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Proposal for a

COUNCIL DIRECTIVE

on consular protection for citizens of the Union abroad

(Text with EEA relevance)

{SEC(2011) 1555 final}

{SEC(2011) 1556 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Introduction

EU citizens who travel to or live in a third country where their Member State of nationality does not have an embassy or consulate have the right to consular protection by the consular authorities of any other Member State. That Member State has to assist these unrepresented EU citizens under the same conditions as its own nationals.

Recent crises affected many EU citizens, for example in Libya, Egypt and Bahrain after the democratic uprisings in spring 2011 or after the earthquake in Japan in March 2011. Also in day-to-day situations, such as in case of serious illness or when being victim of a crime, consular protection is often indispensable.

This legislative proposal replaces sui-generis Decision 95/553/EC regarding consular protection for EU citizens¹ in view of the legal framework established by the Lisbon Treaty. It lays down the cooperation and coordination measures necessary to facilitate consular protection for unrepresented EU citizens and carries out action 8 of the "EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights" pursuant to which the Commission is committed to increase the effectiveness of the right of EU citizens to be assisted in third countries by the diplomatic and consular authorities of all Member States, including by proposing legislative measures in 2011².

1.2 Context and grounds for the proposal

The Treaty right to consular protection for unrepresented EU citizens under the same conditions as for nationals, 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 EU Fundamental Rights Charter, is one of the specific rights granted by EU Citizenship. It is an expression of EU solidarity and of the identity of the Union in third countries, as well as of the practical benefits of being an EU citizen.

Consular protection is an integral part of the Union's policy on citizens' rights. The European Council, in the Stockholm Programme, 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 advocated to strengthen the coordination and cooperation of consular protection⁴, thereby following up its Resolution of 11 December 2007 which suggested common concepts

¹ OJ L 314, 28.12.1995, p. 73.

² COM(2010) 603 final.

³ 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.

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 OJ C 285E, 21.10.2010, p. 12.

and binding guidelines and called for amending Decision 95/553/EC⁵ once the Lisbon Treaty is in place.

In the "EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights" the Commission announced it would increase 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 measures⁶. The Commission reiterated this commitment in its Communication of 23 March 2011 on consular protection for unrepresented EU citizens and announced that it would submit legislation establishing the coordination and cooperation measures necessary to facilitate consular protection for unrepresented citizens and addressing the issue of financial compensation of consular protection in crisis situations⁷.

Under the previous legal regime Member States were to establish the necessary rules among themselves. The Lisbon Treaty confers on the Commission the right to propose directives establishing the cooperation and coordination measures necessary to facilitate the right to equal consular protection for unrepresented EU citizens as for own nationals⁸. The current EU instrument, Decision 95/553/EC⁹, foresees a review following five years after its entry into force in 2002.

Currently, there is scope for further improvement regarding consular protection for unrepresented EU citizens. There is no clear consensus on the content of Article 23 TFEU and about the responsibilities which this right entails. To be effective as a right with concrete meaning, the succinct wording of the Treaty article does not suffice. National consular laws and practices diverge as do views about the underlying concepts of consular protection for unrepresented EU citizens.

In particular in four areas further clarifications appear necessary:

(1) Personal scope

The scope of beneficiaries needs to be clarified. An EU citizen is not only unrepresented if his/her home Member State has no embassy or consulate at all in a given third country, but also if this embassy or consulate is not "accessible"¹⁰. There is however no common understanding about when an embassy or consulate is accessible¹¹. Further, it should be clarified to which extent also third country family members of unrepresented EU citizens are beneficiaries of consular protection.

(2) Access to consular protection and cooperation/coordination

⁵ European Parliament Resolution of 11 December 2007 on the Green Paper: Diplomatic and consular protection of Union citizens in third countries. OJ C 323E, 18.12.2008, p. 120.

⁶ COM(2010) 603 final.

⁷ COM(2011) 149 final.

⁸ Article 23(2) TFEU.

⁹ OJ L 314, 28.12.1995, p. 73.

¹⁰ Article 1 of Decision 95/553/EC.

¹¹ Representatives of Member States consulted expressed different views (e.g. travel distance of less than 400 km or on an island).

It should be clarified which Member State has to assist an unrepresented EU citizen and how assistance is to be coordinated with the citizen's Member State of nationality. This lack of clarity causes delays and does not safeguard efficient protection under the same conditions as for nationals. According to the Treaty an unrepresented EU citizen can choose which embassy/consulate he/she prefers to turn to, whereas in practice arrangements on burden-sharing exist. These arrangements may be acceptable as long as an efficient treatment of unrepresented citizens is secured. They tend however not to be widely publicised, which makes it difficult for a citizen to know which embassy or consulate would assist.

Coordination and cooperation between the assisting embassy or consulate and the Member State of origin are to be further established. Assisting an unrepresented EU citizen, unlike assistance to own nationals, requires efficient cooperation with the consular authorities of the citizen's home Member State. Clearer rules for cooperation and coordination between the assisting Member State and the citizen's Member State of nationality would benefit both consular authorities and citizens. This comprises which types of assistance consular protection for unrepresented EU citizens typically entails (e.g. in case of death, victim of crime, etc.) and how the assistance is to be coordinated between the assisting Member State and the citizen's Member State of nationality.

