - tailored measures), even if the dedicated "mechanism" requirement drops out of the final text.

The development of the reception conditions legislation from phase one to phase two has generally shown some progress in the sphere of protection of vulnerable asylum applicants. The achievements of the second phase legislation contribute to further conceptualisation of vulnerability in the asylum reception procedure. Moreover, the reasoning in the legislative proposals as well as the final text of the second phase Reception Condition Directive reflects additional key aspects (compared to the first phase) of the conceptual framework proposed for this research.

Firstly, in addition to more profound discussion in relation to individual and group-based vulnerabilities and extended list of examples of vulnerable asylum seekers, the legislative tool further indicates the role of the sources of vulnerability, referring to the "nature of special needs". The legislator points out the importance of identification of the nature of special needs for further access to appropriate treatment, as well as the quality of decision-making process. This development is a step forward to a more complete conceptualisation of vulnerability in reception procedure. Even though the legislator does not provide any guidance on what the nature of special reception needs could be and how it can be identified, the requirement itself outlines the connection between the sources of vulnerability and the appropriate action of the authorities. Secondly, the requirements to initiate the assessment within a reasonable period of time and to provide for appropriate monitoring of the situation of applicants with special needs throughout the duration of the asylum process, reflects the fluid/dynamic character of the concept of vulnerability and its changing nature throughout time. Together, these elements begin to map a traceable chain from (a) indicators and sources - (b) assessment - (c) tailored measures - (d) review. Where the text remains thin is on method (how to surface less visible harms) and triggers (when to re-open assessments).

The progress concerning the practical value of the tool remains limited. While the obligations on the Member States to conduct an assessment, identify, and address the special needs are clear, the ambiguity persists concerning the procedures and criteria for identification. The absence of clear guidance from the legislator on the assessment mechanism or criteria leaves the Member States significant discretion and heightens the risk of errors, disparities in implementation, and unjust procedures. Furthermore, the legislative text lacks clarity regarding the relationship between vulnerability and special reception needs. It is unclear whether all vulnerable individuals are considered to have special reception needs. The latter ambiguity undermines the progress that has been made. This indeterminacy also blurs thresholds (who qualifies for adaptations) and accountability (what must be justified and reviewed), which weakens monitoring and creates space for inconsistent practice.

The latest phase of the 2024 Reception Conditions Directive (Directive 6056/24) eliminates almost all references to vulnerability, except one mention of "inherent vulnerabilities" of an applicant in recital 47, of the preamble of the Directive. The analysis of the recast 2024 Directive through the prism of the conceptual framework of this research reveals the following insights.

In connection to the EU asylum reception procedures, the term "inherent vulnerabilities" is used by the legislator first time in this phase of the Reception Conditions Directive. This change presents as a positive development in the conceptualisation of vulnerability in the CEAS as it both refers to one category of sources of vulnerability (inherent or embodied) and leaves the room for interpretation that allows to define other sources of vulnerabilities. Another relevant novelty is multiple references the text of the Directive to the "visible signs" of special reception needs of an applicant, which should be taken into account during the assessment procedure.¹¹⁰ This formulation also points out the complex nature of vulnerability that can manifest in different ways, as a visible characteristic or not. While other examples of sources of vulnerabilities are not clearly mentioned in the text of the Directive, the acknowledgement of "inherent vulnerabilities" and "visible signs" of special reception needs of asylum seekers presents a positive minor step towards a more complete conceptualisation of vulnerability in the asylum reception procedure. At the same time, an emphasis on visible signs risks crowding out less legible harms (e.g., sexuality-related persecution, trauma, coercive control), unless paired with clear procedural safeguards for confidential, phased disclosure and staff training (Chapter 2).

Another change in the text of the recast 2024 Directive concern the list of examples of applicants with special reception needs. The legislative document continues using the categorical approach, proposing a list of examples of persons with special reception needs, similar to the previous phases of the 2003 and 2013 Reception Conditions

¹¹⁰ See Preamble recital 44, Article 10 (3), Article 25 (1), (2)

Directives (Directives 2003/9/EC and 2013/33/EU). Article 24 of 2024 Reception Conditions Directive “Applicants with special reception needs” (in comparison with Article 21 of 2013 Reception Conditions Directive) extends the list of examples to “lesbian, gay, bisexual, trans and intersex persons”, “persons with mental disorders including post-traumatic stress disorder”, “victims of gender-based violence”, “victims of child marriage”; “victims of violence committed with a sexual, gender, racist or religious motive”. The formulation “such as” remains and, as in previous versions of the Reception Conditions Directive, reflects its non-exclusive nature. This extension improves recognition but does not, by itself, deliver method; it still orients practice toward category-led triage rather than context-led assessment.

Another notable innovation proposed by this article concerns its new phrasing, which presents a change in the legislative text of the 2024 Directive in comparison with its predecessors. If earlier versions of the text proposed a link between vulnerability of applicants belonging to the proposed non-exhaustive list of categories and their special needs, the latter formulation proposes a different meaning. As the first step, the article puts an obligation on the Member States to take into account the specific situation of applicants with special reception needs. As the second step, the legislator proposes a non-exhaustive list of categories that “are more likely to have special needs”.¹¹¹ On one side, this formulation highlights that mere inclusion in the specified category does not necessarily indicate that the applicant has special reception needs. On the other side, it might introduce more ambiguities in interpretation as all applicants must undergo assessment, not just those considered “more likely to have special reception needs”. Doctrinally, this re-phrasing de-couples category from entitlement, which is welcome; practically, it shifts discretion upstream to identification without supplying clear criteria, triggers, or review points, thereby risking renewed inconsistency.

Thus, the rationale behind the proposed list of categories remains unclear. Outlining certain categories that are “more likely to have special needs” does not contribute to a better understanding of what vulnerability is in the asylum reception process. The practical value of this innovation remains limited. While the legislator points out that not all the applicants within the proposed categories are vulnerable (which echoes earlier discussed multidimensional nature of vulnerability), there is no conceptual guidance on which factors contribute to special reception needs or to vulnerabilities in the context of the asylum reception process. Hence, the practical implementation of this provision by Member States may pose challenges. In Chapter 2’s terms, the text still lacks a layered capture (structural–situational–experiential) and intersectional mapping (how axes of inequality configure need in concrete settings). Without these, assessments skew toward the visible and additive.

¹¹¹ RCD 2024, Article 24

Article 25 "Assessment of special reception needs" has been edited and contains several advantageous changes. The article introduces a 30-days time frame for the assessment regarding the special reception needs from the application for international protection date. It also specifies that special reception needs may become apparent at a later stage of the asylum procedure, and it calls Member States to continuously "assess and address those needs". The link between the obligation of the Member States to conduct an assessment of the applicant's special reception needs and a consequent responsible authorities' duty to identify measures to address those needs comes out clear in the proposed text of the Directive. The predecessor of the 2024 Directive called the Member States only to address the special reception needs, while the new legislation provides more systematic guidance that also includes assessment procedure. Another improvement is the requirement to ensure that the staff assessing special reception needs in accordance with the 2024 Directive, is "trained and continue to be trained to detect signs that an applicant has special reception needs and to address those needs when identified". This enhancement is important for minimising the impact of administrative or structural sources of vulnerability, as discussed in Chapter 2. Due to the multidimensional and fluid character of individual vulnerability, there is an endless number of scenarios on how it can manifest in different contexts. Continuous training of the decision-makers should have higher priority than the attempts to categorise applicants with "special reception needs" and enshrine the categories in the legislation. As earlier discussed, this approach to the conceptualisation of vulnerability contains a lot of serious pitfalls, for example: stigmatization, disempowerment, and discrimination (see chapter 2). These amendments concretise the temporal and capability dimensions of assessment (deadlines, ongoing review, trained staff). To fully align with the thesis framework, two operational complements would help in practice: (i) periodic review points tied to foreseeable risk events (e.g., pre-interview, pre-transfer, post-decision); and (ii) a brief "pathogenicity check" before high-impact steps (detention, dispersal, acceleration) to prevent procedure-induced harm. Both are consistent with the Directive's logic yet make the dynamic character of vulnerability actionable.

Articles concerning minors, unaccompanied minors, and victims of torture and violence are given additional clarity in the 2024 Directive, thereby the legislative tool strengthens the protection afforded to these specific groups.¹¹² For example, the principle of the best interest of the child is highlighted through additional reference to "the need for stability and continuity in care" for the minors.¹¹³ Furthermore, the Directive stipulates a time limit for Member States to designate a representative for unaccompanied minors and generally clarifies the safeguarding requirements for the representatives. Article 28 in the context of victims of torture and violence makes a specific reference to victims of trafficking in human beings and expands the examples of acts of violence to "psychological, physical or sexual", "including violence committed

¹¹² RCD 2024, Articles 26-28

¹¹³ RCD 2024, Article 26

with a sexual, gender, racist or religious motive". Also, it refers to rehabilitation, counselling and translation needs. The introduced enhancements regarding the protection of minors present a positive step in the protection of vulnerability in the CEAS. Substantively, these clarifications align with experiential and situational layers (needs tied to care environments, interview adaptations, trauma-informed services). Structurally, however, they still rely on group proxies rather than embedding intersectional analysis (e.g., age + status + gender + disability) as a routine assessment lens.

The effort of the legislator to synchronise the legislative tools through cross-referencing mechanisms helps to ensure consistency and alignment among various directives and regulations pertaining to vulnerability protection. Such cross-referencing improves coherence but does not replace the need for clear assessment standards and review triggers at the case level.

Generally, the last phase of the Reception Conditions Directive contributes to the development of the concept of vulnerability by identifying inherent sources of vulnerability and clarifying the measures that should be taken by the Member States (continuous assessment and addressing of special needs) in relation to applicants with special reception needs. Also, the legislator introduces additional categories of applicants that are likely to have special reception needs. However, the new phase of the legislative instrument contains some ambiguities. The connection between vulnerability and special reception needs is unclear in the legislative text. The categorical approach to vulnerability remains and the rationale behind the proposed list of categories remains unclear. Outlining certain categories that are "more likely to have special needs" does not contribute to a better understanding of what vulnerability is in the asylum reception process. Consequently, the practical value of this legislative innovation remains limited. In synthesis: the 2024 text advances when and by whom needs should be assessed (time-limits; trained staff) but remains thin on how a layered and intersectional evaluation should proceed. As a result, the CEAS continues to recognise situational vulnerability more readily than structural drivers and experiential impacts, and risks reproducing the very categorical logics that Chapter 2 problematised.

4.3.2. Vulnerability in the evolution of the Asylum Procedures Directive

The first phase of Asylum Procedures Directive refers to the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. The 2005 Asylum Procedures Directive set the procedures for determining applications for international protection by the Member States and provides guidance for granting and withdrawing of refugee status within the EU. The 2005 Asylum Procedures Directive offered a limited reference to vulnerability. The term "vulnerability" was mentioned twice in the text of the 2005 Asylum Procedures

Directive. Firstly, in the preamble in relation to the best interest of the child, precisely "specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability"¹¹⁴. This formulation reflects the general presumption in international human rights law of the vulnerability of children due to their age, dependency and development stage.¹¹⁵ Also, this formulation encapsulates the group-based or categorical approach to vulnerability, discussed in the previous chapter. Doctrinally, this is an early signal that "vulnerability" enters the APD via status-based proxies rather than a layered inquiry; it recognises heightened exposure without specifying how that exposure should be assessed or addressed across stages of procedure.

Secondly, the term "vulnerability" is mentioned in relation to the requirements for the personal interview. The legislator in Article 13 of 2005 Asylum Procedures Directive called the Member States to "take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner"¹¹⁶. This specifically involves considering the "personal and general circumstances" of the applicant, including "the applicant's country of origin or vulnerability"¹¹⁷ during the interview. Also, the Directive calls the Member States to ensure that the representatives of the authorities who conduct the interviews are "sufficiently competent" to take into those circumstances.¹¹⁸ This embeds a situational dimension (conditions of interviewing) and hints at a capability requirement (competent officials), but it stops short of specifying identification methods, triggers, or review points, which later prove crucial in practice.

Analysis of the first phase Asylum Procedures Directive through the prism of the conceptual framework proposed by this thesis reveals the following observations. To begin with, the conceptualisation of vulnerability in the first phase Asylum Procedures Directive is less elaborate compared to that of the Reception Condition Directive in the same phase. While the Asylum Procedures Directive does not provide examples of vulnerable categories, it points out that minors should be seen as a vulnerable group, in that way indicating the group-based approach to vulnerability. Also, in the context of interviews the legislative instrument refers to personal and general circumstances of the applicant that should be taken into account during the procedure, which indicates the multidimensional nature of vulnerability. The contribution of those findings to the conceptualisation of vulnerability in the asylum procedure is limited. At the same time, those mere steps towards the protection if vulnerability are aligned with the conceptual framework proposed by this research. On the other side, one of the major Directive's shortcomings is that it does not provide any deeper guidance on the identification or

¹¹⁴ APD 2005, Preamble para 14

¹¹⁵ Committee on the Rights of the Child (CRC). (2013). General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (CRC/C/GC/14). United Nations; Ippolito 2020, p. 197

¹¹⁶ APD 2005, Art 13 (3)

¹¹⁷ APD 2005, Preamble Art 13(3)(a)

¹¹⁸ APD 2005, Preamble Art 13(3)(a)

assessment of vulnerability in the asylum process. In terms of the Chapter 2 model, the APD (2005) recognises that vulnerability matters for interviews, but not how to surface less legible harms (experiential), nor when to reassess (temporal), nor which structural conditions in procedures may produce or aggravate exposure (pathogenic risks).

The review of the implementation of the first generation of CEAS by the European Commission was presented in the Green Paper on the future Common European Asylum System which highlighted the need for an appropriate response to situations of vulnerability.¹¹⁹ The European Commission highlighted that "serious inadequacies exist with regard to the definitions and procedures applied by Member States for the identification of more vulnerable asylum seekers"¹²⁰. The European Commission acknowledged the necessity "to prescribe in more depth and detail the ways in which the special needs of the most vulnerable asylum seekers should be identified and addressed in all stages of the asylum process"¹²¹.

The European Commission's Green Paper provided examples of vulnerability, which included "traumatised persons, victims of torture and trafficking, (unaccompanied) minors" and noted that culture, age, and gender should be taken into account during the interview and assessment of claims¹²². The Green paper called for enhancing national capabilities and frequent training and evaluation of asylum officials in order to ensure "high standards of quality in services provided to more vulnerable people"¹²³. These findings echo the method gap identified above and directly motivate the recast: better definitions, systematic identification, and sustained staff training.

Furthermore, the European Commission's report on the application of the 2005 Asylum Procedures Directive addressed critique in relation to the Directive's language referring to "optional provisions and derogation clauses" which "contributed to the proliferation of divergent arrangements across the EU, and that procedural guarantees vary considerably between Member States".¹²⁴ Based on the found deficiencies, the Commission warned for the susceptibility of the asylum procedures to administrative errors. Thus, the language and the scope of the 2005 Asylum Procedures Directive could possibly lead to administrative inaccuracies and weaken the protection meant for cases with special procedural needs. In Chapter 2's terms, this variability risks pathogenic outcomes when accelerated or adversarial settings meet unrecognised vulnerabilities.

¹¹⁹ Green Paper on the future Common European Asylum System / COM/2007/0301 final /

¹²⁰ Green paper 2007, para 2.4.1

¹²¹ Green paper 2007, para 2.4.1

¹²² Green paper 2007, para 2.4.1

¹²³ Green paper 2007, para 2.4.1

¹²⁴ European Commission, 'Report on the application of Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States', COM (2010) 465 p 15

The second phase of the Asylum Procedures Directive was presented in the recast 2013 Asylum Procedures Directive (Directive 2013/32/EU). The 2013 Asylum Procedures Directive aimed to strengthen and broaden the protection of vulnerable applicants that was enshrined in the previous version of the Asylum Procedures Directive. Several significant steps in this direction were introduced in the scope of Article 24 "Applicants in need of special procedural guarantees". The article addressed the requirement for the Member States to "assess within a reasonable period of time [...] whether the applicant is an applicant in need of special procedural guarantees". Furthermore, the article provided a possibility to integrate the assessment of special procedural guarantees into existing national procedures and/or into the assessment of special reception needs, required by the Reception Conditions Directive¹²⁵. Also, it specified that "Member States shall ensure that the need for special procedural guarantees is also addressed [...] where such a need becomes apparent at a later stage of the procedure"¹²⁶. Thus, the article expanded the protection of vulnerable applicants throughout the whole asylum process and its different stages and indicated that the assessment of special reception needs and special procedural guarantees were interrelated, even though they served different purposes. Also, the acknowledgement that the vulnerability could become apparent at different stages of the process reflected the essence of the concept, the multidimensional and fluid /dynamic character of individual vulnerability. This is the recast's key advance: temporalisation (initial assessment and later triggers) and linkage to reception assessments—together sketching a more continuous protection logic across instruments.

The other important development presented in the 2013 Asylum Procedures Directive was the enhanced guidance regarding the competencies required of Member States' officials who conduct the interview and examine asylum applications. The 2013 Asylum Procedures Directive provided broader set of examples related to special competences that the determining authority should be equipped with when dealing with personal and general circumstances of applicants as well as vulnerabilities. Articles 10 related to the requirements for the examination process expand the original standards set in 2005 Asylum Procedures Directive by specifying that Member States personnel examining applications should have the possibility "to seek advice [...] from experts on particular issues, such as medical, cultural, religious, child-related or gender issues"¹²⁷. In case of unaccompanied minors, article 25 set requirements for determining authority to be equipped with "the necessary knowledge of the special needs of minors".¹²⁸ Also, article 15 in relation to the requirements for a personal interview, rephrased and expanded previously existing provision on "personal and general circumstances", by requiring the States to take into account "applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability". Looking at

¹²⁵ APD 2013, Art 24(2)

¹²⁶ APD 2013, Art 24(4)

¹²⁷ APD 2013, 10(3)(d)

¹²⁸ APD 2013, 25(3)(b)

this development through the prism of the set conceptual framework, it becomes evident that the additional factors introduced by the legislator reflect diverse sources of vulnerability. Furthermore, the same article specifies that the Member States shall ensure when possible that the interview is "conducted by a person of the same sex"¹²⁹. Similarly, gender sensitivity was enshrined in the provision regarding the sex of the interpreter.¹³⁰ This development partly sets grounds for a mechanism of vulnerability protection concerning cases when gender is identified as a contributing factor of vulnerability. Firstly, the factor should be taken into account by the authorities, secondly, an appropriate action should be taken by the authorities. Nevertheless, this development is still in its initial stage and only slightly outlines a mechanism that is necessary for the protection of vulnerability in the asylum process. Gender and gender identity as well as other SOGIESC characteristics are not always a visible and it might take time and method for the authorities to identify it before taking it into account during the procedural stages of asylum process. Conceptually, the recast moves from recognition to partial proceduralisation (advice from experts; sex-matching; SOGIESC sensitivity). Practically, the effectiveness of these guarantees still depends on identification method and staff capability.

Overall, the 2013 Asylum Procedures Directive made an attempt to highlight the specific competences that should be in place for different stages of the asylum procedure.

In summary, the legislative development during the second phase Asylum Procedures Directive in relation to the protection of vulnerable applicants presented a step towards a more comprehensive assessment of vulnerability at different stages of the asylum process and thus contributed to a more harmonised and complete perspective of vulnerability. Despite the positive changes provided by the second phase Asylum Procedures Directive, the main challenge remained the unclear method for identification and assessment of vulnerability. There need for detailed provisions for safeguarding the procedural needs of vulnerable applicants remained absent. Thus, Phase II describes what must be taken into account and who should be competent but is thinner on how to detect less visible harms at the right time.

The lack of guidance for the Member States on how to operationalise the assessment procedures remained the major weakness for the implementation of the protection guarantees for vulnerable applicants.

The previously discussed requirements for competencies of the determining authority present another positive development in relation to the protection of vulnerable applicants. The discussed provisions put the obligation for identification and assessment of vulnerability on the authority. This enhancement is important for minimising the impact of administrative or structural sources of vulnerability, as

¹²⁹ APD 2013, 15(3)(b)

¹³⁰ APD 2013, 15(3)(c)

discussed in Chapter 2. Due to the multidimensional and fluid character of individual vulnerability, there is an endless number of scenarios on how it can manifest in different contexts. Continuous training of the decision-makers should have higher priority than the attempts to categorise applicants with "special reception needs" and enshrine the categories in the legislation. As earlier discussed, this approach to the conceptualisation of vulnerability contains a lot of serious pitfalls, for example: stigmatization, disempowerment, and discrimination. Accordingly, competence and training provisions are necessary but not sufficient without a clearer assessment pathway and review triggers.

Despite the positive changes provided by the second phase APD, the main challenge remains the unclear method for identification and assessment. There is a need for detailed provisions for safeguarding the procedural needs of vulnerable applicants. This is precisely what the 2024 Regulation attempts to address in more granular terms.

The latest phase of the CEAS in relation to asylum procedure is presented in the 2024 Asylum Procedures Regulation (Regulation 6375/24). The Regulation was proposed by the Commission in July 2016.¹³¹ The proposal further clarified the responsibility of Member States officials towards vulnerable applicants. The document emphasised that identification of vulnerability shall "be initiated by the authorities responsible for receiving and registering the application as soon as an application is made and shall be continued by the determining authority once the application is lodged"¹³². Also, the proposal required the determining authority to carry out a systematic assessment of whether the applicant is in need of special procedural guarantees¹³³. Thus, the proposal introduces a clear requirement to the authorities to carry out the vulnerability identification process not at one point of time or procedure, but to continuously proceed with the assessment of applicants' need for special procedural guarantees. Also, it specifies that the process should be carried out by a range of actors.¹³⁴ This directly addresses the temporal and institutional gaps flagged in Phase I–II, by spreading responsibility across intake and determination and by requiring continuity rather than one-off screening.

