Justice & Home Affairs

Session 3

EU Asylum policy

Assigned readings for this session:
- **Peers (2011), 357-366**
- **MEDAM (2017), pp 30-43**
- **Scipioni (2018), pp. 1357–1375**
- **Guiraudon (2018), 151-160**

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Convention

EU Asylum Policy

Obligations under international law

and EU Asylum Objectives

EU objectives

to offer appropriate status to third-country nationals who need international protection on the basis of harmonised EU rules

The international legal context
- the 1951 Geneva Refugee Convention and
- the 1967 Protocol thereto
- provide obligations under international law
- which also serve as objectives of EU's asylum policy

to ensure that the *international* principle of 'non-refoulement' is observed

| 1990 | Dublin Convention | 1997 |

- Dublin Convention (1990)
  - **key function**: *assigning member state responsibility for registering and hosting refugees*
  - ***main aim***: *preventing 'asylum shopping'*

Dublin Convention

- *Criteria for determining responsibility*

- *'Rule of first entry'*

- *What the Convention meant in practice*

The Convention does not say that the first member state where an asylum seeker may pass through, has the responsibility to register and host the refugee.

It 'merely says that only after all 'prior criteria' have been exhausted, the first member state becomes responsible

What it meant in practice:
- only 4.2% of asylum applications were subject to 'prior criteria'
- 71.4% of these requests were accepted
- In short: 3% of the total asylum applications resulted in relocation to another member state

Prior criteria *inter alia* include:
- family unity
- applicant has residence permit from another member state
- applicant has visa from another member state
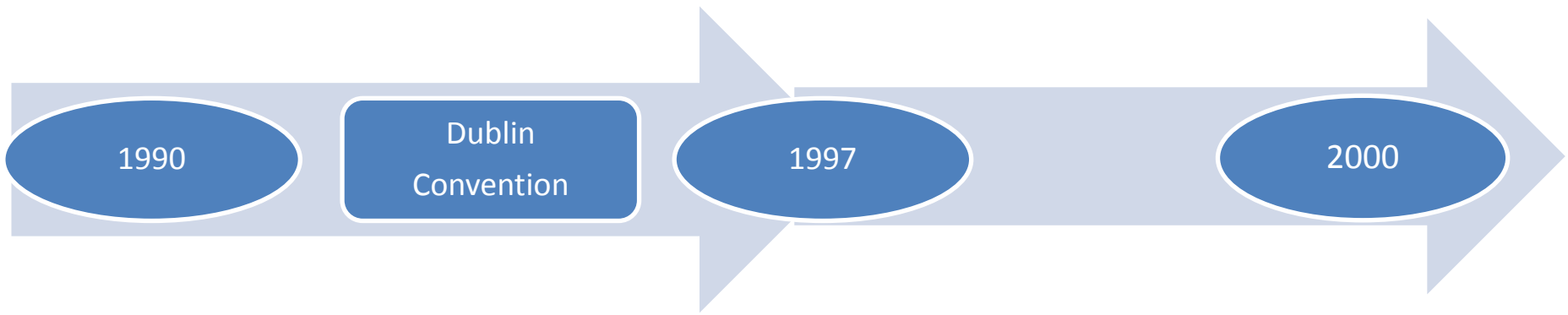
- Dublin Convention (1990)
  - **key function**: *assigning member state responsibility for registering and hosting refugees*
  - ***main aim***: *preventing 'asylum shopping'*
- What it meant in practice
  - *responsibility lies with country of first entry*
  - *the Convention induced asylum seekers to destroy travel documents*
- It entered into force in 1997 (due to ratification difficulties)

- Eurodac Regulation (2725/2000)
  - establishing an integrated fingerprint database
  - *took effect only in 2003 (due to technical difficulties)*
  - *its aim: comparing fingerprints for the effective application of Dublin Convention and its rules:*
- Impact in practice:
  - *substantial increase in percentage of multiple asylum applications detected (from 7% in 2003 to 17.5% in 2008)* Source: Peers 2010, p. 365
  - *actually ensures that the 'rule of first entry' is safeguarded*

- Dublin II regulation (343/2003)
- *Main changes from Dublin Convention:*
  - *speedier procedure for transferring asylum seekers between member states*
  - *additional criteria related to family relationships (on top of family reunion), including:*
    - *the member state responsible for unaccompanied minors is the member state where a family member can take care of them*
  - *Now supported by Eurodac*

Dublin II Regulation

What the Dublin II Regulation means in practice

The default criterion (still) is the member state where the asylum seeker submitted first his or her application

Overall 4.1% of asylum seekers were relocated under the Dublin II Regulation rules

Source: Peers 2010: 362

Failure to carry out half of the transfers, due to:

- absconding (i.e. hiding from the authorities)
- suspensive effect of appeals
- illness or humanitarian reasons
- voluntary return to country of origin

Source: Peers 2010: 362

2009 → Lisbon Changes → 2011

- Main change from Lisbon Treaty (2009):
  - *art. 87 TFEU: creation of a **common** asylum policy (with uniform procedures; no longer minimum standards)*
  - *no change to the decision-making procedure*

- European Asylum Support Office (EASO)
  - *established by Regulation 439/2010; it became operational in 2011*
- *Main aims:*
  - *facilitate protection for asylum seekers*
  - *smoother relocation procedure between EU countries*
- *Some of its tasks*
  - *organising temporary support to member states subject to pressure*
  - *organizing and providing assistance to repair or rebuild asylum and reception systems*

