

A CALL FOR INCLUSIVITY:

**How to better navigate intersectionality
and gender in the EU's Migration Pact**

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**Policy
Brief**

Summary

This policy brief highlights how protection against intersectional discrimination is not comprehensively addressed in the European Commission's 2020 Pact on Migration and Asylum.

We find that when women and gender non-conforming people seek asylum or migrate to the European Union, their specific needs are not considered during pre-screening at the borders, and in general in the asylum-seeking process. Recalling the pledge for a 'Union of equality', made by the European Commission in 2020 and other commitments, this Policy Brief sets out four specific recommendations that try to create a safe and inclusive space for women, gender non-conforming individuals, and at-risk migrants and asylum seekers.



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In September 2020, the European Commission proposed a set of legislative proposals in the [New Pact on Migration and Asylum](#), to address the [weaknesses](#) of its asylum and migration management system.

Although negotiations over the Pact took place over a long period of time due to a lack of consensus on migration management, it has nonetheless failed to adopt an intersectional approach and, on the contrary, it **has only served to enhance existing discrimination**.

Based on this, we recommend (a) including a discussion framework that favours an **intersectional approach**; (b) including an **individual, enforceable, right** by the interviewee to request an assigned handler and to be able to refuse their help, especially when conducting physical and mental health checks. Further, we recommend the European Union to secure **mandatory Sexual and Gender-based violence training** for all reception centres' personnel as well as (c) establish an **individual category of gender-based vulnerabilities**; and (d) **supporting discourse and representation change** of female and gender non-conforming migrants to facilitate their access and integration into the job market and education.

Key Findings

a. A missing pillar: Intersectionality

A key concept that should move forward with this debate is ['intersectionality'](#). This term recognises that the existence of individuals and the violence which they are exposed to –also in the context of migration, borders and asylum policies – are linked to multiple relations of power and oppression that interact with each other. This lens helps us to understand identity not as a homogeneous label but as diverse relationships with the world and historical spaces (See [UN Women](#)).

Intersectional discrimination can be perceived by third-country nationals belonging to ethnic, linguistic, religious or national minorities [who have shared](#) *'stories of ethnic profiling, excessive stop-and-search checks, harassment, exclusion and even violence from security forces and officials, discrimination in employment, precarious socioeconomic situations, lack of access to the most basic services, and poor or unequal access to justice'*.

This dynamic is acknowledged in the EU's commitment to a 'Union of equality' when the European Commission released a [five-year EU Anti-Racism Action Plan](#) in September 2020. As highlighted in the Action Plan, the Commission seeks to ensure that the fight against discrimination and their intersections is integrated into all EU policies, legislation and funding programmes – including migration policies.

The same applies to the [LGBTIQ Equality Strategy 2020-2025](#), in which the EU addresses the need to improve practices for LGBTQI+ asylum applicants, such as safe and suitable reception conditions and the prevention of biased and prejudiced application assessments.

This overlaps with the [EU Action Plan on Integration and Inclusion \(2021-2027\)](#), which itself is built on the core principle of inclusion for all, the commitments laid down in the Compacts for [Migration](#) and [Refugees](#), and the EU Charter of Fundamental Rights. This shows that despite the many commitments signed, protection gaps remain, and therefore there's still the need for more incisive policies.

Intersectionality should be one of the pillars of the New Pact. However, the only mention is of 'vulnerable people'. This emphasises the notion not only that some populations are at higher levels of risk but that there are fixed notions of who is vulnerable *per se*. However, this fails to understand how these characteristics are produced from power structures – structures that have been a constituent part of protection systems themselves.

