

COMMISSION OF THE EUROPEAN COMMUNITIES

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GREEN PAPER

Diplomatic and consular protection of Union citizens in third countries

(presented by the Commission)

1. INTRODUCTION

1.1. Under Article 20 of the Treaty establishing the European Community (hereafter EC), if a citizen of the Union is in a third country in which the Member State of which he is a national does not have an embassy or a consular post, he is entitled to protection by the authorities of any Member State represented on the spot, on the same conditions as the nationals of that State.

Decision 95/553/EC[1] outlines possible action by Member States in cases such as:

- arrest or detention;
- accident or serious illness;
- an act of violence against a citizen;
- death;
- help for a distressed citizen or
- his repatriation.

It also covers the procedures for financial advances to citizens in difficulties.

The above list is not exhaustive. The Decision states that a citizen can also apply for protection in other circumstances, in which, in so far as it is within the States' powers, immediate assistance should be given to a national in difficulties.

A working party on consular cooperation ("COCON") has also been set up in the EU Council to organise exchanges of information on best national practices. In June this year it drew up guidelines on consular protection of EU citizens in third countries[2]. These non-binding guidelines focus on the exchange of information between Member States with a view to close cooperation, also involving the Commission delegations[3].

1.2. There are several reasons why the Commission is proposing possible lines of action for reinforcing this protection of citizens:

- Article 46 of the Charter of Fundamental Rights, proclaimed in Nice on 7 December 2000, enshrined the right to consular and diplomatic protection as a fundamental right of the European citizen;
- Decision 95/553/EC provides for it to be reviewed five years after its entry into force, which was in May 2002;
- in 2007, the Commission will present its 5th report on the citizenship of the Union, which could signal initiatives on the right to diplomatic and consular protection;

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1 Decision of the representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (OJ L 314, 28.12.1995 p. 73).

2 Council of the European Union document 10109/06 of 2.6.2006.

3 The guidelines require each Member State to prepare emergency plans, which all Member States should be familiar with. Member States are also encouraged to share changes to travel advice. Likewise, Member States should encourage EU citizens to report to consulates and register their details so that emergency plans can be implemented efficiently..

– the Commission Communication of June 2006 on implementing the Hague Programme[4] put forward various suggestions on diplomatic and consular protection;

– the need to define the links between consular and diplomatic protection and other areas (civil protection, crisis intervention, humanitarian relief), highlighted in the Report presented on 9 May by Mr Barnier[5] (hereafter Barnier Report).

1.3. Diplomatic and consular protection can concern individuals or groups of people.

1.4. To deal with crisis situations such as natural disasters, terrorist acts, pandemics or military conflicts, the Union has a range of instruments at its disposal:

– the civil protection mechanism, which can operate inside and outside the Union;

– humanitarian relief for civilians hit by a disaster outside the Union;

– specific instruments to cope with crisis management situations such as the rapid reaction mechanism;

– civilian crisis management missions under the foreign, security and defence policy.

All these instruments call for close cooperation between the Council and the Commission to ensure the coherence of the external activities of the Union and its Member States.

These areas of intervention can be supplemented by a reinforcement of the protection for citizens provided for under Article 20 EC.

1.5. Article 20 EC assumes particular importance because of the sharp increase in the number of trips made by EU nationals to third countries[6], and the rise in the number of nationals who establish their residence in these countries. Not all the Member States, however, have a permanent representation in every third country.

At present there are only three countries where all the Member States are represented: the People's Republic of China, the Russian Federation and the United States of America, and in 107 out of 167 third countries a maximum of 10 Member States are represented[7]. This situation became patently clear at the end of 2004 when the tsunami hit South East Asia, where most of the Member States did not have a representation in the countries affected by the disaster. In Thailand, for example, 17 Member States are represented whereas only 6 are represented in Sri Lanka and 3 in Brunei. In the conflict in Lebanon in July this year, it also became clear that not all the Member States had a permanent and accessible representation on the spot. The Barnier report also showed that the European presence in the form of the European Commission delegations was ensured in countries where the national representations are sometimes very limited. Although they do not have consular powers, these delegations could be included in joint efforts to pool resources.

