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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**Consular protection for EU citizens in third countries:
State of play and way forward**

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Consular protection for EU citizens in third countries: State of play and way forward

An EU citizen, travelling to or living in a non-EU country where his/her Member State is not represented, has the right, under the EU Treaties, to enjoy the **protection of the diplomatic and consular authorities** of any Member State **under the same conditions as the nationals** of that State.

The right to obtain consular protection¹ from a Member State under the same conditions as nationals of that Member State is one of the specific rights that the Treaty grants to EU citizens and adds an **external dimension to** the concept of **Union citizenship**. It strengthens the idea of European solidarity and the identity of the Union in third countries.

The aim of this Communication is to take stock of the European Union's contribution to effective consular protection in third countries as announced in the Commission's Action Plan 2007-2009² and to present the way forward based on the experience gained and the renewed institutional framework.

This Communication fulfils the Commission's Treaty obligation to report every three years on the application of Article 23 of the Treaty on the Functioning of the European Union (TFEU) on consular protection, as announced by the Commission in its Report under Article 25 TFEU on progress towards effective EU Citizenship 2007-2010³.

The Communication also contributes to implementing Action 8 of the "**EU Citizenship Report 2010 – Dismantling the obstacles to EU citizens' rights**"⁴, a strategic initiative of the Commission, focusing on obstacles citizens still face, notably when moving cross-border, and presenting remedies to them.

The Communication is a first response to the European Council, which invited the Commission on 2 December 2009, in the Stockholm Programme, to "consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU"⁵.

¹ Consular protection is the provision of support and assistance to citizens abroad, either to a State's nationals or to those nationals to whom it has agreed to provide assistance.

² COM(2007) 767 final.

³ COM(2010) 602 final.

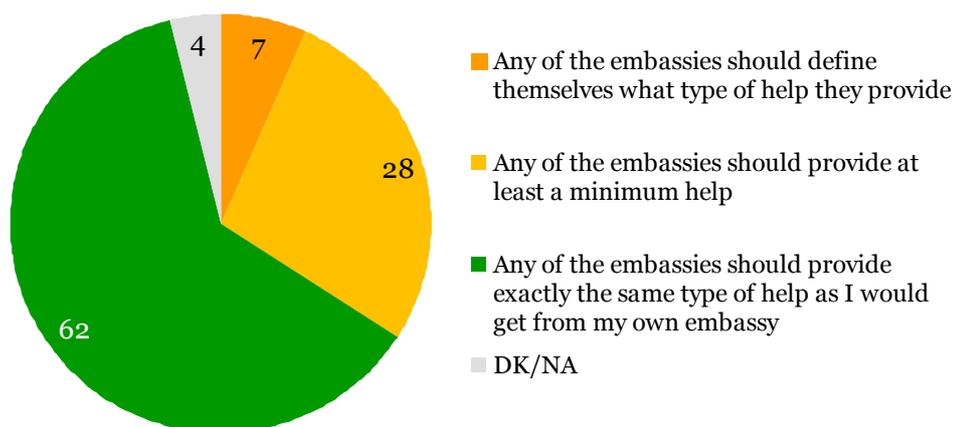
⁴ COM(2010) 603 final.

⁵ OJ 2010/C 115/01 - The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Council document 17024/09 of 2 December 2009, p. 11.

1. WHERE WE STAND TODAY

The need of EU citizens for consular protection is expected to increase in the coming years. According to Eurostat statistics⁶ the number of trips EU citizens take to third countries has increased from over 80 million in 2005 to over 90 million trips in 2008 and travel activity is expected to further increase⁷. More than 30 million EU citizens are estimated to permanently live in a third country, but only in the United States, China and Russia are all Member States represented. Recent major crises affected a considerable number of EU citizens in third countries (for instance in Libya, Egypt and Bahrain after the democratic uprisings in spring 2011; Japan after the earthquake in March 2011; Haiti after the earthquake in January 2010; Iceland's volcanic ash cloud in spring 2010)⁸ and showed the need for consular protection regardless of an EU citizen's nationality. More than 100.000 EU citizens were present in these third countries when the crises occurred. In the current circumstances it appears particularly relevant to further reinforce the effectiveness of the right of EU citizens to be assisted in third countries for their different needs (e.g. practical support, health or transport). With public budgets under pressure, the European Union and the Member States need to foster cooperation to optimise the effective use of resources.

