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NOTE

from: General Secretariat of the Council
to: Working Party on Consular Affairs
No. Cion prop.: 18821/11 - COM(2011)881 final

Subject: Proposal for a COUNCIL DIRECTIVE on consular protection for citizens of the
Union abroad
- Delegations' comments to Chapters 3 and 4

Delegations will find attached an annotated version of the Presidency proposal for Chapter 3¹ as well as original Chapter 4² of the above proposal, summarising delegations' written comments set out in documents 5925/13 + ADD 1-2.

General comments made by delegations at the COCON meeting on 11 January 2013 have been reflected in the meeting report³.

¹ MD 1/13 of 8 January 2013. Changes to the original text (18821/11) are in **underlined and bold** and ~~strikeout~~.

² 18821/11.

³ CFSP/SEC/0092/13 COR 1.

Chapter 3⁵Financial Procedures⁶

Article 12

General rules

When ~~an~~ an unrepresented⁷ citizen requests assistance in the form of financial ~~advance~~ assistance or repatriation, subject to Articles 6 (1) and 7(2), the following procedure shall apply:

- (a) the assisting embassy or consulate shall consult⁸ with the citizen's Member State of nationality about any request for financial assistance or repatriation⁹ which it receives;

~~the unrepresented citizen shall undertake to repay to his or her Member State of nationality the full value of any financial advance or cost incurred, plus a consular fee if applicable, using the standard form set out in Annex 1;~~

⁴ **CZ**: general reservation on the need for this proposal. Consular protection remains solely within the competence of MS.

⁵ **IT, NL**: general reservation on Chapter 3. **IT**: Not all MS can provide financial advances, even in a crisis situation. **NL**: does not provide financial advances and its citizens do not have a right to consular protection under national law. Suggests that any explicit or implicit suggestion regarding a right to consular protection should be removed from this proposal.

⁶ **AT, CZ, HU, NL, SE**: support clear financial arrangements to compensate for those having provided consular protection to an unrepresented EU citizen. However, no new measures on reimbursement should be introduced. Reimbursement should continue to be based on bilateral MS cooperation as is the current practice.

⁷ **NL**: is the international meaning of "represented" to be read as "accredited"?

⁸ **AT, SE**: welcome the idea of a consultative process. **SE**: this seems to strike a fair balance between what is legally required by Art. 23 TFEU and what is practically required to ensure effective MS consular cooperation. **AT**: advantage since it allows the MS of nationality to be informed and the possibility to provide appropriate service from the outset. **CZ**: this procedure is not precise in operational terms. **EL**: replace "consult" by "inform". **LV**: important because prior to granting financial assistance to an unrepresented citizen, approval from MS of nationality is received. **NL**: this wording may make it possible to check whether a citizen is unrepresented.

⁹ **SK**: Financial advance or financial cost and amounts should be communicated in advance to the MS of nationality before providing such consular assistance. **LV**: reservation on granting any form of "financial advance".

- (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, ~~specifying whether any consular fee may be applicable;~~
- (c) **the unrepresented citizen shall undertake to repay to his or her Member State of nationality the full value of any financial advance (see Art 6) or cost incurred, plus any consular fee(s) if applicable.**

~~the assisting embassy or consulate shall inform the citizen's Member State of nationality about any request for financial advance or repatriation which it processed;~~

- (d) on written request from the assisting embassy¹⁰ or consulate ~~in the format set out in Annex I,~~ the citizen's Member State of nationality shall reimburse the full value of any financial **assistance** advance or cost incurred.¹¹

Article 13¹²

Facilitated procedure in crisis situations¹³

1. In crisis situations the assisting embassy or consulate, **with the assistance of the EU Delegation**¹⁴, shall coordinate any evacuation or other ~~necessary~~ support **being** provided for an unrepresented citizen with the citizen's Member State of nationality.

¹⁰ **SE:** reimbursement should not be handled by individual embassies or consulates but by MS capitals. Therefore redraft as "On written request from the assisting Member State embassy, the citizen's Member State of nationality shall...".

¹¹ **AT:** practical reimbursement procedures need to be considered separately from the legal considerations relating to the non-discrimination principle.

¹² **AT:** a specific reference to non-discrimination principle would seem useful.

¹³ **NL:** the terms 'crisis situations' and 'major crisis' are used in this Article. Defining the differences between crisis and major crisis can inhibit flexibility to act.

¹⁴ **LV:** supports the idea of extending the tasks of the EEAS, namely empowering EU delegations to provide consular protection to unrepresented EU citizens in third countries as well as coordinate assistance and organize repatriation in a large-scale crisis.

SE: EU delegations can have a role to play in facilitating and coordinating MS efforts in preparedness for and handling of consular matters, on a pragmatic basis. However, as the EEAS has announced, it does not have the resources, mandate or competence for further responsibility. The extension of the EEAS competence should be addressed in the general overview that is to be carried out.

The assisting Member State shall submit any requests for reimbursement of the costs of such evacuation or support to the Ministry of Foreign Affairs of the citizen's Member State of nationality. The assisting Member State may seek reimbursement even if the unrepresented citizen has not signed an undertaking to repay pursuant to Article 12 (a).¹⁵

This paragraph shall not prevent the citizen's Member State of nationality from pursuing repayment on the basis of national rules.¹⁶

2. In major crisis, the costs of evacuation or support shall be reimbursed by the citizen's Member State of nationality on a pro-rata basis, by dividing the overall costs¹⁷ by the number of citizens assisted, if the assisting Member State so requests.¹⁸
3. Where costs cannot be calculated, the assisting Member State may request reimbursement on the basis of fixed sums¹⁹ corresponding to the type of support provided, as set out in Annex 2.
4. Where the assisting Member State was financially supported in respect of assistance by the EU Civil Protection Mechanism, any contribution from the citizen's Member State of nationality shall be determined after deduction of the Union's contribution.
5. For requests for reimbursement the common formats set out in Annex 2 shall be used.

