



**COUNCIL OF  
THE EUROPEAN UNION**

Brussels, 12 November 2013

15677/13

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**Interinstitutional File:  
2011/0432 (CNS)**

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**LIMITE**

**DOCUMENT PARTIALLY  
ACCESSIBLE TO THE PUBLIC  
(13.12.2013)**

**COCON 55  
PESC 1321  
COTRA 38**

**NOTE**

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from: General Secretariat of the Council  
to: Working Party on Consular Affairs  
No. prev. doc.: 18821/11 - COM(2011)881 final; 13461/13  
Subject: Proposal for a COUNCIL DIRECTIVE on consular protection for citizens of the  
Union abroad  
- Delegations' comments

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Regarding the Presidency proposal for a revised Directive (13461/13), delegations will find attached the comments of the AT, DE, EE, EL, ES, FI, FR, HR, HU, IT, LV, NL, PL, PT, SE, SI, SK and UK delegations.

Delegations' drafting suggestions are marked as follows: deletions in ~~strike through~~ and amendments in **bold and underlined**.

(NB: Only those Articles in respect of which delegations have made drafting suggestions are included in this compilation.)

AUSTRIA

- The proposal should be as streamlined as possible. This would apply in particular to recital clauses.
- In relation to honorary consuls the recital clauses could well be more succinct but should include a provision explaining that honorary consuls, although widely differing in competences among Member States, by definition and practise do not offer the same range of consular services as Embassies of professional consulates.
- Art 11(3): Austria is not convinced that a provision on the Lead State needs to be placed in the directive, since coordination measures would relate to all EU citizens, both represented or not. In the event of a crisis, the Lead State should not be given the legal responsibility to lead evacuations of unrepresented citizens but rather entrusted with coordinating overall undertakings with the support of Member States concerned. Should a provision be foreseen Austria proposes to include a general reference. This could be worded as following: “Member States shall consider the need to entrust a Lead State with the coordination of evacuations in the event of a crisis in order to ensure the support for unrepresented citizens.”
- Art 17(1): The review of the deadline should be initiated five rather than two years after the implementation deadline of the Directive

## **GERMANY**

In general terms,

- Germany proposes to keep the text shorter where appropriate. Also, regulations should not be too detailed as they later might cause obligations that cannot be fulfilled or prove less practical.
- Germany favors to incorporate an enhanced role of the EEAS in the Directive.
- Germany welcomes the financial provisions as set out in Art. 12 reflecting the current practice.
- Germany particularly welcomes the opening clause in Art. 17 proposing a review after three years.
- Recitals should be revisited after the regulations have been agreed upon.

### CHAPTER 1 **General provisions**

#### *Article 1* *Subject matter*

1. This Directive lays down the coordination and cooperation measures, necessary to facilitate the exercise of the right, as referred to in point c of Article 20(2) **and in Article 23** of the TFEU, of citizens of the Union to **enjoy**, in the territory of a third country in which the Member State of which they are nationals is not represented, **the** protection by the diplomatic and consular authorities of another Member State, on the same conditions as the nationals of that Member State.
2. This Directive does not deal with the relationship of Member States to third countries.

#### *Article 2* *General principle*

1. Member States' embassies or consulates shall provide consular protection to unrepresented citizens **as defined in Article 3** on the same conditions as to their own nationals.
2. **Consular protection is subordinated to other sources of assistance accessible to the person concerned.**

*Comment* : German consular assistance is subordinated to the element of subsidiarity.

3. **Member States may decide that Paragraph 1 shall not apply to the consular protection provided by honorary consuls.**

*Article 3*  
*Beneficiaries*

1. **For the purposes of this Directive, "unrepresented citizens" shall mean every citizen holding the nationality of a Member State of the Union which is not represented in a third country as defined in Article 4.**

*Comment: Delete (b) since it is comprised by (a), and in a case of (b) the citizen would be assisted by a third Member State.*

2. Family members of unrepresented citizens who themselves are not citizens of the Union shall **only** be eligible for consular protection in accordance with the law or practice of the assisting Member State.

*Comment: delete second half of the sentence.*

*Article 4*  
*Absence of representation*

1. **A Member State is not represented in a third country if it has no embassy or consulate established there on a permanent basis.**
2. **If a Member State's embassy, consulate or Honorary Consul is not accessible or in a position to effectively provide protection in a given case, assistance by other Member States shall be provided as in case of absence.**

*Comment: New proposal, focussing on necessary action rather than on difficult definition of "absence", "accessibility" and "effectiveness". In an emergency case, a Member State would contact the nearest representation and decide together on accessibility of assistance.*

*Article 5*  
*Access to consular protection and practical arrangements*

1. Unrepresented citizens shall be entitled to seek protection from the embassy or consulate of **another** Member State.
2. **Without prejudice to Article 2**, a Member State may represent another Member State on a permanent basis and Member States' **embassies or consulates** may conclude **practical arrangements for the effective management of applications for consular protection from unrepresented citizens where deemed necessary**. Such arrangements shall be notified to the Commission and to the EEAS with a view to their publication by the EU and Member States.
3. **With respect to cases in which a practical arrangement has been concluded**, an embassy or consulate **asked for** consular protection but not designated as competent shall ensure effective help **by the relevant embassy or consulate if the urgency of the matter does not require immediate action**.

*Comment: Germany is in favour of arrangements if necessary. Keep paragraph 3. simple.*

*Article 6*  
*Identification*

1. The applicant shall establish that he or she is a citizen of the Union by producing a passport or identity card.
2. If the citizen is unable to produce a valid passport or identity card, nationality may be proven by any other means, if necessary **including** verification ~~by the assisting Member State~~ with the diplomatic or consular authorities of the Member State of which the applicant claims to be a national.
3. **With respect to** family members referred to in Article 3(2), the identity and existence of the family relationship **may be proven by any means, if necessary including verification by the assisting Member State with diplomatic or consular authorities of the Member State of which the applicant referred to in paragraph 1 claims to be a national.**

*Article 7*  
*Types of assistance*

**The consular protection referred to in Article 2** may include assistance in the following situations:

- (a) arrest or detention;
- (b) being a victim of crime;
- (c) serious accident or serious illness;
- (d) death;
- (e) relief ~~and repatriation~~ in case of emergency;
- (f) need for emergency travel documents<sup>1</sup>.

*Comment: Delete “repatriation” in (e): it may cause false expectations in respect to member states which do not provide it as well as to member states which provide it but under exceptional circumstances.*

CHAPTER 2  
**Coordination and cooperation measures**

*Article 8*  
*General rules*

1. Member States’ diplomatic and consular authorities shall closely cooperate and coordinate with one another and with the Union to ensure protection of unrepresented citizens **in accordance with Article 2.**

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<sup>1</sup> 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.

2. When an embassy or consulate assists an unrepresented citizen **or is informed of an individual emergency situation of an unrepresented citizen, it** shall contact, **except in cases of extreme urgency,** the Ministry of Foreign Affairs of the citizen's Member State of nationality, or its nearest regionally responsible embassy or consulate. The assisting embassy or consulate shall also facilitate the exchange of information between the citizen concerned and the authorities of the citizen's Member State of nationality.