The negotiation of the third phase CEAS tools took about 8 years. Finally, in 2024 some of the proposed by the Commission enhancements were included in the final draft of the 2024 Asylum Procedures Regulation. Overall, the current version of the Regulation presents a more developed guidance regarding the protection of vulnerable asylum applicants. The provisions regarding the assessment of special procedural needs are edited and include more elaborated clarification on the

¹³¹ European Commission 'Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU' (July 2016)

COM (2016) 467

¹³² EU Commission Proposal July 2016 art 20(1)

¹³³ EU Commission Proposal July 2016 art 19(1)

¹³⁴ EU Commission Proposal July 2016 art 19 -20

procedural moments/steps of identifications and requirements for the responsible personnel training and competences.

Article 21 “Assessment of special procedural needs” and Article 22 “Applicants in need of special procedural guarantees” provide a more elaborated guidance for the Member States regarding the identification of vulnerability and the required action from the competent authorities. Previous version of the document contained only one provision specifically dedicated to the applicants with special procedural guarantees and did not clearly separate the process of identification and the required Member States’ action in the text of the document.¹³⁵ The separation of assessment (Article 21) and response (Article 22) is a structural improvement; it clarifies the chain from detection - support - justification.

Another positive development presents added guidance regarding the identification of first indications of vulnerability. The legislator clarifies that the identification should be based on "visible signs, the applicant's statements or behaviour, or any relevant documents".¹³⁶ Comparing to the text in the proposal that indicated only "physical signs or applicant's statement or behaviour as indicators of eventual special procedural guarantees."¹³⁷ The 2024 Asylum Procedures Regulation adds a clarification regarding the cases that involve minors, specifying that the responsible authority should take into account "statements of parents, adult responsible or representative" during the assessment of special procedural needs.¹³⁸ Analysing those innovations through the prism of the conceptual framework set in this thesis lead to the following observations. The physical or visible signs as well as behaviour of the applicants can be seen as an expression of vulnerability that reflects the source. The statements or documental support of facts is an example of an evidence that can be used in the procedure. It also may reflect the source of vulnerability. The current addition in the legislation echoes some patterns of the conceptual framework, but it still does not provide a clear rationale for the conceptualisation of vulnerability. Crucially, emphasis on visible signs must be balanced with pathways for less legible harms (e.g., sexuality-related persecution, trauma, coercive control), which often surface only through confidential, phased disclosure and trained interviewing.

Furthermore, Article 21 (3) of the 2024 Asylum Procedures Regulation calls the responsible authority to conclude the initial assessment of special procedural needs as soon as possible, within a time frame of 30 days.¹³⁹ The provision further specifies that "the assessment shall be reviewed in case of any relevant changes in the applicant's circumstances or where the needs become apparent after the assessment has been completed".¹⁴⁰ The 2024 Asylum Procedures Regulation clarifies the

¹³⁵ APD 2013, Art 24

¹³⁶ APR 2024, Art 21 (2)

¹³⁷ Prop APR 2016, Art 20 (2)

¹³⁸ APR 2024, Art 21 (2)

¹³⁹ APR 2024, Art 21 (3)

¹⁴⁰ APR 2024, Art 21 (3)

provision that relates to the competences and training of the professionals involved in the assessment of the special procedural guarantees. Firstly, it indicates which professionals can be involved in the assessment, referring to “the relevant personnel of the competent authorities as well as the doctors and psychologist”.¹⁴¹ Secondly, it clarifies the competence they should possess (through the training), meaning ability to detect the signs of vulnerability and if identified, to address the eventual needs of special procedural guarantees.¹⁴² Another positive observation refers to the fact that the mentioned above requirements are synchronised with the obligations enshrined in Article 25 of the 2024 Reception Conditions Directive regarding the special reception needs. The 30-day benchmark plus review-on-change introduces the temporal logic missing in Phase I. The explicit cross-walk with Reception Conditions strengthens horizontal coherence across instruments.

The positive advancements in the 2024 Asylum Procedures Regulation are coupled with certain ambiguities. For instance, the term “adequate support” is replaced by the “necessary support” in the clause related to the obligation on the Member State towards applicants with special procedural guarantees.¹⁴³ Nevertheless, the legislator does not provide clarification regarding the differences of those terms. Also, similar to the ambiguities identified in the 2024 Reception Conditions Directive, the 2024 Asylum Procedures Regulation contains formulations that make the connection between “vulnerability” and “special procedural needs” unclear. Article 21 (5) contains the following formulation: “[the relevant personnel] shall receive training to enable them to detect signs of vulnerability of an applicant who may need special procedural guarantees and address those needs when identified”. This might introduce more ambiguities in interpretation as it is unclear how vulnerability and special procedural guarantees are connected and how the identification process should be organised by the competent authorities. Doctrinally, this keeps the threshold indeterminate (when do “signs” suffice?); operationally, it leaves method and triggering events to administrative discretion, risking uneven practice.

In summary, the legislative development during the second phase Asylum Procedures Directive in relation to the protection of vulnerable applicants presented a step towards a more comprehensive assessment of vulnerability at different stages of the asylum process and thus contributed to a more harmonised and complete perspective of vulnerability. Despite the positive changes provided by the second phase Asylum Procedures Directive, the main challenge remained the unclear method for identification and assessment of vulnerability. Detailed provisions for safeguarding the procedural needs of vulnerable applicants remained absent. While the legislative instrument sets a clear obligation on the Member States, firstly, to identify the vulnerabilities and special procedural needs, and, secondly, to provide necessary support to the applicants with special procedural guarantees, the major ambiguity lays

¹⁴¹ APR 2024, ART 21 (5)

¹⁴² APR 2024, Art 21 (5)

¹⁴³ APD 2013, Art 24, APR 2024, Art 22

in the relation between vulnerability and special procedural guarantees. Even though the form of the legislative instrument has changed from Directive to Regulation, the lack of clarity in the provisions leave the space for interpretation for the member States, and thus may lead to major inconsistencies in implementation. Overall, the APD evolves from recognition (2005) to partial proceduralisation (2013) and toward structured assessment with temporal review (2024). Yet the core methodological gap persists: how to identify layered, intersectional, and less-visible vulnerabilities at the right time and link them to calibrated procedural adaptations. This gap explains why protection still depends heavily on discretion and capacity, rather than on a shared, reviewable assessment standard.

4.3.3. Vulnerability in the evolution of the Qualification Directive

The purpose of the Qualification Directive is to establish a common framework within the EU for determining who qualifies as a beneficiary of international protection. It sets out the criteria for the recognition of refugee status and subsidiary protection status. In contrast to the Reception Conditions and Asylum Procedures instruments—which regulate reception entitlements and procedural safeguards—the Qualification instrument primarily determines status and content of protection. This institutional role partly explains why its engagement with “vulnerability” is more limited and mostly appears at the level of entitlements and adaptations once protection is granted.

The first phase of the Qualification Directive (Directive 2004/83/EC) had only two references to the term “vulnerability”. Article 20 discussed the general rules of the content of international protection, and it requests the Member States to “take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence”¹⁴⁴. The next provision in the same article specifies that the latter should apply “only to persons found to have special needs after an individual evaluation of their situation”¹⁴⁵. Both provisions reflect categorical approach used in earlier discussed CEAS tools, giving examples of vulnerable categories. In line with the first phase Asylum Procedures Directive and Reception Conditions Directive it calls for individual evaluation of each applicant's situation and their special needs. Conceptually, this combines a group-based proxy (illustrative list) with an individualised evaluation clause; operationally, however, it provides no method for identifying those special needs, nor indicates when the evaluation should occur or be reviewed.

The second mentioning of the term “vulnerable” is less relevant to the present discussion. The preamble of the 2004 Qualification Directive mentions vulnerability of

¹⁴⁴ QD 2004, Art 20(3)

¹⁴⁵ QD 2004, Art 20(4)

the family members of the refugee due to their close relation. This statement applies to the refugee status determination assessment when the family members can be granted a protection status due to f.ex. a family unity. This particular vulnerability is less relevant for the present discussion as it has less procedural character, instead this regards the question of the basis of the international protection granted, whether it is on individual ground, derivative or based on family unity. Still, it is an early instance of relational exposure within the instrument: vulnerability can be derivative of legal–familial status rather than solely an individual attribute.

The 2004 Qualification Directive makes an explicit reference to the needs of unaccompanied minors. Article 30 (2) calls the States to "ensure that the minor's needs are duly met" in the implementation of the Directive, and, that the appropriate authorities should make a "regular assessment".¹⁴⁶ The terms "vulnerability" or "special needs" are not precisely mentioned, but as the legislator earlier refers to unaccompanied minors as a group with special needs, the provision is relevant for the current discussion on the conceptualisation of vulnerability in asylum law and procedures.¹⁴⁷ Importantly, the expression "regular assessment" introduces a temporal element—rare in the first phase—suggesting that needs may change over time, which aligns with the dynamic character of vulnerability in your framework.

The 2004 Qualification Directive calls the Member States to "provide [...] adequate health care to beneficiaries of refugee or subsidiary protection status who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict"¹⁴⁸. Here, the instrument locates vulnerability primarily at the experiential layer (trauma, injury, health), translating it into post-recognition entitlements (adequate healthcare), but again without a clear identification pathway.

The categories of applicants with "special needs" proposed as examples in this article have a slight difference from the ones proposed in Article 20, regarding the general rules of international protection. The noticeable focus of Article 29 lies in the characteristics that are connected to experiencing psychological or physical trauma. However, it is unclear why certain categories are included in "special needs" examples and others are not. While for example pregnant women and disabled people are included in both provisions, elderly people are included only in Article 20 on general rules of international protection and not in Article 29 regarding health care. Obviously, the legislator had some background reasoning on which examples of "special needs" should be included in the respective article, but there is no method or identification criteria proposed in the text of the 2004 Qualification Directive. This is problematic

¹⁴⁶ QD 2004, Art 30(2)

¹⁴⁷ QD 2004, Art 20(3), 20(4)

¹⁴⁸ QD 2004, Article 29(3)

from the implementation point of view as there is no clear guidance for the Member States on who and why are vulnerable and/or have "special needs". This internal asymmetry illustrates the broader recognition–method gap: illustrative lists exist, but criteria, triggers, and cross-references to the procedural tools that would establish “special needs” are absent.

In summary, the conceptualisation of vulnerability and special needs in the 2004 Qualification Directive is limited in comparison to the CEAS of more procedural character (Asylum Procedures Directive and Reception Conditions Directive). This can be explained by the nature of the tool, as it guides the qualification of the protection status (refugee/subsidiary protection) and does not reflect the specificity of procedures that are more connected to access to rights of applicants on an equal basis. Overall, the 2004 Qualification Directive reflects the same pattern as other earlier analysed first phase CEAS tools, it promotes the categorical approach to vulnerability through a non-exhaustive list of vulnerable categories enshrined in the text of legislation. Its main added value is to anchor some consequences of vulnerability in the content of protection (notably healthcare), but without providing a shared assessment method or inter-instrument linkage.

The second phase of the recast Qualification Directive (Directive 2011/95/EU) makes a slight contribution to the protection of vulnerable persons by extending the list of examples in Article 20 by two categories: “victims of human trafficking” and “persons with mental disorders”.¹⁴⁹ The provision on health care is also amended and specifies that adequate health care for persons with special needs includes “treatment of mental disorders when needed”.¹⁵⁰¹⁵¹ These changes mark a clearer acknowledgment of structural–experiential intersections (trafficking; mental health) and better alignment with trauma-informed responses, yet they remain recognition-oriented rather than method-oriented.

Chapter II of the recast 2011 Qualification Directive “Assessment of Applications for International Protection” does not include any reference to “special needs” or “vulnerability”. It requires Member States to carry out the assessment of international protection on an individual basis and to take into account “individual position and personal circumstances of the applicant, including factors such as background, gender and age”¹⁵². The requirement regarding individual assessment is relevant for the identification of vulnerability and proposed in the other earlier analysed second phase CEAS tools, however, the examples of personal circumstances and factors as “background, gender and age” that should be taken into account are of general

¹⁴⁹ Recast QD, Art 20(3)

¹⁵⁰ Recast QD, Art 30(2)

¹⁵¹ See CJEU, *M'Bodj* (C-542/13, EU:C:2014:2452), where the Court clarified that subsidiary protection does not extend to persons suffering serious illness unless the harm arises from an intentional act or omission by the actors of persecution. The judgment illustrates how the CJEU interprets “serious harm” through the lens of risk rather than vulnerability as such.

¹⁵² Recast QD art 4(c)

character and are not cross-referencing with the vulnerability or special needs provisions enshrined in the 2013 Asylum Procedures Directive.¹⁵³ This absence of explicit cross-reference weakens horizontal coherence across the CEAS and risks implementation variance where “personal circumstances” are considered without a shared vulnerability assessment logic.

Similar to the critique proposed for the latter legislative, this ambiguity makes it challenging to grasp the connection between the CEAS documents in relation to vulnerability protection and impacts negatively on the implementation process. In Chapter 2 terms, this invites pathogenic outcomes where status decisions proceed without systematically surfacing situational or experiential vulnerabilities that should shape procedure and post-status support.

The third phase of the Qualification Directive was firstly resented in the 2016 EU Commissions proposal for recast.¹⁵⁴ The final text was adopted and presented in the 2024 Qualification Regulation (Regulation 6367/24). The document does not provide any references to the term “vulnerability” and contains some limited references to the term “special needs”. The special needs are mentioned in relation to general rules of the Regulation.¹⁵⁵ Article 20 (4) refers to already established special needs and provide a list of examples that contain the basis of those needs: “[..] where it is established that a person has special needs due to being, for example, a minor, an unaccompanied minor, a person with a disability, an elderly person, a pregnant woman, a single parent with a minor or an adult dependent child, a victim of trafficking in human beings, a person with a serious illness, a person with a mental disorder or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, the competent authorities shall take into account those special needs”. The list partly repeats the categories proposed in the Asylum Procedures Regulation and Reception Conditions Directive developed during the same CEAS phase. However, the provision lacks any cross-reference to the related procedures in which such needs might be “established.” This ambiguity may create difficulties for Member States in both interpretation and operational implementation.

The list remains static and does not include a mechanism for recognising intersectional vulnerabilities—those arising from the interplay of gender, trauma, age, and legal dependency—that are central to the layered framework developed in Chapter 2. The phrase “where it is established” implicitly outsources identification to other instruments or procedures, but without an explicit cross-walk to the APR or RCD. As such, the provision preserves the recognition–method gap and

¹⁵³ APD 2013, Art 15(3)

¹⁵⁴ EU Commission 2016/0223, (Recast Directive 2003/109/EC (QD))

¹⁵⁵ QR 2024, Art 20 (4)

risks generating coordination costs between status and reception/procedural authorities.

Another reference of special needs is made in relation to healthcare.¹⁵⁶ Article 32 (2) refers to “beneficiaries of international protection who have special needs”, meaning that those individuals are no longer asylum seekers, and instead recognised by the Member State as persons in need for international protection. The article presents a non-exhaustive list of persons who are entitled to “adequate healthcare”, “such as pregnant women, persons with a disability, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, or cruel, inhuman and degrading treatment, or who have suffered from armed conflict”.¹⁵⁷ This continues the instrument’s focus on post-recognition entitlements keyed to experiential harms, but again with limited operational guidance on how special needs translate into tailored service delivery or monitoring over time.

The rationale behind the list of special needs proposed in the legislative framework remains unclear and is not adequately explained by the legislator. Furthermore, there is no cross-reference to any other documents that could provide further clarification. The best interest of the child is addressed through cross-referencing to other legislative instruments within the package, highlighting the interconnectivity of the provisions. However, a closer examination of the 2024 Qualification Regulation, viewed through the conceptual lens of this thesis, reveals that its contribution to the conceptualization of vulnerability is limited. Notably, there is no mechanism for assessing vulnerability or special needs outlined in the regulation. Accordingly, the instrument largely receives special needs “as established elsewhere” and responds through entitlements, rather than driving a common method for identification or review.

Additionally, the rationale behind the proposed categories of special needs is absent, leaving significant gaps in understanding. Despite this, the proposed version of the Qualification Regulation, in conjunction with the recent developments in the latest versions of the Asylum Procedures Regulation (APR) and Reception Conditions Directive (RCD), demonstrates how the vulnerability identification mechanism can function across different CEAS tools. The cross-referencing between these documents creates a more unified system and contributes to a more aligned understanding of vulnerability, special needs, and guarantees within the asylum process. When considered in the context of the framework for vulnerability established earlier in this analysis, these legislative developments reflect the fluid and multidimensional nature of vulnerability. They show how vulnerability intersects with various interconnected processes and underscore the importance of considering different contexts when conducting vulnerability identification and assessment. Put

¹⁵⁶ QR 2024, Art 32 (2)

¹⁵⁷ QR 2024, Art 32 (2)

succinctly: Phase III consolidates category lists and post-status duties in the Qualification instrument while the method and temporal review live primarily in APR/RCD. This division of labour can work, but only if explicit cross-references, data handovers, and review triggers are operationalised in national practice to avoid under-protection and implementation divergence.

4.3.4. Vulnerability in the evolution of the Dublin Regulation

The purpose of the Dublin Regulation is to establish which EU Member State is responsible for examining an asylum application. Prior to the establishment of CEAS, this determination was governed by the Dublin Convention, formally signed in 1990 and enacted in 1997. Neither the Convention nor its first successor, Dublin II (Regulation 343/2003), contained any explicit reference to vulnerability.

Nevertheless, the early Dublin framework implicitly incorporated vulnerability considerations through its family-unity and dependency clauses. Chapter III of the Dublin II Regulation laid down a hierarchy of criteria that Member States must apply when determining responsibility for examining an asylum application. Without explicitly mentioning vulnerability, the list included unaccompanied minors and applicants with family members legally residing in a Member State.

Another relevant part of the document related to vulnerability is in Article 3 and Article 15 of the Dublin II Regulation. Article 3(2) allows Member States to "examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility"¹⁵⁸. Article 15 proposes examples where humanitarian grounds can be applicable, such as "family or cultural consideration", family ties cases when "the person is dependent on the assistance of the other on account of pregnancy or a new-born child, serious illness, severe handicap or old age", and family unity for unaccompanied minors.

The Dublin III Regulation¹⁵⁹ provides some elaboration on Member States obligations to consider the particular vulnerability of unaccompanied minors. The preamble calls the MS to consider the best interest of the child and it states that "specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability"¹⁶⁰. Article 8 provides further guidance for determining the family members or capable guardians.

An important amendment of the Dublin III Regulation is the attempt to harmonise the Regulation with RCD and APD. At this point, the cross-references reflect the Phase II CEAS framework, prior to the 2024 reform that replaces the APD with the APR. The

¹⁵⁸ DR II Article 3(2)

¹⁵⁹ 604/2013 Recast DR III

¹⁶⁰ DR III Preamble (13)

preamble cross-reference the RCD 2013/33/EU and APD 2013/32/EU.¹⁶¹ It calls the states to apply the other CEAS tools in addition to the regulation to the procedures for the determination of the MS responsible for the application and concerning the procedural safeguards.

The proposal for the third recast of the Dublin Regulation was published by the EU Commission in May 2016.¹⁶² It does not contain further steps in strengthening the safeguards for vulnerable asylum seekers, as its content is mostly influenced by the challenges connected to the influx of asylum seekers in 2015. On the contrary, it limited the scope of discretionary clauses, thereby reducing the flexibility of Member States to exercise discretion on humanitarian grounds for vulnerable applicants.

Neither the Dublin Regulation nor its recasts contain provisions listing examples of vulnerable applicants or persons with special guarantees; the only category explicitly referred to as vulnerable is that of unaccompanied minors. However, the fact that the Regulation explicitly mentions only one category of vulnerable applicants does not exclude the possibility that other categories may be identified as vulnerable or in need of special guarantees in national practice or through cross-reference to other CEAS instruments.

Although the Dublin framework explicitly recognises only unaccompanied minors as a vulnerable category, this does not preclude the identification of other applicants in need of special guarantees through cross-references to parallel CEAS instruments, such as the Reception Conditions and Asylum Procedures Directives. Yet, the absence of a definition or procedural guidance within the Regulation itself leaves such protection highly dependent on discretionary interpretation by Member States and on the effectiveness of inter-instrument coordination.

4.3.5. The 2024 Asylum and Migration Management Regulation

The Asylum and Migration Management Regulation (AMMR, Regulation 6365/24) represents the latest phase in the evolution of the Common European Asylum System. Replacing the Dublin framework, it broadens the focus from determining responsibility for individual asylum claims to managing migration governance across the Union as a whole. Its stated objectives are to establish a common policy architecture grounded in solidarity and fair sharing of responsibility, to create a new solidarity mechanism, to enhance the efficiency of responsibility determination, and to reduce secondary movements by requiring applicants to remain in the Member State responsible for their claim.

¹⁶¹ DR III Preamble (11), (12)

¹⁶² COM(2016) 270 final — Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (recast).

While the AMMR's material scope is more extensive than that of the previous Dublin Regulations, its engagement with vulnerability remains fragmented. The Regulation refers to "vulnerabilities," "vulnerable persons," and "special or specific needs" in several contexts, yet provides no definition in Article 2 (Definitions). Explicit references appear primarily in:

- Recitals 18 and 25, which mention persons disembarked following search-and-rescue operations and those exposed to trafficking or exploitation;
- Recitals 43–48, which concern minors, unaccompanied minors, and dependency situations arising from pregnancy, illness, or old age; and
- Article 39, which governs the exchange of health data before transfer, listing "disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence."

In addition, Article 12(4) cross-refers to the 2024 Asylum Procedures Regulation regarding "special procedural guarantees." These scattered provisions employ vulnerability as a descriptive label but do not establish corresponding procedural duties or a common assessment mechanism.

Conceptually, the AMMR reframes vulnerability from an individual legal condition into a systemic governance indicator. Vulnerability appears both as an element of "migratory pressure" and as a variable in solidarity and relocation mechanisms. This marks a significant shift—from recognising vulnerability as a ground for protection to managing it as a parameter within the Union's resilience calculus.

From the perspective of this thesis's conceptual framework, the AMMR contributes little to the conceptualisation of vulnerability and only partially to its operationalisation. Although the Regulation promotes cross-referencing with the Reception Conditions and Asylum Procedures Directives—where identification and procedural safeguards are to occur—it provides no criteria, timelines, or accountability mechanisms specifying how vulnerability information should inform solidarity measures or transfer decisions. This maintains the recognition–method gap identified in earlier CEAS instruments: vulnerability is acknowledged rhetorically but not translated into enforceable assessment or protection obligations.