(3) Local coordination

To ensure coordination and cooperation in regard to unrepresented EU citizens, the consular authorities present in a given third country need to liaise with each other and have specific information available¹². Relevant information for unrepresented EU citizens is currently not systematically collected. Further, according to the Treaty on European Union, the diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations shall contribute to the implementation of this right¹³. Respective spheres of competence and scope for action are not yet spelled out. The current setting is thus not conducive to a fully coherent external action of the Union and induces a suboptimal use of human and financial resources.

(4) Assistance in crisis situations/financial reimbursement

The legal cooperation framework should clearly establish who assists unrepresented EU citizens in crisis situations, including as to the role of the so-called Lead State, which is expected to take action in times of crisis¹⁴. Contingency planning does not specifically cater for unrepresented EU citizens and in crisis situations it is difficult to establish the number of unrepresented EU citizens. Particularly in serious crises the local staff needs support from crisis intervention experts.

To date legislation and guidelines comprise generic procedures on financial reimbursement of assistance¹⁵, which are generally not applied in crisis situations, as they do not seem adapted

¹² For instance contact details of unrepresented Member States' authorities as well as of translators/lawyers/doctors speaking the language of unrepresented citizens.

¹³ Article 35 of the Treaty on European Union.

¹⁴ Lead States are currently established in 29 third countries out of 146 where at least one Member State is represented.

¹⁵ Article 6 of the Decision 95/553/EC, Guidelines on consular protection of EU citizens in third countries (Council document 10109/06 of 16 June 2006 revised by Council document 15613/10 of 5 November 2010 – not published) and European Council guidelines on the implementation of the consular Lead State concept (OJ C317, 12.12.2008, p. 6).

to the related specific needs¹⁶. If financial burden-sharing is not clear and is not taking place in practice, there is less incentive to take a proactive approach which entails responsibilities not related to own nationals.

A detailed analysis of the problems of the current system as well as the impacts of the different options considered for addressing them can be found in the Impact Assessment accompanying this proposal.

2. CONSULTATION OF INTERESTED PARTIES

Interested parties were consulted widely. In a comprehensive public consultation on EU citizens' rights in 2010, contributions from all citizens and relevant stakeholders were sought and particular attention was given to consular protection for EU citizens. This public consultation followed a previous one related to the Green Paper of 2007 on diplomatic and consular protection of EU citizens in third countries¹⁷. The ideas put forward informed the policy debate of a conference dedicated to EU citizens' rights of 1-2 July 2010, during which consular protection was discussed in depth. Stakeholders involved in consular protection (such as Member States, travel associations, non-governmental organisations and academics) were further consulted, including via two dedicated workshops of 24 September 2010 and 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 online survey. Six representative Member States were recently visited and field missions to four selected third countries¹⁸ were undertaken by an external consultancy to directly consult consular practitioners working on the ground. For this proposal the Commission took into account the results of four studies on different aspects of the revision¹⁹.

Stakeholders generally support the envisaged reform. Given the new legal regime established by the Lisbon Treaty a revision of Decision 95/553/EC is necessary, which in their view should be used to further improve coordination and cooperation and clarify the underlying legal concepts. Stakeholders' views on the main elements of the reform are as follows. Regarding the question when an embassy or consulate would be "accessible" Member States consulted appeared not to have a common understanding of what it would mean²⁰. However, following consultations with stakeholders²¹ to reach the embassy or consulate, obtain consular protection and travel back at least within the same day would accordingly appear to be an

¹⁶ Notably high time pressure and considerable numbers of citizens to be assisted.

¹⁷ OJ C 30 of 10.2.2007, p. 8.

¹⁸ Kazakhstan, Sri Lanka, Cuba and Egypt.

¹⁹ 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. 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, analysed the legal framework of Member States on consular and diplomatic protection. 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 examined scope for further improvement.

²⁰ Most of the Member States consulted indicated that a one way travel time up to 6 hours to reach the consulate would appear reasonable (63% according to the online survey, 37% of Member States pointed to other travel time, but Member States frequently pointed out that urgent cases may require swifter treatment).

²¹ See Impact Assessment p. 26.

appropriate time limit. Civil society representatives argued for clear and binding legal terms. The inclusion of third-country family members was flagged by civil representatives as an important issue²², a majority of Member States believed that they should at least possibly be included (though at times arguing that conditions for inclusion should be clarified)²³. Regarding access to consular protection and coordination/cooperation Member States and civil society generally perceive a case for greater transparency as to bilateral and local arrangements on burden-sharing. Civil society representatives stress that it must be ensured that unrepresented citizens are able to obtain consular protection under the same conditions as nationals. Ensuring good communication channels and clear legal provisions are by a wide majority²⁴ considered as important or very important factors for an even more efficient assistance. As regards crisis situations and their financial implications Member State representatives strongly support the Lead State concept which should be further enhanced and stress the benefits of comprehensive crisis preparedness²⁵. Civil society representatives underlined that also in crises it needs to be safeguarded that unrepresented EU citizens are being assisted efficiently like nationals.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1 Summary of the proposed actions

The main objective of this proposal is to

- **clarify content and operability** of right of unrepresented EU citizens to consular protection under equal conditions
- **simplify cooperation and coordination between consular authorities.**