*Comment: Add "emergency situation" instead of enumeration of types of assistance. There might be emergencies that are not defined here and that require help.*

3. **If requested, the citizen's Member State of nationality** shall provide **the assisting Member State's ministry, embassy or consulate** with all the relevant information in the case concerned. **It is also responsible for any necessary contact with family members or other related person or authorities.**

*Comment: It might be appropriate to include the MS' ministry / crisis unit in the information channel, not only the embassy or consulate. Provisions for coordination and information should not be too detailed ("liaise with citizen's / deceased citizen's family members"), causing obligations where there might not be a need for it.*

4. The relevant contact persons in the Ministries of Foreign Affairs **shall be notified by Member States** to the European External Action Service **through** its secure internet site.

#### *Article 10*

##### *Local cooperation*

Local cooperation meetings shall include a regular exchange of information **on matters relevant to** unrepresented citizens, ~~on matters~~ such as safety of citizens, prison conditions, consular notification and access, **and crisis cooperation. In these meetings, Member States set up and agree, wherever necessary, practical arrangements as referred to in Article 5.** ~~Unless otherwise agreed by Member States, the Chair shall be a representative of a Member State, jointly with the Union Delegation.~~ **The Chair shall be the Union Delegation unless decided otherwise locally.** The Chair shall collect and regularly update contact details and share them with the local embassies and consulates ~~and the Union delegation.~~

*Comment: Relating to the question of the Chair, Germany favours the Union Delegation.*

#### *Article 11*

##### *Crisis preparedness and cooperation*

1. Local contingency planning shall include unrepresented citizens. Member States represented in a third country shall coordinate contingency plans among themselves and with the Union delegation to ensure that unrepresented citizens are fully assisted in the event of a crisis **and inform unrepresented citizens about crisis preparedness arrangements** ~~under the same conditions as nationals.~~ **The nearest regionally responsible competent embassies or consulates shall be fully informed and involved, where possible.**

*Comment: Information to unrepresented citizens cannot be guaranteed, as they are not registered. Nearest / competent embassies should be involved where possible. In crisis situations this is not always possible, due to time constraints.*

2. In the event of a crisis, Member States and the Union shall closely cooperate to ensure efficient assistance to unrepresented citizens. They shall inform each other of available evacuation capacities in a timely manner. Upon their request Member States may be supported by intervention teams at Union level including consular experts, in particular from the unrepresented Member States.
3. In the event of a crisis, **the Lead State** or the Member State(s) coordinating the assistance shall be in charge of coordinating and leading **any evacuation or other support being provided** for unrepresented citizens, with the support of the other Member States concerned and that of the Union delegation. Member States shall provide the Lead State or the Member State(s) coordinating assistance with all relevant information regarding their unrepresented citizens present in a crisis situation. The Lead State or the Member State(s) coordinating the assistance shall provide a contact point for unrepresented Member States ~~through which they can receive information about their citizens and coordinate the necessary assistance.~~ The Lead State or the Member State(s) coordinating assistance for unrepresented citizens may seek, if appropriate, support from instruments such as the crisis management structures of the European External Action Service and the EU Civil Protection Mechanism.

### CHAPTER 3 Financial procedures

#### *Article 12 General rule*

1. **The costs of consular protection provided for an unrepresented citizen pursuant to Articles 2, 7 and 8(2) shall be reimbursed by the citizen's Member State of nationality to the assisting Member State.**
2. **For requests for consular protection from unrepresented citizens involving such costs, the following procedure shall apply:**
  - (a) **except in cases of extreme urgency** the assisting embassy or consulate shall **consult** with the citizen's Member State of nationality **in accordance with Article 8(2).**
  - (b) **on written request from the assisting Member State the citizen's Member State of nationality shall reimburse, within a reasonable period of time which should not exceed 12 months, the full value of the cost incurred.**
  - (c) the unrepresented citizen then shall undertake to repay to his or her Member State of nationality the full value of **the** cost incurred, plus any consular fee(s) if applicable;
  - (d) **Requests for reimbursement shall be made using the standard forms set out in the Annex.**

*Comment: Proposal to put reimbursement into the order: first MS to MS (b); thereafter citizen to his own MS (c). Delete provisions for mutual information that are self-evident.*

*Article 13*  
*Facilitated procedure in crisis situations*

1. In crisis situations, the assisting Member State shall submit any requests for reimbursement of the costs **of evacuation or other support provided to an unrepresented citizen** to the Ministry of Foreign Affairs of the citizen's Member State of nationality. The assisting Member State may seek such reimbursement even if the unrepresented citizen has not signed an undertaking to repay pursuant to point c **(d)** of Article 12.
2. **The costs referred to in paragraph 1** may be reimbursed by the citizen's Member State of nationality on a pro-rata basis, by dividing the **full value of the actual costs incurred** by the number of citizens assisted, if the assisting Member State so requests.
3. Where the assisting Member State was financially supported via assistance from the EU Civil Protection Mechanism, any contribution from the citizens' Member State of nationality shall be determined after deduction of the Union's contribution.
4. This article shall not prevent the citizen's Member State of nationality from pursuing repayment from the citizen concerned on the basis of national rules.

*Comment: Change order of paragraphs, as citizens' repayment may be calculated after deduction of contributions.*

CHAPTER 4  
**Final provisions**

*Article 17*  
*Monitoring, evaluation and review*

1. Member States shall provide the Commission with all relevant information regarding the **implementation and application** of this Directive. **On the basis of the information provided**, the Commission, **with the support of the EEAS**, 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 and application of this Directive **three years after the implementation deadline of the Directive**.

*Comment: Germany favours a period longer than 2 years to collect sufficient experience with the Directive*



## ESTONIA

- **DELETED**;
- It is very important that the role of EEAS on the field of consular assistance will be stated more clear way, specially if the question is about acting during crisis.
- Estonia supports the clarification of financial mechanisms to compensate Member State's expences of consular assistance to EU citizens or their family members which could be solved on bilateral basis between Member States (Article 12).

## GREECE

With reference to Coreus HEL/0070/13 and BER/0342/13, Greece would like to add that, because consular services need to be dealt with on a flexible basis, the text of the Directive should include regulations as less detailed as possible, with a view to avoiding creating possible obligations that might not be fulfilled.

Greece, taking into consideration the excellent work of the Presidency concerning the text of the revised Directive, as well as the great progress achieved within the COCON Working Group, wishes to reiterate that it maintains a general, scrutiny reservation on the proposal.

## SPAIN

- Art. 4 should refer to a *resident* Embassy or Consulate and not to an Embassy or Consulate established there on a *permanent basis*.
- The reference in arts. 7 and 8 to "*serious illness*" should be deleted.
- Repatriation should always be considered "*in case of emergency*" as stated in art. 7 (e) and not "in case of distress" (recital 15).
- Spain supports the implementation of clear financial mechanisms to compensate Member States that have provided consular assistance to an unrepresented EU citizen. The reimbursement could be managed on a bilateral basis as has been the current practice in the past and has worked reasonably well. The reimbursement should cover all the expenses, including the necessary consular fee(s) and shall take place within a reasonable period of time which should not exceed 12 months.

