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NOTE

From: General Secretariat of the Council
To: Working Party on Consular Affairs

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Subject: Proposal for a COUNCIL DIRECTIVE establishing an EU Emergency
Travel Document and repealing Decision 96/409/CFSP
- Delegations' comments

Delegations will find attached DE delegation's comments regarding the above Proposal.

Delegations' comments on
proposal for a Council Directive establishing an EU emergency Travel Document and
repealing Decision 96/409/CFSP

GERMANY

The German delegation would like to make the following comments with regard to the Proposal of the Commission for a Council Directive establishing an EU Emergency Travel Document (COM(2018) 358) and repealing Decision 96/409/CFSP in addition to the Comments by the German delegation dated 7 September 2018 by which Germany has entered a general scrutiny reservation and has reserved the right to submit further comments.

Article 1:

Directive (EU) 2015/637 contains in Art. 1 (2) an additional paragraph, stating “*This Directive does not concern consular relations between Member States and third countries*”. Should an identical clause be added here as well?

Article 2, no. (5):

In which cases could a travel to third destinations be necessary?

Article 3:

This proposal makes the use of EU ETDs compulsory for unrepresented citizens outside the EU. This would come at a certain price: Member States would be obliged to issue an EU ETD to unrepresented citizens which fulfil the applicable conditions. Against this background, the Honorary consuls representing EU MS outside the capitals and not being equipped to produce ETDs would not be any more in a position to produce a (national) document helping unrepresented EU citizens return home safely. Against this background, Germany poses the question of how to deal with such cases. For example, would it be in the interest of the global reach of consular protection to lower the requirements in the case of Honorary consuls.

Article 4, para. 2 lit. a:

The categories of personal data that may/shall be transmitted, should be laid down in the Directive itself.

Article 4, para. 2 lit. b:

For the time being, the wide DEU consular network of embassies and consulates is not equipped with integrated cameras to take and produce “*a facial image of the applicant, to be taken ... by the authorities of the assisting Member State on the day of the application*” according to Article 4, para. 2 (b). Such equipment for the purpose of producing ETDs shall be provided to DEU embassies and consulates in the perspective of standards to be implemented in the context of the uniform format for visas (Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas as amended by Regulation (EU) 2017/1370 of the European Parliament and of the Council of 4 July 2017 amending Council Regulation (EC) No 1683/95 laying down a uniform format for visas). Therefore, DEU considers the use of photographs of the facial image of the applicant provided by him as a case of “*exceptional circumstances*” acc. to Article 4, para. 2 (b).

Article 4, para. 3:

On the basis of our experience, the time period of 36 hours is too short to respond to the consultation, in particular on weekends. Therefore, Germany suggests a time period of two (2) working days as the applicable time period to respond to the consultation.

Article 4, para. 4:

Is it sufficiently clear what is meant by "*duly justified*" exceptional cases? To whom is the justification provided?

Article 4, para. 5:

- Definition of the term “*crisis situation*”? “*Crisis*” within the meaning of Council Directive (EU) 2015/637?
- Should the assisting Member State, even in crisis situations, try to confirm (at least) the Nationality and identity of the applicant to the extent possible and reasonable? How could this be ensured?

Article 4, para. 6:

- To be added: “at the latest”. Suggestion: “*The copies shall be destroyed at the latest within 60 days after the expiry of the EU ETD, unless they are necessary for the issuance of a new passport or travel document.*”
- Further clarification of the clause “*unless they are necessary for the issuance of a new passport or travel document.*” is needed. Does the Commission know in which cases or by which member states the EU ETD would be necessary for the issuance of a new passport or travel document?

Article 7 General:

Article 7 lays down possible additional situations in which Member States can issue an EU ETD. Recipients of an EU ETD other than unrepresented EU citizens in third countries could be inter alia accompanying family members (a) or “other persons connected with it [issuing Member State] and whom it is willing to admit” (e). With a view to the need of more detailed verification procedures, it would be of interest to know the Commission’s position relating to relevant procedural standards.

Article 7 lit. e:

- Why is this alternative added to the directive? What is the personal scope of application in the Commission’s view?
- What is its additional value with regard to Art. 6, which permits more favourable treatment?
- Furthermore, with regard to Art. 5 Vienna Convention on Consular Relations, is this alternative understood to be limited to a single journey to the MS issuing the ETD?

Article 8 para. 1:

It is suggested to use the same formulations as in Annexes I and II, that means "*uniform EU ETD form*" and "*uniform EU ETD sticker*".

Article 8 para. 2:

The reference should read “*ICAO document 9303, Part 3*” instead of “*Part 2*”.

Article 8 para. 3:

- To be further specified: What are “*necessary national entries*”?
- As stated above, categories of personal data that may be processed, should be laid down in the Directive itself.

Article 8 para. 8:

Definition of the term “crisis situation”? “*Crisis*” within the meaning of Council Directive (EU) 2015/637?

Article 9 General:

Scrutiny reservation

Article 9 lit. b:

It should be clarified that this provision does not allow the inclusion of new categories of personal data.

Article 10:

According to the Commission approximately 600 ETDs were issued in 2017. The ETD forms were produced centrally by Italy for all MS. Does it make sense from an economic perspective to decentralise production? What mechanisms are in place to safeguard the uniformity of the EU ETD form and sticker?

Article 13 General:

Scrutiny Reservation, has to further examined with regard to data protection rules.

Article 13, para. 4:

It is beyond our understanding, why personal data may be retained for up to three years, even though (save in exceptional circumstances) the validity of an EU ETD shall not exceed 15 calendar days and its copies shall be destroyed within 60 days after the expiry of the EU ETD.

Annex I

No. 3, Second Sentence:

With a view to making controls easier we suggest that detailed information be given on how the sticker is affixed. In any case, the machine-readable zone should be aligned with the outer edge of the page (not the inner fold). This would ensure that data could be read using readers requiring the document to be partially inserted into the machine.

No. 7:

Germany asks whether the national number of the EU ETD sticker and the number pre-printed on the EU ETD form must be identical. Germany notes that if this was the case this would have significant logistic implications considering that the documents are pre-numbered during the production process. Germany also asks how to handle cases in which the EU ETD form and the sticker affixed to it do not have the same number.

No. 8:

According to our information, this particular watermark has been used in falsified documents and is therefore compromised. We therefore suggest that a multitone watermark protected by law be used, for example the EU watermark used in the EU laissez-passer.

Annex II

No. 1:

In the German delegation's opinion, the term "integrated" is not sufficiently specified. It is suggested to specify that the portrait must be integrated "by inject printing techniques".

No. 2:

Germany suggests to explicitly use the standardised acronym DOVID. Germany further suggests to specify the DOVID by reference to the new uniform format for visas (EU Regulation 2017/1370).

No. 3:

It is suggested to add "*Part 3*" with regard to the referenced ICAO Document 9303.

No. 4 lit. c:

It is suggested to add "*Part 3*" with regard to the referenced ICAO Document 9303.

No. 6:

The number printed in vertical orientation should protect the Kinegram (or equivalent) by printing the number on a section of the Kinegram (or equivalent).

No. 15:

Germany asks for a clarification of the applicable document type according to the ICAO categorisation of document types.

Section: *Sections to be completed*

Germany suggests to also include a provision on the “*portrait of the holder*” in this part of the Annex under the headline “*Sections to be completed*”.