To this effect, the proposal addresses the following issues:

(1) Personal scope

The proposal clarifies that an EU citizen is to be considered as unrepresented in particular when an embassy or consulate of his/her own Member State is not "accessible". An embassy or consulate is not "accessible", if the EU citizen cannot reach it and return to his/her place of departure (via means of transport commonly used in the third country) at least the same day. An exception is provided for in case the urgency of the matter necessitates even swifter assistance. The proposal further specifies that also third country family members of EU citizens are included in consular protection for EU citizens. Article 23 TFEU provides for non-discriminatory treatment, and in line with Articles 7 and 24 of the Charter of Fundamental Rights of the European Union and the case-law of the European Court of Justice the principal benefits of EU citizens' rights are also extended to their family members to

²² As expressed inter alia at the dedicated workshop of 23 June 2011.

²³ According to the online survey and as resulting from consultations and interviews with Member State experts.

²⁴ According to the online survey among Member States 68,8% of respondents considered clarity of legal proposals as a very important (50%) or an important (18%) factor for an even more efficient consular assistance; as regards overcoming practical challenges (e.g. ensuring clear communication channels) responses were similar (43% very important, 37% important).

²⁵ As expressed in the dedicated workshop of 23 June 2011 and in bilateral consultations.

ensure the full effectiveness of those rights²⁶. Accordingly, the proposal provides that protection must be given to third country family members of EU citizens to the same extent as Member States provide it to the third country family members of their own nationals²⁷.

(2) Access to consular protection and cooperation/coordination

The proposal stresses that EU citizens can turn to "any" other Member State's embassy or consulate; though specific arrangements by Member States are possible as long as transparency (through notification and subsequent publication on the Commission's website) and effective treatment of applications are ensured.

The proposal further specifies which assistance Member States typically provide in the most frequent events (i.e. arrest or detention, victim of crime, serious accident or serious illness, death, relief and repatriation in case of distress, need of emergency travel documents), on the basis of common practices of Member States on consular protection²⁸, and the applicable procedures for cooperation and coordination between the consular authorities in these events. To comply with the citizens' right of self-determination, the proposal provides for enquiries regarding the wishes of citizens which should be respected, including as to whether family members or other related persons should be informed (e.g. about the arrest). Similarly, in the event of death, the wishes of the next-of-kin must be duly taken into account as to how to proceed with the corpse of the deceased citizen.

(3) Local coordination/EU added value

The proposal specifies that local cooperation meetings on consular protection should include regular exchange of information on unrepresented EU citizens and that the Chair of these meetings should collect the contact details of relevance for assistance to unrepresented EU citizens (e.g. regionally responsible embassy or consulate of unrepresented Member States). It provides that Union delegations can under specific conditions chair - or otherwise support - these meetings.

(4) Assistance in crisis situations/financial reimbursement

Regarding crisis situations the proposal entails the following improvements. It provides that local contingency plans must systematically include unrepresented EU citizens. The proposal underlines the importance of the Lead State(s) for protecting unrepresented EU citizens and defines its role in this respect, i.e. that the Lead State is in charge of coordinating and leading assistance of unrepresented EU citizens. The proposal specifies that a Lead State can seek additional support from the EU Civil Protection Mechanism and the crisis management structures of the EEAS. The proposal also provides for additional support and full use of synergies by providing for the inclusion of national consular experts, notably from unrepresented Member States, in existing intervention teams at Union level. Regarding financial burden-sharing a facilitated reimbursement procedure, adjusted to crisis situations, is

²⁶ Cf. for instance case C-60/00 *Carpenter*.

²⁷ It should be born in mind that not all consular services offered to nationals/EU citizens can be applied to their third country family members. Notably, emergency travel documents cannot be issued (neither to third country family members of nationals nor to those of EU citizens); detained third country family members can be visited unless the consular authorities of the third country object.

²⁸ As identified in the study of the Instituto Europeo de Derecho and as described in the Council framework under the Spanish Presidency. See Annex V of the Impact Assessment.

introduced. This entails simplifying the procedural exchange involving consular authorities and citizens, adding standard formats for requests and introducing an easier system for tracking the reimbursement costs (on a pro-rata basis²⁹, fixed rates³⁰ - in case costs cannot be calculated). This improved reimbursement procedure complements the support available from the EU Civil Protection Mechanism and the EEAS crisis management structures.

3.2 Legal basis

Pursuant to the Lisbon Treaty, the EU competence to adopt legislation on consular protection for unrepresented EU citizens is conferred by Article 23(2) TFEU. Under this Treaty provision the Council may adopt directives establishing the coordination and cooperation measures necessary to facilitate protection for unrepresented EU citizens. This provision applies to all Member States.

3.3 Subsidiarity and Proportionality

Consular protection for unrepresented EU citizens by definition entails a cross-border dimension, extending the rights granted by EU Citizenship beyond EU borders. This initiative is on a specific right granted to the EU citizen, a right to consular protection by the consular and diplomatic authorities of another Member State under the same conditions as for its nationals which is inherently linked to the concept of EU citizenship and the competences of the Union under the Treaty on the Functioning of the European Union. It therefore appears appropriate to include the necessary coordination and cooperation measures to facilitate this right in the legal order of the Union, rather than in sui-generis decisions of the Representatives of Governments of Member States. Practicability and coherence of this right will be further enhanced by embedding it in the legal orders of Member States, by the right of national courts to request guidance on interpretation from the European Court of Justice and by the Commission's powers to ensure compliance.