In practical terms, the AMMR's sporadic references risk transforming vulnerability from a human-rights concept into a managerial category of risk distribution. Unless subsequent delegated acts or implementing guidelines specify assessment modalities, the Regulation's contribution to the protection of vulnerable applicants will remain largely indirect—dependent on the functioning of the parallel procedural and reception instruments. In that sense, the AMMR represents both the culmination and the limitation of CEAS's evolution: vulnerability is finally system-wide, but diffused to the point of abstraction.

4.3.6. Vulnerability in the evolution of the Eurodac

The Eurodac Regulation has historically served as the technical backbone of the Common European Asylum System (CEAS), enabling the comparison of fingerprints to determine which Member State is responsible for examining an asylum application. The first Eurodac Regulation (Regulation No 2725/2000) was adopted as a supplement to the Dublin Convention prior to the first phase of the CEAS. It was later replaced by Regulation (EU) No 603/2013 and, most recently, by Regulation (EU) 6366/24. Across these iterations, Eurodac has evolved from a narrowly technical database for asylum identification to a broad governance instrument integrating asylum, return, and law enforcement functions.

In its first two generations, the Eurodac framework contained no reference to “vulnerability” or “special needs.” It operated purely as a procedural and technical complement to the Dublin system. The 2024 recast, however, introduces limited references to vulnerability, primarily in operational and enforcement contexts. For example, Recital 52 acknowledges that administrative measures to ensure compliance with the obligation to provide biometric data may not be appropriate where a person’s “vulnerability arises due to the condition of their fingers or face.” This clause implicitly recognises embodied or inherent vulnerability—acknowledging that certain physical or psychological conditions may impede biometric registration—but does not define vulnerability or attach protective consequences to its recognition.

More significantly, the 2024 Regulation extends biometric data collection to children as young as six years old, lowering the previous threshold of 14 years (Recitals 44–47). It affirms that “no coercion shall be used against minors to ensure compliance,” yet immediately allows that “a proportionate degree of coercion may be used” where necessary. This contradictory phrasing leaves the balance between protection and enforcement unclear, delegating interpretation to Member States. From a conceptual perspective, it reflects the tension between formal recognition of vulnerability and its procedural instrumentalisation: children’s vulnerability is acknowledged rhetorically but subordinated to the system’s data-collection imperatives.

The 2024 recast also integrates Eurodac into the EU interoperability framework, connecting it with other databases such as the Schengen Information System and the Entry/Exit System. This expansion transforms Eurodac into a multi-purpose tool for asylum, migration management, and return monitoring, enabling the storage of alphanumeric and biometric data not only for asylum seekers but also for beneficiaries of temporary protection, resettled persons, and returnees (Recitals 9–10, 58–64). While such interoperability is presented as enhancing efficiency, it risks extending biometric surveillance to populations already recognised as vulnerable—including minors and victims of trauma—without clear safeguards or consent mechanisms. The Regulation makes only general references to compliance with the Charter of

Fundamental Rights and the principle of proportionality (Recitals 52–53, 96), without specifying any vulnerability-sensitive procedures or data protection standards.

Viewed through the conceptual framework of this thesis, the Eurodac recast exemplifies the datafication of vulnerability. Rather than serving as a ground for protection, vulnerability is reframed as a variable of administrative manageability—a factor that determines the degree of coercion permissible or the reliability of biometric data. In this sense, the Eurodac Regulation represents the culmination of a broader trend already visible in the AMMR: the shift from juridical recognition to managerial incorporation.

Overall, despite its expanded scope and rhetorical references to vulnerable persons, the Eurodac Regulation remains primarily a technical and enforcement-driven instrument. It offers no definitional clarity, assessment mechanism, or operational guidance for identifying or protecting vulnerable individuals. Instead, it relocates vulnerability from the sphere of legal safeguards to that of biometric governance, reflecting the CEAS's broader transformation from a protection regime to a system of migration management.

4.3.7. Vulnerability in the evolution of the Crisis and Force Majeure Regulation

The Regulation on situations of crisis and force majeure in migration and asylum (Regulation 6379/24) forms the final component of the 2024 reform of the Common European Asylum System. It establishes a coordinated EU framework for responding to exceptional migratory pressures—such as mass arrivals, the instrumentalisation of migrants, or other force-majeure events—by allowing temporary derogations from ordinary asylum rules while ensuring solidarity among Member States. Structurally, the Regulation functions both as a derogation clause and as a solidarity mechanism, operating in parallel with the Asylum and Migration Management Regulation, the Asylum Procedures Regulation, and the Reception Conditions Directive. Although crisis governance necessarily requires flexibility, it also tests the resilience of human-rights safeguards. The way in which vulnerability is treated therefore reveals whether emergency measures remain rights-responsive or slide into a purely managerial logic. Explicit references to vulnerability appear mainly in the recitals rather than in the operative articles. Recital 38 requires Member States, when applying solidarity or relocation measures, to give primary consideration to vulnerable persons and refers to Article 24 RCD (2024) and Articles 19–22 APR (2024) for guidance. Through these cross-references, the Regulation imports the existing CEAS categories—minors (including unaccompanied minors), persons with disabilities, older persons, pregnant women, single parents, victims of trafficking, persons with serious illness or mental disorders, and survivors of torture or other serious violence. Vulnerability is therefore recognised indirectly through pre-existing instruments rather than through an

autonomous definition. Recital 42 adds that, where derogations are applied, Member States must ensure that applicants with special procedural or reception needs continue to receive appropriate support, and must refrain from applying derogations when such support cannot be guaranteed. Recitals 49–50 address the situation of children, providing that detention of minors should be avoided and that unaccompanied minors or children under 12 should be excluded from or removed from border-procedure tracks following an individual assessment. These provisions introduce a limited corrective element within a wider framework centred on flexibility and control. The operative text, while affirming proportionality and fundamental-rights obligations, contains no dedicated article on vulnerability assessment or monitoring. Protection thus depends on the correct interplay between the crisis regime and the ordinary CEAS instruments.

The architecture of the Regulation exposes a tension between crisis management and protection. On the one hand, it preserves essential safeguards by referring back to the RCD and APR; on the other, it permits extensions of registration deadlines, prolonged border procedures, and delayed transfers that may in practice erode those very safeguards. Vulnerability is therefore acknowledged, but only conditionally—protected where possible and suspended where necessary. By outsourcing identification and assistance entirely to the ordinary instruments, the Regulation perpetuates the recognition–method gap already visible in other CEAS components. It presumes that vulnerability will be identified elsewhere, yet authorises exceptional operations precisely when ordinary mechanisms are most likely to fail. The result is a circular form of protection in which vulnerability remains visible in rhetoric but often disappears in practice.

From a governance perspective, the Regulation transforms vulnerability into a parameter of exception management. Its logic mirrors that of the AMMR and Eurodac: individuals in vulnerable situations are incorporated into the calculus of system resilience rather than treated as holders of distinct entitlements. The Regulation nonetheless introduces a modest innovation by explicitly excluding certain groups—children under 12, unaccompanied minors, and persons whose health or psychological condition prevents adequate support—from the application of crisis measures. This provision confirms that even in emergency contexts some vulnerabilities require absolute protection, yet it remains exceptional and depends heavily on national interpretation.

In sum, the Crisis and Force Majeure Regulation expands the EU’s capacity for coordinated crisis management but not the depth of its protection for vulnerable applicants. Its reliance on cross-referenced safeguards maintains rhetorical consistency across the CEAS but weakens the centrality of individualised assessment. Vulnerability becomes a parameter of flexibility rather than a ground for reinforced care. Viewed through the conceptual framework developed in this thesis, the Regulation completes a trajectory already visible in the previous instruments: the

transformation of vulnerability from a human-rights concept rooted in recognition and positive obligations into an element of administrative calibration within EU migration governance. In this final stage, vulnerability is invoked everywhere yet assessed nowhere. The Regulation therefore epitomises the ambivalent legacy of the CEAS—an ever-expanding procedural architecture that institutionalises the language of protection while dispersing its substance.

4.3.8. Vulnerability in the evolution of the Return Border Procedure Regulation

The Regulation establishing a return border procedure (Regulation 6377/24) forms part of the 2024 CEAS reform package and aims to bridge the gap between the asylum border procedure and return enforcement. It provides for a harmonised framework to manage the removal of third-country nationals whose applications for international protection have been rejected under the 2024 Asylum Procedures Regulation. Although designed primarily as a procedural and enforcement instrument, it also reveals how the Union conceptualises vulnerability at the final stage of the migration cycle.

Unlike other CEAS instruments, the Regulation does not define vulnerability. Its engagement with protection is indirect and largely derivative of other norms. Recital 5 affirms that the best interests of the child should be a primary consideration whenever the Regulation affects minors, and Recital 9 reaffirms Member States' obligations under the Return Directive concerning health, family life, and state of health. Article 4(2) requires that persons awaiting return be accommodated under conditions equivalent to the material reception and healthcare standards of the Reception Conditions Directive. Through this cross-reference, the Regulation implicitly imports the RCD's categories of applicants with special reception needs, including minors, pregnant women, persons with disabilities, and survivors of violence. The reference functions as an indirect bridge ensuring that individuals identified as vulnerable during the asylum stage retain at least minimal safeguards at the return stage.

Article 5 introduces further protection through the principle that detention may only be imposed as a measure of last resort, following an individual assessment, and only when less coercive measures cannot be effectively applied. This language mirrors the general principle of proportionality but also echoes the individualised approach to vulnerability: detention decisions must take account of each person's circumstances, capacity, and possible health or psychological conditions. Nevertheless, the Regulation does not specify how such assessments should occur, nor does it require vulnerability screening before or during detention. The responsibility for identification thus remains external to the return phase, reinforcing the recognition–method gap already observed in earlier CEAS instruments.

The Regulation's crisis and force-majeure provisions add a further layer of complexity. Article 6 authorises Member States, in a declared crisis, to extend both the maximum period of stay at border facilities and the permissible duration of detention by up to six additional weeks. While Article 1(2) emphasises that all measures must respect necessity, proportionality, and the Charter of Fundamental Rights, the effect of such extensions may be to normalise prolonged restrictions precisely for those least able to endure them. From a vulnerability perspective, this creates a structural asymmetry: the individuals most in need of timely procedural guarantees are also those most likely to experience prolonged containment under exceptional conditions.

Article 8 obliges Member States to inform third-country nationals or stateless persons, in a language they understand, about the measures applied and their duration. This is a basic procedural safeguard, but its effectiveness depends on interpretation and access to assistance. For applicants with cognitive, linguistic, or psychological barriers, information alone may not constitute meaningful access to rights without accompanying support mechanisms—none of which are detailed in the Regulation.

Conceptually, the Regulation continues the CEAS trajectory in which vulnerability is treated not as a juridical status but as an operational variable. The cross-references to the RCD and APR transfer responsibility for identifying and managing special needs to earlier procedural stages, assuming continuity where in practice discontinuity often prevails. Once a person's application has been rejected, protective attention shifts to efficiency and removal. In this sense, vulnerability becomes an attribute relevant only insofar as it affects the feasibility of return, not the substantive rights of the individual. Its language of individual assessment and proportionality preserves the appearance of protection but leaves discretion almost entirely to Member States. The Regulation's design reflects a systemic logic of continuity and control—ensuring procedural linkage between asylum and return—while conceptually flattening the distinctions between different forms of vulnerability and the corresponding duties of care.

In summary, the Regulation contributes little to the conceptual or operational development of vulnerability within EU law. Its protective dimension is derivative, fragmented, and conditional. By relying on cross-referenced standards rather than explicit safeguards, it reinforces the managerial framing of vulnerability observed across the new CEAS. At this final stage of the protection–return continuum, vulnerability remains acknowledged yet effectively subordinated to enforcement priorities. The Regulation thus completes the CEAS's circular logic: vulnerability is invoked as a reason for humane management, but rarely as a basis for legally enforceable protection.

The 2024 Return Border Procedure Regulation (Regulation (EU) 2021/1148) is another piece of the EU migration and asylum reform package adopted in 2024. The Regulation does not make any references to “vulnerable persons”, “persons with

special reception needs” or “persons with special procedural guarantees”. Thus, the legislative tool does not contribute significant to the conceptualisation of vulnerability in the CEAS. However, the Regulation is synchronised through cross-referencing with other relevant CEAS documents which address vulnerability and special needs.

4.3.9. Vulnerability in the evolution of the Screening Regulation

The Screening Regulation (Regulation (EU) 2024/6403) introduces a harmonised front-end procedure for third-country nationals who are apprehended in connection with an unauthorised crossing of the external borders, disembarked following search-and-rescue operations, or who apply for international protection at border crossing points without fulfilling entry conditions. It is one of the new instruments adopted under the 2024 reform of the Common European Asylum System (CEAS) and constitutes the initial stage of the migration-management chain, preceding allocation under the Asylum and Migration Management Regulation (AMMR) and subsequent procedures under the Asylum Procedures Regulation (APR) or the Return Border Procedure Regulation.

The Regulation requires that every person subject to screening undergo identity, security, health, and vulnerability checks before referral to the competent authority. Screening must be completed without delay, and in any case within five days (extendable in narrowly defined exceptional circumstances) for external-border cases or within three days for those apprehended inside the territory (Art. 6–7). This codifies an EU-wide obligation of early detection of special needs at the moment of first contact with authorities.

Article 9, entitled “Preliminary health and vulnerability checks,” provides the principal entry point for the protection dimension. It requires that specialised and trained personnel carry out both a health check and a preliminary vulnerability check “to identify indications that a person is in a vulnerable situation, is a victim of torture or other inhuman or degrading treatment or punishment, or has special reception or procedural needs.” The provision explicitly cross-refers to the 2024 Reception Conditions Directive and the 2024 Asylum Procedures Regulation for the meaning of “special reception needs” and “special procedural guarantees.” Where indications of vulnerability arise, the person must receive appropriate support in suitable facilities, and for minors the assessment must involve child-protection authorities and be conducted in a child-friendly manner.

Institutionally, the Regulation defines who must perform these tasks and how. Member States are to designate screening authorities and ensure that all personnel involved in vulnerability or health checks receive dedicated training (Arts 4 and 10). They must also involve medical professionals where necessary, and cooperate with specialised services responsible for child protection or the fight against trafficking in human

beings. Access for organisations providing counselling and legal assistance is guaranteed, subject only to limited restrictions based on security or operational needs (Art. 11). Oversight is entrusted to an independent national fundamental-rights monitoring mechanism, which must be adequately resourced and empowered to investigate allegations of rights violations arising during screening (Arts 15–16). This mechanism functions as an additional safeguard for vulnerable individuals at a phase when access to remedies is otherwise restricted.

From a procedural perspective, the Screening Regulation connects the border stage to subsequent phases by means of the screening form, which compiles findings on identity, health, and vulnerability and is transmitted to the competent authority handling the next procedure (Art. 13). In principle, therefore, the Regulation creates continuity between early detection and later procedural guarantees under the APR and material conditions under the RCD.

Evaluated through the conceptual framework of this thesis, the Regulation's contribution lies primarily in operationalising vulnerability rather than defining it. It institutionalises early and revisitable detection of situational and experiential vulnerabilities, mandates trained personnel, and embeds child-specific and trauma-sensitive safeguards. However, two limitations remain significant. First, the Regulation contains no autonomous definition of vulnerability or common indicators, leaving Member States discretion in methodology and scope. The effectiveness of the screening phase will thus depend on the quality of national protocols, tools, and training. Second, the compressed timelines and the possibility of short-term deprivation of liberty to ensure presence during screening risk undermining the quality of assessment, particularly for persons with non-visible or intersectional vulnerabilities such as psychosocial trauma or SOGIESC-related risks. Unless the training modules and monitoring mechanisms are robustly implemented, these features may perpetuate the recognition–method gap observed throughout the CEAS.

Overall, the Screening Regulation does not redefine vulnerability at a conceptual level, but it meaningfully strengthens its procedural operationalisation at the earliest stage of the asylum process. By embedding mandatory, time-bound health and vulnerability checks, linking findings to subsequent instruments, and establishing independent monitoring, it converts vulnerability from a rhetorical category into an administrative duty of detection and referral. Whether this will translate into effective protection for individuals ultimately depends on how Member States implement the Regulation's training, coordination, and monitoring obligations. In that sense, the Screening Regulation marks both progress and persistence: vulnerability is now systemically recognised from the point of first contact, yet its legal and methodological content remains uneven across the CEAS architecture.

4.3.10. Vulnerability in the evolution of the Resettlement Regulation

The 2024 Union Resettlement and Humanitarian Admission Framework Regulation (Regulation (EU) 2024/6368) establishes, for the first time, a binding and permanent Union framework for the admission of third-country nationals or stateless persons in need of international protection. It replaces the previously fragmented landscape of ad hoc national and multilateral resettlement initiatives and translates long-standing humanitarian practice into EU law. Resettlement is defined as the transfer of forcibly displaced persons from a third country to an EU Member State where they are granted international protection, usually in cooperation with the UNHCR and other international partners. The Regulation therefore extends the Common European Asylum System (CEAS) beyond the internal dimension of asylum procedures to encompass externalised and pre-entry protection pathways.

The Regulation's primary objective is to provide protection to those refugees deemed most in need, thereby offering a safe and legal alternative to irregular migration and dangerous routes. Article 1(1) states that the framework is intended to strengthen solidarity with third countries hosting large refugee populations, while ensuring orderly, predictable, and rights-based admissions. In this respect, the Union Resettlement and Humanitarian Admission Framework formalises what had previously been a discretionary field of cooperation.

Vulnerability is placed at the centre of the eligibility architecture. Article 5(3) explicitly identifies “vulnerable persons” as a core category eligible for admission, listing women and girls at risk; minors, including unaccompanied minors; survivors of violence or torture, including on the basis of gender or sexual orientation; persons with legal or physical protection needs; persons with medical needs; persons with disabilities; and those lacking a foreseeable durable solution, particularly in protracted refugee situations. This list, largely drawn from the UNHCR Resettlement Handbook and global resettlement criteria, represents the most detailed codification of vulnerability in any CEAS instrument. It reflects an institutional borrowing from the humanitarian field rather than an autonomous EU conceptualisation.

The Regulation also embeds dependency and family-unity considerations within its vulnerability logic. Articles 5(4)–(5) extend eligibility to family members who are dependent due to pregnancy, illness, disability, or old age, requiring Member States to take account of the best interests of the child and of family interdependence. This operationalises a relational understanding of vulnerability, whereby care responsibilities and emotional dependency form part of protection needs rather than administrative exceptions.

Procedurally, the identification of vulnerability is to be carried out in cooperation with the UNHCR, the European Union Agency for Asylum (EUAA), or the International

Organization for Migration (IOM). Articles 7–9 require that applicants be individually assessed and, where necessary, interviewed in a manner sensitive to their age, gender, and specific needs. Member States may prioritise applicants “with particular protection needs or vulnerabilities” when implementing the annual Union Resettlement and Humanitarian Admission Plan. Vulnerability thus functions both as a selection criterion and as a procedural parameter guiding how candidates are identified and processed. However, Article 1(2) clarifies that the framework does not create an individual right to admission; decisions remain subject to Member State discretion. Consequently, vulnerability operates here as a policy-based prioritisation tool rather than as a binding entitlement.

Once admitted, beneficiaries of international protection or humanitarian status acquire the rights attached to that status under the Qualification Regulation (2024/6367) and related CEAS instruments, including access to integration and orientation programmes tailored to their specific vulnerabilities (Arts 14–15; Recital 36). These measures acknowledge the continuity of vulnerability beyond arrival and the need for sustained social and economic inclusion.

Viewed through the conceptual framework of this thesis, the 2024 Resettlement Regulation represents both a consolidation and a limitation of the EU’s engagement with vulnerability. It consolidates the concept by placing it explicitly at the heart of eligibility, selection, and procedural design, aligning Union practice with international resettlement norms. Yet it remains limited in that it does not transform vulnerability into a rights-triggering condition: its operationalisation depends entirely on voluntary commitments, quota availability, and cooperation with third countries. In other words, vulnerability is fully institutionalised but only partially juridified—a pattern that mirrors the broader trajectory of the CEAS, where recognition of vulnerability is achieved without an equivalent guarantee of enforceable protection.

Finally, the Regulation illustrates the externalisation of EU asylum governance. By locating protection responsibilities outside EU territory and by framing vulnerability within cooperative admission arrangements, the framework situates the Union’s humanitarian engagement in a governance model that balances moral obligation with migration control. The implications of this shift for the protection of vulnerable refugees in third countries will be examined further in Chapter 5.

4.3.11. Synthesis: Evolution of vulnerability in the CEAS legal instruments

The evolution of vulnerability in the Common European Asylum System (CEAS) reveals a gradual but discernible trajectory from a fragmented, embryonic conception of vulnerability toward a more structured and articulated legal framing. This development culminates in the comprehensive 2024 reform package under the New

Pact on Migration and Asylum, expected to enter into force in 2026. Across the three legislative generations, this trajectory reflects the CEAS's increasing responsiveness to the multifaceted nature of vulnerability, and allows us to assess the extent to which these legal reforms align with the layered, intersectional, and law-mediated framework developed in Chapter 2. Read through the interpretive and doctrinal methodology outlined in Chapter 1, this synthesis also demonstrates how vulnerability is constructed, mediated, and operationalised through legal design.

The first generation of CEAS instruments (2003–2005)—notably the original Reception Conditions Directive (2003), Qualification Directive (2004), and Asylum Procedures Directive (2005)—treated vulnerability primarily as a background condition. Legal references to ‘vulnerable persons’ were sparse, under-defined, and grounded in categorical enumeration (e.g. minors, elderly persons, persons with disabilities). At this embryonic stage, vulnerability was neither proceduralised nor structurally integrated, and lacked any dynamic, relational, or co-produced understanding.

