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IMPACT ASSESSMENT

Accompanying the document

Proposal for a DIRECTIVE OF THE COUNCIL

**on coordination and cooperation measures regarding consular protection for
unrepresented EU citizens**

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1. INTRODUCTION

This impact assessment examines the coordination and cooperation measures regarding consular protection for unrepresented EU citizens with the aim of further facilitating consular protection in third countries. Special attention is given to financial reimbursement in crisis situations. It will be safeguarded that unrepresented EU citizens are treated by the assisting consular authority in the same way as its own nationals; and quality of service for unrepresented EU citizens as well as the solidarity and collaboration between consular authorities will be further enhanced.

An EU citizen, travelling to or living in a third country where his/her Member State is not represented by an embassy or consulate, has the right to enjoy the protection of the diplomatic and consular authorities of any other Member State under the same conditions as the nationals of that State. This right is enshrined in Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union (TFEU) and in Article 46 of the Charter of Fundamental Rights of the European Union.

Recent major crises have affected a considerable number of EU citizens in third countries (for instance in Libya, Egypt and Bahrain after the democratic uprisings in spring 2011 or in Japan after the earthquake in March 2011). Yet also in day-to-day situations (e.g. in the event of serious illness or when someone is a victim of crime) assistance by consular authorities is often essential (for instance assisting with access to medical facilities or issuing emergency travel documents). The need for consular protection is expected to further increase in the future¹.

This impact assessment accompanies the Commission's proposal for a draft Directive on the coordination and cooperation measures regarding consular protection for unrepresented citizens of the Union.

2. CONTEXT AND CONSULTATION

2.1. Policy context

The right to equal treatment on consular protection for unrepresented EU citizens is one of the specific rights granted by the concept of EU citizenship. It is commonly regarded as an expression of EU solidarity and of the identity of the Union in third countries, as well as one of the practical benefits of being an EU citizen.

Consular protection for EU citizens is an integral component of the Union's policy, fostering the rights of the EU citizens. The Stockholm Programme prioritises over the coming years the needs and interests of the citizens and it emphasises that all opportunities offered by the Lisbon Treaty, in order to strengthen the European area of freedom, security and justice for the benefit of EU citizens, should be used by the European institutions². Regarding consular protection the European Council invited the Commission to 'consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU'³.

In its Resolution of 25 November 2009 the European Parliament emphasised the importance of strengthening the coordination and cooperation of consular protection; as it considered that the

¹ See below under point 3.1.

² OJ 2010/C 115/01 - The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Council document 17024/09 of 2 December 2009.

³ *Idem*.

exercise of the rights of EU citizens must be secured beyond national borders, and that they must be able to fully exercise their specific rights, even outside the Union⁴. This was a follow-up to its Resolution of 11 December 2007 advocating the adoption of common concepts and binding guidelines for establishing common standards in the field of consular protection, and – once the Lisbon Treaty has been ratified – subsequent submission of a proposal for amending Decision 95/553/EC⁵.

The EU Citizenship Report 2010, a strategic initiative of the Commission, stemmed from President Barroso's political commitment to obtain a comprehensive overview of the obstacles citizens still face and to propose how they can best be removed⁶. It stressed that there was still a gap between the applicable legal rules and the reality confronting citizens in their daily lives, particularly in cross-border situations, and underlined the importance of making EU citizenship more effective in practice. According to action 8 of the report, the Commission would consider increasing the effectiveness of the right of EU citizens to be assisted in third countries, including in times of crisis, by the diplomatic and consular authorities of all Member States, by proposing legislative measures in 2011 and by better informing citizens via a dedicated website and targeted communication measures. The Commission reiterated this commitment⁷ in its Communication of 23 March 2011 on consular protection for unrepresented EU citizens⁸, which took stock of the Union's contribution to effective consular protection in third countries as announced in the Commission's Action Plan 2007-2009⁹ and presented the way forward based on the experience gained and the renewed institutional framework.