- Dublin III Regulation (604/2013)
- One of key reasons to change:
  - court rulings of (ECJ) 2011 and (ECHR) 2012
  - failing reception conditions: also violation of non-refoulement
- *Main changes from Dublin II Regulation:*
  - *widens the definition of family members (for relocation to other member states)*
  - *introduces more legal measures to safeguard the asylum seekers during the relocation and transfer procedure*
- the first entered Member State still bears the responsibility of handling the asylum application

- **'New Pact on Asylum and Migration'**
  - adopted by Commission in September 2020
- It foresees among other things:
  - streamlining procedures and rules on asylum and return
  - new solidarity mechanism for search and rescue
  - improved management of external borders (next class)

- It also addresses the basic rule of 'first entry' ……..

- Replacing the 'first entry' rule with a relocation programme or quota system of relocation (based on the solidarity principle)

- Currently, the Commission and EP try to force this through a package deal with the ms
  - who ask for EU money in financing border control (next lecture)

- A relocation program based on quotas has actually been applied, albeit temporarily: in 2015-2016.
  - And with deficiencies

Critical Issues of Asylum Policy

The refugee crisis of 2015-2016

- In 2014: **662 680** applications were recorded in the EU
- In 2015: **1 349 638** applications (more than twice the level of 2014)
- In 2016: **1 236 325** asylum applications (9 % decrease compared to 2015)
- In 2017: **707 000** asylum applications (43 % decrease compared to 2016)

Weaknesses and responses
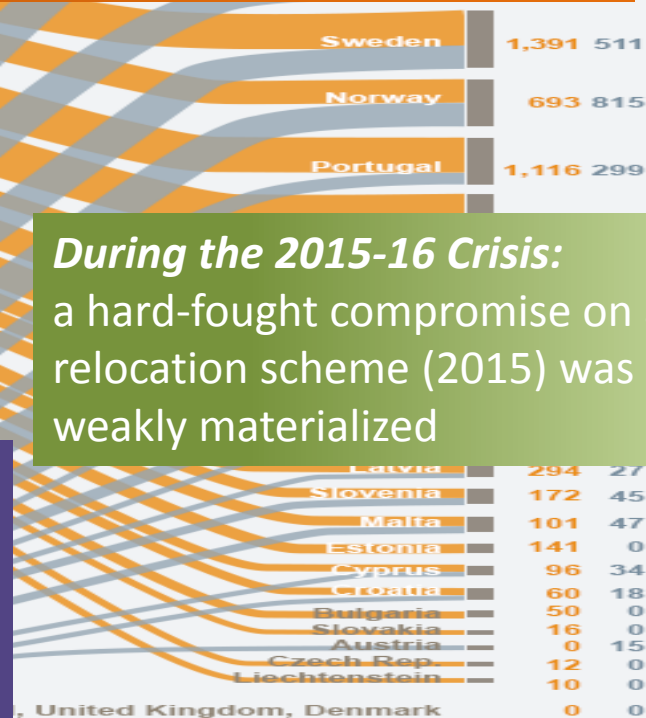
uneven distribution of responsibilities

burden of dealing with illegal entry falls onto external border member states

poor conditions in first-entry countries induce asylum seekers to apply for asylum elsewhere and refuse cooperation with authorities implementing Dublin rules
(Hess & Kasparek 2017: 38)

During the 2015-16 Crisis: a hard-fought compromise on a relocation scheme (2015) was weakly materialized

once a migrant's data was registered in Eurodac, he or she was obliged to remain in the country of first entry

member states most affected started to move towards lax fingerprint registration practice
(Hess & Kasparek 2017: 58)

Sweden	1,391	511
Norway	693	815
Portugal	1,116	299
Latvia	294	27
Slovenia	172	45
Malta	101	47
Estonia	141	0
Cyprus	96	34
Croatia	60	18
Bulgaria	50	0
Slovakia	16	0
Austria	0	15
Czech Rep.	12	0
Liechtenstein	10	0
	0	0

8,402

, United Kingdom, Denmark

ember 2017

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Critical Issues of Asylum Policy

2022: Ukrainian refugees in the EU

- from 2013 to 2021: nearly 6 million people applied for asylum in EU
- about 2.5 million sought asylum during 2015 and 2016
- March 2022: over 4 million fled Ukraine within a month

EU measures

The 4 million refugees fleeing Ukraine outnum... the EU

eived by EU count...

On 23 March adoption of a financial package:
- *release of €3.4 billion in recovery funds*
- *to help MS absorb refugees (chiefly those neighbouring Ukraine)*
- *intended for housing, education, health, employment and child care.*
- *drawn from REACT-EU recovery program (intended for recovery from corona pandemic)*

In a week, after the Russian invasion on 24/2:
- humanitarian exception clause of Schengen Borders Code (Art. 6(5c)) activated
- reprogramming funding of initially around 200 million for border management support
- crisis management coordination team established (IPCR)
- Temporary Protection Directive (TPD) granting en masse collective protection status

016   2017

Leading statement for in-class debate of tomorrow:

Member states should be allowed to (continue to) externalize reception and registration in neighbouring (third-state) countries.

Leading statement for in-class debate of today:

The Dublin mechanism should be based on a system of quotas.

(that is: refugees should be distributed amongst member-states according to a formula pre-established at EU level)

END

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