The second generation (2011–2013) introduced recast directives that expanded legal attention to vulnerability. The scope of categories was enlarged and procedural guarantees refined. However, the legal framework remained largely categorical, with limited recognition of individualised or intersectional vulnerability. Despite new references to ‘special procedural needs’ and ‘adequate support’, there was no integrated system of identification, assessment, and follow-up. Categories continued to function as the dominant logic, even as broader definitions and contextual considerations emerged. This second phase demonstrates some early alignment with the layered model—particularly at the structural and situational levels—but the recognition–method gap identified in Chapter 2 remained fully intact.

The 2024 reform package, under the Pact on Migration and Asylum, marks the most ambitious legislative effort to codify vulnerability. It includes the Asylum Procedures Regulation (APR), the Qualification Regulation (QR), Reception Conditions Directive (recast), Screening Regulation, Asylum and Migration Management Regulation (AMMR), Crisis and Force Majeure Regulation, and Eurodac Regulation. Together, these instruments form a more coherent and operationally oriented vulnerability framework. Importantly, they introduce several innovations that resonate with the three analytical dimensions of vulnerability developed in Chapter 2: structural, situational and experiential, with intersectionality serving as an analytic lens.

The obligation to conduct continuous identification and context-sensitive assessment of vulnerability—explicit in the Screening Regulation (Art. 10) and the Asylum Procedures Regulation (Arts. 27–29)—demonstrates an emerging alignment with the layered model. The legal text now acknowledges both visible and non-visible indicators of vulnerability, including psychological trauma and social stigma, and expands the definition of persons with ‘special procedural needs’ to include survivors

of violence, victims of trafficking, and individuals with serious illnesses. These developments support the recognition of general vulnerability (linked to the structural harms of displacement) and partially address situational or intersectional vulnerability by requiring individualised assessments. However, experiential vulnerability—central to narrative identity, disclosure, and embodied harm—remains only implicitly acknowledged, with no procedural guarantees that operationalise it.

However, significant gaps remain—especially regarding structural vulnerability and the relational, institutional positioning of applicants. Although the 2024 reform texts suggest growing awareness of how legal and administrative systems can exacerbate harm, they stop short of explicitly acknowledging the law’s role in co-producing vulnerability. From the perspective of law-mediated vulnerability, the CEAS remains cautious in recognising how its own procedural architectures, border constraints, and governance logics generate new forms of dependency and exposure. The persistent reliance on pre-defined categories, even if non-exhaustive, limits the ability of the CEAS to fully implement an intersectional or relational approach. As discussed in Chapter 2 and theorised through McCall’s typology, current legal tools remain primarily inter-categorical. While some intra-categorical attention is visible through expanded definitions, and the logic of anti-categorical intersectionality is evoked in the EUAA soft-law guidance, these approaches are not systematically embedded in the legislative text.

The experiential dimension of vulnerability, articulated in Chapter 2 through Ricoeur’s notion of narrative identity and the capacity to ‘tell one’s story,’ remains underdeveloped in CEAS legislation. While the reforms affirm that assessments must be conducted on a case-by-case basis, this requirement is not new and has long been embedded in asylum procedures. What remains missing is a legal infrastructure that enables meaningful engagement with individual trajectories as the site of intersectional harm. Positionality, as discussed in Wallner’s contribution and reflected in the VULNER findings, is equally underexplored: although institutional discretion and frontline practices are recognised as variables in vulnerability assessment, the role of officials’ positionalities—how their own assumptions, roles, and institutional contexts shape recognition—is not clearly addressed in the legal instruments. This omission limits the CEAS’s capacity to address the epistemic, institutional, and relational asymmetries that shape how vulnerability is perceived and acted upon.

That said, progress is evident within the legislative framework itself. The 2024 reform package introduces obligations that move beyond fixed categories and gesture toward a more holistic and context-sensitive understanding of vulnerability. Requirements for continuous identification, attention to non-obvious harms, and procedural flexibility—particularly within the Screening Regulation and Asylum Procedures Regulation—signal incremental alignment with the layered and law-mediated model developed in Chapter 2. In parallel, several policy documents accompanying the reform process, including the Commission’s Green Paper and European Parliament

recommendations, underscore persistent discrepancies in Member State practices and call for enhanced harmonisation through clearer procedural guidance, staff training, and operational coordination. These recommendations reflect growing awareness of the need for a more coherent and institutionally anchored approach to vulnerability, and further highlight the importance of interpretive sensitivity among first-line officials.

Despite these advancements, CEAS law remains in a state of conceptual transition. It gestures toward a responsive, layered, and individualised model, yet remains institutionally anchored in categorical entry points and administratively manageable checklists. While the evolution of vulnerability in CEAS parallels some of the developments observed in UN treaty bodies and European human rights jurisprudence (as shown in Chapter 3), it lags behind in fully operationalising intersectionality and structural awareness. The normative promise of vulnerability—as a tool for recognising embedded harm, disrupting bias, and enabling tailored protection—has been acknowledged but not fully realised. A fully responsive CEAS would require not only legislative refinement but also greater institutional self-reflexivity, including explicit mechanisms to address structural, law-produced vulnerabilities and the positionality of decision-makers.

Thus, although CEAS has moved beyond its embryonic stage of fragmented categorisation, and now incorporates multiple signals of layered vulnerability, the framework remains incomplete. Its continued reliance on categories, absence of procedural mechanisms to capture narrative and positional complexity, and the limited legal recognition of law’s co-productive function signal areas where further conceptual and normative development is required. The recognition–method gap identified in Chapter 2 persists as the central limitation: vulnerability is increasingly named, but insufficiently operationalised, coordinated, or systematically reviewed.

4.4. EUAA Soft Law Instruments and Operational Tools in the

Context of the New Pact

This sub-chapter examines how the European Union Agency for Asylum (EUAA) conceptualises and operationalises vulnerability through its expanding set of soft-law instruments. Under Regulation (EU) 2021/2303, the EUAA’s mandate is to support Member States in implementing the Common European Asylum System (CEAS) by providing technical assistance, training, operational coordination, and—critically—developing “operational standards, indicators, guidelines and best practices” (Art. 13). While the Agency does not interpret EU law in a binding manner (Art. 66), its soft-law tools play an increasingly pivotal role in shaping how vulnerability is recognised and acted upon in day-to-day practice. In the architecture of CEAS

governance examined throughout this thesis, these tools occupy the institutional layer where legal norms meet administrative reality, providing a key site for analysing how vulnerability becomes operationally meaningful.

Within this mandate, and in the context of the New Pact reforms, the EUAA has developed four principal instruments aimed at standardising the identification and assessment of vulnerability: the Tool for the Identification of Persons with Special Needs (IPSN)¹⁶³, the Special Needs and Vulnerability Assessment Tool (SNVA)¹⁶⁴, the Guidance on Reception: Operational Standards and Indicators (EUAA, 2024a), and the Guidance on Vulnerability in Asylum and Reception: Operational Standards and Indicators (EUAA, 2024b). Complementary checklists, referral templates and training modules further operationalise these tools. Together, they seek to translate legal concepts—initially embedded in the 2013 Reception Conditions Directive (Art. 21) and Asylum Procedures Directive (Art. 24), and now reaffirmed in the 2024 Reception Conditions Regulation (Arts. 24–25) and Asylum Procedures Regulation (Arts. 21–22)—into actionable procedures for frontline officials.

A notable contribution of these instruments is their attempt to move beyond the purely categorical approach that characterised earlier CEAS practice. The EUAA Guidance (2024b) repeatedly emphasises that vulnerability is “not a permanent or fixed feature” but an evolving condition shaped by internal and external factors (p. 19). To avoid essentialising labels, it prefers the terminology “person in a vulnerable situation” rather than “vulnerable person” (p. 16). Vulnerability is defined as a multifactorial, context-dependent state that may affect an applicant’s ability to understand or present their case or to fully benefit from reception conditions (Annex 3, p. 127). The Guidance further stresses that applicants may present vulnerabilities that are “not immediately visible” (p. 19) and that different factors may “coexist and intersect with each other” (p. 19). In these respects, the EUAA framework explicitly distances itself from the rigid lists inherited from CEAS legislation.

Yet despite this conceptual advance, the categorical logic remains embedded across EUAA tools. The IPSN Tool begins by grouping indicators according to predefined categories; the SNVA relies on category-based prompts; and both the 2024a Reception Guidance and 2024b Vulnerability Guidance draw directly on the legislative categories of “applicants with special needs.” This dual structure—innovation within constraint—makes the EUAA instruments particularly illuminating for the layered and intersectional framework developed in Chapter 2.

¹⁶³ European Union Agency for Asylum. (n.d.). *Tool for the identification of persons with special needs (IPSN)*. European Union Agency for Asylum. <https://euaa.europa.eu/practical-tools-and-guides/tool-identification-persons-special-needs>

¹⁶⁴ European Union Agency for Asylum. (n.d.). *Special Needs and Vulnerability Assessment Tool (SNVA)*. European Union Agency for Asylum <https://snva.euaa.europa.eu/esf/SNVA-MAIN>

Turning to operationalisation, the EUAA approach is structured around identification and assessment. The identification stage rests on a series of observable indicators intended for use by non-specialist personnel during early contact, including screening, registration and lodging. These indicators cover physical, psychological, behavioural and social dimensions (EUAA, 2024b, p. 95 onwards). Although the lists are derived from legislative categories, the Guidance insists that they must be applied flexibly and supplemented by contextual judgement, particularly where vulnerabilities may be hidden, inhibited by shame, or culturally mediated (p. 19). Importantly, the Guidance recognises that individuals may fall within several categories or exhibit multiple indicators, and that vulnerabilities may intensify or diminish over time depending on environmental factors (p. 22). This marks a significant evolution from earlier, rigid group-based identification models.

The assessment stage demonstrates the most substantial conceptual progress. The 2024b Guidance requires a balanced assessment addressing both “risk and harm factors” and “protective factors and coping mechanisms” (EUAA, 2024b, p. 110). Risk and harm factors include trauma, violence, discrimination, physical or mental health challenges, communication barriers, or procedural obstacles. Protective factors may include family or community support, emotional resilience, previous cooperation with authorities, or a stable living situation (p. 22). Rather than treating vulnerability as a deficit, the balanced model recognises that these protective elements may mitigate (but never eliminate) vulnerability. This relational understanding resonates with the scholarship examined in Chapter 2—especially Butler’s, Luna’s and Fineman’s analyses of vulnerability as mediated through social and institutional conditions.

The Guidance also prescribes an individualised and context-sensitive approach. Staff must consider personal biography, cultural background, gendered experiences, and the procedural environment in which the applicant finds themselves (pp. 19–22). These commitments align closely with the situational and experiential layers of vulnerability identified in Chapter 2. The EUAA model recognises that vulnerability is shaped not only by individual characteristics but by the interplay of personal circumstances with external conditions, including reception environments, procedural pressures, and social supports.

Taken together, the EUAA tools represent a substantial procedural and conceptual advance within the CEAS. They reject inherent, fixed understandings of vulnerability; highlight temporality, context and individualisation; incorporate both risk and resilience; and explicitly acknowledge that vulnerabilities may intersect. They thus bring the CEAS closer to the layered, relational and non-essentialist framework developed in Chapter 2.

However, important limitations persist. First, the EUAA’s definition ties vulnerability to its procedural relevance—specifically to the individual’s ability to participate effectively in the procedure or benefit from reception conditions (Annex 3, p. 127). This functional

focus risks obscuring broader structural dimensions of vulnerability, including those created by law and administrative design. Chapter 2 demonstrates that vulnerability is often produced by structural factors such as accelerated timelines, border settings, uncertainty, institutional opacity or coercive environments. These elements remain largely outside the EUAA's conceptual frame.

Second, while the Guidance recognises that vulnerability factors may “coexist and intersect,” intersectionality is not operationalised as an analytic method (EUAA, 2024b, p. 19). The tools do not instruct staff on how to interpret compounded vulnerabilities or how interacting axes of disadvantage—such as gender, trauma history, legal precarity or cultural marginalisation—produce qualitatively different risks. Intersectionality remains acknowledged but not methodologically integrated, whereas Chapter 2 conceptualises it as a mode of analysis essential for capturing layered vulnerability.

Third, despite the dynamic framing of vulnerability, the system continues to rely on the indicative lists inherited from the Directives and their 2024 recasts. These lists shape frontline expectations about who “counts” as vulnerable and privilege harms that are visible, identity-based or already institutionalised. As Chapter 2 identifies, this produces a recognition–method gap: tools detect what is legible within their categories but struggle to capture less visible harms, such as shame-based trauma, psychological inhibition, coercive control or culturally mediated silence.

Finally, because EUAA tools are soft law, they improve recognition without guaranteeing protection. They do not create binding obligations; implementation varies across Member States; and applicants lack remedies for incorrect or absent assessments. This mismatch generates the recognition–accountability gap described in Chapter 2, where the system becomes increasingly detailed in identifying vulnerability but remains structurally limited in ensuring consistent safeguards.

Overall, the EUAA soft-law instruments represent one of the most sophisticated operationalisations of vulnerability within EU asylum governance to date. They incorporate dynamic, relational and contextual elements that align closely with the layered model developed in Chapter 2. At the same time, they reveal the boundary between conceptual innovation and structural constraint: while the tools push beyond categorical thinking, they remain anchored in legislative categories and procedural logics; while they recognise intersectionality, they do not operationalise it; and while they enhance recognition, they do not close the gap between recognition and protective effect. This makes them both a major step forward and a compelling illustration of why a layered, intersectional, law-mediated concept of vulnerability remains necessary for analysing the CEAS as a whole.

4.4.1.Synthesis: EUAA Soft Instruments and the Operationalisation of Vulnerability

The EUAA soft-law instruments represent a notable conceptual and procedural evolution within the governance of vulnerability in the CEAS. Through its operational standards, indicators, and guidance tools developed under Regulation 2021/2303, the Agency has sought to bridge the gap between legislative abstraction and frontline practice. Read through the interpretive and doctrinal methodology outlined in Chapter 1, these tools are approached here as institutional sites where legal concepts of vulnerability are interpreted, mediated, and translated into operational routines. EUAA guidance documents constitute soft-law instruments: interpretative and operational in nature, but not legally binding. Their authority derives from Regulation 2021/2303, which empowers the Agency to develop common standards, training materials, and operational guidance, while expressly limiting these instruments to coordination and support rather than enforceable duties. Their importance lies not in formal legal authority but in shaping administrative practice, standardising assessments across Member States, and providing the interpretive infrastructure necessary for consistent identification of situational and experiential vulnerabilities.

First, the EUAA framework advances a dynamic, non-essentialist understanding of vulnerability, marking a departure from earlier CEAS instruments that equated vulnerability with fixed identity-based categories. Vulnerability is presented as context-sensitive, fluid, and shaped by both internal and external factors, echoing Chapter 2's emphasis on the relational and dispositional nature of vulnerability. The tools recognise that vulnerability may be hidden or socially mediated, and that individual experiences evolve across time and institutional settings. This represents a clear alignment with the experiential and situational dimensions of the framework, even if the structural dimension remains only implicitly acknowledged.

Second, the EUAA Guidance introduces a balanced assessment model that considers both risk and harm factors alongside protective and resilience factors. This move challenges the traditional deficit-based view of vulnerability and reflects the relational perspective theorised by Butler, Luna, and Fineman. However, the EUAA's functional orientation—linking vulnerability strictly to an applicant's ability to engage with procedures or benefit from reception conditions—risks narrowing the concept to a procedural threshold. Structural vulnerabilities, such as those arising from systemic uncertainty, administrative opacity, or institutional coercion, remain under-theorised in this framework. This limits alignment with the structural dimension elaborated in Chapter 2, particularly with respect to law-mediated vulnerability, where institutional architectures themselves contribute to exposure and harm.

Third, while the Guidance acknowledges that vulnerability factors may intersect, intersectionality is not methodologically integrated. The tools lack mechanisms to

interpret how multiple, interacting axes of disadvantage produce unique configurations of harm. This reflects the ongoing dominance of categorical logic, even as it becomes more nuanced and inclusive. As discussed in Chapter 2 and drawing on McCall's typology, the EUAA model remains primarily inter-categorical, while beginning to incorporate intra-categorical nuance and gesturing toward anti-categorical reflexivity. Yet, without full analytical commitment to intersectionality, the tools risk flattening complex lived experiences into administratively legible forms.

Fourth, the EUAA tools illustrate the recognition–accountability gap: while they improve the identification of vulnerability, they do not generate enforceable rights or binding obligations. Implementation remains uneven, and the lack of remedies or procedural guarantees renders recognition incomplete, leaving applicants dependent on the variable implementation by Member States and on EUAA's limited monitoring powers. This gap, mapped in Chapter 2, highlights the limits of soft law in transforming vulnerability from a diagnostic concept into a justiciable claim.

Finally, the tools exhibit growing awareness of positionality and narrative. The emphasis on case-by-case analysis, personal biography, and context-sensitive assessment reflects, albeit implicitly, the insights of Chapter 2 on Ricoeur's notion of narrative identity and Wallner's emphasis on the evaluator's position. However, without explicit acknowledgement of the epistemic and institutional lenses through which vulnerability is assessed, such awareness remains partial, and the experiential dimension risks being reduced to what can be narrated or documented within accelerated or resource-constrained procedures.

In sum, the EUAA soft-law instruments reflect meaningful progress toward a more layered and operationally relevant conceptualisation of vulnerability. They embody many of the analytical gains proposed in Chapter 2 and represent an institutional effort to bring legal meaning into procedural life. Yet they also demonstrate the persistent limits of non-binding instruments in overcoming the structural, methodological, and epistemic constraints of the CEAS. As such, they serve not only as a partial realisation of the vulnerability framework but also as a diagnostic site for its continued refinement and application.

4.5. Externalisation in the CEAS: Forms, Functions, and

Protection Implications

This sub-chapter examines the role of externalisation in the CEAS, focusing on how the relocation of asylum functions beyond EU borders transforms governance practices and affects the protection environment for applicants.

4.5.1. What Externalisation Is: Definitions, Logic, and Policy Evolution

The concept of externalisation has become central to understanding how the Common European Asylum System (CEAS) governs mobility beyond EU borders. Although the term is used in diverse ways, the literature converges around a core idea: externalisation comprises state measures designed to prevent, deter, redirect, or otherwise reshape access to asylum by shifting, minimising, or avoiding responsibility for protection. As Cantor et al. explain, these measures include actions “that shift, minimise or avoid responsibilities” by relocating or obstructing access to asylum procedures (2022, pp. 121–124). UNHCR adopts a similar position, defining externalisation as measures “implemented or having effects outside a State’s territory” that “directly or indirectly prevent asylum-seekers from reaching the destination country or claiming or enjoying protection there” (UNHCR, 2021, para. 5).

This relocation of responsibility is not merely spatial but structural. Cantor et al. emphasise that externalisation involves transferring “State functions normally undertaken within the territory,” including not only border control but also “the administration of national asylum systems” (2022, p. 122). From the perspective of the layered and law-mediated model developed in Chapter 2, these shifts represent a significant reconfiguration of the institutional environment that conditions vulnerability. Externalisation restructures the legal and institutional landscape in which asylum seekers must act, altering the baselines that support individual autonomy and producing new structural vulnerabilities by design.

Externalisation is embedded in a broader logic of remote migration governance. Moreno-Lax conceptualises this as “contactless control”, whereby the EU exerts effective influence without formally engaging jurisdiction (2017, pp. 34–37; 2020, pp. 385–416). This resonates with the thesis’s argument that law not only responds to vulnerability but also produces it: externalisation operates as an institutional mechanism that strategically lowers the visibility of protection obligations while increasing exposure to preventable harm.

The historical evolution of externalisation reflects a deliberate consolidation of this governance philosophy. Instruments such as the Global Approach to Migration and Mobility (GAMM), the European Agenda on Migration (2015), and more recently the New Pact on Migration and Asylum (2020–2024) have progressively incorporated external dimensions into core asylum governance. Carrera et al. describe how cooperation with third countries has increasingly been tied to conditionality, with incentives exchanged for strengthened border enforcement and readmission cooperation (2016, pp. 7–14). As Niemann and Zaun note, externalisation has become “the most dynamic strand” of EU migration policy after 2015 (2023, p. 2966).

Placed within the layered concept of vulnerability introduced in Chapter 2, this evolution signifies not only a policy shift but a structural reorganisation of the conditions under which vulnerability emerges, is recognised, and can be mitigated.

4.5.2. How Externalisation Operates: Instruments, Actors, and Legal Design

Externalisation does not rely on a single legal instrument. Instead, it operates through a flexible and hybrid architecture, combining soft law, political declarations, operational cooperation, and extraterritorial processing arrangements. One distinguishing feature is the pervasive use of informal or semi-formal tools that lack traditional binding force yet produce significant regulatory and practical effects.

Cardwell and Dickson characterise Mobility Partnerships as emblematic of “formal informality”: instruments that “appear binding but lack enforceability,” shaping migration control without creating rights or remedies (2023, pp. 3121–3126). Xanthopoulou similarly identifies the EU–Turkey Statement (2016)¹⁶⁵ as an instance of “ongoing informalisation,” marked by unclear status, hybrid authorship, and limited accountability (2024, pp. 133–138).

From a vulnerability-sensitive perspective, these soft-law frameworks create environments where the legal supports that sustain autonomy and enable disclosure—identified in Chapter 2 as crucial for relational and dispositional vulnerability—become attenuated. Without enforceable guarantees, individuals face reduced access to the institutional resources needed to withstand situational pressures.

A second modality of externalisation consists of extraterritorial asylum procedures. These include arrangements such as the Italy–Albania agreement¹⁶⁶, which foresees the application of Italian law outside Italian territory, and the UK–Rwanda model¹⁶⁷, which entails a transfer of asylum procedures and protection obligations. Recent policy analyses classify these as part of three dominant strategies: (1) extraterritorial processing, (2) transfers of responsibility, and (3) returns to transit states (Niemann, 2024, p. 3).

¹⁶⁵ European Council. (2016). *EU–Turkey Statement*, 18 March 2016. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-meeting/>

¹⁶⁶ *Protocol between the Government of the Italian Republic and the Council of Ministers of the Albanian Republic on Strengthening Cooperation in the Field of Migration* (signed 6 November 2023).

