

Used during the Balkan crises, the EU's Temporary Protection Directive may now be a solution to Europe's refugee emergency

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Europe's attempts to deal with the influx of people attempting to cross its southern borders was one of the key issues throughout 2015. [Olga Mitrovic](#) writes that while various proposals have been made for addressing the crisis, the use of an existing mechanism – the EU's Temporary Protection Directive – has so far received relatively little attention. She argues that offering temporary protection, as the EU did during the Balkan refugee crises in the 1990s, offers a clear solution to the current situation.



A [defining humanitarian crisis of our time](#) – this is how the former UK Foreign Secretary described situation in Syria in April 2014. Fast-forward to 18 months later and the acute humanitarian crisis is a daily occurrence for over 800,000 people that have sought refuge in Europe in 2015. The majority of them are from Syria and their arrival is portrayed as an unprecedented challenge for the EU's authorities.

The pressure on borders is enormous, but the EU is no stranger to volatile and large-scale movements of asylum seekers. Its recent institutional memory recalls the Balkan refugee crisis in the 1990s – during a period when there was no Common European Asylum System, harmonised asylum rules, or structures such as the European Refugee Fund, Frontex and a European Asylum Support Office.

At the time, member states had to rely on ad hoc measures to provide an adequate humanitarian response. And yet, Bosnian refugees in 1992-95 and Kosovar refugees in 1999 were offered protection, flows were managed and lessons were learned. These practices were later standardised and embedded in the [Temporary Protection Directive](#). Today, the one solution to the Syrian refugee crisis which has largely gone without mention in discussions is the instrument that was specifically made for resolving emergency situations such as this one: the temporary protection mechanism that worked well in the recent past.

Temporary protection and the refugee crises in the Balkans

The outbreak of war in the former Yugoslavia displaced over 3.2 million people within and outside of its borders causing the largest refugee crisis in Europe since World War Two. Germany alone admitted 350,000 refugees from Bosnia. To respond to a sudden arrival of thousands of people fleeing prosecution, western European governments introduced [temporary protection schemes](#) between April 1992 and December 1994. These schemes were an emergency response to the situation when, due to the number of asylum claims, individual processing under the 1951 Refugee Convention was not possible.

Instead, all asylum seekers were offered protection for the duration of one year with the possibility of renewal and were provided with accommodation, access to healthcare, social services and employment. In 1997, Germany was the first country to lift the temporary protection status and repatriate 300,000 people to Bosnia. Though the UNHCR cautioned that conditions were not conducive for return, the chain reaction followed from other member states, resulting in the overall return of 700,000 people to Bosnia.

The temporary protection mechanism was invoked again during the 1999 Kosovo war and NATO bombing. Though asylum seekers in Kosovo predominantly fled to neighbouring Macedonia, Albania and Montenegro, between March and June of 1999, the EU admitted 200,000 people, with the largest number going to Germany and Switzerland. Back then, Western states exhibited an exceptional level of solidarity to ease the burden on Albania and Macedonia. Under the Humanitarian Evacuation Programme, 60,000 people were evacuated up until May 1999 by a massive

[airlift operation to 29 countries](#) that had agreed to provide temporary shelter, predominantly in the EU. Repatriation was even faster than that to Bosnia and in the summer of 2000 a total of 841,000 of the asylum seekers residing in the region and western states were returned to Kosovo.

The application of temporary protection in the Balkan refugee crisis demonstrates its worth as a pragmatic option for solving the current crisis. On one hand, temporary protection addresses the humanitarian needs of the displaced and guarantees their safety. On the other hand it allows governments to admit large number of refugees and mitigate political tensions that arise over the influx of asylum seekers, since the protection is given for a limited period of time.

The mechanism of course has its downsides. It does not always take into account refugees' needs, as reported by some refugees from Bosnia and Kosovo who felt their temporary stay was a state of limbo. The cancelation of refugees' protection status and premature return to their country of origin was another concern raised by the UNHCR. Despite this, the UNHCR considers temporary protection to be an efficient response in emergency cases.