The **Lisbon Treaty** takes account of the increased need for a European dimension for consular protection by reinforcing and clarifying the capacity of the Union to act.

Consular protection for EU citizens, introduced by the Maastricht Treaty, is also enshrined in Article 46 of the Charter of Fundamental Rights of the European Union. This right confers a clear individual entitlement for the citizen of a non-represented Member State to be treated by the consular and diplomatic authorities of another Member State as if he/she were its own national. Articles 20(2)(c) and 23 form an integral part of Chapter II on non-discrimination and citizenship of the TFEU.

Under the previous legal regime Member States had to establish the necessary rules themselves. Two succinct sui generis decisions were adopted (Decision 95/553/EC on consular protection for unrepresented EU citizens¹⁰ and Decision 96/409/CFSP regarding Emergency Travel Documents¹¹), as well as non-binding guidelines (on consular protection of EU citizens in third countries in general as well as on specific terms of Decision 95/553 and on crisis cooperation¹²). The Lisbon

⁴ European Parliament Resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0090&format=XML&language=EN>).

⁵ European Parliament Resolution of 11 December 2007 on the Green Paper: Diplomatic and consular protection of Union citizens in third countries (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0592&language=EN&ring=A6-2007-0454>).

⁶ COM(2010) 603 final.

⁷ See also the Commission Work Programme 2011 (COM(2010)623 final).

⁸ COM(2011) 149 final.

⁹ COM(2007) 767 final.

¹⁰ OJ L 314, 28.12.1995, p. 73.

¹¹ OJ L 168, 16.7.1996, p. 4.

¹² Guidelines on consular protection of EU citizens in third countries (Council document 10109/2/06 of 16 June 2006 revised by Council document 15613/10 of 05 November 2010 (not published)). Guidelines for further

Treaty conferred on the Commission the right to initiate legislative proposals, i.e. directives establishing cooperation and coordination measures necessary to facilitate the right regarding consular protection for unrepresented EU citizens¹³. Any such legislative proposal would, following consultation of the European Parliament, be subject to qualified majority voting in the Council¹⁴.

The Lisbon Treaty also allowed for the creation of the European External Action Service (EEAS)¹⁵. Article 35 of the Treaty on European Union (TEU) stipulates that the diplomatic and consular missions of the Member States and the Union delegations in third countries shall contribute to the implementation of the right of EU citizens as referred to in Article 20(2)(c) TFEU and of the measures adopted pursuant to Article 23 TFEU.

Right to equal treatment as regards consular protection

Every EU citizen has, in a third country in which his/her Member State of nationality is not represented, the right to protection by the diplomatic or consular authorities of any EU Member State, under the same conditions as the nationals of that State. This means that an EU citizen who travels to (or lives in) a non-EU country, where his/her home Member State does not have an embassy or a consulate, can turn to another Member State's embassy or consulate and ask for protection. The EU citizen then has the right to be treated in the same way as the assisting Member State would treat its own nationals (non-discrimination).

2.2. Consultation and chronology

2.2.1. Consultation of stakeholders

The views of Member States and other stakeholders were widely sought in accordance with the general principles and minimum standards applicable to the consultation of interested parties. In a comprehensive public consultation on EU citizens' rights in 2010, contributions from all citizens and relevant stakeholders were sought with a view to identifying concrete actions. Particular attention was given to consular protection for EU citizens. This public consultation followed a previous one connected with the Green Paper of 2007 on diplomatic and consular protection of EU citizens in third countries¹⁶. The ideas put forward during the public consultation informed the policy debate at the conference "EU citizens' rights – the way forward" of 1-2 July 2010, during which consular protection was discussed in depth.

