

Solidarity in EU Asylum and Migration Law

Overview

1. EU Asylum and Migration Law in context
2. Dublin III Regulation
3. Outlook: Which way forward to more solidarity?

1. EU Asylum and Migration Law in context

2007 – Lisbon Treaty

2015 – ‘Long summer of migration’ – European Agenda on Migration

2020 – New Pact on Migration and Asylum

1. EU Asylum and Migration Law in context

Lisbon Treaty 2007

- Area of Freedom, Security and Justice
- Art. 67-80 Treaty on the Functioning of the EU (TFEU) dealing with competences in matters of immigration and asylum
 - Extended the competences in comparison to the Treaty of Nice 2001
- Co-decision procedure regarding border checks, asylum and immigration
 - Not intergovernmental anymore

1. EU Asylum and Migration Law in context

Art. 80 TFEU

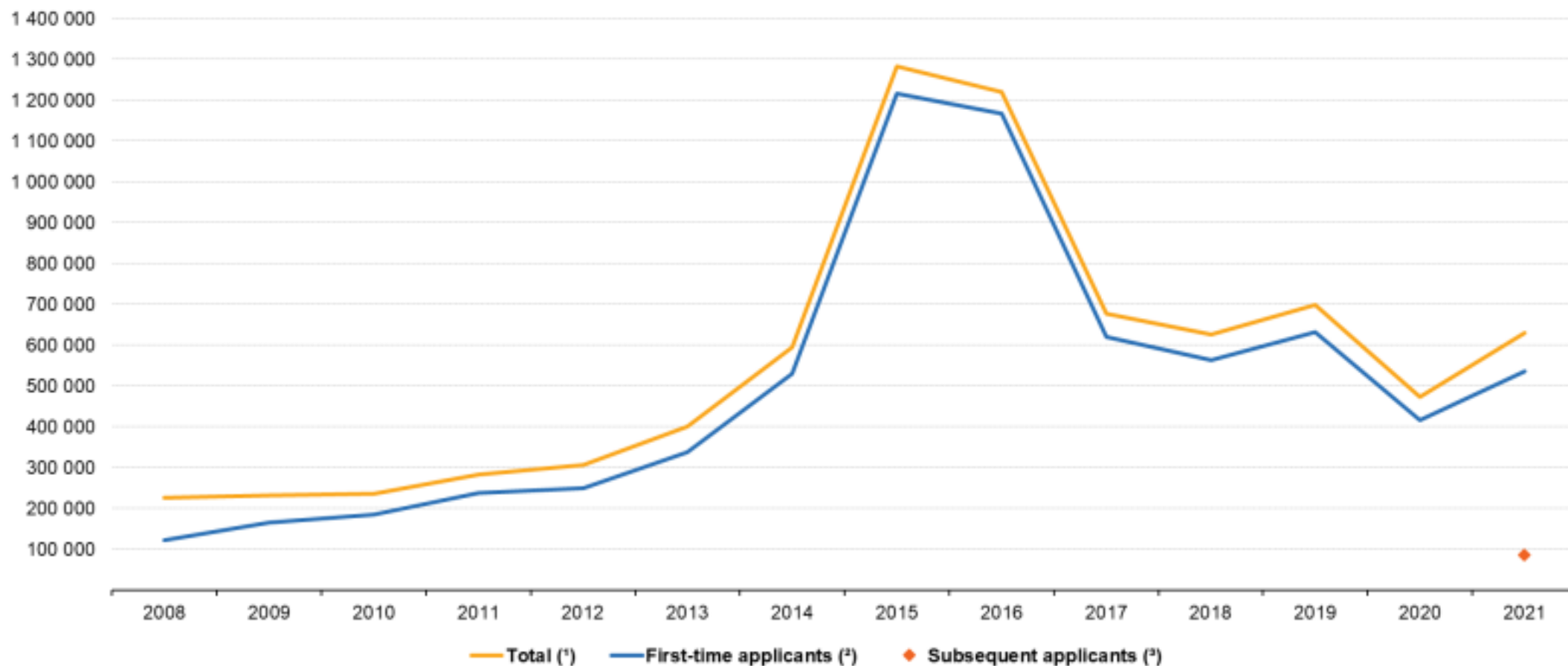
‘The policies of the Union set out in this Chapter and their implementation shall be governed by the **principle of solidarity** and fair sharing of responsibility, including its financial implications, between the Member States. [...]