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4 COM (2006) 331 of 28 June 2006 "Implementing the Hague Programme: the way forward".

5 Report by Michel Barnier to the President of the Council of the European Union and the President of the European Commission: "For a European civil protection force: europe aid."

6 In April 2006 the COCON Group estimated these trips at some 180 million per year.

7 Council document 15646/05 of 12 December 2005 on Presidency diplomatic representation in third countries, not published. There are areas where the Member States' diplomatic and consular representations on the spot are inadequate: Central America and the Caribbean (for example, 1 Member State is represented in Belize, 3 in Haiti, 4 in El Salvador, none in the Bahamas), Central Asia (in

1.6. In view of the limits to the Member States' consular and diplomatic networks, the current Community acquis is fairly slim, consisting only of Decision 95/553/EC and exchanges of information between the Member States within the COCON**.**

Yet citizens want the European profile to be raised. A recent Eurobarometer survey[8] revealed citizens' ignorance of their rights and at the same time their high expectations of Europe in this area. It also emerged that half the people living in the Union plan to travel to a third country within the next three years and that only 23% of them claim to be familiar with possibilities offered by Article 20 EC; at the same time, 17% believe that it is possible to seek protection from the Commission delegations.

Lastly, in its Communication to the European Council of 10 May 2006 "A citizens' agenda"[9], the Commission highlighted the Union's need to foster cooperation on consular affairs in order to protect EU citizens in third countries more fully and also to enable every European citizen to be aware of and enjoy full access to their existing rights.

The Commission proposes courses of action for informing citizens more fully and examining the scope of the protection that they should be offered and the structures and resources that the Union should have for this and the links to be developed with third-country authorities.

2. INFORMATION FOR CITIZENS

It is essential to ensure that citizens are more fully informed about consular protection.

The Commission suggests several measures, some of them immediate, and others that require more complex decision-making at European level.

2.1. Information on the right to diplomatic and consular protection

The institutions and the Member States should ensure that citizens and the trade sectors involved in passenger transport, such as travel agencies, are provided with regular information.

Examples include distributing information leaflets, putting up posters in places such as airports, ports, railway stations or passport offices, information on the "Europa" site and on the internet site of the Commission delegations in third countries. Another example could be telephone calls or e-mails to EUROPE DIRECT[10], enabling citizens to ask questions about consular and diplomatic protection in third countries.

Suggested actions:

- **Distribute leaflets, including to the relevant trade sectors**
- **Put information on the "Europa" site and on the internet site of the Commission delegations in third countries.**

Tajikistan only 1 Member State, and 3 in Turkmenistan); Central and West Africa (1 Member State is represented in Liberia and SaoTome and 3 in Mali and Congo-Brazzaville).

8 Eurobarometer No 188 of July 2006.

9 COM (2006) 211 final.

10 http://.eu.int/europedirect/index_en.htm

– **Put up posters in airports, ports, railway stations or any other appropriate points.**

– **Citizen information services.**

2.2. Information on Member States' representation in third countries

If their country does not have an embassy or consulate in the third country of destination, citizens must be given information about the other Member States' embassies and consulates there.

The Commission could take responsibility for conducting this type of information campaign with the help of the Member States. They would accordingly be asked to provide the Commission with an updated list of all their embassies and consulates in third countries, with the necessary contact details.

Suggested action:

– **Publish and update the contact details of embassies and consulates of the Member States represented in each third country.**

2.3. Using passports as a means of information

The Barnier report suggested that all passports should have Article 20 EC printed in them.

In its report of 15 June 2006 to the European Council[11], the Council Presidency asked the Member States to print Article 20 EC in passports.

The Commission considers that this would be an effective way of reminding citizens of their rights.

Suggested action:

– **Adopt a Commission Recommendation calling on the Member States to print Article 20 EC in passports.**

2.4. Advice for travellers

In order to discourage citizens from going to a third country where their safety and health could be endangered, each of the Member States issues advice to its nationals, giving its own assessment of the risk, which may differ from that of other Member States depending on its knowledge of the country concerned or the nature of its links with that country[12].

