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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2023) 942 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Council Directive amending Directive (EU) 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and Directive (EU) 2019/997 establishing an EU Emergency Travel Document

Delegations will find attached document SWD(2023) 942 final.

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Brussels, 6.12.2023
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Council Directive

amending Directive (EU) 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and Directive (EU) 2019/997 establishing an EU Emergency Travel Document

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{SWD(2023) 941 final}

1. NEED FOR ACTION

1.1 What is the problem and what are its causes and consequences?

EU citizens are entitled to the protection of the diplomatic and consular authorities of any other Member State under the same conditions as the nationals of that Member State. This right is set out in Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union and in Article 46 of the Charter of Fundamental Rights of the European Union. The coordination and cooperation measures necessary to facilitate the exercise of that right are laid down in Council Directive (EU) 2015/637¹.

On a day-to-day basis, consular protection is provided to a limited number of unrepresented EU citizens in need of assistance abroad. However, consular protection to unrepresented EU citizens is likely to become more common in the future as the frequency, severity and duration of crises with a consular element are likely to increase. Over the last few years, several large-scale events have required the provision of consular protection to EU citizens, in particular: the COVID-19 pandemic; the conflict in Afghanistan; Russia's war of aggression against Ukraine; and, more recently, the conflict in Sudan and the repatriations from Israel and Gaza.

These crises have demonstrated the need to: (i) improve the consular protection framework; and (ii) strengthen coordination and cooperation among Member States. They have also illustrated how existing rules have gaps that can create legal uncertainty and undermine the effective provision of consular assistance to EU citizens. In particular, the rules fail to reflect the increasing role of EU delegations in supporting Member States in providing assistance to unrepresented EU citizens. The existing rules also do not address important recent developments in cooperation among Member States on crisis preparedness.

On this basis, a number of challenges to the effective exercise of EU citizens' right to consular protection have been identified. These challenges include: (i) an imprecise definition of the term 'unrepresented citizen'; (ii) unclear assignment of roles and tasks in local consular cooperation meetings; (iii) a lack of systematic consular contingency planning; (iv) the ineffectiveness of the 'Lead State' concept²; and (v) legal uncertainty related to the role of EU delegations in supporting Member States. In addition, there are inconsistencies in the information on consular assistance provided to EU citizens and there is a lack of reliable information on EU citizens living or travelling abroad. Finally, the procedures for reimbursing consular authorities for the assistance they provide are complex, under-used, and do not cover EU delegations.

1.2 What should be achieved?

The **general objective** of the policy initiative in this area is to improve the exercise of the right to consular protection by unrepresented EU citizens. This would be achieved through the following **specific objectives**: (i) to increase legal certainty for EU citizens about the scope of the right to consular protection; (ii) to ensure clear roles, coordination and cooperation mechanisms between Member States and EU delegations, including in times of crisis; (iii) to improve communication with EU citizens and to provide them with high-quality information; and (iv) to increase the efficiency and use of the financial reimbursement procedures.

¹ Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC (OJ L 106, 24.4.2015, p. 1).

² The term 'Lead State' refers to one or more Member State(s) represented in a given third country, and in charge of coordinating and leading the assistance of unrepresented citizens during crises.

2. SOLUTIONS

2.1 What are the options to achieve those objectives?

The impact assessment examined several policy options for each specific objective with a range of potential measures to address the problems.

The options under the first objective seek to ensure that the definition of ‘unrepresented EU citizen’ is clarified and improved to avoid future cases in which unrepresented EU citizens are not assisted on the basis of an incorrect interpretation or assessment of the situation by Member States. In particular, this objective seeks to address situations where the citizen’s Member State of nationality is in principle represented in the third country concerned by an embassy or consulate, but where it is unclear whether that embassy or consulate should be considered as ‘effectively in a position to provide consular protection’. Policy **option 1(a)** offers ‘soft’, non-binding measures, while policy **option 1(b)** proposes legislative changes to clarify the definition found in the Directive. Policy **option 1(c)** proposes the introduction of a new ‘presumption of unrepresentedness’.