Type/level of help that embassies should provide to EU citizens



Q5. If you are in a country where [Member State of which the interviewed is a national] does not have an embassy, you have the right, as an EU citizen, to get help from the embassy of any other EU Member State. The type/level of help you will get, depends on which embassy you go to. Which statement do you agree with more:

Base: all respondents, % EU27

⁶ Database on population, section on tourism; data include holiday and business trips of more than one day.

⁷ The World Tourism Organization expects further significant growth for the period 2010-2020.

⁸ **Libya** (where 8 Member States are represented): around 6.000 EU citizens present at the beginning of the crisis; on 9 March 2011 1.345 EU citizens were still present; since then, Member States were looking for evacuation possibilities for at least 52 EU citizens. **Egypt** (where 22 Member States are represented): at least 100.000 EU citizens (mostly tourists in the Red Sea region). **Bahrain** (where 4 Member States are represented): there are at least 8.800 EU citizens. **Japan** (where all Member States are represented except Malta and Cyprus): around 37.000 EU citizens. **Haiti** (after the earthquake in 2010): about 2.700 EU citizens. **Icelandic volcanic ash cloud crisis** (spring 2010): more than 100.000 flights were cancelled. Figures are estimates based on Member States and Commission sources.

Even though consular protection provided by Member States varies, the majority of EU citizens⁹ (62%) would expect the same kind of help regardless of which Member State's embassy they turn to. A third of EU citizens (28%) expect at least a minimum standard of help provided by any Member State.

1.1. The new legal framework

The Lisbon Treaty takes account of the **increased need for a European dimension to consular protection**; it reinforces and clarifies the capacity of the Union to act. The right of unrepresented EU citizens to enjoy protection by the consular and diplomatic authorities of other Member States on the same conditions as nationals of that State is enshrined in Articles 20(2)(c) and 23 TFEU and Article 46 of the Charter of Fundamental Rights of the European Union.

According to the wording of these three provisions, EU citizens "shall have the right to enjoy [...] the protection of the diplomatic and consular authorities on the same conditions as nationals of that State". This confers a clear individual entitlement for the citizen¹⁰ of a Member State to be treated equally by the consular authorities of another Member State in the territory of a third country where his/her own Member State is not represented. The status as a citizen of the Union is destined to be the fundamental status of nationals of the Member States¹¹ and Union law confers individual rights inter alia to guarantee the full effect of citizens' legal entitlements.

The right to protection by consular and diplomatic authorities as endowed in Article 23 TFEU is **subject to judicial review**. The provisions of Part Two of the TFEU are under full review of the European Court of Justice. National courts have to apply Article 23 TFEU as any other provision of Union law; the right to judicial review is a general principle of law binding Member States and institutions when implementing Union law¹² which is codified in Article 47 of the Charter of Fundamental Rights. Unrepresented EU citizens have the right that their request for consular protection is duly considered; a refusal decision is subject to judicial review and in accordance with established case-law on State liability may render liable for harm caused.

Under the previous legal regime Member States were to establish the necessary rules among themselves¹³. Two decisions of the Representatives of the Governments of the Member States were adopted (Decision 95/553/EC on consular protection for unrepresented EU citizens¹⁴ and Decision 96/409/CFSP regarding Emergency Travel Documents¹⁵). The Lisbon Treaty abandons the previous logic of intergovernmental sui generis decision-making. Article 23(2) TFEU empowers the Commission¹⁶ with the **right to initiate legislation**, i.e. to propose **directives establishing the coordination and cooperation measures necessary to facilitate**

⁹ Eurobarometer from March 2010.

¹⁰ See cases Lütticke, 57/65 and Van Gend & Loos, 26/62. Article 23(2) TFEU no longer prescribes that Member States establish the necessary rules among themselves. Article 23(1)(2) TFEU merely enables Member States to adopt the necessary internal provisions.

¹¹ Case Grzelczyk, C-184/99.

¹² Case Oleificio Borelli, C-97/91.