A 2010 Eurobarometer on Citizenship revealed that consular protection for unrepresented EU citizens constitutes the least known EU Citizenship right¹⁷. Stakeholders involved in consular protection (such as Member States, travel associations, non-governmental organisations and academics) were consulted, including via two dedicated workshops which took place on 24 September 2010 and on 23 June 2011. Consular and diplomatic authorities of all the Member States were informed in the Council Working Group Consular Affairs (COCON) and consulted via an

implementing a number of provisions under Decision 95/553/EC (Council document 11113/08). Lead State concept (Council document 10715/07) and European Union guidelines on implementation of the consular Lead State concept (document 2008/C317/06, OJ C317/06, p. 6). See as well Decision of the Representatives of the Governments of the Member States, meeting within the Council, on measures implementing the Decision regarding protection for citizens of the European Union by diplomatic and consular representations (Council document 11107/95 (not published)).

¹³ Article 23(2) TFEU.

¹⁴ Article 16(3) TEU.

¹⁵ Article 27 TEU.

¹⁶ OJ C 30 of 10.2.2007, p. 8.

¹⁷ Eurobarometer(2010), Flash EB No 294, European Union Citizenship.

online survey and bilateral interviews and six representative Member States were recently visited. To ensure that any measures proposed would be appropriate and proportional and to provide for a ‘reality check’, field missions to four selected third countries (Kazakhstan, Sri Lanka, Cuba and Egypt) were undertaken by an external consultancy to directly consult consular practitioners working on the ground.

2.2.2. Studies on consular protection

This impact assessment also draws on four recent studies on consular protection for unrepresented EU citizens.

- A study (2009) on Member States' legislations and practices, carried out by the Instituto Europeo de Derecho, examined laws and practices of Member States in the field of consular protection, including as regards the implementation of the Decision 95/553/EC on unrepresented EU citizens.
- Through the CARE (Citizens Consular Assistance Regulation in Europe) project activities (2009-2011), realised with the financial support of the Fundamental Rights & Citizenship Programme of the European Commission, the legal framework of Member States on consular and diplomatic protection was comprehensively analysed. Special attention was given to Article 23 TFEU.
- An external study (2010) by the consultancy GHK supported the Commission in its analysis of policy options and the related costs, focusing on crisis situations and financial reimbursement.
- A second external study (2011) undertaken by the consultancy Matrix Insight provided further evidence, including via missions to third countries, evaluated Decision 95/553/EC and the current functioning of cooperation and coordination and examined how consular protection for unrepresented EU citizens could be further improved.

2.2.3. Internal consultation and scrutiny of the Impact Assessment

An Interservice Impact Assessment Steering Group involving representatives from DG ECHO, EEAS, DG HOME as well as the Legal Service and the Secretariat-General was created.

IASG meetings were held on 17 June, 1 July and 15 July 2011. The IASG also supported the work on financial reimbursement in crisis situations through meetings on 15 July and 22 October 2010. Feedback received at the meetings and through further contacts has been taken into account throughout this report. The European Commission's Impact Assessment Board examined this impact assessment in written procedure and issued its opinion on 16 September 2011. The opinion is fully taken into account in the Impact Assessment. In particular, explanations about the estimated costs/benefits and the similarities and variations of standard consular services have been developed and the analysis of consular protection in crisis situations and regarding third country family members have been further elaborated. Stakeholders' views about the option elements and the expected benefits of awareness-raising measures have been further detailed.