An example of this could be the standards set for an asylum seeker to be acknowledged as homosexual during the screening process. Research shows that standards have been set ['to encompass the white, Western, male standard of homosexuality'](#). Besides, discrimination and intersectionality in the scope of migration policies is often associated with nationality-based differential treatment, as was evidenced in the response to the war in Ukraine.

b. No Gender-Oriented Approach

The Commission's unequivocal commitment to the aforementioned strategies and action plans to integrate an intersectional approach into all EU policy fields should be welcomed. But the **New Pact on Migration and Asylum is still missing a specific [gender-oriented approach](#).**

The term 'gender' does not solely represent women. In fact, it must be understood in light of social constructions, such as norms and social expectations, that determine the relationship between an individual's identity and their assigned sex at birth. While gender is often approached as the binary man-woman, there are various gender categories that do not identify within this binary and others that identify in between them.

The International Organization for Migration (IOM) recognises that there are **major gaps in migration data, particularly when it comes to gender**. The lack of data leads to a lack of knowledge about the multiple experiences of these populations and the capacity to build policies and **gender-sensitive and responsive indicators** that respond to the needs of displaced people.

Border management and pre-entry screening

A large focus of the Commission's efforts is on streamlining border procedures and enhancing border security. The Commission has proposed a **Screening Regulation** as well as **amending the Asylum Procedures Regulation** to make provisions for 'asylum claims with low chances of being accepted [to] be examined rapidly without requiring legal entry to the Member State's territory.' This would particularly apply to claims made by applicants from countries with low recognition rates.

However, gender-specific intersectionality concerns remain in the context of (a) pre-entry screening, and (b) the category of so-called 'vulnerable persons'.

Pre-entry screening

The proposed **Screening Regulation** requires Member States to conduct a pre-entry screening of third-country nationals crossing the EU external border 'without fulfilling the entry conditions' (such as entering with a valid visa through an official border crossing). The screening revolves around an identity and security check as well as a preliminary health and vulnerability check.

Its purpose is both to make up for the fact that the individuals concerned have circumvented the usual border procedure (such as identity and passport checks) when crossing the external border in an unauthorised manner and to collect the relevant information to identify the appropriate procedures to follow (asylum or return procedure).

Intersectionality concerns in the border procedures proposed by the New Pact are inextricably linked to pre-entry screening. This is because, under the proposal, the screening should be performed ‘at locations situated at or in proximity to the external border’. **As has been pointed out**, this raises the risk of placing persons concerned in detention – most likely in hotspot areas where individuals face a **high risk** of being exposed to gender-based violence.

Particularly gender-sensitive is the health and vulnerabilities check required under Art. 9 of the proposal. Its purpose is to identify any needs for immediate care or isolation. When vulnerabilities are identified, Member States are required to provide timely and ‘adequate support’ for the individual’s physical and mental health. The Commission has rightly recognised the need for an early identification mechanism of gender-based vulnerabilities. Yet, **both the definition of ‘vulnerability’ as well as the wording on the care which must be made available remains vague.**

It is unclear what legal obligations Member States need to follow when they are required to provide ‘adequate support’. Instead, member states ought to be required to conduct an individual assessment considering the specific needs and circumstances of the applicant. Centred around the specific needs of the individual, this approach would not only force member states to provide effective remedies to vulnerabilities, but also to take positive action to eradicate gender-based disparities in the asylum process. Additionally, **the proposed regulation fails to tackle the specific needs of women during the health and vulnerabilities check.** Women who have fallen victim to domestic or sexual violence, for instance, may feel uncomfortable telling their story to male personnel in charge of conducting the vulnerability assessment. It is similar for **LGBTQI+ individuals** with personal experiences of discrimination based on their sexual and/or gender identity.

It is therefore vital that the Commission includes the right for every individual to request a person of a gender they are comfortable with to conduct the health and vulnerability check during the pre-entry screening. The **proposed regulation** does not include a requirement for the interview to be led by a professional who has undergone gender-sensitivity training. Consequently, the very vulnerabilities that the proposal intends to uncover may remain unnoticed. Furthermore, the strict time constraints to undertake the pre-entry screening **limits the ability to make an objective assessment.**

Vulnerable persons vs discriminated groups

The proposed **screening legislation** would require Member States to provide proper screening of third-country nationals entering the EU, with a focus on identifying potential 'vulnerable persons'. The screening itself would be focused on 'identifying any needs for immediate care or isolation on public health grounds'. Therefore, the aim would be pre-existing entry conditions. Furthermore, the proposal stresses the importance of **minimising coercion**, such as pressuring or forcing third-country nationals into providing personal information when gathering biometric data relevant for processing measures.