The proposal takes due account of the principle of proportionality by restricting itself to specifying cooperation and coordination measures for frequent events (e.g. death, victim of crime) and crisis situations. It further fully builds on and integrates previous legal measures as well as recent developments, e.g. the Lead State, with a clear focus on the unrepresented EU citizen. The attached Impact Assessment demonstrates that the benefits of each of the proposed amendments outweigh their costs; the proposed measures are therefore proportionate.

3.4 Impact on fundamental rights

As set out in detail in the Impact Assessment accompanying this proposal and in accordance with the Union's Strategy for the effective implementation of the EU Fundamental Rights Charter³¹, the proposal reinforces the rights set out in the Charter. This reform enhances in particular the fundamental right to consular protection under the same conditions as for nationals laid down in its Article 46, by clarifying the content of this right, by facilitating the necessary cooperation and coordination procedures and by ensuring effective implementation and compliance. Including third country family members strengthens the right to family life as well as the rights of the child (Articles 7 and 24 Fundamental Rights Charter). Clearer

²⁹ Pro-rata reimbursement refers to a proportional reimbursement based on the number of persons assisted (total costs divided by the number of assisted persons).

³⁰ I.e. standardised costs for evacuation, medical evacuation and shelter.

³¹ Communication from the Commission, COM(2010) 573 final of 19.10.2010.

responsibilities and improved burden-sharing in crisis situations would ensure non-discrimination also in times of crisis when fundamental rights are at stake. Further the principles of non-discrimination, life and integrity of the person and the right of the defence and to a fair trial are being reinforced (Articles 2, 3, 21, 47 and 48 Fundamental Rights Charter).

Proposal for a

COUNCIL DIRECTIVE

on consular protection for citizens of the Union abroad

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 23 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Citizenship of the Union is the fundamental status of citizens of the Union when exercising their rights under the Treaties. The right of citizens, whose Member State is not represented by an embassy or consulate in a third country, to obtain protection by the diplomatic or consular authorities of any Member State under the same conditions as the nationals of that State is one of the specific rights that the Treaty grants to citizens of the Union.
- (2) The Treaty of Lisbon reinforced the status of citizenship of the Union and strengthened the rights attached to it; on consular protection it provides for directives on cooperation and coordination. Pursuant to action 8 of the "EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights" the Commission committed to increase the effectiveness of the right of citizens of the Union 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 measures³².
- (3) In its Communication of 23 March 2011 on consular protection for unrepresented citizens of the Union the Commission reiterated that commitment and announced that it would submit legislation establishing the coordination and cooperation measures

³² COM(2010) 603 final.

necessary to facilitate consular protection for unrepresented citizens and addressing the issue of financial compensation of consular protection in crisis situations³³.

- (4) The values on which the Union is founded include solidarity, non-discrimination and respect for human rights; in its relations with the wider world the Union should uphold its values and contribute to the protection of its citizens. The fundamental right to consular protection of unrepresented citizens of the Union under the same conditions as nationals, enshrined in Article 46 of the Charter of Fundamental Rights of the European Union, is an expression of European solidarity. It provides an external dimension to the concept of citizenship of the Union and strengthens the identity of the Union in third countries.
- (5) Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regulates protection for citizens of the European Union by embassies and consulates³⁴ and foresees a review following five years after its entry into force in 2002.
- (6) The aim of this Directive, which repeals Decision 95/553/EC, is to lay down the cooperation and coordination measures necessary to further facilitate consular protection for unrepresented citizens of the Union. Those measures should enhance legal security as well as efficient cooperation and solidarity among consular authorities.
- (7) Where unrepresented citizens need protection in third countries efficient cooperation and coordination is required. The assisting Member State present in a third country and the Member State of origin of the citizen may need to cooperate closely. Local consular cooperation may be more complex for unrepresented citizens, as it requires coordination with authorities not represented on the ground. To fill the gap caused by the absence of an embassy or consulate of the citizen's own Member State, a stable framework should be ensured.
- (8) Citizens of the Union are unrepresented if their Member State of nationality does not have an accessible embassy or consulate in a third country. The notion of accessibility should be interpreted with a view to safeguarding the protection of citizens.
- (9) In accordance with the right to respect for private and family life as recognised in Article 7 of the Charter of Fundamental Rights of the European Union, the assisting Member State should provide protection to third country family members of citizens of the Union under the same conditions as to third country family members of its own nationals. Any definition as to which persons are family members should draw inspiration from Articles 2 and 3 of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States³⁵. Member States may not be in a position to deliver all types of consular protection to third country family members, notably emergency travel documents are not being issued. In accordance with Article 24 of the Charter, the best interests of the

³³ COM(2011) 149 final.

³⁴ OJ L 314, 28.12.1995, p. 73.

³⁵ OJ L 158, 30.4.2004, p. 77.

child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989, should be a primary consideration.