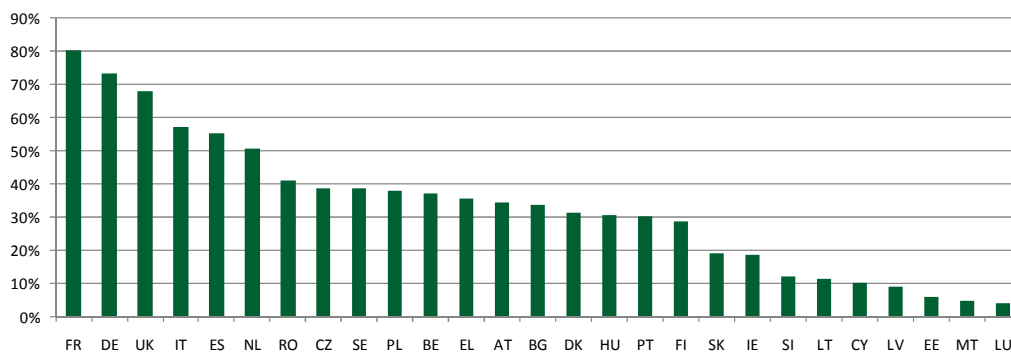
3. PROBLEM DEFINITION

3.1. Magnitude

Large numbers of EU citizens have been affected by recent crises. In Libya around 5.800 EU citizens were evacuated, in Haiti 2.700 EU citizens were affected. In Egypt there were at least 100.000 EU citizens (mostly tourists in the Red Sea region) and in Japan around 37.000 EU citizens involved¹⁸. Apart from their security, humanitarian or nuclear safety impacts, all these events were also consular crises¹⁹, as they required an appropriate consular response: providing information on safety measures, coordination of evacuations, issuance of emergency travel documents.

All 27 Member States are represented in only three third countries: China, Russia and the United States (Annexes I and II present an overview of Member States' representations in third countries). France, Germany, the UK, Italy and Spain (combined population of 314.815.000) are in the top quintile with representation in more than 50% of all third countries. Malta, Estonia, Luxembourg, Latvia and Cyprus (combined population of 5.301.000) are in the bottom quintile with representations in less than 10% of all third countries.

Figure 1: Number of representations in third countries per Member State (as a percentage of total third countries)



Source: General Secretariat of the Council, 17770/2/09 REV 2 PESC 1795 RELEX 1235 COCON 47, EU diplomatic representation in third countries, second half of 2010

Currently there are no systematic data on unrepresented EU citizens travelling to or living in third countries. To obtain the number of unrepresented EU citizens travelling or residing in third countries, relevant travel and emigration patterns around the world have been analysed. Eurostat has information about trips to third countries in 2009 (both for holidays and business), and the UNWTO World Tourism Barometer²⁰ provides comprehensive data on international tourist arrivals in third countries. National statistical sources as well as information by travel associations are used for validation and to fill remaining gaps. Regarding the total number of EU citizens living in third

¹⁸ See COM(2011) 149 final.

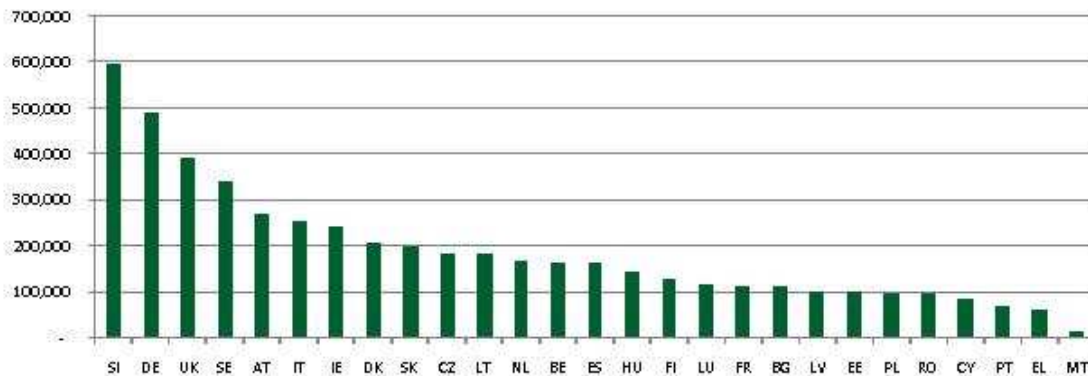
¹⁹ A consular crisis is any situation caused by natural or manmade disaster that affects a high number of persons, requiring the immediate and direct intervention of a consular authority to ensure safety and security of its citizens present abroad.