Importantly, the New Pact notes that, under the current Asylum and Migration Management Regulation (RAMM), legislation still 'relies on coercion and a sanction-based approach to ensure applicants compliance [1]' in gathering personal data. Therefore, the issue of gathering informed and effective consent from applicants remains unsolved, yet paramount.

In turn, the recommendations for minimising forms of coercion against disproportionately affected people, through the asylum process, include recommending that EU legislators 'explicitly prohibit the use of coercion when collecting biometric data from all categories of TCNs (third country nationals) falling within the scope of the Eurodac Regulation'. This point is **stressed** when discussing both vulnerable people and minors. Although the current legislation is inadequate and unorganised in tackling coercion, the Pact seeks to amend this by prohibiting its use outright throughout the asylum process.

Although the Pact stresses the issue of dealing with 'vulnerable groups' throughout the asylum procedure, it fails to offer a comprehensive gender-based approach to the issue. First, the term has a negative and misleading connotation and should be reworded to 'intersectionally discriminated individuals' or 'disproportionately affected groups'.

[1] Executive Summary, COM (2020) 697, p. 17.

Second, the overall response to potential disproportionately affected individuals, like women, will not be fully supported without recognising the extra risks and challenges affecting them throughout the asylum procedure. However, it would be incorrect to assume that women are therefore vulnerable under the terms of the Pact. Nevertheless, women do face specific gender-based vulnerabilities, typically at higher rates than their male counterparts, such as gender-based violence. **Through its lack of guidance in establishing an individual category of gender-based vulnerabilities, the Commission has failed to clearly outline and increase understanding of the potential vulnerabilities** that could arise when processing asylum seekers.

The New Pact offers several options in identifying discriminated groups throughout the asylum process, as well as what further aid and advice may be provided to them. However, the Pact's exact wording and suggestions on minimising coercion are also left unclear. Aside from proposing that all forms of coercion must be reduced throughout the asylum process, little is offered. Therefore, **it is of the utmost importance that the Commission investigates precise recommendations for constructing a cohesive and broad approach to reducing coercion in all its forms.**

Asylum reform and the proposal for a regulation on asylum and migration management

As part of the Pact, the Commission also tabled a proposal for a [Regulation on Asylum and Migration Management](#). Set to replace the existing Dublin regime, it is scheduled to become the cornerstone of a reformed EU asylum system. While progress has stalled since 2021, the European Parliament and the rotating Council Presidencies have agreed on a [joint roadmap](#) to conclude negotiations by February 2024. Yet, the proposal tabled by the Commission lacks a specific gender-oriented approach to asylum.

Addressing the needs of 'Vulnerable Persons'

One of the main aims of the Commission proposal is to establish a solidarity mechanism to facilitate burden-sharing between Member States, for example through the relocation of applicants or return sponsorship. This solidarity mechanism specifically applies to 'vulnerable persons', thereby enabling specific measures to meet their needs such as the relocation of disproportionately exposed applicants to other Member States.

However, **a common definition for ‘vulnerable persons’ is lacking in the Commission proposal**, as is an objective assessment by asylum authorities not subject to expedited procedures and speedy processes. Furthermore, the Commission proposal also requires Member States to conduct a personal interview with all applicants.

Personal interviews

When it comes to personal interviews, one of the main elements to keep in mind is the gender component. That is because in particular **women and girls are the most targeted**, and therefore at-risk groups of people travelling along the unauthorised routes to Europe.

Considering the gender-inclusive nature of this brief, we **recommend including the category of gender non-binary and gender queer people alongside that of women and girls, when underlining the exposure to risks**. Being most at risk means that these individuals are further exposed to traumatic events and are often not supported in sharing accounts of their trauma in a safe and sensitive manner.