Following the experience from the 1990s, the EU started working on the creation of the Common European Asylum System. After the 1999 Treaty of Amsterdam, which institutionalized development of common binding EU legislation in the area of asylum, the first Directive that was adopted was Temporary Protection Directive. This legal instrument was to serve as principal framework in the event of a major refugee crisis and it envisaged a series of necessary measures that enhance the protection of asylum seekers during their stay in host countries.

Current responses to the Syrian refugee crisis

Twenty years after the emergence of temporary protection policies, the EU is coping with another refugee crisis. Since the first EU summit on this subject in April 2015, almost every type of response has been tested. Some member states chose to disregard international responsibilities and [EU asylum directives](#) and unilaterally deal with asylum seekers through the erection of walls, closure of borders, detention of migrants and by voicing their [preferences to take in non-Muslim asylum seekers](#).

Other responses emphasised the security dimension: declaring war on smugglers and securing external borders through increased Frontex presence and operations. Additionally, a solution was sought by outsourcing the crisis, whether through the creation of the [offshore centre in Niger and other transit areas](#) where asylum claims can be processed, or by intensifying cooperation with third countries, [such as Turkey](#), that would result in stemming the tide of migrants. These measures are to be followed with long-term actions that aim to address the root causes of migration by assisting the development of Global South.

A long negotiated solution to the crisis, that was met with fierce opposition from [Visegrad countries](#) and caused a rift in the EU, was the agreement in September 2015 to relocate 120,000 asylum seekers from Greece and Italy. Though it seemed that member states are finally assuming their responsibility, the poor implementation of this agreement prompted a reaction from the European Commission President that [with the current pace, relocation will only be completed by 2101](#). In spite of all measures and frequent summits, the EU is grappling with the crisis and the situation is deteriorating by the day, with the latest threats made that Greece will be [suspended from Schengen](#).

The only mechanism that has not been used is the one which was created to address situations like these. Although the Temporary Protection Directive is one of the pillars of the EU asylum acquis, it has been completely absent from the policy discourse. The idea of granting temporary protection is not even mentioned in the [European Agenda for Migration](#), a document adopted by the Commission in May 2015 that should serve as a blueprint for all future migration related measures. The activation mechanism for the Temporary Protection Directive stipulates a qualified majority decision within the Council of the European Union, acknowledging a mass influx of displaced persons arriving from a specific country or a geographical region. Though Syrian asylum seekers make a compelling and clear-cut case for this decision, it looks like no such proposal will be made.

Resolving the crisis not only requires a technical solution, which already formally exists, but also strong political will that is currently in short supply in the EU. While there was support for accepting Bosnian refugees and to a greater extent refugees from Kosovo, the political will to tackle the Syrian refugee crisis in line with human rights is vanishing. This grave situation indicates different standards and attitudes towards displaced persons that were coming from Europe and those arriving from the Middle East. The increased securitisation and the rise of far-right parties following the Paris attacks can only further undermine asylum protection.

The comparison of the current refugee crisis with that of the two Balkan crises reveals a great paradox. In the 1990s when there was no common system, member states managed to provide ad-hoc adequate protection responses. Nowadays, when the EU has elaborate legal, institutional and financial infrastructure it is failing to produce a solution, partially because it is not even considering its very own rules that were made for dealing with such a crisis.

Compared to what the Syrian asylum seekers have been experiencing in the past few months and taking into account other available solutions, temporary protection looks like the only right choice from a human rights perspective. Nevertheless, the EU continues to come up with novel, untested solutions, whereas those that have worked successfully in the past are forgotten and ignored.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics. Featured image: Refugees strike in front of the Budapest Keleti railway station, 3 September 2015; credits: [Mstyslav Chernov](#) (CC BY-SA 4.0)

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About the author

Olga Mitrovic

Olga Mitrovic is Business Development Consultant for the Western Balkans at the British Council in Serbia.

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