Spain is also in favour of the implementation of a safety net system to avoid the non-recovery of large amounts ad/or long overdue debts.

## **FINLAND**

Certain parts of the text, particularly Chapter one, have been made considerably more concise during the process, which shows that progress has been made. Other chapters may need somewhat more work in bringing them in line with the compact, general and pragmatic approach advocated by many Member States, including Finland. In a few articles Finland still sees unanswered questions and is, therefore, not ready to lift all its reservations. Finland also wishes to remind that it maintains a general reservation on the proposal.

### **Chapter 1**

As regards Chapter 1, the text has evolved in the right direction in becoming more concise and less detailed. Finland shares the presidency's position on the need for further reflection on honorary consuls.

Finland still has reservations as regards widening the personal scope of consular services. According to the Finnish Consular Services Act (498/1999) the beneficiaries of consular services are Finnish citizens and foreign nationals residing permanently in Finland. Finland wants to make sure that foreign citizens residing in such Member States of the Union, which do not guarantee the same level of services, would not, as a result of the proposal, become entitled to consular services provided by Finland. Furthermore, the definition of family members of unrepresented citizens referred to in Article 3 paragraph 2 needs some more clarification.

There remains a certain ambiguity in the concept of consular protection itself. As previously stated, Finland considers that Article 5 of the Vienna Convention on Consular Relations should be taken into account in defining the concept of consular protection. Article 5 of the Vienna Convention defines which consular functions a consular officer may exercise in the territory of another member State of the Convention and ought to be referred to in the text. Finland welcomes, however, the open-ended modality (wording 'may') introduced in Article 7 of the proposal.

## Chapter 2

On Chapter 2, the text in its current form is too detailed. The very detailed provisions set for the assisting Member State in Article 8, for example, do not correspond to the hands-on consular practice and pragmatic cooperation currently taking place between Member States.

Furthermore, the excessively detailed provisions on who should chair local meetings under which type of organizational constellation (Article 10) do not contribute to the unanimously stated aim of keeping the consular cooperation as pragmatic and flexible as possible.

Equally on Article 11, Finland would like to see less detail in the Crisis cooperation provisions. For example, the requirement to 'inform unrepresented citizens of crisis preparedness arrangements under the same conditions as nationals' may lead to results that are either trivial or outright impractical: how to inform people whose presence is not known without any nationally exclusive methods (such as telecommunications subscriptions)? Finland would like to see the overly-detailed provisions such as this one removed from the directive.

## Chapter 3

There remain questions that potentially affect the final assessment of the financial impact of the proposal. Finland is unsure whether the requirement to 'consult' with the citizen's MS of nationality is a sufficient procedure (Article 12, paragraph 2 a). At the very least, Finland has to reserve its position until a further, upcoming parliamentary scrutiny. The Finnish parliament has in 2012 taken an unequivocal position that the proposal must not lead to a need to increase resources of consular services. Therefore, the responsibility of each citizen should be underlined.

Finally, Finland understands the value of recitals in setting out concise reasons for the main provisions. Practice has shown, however, that consular services need flexibility and in casu action. Thus, it is not always beneficial to regulate these services too meticulously.

Finland wishes, once more, to express its gratitude to the Presidency for the work it has done on the proposal. There is still more work ahead, but as the proposal now shows good promise, Finland believes there is also more progress ahead.

## FRANCE

*(France has no proposals for amendments to the recitals at this stage.)*

### CHAPTER 1 General provisions

#### *Article 1 Subject matter*

1. This Directive lays down the coordination and cooperation measures, necessary to facilitate the exercise of the right, as referred to in point c of Article 20(2) **and in Article 23** of the TFEU, of citizens of the Union to **enjoy**, in the territory of a third country in which the Member State of which they are nationals is not represented, **the** protection by the diplomatic and consular authorities of another Member State, on the same conditions as the nationals of that Member State. **This Directive also outlines the role of the Union Delegations in contributing to the implementation of this right in accordance with Article 35 of the TEU.**
2. This Directive does not deal with the relationship of Member States to third countries.

#### *Article 4 Absence of representation*

1. **A Member State is not represented in a third country if it has no embassy or consulate established there on a permanent basis.**
2. **However, for the purposes of this Directive, a Member State may not be considered to be represented if its embassy or consulate is not in a position to effectively provide protection in a given case.** ~~a Member State shall not be considered to be represented in a third country if it has no accessible embassy or consulate established on a permanent basis in that country. An embassy or consulate established on a permanent basis shall be considered accessible if it is in a position to effectively provide protection in a given case.~~
3. **Citizens of the Union shall not be considered to be unrepresented in a third country if an honorary Consul representing their Member State of nationality is effectively in a position to provide protection to them in a given case.**

*Article 5*  
*Access to consular protection and practical arrangements*

1. Unrepresented citizens shall be entitled to seek protection from the embassy or consulate of another Member State.
2. **Without prejudice to Article 2**, a Member State may represent another Member State on a permanent basis and Member States' embassies or consulates ~~may~~ shall conclude practical arrangements on sharing responsibilities for providing protection to unrepresented citizens unless deemed unnecessary by locally represented Member States, ~~for the effective management of applications for consular protection from unrepresented citizens~~. Such arrangements shall be notified to the Commission and to the EEAS with a view to their publication by the EU and Member States.
3. **With respect to cases in which a practical arrangement has been concluded as provided for in Paragraph 2**, an embassy or consulate from which the unrepresented citizen seeks consular protection, and which is not designated as competent according to the specific arrangement in place, shall ensure that the application from the citizen is redirected to the relevant embassy or consulate, unless effective protection is compromised, in particular if the urgency of the matter requires immediate action **by the requested embassy or consulate**.

CHAPTER 2  
**Coordination and cooperation measures**

*Article 8*  
*General rules*

1. Member States' diplomatic and consular authorities shall closely cooperate and coordinate with one another and with the Union to ensure protection of unrepresented citizens **in accordance with Article 2**.
2. When an embassy or consulate assists an unrepresented citizen **pursuant to Article 2, or is informed of the death, arrest or detention of an unrepresented citizen or of a case in which an unrepresented citizen has been victim of a crime or suffered a serious accident or serious illness**, the embassy or consulate shall contact, when the circumstances permit and except in cases of extreme urgency, the Ministry of Foreign Affairs of the citizen's Member State of nationality, or its nearest regionally responsible embassy or consulate, **and provide it with all the relevant information at its disposal**. The embassy or consulate shall facilitate the exchange of information between the citizen concerned and the authorities of the citizen's Member State of nationality.
3. **If requested, the authorities of the citizen's Member State of nationality** shall provide the embassy or the consulate with all the relevant information in the case concerned. When the circumstances permit, they may decide to deliver consular protection even though they are not represented locally. They are also responsible for any contact with family members or other related person or authorities, and, if necessary, it shall liaise with the citizen's ~~or, as the case may arise, the deceased citizen's~~ family members or other related person or authorities.
4. The relevant contact persons in the Ministries of Foreign Affairs **shall be notified by Member States** to the European External Action Service **through** its secure internet site.