¹⁶⁷ Government of the United Kingdom & Government of the Republic of Rwanda. (2022). *Memorandum of Understanding between the United Kingdom and the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement*. <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-united-kingdom-and-the-republic-of-rwanda-on-migration-and-economic-development>

A recent example of operational externalisation is the Italy–Albania Protocol on Migration Cooperation (2023), which establishes two facilities on Albanian territory—hosting up to 3,000 persons—where Italy may conduct border and return procedures under Italian and EU law (Arts. 3; 4(1)–(2)). Migrants may remain in Albania *only* for these procedures (Art. 4(3)), and all disputes fall under the exclusive jurisdiction of Italian courts (Art. 4(2)), while Italian personnel benefit from immunity from Albanian jurisdiction (Art. 7(4)). Albania controls only the external perimeter, and individuals who exit the area may be returned to the facility by Albanian authorities (Art. 6(2)–(6)).

This design reflects what Xanthopoulou (2024, pp. 122–124) describes as “jurisdictional opacity,” since operational control and legal responsibility are split between two states in ways that obscure accountability. It also exemplifies the “contactless control” model identified by Moreno-Lax (2020, pp. 389–392), enabling Italy to govern asylum procedures extraterritorially while distancing itself from full territorial obligations.

Viewed through the lens of the layered and law-mediated vulnerability framework introduced in Chapter 2, the Italy–Albania arrangement illustrates how externalisation can produce both structural and pathogenic vulnerabilities. Structural vulnerability arises from the creation of a quasi-territorial legal space where safeguards are fragmented, while pathogenic vulnerability emerges from accelerated procedures, limited access to counsel, and the inherent uncertainty of a setting where neither EU nor Albanian protections apply fully.

A third operational avenue involves returns to safe third countries. Xanthopoulou points to the Greek 2021 designation of Turkey as safe for several nationalities¹⁶⁸ as an example of a “borderline legal apparatus,” highlighting how safety assessments may be politicised (2024, p. 139).

Externalisation is further characterised by multi-actor governance. As Goller notes, EU institutions, Frontex, the EUAA, Member States, and third-country authorities participate in shared operations that generate “diffused accountability,” as no actor assumes full responsibility for the human rights effects (2024, pp. 65–70). Xanthopoulou describes this as “jurisdictional opacity” (2024, pp. 122–124).

This dispersal of responsibility directly engages the analytical framework of Chapter 2: by destabilising clear lines of accountability, externalisation reshapes the legal environment that mediates vulnerability, transforming potentially remediable risks into entrenched structural harms.

¹⁶⁸ Hellenic Republic. Joint Ministerial Decision No. 42799 (7 June 2021) designating Turkey a “safe third country” for nationals of Syria, Afghanistan, Pakistan, Bangladesh, and Somalia.

Material infrastructures operate alongside this legal architecture. Transit zones, closed ports, and offshore facilities function as quasi-territorial spaces in which legal safeguards may be reduced or uncertain (Xanthopoulou 2024, pp. 109–111). These sites exemplify how situational vulnerability—identified in Chapter 2 as stemming from context-specific conditions—can be systematically generated by design.

4.5.3. Protection Risks and Structural Vulnerabilities in Externalised Settings

Despite policy claims to efficiency and cooperation, externalisation entails systemic protection risks. These risks arise from the interaction of informality, multi-actor governance, jurisdictional fragmentation, and the displacement of asylum processes outside EU legal space.

(1) Jurisdictional ambiguity and protection vacuums

A central risk emerges when EU actors exercise effective influence over a person's situation while denying jurisdiction. Moreno-Lax refers to this phenomenon as “contactless responsibility,” whereby states determine people's fate remotely while avoiding rights-triggering obligations (2020, pp. 389–392). Xanthopoulou describes the resulting spaces as “legal grey zones” that states “seem to exploit” (2024, p. 112). These dynamics illustrate the production of pathogenic vulnerability: the legal environment itself generates or amplifies harm, as described in Chapter 2.

(2) Circumvention of non-refoulement

Externalisation may amount to constructive or indirect refoulement. As Cantor et al. document, preventing arrival or transferring persons without adequate safeguards may breach non-refoulement obligations when individuals face risks that become invisible within externalised structures (2022, pp. 132–141). UNHCR warns that externalisation can result in “physical or legal limbo,” “warehousing,” and exposure to hostility or violence (2021, paras. 3, 7).

The layered model developed in Chapter 2 makes clear that such uncertainty and indeterminacy simultaneously deepen structural, situational, and experiential vulnerability, as individuals navigate incomplete information, hostile environments, and severely constrained agency.

(3) Informality and absence of effective remedies

Informal arrangements limit judicial oversight and create accountability gaps. Xanthopoulou emphasises the lack of institutional balance, transparency, and remedies within informal structures, which undermines rights to asylum, liberty, and

non-discrimination (2024, p. 138). Cardwell and Dickson similarly highlight the governance implications of soft-law cooperation lacking enforceability (2023, pp. 3123–3126).

This aligns with the Chapter 2 insight that vulnerability is relational: when legal remedies and institutional recognition are weakened, individuals lose access to the supports necessary to exercise autonomy.

(4) Operational risks and ambiguous liability

Joint operations involving Frontex or Member States often result in blame-shifting and weak oversight. Xanthopoulou provides examples where shared operational control complicates accountability and weakens remedies (2024, pp. 187–190).

(5) Barriers to access, procedural gaps, and vulnerability identification

Externalised “pre-entry” settings frequently hinder access to procedural guarantees, legal aid, and early identification of vulnerabilities. FRA and EUAA reporting shows persistent structural obstacles to identifying applicants with heightened protection needs, especially in border screening contexts.

This directly reflects Chapter 2’s argument that vulnerability becomes invisible when institutions rely on narrow, checklist-based assessments and when disclosures occur in coercive or opaque environments.

(6) Broader structural effects

Externalisation produces “zones of reduced rights protection” (Moreno-Lax 2020, pp. 25–31) and “inconsistent and selective borders” that are “rigid and closed to some, while kind and generous to others” (Xanthopoulou 2024, p. 110).

This stratified border governance reinforces the thesis’s view that vulnerability is shaped by civic and geopolitical stratification. Externalisation is therefore not merely a technical relocation of procedures but a structural generator of layered, intersectional, and law-mediated vulnerability.

4.5.4. Synthesis: Externalisation in the CEAS and the Protection of Vulnerability Persons

The analysis in this section confirms that externalisation fundamentally reshapes the vulnerability environment under the CEAS. It does so not merely by relocating procedural functions, but by restructuring the legal, spatial and institutional conditions under which vulnerability is produced, recognised, and remediated. Read through the

interpretive and doctrinal methodology outlined in Chapter 1, externalisation emerges as a site where legal design, institutional architecture, and governance practices actively mediate vulnerability. These dynamics reinforce the core conceptual claim developed in Chapter 2: that vulnerability is layered, intersectional, and law-mediated—not an inherent trait, but a condition shaped by institutional configurations and normative contexts. Externalised arrangements—such as offshore processing, hybrid cooperation agreements, and returns to designated safe third countries—construct governance spaces in which institutional visibility, access to procedural safeguards, and legal accountability are significantly attenuated. In these spaces, law-mediated vulnerability becomes structurally embedded, as institutional configurations themselves generate new forms of exposure and dependency.

As Chapter 3 demonstrated in the context of international and European human rights jurisprudence, vulnerability requires active interpretive engagement. Externalised models reduce the capacity—and in some cases, the willingness—of authorities to undertake such engagement. In these settings, vulnerability becomes not merely under-acknowledged but structurally invisible. This invisibility is best understood as a manifestation of the recognition–method gap: mechanisms for identifying and assessing vulnerability are weakened precisely where risk is highest. Crucially, this invisibility is not random but patterned: it disproportionately affects applicants whose vulnerability does not align with pre-constructed templates or visible indicators. The legal opacity and multi-actor governance that characterise externalisation render such cases difficult to identify, assess, or remedy.

From an intersectional perspective, these dynamics are even more pronounced. While Chapter 2 established that vulnerability often manifests at the intersection of legal status, identity, social norms, and institutional positionality, the externalised setting further distorts this configuration. The same applicant may face heightened experiential, situational and structural vulnerabilities in an externalised context precisely because institutional environments are less attuned to intersectional harm. Whereas CEAS territory—despite its flaws—offers some degree of harmonisation, procedural safeguards, and soft-law guidance (as analysed in Sections 4.3 and 4.4), externalised procedures unfold in more heterogeneous and legally ambiguous environments, limiting the scope for nuanced assessment. Thus, intersectionality in these settings risks being neutralised, if not actively silenced.

At the same time, externalisation opens normative and policy debates about the possibility of a more globalised and cooperative protection regime. As discussed earlier in this chapter, instruments such as Mobility Partnerships and regional frameworks could, in principle, enable more equitable responsibility-sharing. However, this potential must be approached with caution. As the preceding sections have shown, even within the EU’s internal system, the harmonisation of vulnerability identification and protection remains uneven—despite years of legislative reform, extensive EUAA guidance, and increasing awareness of intersectional needs. Transposing these

practices to cooperation arrangements with third countries—where oversight is weaker, legal guarantees more limited, and institutional cultures more heterogeneous—risks compounding structural and law-mediated vulnerabilities rather than alleviating them. Extending these practices to third-country cooperation arrangements without robust oversight mechanisms, enforceable standards, and intersectionality-sensitive methodologies risks replicating—and even amplifying—existing gaps. In this sense, externalisation is not only a test of logistical capacity or diplomatic cooperation, but of the normative commitments underlying EU asylum governance. It exposes the tension between the EU’s stated human-rights obligations and the governance technologies through which mobility is controlled.

In conclusion, the externalisation of asylum responsibilities constitutes more than a shift in geographic location: it generates new configurations of law-mediated, structural, and pathogenic vulnerability. These findings provide a critical bridge to Chapter 5, where the layered framework will be applied to SOGIESC-diverse applicants, and where the externalisation context will be explored in relation to applicants whose vulnerability is often institutionally erased.

4.6. Final Synthesis: Re-reading CEAS Vulnerability Governance

Through the Conceptual Lens

This chapter has examined how vulnerability is governed in the CEAS across three interrelated dimensions: legislative development, soft-law guidance, and externalised governance. When viewed through the layered, intersectional, and law-mediated lens developed in Chapter 2, a complex pattern emerges: while important normative and conceptual advances have been made, significant structural tensions continue to limit the system’s capacity to recognise and respond to less visible or intersectional forms of harm. Read through the interpretive and doctrinal methodology outlined in Chapter 1, these findings show how legal design and institutional configurations actively shape the production, recognition, and suppression of vulnerability.

The layered vulnerability model highlights how structural, situational, and experiential harms co-exist and interact. In CEAS legislation, procedural and reception safeguards have expanded across successive reform cycles but remain tied to categorical indicators that flatten these layers. The intersectional lens, moreover, reveals how individual vulnerabilities are shaped not only by identity, but by their interaction with legal norms, procedural conditions, and institutional expectations. The EUAA soft tools move closer to recognising this complexity by shifting from fixed group-based templates to more flexible, needs-based approaches. Yet gaps remain, particularly in supporting practitioners to identify overlapping vulnerabilities in dynamic or high-pressure settings. The persistence of the recognition–method gap, where vulnerability

is increasingly named but insufficiently operationalised, continues to limit the practical realisation of these safeguards. Externalisation adds a further challenge, as it restructures the governance environment in ways that amplify pathogenic and structural vulnerabilities, often without adequate safeguards or accountability.

At the same time, the findings offer reasons for cautious optimism. The 2024 CEAS reforms and EUAA guidance reflect a clear discursive shift away from essentialist framings of vulnerability and towards a more dynamic, person-centred understanding. These developments signal an emerging openness to rethinking protection obligations in more inclusive and adaptive terms. If complemented by clearer methodological guidance, stronger cross-institutional coordination, and explicit engagement with law-mediated vulnerability, these practices may help narrow the gap between conceptual ambition and procedural reality. With enhanced institutional coherence and a sustained commitment to intersectionality, such developments could translate into more responsive practice—even in externalised or hybrid governance settings.

Ultimately, this chapter confirms the central thesis claim that vulnerability in EU asylum law is not merely a descriptive label but a governance function shaped by legal form, operational tools, and institutional environments. It also underscores that vulnerability is both produced and constrained by the epistemic, procedural, and structural conditions of the CEAS, illustrating the need for a more reflexive and integrated approach across legal and operational levels. As the next chapter demonstrates, these dynamics become especially visible—and consequential—when examined through the lived experiences of SOGIESC-diverse applicants navigating both CEAS procedures and externalised protection landscapes.

5. Chapter 5: Through the Vulnerability Lens:

SOGIESC Diversity in the Asylum Context

5.1. Introduction

Based on the conceptual framework developed in Chapter 2, this chapter applies a layered, intersectional and law-mediated analysis of the SOGIESC (Sexual Orientation, Gender Identity and Expression, and Sex Characteristics) group in the asylum context. In line with that framework, vulnerability is understood here as a dynamic, experiential (including relational) and law-mediated, rather than as an inherent property of a pre-defined “vulnerable group.” As discussed in Chapter 2.6, vulnerability emerges through interactions between embodied experience, social positioning and institutional–legal environments that shape visibility, legibility and access to protection.

The analysis applies four key dimensions of vulnerability—structural, situational, experiential and law-mediated—to the specific trajectories of SOGIESC-diverse applicants. These dimensions reflect the co-existing layers of vulnerability across three analytical entry points: general vulnerabilities (rooted in the structural position of being an asylum seeker), group-based vulnerabilities (linked to shared identity markers and group-specific harms), and individually experienced vulnerabilities (shaped by biographical, psychological and experiential–relational factors). These are not discrete types of persons but intersecting analytical lenses into a unified, configuration of vulnerability with relational and narrative dimensions situated within the experiential layer - co-constructed across legal, institutional, normative and biographical contexts.

For consistency, the analysis focuses on two key phases of the asylum context: reception conditions and refugee status determination procedures. In addition, based on the findings of Chapter 4, it examines two institutional settings: intra-EU asylum procedures under the CEAS and extra-territorialised procedures implemented through Mobility Partnership Agreements (MPAs) between the EU and African States.¹⁶⁹ These are used illustratively to highlight how different legal, institutional and geographical

¹⁶⁹ This reference to “Mobility Partnership Agreements (MPAs) between the EU and African States” is used illustratively to capture dynamics observed in various forms of EU cooperation with third countries. While there is no singular or uniform EU–Africa MPA framework, the term here refers to specific bilateral or regional arrangements between the EU or its Member States and African countries (e.g., the EU–Morocco Mobility Partnership), which often include provisions on migration management. The example is intended to highlight how externalisation procedures in distinct legal and geographical settings pose challenges for the identification and assessment of vulnerability, rather than to denote a single institutional model.

configurations reshape the identification and assessment of vulnerability—a process conceptualised in Chapter 2 as law-mediated vulnerability.

Intersectionality is applied as a diagnostic and refining lens, in line with the approach developed in Chapter 2. Following Crenshaw’s foundational insight that structures of harm are reproduced both through and within identity categories, the analysis primarily draws on McCall’s intra-categorical approach—focusing on heterogeneity within the group of SOGIESC applicants, including distinctions between gender-nonconforming individuals, transgender persons, bisexual persons, or those with fluid or emerging identities. At the same time, the analysis remains attuned to inter-categorical dynamics (revealing how institutional regimes structure harm across group boundaries) and anti-categorical critique (which questions the stability and institutional utility of the categories themselves).

This intersectional lens is further enriched by Yuval-Davis’s multi-level model, which maps inequality across experiential, institutional and symbolic levels. Rather than stacking identity markers, intersectionality is used here to trace the institutional, legal and normative mechanisms that privilege certain narrative templates while marginalising others. This is particularly relevant in asylum procedures, where institutional legibility often depends on narrow identity scripts and checklist-based assessments, and where complex subjectivities are frequently rendered invisible by procedural and epistemic constraints.

Taken together, this methodological and conceptual approach demonstrates how the layered vulnerability model developed in Chapter 2 can be operationalised in practice. The following sections illustrate this application through detailed case analyses, highlighting how vulnerability is produced, obscured or exacerbated in real-life procedural contexts.

5.2. Unpacking SOGIESC-related vulnerability in the asylum context

Asylum applications from SOGIESC-diverse individuals may raise the need for international protection based on sexual orientation and/or gender identity, typically under the refugee definition ground of “membership of a particular social group,” often

in conjunction with other grounds such as “political opinion” or “religion.”¹⁷⁰¹⁷¹ These claims are among the most complex and challenging within asylum adjudication. Several factors contribute to this complexity, including the absence of material proof or objective verification methods to confirm one’s sexual orientation or gender identity (UNHCR, 2012, paras. 64-66; EUAA 2024c, pp. 25-25). Moreover, systemic shortcomings in asylum reception frameworks—especially in relation to non-conforming sexuality and gender expression—lead to the marginalisation of SOGIESC applicants and the violation of their fundamental rights (Venturi, 2023, pp. 10–18). The EUAA (2023) notes similar systemic shortcomings, observing that SOGIESC applicants frequently face inappropriate accommodation placements, heightened exposure to harassment in collective facilities, and inconsistent access to specialised support services (EUAA, 2023, pp. 1–2).

As will be further elaborated in this chapter, the lack of a well-defined and operationalised conceptualisation of vulnerability in asylum law and procedure results in significant protection gaps for SOGIESC-diverse individuals. From the perspective developed in Chapter 2, these gaps are not merely technical failures of implementation; rather, they reflect deeper processes through which legal norms and institutional practices actively produce and structure vulnerability. This dynamic is often described in the literature as “pathogenic vulnerability” (Mackenzie et al., 2014; Flamand, Raimondo & Saroléa, 2023). As Venturi (2023) shows, these pathogenic mechanisms are particularly pronounced in SOGIESC-related claims, where disclosure, credibility, and safety are filtered through normative and procedural expectations that many applicants are unable—or unwilling—to meet due to fear, trauma, or non-conformity with stereotyped identity narratives. These procedural challenges are echoed in the EUAA’s operational findings, which emphasise that LGBTIQ applicants often struggle with disclosure due to fear of violence, past trauma, and culturally embedded stigma, and that credibility assessments may unintentionally rely on stereotyped expectations of identity expression (EUAA, 2023, p. 2)

¹⁷⁰ “Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” — Convention Relating to the Status of Refugees, adopted 28 July 1951, entered into force 22 April 1954, 189 UNTS 137, Art. 1(A)(2).

¹⁷¹ UNHCR. (2012). Guidelines on international protection No. 9: Claims to refugee status based on sexual orientation and/or gender identity within the context of Article 1A(2) of the 1951 Convention and/or its protocol relating to the status of refugees. Available at <https://www.refworld.org/docid/50348afc2.html>; European Union Agency for Asylum. (2024c). *Practical guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics: Cross-cutting elements*. Publications Office of the European Union. [PDF file]. <https://www.euaa.europa.eu/sites/default/files/publications/2024-11/practical-guide-sogiesc-cross-cutting-elements.pdf>

As Chapter 2 demonstrated, intersectionality functions as a refining lens within the layered vulnerability model, offering a method for understanding how vulnerability emerges not from identity traits alone but through the interaction between identity, norms, and institutional legibility. While this section primarily adopts McCall’s intra-categorical approach—focusing on heterogeneity within the category of “SOGIESC applicants,” such as distinctions between gender-nonconforming individuals, transgender persons, bisexual persons, or those with fluid or emerging identities—it remains attuned to the insights of inter-categorical analysis, which exposes how institutional regimes structure vulnerability across group boundaries, and anti-categorical critique, which questions the stability of the categories themselves (McCall, 2005). This approach is further enriched by Yuval-Davis’s multi-level model of intersectionality, which situates inequality across experiential, institutional, and symbolic levels (Yuval-Davis, 2006, 2011). These combined perspectives help explain why some forms of vulnerability become hyper-visible in asylum procedures, while others are rendered structurally invisible, misrecognised, or reframed as credibility deficits. Rather than stacking identity markers, intersectionality is used here to trace the institutional, legal, and normative mechanisms that privilege certain narrative templates while marginalising others.

While all asylum seekers face structural challenges due to the precarious nature of legal status, SOGIESC-diverse applicants experience additional and compounding forms of harm. These include identity-specific exposure to stigma, violence, and procedural misunderstanding. This section applies the layered vulnerability framework to examine these dynamics, identifying both general shortcomings of the asylum system and specific issues that disproportionately affect SOGIESC applicants. These layers of vulnerability—structural, situational, and experiential—are not treated as discrete or additive categories, but as interdependent and mutually reinforcing dimensions, in line with intersectionality theory (Crenshaw, 1991; Raimondo, Leboeuf & Venturi, 2023). EUAA operational reporting likewise highlights that vulnerabilities affecting LGBTIQ applicants originate simultaneously from institutional arrangements (structural), accommodation placement or community hostility (situational), and individual histories of violence or concealment (experiential), confirming the multi-layered nature of harm identified in the literature (EUAA, 2023, pp. 1–3). Moreover, this analysis also builds on empirical findings from the VULNER project¹⁷², which show how intersecting axes of identity, legal status, institutional design, and social norms shape asylum seekers’ lived experiences of harm.

¹⁷² VULNER Project. (2020–2023). *Vulnerability under the Global Protection Regime: How Does the Law Assess, Address, Shape and Produce the Vulnerabilities of the Protection Seekers?* Horizon 2020 Research Project (Grant Agreement No. 870845). Retrieved August 31, 2025, from <https://www.vulner.eu>

5.2.1. The first layer: General challenges related to the uncertain legal status of asylum seekers

For all persons in forced displacement, legal status determines their access to rights, protection, and autonomy (EUAA & Frontex, 2023, p.8, p.14). Within the international protection framework, a basic distinction exists between internally displaced persons, asylum seekers, and refugees.¹⁷³ Unlike internally displaced persons—who remain under the jurisdiction of their State of origin—asylum seekers and refugees have crossed an international border and depend fully on the legal and institutional arrangements of the host State.¹⁷⁴

Refugees, once officially recognised, obtain a legal status that normally grants access to civil, political, social and economic rights,¹⁷⁵ and are protected by the principle of non-refoulement¹⁷⁶ from being returned to a place where they would face persecution or serious harm.¹⁷⁷ By contrast, asylum seekers occupy a far more precarious position (EUAA & Frontex, 2023, p. 26). Although Article 14 of the Universal Declaration of Human Rights guarantees the right to seek asylum, States have no corresponding legal obligation to grant it. In practice, asylum seekers possess only the right to lodge an application and the right to remain while their claim is examined. Their access to housing, health care, employment and procedural safeguards varies significantly across jurisdictions and is often conditioned on administrative discretion (EUAA & Frontex, 2023, pp. 20-21).