The question is whether it is possible to have a coordinated presentation of the different advice.

For example, Decisions 2119/98/EC[13] and 2000/57/EC[14] have established a network at Community level to promote cooperation, coordination and the exchange of information with a view to improving the prevention and control of communicable diseases. The information concerns public health measures taken by the Member

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11 Document 10551/06 of 15 June 2006: Reinforcing the European Union's emergency and crisis response capacities.

12 For a schematic presentation, see: http://www.travel-voyage.consilium.europa.eu.

13 OJ L 268, 3.10.1998.

14 Commission Decision 2000/57/EC of 22.12. 1999 (OJ L 21, 26.1.2000, p.32).

States to cope with a public health threat, including the threat of a pandemic. It is transmitted via an Early Warning and Response System - EWRS.

The Commission and Member States also inform concerned professionals and the general public of any guidance agreed at Community level. It will also be important to give preventive advice on the risks involved by providing appropriate and common advice to citizens via the competent authorities, and in accordance with the advice given by the European Centre for Disease Prevention and Control (ECDC).

Suggested action:

– **Coordinated presentation of advice to travellers.**

2.5. Publication of any measures implementing Article 20 EC

For the sake of transparency, citizens should be properly informed of their rights under Article 20 EC. For example, guidelines on the application of this Article should be published in the Official Journal.

Suggested action:

– **Publish any measures connected with the implementation of Article 20 EC.**

3. THE SCOPE OF PROTECTION FOR CITIZENS

Given that protection is not uniform, since Article 20 EC only requires each Member State to protect citizens of the Union on the same conditions as those afforded to its own nationals, EU citizens are confronted with the same number of protection arrangements as there are Member States.

The scope and legal force of these arrangements can vary[15].

The Commission considers that differences between the various aspects of protection should be examined over the longer term, with a view to considering the possibilities of offering citizens similar protection irrespective of their nationality.

In the immediate future, the following courses of action should be explored:

3.1. Protection of European citizens working and living in third countries

By its Decision 88/384/EEC setting up a prior communication and consultation procedure on migration policies in relation to non-member countries[16], the Commission established a consultation procedure between Member States aimed at promoting the inclusion of a maximum of common provisions in bilateral agreements, and improving the protection of Community nationals working and living in third countries.

Provisions on the protection of EU citizens should therefore be included in bilateral agreements with third countries with a view to ensuring this protection, as provided for by Article 20 EC.

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[15] For example, only some Member States recognise the right of appeal against the refusal of protection.

[16] OJ L 183, 14.7.1988, p 35.

Suggested action:

– **Include in Member States' bilateral agreements with third counties provisions protecting Union citizens working and living in third countries, in order to apply Decision 88/384/EEC properly.**

3.2. Union citizens' family members who are not nationals of a Member State

The need for joint protection of citizens and members of their families who are not EU nationals emerged in the Lebanon conflict in July this year, with the procedures for evacuating and repatriating via Cyprus family members of citizens whose Member State was not represented. It is time to put an end to the considerable difficulties that citizens and their families face in such situations and therefore to lay down arrangements for joint protection of distressed citizens and family members who are not nationals of an EU Member State.

Suggested action:

– **Extend consular protection to Union citizens' family members who are third country nationals, by appropriate means (amend Decision 95/553/EC or Commission proposal on the basis of Article 22 EC).**

3.3. Identifying and repatriating remains

The aftermath of the tsunami at the end of 2004 revealed the scale of the problem of identifying and repatriating remains. The third country local authorities can require a series of formalities, such as obtaining a mortal remains certificate (issued by the consular authority) or health and police certificates confirming death and causes of death, compliance with certain public health requirements concerning the coffin, or a certified translation of the administrative documents.

The families of victims therefore have to cope with the complex procedures and costs of repatriation.

Some Member States have acceded to the Council of Europe Convention of 26 October 1973 on the transfer of corpses[17], which is designed to simplify administrative formalities for repatriating remains. However, this instrument leaves the Member States wide discretionary powers. It is important to convince all the Member States to accede to this instrument, while at the same time continuing efforts at simplification.

