



Council of the  
European Union

Brussels, 21 April 2021  
(OR. en)

7938/1/21  
REV 1

LIMITE

COCON 24  
CFSP/PESC 383  
JUSTCIV 66

#### NOTE

From:	General Secretariat of the Council
To:	Working Party on Consular Affairs
No. prev. doc.:	WK 3879/2021 REV 1; WK 923/2021; ST 8280/16
Subject:	Revised Joint Demarche Toolkit on procedural issues following lessons learnt from the COVID-19 consular crisis

Delegations will find attached the above-mentioned document as agreed by the members of the Consular Affairs Working Party on 16 April 2021 following written consultation.

This revised version only contains changes to the formatting of the document.

**Consular Démarches : Toolkit on procedural issues**

<b>Opportunity for a joint consular démarche?</b>	<b>Content</b>	<b>Preparation</b>	<b>Roles</b>	<b>Wording and delivery</b>
<p><b>In all cases:</b></p> <ul style="list-style-type: none"> <li>- The main drive is solving pending consular cases;</li> <li>- Bilateral approach is not having a satisfactory impact.</li> </ul> <p><i>The opportunity for a joint démarche will logically be discussed at local level. Local EU consular/HoM meetings provide for the exchange of information and best practices.</i></p>	<p><b>Consular - national competence addressing currently pending cases, also including reminder démarches</b></p> <p><i>(e.g. prison conditions, pre-trial detention, access to detainees, etc.) and possibly</i></p> <p>Exercise of national foreign/consular policy</p> <p><i>(e.g. with a view to permanent change to avoid future cases)</i></p>	<p><b>Coordination of Member States</b> [concerned] within COCON (hereinafter 'COCON coordination'). Concrete steps are:</p> <ul style="list-style-type: none"> <li>- Local EU presidency and capital consult on               <ul style="list-style-type: none"> <li>a) opportunity</li> <li>b) involvement of MS in COCON</li> <li>c) joining of like-minded countries;</li> </ul> </li> <li>- Text of consular démarche can be developed based on templates;</li> <li>- Presidency reaches agreement with MS in COCON / like-minded countries;</li> <li>- Presidency instructs local Presidency on démarche;</li> <li>- Follow-up will be discussed and monitored in COCON.</li> </ul> <p><b>Reminder démarche:</b></p> <ul style="list-style-type: none"> <li>- Presidency and local presidency monitor. Both can take the initiative for a reminder démarche.</li> <li>- Same procedure as above.</li> <li>- Presidency instructs local presidency on démarche to make sure that démarche is executed along the same lines as the first démarche.</li> </ul>	<p><b>Presidency:</b></p> <ul style="list-style-type: none"> <li>- Leads consultations locally and in COCON;</li> <li>- Delivers démarche;</li> <li>- Monitors and reports back to COCON.</li> </ul>	<p><b>Wording:</b></p> <p>'EU Member States'</p> <p><b>Delivery (three options):</b></p> <ol style="list-style-type: none"> <li>1. Rotating presidency</li> <li>2. EU delegation (on behalf of EU Member States)</li> <li>3. Each Member State in parallel</li> </ol>

	<b>Extraordinary consular circumstances in third countries</b>	<ul style="list-style-type: none"> <li>- Immediate follow-up actions<sup>1</sup> may not require further agreement of the MS in COCON. The outcomes are reported to them.</li> <li>- Presidency seeks agreement of MS within COCON to a temporary mandate allowing it to prepare and deliver consular démarches / notes verbales to third-country authorities without their prior agreement if urgency so requires and only in the context of extraordinary consular circumstances. This mandate will be clearly limited in time and in scope (geographic/thematic).</li> <li>- The text of the relevant démarche / note verbale is consolidated locally.</li> <li>- Presidency informs the MS in COCON of the outcome of such démarches / notes verbales.</li> <li>- Further details and templates in Annex.</li> </ul>		
	<b>Mixed - consular and exercise of EU foreign policy (CFSP)</b> ( <i>Seeking solution for pending cases and also permanent change to avoid future cases, state of legislation, respect of human rights, etc.</i> )	<ul style="list-style-type: none"> <li>- COCON coordination for the part concerning currently pending consular cases. Those MS without pending cases who are interested in joining do so on their own foreign/consular policy.</li> <li>- In consultation with the CFSP geographic WP for political part.</li> </ul>	<b>Presidency:</b> <ul style="list-style-type: none"> <li>- Leads consultations in COCON and with like-minded countries;</li> <li>- Consults the relevant geographic CFSP working party;</li> <li>- Delivers démarche;</li> <li>- Monitors and reports back to COCON.</li> </ul>	<b>Wording:</b> 'EU and its Member States' (exercise of CFSP)  <b>Delivery:</b> Three options as above, together with EU Del for the CFSP part (HR could also be delivering at his/her level).

<sup>1</sup> For instance, when a démarche may be more effective if also delivered to another authority not identified at the time of approval, or when additional factual elements may be added to the text to make it more effective.