*Article 9*  
*The role of Union delegations*

Upon request from Member States, the Union delegations shall contribute to local and crisis cooperation and coordination. **This may include the following activities:**

- (a) ~~by~~ providing logistical support as available, including office accommodation and organisational facilities, such as temporary accommodation for consular staff and for intervention teams;–
- (b) ~~The Union delegations shall also~~ **facilitating** the exchange of information between Member States' embassies and consulates and, if appropriate, with local authorities;
- (c) **supporting Member States in concluding practical arrangements as referred to in Article 5, and informing unrepresented citizens about their rights, pinpointing them to Member States' representations, according to agreed local arrangements.**

*Article 10*  
*Local cooperation*

Local cooperation meetings shall include a regular exchange of information on unrepresented citizens, on matters such as safety of citizens, prison conditions, consular notification and access and crisis cooperation. In these meetings, **represented Member States shall consider the need to set up and agree, wherever necessary, practical arrangements as referred to in Article 5 to ensure that unrepresented citizens are effectively protected in the third country concerned except if they agree that such an arrangement is not necessary.** ~~Unless otherwise agreed by Member States, the~~ Chair shall be a representative of a Member State, ~~jointly with~~ the Union Delegation **unless decided otherwise locally.** The Chair shall collect and regularly update contact details and share them with the local embassies and consulates ~~and the Union delegation.~~

*Article 11*  
*Crisis preparedness and cooperation*

1. Local contingency planning shall include unrepresented citizens. Member States represented in a third country shall coordinate contingency plans among themselves and with the Union delegation to ensure that unrepresented citizens are fully assisted in the event of a crisis ~~and inform unrepresented citizens of crisis preparedness arrangements under the same conditions as nationals.~~ **Unrepresented citizens should be informed about crisis preparedness arrangements. The nearest regionally responsible competent embassies or consulates shall be fully informed and involved, where relevant.**
2. In the event of a crisis, Member States and the Union shall closely cooperate to ensure efficient assistance to unrepresented citizens. They shall inform each other of available evacuation capacities in a timely manner. Upon their request Member States may be supported by intervention teams at Union level including consular experts, in particular from the unrepresented Member States.

3. In the event of a crisis, **the Lead State** or the Member State(s) coordinating the assistance shall be in charge of coordinating and leading **any evacuation or other support being provided** for unrepresented citizens, with the support of the other Member States concerned and that of the Union delegation. Member States shall provide the Lead State or the Member State(s) coordinating assistance with all relevant information regarding their unrepresented citizens present in a crisis situation. The Lead State or the Member State(s) coordinating the assistance shall provide a contact point for unrepresented Member States through which they can receive information about their citizens and coordinate the necessary assistance. The Lead State or the Member State(s) coordinating assistance for unrepresented citizens may seek, if appropriate, support from instruments such as the crisis management structures of the European External Action Service and the EU Civil Protection Mechanism.

### CHAPTER 3 Financial procedures

#### *Article 12 General rule*

1. **The costs of ~~financial assistance or repatriation of the consular protection or any type of consular protection implying costs for the assisting Member State (s)~~ provided for an unrepresented citizen pursuant to Articles 2, 7 and 8(2) shall be reimbursed by the citizen's Member State of nationality to the assisting Member State.**
2. **For requests for consular protection from unrepresented citizens involving the signature of an undertaking to repay pursuant to the Annex B and C ~~financial assistance or repatriation~~, the following procedure shall apply:**
  - (a) **except in cases of extreme urgency** the assisting embassy or consulate shall **consult** with the citizen's Member State of nationality **in accordance with Article 8(2)**;
  - (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. **It may decide to pay directly for the cost incurred**;
  - (c) the unrepresented citizen shall undertake to repay to his or her Member State of nationality the full value of ~~any financial assistance or~~ **the** cost incurred, plus any consular fee(s) if applicable **using the standard form set out in the Annex**;
  - (d) on written request from the assisting Member State **using the standard form set out in the Annex**, the citizen's Member State of nationality shall reimburse, **within a reasonable period of time which should not exceed 12 months**, the full value of ~~any financial assistance or~~ **the** cost incurred.
3. **For any requests for consular protection, the assisting Member State may send a written request to the citizen's Member State of nationality for the reimbursement, upon appropriate justification, of administrative costs in case they are unusually high. The Member State of nationality shall reimburse within a reasonable period of time which should not exceed 12 months.**

CHAPTER 4  
**Final provisions**

*Article 17*  
*Monitoring, evaluation and review*

1. Member States shall provide the Commission with all relevant information regarding the **implementation and application** of this Directive. **On the basis of the information provided**, the Commission, **with the support of the EEAS**, 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 and application of this Directive **two years after the implementation deadline of the Directive**.
2. The report shall, in particular, address the way in which this Directive has operated and evaluate
  - the prospects for entrusting the Union delegations with any additional tasks and
  - in the light of the information provided by Member States, whether there is any need to review the financial procedures with a view to ensuring an adequate burden sharing among Member States.In this report, the Commission shall consider the need for additional measures, including, where appropriate, amendments to adapt this Directive with a view to further facilitating the exercise of Union citizens' right to consular protection referred to in Article 1.



ANNEX

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

- 1. Requesting Member State's ~~embassy or consulate~~
- 2. Citizen's Member State of nationality  
(~~nearest regionally responsible embassy or consulate or Ministry of Foreign Affairs~~)
- 3. Identification of the event  
(Date, place)
- 3. Data of assisted citizen(s) (to be attached separately)

Full name	Place of birth	Name and number of travel document	Kind of assistance provided
	Costs + <u>fees</u>		

**5. Administrative costs (if deemed excessive upon justification)**

- 6. Total costs
- 7. Bank account for the reimbursement
- 8. Attachment:
  - undertaking to repay (if applicable)
  - **financial justification for administrative costs in case they are unusually high**

**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)

.....  
**citizen of.....**

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 **my country** 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)

.....  
**citizen of.....**

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 **my country**

in accordance with the national law ~~of that country~~ the equivalent of all costs as paid on my account 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 account 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.

## CROATIA

The revised proposal for a Council Directive on consular protection for citizens of the Union abroad (document 13461/13) is more concise compared to the preceding proposals for this legal instrument. Here is our opinion of the proposed draft:

In **Point 9 of the Recital** it is proposed to replace „*with the nearest regionally responsible representations*“ with the wording „*with the nearest regional representations*“.

Consequently, the amended sentence of this Point of the Recital would read:

*„Local consular cooperation may be more complex for unrepresented citizens, as it requires coordination with authorities not represented on the ground, including where relevant with the nearest regional representations.“*

Notably, a representation in charge in a Member State does not have to mean a representation that is also territorially nearest to a Third State in which the Member State is not represented (e.g. Angola is covered by the Croatian Embassy in the Portuguese Republic, the Federal Republic of Nigeria is covered by the Embassy of the Republic of Croatia to the United Kingdom of Great Britain and Northern Ireland).