¹³ Article 20 TEC.

¹⁴ OJ L 314, 28.12.1995, p. 73.

¹⁵ OJ L 168, 16.7.1996, p. 4.

¹⁶ Article 17(2) TEU.

such protection. After consulting the European Parliament, the Council acts by qualified majority¹⁷.

The Lisbon Treaty also provided for the creation of the European External Action Service (EEAS)¹⁸ which was launched on 1 January 2011. The Council Decision establishing the organisation and functioning of the EEAS¹⁹ provides in Article 5(10) that the Union delegations shall, upon request by Member States, support them in their diplomatic relations and in their role of providing protection to EU citizens in third countries on a resource-neutral basis.

1.2. Consular protection for EU citizens today

Today, citizens are not sufficiently aware of their Treaty right to equal treatment regarding consular protection. The number of cases where EU citizens have requested consular protection from another Member State is low and relevant data and statistics are not collected by all Member States. On 15 June 2010, the Commission concluded a **public consultation** on Union citizenship, including on consular protection. The issues invoked were discussed at a conference on Citizenship on 1 and 2 July 2010 which brought together relevant stakeholders. Representatives from civil society and academia argued that under the new institutional framework the Commission should step up its efforts to render Article 23 TFEU more effective. The European Parliament has also repeatedly called on the Commission and on Member States to strengthen the practical implementation of consular protection²⁰.

To further increase effectiveness, the Commission considers that enhanced efforts are necessary to:

- raise awareness among EU citizens about the right to turn to embassies/consulates of Member States other than their own, how to reach these facilities and what kind of help can be offered;

¹⁷ Article 16(3) TEU.

¹⁸ Article 27 TEU.

¹⁹ OJ L 201, 3.8.2010, p. 30 (Council document 2010/427/EU).

²⁰ European Parliament Resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0090&format=XML&language=EN>).

European Parliament Resolution of 11 December 2007 on the Green Paper: Diplomatic and consular protection of Union citizens in third countries (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0592&language=EN&ring=A6-2007-0454>). In this Resolution, the Parliament, amongst others, "suggests that the Commission should propose without delay to the Council (over and above the requirement for it to report every three years on Union citizenship pursuant to Article 22 of the EC Treaty) that common concepts and binding guidelines enabling common standards to be established in the field of consular protection be adopted; calls on the Commission to intensify its communication and information efforts, in particular by establishing a single European emergency telephone number for inclusion in the passports of Union citizens together with the text of Article 20 of the EC Treaty, enabling any Union citizen to be connected to a call centre which will provide him with comprehensive information in the event of a critical situation triggering the consular protection process in particular an up-to-date list of contact details for the Member States' embassies and consulates to which he is entitled to apply; the number could be administered on a central basis in Brussels; calls on the Commission to submit to it, once the Lisbon Treaty has been ratified, a proposal for amending Decision 95/553/EC, so that it expressly includes: diplomatic protection; the identification and repatriation of mortal remains; simplification of the procedures for advancing money".

- raise awareness about the EU dimension of consular protection among national consular officials;
- improve the legal certainty regarding scope, conditions and procedures related to consular protection;
- improve burden-sharing and use of resources, including in times of crisis.

European policies must aim at results for the benefit of EU citizens. The Lisbon Treaty provides new opportunities to further improve consular protection for unrepresented EU citizens. The Commission will work in **close partnership** with the European Parliament, the Council, the Member States, the European External Action Service and other stakeholders on the actions proposed in the third part of this Communication.

2. STOCKTAKING – ACTION PLAN 2007-2009 AND BEYOND

In its Action Plan 2007-2009, the Commission proposed a set of measures to strengthen protection by the diplomatic and consular authorities which can be grouped into three categories: 1) information measures, 2) reinforcing and clarifying the protection, 3) stepping up joint efforts in crisis situations and as regards common resources.

2.1. Information measures

2.1.1. *Informing EU citizens*

To inform EU citizens the Commission adopted a Recommendation on 5 December 2007 inviting Member States to **reproduce the wording of the first sentence of Article 20 TEC** (which corresponds to Article 23 TFEU) **in national passports** issued after 1 July 2009. Most Member States reacted positively and decided to include the first sentence of Article 20 TEC or a paraphrased version in their new passports²¹. Some Member States will not do so or have not yet decided on the issue²².