¹⁵ **SE:** amend to include "Member State provides assistance, evacuation or other support in a crisis situation after signing of a written obligation by the unrepresented citizen or after approval of the citizen's Member State of nationality for reimbursement of value of any financial advance or costs."

¹⁶ **HU:** Article 12 sets general rules of financial assistance, therefore 2nd and 3rd paragraphs could be deleted.

¹⁷ **AT:** "overall costs" needs to be specified. This should not include general administrative costs, nor should it apply when military means are used.

¹⁸ **SE:** amend as follows: "In major crises, in situations where an incontrovertible signed obligation from the unrepresented citizen or approval of citizen's Member State of nationality for reimbursement of value of financial cost could not be obtained, the costs of evacuation or support shall be reimbursed by the citizen's Member State of nationality on a pro-rata basis, by dividing the mutually approved overall costs by the number of citizens assisted, if the assisting Member State so requests."

¹⁹ **LV, SE, SK:** reservation on "fixed sums". There would hardly be a situation in which the actual costs of evacuation or other support would not be possible to calculate. In the unlikely event that such a situation arises, the fixed sums suggested in Annex 2 will rarely correspond to the actual costs. Should it not be possible to calculate actual costs, it therefore seems more feasible for the assisting Member State and the Member State of nationality to agree on a cost estimate than to use fixed sums. **SK:** Price levels may greatly vary in different countries. The current Annex 2 figures can indicate a cost ceiling but if costs are lower (e.g. transport or medical assistance), then a maximum cost should not be charged.

CHAPTER 4

Local and crisis cooperation and coordination

Article 14

Local cooperation

Local cooperation meetings shall include a regular exchange of information on unrepresented citizens, on matters such as safety of citizens, prison conditions or consular access²⁰. Unless otherwise agreed by the Ministries of Foreign Affairs centrally, the Chair shall be a representative of a Member State or the Union delegation decided locally. The Chair shall collect and regularly update contact details, in particular regarding the contact points of unrepresented Member States²¹, and share them with the local embassies and consulates and the Union delegation.

Article 15

Crisis cooperation

1. To ensure comprehensive preparedness local contingency planning shall include unrepresented citizens. Member States represented in a third country shall coordinate the contingency plans among themselves and with the Union delegation. They shall agree on respective tasks to ensure that unrepresented citizens are fully assisted in case of crisis, appoint representatives for assembly points²² and inform unrepresented citizens on crisis preparedness arrangements under the same conditions as nationals.
2. In the event of a crisis Member States and the Union shall closely cooperate to ensure efficient assistance of unrepresented citizens. Member States and the Union shall inform each other about available evacuation capacities in a timely manner. Upon request Member States may be supported by existing intervention teams at Union level including consular experts, in particular from the unrepresented Member States.

²⁰ **EL:** add "... **and consular notification**".

²¹ **NL:** delete: "..., in particular regarding the contact points of unrepresented Member States, ...".

²² **NL:** delete: "..., appoint representatives for assembly points...".

Article 16²³

Lead State

3. For the purpose of this directive the Lead State(s) is (are) one or more Member State(s) in a given third country, in charge of coordinating and leading assistance regarding the preparation for and in case of crisis, which includes a specific role for unrepresented citizens.
4. A Member State is designated as Lead State in a given third country, if it notified its intention through the existing secure communication network; unless another Member State objects within 30 days or the proposed Lead State renounces the task through the secure communication network. If more than one Member State wish to assume jointly the task of Lead State they shall jointly notify their intention through the secure communication network. In the event of crisis one or more Member States may assume this task immediately and shall undertake notification within 24 hours. Member States may decline the offer, but their nationals and other potential beneficiaries remain, in accordance with Article 6(1), eligible to assistance from the Lead State. If there is no Lead State, Member States represented on the ground shall agree on which Member State will coordinate assistance for unrepresented citizens.
5. To prepare for crises the Lead State(s) shall ensure that unrepresented citizens are duly included in embassies and consulates' contingency planning, that contingency plans are compatible and that embassies and consulates as well as Union delegations are duly informed about these arrangements.
6. In the event of crisis the Lead State(s) or the Member State coordinating assistance shall be in charge of coordination and leading assistance and assembly operations for unrepresented citizens, and if necessary ensure evacuation to a place of safety with the support of the other Member States concerned. It shall also provide a point of contact for unrepresented Member States, through which they can receive information about their citizens and coordinate necessary assistance. The Lead State(s) or, the Member State coordinating assistance for unrepresented citizens may seek, if appropriate, support from instruments such as the EU Civil Protection Mechanism and the crisis management structures of the European External Action Service. Member States shall provide the Lead State(s) or the Member State coordinating assistance with all the relevant information regarding their unrepresented citizens present in a crisis situation.

²³ **CZ**: reservation to change the application of the "Lead State" system. Consular and other assistance must not be confused with the role of "Lead State" in crisis cooperation. **IT**: to reflect whether the adoption of the Directive will have an effect on the "Lead State" concept. **SE**: reference to the Lead State concept can be kept but does not need to be regulated in detail in the Directive. **NL**: questions the necessity of Article 16 and refers to the EU guidelines on the implementation of the consular Lead State concept (OJ C 317 of 12 December 2008) in which the role of Lead States as a whole is covered. **NL** considers that these guidelines are still pertinent and that any revision should be introduced into the said guidelines.