In **Article 1** of the proposal of the Directive, „*another*“ should be replaced with „*any*“ in order to harmonize the text of this Article with the provision of Article 20(2) of the Treaty of the Functioning of the European Union.

Under Croatian legislation honorary consuls cannot exercise consular functions. For this reason, **paragraph 2 of Article 2** should read:

*„Member States may decide that Paragraph 1 shall not apply to the consular protection provided by honorary consuls, if in accordance with the legislation or practice in a Member State they perform consular duties.“*

It is our view that diplomatic missions or consular posts of Member States could not enter into practical arrangements concerning the effective management of applications of unrepresented citizens of the Union for the provision of consular protection. Such arrangements should be within the scope of the foreign ministries of Member States. **Paragraph 2 of Article 5** should read:

*„Without prejudice to Article 2, a Member State may represent another Member State on a permanent basis, and Member States' Ministries of Foreign Affairs may conclude practical arrangements for the effective management of applications for consular protection by unrepresented citizens. Such arrangements shall be notified to the Commission and to the EEAS with a view to their publication by the EU and Member States.“*

In **Article 7** of the proposal of the Directive, „may“ should be replaced with „*includes or shall include*“. We think it is necessary to mention the consular functions that the diplomatic mission/consular post of a Member State performs at the request of an unrepresented citizen of the Union. In our view this does not encroach upon the jurisdiction of Member States in this area, particularly bearing in mind the proposed provision of Article 2 of the proposal of the Directive. Consequently, the first sentence of this Article should read:

*„The consular protection referred to in Articles 2 and 5 shall include assistance in the following situations:“*

For the reasons mentioned with the proposed amendment to Point 9 of the Recital, it is our view that in **Article 8 paragraph 2** „*nearest regionally responsible embassy or consulate*“ needs to be replaced with „*nearest regional embassy or consulate*.“

## **HUNGARY**

### *Article 6 Identification*

1. The applicant shall establish that he or she is a citizen of the Union by producing a passport or identity card.
2. If the citizen is unable to produce a valid passport or identity card, nationality may be proven by ~~any other means, if necessary~~ **including** verification by the assisting Member State with the diplomatic or consular authorities of the Member State of which the applicant claims to be a national.

### *Article 7 Types of assistance*

The consular protection referred to in Article 2 may include assistance in the following situations:

- (a) arrest or detention;
- (b) being a victim of a **violent** crime;
- (c) serious accident or serious illness;
- (d) death;
- (e) relief and repatriation in case of emergency;
- (f) need for emergency travel documents .

### *Article 8 General rules*

1. Member States' diplomatic and consular authorities shall closely cooperate and coordinate with one another and with the Union to ensure protection of unrepresented citizens in accordance with Article 2.
2. When an embassy or consulate assists an unrepresented citizen pursuant to Article 2, or is informed of the death, arrest or detention of an unrepresented citizen or of a case in which an unrepresented citizen has been victim of a **violent** crime or suffered a serious accident or serious illness, the embassy or consulate shall contact the Ministry of Foreign Affairs of the citizen's Member State of nationality, or its nearest regionally responsible embassy or consulate, and provide it with all the relevant information at its disposal. The embassy or consulate shall facilitate the exchange of information between the citizen concerned and the authorities of the citizen's Member State of nationality. If requested, the latter shall provide the embassy or the consulate with all the relevant information in the case concerned and, if necessary, it shall liaise with the citizen's or, as the case may arise, the deceased citizen's, family members or other related person or authorities.

***Hungary suggests using the term “victims of violent crime” throughout the Directive, similarly to the wording of Decision 95/553/EC.***

## **ITALY**

Italy believes that consular protection for citizens of the Union in Third Countries could be better addressed through improved cooperation. An appropriate and effective action (day to day and crisis cooperation) can be assured with simple, clear and easily applicable principles, rather than on the basis of detailed regulations. On the contrary, the draft Directive would make consular assistance more cumbersome and difficult, eventually making it harder for each Member State to help EU citizens and to find appropriate response in case of distress/crisis.

Italy, indeed, supports the proposal of the others MS to explore best practices and pilot projects.

## LATVIA

### **Article 4**

Latvia deems that there is an overlapping between the Paragraph 1 and the first sentence in the Paragraph 2 – both aim to make clear that a Member State is not represented if it does not have a representation in a third country “established on a permanent basis”. Hence Paragraph 1 might be considered redundant and could be deleted.

### **Article 5**

Given the fact that the rules and administrative procedures of consular services, including consular fees and charges, vary greatly between Member States<sup>2</sup>, Latvia has concerns that burden sharing arrangements might cause considerable differences in the types of services provided and fees applied in regards to non-represented EU citizens. On the other hand, burden sharing arrangements can be helpful and justified if they raise the “preparedness to provide effective protection” as mentioned in the recital (12). Especially this might be true in preparing contingency plans for the event of crisis. It is important that non-represented EU citizens are informed about any burden sharing arrangements.

Hence, Latvia believes that the following points from the recital 12 of the Preamble should be integrated into Article 5:

“Such arrangements should be beneficial to citizens, since they may allow for better preparedness to provide effective protection”.

“Any such arrangement should be notified to the Commission and to the European External Action Service (EEAS) and published by the EU and Member States to ensure transparency for unrepresented citizens.”

Taking into account the “practical” nature of the burden sharing arrangements, Latvia suggests replacing the word “competent” both in the Paragraph 2 and in recital 12 with a less formal term, for instance, “responsible”.

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<sup>2</sup> Remarkable example of this is the differences in fees charged by different Member States when issuing Emergency Travel Document with amounts ranging from free of charge up to 124 EUR.

## **Article 10**

Latvia suggests that the last sentence needs a clarification as regards “contact details” – are these details of the consular officers of the local embassies and consulates or details of third country authorities.

## **Article 11**

Latvia suggests that recital 23 of the Preamble should be integrated into Article 11.

## **Article 12**

Latvia supports the implementation of clear financial mechanisms to compensate the costs of the consular protection provided for unrepresented citizens. Simultaneously, Latvia would prefer to retain the principle that financial assistance is granted if it has a prior approval by the member state of nationality as laid out in Article 6 of 95/553/EC Decision. The current wording of simple “consultation” for this purpose does not seem sufficient. The opinion given by the Member State of nationality as regards the provision of financial assistance should be of a more binding character.

Latvia would like to see that the principle cited in recital (25) of the Preamble that the “directive cannot be relied on by Union citizens in the event of abuse” is integrated into Article 12.

Latvia fully supports the initiative that Member State of nationality has the right to take over the “consular assistance file”, in particular relating to financial assistance to its non-represented citizen, and handles it directly.

Latvia would like to inquire into the reasoning behind the reference to Article 8(2) in Paragraph 1 of article provided that the reference to it is already provided further in Paragraph 2.