The Commission further launched an **information campaign**. Posters explaining the Treaty provision on consular protection in user-friendly terms were sent to 35 major airports from all Member States in cooperation with the Airports Council International (ACI) in March 2008. In June 2008, the information material was sent to more than 10 000 travel agencies in 15 Member States in cooperation with the European travel agents' and tour operators' associations (ECTAA).

2.1.2. *Seminars for consular officials*

As a follow-up to its Action Plan, the Commission organised jointly with the EU Presidencies several seminars to discuss common problems and facilitate the exchange of information. These seminars started under the Portuguese Presidency in **Lisbon** in November 2007. Regarding unrepresented EU citizens, a common thread was that cooperation on the ground is largely based on ad hoc arrangements and informal contacts. The following seminars took place in **Ljubljana** (June 2008), **Strasbourg** (October 2008), **Prague** (April 2009) and **Brussels** (September 2010). The seminars in Ljubljana and Prague and the one in Brussels

²¹ BE,BG,DE,EL,ES,FR,IT,CY,LV,LT,LU,MT,NL,AT,HU,PL,RO,SI,SE,UK.

²² CZ,DK,EE,IE,PT,SK,FI.

focused on consular protection in crisis situations, whereas the seminar in Strasbourg was on the role of Member States' consulates inside the EU. The seminars showed scope for further cooperation, including through appropriate training and financial reimbursement in crisis situations.

2.2. Identifying the scope of consular protection for EU citizens

2.2.1. Comparative analysis of rules and practices

The extent of consular protection varies between Member States and discrepancies may render cooperation and coordination by consular and diplomatic authorities more challenging. The Commission undertook a **comparative analysis** of the extent and nature of discrepancies²³. National rules on consular protection show significant divergences (e.g. as regards the level of fees) but also many common features and several best practices (e.g. bringing victims of violent crime into contact with support organisations). **Common practices** include the day-to-day situations in which all Member States' consulates and missions provide assistance (e.g. death, serious accident or illness, arrest or detention) and the assistance provided in these cases (for instance in case of serious accident or illness all Member States inform the family of the EU citizen, provide information on available medical care, etc.). Areas in which best practices could be shared (e.g. assistance in cases involving mental illness) were identified.

2.2.2. Reinforced scope and procedures

EU citizens' family members who are third country nationals are often excluded from consular assistance. When they are assisted, the categories of family members included seem to vary as well as the circumstances under which they are granted assistance. Decisions appear to be taken on a case-by-case basis without clear criteria, though in times of crisis rules on family members tend to be applied in a more comprehensive way.

EU citizens in distress may find themselves in situations where they are deprived of necessary financial means (e.g. subsequent to being the victim of a crime). The Commission looked into the procedures for **financial advances**. Member States provide financial advances to citizens in distress only in limited circumstances and under strict conditions. Regarding reimbursement the form included as an annex to Article 6 of Decision 95/553/EC is not commonly used. On the **identification and repatriation of the deceased**, the 1973 Council of Europe Convention on transfer of corpses²⁴ is currently ratified by 16 Member States. The Convention simplifies the formalities required for the international transfer of corpses through a uniform "laissez-passer". In line with its Action Plan, the Commission asked Member States to accede to the Convention. However, there has not been significant progress in the ratification, which is a pre-condition to initiate multilateral negotiations in this area.

Under international law, the consular protection of a citizen by another State requires the **consent of the receiving State**. It is argued that in accordance with Article 8 of the Vienna Convention on Consular Relations²⁵ a unilateral notification to the third country suffices, which would however require all 27 Member States to unilaterally notify the third country.

²³ Comparative study on Member States' legislations and practices in the field of consular protection.

²⁴ Agreement on the Transfer of Corpses, Strasbourg 26.10.1973.

²⁵ "Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State".

The Commission has also been encouraging Member States to include a **consent clause** in future bilateral agreements with third countries, i.e. a clause providing for the agreement of a third State that the consular and diplomatic authorities of a represented Member State can provide protection to nationals of unrepresented Member States under the same conditions as to its own nationals. The Commission - taking due account of the specificity of each negotiation - proposed to include a consent clause in mixed agreements with certain third countries. Negotiations are ongoing.