	<p><i>The concrete consular issue can have a link with the exercise of the EU CFSP, for example in the context of an open political dialogue with the country (for instance, an EU démarche on prison conditions for EU citizens connects with the EU human rights dialogue with that country) or a binding agreement with the country where procedures are stipulated in the case of infringements.</i></p>		<p><b>CFSP geographic working party:</b></p> <ul style="list-style-type: none"><li>- looks at the political part of the démarche. The advice of the CFSP working party could be that the joint démarche can be held as above (consular), or that the démarche has to be amended to include foreign policy aspects.</li><li>- If policy is the sole basis for the démarche and the text does not refer to specific consular cases, the policy working party takes over.</li></ul>	
<p><b>Mixed – consular and external projection of EU exclusive internal competence</b></p> <p><i>The concrete consular issue is coupled with an EU exclusive competence.</i></p> <p><i>For instance, international child abduction.</i></p>	<ul style="list-style-type: none"><li>- COCON coordination for the part concerning concrete existing consular cases.</li><li>- Consultation with the thematic working party for the (political) part relating to EU exclusive competence (e.g. the relevant JAI working party for child abduction).</li></ul> <p><i>If the démarche only refers to policy, the content of the démarche is checked exclusively by the relevant policy working party and the Commission takes the lead.</i></p>	<p><b>Presidency:</b></p> <ul style="list-style-type: none"><li>- Leads consultations in COCON and with like-minded countries, Commission, EEAS;</li><li>- Consults the relevant policy working party;</li><li>- Instructs on delivery of démarche;</li><li>- Monitors and reports back to COCON.</li></ul>	<p><b>Wording:</b></p> <p><i>'EU and its Member States'</i></p> <p><b>Delivery:</b></p> <p>Three options as above.</p> <p><u>together with</u> the EU delegation for the EU policy part</p> <p>(HR / relevant Commissioner could also be delivering at their level).</p>	

## Pre-trial conditions démarche – draft template

The Member States of the European Union **[together with xxx (other state, e.g. US)]** would like to draw attention to the fact that detained EU Member State **[and xxx]** nationals spend longer in pre-trial detention in **[country]** than the maximum time according to domestic law without any trial date set. Therefore, the Member States of the European Union **[together with xxx (other state, e.g. US)]** urge the Government of **[xxx]** to see to it that detained EU Member State **[and xxx]** nationals are not deprived of their liberty except on such grounds and in accordance with such procedure as are established by domestic law, and that any deprivation of liberty in accordance with the law remains within the limits of that law, taking into account the maximum time that can be spent in pre-trial detention, upon expiry of which a trial date should be set **[amend to highlight local issues and, if relevant, treaties to which the state is a party, such as the ICCPR, and relevant UNGA resolutions]**.

**[The second paragraph should go into more detail on the main issue, i.e. length and conditions of pre-trial detention, particular situations in prison, separation of juvenile detainees from other detainees, etc.] [As appropriate, add language on the extent to which the EU is willing to help improve standards, e.g. by means of technical cooperation.]**

The Member States of the European Union **[together with xxx (other state, e.g. US)]** would like to thank the Government of **[xxx]** for its attention to this matter and look forward to receiving a reply.

**[DATE]**

## **Instructions on delivering a joint consular démarche**

*Please refer to the table on consular démarches for delivery in the case of a démarche concerning the common foreign and security policy (CFSP) or an EU exclusive internal competence.*

### **Request**

It is requested to deliver a démarche on prison conditions in Cambodia on behalf of the Member States of the European Union together with [####]. Report back before [#####].

### **Background**

[Free text to explain the developments and reasoning leading to the decision for a joint EU consular démarche]

### **Instructions**

- The consular démarche is being delivered to the [country] authorities on behalf of the Member States of the EU (NB: not on behalf of the EU).
- [Joint consular démarches are usually delivered by the local representation of a Member State holding the EU Presidency. In the absence of an embassy in the country, another EU Member State or the EU delegation can be asked to deliver the démarche on behalf of the Member States of the EU.]
- The démarche text has been discussed with and approved by all EU Member States in the Working Party on Consular Affairs.
- EU Member States that have detainees in [country] and have expressed an interest can join in the delivery of the démarche. Arrangements regarding time and place can be made in consultation with the local representations of those Member States.
- The démarche is to be delivered at the highest and most appropriate level (according to your assessment).
- It is requested that you deliver the démarche and report back before [#####].
- An assessment of possible results is to be made within two months and sent to [#####], preferably before [#####].

## **Prison conditions démarche – draft template**

The Member States of the European Union **[together with xxx (other state, e.g. US)]** urge the Government of **[xxx]** to improve prison conditions for all detainees by taking appropriate measures with a view to ensuring safe prison conditions and the absence of inhuman and degrading treatment, including measures to ensure the provision of better and more timely medical and dental treatment, the provision of sufficient amounts of food, better regulation of temperatures in prison, in particular in the light of the very low outside temperatures in winter, additional time for daily exercise **[amend to highlight local issues]**.