1. EU Asylum and Migration Law in context

Art. 222(1) TFEU

‘The Union and its Member States shall act jointly in a **spirit of solidarity** if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. [...]’

Number of asylum applicants (non-EU citizens), EU, 2008–2021



(¹) Total: 2008-2014 data are estimated.

(²) First-time applicants: 2008-2013 data are estimated.

(³) New data collection from reference year 2021. Subsequent applicant is one of the category of repeated applicant. EU total is estimated based on available data.

Source: Eurostat (online data code: migr_asyappctza)

1. EU Asylum and Migration Law in context

European Agenda on Migration 2015 – reaction to deaths in the Mediterranean sea and ‘long summer of migration’

- Reducing incentives for irregular migration
- Border management – saving lives and securing external borders
- Strong common asylum policies
 - Coherent implementation of the Common European Asylum System (CEAS)
 - Dublin – greater responsibility sharing
- **Solidarity through relocation?**
 - Relocation vs Resettlement

1. EU Asylum and Migration Law in context

New Pact on Migration and Asylum 2020

- includes legislative proposals like the Asylum and Migration Management Regulation.
 - Dublin-Reform
- Solidarity is at the heart of this communication.
 - Not a programmatic five-year plan like Tampere 1999, The Hague 2005, Stockholm 2010 (cf. Art. 68 TFEU)

2. Dublin III Regulation (2013/603/EU)

What is the core idea behind Dublin?

- ‘One-chance-only’
- ‘asylum shopping’
- ‘refugees in orbit’

Why is Dublin necessary for Schengen?

How does Dublin and EURODAC relate?




2. Dublin III Regulation

Who is the responsible Member State in theory?

- Objective, fair criteria both for the Member States and for the persons concerned

Hierarchy of criteria (Art. 7-15 Dublin III Regulation)

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- Minors
 - Family members
 - who are beneficiaries of international protection/who are applying for international protection
 - **Residence permit/visa (legal entry)**
 - **Illegal entry and/or stay**
 - Application in transit area of an airport
 - If no other criteria is applicable
 - **the first Member State in which an application was lodged/transfer impossible**

2. Dublin III Regulation

Who is the responsible Member State in practice?

Member States in which the asylum seekers enter 'illegally' into the EU

- Greece, Italy, Hungary, Croatia, etc.

BUT also, Germany and other states as 'top-destinations'

- Often problems with transferring persons from one Member State to another
- Delays, numbers are low

Provisions regarding minors and family members almost never applied

2. Dublin III Regulation

Massive criticism before and especially after long summer of migration in 2015

- No burden sharing
- No fair criteria
 - 'in 2014 five Member States dealt with 72% of all asylum applications EU-wide'
(European Agenda on Migration 2015, see also COM(2020) 610 final, 14)
- Still multiple asylum applications in different Member States

3. Outlook: Which way forward to more solidarity?

- Dublin III still in place
- Dublin IV Proposal 2016 has been withdrawn
- Current Proposal in the 2020 New Pact on Migration and Asylum:

Asylum and Migration Management Regulation

Reproduces Dublin III Regulation + Amendments taken from the Dublin IV Proposal

3. Outlook: Which way forward to more solidarity?

Asylum and Migration Management Regulation

- Reproduces Dublin III Regulation + Amendments taken from the Dublin IV Proposal
 - ‘Dublin, the Undying’ (Maiani)
- Status according to the Legislative Train of the EP: **Derailed!**
 - Proposal aims for more solidarity, but no definition of the concept in the whole Pact!

3. Outlook: Which way forward to more solidarity?

Asylum and Migration Management Regulation

- 'New solidarity mechanism'
 - 'Mandatory' and 'flexible'
- Expansion of family definition
- New obligations for asylum applicants – to discourage secondary movements
 - Loss of social benefits
- Shorter time limits for take charge/back request

Thank you very much for your kind attention!

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