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*Committee on Legal Affairs*

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**2011/0432(CNS)**

12.7.2012

## **OPINION**

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on consular protection for citizens of  
the Union abroad  
(COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS))

Rapporteur: Tadeusz Zwiefka

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## SHORT JUSTIFICATION

The right for a citizen of an unrepresented Member State to seek assistance from the consular authorities of other Member States who are represented is one of the rights conferred by Union citizenship. The relevant legal provisions are Article 23 of the Treaty on the Functioning of the European Union and Article 46 of the Charter of Fundamental Rights.

A legal framework for implementing this right was first laid down by Decision 95/353/EC. This right has thus been in existence for some time. However, there is a need to strengthen this framework as experience has shown that citizens are not fully able to benefit from their rights to consular protection.

One of the major problems is that citizens have not been aware of their right to obtain help from the consulate of another Member State when they are in a third country in which their own Member State is not represented. This new Directive seeks to address this problem.

Furthermore, this Directive aims to take a more coordinated approach to the issue of assistance for unrepresented Union citizens. Without prejudice to the right of unrepresented citizens to seek help from the authorities of any Member State, the Directive will create a framework under EU law which will allow Member States to agree that, in a certain country or area, one Member State will act as 'Lead State' and coordinate consular activity. These agreements will be made public, meaning that citizens travelling to a certain place will know which consulate to contact in the first instance.

In the long term, this could also lead to savings, as once a Lead State has been appointed by agreement between Member States, there will be less need for other Member States to also be represented in that locality.

Finally, one of the stumbling blocks of current consular cooperation is the difference in custom between Member States concerning the financing of consular support. Some Member States fund such support from their general budget, whilst other Member States consider that the assisted person should reimburse the taxpayer for the assistance provided. This Directive establishes rules for compensation between Member States' consular systems, whilst leaving national customs in this respect untouched.

The Committee on Legal Affairs is broadly very supportive of the proposal, but considers that some amendments should be made. The amendments tabled aim, in particular, to ensure that information on consular protection is as widely available as possible, to clarify that citizens should continue to benefit from the full range of consular assistance customarily provided by Member States' representations, and to make clear that the role played by the authorities of represented Member States does not mean that unrepresented Member States are excluded from providing assistance.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

## Amendment 1

### Proposal for a directive

#### Recital 10

##### *Text proposed by the Commission*

(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.

##### *Amendment*

(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, ***as well as on the relevant websites of the competent institutions in the Member States involved.***

##### *Justification*

*One of the reasons why European citizens do not benefit from their consular rights in third countries is that insufficient information is available to them.*

## Amendment 2

### Proposal for a directive

#### Recital 14

##### *Text proposed by the Commission*

(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

##### *Amendment*

(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, ***and in crisis situations.*** Since the necessary protection always depends on the factual situation, consular protection

situations specifically mentioned in this Directive.

should not be limited to those situations specifically mentioned in this Directive.

### **Amendment 3**

#### **Proposal for a directive Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) Training courses should be organised for consular staff in order to improve cooperation and increase their knowledge of citizens' rights under the Treaties and this Directive.***

*Justification*

*It is important that consular staff should be aware of the rights of the citizens of other Member States who come to them for help.*

### **Amendment 4**

#### **Proposal for a directive Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25a) This Directive should not affect the obligation and/or right of unrepresented Member States to assist their citizens directly where necessary and/or desirable. Unrepresented Member States should give continuous support to Member States which are providing consular assistance to the citizens of the former.***

*Justification*

*This amendment seeks to clarify that, even in countries where they are not represented, Member States still have a role to play in helping their citizens.*

## Amendment 5

### Proposal for a directive Recital 25 b (new)

*Text proposed by the Commission*

*Amendment*

***(25b) In order to ensure the swift and efficient functioning of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of any amendment to the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.***

*Justification*

*The rapporteur considers that the Commission should be delegated the power to amend the annexes, which consist of forms which may need to be updated from time to time. The new Articles 18a and 18b implement this.*

## Amendment 6

### Proposal for a directive Article 3 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***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

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temporarily closed in case of crisis.

#### *Justification*

*The accessibility of a consulate should not be determined in such a detailed manner, as there will be considerable differences between third countries.*

### **Amendment 7**

#### **Proposal for a directive Article 3 – paragraph 3**

##### *Text proposed by the Commission*

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.

##### *Amendment*

3. Honorary consuls shall be regarded as equivalent to accessible embassies or consulates ***to the extent that they have the relevant*** competences pursuant to national law and practices.