- (10) Unrepresented citizens should be able to freely choose the embassy or consulate from which they seek consular protection. Member States should be able to enter arrangements on burden-sharing. However such arrangements should be transparent for the citizen and should not jeopardize effective consular protection. Any such arrangement should be notified to the Commission and published on its dedicated website.
- (11) The traditions regarding the competences of honorary consuls diverge among Member States. Honorary consuls are generally in a position to perform very limited consular tasks. Honorary consuls should only be regarded as equivalent to accessible embassies and consulates present in a third country on a permanent basis within the scope of their competences pursuant to national law and practices.
- (12) Protection should be provided if applicants establish that they are citizens of the Union. Unrepresented citizens in need of consular protection may no longer be in possession of their identity documents. The fundamental status of citizenship of the Union is conferred directly by Union law and identity documents are of merely declaratory value. If applicants are unable to provide identity documents, they should therefore be able to prove their identity by any other means, if necessary following verification with the authorities of the Member State of which the applicant claims to be a national.
- (13) Member States' authorities should closely cooperate and coordinate among each other and with the Union, the European External Action Service and the European Commission, in a spirit of mutual respect and solidarity. To ensure swift and efficient cooperation relevant contact persons in the Member States should be notified and continuously updated through the secure website of the European External Action Service (Consular On-Line).
- (14) In order to clarify which coordination and cooperation measures are necessary the ambit of cooperation and coordination should be specified. Consular protection for unrepresented citizens includes assistance in a number of typical situations, such as in case of arrest or detention, serious accident or serious illness and death, as well as with regard to providing relief and repatriation in case of distress and the issuance of emergency documents. Since the necessary protection always depends on the factual situation, consular protection should not be limited to those situations specifically mentioned in this Directive.
- (15) A prerequisite for effective coordination and cooperation between Member States' consular authorities is to establish the different types of assistance which are delivered in specific situations. Those types of assistance should reflect the common practises among Member States, without prejudice to Article 23 of the Treaty on the Functioning of the European Union which imposes an obligation on Member States to provide protection under the same conditions as to their nationals.
- (16) To comply with the citizens' right of self-determination, where applicable, the citizens' wishes should be duly respected, including as to whether family members or other related persons should be informed. Similarly, in the event of death, the wishes of the

next-of-kin should be duly taken into account as to how to proceed with the corpse of the deceased citizen.

- (17) Mutual solidarity and cooperation also encompasses financial matters. Member States provide financial assistance as a last resort only in cases where citizens cannot obtain financial means in other ways, such as through transfers by family members or relatives. Citizens of the Union should be assisted efficiently regardless of their nationality. Financial burden-sharing and adequate reimbursements should be ensured. Where financial assistance is granted the recipient may be required to repay the amount received.
- (18) Accordingly, mutual solidarity between consular authorities should be enhanced and financial procedures simplified. Given the specificities of crisis situations, such as the need for a quick response regarding a considerable number of citizens, no undertaking to repay should be necessary for the assisting Member State in order to seek reimbursement.
- (19) Upon request of the assisting Member State costs should be reimbursed by the assisted Member States on a pro-rata basis in major crises, which have or may have an adverse impact on an important number of citizens of the Union, by dividing the overall costs by the number of citizens assisted. In cases where costs cannot be calculated, the assisting Member State may request to be reimbursed on the basis of fixed sums as specified in Annex 2 of this Directive.
- (20) Regarding coordination on the ground and in crisis situations, competences and respective roles should be clarified in order to ensure that unrepresented citizens are fully taken care of. Local consular cooperation should pay due attention to unrepresented citizens, for example by collecting relevant contact details of the nearest regional embassies and consulates of Member States.
- (21) In the event of crisis adequate preparation and a clear division of responsibilities are essential. Crisis contingency planning should therefore fully include unrepresented citizens and national contingency plans should be coordinated. The concept of the Lead State should be further developed in that context³⁶.
- (22) Interoperability between consular and other crisis experts should be enhanced, in particular through their participation in existing multi-disciplinary crisis teams, such as those under the EU Civil Protection Mechanism.
- (23) In third countries the Union is represented by the Union delegations, which together with the diplomatic and consular missions of the Member States contribute to the implementation of the right of citizens of the Union regarding consular protection as specified further in Article 35 of the Treaty on European Union. In line with the Vienna Convention on consular relations Member States may provide consular protection on behalf of another Member State unless the third country concerned objects. Member States should undertake the necessary measures in relation to third countries to ensure that consular protection on behalf of other Member States can be provided.

³⁶ OJ C 317/6, 12.12.2008 (Council document 2008/C 317/06).

- (24) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data³⁷ governs the processing of personal data carried out in the context of this Directive by Member States.
- (25) This Directive should not affect more favourable national provisions in so far as they are compatible with this Directive.
- (26) This Directive aims to promote consular protection as recognised in the Charter of Fundamental Rights of the European Union. It respects the fundamental rights and observes the principles recognised in particular by the Charter, notably the principle of non-discrimination, life and integrity of the person, private and family life, the rights of the child and of the defence and the right to a fair trial. This Directive should be implemented in accordance with those rights and principles.
- (27) In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or beliefs, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

General provisions

Article 1

Subject matter

This Directive lays down the cooperation and coordination measures necessary to facilitate the exercise of the right of citizens of the Union, in the territory of a third country in which the Member State of which they are nationals is not represented, to protection by the diplomatic or consular authorities of another Member State on the same conditions as the nationals of that Member State.