**Additional comment on financial mechanisms:**

Latvian consular service provides financial assistance in emergency situations for repatriation to Latvia since June 2012 when special budgetary funding was allocated for this purpose. This is highly appreciated by our consular officials who now have an additional ‘tool’ to help our distressed nationals in case of emergency. Nevertheless, a few problems have been encountered. It is next to impossible to recover the financial means once the person who has received financial assistance has moved away from its country of nationality (e.g. exercising its right to freedom of movement). This is even truer in situations when the person’s new address in another Member State is not known to the authorities of the country of nationality. It should be reminded that there are few Member States with centralised population registers and the exchange of data between them is very limited. Thus, as our current experience shows, a substantial part of costs charged by ‘represented Member States’ will be in the end borne by the public funding of non-represented Member State not an assisted individual. Hence, in Latvia’s opinion a kind of prior ‘approval’ for financial assistance by the authorities of non-represented Member State is fully justified.

In the context of the directive, Latvia deems that it would be beneficial to learn about the rules and procedures based on which Member States provide any financial assistance and consular fees charged for providing consular assistance.

## THE NETHERLANDS

The Netherlands is of the opinion that the text of this revised proposal has improved. However, a number of concerns remain. The Netherlands offers the following comments on the proposal, amendments in capital letters.

### International Law Aspects

A crucial issue concerning international law aspects (specifically recital 8 and article 2 under 1) needs to be addressed. The current text encompasses EU-obligations for MS that might not be tenable from an international law perspective (if a third country would object thereto).

The Netherlands therefore proposes the following changes to the text:

In recital 8, a full stop after "...international agreements" and delete the text "that Member States apply... for in Article 351 TFEU.

Furthermore, recital 8, reflects the obligations under the Vienna Convention incorrectly. By adding the words "after appropriate notification" in the second sentence, this can be corrected. The text of recital 8 will then read as follows:

"This Directive does not concern the relations of Member States with third countries, in particular their rights and obligations arising from international agreements. The Vienna Convention on consular relations provides that Member States may provide consular protection on behalf of another Member State **AFTER APPROPRIATE NOTIFICATION**, unless the third country concerned objects. Member States, **supported by the local consular cooperation**, should undertake the necessary measures in relation to third countries to ensure that consular protection on behalf of other Member States can be provided."

In that respect, article 2.1, needs to be rewritten too, since consular protection to unrepresented EU-members can only be given with consent (i.e. absence of objection) from the third country in which the protection is requested. Article 2.1 could read as follows:

"Member States' embassies or consulates shall provide consular protection to unrepresented citizens **as defined in Article 3** on the same conditions as to their own nationals, **EXCEPT WHERE A THIRD COUNTRY OBJECTS IN ACCORDANCE WITH ARTICLE 8 OF THE VIENNA CONVENTION ON CONSULAR RELATIONS.**"

## **Family Members**

The Netherlands is concerned about the wording of article 3(2). It foresees that problems might occur given the differences throughout the Member States with regard to the interpretation of “family member”. Persons, who are considered to be a family member of an unrepresented citizen under Dutch law, might not be eligible for consular protection under the law of another Member State.

Therefore, the Netherlands suggests redrafting art. 3(2) as follows:

“2. Family members of unrepresented citizens who themselves are not citizens of the Union shall ~~only~~ be eligible for consular protection in accordance with the law or practice of the assisting Member State, under the same conditions as the family members of its own nationals who themselves are not citizens of the Union.

IN ADDITION TO PARAGRAPH 2, MEMBER STATES MAY OFFER CONSULAR PROTECTION TO NATIONALS OF A MEMBER STATE WHO ARE CONSIDERED TO BE A FAMILY MEMBER OF AN UNREPRESENTED CITIZEN ACCORDING TO THE LAW OF THE MEMBER STATE OF WHICH THEY ARE A NATIONAL.”

## **Nationality**

The Netherlands wishes to give the following information with regard to article 6. Ownership of a Dutch passport does not necessarily entail Dutch citizenship. Furthermore, in some cases, the Netherlands will verify the nationality with the diplomatic or consular authorities of the Member State of which the applicant claims to be a national before protection is given (for instance to issue a passport). If there appear to be any issues when issuing a passport (for instance in the case of international child abduction), the Dutch system will automatically give a warning, after which appropriate action can be taken. Thus, the handing over of a passport will not automatically establish nationality and a check needs to be part of the procedure. Therefore, the Netherlands proposes to add the following sentence to art. 6(1):

“The applicant shall establish that he or she is a citizen of the Union by producing a passport or identity card. THE ASSISTING MEMBER STATE SHALL VERIFY THE NATIONALITY WITH THE DIPLOMATIC OR CONSULAR AUTHORITIES OF THE MEMBER STATE OF WHICH THE APPLICANT CLAIMS TO BE A NATIONAL”.

With respect to article 6(3), “identity” should be replaced by “nationality” since the action is needed to verify whether the person qualifies as an EU-citizen.

### **Consular protection**

The Netherlands is of the opinion that the list of types of protection in article 8(2) may lead to the wrongful assumption that EU-citizens have a right to consular protection in said cases. Therefore the Netherlands suggests to replace the list with a reference to article 7:

“8(2): “When an embassy or consulate assists an unrepresented citizen **pursuant to Article 2, or is informed of one of the situations listed in article 7,**~~death, arrest or detention of an unrepresented citizen or of a case in which an unrepresented citizen has been victim of a crime or suffered a serious accident or serious illness~~ the embassy or consulate shall contact the Ministry of Foreign Affairs of the citizen’s Member State of nationality, or its nearest regionally responsible embassy or consulate, and provide it with all the relevant information at its disposal. The embassy or consulate shall facilitate the exchange of information between the citizen concerned and the authorities of the citizen’s Member State of nationality. If requested, the latter shall provide the embassy or the consulate with all the relevant information in the case concerned and, if necessary, it shall liaise with the citizen’s or, as the case may arise, the deceased citizen’s, family members or other related person or authorities.

### **Financial procedure**

With regard to article 12, financial procedures, the Netherlands prefers to continue the current practice whereby the costs incurred are reimbursed on the basis of bilateral agreements. Therefore, the Netherlands believes the standard form set out in the Annex is unnecessary. It proposes to amend articles 12(c) and (d) as follows:

“(c)The unrepresented citizen shall undertake to repay to his or her Member State of nationality the full value of any financial assistance or cost incurred, plus any consular fee(s) if applicable **using the standard form set out in the Annex;**

(d) ~~on written request from the assisting Member State using the standard form set out in the Annex, the citizen’s Member State of nationality shall reimburse, within a reasonable period of time which should not exceed 12 months, the full value of any financial assistance or cost incurred.”~~

It would be constructive to define “crisis situations” in article 13.

## Pilot projects

Last but not least, the Netherlands sees that joint initiatives on setting-up and executing pilot projects with (most or) all MS can help in writing the daily practice into a workable Council Directive.