A negative asylum decision normally results in return or removal, which means that any weakness in the assessment may trigger a violation of non-refoulement and expose the person to persecution, torture, or other irreparable harm. This profound dependency on the host State's procedural fairness and institutional capacity constitutes the first and foundational layer of vulnerability for all asylum seekers, including those with diverse SOGIESC (UNHCR, 2012, para. 60; EUAA & Frontex, 2023, p. 12). The 2024 EUAA guide further underlines that SOGIESC applicants are particularly affected by legal uncertainty, delayed access to the procedure, and fear of early disclosure — all of which heighten their structural vulnerability within the system (UNHCR, 2012, paras. 16-25; 30-33; EUAA, 2024c, pp. 14–21, 24–27).

¹⁷³ For definitions of these and related terms, see UNHCR, *Master Glossary of Terms*, accessed 23 November 2025, <https://www.unhcr.org/glossary>

¹⁷⁴ The refugee definition is declaratory. See UNHCR Emergency Handbook: "a person is a refugee as soon as s/he fulfils the criteria contained in the definition". The refugee status is an official recognition by the State that grants international protection to a refugee.

¹⁷⁵ The scope of the rights depends on the hosting state's law and policy.

¹⁷⁶ The principle of non-refoulement is a fundamental principle of international law. It has its origins in international refugee law as found in Article 33 of the Convention relating to the Status of Refugees ((adopted 28 July 1951, entered into force 22 April 1954)

¹⁷⁷ See also (EUAA & Frontex, 2023, pp. 29-30), reasoning on the transition to refugee status.

As conceptualised in Chapter 2, this constitutes a paradigmatic form of structural vulnerability: a law-mediated condition arising from legal uncertainty, restricted rights, institutional dependence, and suspended autonomy. This is reinforced by the EUAA (2024c) observation that the asylum procedures itself can be a source of stress, fear and re-traumatisation, especially for SOGIESC applicants who lack secure status and face institutional ambiguity (Fuglei, UN Women, 2023, p. 14; EUAA, 2024c, p. 29, p.38). This structural layer does not simply exist in the background; it actively shapes how SOGIESC applicants navigate the entire asylum trajectory. It influences whether they can safely disclose their identity, seek help, avoid harmful environments, or correct errors in the procedure. Within this structural layer, additional situational (linked to reception conditions) and experiential layers accumulate and interact — including their relational dimensions (shaped by stigma, social norms and interpersonal dynamics) and psychological dimensions (trauma, shame, internalised fear).

Thus, understanding the precarious legal status of asylum seekers is essential for analysing SOGIESC-related vulnerability: it is the legal and institutional baseline upon which all subsequent layers of vulnerability develop.

5.2.2. The additional layers: group-specific and individual layers of vulnerability

- Multiple discrimination during the cycle of displacement (incl. asylum country) due to diverse SOGIESC

Individuals with diverse SOGIESC are often exposed to different forms of discrimination and persecution in their countries of origin and thus forced to flee to save their lives. There is no accurate data on the number of LGBTIQ+ persons or individuals with diverse SOGIESC forcibly displaced globally, as many people continue living in fear of the consequences in case their non-conforming sexuality or gender identity would be known to the State and non-State actors. In reality, fleeing the country of origin does not always ensure safety. LGBTIQ+ individuals may continue to experience the same degrading treatment in the countries of transit or asylum; thus, discrimination and persecution throughout the entire displacement circle might remain. How the group is treated may depend on the prevailing norm in the society, religion, beliefs, culture, tradition and other factors. It is important to remember that different identities within the LGBTIQ+ and SOGIESC umbrella terms may be exposed to harm to a different extent. For example, transgender individuals would be more noticeable as they normally break the prevailing in many societies heterosexual norm and may challenge other strong norms such as cultural, religious, gender etc. Thus, the diversity within the SOGIESC group, combined with the surrounding cultural, religious and political context, shapes the individual experience of vulnerability and adds further layers to the structural vulnerability associated with uncertain legal status. In the terms

of Chapter 2, this reflects intersectional experiential and situational vulnerability arising from the interaction between group-based position and other axes of differentiation (such as gender, race, class, age or disability), giving rise to intersectional configurations of risk. Recent scholarship confirms this pattern, noting that SOGIESC-based harms rarely occur in isolation but are embedded in broader matrices of oppression (Venturi, 2023, p. 480). This aligns with research showing that asylum seekers' vulnerabilities are formed through intersecting personal, situational and administrative layers rather than single identity markers (Flamand, Raimondo, & Saroléa, 2023, pp. 501–502, 511–512). As Venturi (2023, pp. 493–494) and Flamand et al. also demonstrate, such intersectional patterns shape not only exposure to harm but also the ways in which applicants are perceived and assessed by asylum authorities, including credibility assessments influenced by age, gender, social background, trauma, and visibility (Flamand et al., 2023, pp. 508–509).

- Continuous persecution, varied forms of persecution

The forms of persecution that the SOGIESC diverse individuals may experience has a direct impact the experiential and situational dimensions of vulnerability. To illustrate the reality of SOGIESC asylum seekers worldwide, this section analysis the UNHCR documents describing the forms of persecution relevant to the SOGIESC cases worldwide. One of the key elements of the asylum examination procedure is to establish the risk of persecution upon return (forward-looking assessment).

This is a non-exhaustive list of harm/treatment that asylum applicants with diverse SOGIESC may experience in their countries of origin. This treatment may constitute persecution in the Convention meaning. As noted above, this forms of harm or persecution can be experienced by the individuals with diverse SOGIESC even on the transit and hosting counties (UNHCR 2012, paras. 20-25; UNHCR, 2002, para. 18; UNHCR, 2003, p. 109; UNHCR Executive Committee, 1993):

- Physical violence
- Sexual violence (i.e. corrective rape, forced sterilization, forced pregnancy)
- Psychological violence (i.e. serious forms of humiliation, harassment, threats and other practices that cause mental or emotional harm)
- Efforts to change an individual's sexual orientation, gender identity, or sex characteristics (forced sex-assigned surgery, forced electroshock therapy, forced drug injection or hormonal therapy)
- Laws criminalizing same-sex relationships
- Penalties or punishment for non-compliance with a law or policy (in the counties without laws that criminalize same-sex relationships "public morality" laws can be applied against individuals with diverse SOGIESC)
- Harmful traditional practices, social norms, and values ("honor crimes", forced marriage and other "purification" ceremonies to "correct" non-conformity)

- Severe or cumulative instances of discrimination or restrictions on the exercise of human rights

As noted earlier, this forms of harm or persecution can be experienced by the individuals with diverse SOGIESC not only in their country of origin, but even in the transit and hosting (asylum) counties. This demonstrates the dynamic, context-dependent nature of situational vulnerability. This aspect is particularly important for the assessment of the situations that cause vulnerability. The list of possible harm reflects the dynamic character of risks that may occur in different contexts and situations. Thus, it is important to remember that vulnerability is not a static state. These shifting risk environments mirror what Chapter 2 conceptualised as situational vulnerability: a layer produced by the interaction between the applicant's identity and the social, political and institutional contexts in which they move. Empirical evidence from the VULNER project confirms that these situational harms can emerge or re-emerge at any stage of the migration trajectory (see Chapter 2 §2.5, Marchetti et al., 2023).

Rather than a static condition, vulnerability is temporally and spatially contingent, shaped by shifting institutional, social and legal environments along the displacement trajectory—as emphasised in VULNER findings (see Chapter 2 § 2.5, Marchetti et al., 2023) and related intersectional analyses (Flamand, Raimondo, & Saroléa, 2023, pp. 503, 509–513)

- The role of norms

Norms are the central element of theoretical discussions about power and abuse.¹⁷⁸ The norms are unwritten rules that are expected to be followed. Each society has its own gender, social, cultural, religious, and other norms. Behaviour non-conforming to the prevailing norm, in most cases, leads to a corrective or punitive sanction. In traditional societies, the diverse SOGIESC often contradicts the prevailing norms that are usually based on a binary understanding of gender, heterosexuality, in the context of strong heteronormativity and uncompromising expectations of how individuals should be expressing their gender and sexuality. These norms constitute the key drivers of the relational dimensions of experiential vulnerability, as defined in Chapter 2: the vulnerability that arises through interpersonal, communal, and institutional relationships that confer or deny recognition.

As it was previously mentioned both SOGIESC and LGBTIQ+ terms include an endless list of identities. Those identities can demonstrate themselves in different ways.

¹⁷⁸ See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990); R. W. Connell, *Masculinities*, 2nd ed. (Routledge, 2020); and Domestic Abuse Intervention Programs, *Power & Control Wheel*, <https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/>, for foundational discussions of how norms shape and reinforce power structures, particularly in gendered and abusive contexts.

It can be through sexual conduct or external appearance, dress, speech, mannerisms, as well as through an individual's way of thinking, living or wishing to live. Societal disapproval of non-conforming sexual and gender identities and expression may lead to different sanctions which can cause harm to non-conforming individuals. It is important to note that LGBTIQ+ asylum claims are not about sexual practices. Those claims are about identity and its expression that is norm-breaking in relation to a certain context. Case law from different jurisdictions affirms that sexual orientation and/or gender identity are fundamental aspects of human identity that are either innate or immutable, or that a person should not be required to give up or conceal¹⁷⁹.

The central element of claims related to sexual orientation and/or gender identity is harm that an individual risks facing as a result of not conforming to expected gender, social, cultural or/and religious or even political norms in the country of origin. Perpetrators may rationalize the violence by referring to the intention of "correcting", "curing" or "treating" the person. Corrective rape or forceful medical treatment could be examples of harm caused to SOGIESC-diverse individuals. This connects directly to the experiential layer (internalised stigma, shame, fear) and the situational layer (social hostility) of vulnerability described in Chapter 2. The identification of prevailing norms in a given context would be the first step when approaching the claim. To assess the risks that an individual may face, it is important to understand how the diverse SOGIESC of the claimant or its expression breaks the prevailing norm in society. Sexual practices are less relevant to the claim, they matter only if persecution occurred as a result of sexual practices. Sexual practices constitute only one example of an expression of norm-breaking behaviour. Gender, societal, religious, political and other norms can be challenged in other ways by diverse SOGIESC.

The identification of prevailing norms in the given context is important not only for the assessment of the claim. The norms can also influence how the asylum procedures are implemented in the hosting (asylum) State. Generally, the European context is seen as favourable for the LGBTIQ+ group and SOGIESC diversity and the EU Member States offer international protection to individuals fleeing from persecution based on their gender identity and/or sexual orientation. However, the application of asylum procedures and the capacity of the asylum reception conditions differs between EU Member States.¹⁸⁰ A closer look at the European asylum procedures shows that the prevailing norms in the society and stereotypical views on the LGBTIQ+ and SOGIESC diversity have been affecting the asylum procedures in a negative way for decades. The methods used in the asylum procedures until recent times to "prove" one's sexual orientation included harmful practices, as plethysmography, medical examination and other "tests" or questioning on the details of sexual practices (harmful methods and practices described in Organization for Refuge, Asylum & Migration (ORAM), 2011). Films of applicants' intimate acts used to be accepted by the

¹⁷⁹ See, for example, *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada, Supreme Court, 30 June 1993

European authorities as a form of evidence of one's sexual orientation. These methods were later forbidden by the CJEU, the Court stated that the evidence of this nature infringes on human dignity and is also contrary to fundamental rights.¹⁸¹

The most challenging part of the asylum claims based on gender, gender identity and sexual orientation is the credibility assessment. While there is no method to prove one's sexual orientation or gender identity, credibility concerns lead to the rejections and expulsion of LGBTIQ+ asylum seekers.¹⁸² The UNHCR and the EU authorities recommend that the credibility assessment focuses on the applicant's personal perceptions, feelings and experiences connected to their feelings of for example difference, stigma or shame. The feelings of self-denial, shame and isolation may accrue when an individual has grown up in cultures where their sexuality and/or gender identity is shameful or taboo (UNHCR 2012, paras. 62-63). It is important to note that every individual is different, and they may experience the situations differently, there is no perfect formula of questions (or answers) that can be used to establish credibility. The focus should be on the identity, non-conformity to the norms and the harm/persecution that may occur as a result of it. Another important aspect related to the norms is the subjective bias of interviewers and decision-makers representing the hosting State authority. This factor should not be overlooked, as their personal views, prejudices, personal life experiences and cultural norms may affect their assessment of the case (UNHCR 2013, p. 186).

These credibility practices exemplify what Chapter 2 described as normative and epistemic vulnerability. Recent work on asylum decision-making confirms that SOGIESC applicants are often assessed through Westernised “scripts” of queerness that penalise cultural difference and non-linear self-realisation processes. As recent scholarship notes, credibility assessments in SOGIESC cases often rely on Westernised “scripts” of queerness and linear identity narratives, which structurally disadvantage applicants whose lived experiences do not conform to these normative expectations (Venturi, 2023, pp. 483–486, 489; Edenborg & Wojnicka, 2024, pp. 91-94).

¹⁸¹ CJEU –The A,B, C cases C-148/13 to 150/13, CJEU – the X, Y, Z cases on sexual orientation. Joined cases C-199, C-200, and C-201. Judgment (final) 7 November 2013

¹⁸² For more empirical data and academic analysis, see:

Ferreira, N. (2022). Utterly unbelievable: The discourse of ‘fake’ SOGI asylum claims as a form of epistemic injustice. *International Journal of Refugee Law*, 34(3–4), 303–326. <https://doi.org/10.1093/ijrl/eeac041>

Zisakou, S. (2021). Credibility assessment in asylum claims based on sexual orientation by the Greek Asylum Service: A deep-rooted culture of disbelief. *Frontiers in Human Dynamics*, 3, Article 693308. <https://doi.org/10.3389/fhumd.2021.693308>

5.2.3. Specific aspects of the refugee status determination procedure for the individuals with diverse SOGIESC

Individuals with diverse SOGIESC may face many challenges throughout the refugee status determination procedure due to their unique characteristics. However, there are three aspects that are very special for this type of claims:

- There is no method to "prove" someone's sexual orientation - this applies for any type of sexual orientation including heterosexual. Same is valid for gender identity.

Both sexual orientation and gender identity are inherent aspects of one's personality¹⁸³. There are no universal characteristics or qualities that typify LGBTIQ+ individuals any more than heterosexual individuals (UNHCR 2012, para. 60 ii). Furthermore, there is a method that can "establish" or "prove" someone's sexuality or gender identity. In asylum cases, applicant's testimony is often the only source of evidence. For this reason, the process of evidence assessment in LGBTIQ+ claims is different from other type of claims. For example, a person fleeing from persecution based on his political activity in some cases can demonstrate material evidence of belonging to a certain political party (membership card), participation in political events (newspaper articles) etc. In cases related to gender, gender identity and sexual orientation the applicant's testimony is the primary and often the only source of evidence (UNHCR 2012, para. 64). For this reason, it is extremely important that the authority that processes the claim has a good understanding of the unique aspects and sensitivity of the SOGIESC-related claims. The assessment cannot be based on superficial understandings or stereotypical assumptions about the experience with diverse SOGIESC (UNHCR 2012, para. 4; Saroléa et al., 2021, pp. 67–68; Carnassale & Marchetti, 2022, pp. 17–18).

From the standpoint of layered vulnerability, these evidentiary constraints illuminate the centrality of experiential vulnerability, including its relational dimensions (shame, stigma, fear, disclosure dynamics), as well as the law-mediated vulnerability arising from how institutions interpret narrative evidence. These dynamics are confirmed empirically in the VULNER Belgium and Italy reports (Saroléa et al., 2021, pp. 65–69; Carnassale & Marchetti, 2022, pp. 15–20).

- Self-realization process

¹⁸³ Sexual orientation refers to: "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender". Gender identity refers to "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms"¹⁸³(UNHCR 2012, para. 8)

At the time of application, the SOGIESC claimants can be at different stages of the process of self-realization. Some for example may identify themselves with the LGBTIQ+ group, some for example may engage in same-sex activity without assigning a clear label to themselves, some may never have had any romantic or sexual relationship but they harbor deep feelings related to their non-conformity to gender, cultural, religious and other norms. Some may be in a difficult internal process of denying their sexuality or gender identity as a result of shame, stigmatization and fear or harm. One's gender identity or/and sexual orientation may be still, they may describe it as fluid or express confusion or uncertainty regarding their sexuality or identity (UNHCR 2012, para. 47). Living all life in the society where non-conforming gender identity or/and sexual orientation is a taboo and where the SOGIESC diversity is punished by the authorities and society may affect self-realization process. These layered and dynamic identity trajectories are well documented in the VULNER Italy report, which illustrates how asylum applicants often experience identity formation as non-linear, context-dependent and entangled with socio-cultural constraints (Carnassale & Marchetti, 2022, pp. 18–20).

These dynamics also resonate with Crenshaw's notion of representational intersectionality, where institutional frames fail to capture the diversity and fluidity of identity trajectories.

- Late disclosure in SOGIESC-related asylum claims

Some applicants may be deeply affected by feelings of shame, internalized homophobia and trauma. In some cases, the applicant may still be in the process of self-realization and haven't come to terms with their sexual orientation and /or gender identity. The SOGIESC individuals require a supportive environment throughout the process to be able to "come out" in front of authorities and articulate the basis of their claims.

Some LGBTI applicants may, for instance, change their claims during the process by initially stating that their sexual orientation is imputed to them or making a claim on a ground unrelated to their sexual orientation or gender identity, to eventually expressing that they are LGBTI. This should not automatically lead to a lack in applicant's credibility.¹⁸⁴

Using late disclosure mechanistically to undermine credibility constitutes a paradigmatic instance of pathogenic vulnerability (Mackenzie et al., 2014) and is now widely criticised in recent SOGIESC scholarship (Venturi, 2023, pp. 487-491; Raimondo et al., 2023, pp. 392-394).

¹⁸⁴ CJEU –The A,B, C cases C-148/13 to 150/13: Due to the "sensitive nature of questions relating to a person's personal identity and, in particular, his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not *declare his homosexuality at the outset*" (para 69). See also Carnassale & Marchetti, 2022, pp. 17–18

5.2.4. Specific aspects of reception procedure for the SOGIESC individuals

- Risk of harassment, isolation and discrimination at asylum reception centres

LGBTIQ+ asylum seekers because of their SOGIESC often qualify as vulnerable persons with specific needs in reception conditions (ILGA, 2021, p.1). The LGBTIQ+ group is often exposed to harassment, isolation and discrimination during the asylum reception process. Such violence often forces them to avoid reception centres and this self-exclusion deprives them from access to essential services such as shelter, food, healthcare, and other vital services (Carnassale & Marchetti, 2022, pp. 31–34; Saroléa et al., 2021, pp. 40–41; ILGA, 2021, p.5). As a consequence, LGBTI persons become even more vulnerable and are exposed to the additional risk of falling victim to exploitation and human trafficking (ILGA, 2021, p.7). Reception systems thus become key sites where structural, situational and experiential vulnerabilities intersect and can either be mitigated or exacerbated—an insight strongly supported in recent EUAA evaluations and VULNER reception-field research (Saroléa et al., 2021, pp. 34–41; Carnassale & Marchetti, 2022, pp. 31–35; see also Kluth et al., 2021; Lidén et al., 2022).

- Risk of being unidentified and not given access to adequate protection guarantees

The LGBTIQ+ asylum seekers maybe be unnoticed during the reception procedures as their SOGIESC might be invisible. They might not disclose their SOGIESC directly upon arrival in the country of asylum and during the registration procedures due to fear, trauma, shame, stigma and other unique reasons (Carnassale & Marchetti, 2022, pp. 32–33; Saroléa et al., 2021, pp. 35–36). The specific protection needs of LGBTIQ+ individuals might not be identified by the authorities on the early stages of the process if the identification procedures are focused on "visible" characteristics or standardized questions (not sensitive to the unique nature of SOGIESC-related cases). Due to the complex nature of cases based on diverse SOGIESC it is generally unsuited and even dangerous to apply accelerated or fast-track processing aimed at "sorting out" applicants who will be likely rejected. This approach entails a risk for individuals with diverse SOGIESC of being not identified, discriminated and rejected, which in its turn may lead to expulsion and grave violation human rights (UNHCR 2012, para. 59; ILGA 2019, p.3).

From the perspective developed in Chapter 2, these visibility-dependent mechanisms exemplify law-mediated vulnerability: legal and administrative categories determine who becomes legible to the system and who remains invisible.

5.2.5. The effect of categorical approach to vulnerability of individuals with diverse SOGIESC.

The categorical approach to vulnerability of individuals with diverse SOGIESC in the asylum process has both positive and negative implications. While it is convenient in practical application (list-based, easy to tick the boxes), it contains some pitfalls.

Both LGBTIQ+ and SOGIESC are umbrella terms which include an endless number of identities. Addressing the LGBTIQ+ group as vulnerable in all or certain asylum procedures means also classing all the included identities as vulnerable. Hence, on one hand, categorizing provides a potential for stronger protection of the group, on the other hand, treating LGBTIQ+ individuals as a homogenous group oversimplifies the diversity and makes the differences within the group invisible. This dynamic of flattening internal diversity through list-based categories has been empirically confirmed in intersectional critiques of vulnerability, which show how such categorisation risks reinforcing stereotypes and epistemic blind spots (Venturi, 2023, pp. 475–478; Flamand et al., 2023, pp. 502–505). Furthermore, the SOGIESC diversity is generally exposed to stereotyping and stigmatisation due to non-conformity to prevailing norms thus, the categorical approach may contribute to additional stigma and stereotyping within the asylum process. These effects have been linked to what Flamand et al. (2023, pp. 503–510) describe as 'institutional performativity,' where vulnerability becomes a tool of governance that imposes normative assumptions rather than responding to lived complexity.