Article 2

Beneficiaries

1. Every citizen holding the nationality of a Member State of the Union which is not represented by a diplomatic or consular authority in a third country, hereafter

³⁷ OJ L 281, 23.11.1995, p. 31.

"unrepresented citizen", shall be entitled to protection by the diplomatic or consular authorities of another Member State under the same conditions as its nationals.

2. Citizens holding the nationality of more than one Member State of the Union are unrepresented if none of their Member States of nationality is represented by a diplomatic or consular authority in a third country.
3. Family members of unrepresented citizens who themselves are not citizens of the Union are entitled to consular protection under the same conditions as the family members of nationals of the assisting Member State who themselves are not nationals.

Article 3

Absence of representation

1. A Member State is not represented in a third country if it has no accessible embassy or consulate established on a permanent basis in that country.
2. An embassy or consulate established on a permanent basis is accessible if it can effectively provide protection and can be reached safely within convenient travel distance and reasonable time.

Citizens of the Union at least need to be able to reach the embassy or consulate and return to their place of departure the same day, via means of transport commonly used in the third country, unless the urgency of the matter requires swifter assistance. The embassy or consulate is not accessible if it is temporarily not in a position to effectively provide protection, in particular if it is temporarily closed in case of crisis.

3. Honorary consuls shall be regarded as equivalent to accessible embassies or consulates within the scope of their competences pursuant to national law and practices.

Article 4

Access to consular protection

1. Unrepresented citizens may choose the Member State embassy or consulate from which they seek consular protection.
2. A Member State may represent another Member State on a permanent basis and Member States' embassies or consulates in a third country may conclude arrangements on burden-sharing, provided that effective treatment of applications is ensured. Member States shall inform the European Commission of any such arrangement in view of publication on its dedicated internet site.

Article 5

Identification

1. An embassy or consulate shall respond to a request for protection if the applicant establishes, by producing a passport or identity card, that he or she is a citizen of the Union.
2. If the citizen of the Union is unable to produce a valid passport or identity card, nationality may be proven by any other means, if necessary following verification with the diplomatic and consular authorities of the Member State of which the applicant claims to be a national.
3. For family members of citizens of the Union, as referred to in Article 2(3) of this Directive, this article applies *mutatis mutandis* as to the proof of the existence of the family relationship.

Article 6

Types of assistance

1. Member States' embassies or consulates shall provide consular protection to unrepresented citizens as if they were nationals of their own Member State.
2. The consular protection referred to in paragraph 1 shall include assistance in the following situations
 - (a) arrest or detention;
 - (b) being victim of crime;
 - (c) serious accident or serious illness;
 - (d) death;
 - (e) relief and repatriation in case of distress;
 - (f) need of emergency travel documents³⁸.

³⁸ As provided for in Decision 96/409/CFSP of the representatives of the governments of the Member States, meeting within the Council on the establishment of an emergency travel document. OJ L 168, 16.7.1996, p. 4.

CHAPTER 2

Coordination and cooperation measures

Article 7

General principle

Member States' diplomatic and consular authorities shall closely cooperate and coordinate among each other and with the Union to ensure protection of unrepresented citizens under the same conditions as for nationals. When a consulate or embassy assists an unrepresented citizen, the regionally responsible nearest consulate or embassy or the Ministry of Foreign Affairs of the citizen's Member State of nationality shall be contacted. Member States shall notify the relevant contact persons in the Ministries of Foreign Affairs to the European External Action Service which shall continuously update them in its secure internet site.

Article 8

Arrest or detention

1. Where an unrepresented citizen is arrested or detained Member States' embassies or consulates, subject to Article 6(1), shall in particular:
 - (a) assist in informing the citizen's family members or other related persons at the citizen's request;
 - (b) visit the citizen and monitor minimum standards of treatment in prison;
 - (c) provide the citizen with information on the rights of the detained.
2. Where a Member State's embassy or consulate is informed about the arrest or detention of an unrepresented citizen, it shall in turn inform the citizen's Member State of nationality and provide it with all the relevant information at its disposal. The latter shall liaise with the citizen's family members or other related persons if the citizen so wishes.
3. The embassy or consulate shall report to the citizen's Member State of nationality following any of its visits of the citizen and upon monitoring of minimum standards of treatment in prison. It shall immediately inform the citizen's Member State of nationality about any complaints of ill-treatment.
4. The embassy or consulate shall inform the citizen's Member State of nationality about information provided by it to the citizen about his or her rights. It shall act as an intermediary, including as to assistance with drafting petitions for pardons or early releases and where the citizen wishes to apply for a transfer. If necessary it shall act as an intermediary for any legal fees deposited via the diplomatic or consular authorities of the citizen's Member State of nationality.

Article 9

Victim of crime

1. Where an unrepresented citizen is the victim of a crime Member States' embassies or consulates, subject to Article 6(1), shall in particular:
 - (a) assist in informing the citizen's family members or other related persons, if the citizen so wishes;
 - (b) provide the citizen with information and/or assistance regarding relevant legal issues and health care.
2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given and shall liaise with the citizen's family members or other related persons if the citizen, where possible, has given his or her consent.