## POLAND

***Poland supports prompt conclusion of the work on the Presidency proposal for the Council Directive within the Working Party on Consular Affairs and further referral of the elaborated compromise text (to Coreper).***

### *Article 1 Subject matter*

1. This Directive lays down the coordination and cooperation measures, necessary to facilitate the exercise of the right, as referred to in point c of Article 20(2) of the TFEU, of citizens of the Union to **enjoy**, in the territory of a third country in which the Member State of which they are nationals is not represented, **the** protection by the diplomatic and consular authorities of ~~another~~ **any** Member State, on the same conditions as the nationals of that Member State.

*Comment: The right granted by the Article 23 of the TFEU refers to the protection by the diplomatic and consular authorities of any Members State. The change of the wording (another) does not remain in compliance with the idea behind this strong right of the citizen of the Union, which in particular consists of the possibility to choose which consular or diplomatic post they wish to turn to.*

### *Article 2 General principle*

1. Member States' embassies or consulates shall provide consular protection to unrepresented citizens **as defined in Article 3** on the same conditions as to their own nationals.
2. **Member States may decide that Paragraph 1 shall not apply to the consular protection provided by honorary consuls.**

*Comment: It is vital for these decisions to be communicated within local consular cooperation.*

### *Article 3 Beneficiaries*

2. Family members of unrepresented citizens who themselves are not citizens of the Union **shall may** only be eligible for consular protection in accordance with the law or practice of the assisting Member State, under the same conditions as the family members of its own nationals who themselves are not citizens of the Union, **with respect of the applicable international law and the law of the receiving third country.**

*Comment: Consular protection of third country nationals is restricted by the Vienna Convention on Consular Relations. The receiving third country may object to the performance of consular functions by a Member State on behalf of another. This may concern, in particular, citizens of the receiving third country.*

*Article 5*  
*Access to consular protection and practical arrangements*

1. Unrepresented citizens shall be entitled to seek protection from the embassy or consulate of ~~another~~ **any** Member State.
2. Without prejudice to Article 2, a Member State may represent another Member State on a permanent basis and Member States' embassies or consulates may conclude practical arrangements for the effective management of applications for consular protection from unrepresented citizens. Such arrangements shall be notified to the Commission and to the EEAS with a view to their publication by the EU and Member States.
3. With respect to cases in which a practical arrangement has been concluded as provided for in Paragraph 2, an embassy or consulate from which the unrepresented citizen seeks consular protection, and which is not designated as competent according to the specific arrangement in place, shall ensure that the application from the citizen is redirected to the relevant embassy or consulate, unless effective protection is compromised, in particular if the urgency of the matter requires immediate action by the requested embassy or consulate.

*Article 7*  
*Types of assistance*

The consular protection referred to in Article 2 may **in particular** include assistance in the following situations:

- (a) arrest or detention;
- (b) being a victim of crime;
- (c) serious accident or serious illness;
- (d) death;
- (e) relief and repatriation in case of emergency;
- (g) need for emergency travel documents<sup>3</sup>.

*Article 8*  
*General rules*

1. Member States' diplomatic and consular authorities shall closely cooperate and coordinate with one another and with the Union to ensure protection of unrepresented citizens in accordance with Article 2.

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<sup>3</sup> 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.

2. When an embassy or consulate assists an unrepresented citizen pursuant to Article 2, or is informed of the death, arrest or detention of an unrepresented citizen or of a case in which an unrepresented citizen has been victim of a crime or suffered a serious accident or serious illness, the embassy or consulate shall contact the Ministry of Foreign Affairs of the citizen's Member State of nationality, or its ~~nearest~~ regionally responsible embassy or consulate, and provide it with all the relevant information at its disposal. The embassy or consulate shall facilitate the exchange of information between the citizen concerned and the authorities of the citizen's Member State of nationality. If requested, the latter shall provide the embassy or the consulate with all the relevant information in the case concerned and, if necessary, it shall liaise with the citizen's or, as the case may arise, the deceased citizen's, family members or other related person or authorities.

*Comment: One should distinguish between the "nearest" or the "regionally responsible" post. The nearest post is not always the regionally responsible one.*

*Article 10  
Local cooperation*

Local cooperation meetings shall include a regular exchange of information on unrepresented citizens, on matters such as safety of citizens, prison conditions, consular notification and access and crisis cooperation. In these meetings, Member States shall consider the need to set up and agree, wherever necessary, practical arrangements to ensure that unrepresented citizens are effectively protected in the third country concerned. Unless otherwise agreed by Member States, the Chair shall be a representative of a Member State **assisted by** the Union Delegation. The Chair shall collect and regularly update contact details and share them with the local embassies and consulates and the Union delegation.

*Article 11  
Crisis preparedness and cooperation*

1. Local contingency planning shall include unrepresented citizens. Member States represented in a third country shall coordinate contingency plans among themselves and with the Union delegation to ensure that unrepresented citizens are fully assisted in the event of a crisis and inform unrepresented citizens of crisis preparedness arrangements under the same conditions as nationals. The ~~nearest~~ regionally responsible embassies or consulates shall be fully informed and involved, where relevant.

*Article 17*  
*Monitoring, evaluation and review*

2. The report shall, in particular, address the way in which this Directive has operated and evaluate

- the **advisability and** prospects for entrusting the Union delegations with any additional tasks and
- in the light of the information provided by Member States, whether there is any need to review the financial procedures with a view to ensuring an adequate burden sharing among Member States.

In this report, the Commission shall consider the need for additional measures, including, where appropriate, amendments to adapt this Directive with a view to further facilitating the exercise of Union citizens' right to consular protection referred to in Article 1.



## PORTUGAL

Regarding Chapter 1, PT would appreciate a deeper reflection about the role of Honorary Consuls.

On Chapter 3, it is necessary to make sure that the implementation of this directive will not mean a further enhancement of consular protection charges, since our budgetary expenses cannot be increased.

In detail, we propose:

**Recital (25)** delete “*when circumstances permit and except in cases of extreme urgency*”. We believe that the assisting MS should contact the citizen’s MS of nationality before giving any financial assistance in order to prevent abuse and also to give the MS of nationality the information necessary to choose whether to receive assistance from that specific embassy or to arrange some other way to do it.

**Recital (27)** delete the last sentence. Dividing the cost incurred with a large scale evacuation by the assisted MS on a pro-rata basis may prove to be impossible to reimburse. When military means, for instance, are mobilized for an evacuation, the pro-rata cost of that operation is too expensive for any citizen to reimburse. Until now, in all evacuation operations that have had a European dimension, European solidarity has prevailed, and no MS felt it had helped more than been helped. The principle of reimbursement should be clear in the directive but the means to do it in every situation, and in particular a pro-rata division does not seem realistic.

**Article 1, paragraph 2** – delete.

**Article 2, paragraph 2** – delete. Portuguese Honorary Consuls do not provide consular protection. It should read the opposite: “*MS may decide that paragraph 1 may apply to the consular protection provided by honorary consuls*”.

