



# EU Temporary Protection Directive: What lessons have been learned?

In the 1990s temporary protection (TP) was seen as an innovation in refugee protection balancing state interests with international obligations.

In 2001 the EU passed the Temporary Protection Directive (TPD) to coordinate the EU's response in situations of mass influx of 'displaced persons'. This directive was passed following lessons learned from the mass influxes caused by the break up of Yugoslavia.

Why has the directive never been used?

## What is Temporary Protection (TP)?

A link between non refoulement and a durable solution, TP 'is linked with the persistence of the causes of persecution'.

Kjaerum 1994

'Temporary protection', unlike refugee status, never became a consistent category enshrined in international law. Is it a temporary sojourn in a host country, or is it a precursor to more permanent protection?

Koser and Black 1999

States tend to reinvent the system of [temporary] protection each time a mass influx occurs, tailoring its application and scope to domestic and international pressures, rather than in accordance with a formal and predictable legal regime.

Fitzpatrick 2000

TP was conceived as a return-oriented protection mechanism, within which 'the focus on return as the most appropriate solution' provided the rationale for 'standards of treatment which emphasize the provisional aspect of the refugees' stay ... and minimize, at least in the initial stages, efforts to promote integration'.

Durieux 2014

### 2001: EU: Lessons learned

#### Preamble to the 2001 Directive on Temporary Protection:

'The European Council, at its special meeting in Tampere [1999] acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

'On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty.'

#### 2001: EU passes Directive 2001/55/EC

'On minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.' See box top right.

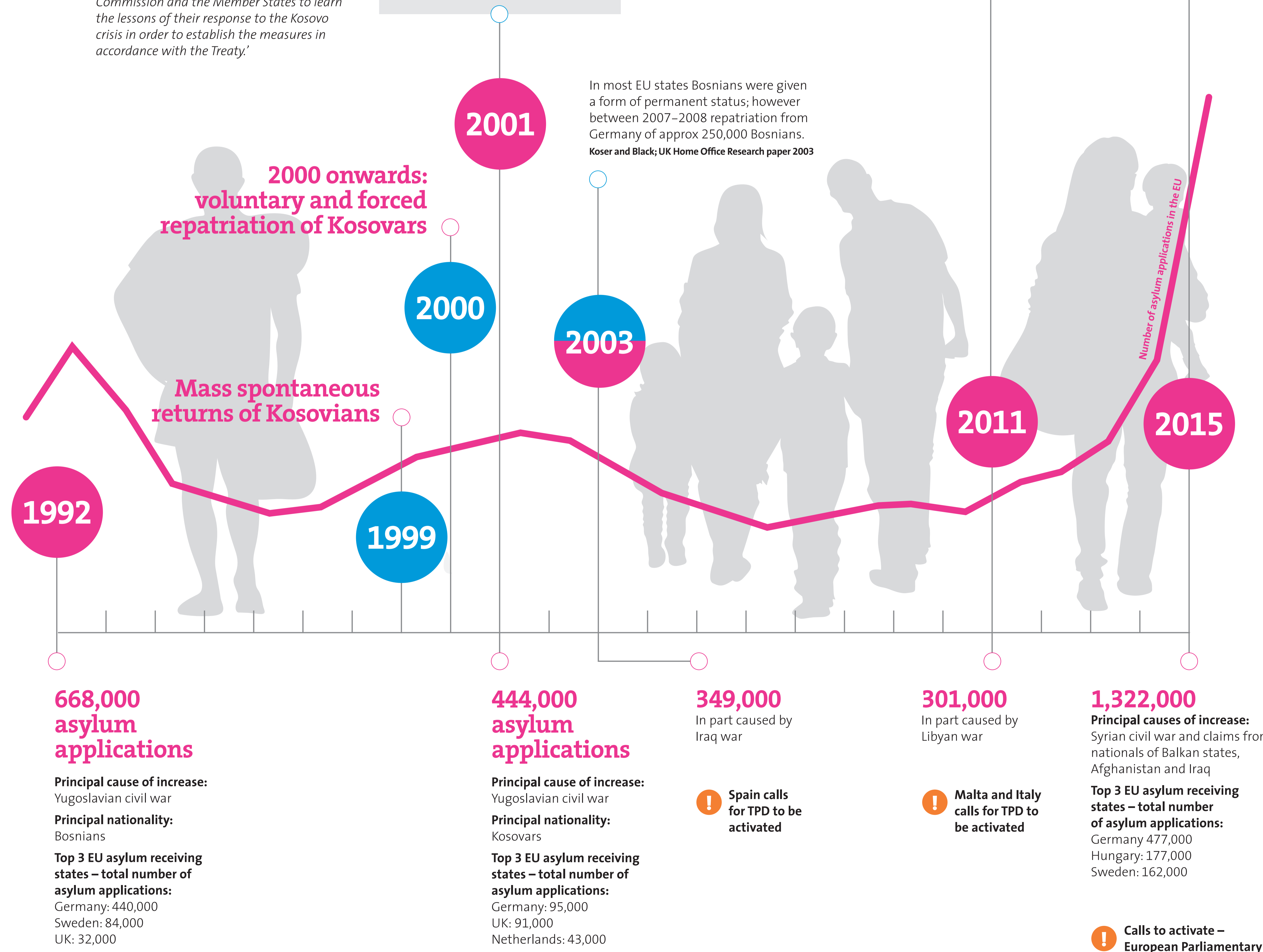
\* In the event of a mass influx of displaced persons, the Commission will always consider activating the mechanism of the Temporary Protection Directive when the conditions are met.