Article 10

Serious accident or serious illness

1. Where an unrepresented citizen suffers a serious accident or serious illness Member States' embassies or consulates, subject to Article 6(1), shall in particular:
 - (a) assist in informing the citizen's family members or other related persons;
 - (b) assist with medical care, non-financial advice and with repatriations.
2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given and if appropriate liaise with the victim's family members or other related persons. It shall inform the citizen's Member State of nationality if there is a need for medical evacuation. Any medical evacuation shall be subject to prior consent of the citizen's Member State of nationality except in cases of extreme urgency.

Article 11

Death

1. In the event of the death of an unrepresented citizen Member States' embassies or consulates, subject to Article 6(1), shall in particular:
 - (a) assist in informing the citizen's family members;
 - (b) obtain death certificates, medical certificates and laissez-passers for repatriation of the corpse where necessary.

2. Where a Member State's embassy or consulate is informed about the death of an unrepresented citizen, it shall in turn inform the citizen's Member State of nationality. The latter shall liaise with the deceased citizen's family members. Following establishment of the wishes of the next-of-kin, in order for the body to be buried, cremated or repatriated, the embassy or consulate shall assist with obtaining death certificates, medical certificates and laissez-passers for repatriation where necessary.

CHAPTER 3

Financial procedures

Article 12

General rules

Where an unrepresented citizen requests assistance in the form of financial advance or repatriation, subject to Article 6 (1), the following procedure shall apply:

- (a) the unrepresented citizen shall undertake to repay to his or her Member State of nationality the full value of any financial advance or cost incurred, plus a consular fee if applicable, using the standard form set out in Annex 1;
- (b) if required by the assisting embassy or consulate, the citizen's Member State of nationality shall without delay provide the necessary information concerning the request, specifying whether any consular fee may be applicable;
- (c) the assisting embassy or consulate shall inform the citizen's Member State of nationality about any request for financial advance or repatriation which it processed;
- (d) on written request from the assisting embassy or consulate in the format set out in Annex I, the citizen's Member State of nationality shall reimburse the full value of any financial advance or cost incurred.

Article 13

Facilitated procedure in crisis situations

1. In crisis situations the assisting embassy or consulate shall coordinate any evacuation or other necessary support provided for an unrepresented citizen with the citizen's Member State of nationality.

The assisting Member State shall submit any requests for reimbursement of the costs of such evacuation or support to the Ministry of Foreign Affairs of the citizen's Member State of nationality. The assisting Member State may seek reimbursement

even if the unrepresented citizen has not signed an undertaking to repay pursuant to Article 12 (a).

This paragraph shall not prevent the citizen's Member State of nationality from pursuing repayment on the basis of national rules.

2. In major crises, the costs of evacuation or support shall be reimbursed by the citizen's Member State of nationality on a pro-rata basis, by dividing the overall costs by the number of citizens assisted, if the assisting Member State so requests.
3. Where costs cannot be calculated, the assisting Member State may request reimbursement on the basis of fixed sums corresponding to the type of support provided, as set out in Annex 2.
4. Where the assisting Member State was financially supported in respect of assistance by the EU Civil Protection Mechanism, any contribution from the citizen's Member State of nationality shall be determined after deduction of the Union's contribution.
5. For requests for reimbursement the common formats set out in Annex 2 shall be used.

CHAPTER 4

Local and crisis cooperation and coordination

Article 14

Local cooperation

Local cooperation meetings shall include a regular exchange of information on unrepresented citizens, on matters such as safety of citizens, prison conditions or consular access. Unless otherwise agreed by the Ministries of Foreign Affairs centrally, the Chair shall be a representative of a Member State or the Union delegation decided locally. The Chair shall collect and regularly update contact details, in particular regarding the contact points of unrepresented Member States, and share them with the local embassies and consulates and the Union delegation.

Article 15

Crisis cooperation

1. To ensure comprehensive preparedness local contingency planning shall include unrepresented citizens. Member States represented in a third country shall coordinate the contingency plans among themselves and with the Union delegation. They shall agree on respective tasks to ensure that unrepresented citizens are fully assisted in case of crisis, appoint representatives for assembly points and inform unrepresented citizens on crisis preparedness arrangements under the same conditions as nationals.

2. In the event of a crisis Member States and the Union shall closely cooperate to ensure efficient assistance of unrepresented citizens. Member States and the Union shall inform each other about available evacuation capacities in a timely manner. Upon request Member States may be supported by existing intervention teams at Union level including consular experts, in particular from the unrepresented Member States.