### **Amendment 8**

#### **Proposal for a directive Article 4 – paragraph 1**

##### *Text proposed by the Commission*

1. Unrepresented citizens may choose the Member State embassy or consulate from which they seek consular protection.

##### *Amendment*

1. Unrepresented citizens may choose the Member State embassy or consulate from which they seek consular protection.  
***Member States shall make available, on the websites of their ministries in charge of foreign affairs, information on their citizens' right to seek, in a third country in which those Member States are not represented, consular protection, in accordance with this Directive, from the diplomatic or consular authorities of another Member State, and on the conditions of the exercise of this right.***

#### *Justification*

*In order to make the provisions of this Directive effective and bring added value for citizens, the latter should be properly informed about their right, by virtue of this Directive, to consular protection from the diplomatic or consular authorities of another Member State.*

## Amendment 9

### Proposal for a directive Article 4 – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

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, **and shall also publish such information on the internet sites of their ministries responsible for foreign affairs, and on the internet sites of the relevant embassies and/or consulates.**

*Justification*

*One of the reasons why European citizens do not benefit from their consular rights in third countries is that insufficient information is available to them.*

## Amendment 10

### Proposal for a directive Article 6 – paragraph 2 – introductory part

*Text proposed by the Commission*

2. The consular protection referred to in paragraph 1 shall include assistance in the following situations

*Amendment*

2. The consular protection referred to in paragraph 1 shall include, **as a minimum,** assistance in the following situations

*Justification*

*This amendment, and the following one, aim to clarify that the list of situations in which assistance should be provided is not exhaustive, and that Member States should continue to provide assistance in other situations where it is customary to do so.*



## Amendment 11

### Proposal for a directive

#### Article 6 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***This consular protection shall also extend to all other situations where the represented Member State would habitually provide assistance to its own citizens.***

## Amendment 12

### Proposal for a directive

#### Article 8 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) assist the citizen in obtaining the help of a legal professional.***

*Justification*

*This amendment seeks to establish that consulates are not obliged to themselves provide legal advice, but rather to assist the citizen in obtaining such advice from a local professional.*

## Amendment 13

### Proposal for a directive

#### Article 8 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

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. 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.

or consular authorities of the citizen's Member State of nationality.

#### **Amendment 14**

##### **Proposal for a directive**

##### **Article 9 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) provide the citizen with information and/or assistance regarding relevant legal issues **and** health care.

*Amendment*

(b) provide the citizen with information and/or assistance regarding relevant legal issues, health care **and counselling**.

#### **Amendment 15**

##### **Proposal for a directive**

##### **Article 9 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) assist the citizen in obtaining the help of a legal professional.***

#### **Amendment 16**

##### **Proposal for a directive**

##### **Article 9 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given. **That Member State** shall liaise with the citizen's family members or other related persons **unless** the citizen **has refused to give** consent.

#### *Justification*

*This amendment, and the following one, are being tabled because of the language barrier which may exist between the consular staff and the citizen's family. It would seem more appropriate for communication with family to be routed through the authorities of their Member State.*

## Amendment 17

### Proposal for a directive Article 10 – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

2. The embassy or consulate shall inform the citizen's Member State of nationality about the incident, its seriousness and the assistance given. **That Member State shall** liaise with the victim's family members or other related persons **unless the citizen has refused to give consent**. 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.

## Amendment 18

### Proposal for a directive Article 18 a (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 18a**

##### ***Amendments to the annexes***

***The Commission shall be empowered to adopt delegated acts in accordance with Article 18b concerning any amendment to the Annexes.***

## Amendment 19

### Proposal for a directive Article 18 b (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 18b**

### *Exercise of delegation*

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
- 2. The delegation of power referred to in Article 18a shall be conferred for an indeterminate period of time from ...\*.*
- 3. The delegation of powers referred to in Article 18a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
- 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
- 5. A delegated act adopted pursuant to Article 18a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.*

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*\* Date of entry into force of this Directive.*

## PROCEDURE

<b>Title</b>	Consular protection for citizens of the Union abroad
<b>References</b>	COM(2011)0881 – C7-0017/2012 – 2011/0432(CNS)
<b>Committee responsible</b> Date announced in plenary	LIBE 2.2.2012
<b>Opinion by</b> Date announced in plenary	JURI 2.2.2012
<b>Rapporteur</b> Date appointed	Tadeusz Zwiefka 19.12.2011
<b>Discussed in committee</b>	31.5.2012
<b>Date adopted</b>	10.7.2012
<b>Result of final vote</b>	+: 23 –: 0 0: 0
<b>Members present for the final vote</b>	Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Luis de Grandes Pascual, Eva Lichtenberger, Dagmar Roth-Behrendt, József Szájer, Axel Voss