With regard to the costs of repatriating remains, a complementary action could be to set up a European compensation system.

Identifying remains is a necessary prerequisite for their repatriation. In this connection, the Commission will encourage research and development of effective tools for analysing DNA which are less costly than those currently available.

[17] Convention No 80 of the Council of Europe Treaty Series (15 Member States have ratified).

Suggested actions:

In the short term:

– **Amend Decision 95/553/EC in order to include the identification and repatriation of remains.**

– **Recommend Member States which are not yet contracting parties to the 1973 Strasbourg Convention to accede to it.**

In the long term:

– **Simplify procedures for repatriating remains.**

– **Possibly set up a European compensation system.**

– **Encourage research and development of DNA analysis tools and encourage some European laboratories to specialise in victim identification.**

3.4. Simplifying procedures for financial advances

Decision 95/553/EC shows the complexity of the procedure for repaying expenditure and the advances paid to distressed citizens: the applicant must obtain permission from the Member State of which he is a national and sign a document promising to repay; the Member State of which he is a national reimburses all costs, on request, to the assisting State; the citizen reimburses his own State. Nationals of some Member States may be asked to leave their passport with the assisting State as a guarantee.

A possible solution could be to centralise the processing of all files in a common office in the third country, thereby simplifying the administrative steps described in Decision 95/553//EC.

Suggested action:

– **Simplify procedures for financial advances.**

4. STRUCTURES AND RESOURCES

4.1. Setting up common offices

Requests for protection should not cause any particular problem when it is a matter of dealing with individual situations, such as loss of documents. However, the situation may be different in the case of large groups of people in the wake of disasters, pandemics, acts of terrorism or military conflicts.

There needs to be a fair division of tasks between the Member States in cases of requests for assistance or repatriation by a large number of citizens whose own State has no representation. An attempt at this division of tasks has been made in the abovementioned guidelines.

One way of dealing with this sort of situation would be to set up common offices, as proposed in the Barnier Report and taken up in the abovementioned Communication, of 28 June 2006 on implementing the Hague Programme[18]. Similar proposals had been backed by European Parliament[19].

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[18] See footnote on page 4.

[19] Resolution of 5 September 2000 on common Community diplomacy.

Setting up common offices would help to streamline functions and save on the fixed costs of the structures of Member States' diplomatic and consular networks.

The functions performed by these common offices could be based on a system of deputising between Member States, which would enable the following proposals to be put into practice:

– Depending on the countries and the presence of Member State representations, these offices could be housed in various representations or national embassies or in just one, or they could share the Commission delegation under arrangements still to be defined. In all cases, the consular officials would perform their functions, under the authority of their State, in common offices. Initially, the four experimental areas proposed in the Barnier report could be adopted: the Caribbean, the Balkans, the Indian Ocean and West Africa. These areas were proposed because of the number of European tourists visiting them, the relatively low representation of the Member States and the presence of Commission delegations, which could provide the appropriate support. The programme of staff exchanges between the Member States' national diplomatic services, the Commission and the Council Secretariat could be used on this occasion, in the spirit of the Commission Communication to the European Council of 8 June 2006 on Europe in the world[20].

– To perform these functions, the Member States could draw up and make available to citizens a set of rules establishing a system for deputising and sharing the work done by the common office in each third country.

– To facilitate the work of the common offices, information campaigns could be organised, inviting citizens to register on a voluntary basis, which would then make possible rescue operations easier.

– Significant steps have been taken under the common visa policy, through Council decisions amending the Common Consular Instructions (CCI). These specific measures provide an example of the added value that Europe can offer. To make up for the drawbacks of an inadequate consular presence in some third countries, the possibility that already exists for one Member State to represent another for the purposes of issuing visas on its behalf should be further extended[21]. Other amendments to the CCI have also helped to strengthen local consular cooperation and to give it a bigger role in applying the common visa policy[22]. Taking these measures further, the Commission recently presented initiatives to supplement the existing acquis in this field. First it presented a proposal to establish common centres for the reception of visa applications[23], in order to facilitate the introduction of biometrics and to extend the scope of representation. Then it put forward a proposal for a Regulation establishing a Code on Visas, a single instrument that reviews and incorporates all the provisions on visa-issuing procedures[24]. The aim of the proposed Code is to reinforce and enhance local consular cooperation in respect of visas. In the long term, thought needs to be given to harnessing moves

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20 COM (2006) 278 final "Europe in the World — Some Practical Proposals for Greater Coherence, Effectiveness and Visibility".