Article 16

Lead State

1. For the purpose of this directive the Lead State(s) is (are) one or more Member State(s) in a given third country, in charge of coordinating and leading assistance regarding the preparation for and in case of crisis, which includes a specific role for unrepresented citizens.
2. A Member State is designated as Lead State in a given third country, if it notified its intention through the existing secure communication network; unless another Member State objects within 30 days or the proposed Lead State renounces the task through the secure communication network. If more than one Member State wish to assume jointly the task of Lead State they shall jointly notify their intention through the secure communication network. In the event of crisis one or more Member States may assume this task immediately and shall undertake notification within 24 hours. Member States may decline the offer, but their nationals and other potential beneficiaries remain, in accordance with Article 6(1), eligible to assistance from the Lead State. If there is no Lead State, Member States represented on the ground shall agree on which Member State will coordinate assistance for unrepresented citizens.
3. To prepare for crises the Lead State(s) shall ensure that unrepresented citizens are duly included in embassies and consulates' contingency planning, that contingency plans are compatible and that embassies and consulates as well as Union delegations are duly informed about these arrangements.
4. In the event of crisis the Lead State(s) or the Member State coordinating assistance shall be in charge of coordination and leading assistance and assembly operations for unrepresented citizens, and if necessary ensure evacuation to a place of safety with the support of the other Member States concerned. It shall also provide a point of contact for unrepresented Member States, through which they can receive information about their citizens and coordinate necessary assistance. The Lead State(s) or, the Member State coordinating assistance for unrepresented citizens may seek, if appropriate, support from instruments such as the EU Civil Protection Mechanism and the crisis management structures of the European External Action Service. Member States shall provide the Lead State(s) or the Member State coordinating assistance with all the relevant information regarding their unrepresented citizens present in a crisis situation.

CHAPTER 5

Final provisions

Article 17

More favourable treatment

Member States may introduce or retain more favourable provisions in so far as they are compatible with this Directive.

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 19

Repeal

Decision 95/553/EC is repealed with effect from [...].

Article 20

Monitoring and evaluation

Member States shall provide the Commission with all the relevant information regarding the implementation of the right of unrepresented citizens and the practical implementation of this Directive, including a yearly overview of statistics and relevant cases. The Commission shall submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of this Directive by [...].

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 22

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX 1

A. Form of the request for reimbursement (Article 12)

1. Requesting Member State's embassy or consulate

2. Citizen's Member State of nationality

(regionally responsible nearest embassy or consulate or Ministry of Foreign Affairs)

3. Identification of the event

(date, place)

4. Data of assisted citizen(s) (to be attached separately)

Full name	Place and date of birth	Name and number of the travel document	Kind of assistance provided	Costs
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5. Total costs

6. Bank account for the reimbursement

7. Attachment: undertaking to repay (if applicable)

B. Common format – undertaking to repay (financial aid)

COMMON FORMAT UNDERTAKING TO REPAY (FINANCIAL ADVANCE)

I, (Mr/Mrs/Ms/Miss) (full name in block capitals)

holder of passport No.....issued at.....

hereby acknowledge receipt from the Embassy/Consulate of.....
.....at.....

of the sum of.....

as an advance for the purpose of.....

.....(including any applicable fee)

and undertake and promise to repay on demand to the Ministry of Foreign Affairs/Government of.....

.....
in accordance with the national law of that country the equivalent of the said sum in (currency).....

at the rate of exchange prevailing on the day on which the advance was made.

My address (*) (in block capitals) (country).....
is:.....

DATE.....SIGNATURE.....

(*) if you have no permanent address, please indicate a contact address.

C. Common format undertaking to repay (repatriation)

COMMON FORMAT UNDERTAKING TO REPAY (REPATRIATION)

I, (Mr/Mrs/Ms/Miss) (full name in block capitals)

born at (town).....in (country).....

on (date).....

holder of passport No.....issued at.....

on.....and ID No.....

hereby undertake to repay on demand to the Government of.....

.....in accordance with the national law of that country the equivalent of all costs as paid on my behalf or advanced to me by the consular officer of the.....Government at.....

for the purpose of, or in connection with, the repatriation to.....

of myself and the members of my family accompanying me, and to pay all appropriate consular fees in respect of the repatriation.

These are:

(i) (*) Fares

Subsistence

Miscellaneous costs

LESS the contribution made by me

CONSULAR FEES:

Repatriation fee

Attendance fee

Passport/emergency fees

(...hours at...per hour...)

(ii) (**) All sums on my behalf for the purpose of, or in connection with, the repatriation of myself and the members of my family accompanying me which cannot be determined at the time this undertaking to repay is signed by me.

My address (***) (in block capitals) (country).....

is:.....

DATE.....SIGNATURE.....

(*) Delete as appropriate: The Consular Officer and the applicant should initial each delegation in the margin.

(**) Delete as appropriate: The Consular Officer and the applicant should initial each delegation in the margin.

(***) If you have no permanent address, please indicate a contact address.

ANNEX 2

A. Form of the request for reimbursement in crisis situations (Article 13)

1. Requesting Member State

2. Citizen's Member State of nationality

(Ministry of Foreign Affairs)

3. Identification of the event:

(date, place)

4. Data of assisted citizens (s) (to be attached separately)

Full name	Place and date of birth	Name and number of the travel document	Assistance provided	Costs
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5. Calculation method

Real costs

Pro-rata

Fixed sum

6. Total costs

7. Bank account for reimbursement

8. Attachment: undertaking to repay (if applicable)

B. Fixed sums

Type of support	Fixed sum
Evacuation - long-haul journey	Cost of the last available commercial air ticket: place of evacuation – destination (OR 1.000 EUR)
Internal journey to the safe location	150 EUR
Medical assistance	2.500 EUR
Subsistence (accommodation and food offered)	200 EUR (per day)