The Union has not found itself in a situation of mass influx of displaced persons since the Kosovo refugee crisis of 1999. The events of 2011 in the Southern Mediterranean [Libyan civil war] have not led to an influx of persons into the EU of a comparable scale.

Commission, 2011

In most EU states Bosnians were given a form of permanent status; however between 2007–2008 repatriation from Germany of approx 250,000 Bosnians.

Koser and Black; UK Home Office Research paper 2003



### 2015: EU agrees temporary alteration to Dublin transfer rules

Mandatory quotas of transfer of up to 160,000 Syrians, Iraqis and Eritreans from Italy and Greece to (most) other states during 2015–2017:

Art 1: This Decision establishes provisional measures in the area of international protection for the benefit of Italy and of Greece, in view of supporting them in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in those Member States.

## EU Law: Temporary Protection Directive (TPD) Directive 2001/55/EC \*

### Key features under TPD

- Recognition for mass influx into EU = large number of 'displaced persons' coming from a specific country or geographical area: whether spontaneous arrival or evacuated to EU.
- Displaced persons includes: 'persons who have fled areas of armed conflict'.
- TP Period: immediate and up to 3 years.
- Burden sharing between states 'promoted' for reasons of effectiveness, coherence and solidarity and in order, in particular, to avert the risk of secondary movements.
- Harmonised rights: minimum set of rights: right to non refoulement during period of TP, reception, social and economic rights, right to claim asylum (though latter can be suspended).

### Trigger mechanism

- EU Commission initiates – identifies mass influx and group(s) of beneficiaries.
- States inform Commission of their capacity to receive displaced persons.
- Council – right of adoption by qualified majority voting (= 16 states representing 65% of total EU population).

## Temporary Protection in Europe: new lessons

The 1990s break up of Yugoslavia was a particular type of situation where (i) return was an imperative given displacement was a goal of ethnic cleansing and (ii) the West had an influence on the ending of the causes of displacement.

TPD itself serves no purpose for states if it does not ensure burden sharing and/or repatriation; it cannot ensure either.

The TP Directive 2001 offers no clear benefits to asylum seekers – EU asylum law provides protection for those fleeing armed conflict (subsidiary protection) and harmonised rules relating to reception and recognition.

TPD activation and mechanics contain problems and risks: over trigger mechanism; states under-reporting or not reporting reception capacities; lack of clarity around question of consent of person to be relocated to a state, potential pitfalls with any repatriation schemes.

**'States have no reason to support temporary protection if it proves simply to be an extended pathway to permanent immigration.'**

Gibney (2000)



EST 1892

John Koo, Lecturer in EU Law at LSBU