21 Decision 2004/15 of 22.12.2003, OJ L 5, 9.1.2004.

22 Decision 2002/585 of 16.7.2002, OJ L, 16.7.2002 on cooperation with travel agencies and Decision 2004/17 of 12.2003, OJ L 5, of 9.1.2004, establishing the requirement to have travel insurance.

23 COM(2006)269 final of 31.5.2006.

24 COM(2006)403 final of 13.7.2006.

towards common offices for the purposes of consular protection with moves towards common centres for the purposes of visa policy.

Suggested actions:

- **Initially set up "common offices" in the Caribbean, the Balkans, the Indian Ocean and West Africa.**
- **Publish rules establishing a system of deputising between Member States in third countries.**
- **Organise information campaigns encouraging citizens to register at the common office.**
- **In the long term, common offices could perform consular functions, such as issuing visas or legalising documents.**

4.2. Training for Member State officials

To ensure effective training, especially for the staff of the "common offices", the Commission could organise joint training activities for Member State and Community institution officials on, for example, EU external border checks, repatriation of remains or the right to diplomatic and consular protection.

Suggested action

- **Training for Member State and Community institution officials.**

5. THE CONSENT OF THE THIRD-COUNTRY AUTHORITIES

Implementation of Article 20 EC requires the consent of the third countries.

It is a general principle of international law that the protection of a citizen of one State by another State is subject to the third country's consent[25].

Under Article 20 EC Member States must start the international negotiations required to this end.

Each Member State is therefore expected to initiate bilateral negotiations[26] with third countries. But it would also be possible, in "mixed" agreements concluded by the Community and its Member States, to negotiate a standard consent clause for diplomatic and consular protection. Under such a clause third countries would accept that Union citizens can be assisted by any Member State represented on the spot.

A specific case concerns the boarding of fishing vessels flying the flag of a Member State or the arrest of the master and crew. Under some fishing agreements, the third country authorities are required to inform the European Commission delegation on the spot, which has "a duty to provide diplomatic protection"[27] as stated in the "Odigitria" judgment[28].

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25 Articles 45 (c) and 46 of the 1961 Vienna Convention on diplomatic relations and Article 8 of the 1963 Vienna Convention on consular relations.

26 These agreements supplement those provided for by Decision 88/384/EC : see paragraph 3.1 of this paper.

27 For example, the Agreement between the EEC and the Republic of Côte d'Ivoire on fishing (OJ L 379/90, page 3).

28 Judgment of the Court of First Instance of 6 July 1995, Case T-572/93.

Although no general lesson can be drawn from the "Odigitria" judgment outside the context of the fishing agreement concerned, in the long term, the question of the application of this diplomatic protection could arise if it resulted from the exercise of Community competence.

Suggested actions:

- **Insert a consent clause in "mixed" agreements concluded with third countries.**
- **In the long term: examine the possibilities of getting the consent of third countries for the Union to exercise a duty of protection, via the Commission delegations, in cases relating to Community competence.**

6. CONCLUSIONS

In this Green Paper the Commission sets out ideas to be considered for strengthening the right to Community diplomatic and consular protection. Before carrying out the actions needed for this, which call for initiatives on its part or coordination with the Member States, the Commission wishes to launch a wide-ranging public debate with the European Parliament and the Council of the Union and with all interested parties: Member States, NGOs, civil society and European citizens.

To this end, the Commission wishes to receive contributions commenting on the actions suggested above, by 31 March 2007. These should be sent by e-mail to the following address: JLS-diploconsul-protection@ec.europa.eu.

The contributions received will be published on "Your Voice in Europe", giving the name of the authors, unless they wish to remain anonymous or they ask for the entire contribution to remain confidential.

This dialogue will end with a hearing open to all interested parties.