**Article 12, paragraph 2 (a)** – delete “*except in cases of extreme urgency*”, for the same reasons explained regarding Recital (25).

**Article 13, paragraph 2**, delete for the same reasons explained above for recital (27).

## **SWEDEN**

### **1. Who owns the protection?**

The directive takes as starting point the right for a non-represented EU citizen to receive protection from another EU member state. That is a rights based approach, in line with article 23 of the TFEU. At the same time the main purpose of the cooperation between member states is and should be to ensure that efficient consular protection is actually given to EU citizens. In that respect, Sweden finds that the directive is somewhat static, and does not fully take account neither of modern day possibilities, nor of actual practice of consular affairs as they are dealt with in the field. In a number of cases, consular protection, or consular services, can effectively be given by the Member State of nationality, regardless of whether or not that Member State is represented. In other cases, the situation may evolve so that the member state of nationality can deliver the needed consular protection. This is best perhaps illustrated by examples: A guarantee for a hospital bill can be made from the consular department in the capital. A defence lawyer may be hired and paid for in the same fashion. A prisoner may be visited by personnel from a nearby embassy. Honorary consuls (see Sweden's comments under 2.) may deliver certain services.

In this perspective it does not seem in line with the purpose of the directive or of our consular cooperation if it were the choice of the citizen in need that should be determinant. The same reasoning applies to crisis situations. It does not seem equitable that a person should be able to refuse to board an evacuation aeroplane – in a country where his state of citizenship is not represented – of his own country in favour of a plane from another EU state.

Sweden therefore finds that it is essential that any EU member state should be given the possibility to offer, even impose, consular protection to its citizens regardless whether or not it is represented in a certain country. This would also bring an answer to the question of “consular shopping”, which has repeatedly been brought forward during our negotiations. This might be taken care of with the insertion of a paragraph in the very beginning of the directive:

*This directive does not apply when the State of citizenship can/is in a position to/is willing to offer effective consular protection in accordance with its own legislation and procedures.*

Should this not be possible, Sweden shall want an in-depth discussion on the concept of “protection”.

## 2. Role of honorary consuls

Regarding honorary consuls, Sweden would like to see the directive take a reversed approach, compared to what is currently the case. This is most easily done by removing “not” in the wording of article 2, paragraph 2:

*2. Member States may decide that Paragraph 1 shall ~~not~~ apply to the consular protection provided by honorary consuls*

Honorary consuls do not fully represent the country by which they are appointed, in the way that an embassy or a consulate general does. Therefore, for the purposes of the directive, it should not be assumed that honorary consuls are by default part of a Member State’s system for consular protection in full. Moreover, if it is presumed that a Member State is represented in every given country where it has an honorary consul, at least Swedish citizens would not find themselves unrepresented anywhere in the world. The same probably applies to a number of other Member States.

The on-going discussion in Cocon with regard to honorary consuls shows that the practise of consuls is diverging among Member States. What tasks Member States appoint and what expectations are put on our honorary consuls are dependent on the situation for every individual consul and every individual case. The presumption that exists in the current proposal puts too much of a burden on them.

### 3. Non-EU family members

Sweden still has concerns regarding assistance provided to non-EU family members, for two reasons. Firstly, Sweden is not convinced that such a right to consular protection, as is expressed in recital 11 and article 3.2., can actually be derived from article 7 of the Charter of Fundamental Rights. A legal opinion on this matter has previously been asked for. Secondly, if it is found that such a right actually does exist, Sweden is concerned that diverging definitions among Member States of who are considered family members, might lead to unequal treatment of such non-EU family members. The reference in recital 11 to Directive 2004/38/EC does not suffice to ease this concern, as this directive states that “*Family member*” means: ... *... (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State*” (Art 2.2., “host Member State” is this case being equivalent to “assisting Member State”). There is thus reason to believe that, under the proposed directive, a given Member State might for example have to assist non-EU spouses of unrepresented EU citizens, while other Member States might not have to assist for example non-EU same-sex partners of unrepresented EU citizens, depending on their national legislation and practise. This would clearly be against the principles of equal treatment and non-discrimination and difficult for Sweden to accept.

### 4. Recitals

During the process of making the articles of the proposal less detailed, one which Sweden very much appreciates, a lot of substance has however moved from articles to recitals, rendering the latter in need of shortening. Sweden thus suggests that at least recitals 5, 15 and 16 be removed, as they can be considered redundant, even in recitals.

### 5. Financial questions

There are a number of uncertainties regarding the financial issues, and in particular questions relating to reimbursement. Sweden will revert to these.

## SLOVENIA

### *Article 4 Absence of representation*

1. **For the purposes of this Directive Aa Member State is not represented in a third country if it has no embassy or consulate established there on a permanent basis or if it has an embassy or consulate which is not in a position to effectively provide protection in a given case.**
2. ~~For the purposes of this Directive, a Member State shall not be considered to be represented in a third country if it has no accessible embassy or consulate established on a permanent basis in that country. An embassy or consulate established on a permanent basis shall be considered accessible if it is in a position to effectively provide protection in a given case.~~

## SLOVAKIA

In the preamble point 11 there is stated that "*Any definition as to which persons are family members eligible for protection 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 States. Member States may not be in position to deliver certain types of consular protection to third country family members; in particular, emergency travel documents are not issued*".

We would like to propose that the issuance of emergency travel documents should be limited strictly to unrepresented EU citizens and not to family members of unrepresented EU citizens defined under the Directive 2004/38/EC.

### **Explanatory note:**

Under the Slovak legislation, authorities are competent to issue emergency travel documents only to Slovak citizens and EU citizens. There is no legal competence to issue a travel document to that type of third country nationals. In this context, we would like to solve the emergency situation with the third country nationals who are family members of unrepresented EU citizens, for example, by the issuance of national visas, but not by the issuance of the travel documents which would authorize the holders to travel in the whole Schengen Area without restrictions.

## UNITED KINGDOM

The United Kingdom recognises the considerable effort put into trying to identify an agreed text that could form the basis of a Directive.

The extensive discussions at COCON over the last few years have been helpful in clarifying the extent of Member State obligations under the Treaty.

Given that Member States have a common understanding of their obligations under the Treaty, the United Kingdom continues to believe that the proposed Directive is unnecessary. The current arrangements for providing assistance to unrepresented EU nationals work well (the United Kingdom has been able to provide a number of unrepresented EU nationals with pragmatic and timely consular assistance in recent months without a Directive). The proposed Directive would not enhance that cooperation. Indeed, the Directive could inadvertently constrain the ability of Member States to provide assistance on behalf of each others' nationals. As some Member States have observed, any proposed regulation that is too detailed would not serve to provide citizens with an improved service.

Furthermore, the United Kingdom considers that the proposed Directive adds unnecessary bureaucracy at a time when we are collectively striving to reduce the amount of unnecessary regulation being introduced.

The United Kingdom wishes to remind the Presidency that it maintains a general reserve on the proposal.

The UK notes that the role of the EEAS in this field is being examined separately in the context of COREPER discussions of the EEAS Review.

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