Furthermore, the analysis shows the effect of the categorical approach to vulnerability assessment in the asylum law and procedure. While the approach contains some obvious "pros" for the practical application (easy-to-apply list-based categories), the "cons" related to the approach have a crucial impact on the protection of the rights of the group. The analysis confirms that only the categorical approach, which is traditionally accepted in the international human rights law field, is not enough to provide a fair and sensitive assessment of vulnerability in the asylum process. The categorical approach may contribute to either "invisibility" of individual needs or to additional stigma and stereotyping of SOGIESC applicants along the asylum process. Venturi (2023, pp. 487–489) demonstrates how these mechanisms generate 'pathogenic vulnerability,' where institutional expectations around coherence, disclosure, and visibility conflict with applicants' lived realities.

Recent literature underscores this argument: intersectional analyses confirm that categorical framings of "vulnerable groups" obscure internal diversity and reproduce epistemic blind spots (Flamand et al., 2023, pp. 510–514; Venturi, 2023, pp. 494–495). From the point of view of this thesis, categorical tools must therefore be embedded within a broader, layered and intersectional framework that pays attention to context,

the experiential dimensions of vulnerability (including relational dynamics), and the ways in which legal categories themselves can produce or intensify vulnerability. Flamand et al. (2023, pp. 512–513) call explicitly for such a shift, warning that rigid vulnerability labels often obscure the complex interplay of power, identity, and institutional position.

Taken together, the dynamics analysed above illustrate how the layered–intersectional–law-mediated framework developed in Chapter 2 provides the analytical depth necessary to capture the complexity of SOGIESC-related vulnerability in the asylum context. Rather than treating vulnerability as a fixed group attribute, this chapter shows how it arises through the interaction of structural status regimes, social norms, institutional practices, evidentiary expectations, and experiential factors (including the relational conditions through which identity is expressed, suppressed or interpreted) across both country-of-origin and CEAS procedural contexts. This conceptual grounding now informs the case analyses that follow, demonstrating the practical value of the framework for understanding how vulnerability is produced, obscured, or exacerbated in real-life situations.

5.3. SOGIESC asylum applicants under the CEAS

Drawing from the insights uncovered in Chapter 4 (CEAS), this sub-chapter aims to analyse to which extent the present version (third generation) of CEAS instruments protects the rights of the SOGIESC diverse asylum applicants. It also scrutinizes the sensitivity of the existing procedure for identifying special needs, particularly in its capacity to recognise the SOGIESC-related group-based and individual vulnerabilities. The analysis focuses on two main procedures within the asylum context: reception procedure and refugee status determination procedure. Furthermore, building upon the findings from Chapter 4 (Externalisation), this sub-chapter analyses the eventual challenges for the SOGIESC asylum applicants connected to the current trend of externalisation of migration and asylum management, using the example of Mobility Partnership Agreements between EU and African partner States. In line with Chapter 2, the analysis applies the layered and law-mediated understanding of vulnerability to assess whether CEAS mechanisms can meaningfully recognise structural, situational and experiential (including interpersonal and normative) sources of harm for SOGIESC applicants.

The 2024 Reception Conditions Directive (Directive 6056/24) and 2024 Asylum Procedures Regulation (Regulation 6375/24) set the legal framework for the asylum reception and refugee status determination procedures for all European Union Member States. As demonstrated in Chapter 4, the current legislative instruments constitute the most advanced generation of the CEAS and thus present the most progressive in the EU protection guarantees for vulnerable asylum seekers. Moreover, among the other CEAS instruments, the 2024 Reception Conditions Directive and

2024 Asylum Procedures Regulation contain the most developed conceptualisation of vulnerability (see Chapter 4). The obligations of the Member States to identify the special needs, conduct an assessment and identify measures to address those needs, comes out clearly in the newly adopted version of the CEAS. The question, however, is whether these mechanisms can adequately capture vulnerability that is not visible, categorical or inherent, but experiential and context-responsive, as is often the case for SOGIESC applicants. By applying the current instruments to the SOGIESC diverse asylum applicants, the analysis below attempts to reveal both the strengths and shortcomings of the current legislation from the vulnerability perspective.¹⁸⁵

Both legislative instruments demonstrate a clear commitment to providing stronger protection for the SOGIESC diverse asylum seekers. The 2024 Asylum Procedures Regulation highlights the necessity to take into account the complexity of gender-related claims in all the procedures.¹⁸⁶ Article 24 “Applicants with special reception needs” of the 2024 Reception Conditions Directive extends the list of examples to “lesbian, gay, bisexual, trans and intersex persons”.¹⁸⁷ For the first time in CEAS history, the LGBTI group is explicitly mentioned in the text of the CEAS instrument in relation to special needs. This legislative development on one hand has positive impact as it contributes to a more robust recognition and protection of the group within the asylum context. On the other hand, the formulation chosen does not reflect the diversity of gender and sexual identities, represented in the term SOGIESC (as discussed earlier in this chapter). The formulation chosen by the legislator (LGBTI) may result in a limited understanding of which gender and sexual identities might be considered vulnerable or having special needs, potentially excluding individuals within the SOGIESC spectrum who are not explicitly mentioned in the text. Taking into consideration the prevailing in the CEAS instruments categorical approach to vulnerability (discussed in Chapters 2 & 4), the current wording of the provision may further heighten the risk of exclusion of SOGIESC diversity from the protection. This reflects a broader problem identified in Chapter 2: categorical framings risk generating both invisibility (for identities not named) and pathogenic vulnerability (when institutional scripts reinforce stereotypes).

Another advancement of the third generation CEAS, that impacts the SOGIESC diversity, concerns the proposed focus on “inherent vulnerabilities” and “visible signs” during the identification of special reception needs.¹⁸⁸ The analysis performed in the previous sub-chapter regarding the specific aspects of reception and status determination procedure for the SOGIESC diverse individuals highlights the risks related to authorities’ focus on visible characteristics during the special reception needs identification procedures. Due to the complex nature of cases based on diverse SOGIESC, it is unsuited and even dangerous to rely on “visible” characteristics as the

¹⁸⁵ See also EUAA 2024c, pp. 12-23

¹⁸⁶ APR 2024, Recital 21

¹⁸⁷ RCD 2024, article 24

¹⁸⁸ RCD 2024, Article 25 (1), (2)

only/or the main factor of identification. The LGBTIQ+ asylum seekers might be unnoticed during the reception procedures as their SOGIESC might be invisible. They might not disclose their SOGIESC directly upon arrival in the country of asylum and during the registration procedures due to fear, trauma, shame, stigma, and other unique reasons. Focusing on visible signs and inherent characteristics proposed by the legislator entails a risk for individuals with diverse SOGIESC of being not identified by the authorities, discriminated, and rejected, which in its turn may lead to expulsion and grave violations of human rights. This is a paradigmatic example of law-mediated vulnerability: institutional logics of visibility shape who becomes legible to protection regimes and who remains structurally invisible.

A similar approach to identification and assessment of special procedural needs is enshrined in the 2024 Asylum Procedures Regulation. Article 21 "Assessment of special procedural needs" clarifies that the identification should be based on "visible signs, the applicant's statements or behaviour, or any relevant documents".¹⁸⁹ While this guidance can be useful for identification of special procedural needs of other proposed by the legislator groups (f.ex. children, persons with disabilities, elderly persons, pregnant women (RCD art 24), as their situation and sources of vulnerabilities in many cases can be assessed visually, through physical characteristics and/or behaviour, or confirmed by relevant documents), same approach to identification may present numerous challenges for the SOGIESC diverse asylum applicants. As discussed earlier in this chapter, the SOGIESC is an umbrella term which includes an endless number of identities. There is no method that can "establish" or "prove" someone's sexuality or gender identity. Neither there is a behaviour that can be expected from a person (based on sexuality or gender identity). On one hand, this approach can be applied to some SOGIESC identities, f.ex. transgender individuals can be more visually recognizable due to certain way of clothing, or, in some cases, in possession of relevant documentation about sex reassignment surgery. On the other hand, it can be useless and even harmful for other identities covered by LGBTIQ+ and SOGIESC terms. Relying solely on visible signs and inherent characteristics to identify SOGIESC identities is likely to be unreliable and lead to failure. Moreover, expectations of certain behaviours and looks from the SOGIESC diverse individuals may result in stereotyping, discrimination and exclusion. As explained earlier, in cases related to gender, gender identity and sexual orientation the applicant's testimony is the primary and often the only source of evidence (UNHCR 2012, para. 64; see also EUAA 2024c). Also, the SOGIESC individuals require a supportive environment throughout the process to be able to "come out" in front of authorities and articulate the basis of their claims or explain the sources of their vulnerabilities in the asylum context. For this reason, it is extremely important that the authority that processes the claim has a good understanding of the unique aspects and sensitivity of the SOGIESC-related claims and avoid relying on visible signs. The assessment cannot be based on superficial understandings or stereotypical

¹⁸⁹ APR 2024, Art 21 (2)

assumptions about the experience with diverse SOGIESC (UNHCR 2012, para. 4; see also EUAA 2024c). These challenges become even more acute in externalised or accelerated procedures, where limited time, institutional distance and reduced trust constrain the experiential conditions needed for safe disclosure.

Another challenge for the SOGIESC diverse asylum applicants is related to the ambiguities in the legislative text regarding the relation between vulnerability and special needs (identified in Chapter 4). Among other CEAS instruments, the 2024 Reception Conditions Directive contains the most developed conceptualisation of vulnerability. Also, it proposes a list of categories relevant for the identification of special reception needs. However, the connection between vulnerability and special reception needs is unclear in the legislative text. This ambiguity generally weakens the protective force of the instrument. While the categorical approach to vulnerability preferred by the legislator, the rationale behind the proposed list of categories that are “more likely to have special needs” remains unclear. Outlining certain categories that are “more likely to have special needs” does not contribute to a better understanding of what vulnerability is in the asylum reception process. Consequently, bare inclusion of LGBTI group in the proposed non-exhaustive list of categories does not heighten the protective value of the provision, neither it contributes to a fair, sensitive, and legally justified vulnerability identification process.

Despite the presented ambiguity, one conclusion is clear – pure belonging to a group/category proposed by the legislator does not automatically mean that the asylum seeker is vulnerable or has special reception needs/procedural guarantees. The other clear conclusion is that while rationale behind the choice of the groups “more likely to have special needs” is left without explanation by the legislator, it will be challenging for the Member States authorities to answer the questions who is vulnerable or have special needs and why. Therefore, effectively ensuring the rights of specific groups, including SOGIESC, will likely be challenging in practice. This confirms the need for a layered, intersectional and law-mediated approach to vulnerability identification (Chapter 2), without which CEAS mechanisms risk reproducing the very invisibility they aim to address.

5.4. SOGIESC asylum applicants and externalised asylum processing

Building on the doctrinal analysis of externalisation developed in Chapter 4, this section examines how the relocation of asylum procedures to partner States shapes the layered, intersectional and law-mediated vulnerabilities of SOGIESC asylum applicants. Whereas Chapter 4 outlined the legal architecture, accountability gaps and operational logics of externalisation, the focus here is on how these arrangements

affect disclosure, protection and procedural fairness in reception and refugee status determination.

Externalisation is commonly implemented through soft-law cooperation frameworks such as Mobility Partnership Agreements (MPAs). Their lack of enforceable guarantees and clear responsibility-sharing generates structural vulnerability for SOGIESC applicants. Because SOGIESC claims rely largely on personal testimony, the absence of consistent safeguards, confidentiality protections and trained interviewers creates a heightened risk of non-identification and refoulement. When procedures are relocated to environments where EU oversight is limited, protection standards become uncertain and the legal space for safe disclosure narrows dramatically.

Many partner States maintain criminalising laws or hostile social attitudes towards SOGIESC persons. ILGA identifies 33 African States that criminalise consensual same-sex conduct, while Afrobarometer surveys show persistently negative public attitudes (ILGA, 2016).¹⁹⁰ Even where protective norms exist, such as the African Commission's Resolution 275,¹⁹¹ implementation remains uneven. These realities generate situational vulnerability, as disclosure may expose applicants to arrest, extortion or violence. They also create experiential and normative vulnerability by suppressing the ability to articulate SOGIESC-related harm. Medicalised violence such as forced anal examinations has been documented in several African States (Human Rights Watch, 2016),¹⁹² and even States without explicit criminalisation may use morality provisions or police harassment against SOGIESC individuals.¹⁹³ The relevance of these contexts in Chapter 5 is not to repeat the descriptive analysis from Chapter 4, but to show how externalised procedures take place in settings where disclosure is unsafe and where the core evidentiary basis of SOGIESC claims becomes impracticable.

These contexts also produce experiential vulnerability, including its interpersonal and trust-related dimensions. Externalised procedures often rely on local authorities, security personnel or interpreters whose attitudes are shaped by prevailing heteronormativity. Applicants may fear judgment, hostility or exposure, undermining trust and inhibiting disclosure. At the same time, many SOGIESC applicants carry layers of trauma, shame and internalised stigma from criminalising environments. Being asked to disclose deeply personal experiences in a setting where SOGIESC expression is socially condemned intensifies these feelings. As analysed in Chapter 2, such conditions can lead to pathogenic vulnerability, where the structure of the procedure itself produces harm by silencing applicants or fracturing their narratives.

¹⁹⁰ ILGA, *State-Sponsored Homophobia* (2019); Afrobarometer, *Tolerance in Africa* (2016).

¹⁹¹ African Commission on Human and Peoples' Rights, *Resolution 275*.

¹⁹² Human Rights Watch, *Dignity Debased* (2016).

¹⁹³ European Parliament, *LGBTI in Africa* (2019); Corey-Boulet, R. (2017). Ivory Coast officials refuse to explain why two gay men were jailed. *The Guardian*.

Reduced procedural guarantees in externalised settings generate additional law-mediated vulnerability. Confidential spaces, trained staff and independent oversight—key elements of SOGIESC-sensitive interviewing—are often unavailable. Visibility-dependent mechanisms embedded in CEAS, such as reliance on “visible signs” or “inherent characteristics” when identifying vulnerability, become particularly dangerous where concealment is necessary for safety. Applicants whose vulnerability is primarily experiential or linked to interpersonal and normative pressures may therefore remain invisible to the system, especially in accelerated or pre-screening procedures that provide little time or trust-building space for non-linear identity narratives.

Taken together, these dynamics show how externalisation amplifies the layered vulnerabilities of SOGIESC asylum applicants. Structural uncertainty in cooperation frameworks, situational hostility in criminalising environments, experiential harms shaped by interpersonal dynamics and internalised stigma, and law-mediated obstacles to safe disclosure interact to create a context where SOGIESC-based harm is difficult to articulate and easy to overlook. Externalisation thus reconfigures—not merely relocates—the vulnerability environment, disproportionately disadvantaging SOGIESC individuals and heightening the risk of incomplete or incorrect assessments. These insights provide the conceptual foundation for the case analyses that follow, demonstrating how such dynamics unfold in real-life contexts.

5.5. Case Illustrations: Applying the Layered–Intersectional–Law-Mediated Framework

The case illustrations that follow are analysed through an intersectional, intracategorical lens. Rather than representing “typical” SOGIESC claims, each case highlights internal variation within broad identity categories and demonstrates how institutional structures privilege certain identity expressions while rendering others illegible. This methodological choice aligns with McCall’s intracategorical framework, which focuses on the experiences of individuals located within complex intersections of social norms, legal categories, and institutional expectations. As Chapter 2 demonstrated, intersectionality functions as a refining lens within the layered vulnerability model, offering a method for understanding how vulnerability emerges not from identity traits alone but through the interaction between identity, norms, and institutional legibility. Read through the interpretive methodology set out in Chapter 1, these cases operate as analytical illustrations rather than empirical reconstructions, showing how layered and law-mediated vulnerabilities take shape in different procedural settings. By examining how layered and law-mediated vulnerabilities converge in specific contexts, the cases provide a grounded demonstration of the

conceptual model developed in Chapter 2. This builds on Crenshaw's foundational insight that systems of power can overlap and compound disadvantage, particularly when institutional recognition is structured around singular categories.

While this section primarily adopts McCall's intra-categorical approach—focusing on heterogeneity within the category of “SOGIESC applicants,” such as distinctions between gender-nonconforming individuals, transgender persons, bisexual persons, or those with fluid or emerging identities—it remains attuned to the insights of inter-categorical analysis, which exposes how institutional regimes structure vulnerability across group boundaries, and anti-categorical critique, which questions the stability of the categories themselves (McCall, 2005). Following Crenshaw's distinction between structural and representational intersectionality, the analysis is further enriched by Yuval-Davis's (2006, 2011) multi-level model of intersectionality, which identifies how inequalities are produced and reproduced across experiential, institutional, and symbolic registers. In the asylum context, this means that what an applicant experiences as harm (experiential level) may go unrecognised if it is not reflected in institutional practices (e.g., registration, credibility assessment) or if it contradicts dominant symbolic representations of legitimate vulnerability (e.g., who is ‘expected’ to be a victim). For example, when non-binary applicants are registered within binary systems, or when male survivors of sexual violence are excluded from sexual and gender-based violence (SGBV) protection programming, symbolic misrecognition translates into institutional exclusion. These combined perspectives help explain why some forms of vulnerability become hyper-visible in asylum procedures, while others are rendered structurally invisible, misrecognised, or reframed as credibility deficits. Rather than stacking identity markers, intersectionality is used here to trace the institutional, legal, and normative mechanisms that privilege certain narrative templates while marginalising others.

To demonstrate how the layered, intersectional, and law-mediated vulnerability framework developed in Chapter 2 operates in practice, this section presents two case illustrations. These cases are not intended as full life narratives; rather, they synthesise recurring patterns documented in empirical research (especially the VULNER project), soft-law instruments, and recent scholarship—including Venturi's (2023) intersectional analysis of SOGIESC asylum claims. The purpose is to show how vulnerability emerges through the interaction of identity, institutional structures, norms, and context, and how different layers manifest across the asylum trajectory. As clarified in Chapter 1, the use of case illustrations serves as an interpretive device to operationalise the conceptual framework, rather than as a substitute for empirical fieldwork.

As developed in Chapter 2, intersectionality functions here as a methodological tool for uncovering the internal heterogeneity of SOGIESC applicants; the case illustrations below demonstrate how these intracategorical differences shape the production of vulnerability within different procedural environments. In doing so, they reveal how

layered vulnerabilities are shaped, intensified, or erased by procedural design, institutional positionality, and normative expectations.

5.5.1.CASE I — K.: A Non-Binary SOGIESC Applicant in Two Procedural Environments

K. is a 21-year-old non-binary person who fled a West African country where non-conforming gender expression is socially condemned and consensual same-sex intimacy is criminalised (ILGA World, 2019; Human Rights Watch, 2024). Their experience is analysed along two trajectories: a CEAS-territorial procedure within the EU, and a hypothetical externalised pre-entry setting in a partner State. Examining both allows us to see how the same individual's vulnerability can be shaped, intensified, or erased by institutional design, normative frameworks, and relational environments.

Upon arrival in the EU, K. is automatically categorised as “male,” due to the binary structure of registration systems and databases embedded within CEAS administrative practice. As documented in VULNER Belgium and Italy, identification tools in reception environments often depend on visible cues or immediate self-disclosure to detect special needs (Saroléa et al., 2022; Carnassale & Marchetti, 2022). K., withholding their gender identity due to fear and previous trauma, is registered as a “single adult male”—a category institutionally presumed to lack vulnerability. This moment encapsulates how law-mediated visibility regimes produce vulnerability through categorical erasure.

Placement in male dormitories further amplifies K.'s situational vulnerability, as their gender expression becomes a site of ridicule and hostility. Similar dynamics were repeatedly observed in VULNER Italy, where gender-nonconforming applicants experienced bullying, forced isolation, or threats within gender-segregated facilities (Carnassale & Marchetti, 2022, pp. 21, 96). Seemingly neutral procedures thus create exposure to harm, highlighting how spatial and institutional design produce interpersonal and situational vulnerabilities.

During K.'s first interview, the authority assigns an interpreter from their national community. Empirical findings from VULNER Belgium show that this arrangement frequently suppresses disclosure in SOGIESC cases due to fear of exposure, community retaliation, or stigma (Saroléa et al., 2022). As a result, K. avoids disclosing their SOGIESC identity or transit-related violence, opting for a generalised narrative of insecurity. This omission is later interpreted as evasive or inconsistent. As Venturi (2023) demonstrates, credibility assessments in SOGIESC claims are shaped by implicit expectations that applicants narrate their identity in linear, emotionally expressive ways and display “coherent” self-realisation (pp. 475–478, 486–487). This

exposes the influence of what Chapter 2 describes as anti-categorical logics, which constrain complex identity expressions within normative scripts.

Weeks later, after cumulative distress and ongoing harassment, K. opens up to a social worker. This “late disclosure” is framed in CEAS practice as opportunistic, yet trauma research (Nematy, Namer, & Razum, 2023, pp. 658 – 660, see also UNHCR 2021, UNHCR, 2012) indicate that shame, fear and internalised stigma are common causes of delayed revelation. Thus, what appears as procedural inconsistency is better interpreted as experiential vulnerability, shaped by trauma and relational dynamics.

Now viewed through Ricœur’s narrative lens (Chapter 2), K.’s story demonstrates how legal and social scripts limit what can be told, when, and how. Identity is not disclosed as a fixed fact but is narratively constructed within unsafe and asymmetrical environments. These cumulative pressures produce a configuration of harm where structural, situational and experiential vulnerabilities intersect—validating the layered model of vulnerability advanced in this thesis. These dynamics resonate with Crenshaw’s notion of representational intersectionality, where dominant scripts erase complex identity narratives from legal recognition.

In contrast, if K. were subject to an externalised screening in a partner State—where criminalisation and social condemnation of gender diversity are intense—the environment itself would erase vulnerability altogether. As VULNER Uganda (Nakueira, 2022) shows, SOGIESC-diverse individuals in transit contexts face violence, surveillance and extortion. Disclosure becomes too dangerous, while silence offers protection but results in institutional invisibility.