²⁰ UNWTO(2010), World Tourism Barometer, Vol 8, No 2, June 2010.

countries Eurostat emigration figures were used to reflect the total number of emigrants both by Member State and by third country²¹.

Following a comparison of the numbers of representations and the actual number of citizens travelling to or residing in third countries, an estimated 6.86 million EU citizens travel to (5.12 million) or live in (1.74 million) third countries where their Member State is not represented²².

Figure 2: Estimate of total number of instances when travelling EU citizens are unrepresented in third countries (2009)



On the basis of the information provided by Member States, in 2009 consular protection was provided in total in almost 300.000 cases²³. According to reported data, represented EU citizens appear to ask for and obtain consular protection much more often than unrepresented EU citizens. If one assumes that represented and unrepresented EU citizens are equally likely to get into a situation in which they could request consular protection (e.g. victim of robbery) around 7.300 unrepresented EU citizens have been thus affected in third countries²⁴. In fact, only 16% of these citizens have actually benefited from consular protection - although according to a recent Eurobarometer survey 79% of EU citizens know about the existence of this right²⁵ - a right that has however not yet been fully established²⁶.

²¹ A Member State's share of total emigration to third countries can be used to estimate the number of citizens of a particular Member State residing outside the EU. Further indications about the number of EU citizens living in third countries were obtained from expatriate associations.

²² Please see Annex III for further details on the methodology.

²³ 295.490 cases in 2009. As not all Member States reported cases this figure is partially based on extrapolations (see Annex III).

²⁴ Compared to how often represented nationals requested consular protection.

²⁵ Eurobarometer(2010), Flash EB No 294, European Union Citizenship.

²⁶ For the various reasons please see the following section.

Figure 3: Unrepresented EU Citizens Potentially in Need of Consular Protection



As time goes by more and more citizens will find themselves in situations where they may be eligible for consular protection of another Member State (see point 3.4 on the baseline scenario). This trend is further aggravated by the ongoing rationalisation of Member States' consular networks.

EU citizens travelling to and living in third countries are also increasingly exposed to crisis situations (both natural and manmade). As outlined in the Commission's recent Communication "Towards a stronger European disaster response: the role of civil protection and humanitarian assistance"²⁷, the recorded annual number of disasters has increased fivefold - from 78 in 1975 to nearly 400 currently. This is the effect of climate change, population growth combined with increasing urbanisation and other factors²⁸. The frequency and intensity of disasters are likely to continue increasing. Also terrorism and civil unrests remain a significant security threat. Consular crises involving unrepresented EU citizens are even more likely to take place in the future due to an increasing number of EU citizens travelling to third countries or residing there. In 2010, several consular crises had an impact on unrepresented EU citizens²⁹; also the consular crises in the first half of 2011, in Tunisia, Yemen and in particular in Libya, involved unrepresented EU citizens.

3.2. General problem

*In line with the case-law of the European Court of Justice³⁰, citizenship of the Union should be the fundamental status of EU citizens when exercising their rights under the Treaties. Citizens should be able to make use of their rights in the same way as they use their rights as national citizens. However, the **implementation of EU citizenship as a concrete reality ensuring equal treatment in regard to consular protection** is currently not secured. There is no clear consensus on the content of Article 23 TFEU and about the responsibilities which this right entails. Cooperation and coordination often work on an ad-hoc basis, depending to a large extent on personalities involved, rather than on clear divisions of responsibilities and established procedures. These issues are*

²⁷ COM(2010)600 final, 26.10.2010.

²⁸ Such as increased industrial activity and environmental degradation.

²⁹ Haiti earthquake, Chile earthquake, Thailand civil unrest, Kyrgyzstan civil unrest, volcanic ash cloud, Ladakh floods, Yemen civil unrest, Ivory Coast civil unrest. According to information provided by the Member States in Haiti assistance was provided to more than 200 unrepresented EU citizens, in Kyrgyzstan to 89 unrepresented citizens. See also Annex VI.

³⁰ See for instance case C-184/99 *Grzelczyk*.