**[The second paragraph should go into more detail on the main issue, i.e. length and conditions of pre-trial detention, particular situations in prison, separation of juvenile detainees from other detainees, etc.]**

Therefore, the Member States of the European Union urge the Government of **[xxx]** to improve prison conditions to an adequate level as recognised in the international standard minimum rules for the treatment of prisoners, as reflected in **[relevant treaties to which the state is a party, such as the ICCPR, and relevant UNGA resolutions]** **[as appropriate, add language on the extent to which the EU is willing to help improve standards, e.g. by means of technical cooperation]**.

**[DATE]**

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## **Prison conditions démarche – draft reminder template**

On **[date]** the Member States of the European Union **[together with xxx (other state, e.g. US)]** urged the Government of **[xxx]** to improve prison conditions for all detainees by taking appropriate measures with a view to ensuring safe prison conditions and the absence of inhuman and degrading treatment, including measures to ensure the provision of better and more timely medical and dental treatment, the provision of sufficient amounts of food, better regulation of temperatures in prison, in particular in the light of the very low outside temperatures in winter, additional time for daily exercise **[amend to highlight local issues]**.

**[The second paragraph should go into more detail on the main issue, i.e. length and conditions of pre-trial detention, particular situations in prison, separation of juvenile detainees from other detainees, etc.]**

Therefore, the Member States of the European Union once again urge the Government of **[xxx]** to improve prison conditions to an adequate level as recognised in the international standard minimum rules for the treatment of prisoners, as reflected in **[relevant treaties to which the state is a party, such as the ICCPR, and relevant UNGA resolutions]**. **[Add language on the extent to which the EU is willing to help improve standards, e.g. by means of technical cooperation, as appropriate.]**

**[DATE]**

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**Temporary mandate for the presidency to act with consular démarches / notes verbales in extraordinary consular circumstances in third countries**

Such a mandate can only be used for consular démarches / notes verbales within national competence (mixed consular and exercise of EU foreign policy (CFSP) démarches and mixed consular and external projection of EU exclusive internal competence démarches are excluded).

**Process:** The presidency requests a temporary mandate from the Member States in COCON. Appropriate justifications are provided. Prior agreement is given by the representatives of the Member States within COCON. The scope of the mandate is expressly indicated. The mandate is limited in time and should not extend beyond the duration of the presidency. The mandated presidency informs the Member States in COCON about each consular démarche / note verbale delivered under this mandate. The process can be initiated by written consultation.

‘Extraordinary consular circumstances’ include, but are not limited to, the following situations: a large-scale consular crisis involving a large number of EU citizens, a number of EU citizens simultaneously affected by a consular issue in a large number of third countries, a variety of consular issues affecting EU citizens (requiring the issuance of several démarches or systematic follow-up démarches) in one or more third countries, an emergency situation in which a regular consular démarche procedure would fail to provide effective and timely assistance.

**Template: COCON: Deadline XX – Temporary mandate for the presidency to act with consular démarches / notes verbales in extraordinary consular circumstances in third countries**

**TO THE REPRESENTATIVES OF THE MEMBER STATES WITHIN COCON: MESSAGE FROM THE PRESIDENCY**

*Dear colleagues,*

*[Describe the consular crisis at stake, the justification for seeking this temporary mandate] requires the Presidency, the Member States, the EEAS and colleagues from the EU institutions to act without delay.*

*Decisions made by the competent authorities of the third countries involved may have a considerable impact in the consular field, especially on the process of providing consular assistance to citizens of the Member States of the EU.*

*For that reason, the Presidency asks to be temporarily mandated by the representatives of the Member States within COCON to deliver consular démarches / notes verbales to third-country authorities without prior written consultation, if urgency so requires and only in the context of [the crisis at stake] [define the type of actions and the context in which these démarches would be delivered].*

*The Presidency will ensure that the **representatives of the Member States** are informed about each consular démarche / note verbale, and that reports on these démarches are shared with them in COCON.*

*In the absence of objections, the above will be considered approved by the representatives of the Member States within COCON. The text of each démarche will be consolidated locally with the local consular cooperation group.*

*The mandate should not extend beyond the duration of the Presidency. The Presidency thanks you for your cooperation.*

**COCON Secretariat**

**Draft template for note verbale / démarche on restrictions imposed on EU citizens for public health reasons**

The Member States of the European Union have the honour to seek urgent clarification of the measures announced by [authority] which affect their citizens in [country].

[Description of the measures (examples may include the following)]

We kindly request immediate clarification of the following issues:

- *type of institution, address and contact information of the centralised quarantine facilities;*
- *categories exempt from centralised quarantine;*
- *costs for persons in quarantine;*
- *treatment of families, in particular regarding reports of the potential separation of minors from parents / accompanying adults during the centralised quarantine;*
- *possibility for deliveries to persons in the centralised quarantine facilities (especially for families with babies: milk, baby equipment, etc.);*
- *implications for passengers in international or domestic transit.*

*[Option (only if applicable): The Member States of the European Union respectfully remind the Consular Department of the Ministry of Foreign Affairs that under Article 36 of the Vienna Convention on Consular Relations ‘consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State’.]*

*[Option (adjust if relevant): To ensure early notification of the citizens concerned, the diplomatic missions of the Member States of the European Union and the EU Delegation kindly request that they be informed in writing at least one day prior to the adoption of measures impacting their communities.]*