Externalised settings are often rapid, security-driven, and dependent on visible signs. This erases less visible, layered vulnerabilities. What emerges is law-mediated vulnerability: a structural condition where disclosure is not simply discouraged but becomes institutionally impossible. Interactions occur within hostile normative frameworks that deepen relational fear, silence experiential trauma, and disqualify applicants from recognition.

Ultimately, this case illustrates how vulnerability is not static nor inherent, but emerges at the shifting nexus of identity, procedure, social normativity, trauma, and institutional positionality. It exemplifies the argument developed in Chapter 2: vulnerability is layered, intersectional, and law-mediated and cannot be reduced to fixed identity categories or visibility logics.

5.5.2.CASE II — Hidden Vulnerability: Male Survivors of Sexual Violence in Uganda

The second case concerns a large group of male refugees interviewed by Nakueira (2022) in the VULNER Uganda study. Already introduced in Chapter 2 as a paradigmatic example of hidden vulnerability, the case is here analysed through the full conceptual framework.

“My field assistant and I met with a group of over 100 male refugees who had undergone sexual violence at the hands of male and female perpetrators in their home countries. (...) In their narratives, interlocutors emphasized their need of dedicated medical interventions. Some were left incapable of fulfilling their conjugal rights due to the psychological trauma. (...) Others confessed to not telling their spouses that they were victims of sexual violence, out of fear of losing their respect. Some mentioned that they were rejected by their family members and places of worship, who associate them to queer people because of their traditional belief that men cannot be raped. (...) All complained that aid agencies failed to respond to their needs that relate, for example, to the access of adequate healthcare and surgery to repair the consequences of SGBV (such as anal bleedings, erectile dysfunction, and so forth). They attributed the social stigma of being labelled as gay men by other refugees to the dominant belief that men could not be victims of sexual violence.” (Nakueira, 2022, p. 22, as cited in Marchetti, Brun, Crine, Flamand, & Raimondo, 2025, p. 57).

The facts are clear - over one hundred male refugees reported having survived sexual violence by both male and female perpetrators, with long-term physical consequences including anal injuries, chronic pain and erectile dysfunction, as well as profound psychological distress (Nakueira, 2022, p. 22). Yet almost none disclosed these experiences to institutional actors, fearing that recognition would trigger stigma, disbelief, or accusations of queerness.

This illustrates interpersonal and normative vulnerability: harm is not just endured but silenced by social environments that delegitimise certain victimhood. The refugee camp context produces situational vulnerability by making disclosure a risk-laden act. At the structural level, humanitarian systems often centre SGBV programming around women and LGBTIQ+ persons, leaving male-bodied survivors illegible.

As Chapter 2 argues, intersectionality is necessary to reveal how gender, trauma, cultural beliefs, and institutional blind spots converge to invisible harm. These men are not excluded because they lack vulnerability, but because their vulnerability is not recognised within prevailing categorical templates of “recognisable” victims. This confirms Crenshaw’s argument that structurally embedded norms of victimhood can render certain harms institutionally illegible.

Institutional tools premised on voluntary self-disclosure are inherently limited when trauma inhibits speech, masculinity norms prevent help-seeking, and procedures rely on essentialised scripts of who “counts” as a victim. This produces law-mediated vulnerability: the very design of procedures silences those whose biographies do not

align with expected patterns. In these conditions, vulnerability is not merely under-identified but structurally excluded from recognition and remedy.

The case confirms the broader insight that vulnerability must be approached not as a checklist of identity markers but as a layered, and contextually mediated condition. It also exemplifies intra-categorical complexity, as male survivors do not fit normative profiles yet face specific and compounded harms. As Chapter 2 discusses via McCall's typology, this reinforces the need for both inter- and intra-categorical analysis within asylum systems.

Together, both case illustrations make a strong case for rethinking how vulnerability is identified and assessed. They call for institutional practices that are attuned to narrative complexity, interpersonal environments, structural exclusions, and the interpretive space required for delayed, non-linear and emotionally difficult disclosures. In doing so, they affirm the value of integrating Crenshaw's, McCall's and Yuval-Davis's intersectional insights into a context-sensitive, law-mediated vulnerability framework.

5.6. Final Synthesis: Reframing SOGIESC-Related Vulnerability Across CEAS and Beyond

This chapter has applied the layered, intersectional and law-mediated framework developed in Chapter 2 to examine how SOGIESC-related vulnerability is produced, shaped and (mis)recognised across both territorial CEAS procedures and externalised environments. Through doctrinal analysis, soft-law instruments, empirical findings and case illustrations, it demonstrated that vulnerability for SOGIESC-diverse applicants is not an inherent attribute of a predefined group but a condition that emerges through the interaction of structural constraints, situational contexts, experiential dynamics and the interpretive logics embedded in legal and institutional systems. The analysis confirms that approaches relying solely on fixed categories, visible indicators or presumed "inherent" traits cannot capture the multi-layered and context-dependent nature of vulnerability in the asylum process.

The findings showed that structural vulnerability remains embedded within CEAS governance. Accelerated timelines, list-based indicators and identification methods centred on "visible signs" systematically disadvantage applicants whose identities and trajectories resist institutional templates. This is especially evident for SOGIESC applicants, whose identities often conflict with binary and heteronormative assumptions built into reception, registration and credibility-assessment practices. The doctrinal and soft-law materials examined, particularly EUAA guidance and the 2024 CEAS instruments, reflect a growing sensitivity to these issues but still operate within procedural logics that limit the scope of recognition. These dynamics directly echo the

concerns identified in Chapter 3 regarding the limits of vulnerability as a recognition tool when embedded in rigid institutional frameworks.

At the same time, the chapter highlighted how situational and experiential factors determine whether vulnerability becomes institutionally legible. Insecure or hostile reception environments, the absence of SOGIESC-sensitive interpretation and gendered assumptions about behaviour shape when, how and whether applicants can safely disclose harm. These constraints often produce fragmented narratives, delayed disclosure or apparent inconsistencies—patterns that credibility assessments misinterpret as deficits rather than as consequences of shame, trauma, fear and constrained narrative agency. As shown in Chapter 2, these are core features of experiential vulnerability: affective, temporal and narrative conditions that shape the applicant's ability to articulate their claim within asymmetric and normatively charged institutional settings.

The analysis further revealed how normative and interpretive assumptions within asylum governance structure misrecognition. Heteronormativity, cultural expectations and dominant scripts of "credible" identity expression influence which narratives are heard as plausible. When individual identity trajectories are fluid, non-linear or shaped by repression, applicants risk being misheard or selectively heard. This reflects the symbolic dimension of vulnerability discussed in Chapter 2, where recognition depends on the alignment between individual narrative possibilities and institutional expectations. Case material demonstrated that non-binary applicants, male survivors of sexual violence and individuals with fluid or emerging identities are frequently rendered invisible or viewed as lacking credibility because their stories do not conform to expected scripts.

The chapter also underscored the importance of law-mediated mechanisms in shaping vulnerability across the asylum trajectory. Legal and administrative configurations, such as registration categories, predefined vulnerability lists and disclosure-dependent procedures, mediate which harms become visible, plausible or dismissible. A dual visibility dynamic emerges: some applicants become hyper-visible in ways that expose them to risk (e.g., harassment in gender-segregated centres), while others become structurally invisible when fear, trauma or procedural design inhibit disclosure. Both dynamics demonstrate the insight developed in Chapter 2 that vulnerability is not merely an individual condition but is co-produced through legal form, institutional design and normative environments.

These concerns intensify in externalised contexts. In pre-entry or partner-State procedures, SOGIESC-related harm often becomes normatively and institutionally unspeakable. Criminalisation, hostile social norms, limited EU oversight and rapid security-driven screening render disclosure unsafe or impossible. Vulnerability is not simply overlooked but effectively erased, as applicants lose the minimal interpretive and procedural space needed to articulate SOGIESC-based harm. The same

individual who may retain partial legibility within CEAS territory becomes structurally invisible in externalised settings. This confirms Chapter 4's finding that externalisation reconfigures—rather than simply relocates—the vulnerability environment by altering the conditions under which recognition becomes possible.

Finally, the chapter showed the limits of categorical approaches, which continue to structure CEAS instruments and operational tools. While listing “LGBTI” persons as “more likely to have special needs” provides some visibility, it risks flattening internal diversity, reproducing stereotypes and overlooking intra-group heterogeneity. Drawing on McCall's typology, the analysis demonstrated the necessity of combining inter-categorical comparisons with intra-categorical attention to diversity and anti-categorical awareness of how institutional categories themselves can produce exclusion. Intersectionality thus functions not as an additive identity model but as a diagnostic lens that reveals how normative assumptions, procedural logics and structural inequalities shape both legibility and invisibility. Without this layered, intersectional analysis, categorical approaches risk producing pathogenic vulnerability—harm generated by the asylum system itself.

In sum, Chapter 5 confirms and extends the conceptual model developed in Chapter 2 and the jurisprudential trajectory examined in Chapter 3. It shows that a layered—intersectional—law-mediated approach is indispensable for diagnosing how vulnerability is produced, obscured or exacerbated within both CEAS structures and externalised procedures. These insights provide the analytical foundation for Chapter 6, where they are translated into normative and operational recommendations for EU asylum governance.

6. Chapter 6: Rethinking Vulnerability:

Conclusions and Recommendations

6.1. Introduction

This thesis set out to explore how vulnerability is conceptualised, operationalised, and mediated within the Common European Asylum System (CEAS). Across its multiple legal instruments, guidance documents, and institutional practices, vulnerability has become a recurring reference point. Yet, as demonstrated throughout the thesis, the concept remains conceptually underdeveloped, normatively ambiguous, and operationally fragmented. CEAS instruments continue to rely primarily on enumerated lists of applicants presumed to have “special procedural or reception needs.” While these categories perform an important signalling function, they obscure the dynamic, contextual, intersectional, and law-mediated ways in which vulnerability is actually experienced by protection seekers, and they provide no coherent account of how vulnerability emerges or why it matters.

At the same time, as shown in Chapter 4, CEAS is not static. The 2024 reform package and the evolving EUAA operational guidance reveal important positive developments, including more consistent procedural safeguards, greater attention to needs-based assessment, and incremental movement toward contextual understanding. These developments mark a shift in the normative architecture and interpretive aspirations of CEAS, even if their conceptual grounding remains incomplete and their practical implementation uneven.

To illuminate the gap between conceptual potential and operational practice, the thesis developed a layered, intersectional, law-mediated framework (Chapter 2), assessed how international and European human rights bodies have interpreted vulnerability (Chapter 3), analysed CEAS legislation, soft-law tools, and externalisation practices (Chapter 4), and examined how these forces shape lived experience through the example of SOGIESC-diverse applicants (Chapter 5). This final chapter draws these strands together, synthesising the findings across the thesis, answering the research questions, and offering a set of conceptual, doctrinal, procedural, and accountability-oriented recommendations. In doing so, it demonstrates the analytical and practical value of approaching vulnerability not as an attribute of certain groups, but as a dynamic condition shaped by law, institutions, and social norms.

6.2. Synthesis of Findings and Answers to the Research Questions

RQ1: How does CEAS conceptualise and operationalise vulnerability?

Across CEAS instruments, vulnerability appears not as a principle but as a list of statuses. This list-based approach provides administrative clarity but fails to articulate the underlying logic of vulnerability - how it is produced, sustained, intensified, or mitigated within asylum systems. Chapter 4 demonstrated that this fragmentation is a defining feature of CEAS: vulnerability is dispersed across legislative instruments and externalisation frameworks without a unifying conceptual anchor.

The consequences of this categorical logic are amplified when viewed through the layered–intersectional–law-mediated model (Chapter 2) and the case analyses of Chapter 5. Because CEAS treats vulnerability as something that is declared, performed, or visually identifiable, it places immense weight on applicants' ability to self-disclose or present culturally legible narratives. As shown in the SOGIESC analyses, this leads to predictable forms of misrecognition and structural exclusion: non-binary applicants forced into binary categories; male survivors of sexual violence rendered invisible by gendered assumptions; and trauma-induced inconsistencies interpreted as credibility problems rather than affective consequences of harm.

Yet Chapter 4 also highlighted positive developments. EUAA operational guidance increasingly integrates trauma-informed, contextual, and needs-based elements. Some Member States have adopted more flexible practices. The 2024 reforms consolidate certain safeguards, and the Screening Regulation introduces early but more structured checks.

Conclusion (RQ1): CEAS currently conceptualises vulnerability in categorical and fragmented terms, but recent developments demonstrate a growing recognition of its complexity. The system's reliance on visibility and narrative coherence continues to generate misrecognition, yet its evolving tools—especially at the EUAA level—offer important entry points for more dynamic implementations grounded in layered vulnerability.

RQ2: Can CEAS meaningfully accommodate a layered, dynamic understanding of vulnerability?

The layered, intersectional, law-mediated framework introduced in Chapter 2 conceptualises vulnerability as structural, situational, and experiential, and emphasises that vulnerability is often produced or intensified by law itself. Applied to

CEAS (Chapter 4) and to lived experience (Chapter 5), the model shows that CEAS is not yet structured to systematically account for layered vulnerability. However, several emerging elements point toward future possibilities.

At the structural level, asylum applicants occupy a position defined by legal precarity, dependency, and exposure to institutional power. CEAS does not formally recognise asylum status as a structural vulnerability, but the 2024 legislative revisions do acknowledge systemic factors more explicitly than before. Nevertheless, accelerated procedures, border procedures, and datafied decision-making continue to generate pathogenic vulnerabilities - harms produced by the system itself.

At the situational level, Chapter 4 showed that vulnerability arises within specific interactions: with interpreters, interviewers, reception environments, and border infrastructures. CEAS still relies predominantly on front-loaded identification, yet Chapter 4.3 highlighted the emerging EU-level recognition that vulnerability is dynamic and must be reassessed throughout the procedure. This principle is now present—though unevenly operationalised—in EUAA guidance, revised reception standards, and some Member State practices.

At the experiential level, trauma, stigma, and shame shape applicants' ability to narrate harm. Chapter 5 illustrated how CEAS procedures often misinterpret trauma through credibility logics that favour linear, consistent storytelling. Nevertheless, trauma-informed practices are increasingly emphasised in EUAA guidance, opening a path toward improved experiential recognition.

Finally, externalisation, as analysed in Chapter 4.5 and illustrated in Chapter 5, exposes layered vulnerability to heightened risk. Yet externalisation also opens a broader conversation on shared responsibilities and the need for enforceable standards across cooperation frameworks, providing a realistic area where layered vulnerability could become a basis for EU-level oversight and monitoring.

While Chapter 5 focused primarily on intra-categorical differences, intersectionality in this thesis operates at multiple levels. Chapter 2 outlined a mixed intersectional strategy: inter-categorical analysis to examine how CEAS constructs and differentiates its groups; intra-categorical analysis to illuminate heterogeneity within them; and anti-categorical critique to question the administrative templates themselves. This multi-level approach is especially suited to CEAS, where decision-making is structured through predefined checklists. Importantly, intersectionality is not used as a stand-alone paradigm but as a complementary analytic device within the layered-law-mediated model. It refines how structural, situational, and experiential layers interact, revealing how institutional design shapes exposure to harm across and within categories.

Conclusion (RQ2): CEAS does not yet accommodate layered vulnerability systematically. However, building blocks already exist—in EUAA guidance, in the 2024 reforms, and in emerging Member State practices—and these can be strengthened to operationalise a dynamic, layered approach. The conceptual model developed in this thesis provides a coherent pathway for doing so.

RQ3: How can intersectionality improve the identification and assessment of vulnerability in CEAS?

Intersectionality, developed in depth in Chapter 2, provides a critical methodological lens to address CEAS’s structural and categorical blind spots. The thesis applied three modes of intersectionality:

- intracategorical: differences within administrative categories (Chapter 5);
- intercategory: the positioning of groups within CEAS structures (Chapter 4);
- anti-categorical: critique of categories as institutional constructs (Chapters 2 and 4).

This integrated approach reveals why categories alone cannot capture vulnerability. As Chapter 5 demonstrated, SOGIESC applicants differ profoundly depending on gender expression, race, trauma, and cultural scripts. Chapter 4 showed how CEAS categories themselves create blind spots—for example, by separating “vulnerable groups” from “ordinary applicants” and by overlooking cross-group structural effects. Intersectionality thus strengthens the layered model by explaining how different layers of vulnerability interact across multiple axes of identity and context. It clarifies why vulnerability is not merely an attribute but a process shaped by institutional design, social norms, and power relations.

Conclusion (RQ3): Intersectionality provides CEAS with a methodological tool for recognising intra-group diversity, identifying structural patterns, and questioning categorical assumptions. Its full potential has not yet been realised in CEAS, but its integration into EUAA guidance and its alignment with treaty-body reasoning offer realistic pathways for adoption.

RQ4: What reforms are required to make CEAS more vulnerability-sensitive and responsive?

Drawing on Chapters 2–5, the thesis identifies four domains of reform:

(1) Conceptual Reform

CEAS needs a principled definition of vulnerability that moves beyond lists and incorporates layered, intersectional, and law-mediated dimensions. This definition

should align with evolving international human rights practice (Chapter 3) and function as a transversal interpretive principle.

(2) Doctrinal Reform

Legal obligations must be clarified concerning:

- how vulnerability triggers safeguards;
- how trauma and experiential dynamics shape credibility assessment;
- how pathogenic vulnerabilities inform due diligence and proportionality;
- how EU responsibility extends into externalised settings.

These reforms build on existing jurisprudential trends and principles already present in ECtHR and treaty-body practice.

(3) Procedural Reform

Identification should become:

- continuous rather than front-loaded,
- trauma-informed,
- intersectional,
- context-sensitive (especially at borders and in externalised settings),
- and linked to enforceable safeguards such as specialised interviewing, trained interpreters, and adapted reception conditions.

These shifts are ambitious yet achievable through EUAA training, guidance, and operational standards.

(3) Accountability Reform

A vulnerability-sensitive CEAS must recognise and address law-mediated vulnerability. This requires:

- robust monitoring,
- enforceable remedies,
- transparency mechanisms,
- and externalisation oversight frameworks.

Embedding layered vulnerability into monitoring systems would allow CEAS to anticipate and mitigate system-generated harms.

6.3. Normative and Practical Implications

The central normative insight of the thesis is that vulnerability should not be viewed as an exceptional feature affecting only specific groups. It is a structural and procedural condition inherent in the asylum process, shaped by the asymmetry of power between the state and the applicant, and mediated through legal status, timelines, evidentiary expectations, institutional design, and externalised environments. Recognising vulnerability in this systemic way shifts responsibility toward institutions: applicants should not bear the burden of “proving” vulnerability; instead, authorities must anticipate, recognise, and mitigate the vulnerabilities that procedures themselves generate.

Practically, adopting a layered and intersectional approach would:

- improve the accuracy of vulnerability assessment,
- align credibility evaluation with trauma patterns,
- reduce misrecognition of non-binary applicants and male survivors,
- support safer and more adaptive reception environments,
- strengthen fairness in border and accelerated procedures,
- and generate greater institutional accountability in externalised settings.

Such an approach is not only conceptually sound but institutionally realistic: the building blocks for it already exist within EUAA tools, treaty-body reasoning, and evolving Member State practices. What is required is not invention, but coherent integration, conceptual consolidation, and enforcement.

6.4. Final Reflections

Chapters 2–5 collectively demonstrate that the future of vulnerability in EU asylum law depends not on expanding or adjusting lists of “vulnerable groups,” but on transforming how vulnerability is interpreted, situated, and operationalised. A vulnerability-sensitive CEAS must embrace a dynamic, contextual, and institutionally informed understanding of vulnerability - one that recognises institutional responsibility, structural conditions, and the complexity of lived experience.

The layered–intersectional–law-mediated framework developed in this thesis provides a robust conceptual and methodological foundation for such a transformation. It integrates legal theory, doctrinal evolutions, empirical insights, operational practices, and applicants’ lived realities to show how vulnerability can be recognised more accurately and addressed more justly within CEAS. Importantly, this framework demonstrates that vulnerability is not an exceptional condition affecting specific

groups, but a systemic feature of asylum governance shaped by law, procedure, organisational structures, and the broader political environment.

Although Chapter 5 applied the framework to the experiences of SOGIESC-diverse applicants, this selection served as an illustration of its analytical potential rather than a restriction of its scope. The same systemic patterns identified in that chapter, misrecognition, reliance on visibility, narrative expectations, and the interaction between identity, trauma, and institutional structures, affect many applicants who fall within CEAS categories. Whether applied to unaccompanied minors, survivors of torture, persons with disabilities, single adult men in precarious reception settings, or individuals navigating stigma, coercion, or shame, the model illuminates how vulnerability is layered, context-dependent, and mediated through legal and administrative design. The SOGIESC case study thus demonstrates the explanatory power of the framework, but it is only one of many possible applications.

The analysis of externalisation further underscores this point. Externalisation is no longer a peripheral concern but a central organising logic of EU asylum governance. It reshapes where and how vulnerability is produced, mediated, and often obscured - especially in spaces where oversight is limited and procedural guarantees are weakened. As CEAS increasingly relies on border screening, cooperation with third countries, and hybridised migration management, the layered–intersectional approach offers a principled and operationally realistic method to recognise, trace, and respond to vulnerability across delegated governance spaces. This is essential for maintaining coherence with EU fundamental rights commitments and for ensuring accountability beyond borders.

Moreover, the framework developed in this thesis offers more than a critique of categorical approaches. It provides a multi-level analytical lens through which to understand how vulnerability is co-produced by structural arrangements, institutional interactions, and experiential dynamics. Intersectionality plays a central role in this architecture—not merely by highlighting intra-group differences, but by enabling inter-categorical comparisons and supporting anti-categorical critiques of CEAS’s administrative templates. This methodological richness allows the thesis to move beyond static lists and conceptualise vulnerability as a dynamic condition shaped by legal norms, social expectations, and institutional practice.

Taken together, these reflections reinforce the broader lesson of the thesis: vulnerability is not an attribute possessed by certain individuals but a condition produced by legal, procedural, and institutional environments. Recognising this enables a more coherent and humane future for CEAS—one in which institutions not only acknowledge vulnerability but also understand it, anticipate it, and respond to it in meaningful, context-sensitive, and rights-respecting ways, both within and beyond the borders of the European Union.

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