While the purpose of the interview is not to determine the material validity of the asylum claim *per se* but to establish the EU Member State responsible, it should still be a forum where all applicants can feel safe. This is because, at a minimum, the interview can only serve its intended purpose if it ensures that applicants feel free to share all relevant details about their journey. Additionally, any special needs may come to light during the interview. Consequently, **it is of utmost importance that the interview’s environment provides an inclusive space**.

While the Commission proposal acknowledges this requirement in some respects, it does not go far enough. For instance, the proposed Regulation stipulates that the interview be conducted in a child-friendly manner, by 'appropriately trained and qualified' staff and, where necessary, with an interpreter or cultural mediator. Yet, when it comes to addressing gender-specific challenges, it only provides that 'the applicant may request to be interviewed and assisted by staff of the same sex.' The use of the phrase 'may request' stands in stark contrast to other clearly defined legal obligations. It is not clear whether the Commission intended to guarantee the right to have an interviewer of the same gender, but its wording points in a different direction – applicants may request, but Member States do not need to abide. Yet women and LGBTQI+ applicants who, for instance, have experienced gender-based violence may feel unsafe and anxious when being subjected to a male interviewer.

Additionally, the Commission has failed to address the case-specific vulnerability to individuals caused by being subjected to the interview per se. When the 'at-risk people' are faced with personal interviews at pre-screening stage, they are not in the psychological nor physical condition to comprehensively **open up to the authorities in charge** and to inform the reception centres of the harm they have suffered in their country and during their journey. Variables include the fear of stigmatisation and the influence of social taboos, as well as a lack of awareness of the procedures and the timeline of when a migrant is assigned to a Member State.

Furthermore, one of the elements that needs to be improved is the lack of translators, both of male and female gender, in various languages and dialects. The '**scarcity of female interpreters** in minority languages such as Bengali or Somali are a further deterrent that results in the underreporting of sexual exploitation and abuse'. Moreover, a series of steps will be put in place when dealing with accounts of sexual and gender-based violence (SGBV), for example assigning a single case worker per case. This would avoid the need for the victims to repeat their traumatic accounts of SGBV.

To properly understand an asylum seeker's account, lexical terms that might be meaningless to a non-native speaker mediator could hide meanings for a native speaker, i.e. the colloquial expressions in said language. Research suggests that **the role of intercultural mediators** is 'a crucial figure in trying to explain what happens at institutional and legal levels so that the asylum seeker or refugee is clearly informed on what is taking place.'

Legal migration routes – gender and the focus on skilled migrants

Among the gaps found in the New Pact is the discussion on gender-diverse people in the labour sphere of the hosting Member States. In fact, '**the employment rate of women refugees is approximately 45 % whereas the employment rate of refugee men is on average 62 %**'. A different approach to legal and illegal migrants' integration can be seen when **comparing the opportunities provided to Ukrainian migrants** as opposed to that of African, Middle Eastern and (some) Asian asylum seekers. This element further underlines the '**systemic unequal solidarity in the EU and Member States**'.

Overall, the idea of facilitating access to the labour market is welcomed in the New Pact. However, the importance of labour migration to the EU is not emphasised and reflected upon, especially in terms of (non)gender-blind proposals and actions relevant to women and gender non-conforming people who seek protection.

Gender stereotypes affect female and gender non-conforming third-country nationals, such as the assumption that they would have the primary responsibility to care for their families, both in the host countries and in their countries of origin. Gender inequality and discrimination based on sex reduces women's opportunities to earn an advanced education and to gather a wide range of skillsets, unlike men. The New Migration Pact has set 'skills and talent' as one of the goals for the EU to consider in light of the 'global race for talent'; the suggested actions focus on finalising the [EU Blue Card Directive](#); revising the [Long-Term Residence Directive](#) and the [Single Permit Directive](#); and setting up the 'EU talent pool'.