Under the section for the second specific objective, the impact assessment examined options that address the problems related to the main concepts and processes through which Member States and EU delegations interact to provide consular assistance to unrepresented citizens. On local consular cooperation networks, policy **option 2(a)** consists of ‘soft’ measures to better structure the different responsibilities in such networks, and policy **option 2(b)** proposes to assign the role of the chair of local consular cooperation meetings to the EU delegations. Policy **option 2(c)** consists of legislative amendments reviewing the concept of ‘Lead State’ and deciding on the assignment of clear tasks, in so-called joint consular contingency plans, to the different actors involved. Policy option 2(c) also proposes to include provisions on such plans and so-called joint consular teams in Directive (EU) 2015/637. Policy **option 2(d)** consists of legal amendments to clarify the supporting role of EU delegations, notably by aligning the provisions in the Directive with Council Decision 2010/427/EU³ on the European External Action Service (EEAS). Finally, policy **option 2(e)** consists of legal amendments granting EU delegations new powers that would enable them to provide direct consular protection to unrepresented citizens in uncovered third countries upon request from the citizen.

Options that pursue the third specific objective address the main drivers of the problems linked to communication with citizens, namely: (i) problems with the information provided to citizens by Member States and the EU; and (ii) the lack of information on citizens travelling or residing abroad. On the first issue, policy **option 3(a)** proposes legal amendments with new requirements on the provision of information, while policy **option 3(b)** proposes setting up an EU travel-advice portal. On the second issue, policy **option 3(c)** recommends an EU-wide communication campaign, and policy **option 3(d)** requires Member States to promote measures enabling EU citizens to inform national authorities of their travel or residence abroad.

Finally, the options under the fourth specific objective aim at reducing the complexity and ineffectiveness of existing financial reimbursement procedures (reimbursing the consular authorities for assistance they provide to citizens of another Member State) so that these procedures are faster and used more often for the benefit of EU citizens and Member States. Policy **option 4(a)** offers ‘soft’ measures to clarify the reimbursement process and provide training to Member States, while policy

³ Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

option 4(b) proposes legal amendments to improve the reimbursement procedures and to extend them to EU delegations to ensure compliance with the cost-neutrality requirement in Decision 2010/427/EU.

2.2 What is the preferred combination of options?

The preferred combination of options would result in the following legislative amendments to Directive (EU) 2015/637:

- **Option 1(b):** clarifying the definition of what it means for an EU citizen to be unrepresented;
- **Option 2(b):** the chairing of local coordination meetings, as a rule, by EU delegations;
- **Option 2(c):** formalising joint consular contingency plans and joint consular teams and reviewing the ‘Lead State’ concept;
- **Option 2(d):** strengthening the supporting role of EU delegations and aligning the text with Decision 2010/427/EU;
- **Option 3(a):** requiring Member States to regularly provide the Commission and the EEAS with information on their consular networks, honorary consuls, and bilateral and practical arrangements for providing consular protection;
- **Option 3(d):** requiring Member States to promote measures enabling EU citizens to inform consular authorities of their travels to or record their presence in third countries;
- **Option 4(b):** allowing assisting Member States to require unrepresented citizens to repay costs directly and extending reimbursement mechanisms to EU delegations.

3. IMPACTS OF THE PREFERRED OPTION

3.1 Benefits and costs of the preferred option

The main benefit of the preferred option would be a more effective and efficient exercise of the right to consular protection by unrepresented EU citizens. This would be achieved through clarification of definitions and procedures, thus increasing legal certainty for citizens and Member States. Better preparedness and coordination measures, as well as a robust legal framework for the role of EU delegations, will result in the better protection of EU citizens, in particular in crisis situations.

Other benefits would include improved communication with EU citizens, including through facilitated access to reliable information and increased recording of citizens’ travels and residence abroad. The preferred measures also entail: (i) small savings and efficiencies for national administrations; and (ii) time saving and reduced burden for EU citizens.

The costs of the preferred option to be borne by Member States and the EU are very limited.

3.2 Subsidiarity and complementarity of the action at EU level

Consular protection for unrepresented citizens entails, by definition, a cross-border dimension, given its nature as an EU citizenship right enjoyed vis-à-vis the authorities of Member States other than those of one’s nationality. As a result, it cannot effectively be addressed by Member States acting individually.