These show how **the New Pact has failed to acknowledge and reflect on long-term priorities, like gender-equal integration in the labour market.** A more gender-inclusive and gender-sensitive approach could not only benefit the social and economic empowerment of the EU. It could take part in weakening the gender gap in the labour market while becoming a good example for other countries on how to build inclusive social integration.

When looking at the reasons behind women's choice to migrate, reunification with their family has often been underlined as the leading and categorising factor, making them '[secondary reunification migrants](#)'. The [Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification](#) as implemented to favour the reunification process of third-country nationals' families, as shown by FRA's Second European Union Minorities and Discrimination Survey. However, it potentially leads to the [further discrimination of women](#) for two main reasons.

Firstly, the implementation of the Directive on the right to family reunification depends on the discretion of each Member State, hence access to the labour market and the duration of employment varies depending on the Member State's independent decision. Furthermore, it is up to each Member State's discretion to allow family members an '[autonomous residence permit independent of that of the sponsor for a period up to five years](#)'.

This is the second element which brings up the discriminatory side of the Directive towards women, because it could **further expose women to dangers** in their own households, 'for example when the sponsor is a man, this period of dependence may result in serious consequences, such as the **inability of women migrants to escape domestic violence**'.

Policy recommendations

**1**

An intersectional framework in the New Pact

Incorporate elements that favour the intersectional approach. We suggest, as an example, the enablers **proposed by UN Women**. Furthermore, add to the Pact a description of the mechanisms that will be applied to monitor and evaluate whether this policy is able to meet the needs of migrants from an intersectional perspective.

Including policies that recognise these dynamics means a shift towards understanding the processes vulnerability, **how the same rules can more deeply impact some individuals, and how further violence in the process can be avoided. This cannot be called 'a pact' if those who are directly affected by these measures are not heard.** It is essential to adopt steps in the process of designing and implementing this Pact (and other EU mechanisms) so that the voices and points of view of discriminated groups are fully incorporated.

**2**

Border Management and Pre-entry screening

We recommend providing the **right to accessibility and transparency at all stages, especially during physical and mental health checks.** Hence, for example giving freedom to individuals to request an **assigned operator** and to provide diverse personnel to support the principle of intersectionality by avoiding **re-traumatisation**.

This would be in tandem with enforcing gender-sensitive and anti-discriminatory training on preventing sexual and gender-based violence.

This can be done by elaborating on the role of **intercultural mediators** of **diverse genders** and by providing in-site and remote **translators** for more languages and dialects. Providing such rights would improve communication and the collection of information, facilitate trust between asylum seekers and officials, and foster humane treatment following inhuman experiences along migration routes. Lastly, it would address the gap in the definition and use of needs-based support, by means of achieving an inclusive and intersectional level of care, as well as upholding the minimum standards that Member States are required to comply with.

**3**

Asylum reform and the proposal for a regulation on asylum and migration management

We invite greater clarity, by means of official guidance, **to establish an individual category of gender-based vulnerabilities**. Member States ought to be required to conduct an individual assessment considering the specific needs and circumstances of the applicant.

In light of this, the proposed [**Regulation on Asylum and Migration Management**](#) should be changed to require the collection and sharing of data pertaining to gender-based vulnerabilities.

**4**

Legal Migration Routes – Gender and the focus on skilled migrants

A **change in the discourse** and **representation** of female and gender non-conforming migrants is needed to prevent discrimination against numerous employees.

Any pilot action aiming at increasing decent labour migration, such as the implementation of the 'Talent Partnerships' in the EU's Neighbourhood, requires **integration and inclusion efforts** across all migrant workers in significant sectors, especially those with low wages who have no access to permits regardless of their status and gender.

Conclusion

Despite its commitments to adequately take intersectionality into account in all policy areas, the Commission has failed to do so in its New Pact Migration and Asylum. As they currently stand, the Commission proposals further entrench gender-based discrimination in border and asylum procedures and in the context of legal migration routes. Therefore, we have proposed significant amendments which would not only address the needs of those facing structural discrimination, but also enhance their legal position during all stages of the process.



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