2.3. Joint efforts – in crisis situations and on the ground

2.3.1. Consular protection in times of crisis

During recent crises, the Commission supported Member States' assistance to EU citizens in a number of ways. On the ground, EU Delegations provided support in specific cases. The Treaty provides that Member States' diplomatic and consular missions and EU Delegations shall contribute to the implementation of the EU citizens' right to consular protection as referred to in the Treaty²⁶. The EU Delegations support the Member States upon request particularly in the event of a crisis. A small dedicated budget line was set up for EU Delegations to assist, if asked, with logistical support. This occurred during the Gaza crisis in January 2009 when nearly 100 persons were evacuated in armoured buses thanks to EU Delegation support.

Since November 2007, the **EU Civil Protection Mechanism (the Mechanism)** can be triggered to support consular assistance to EU citizens in third countries regarding civil protection activities, if requested by the consular authorities of the Member States²⁷. When the Mechanism is activated, the Monitoring and Information Centre (MIC) of the European Commission which is the operational centre of the Mechanism gives access to a wide network of civil protection resources available from the 31 participating countries (Member States, EEA countries and Croatia), which allows for pooling and mobilisation of resources (e.g. transport means, medical assistance and evacuation, temporary shelter, etc.) and for exchange of information. After the Mumbai terrorist attack in November 2008, a Swedish Medevac airplane, co-financed by the Commission through the MIC, evacuated six wounded Europeans. Recently, the Mechanism was again activated in the context of the Libyan crisis to support consular authorities with the rapid evacuation of EU citizens. The MIC contributed to the ongoing operations of Member States by facilitating the pooling of transport, identifying additional transport means for evacuation purposes, and co-financing transport costs for certain Member States' assets. For instance, Hungary made an aircraft available, which was co-financed through the MIC, to evacuate 29 Romanians, 27 Hungarians, 20 Bulgarians, 8 Germans, 6 Czechs and 6 other EU and non-EU nationals from Tripoli. Close collaboration with the military ensured that the MIC operated as an information hub between transport providers and consular authorities.

During recent crises (for instance Libya, Egypt, Haiti, Iceland's volcanic ash cloud), consular assistance was coordinated via **teleconferences and the EU secure website** for information sharing by EU consular authorities ("**Consular On-Line**") provided by the Joint Situation

²⁶ These operations are based on Articles 20(2)(c) and 23 TFEU, concerning the protection of EU citizens not represented in third countries by their Member State, and on Article 35 TEU, providing a role for the EU Delegations in the implementation of Article 20(2)(c) TFEU, in cooperation with the Member States' missions.

²⁷ Article 2(10) of Council decision 2007/779/EC of 8 November 2007.

Centre of the EU. Such a coordination tool proved useful and instrumental in assessing the overall situation on the ground, namely concerning the presence of EU citizens and available capacities of Member States. Further actions to strengthen cooperation and solidarity between consulates in crisis situations, such as in cases where the international and intra-EU mobility of EU citizens is heavily affected, are the object of discussion in the relevant fora (consular affairs, civil protection, transport, etc.). It is important to ensure that all EU citizens are timely evacuated, not only those whose diplomatic representations are present in the third country concerned. The current crisis in Libya, where Member States have been evacuating EU citizens from other Member States has been a good illustration of European solidarity and the added value Union instruments can bring. No EU citizen should be left behind.

2.3.2. *Common offices pilots*

The Commission's Action Plan 2007-2009 suggested setting up a **common office** in cooperation with Member States as a pilot project. Common offices, i.e. co-location arrangements, of Member States and the EU delegation in a given third country could potentially save costs, enhance mutual cooperation of national consular staff and compensate for limited consular presence. They should be accessible to all EU citizens. The common visa application centre in the Republic of Moldova, albeit carrying out very different tasks, is a first step in this direction.

3. THE WAY FORWARD

The European Council when endorsing the Stockholm Programme invited the Commission to consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection²⁸.

Therefore, the Commission is considering actions in the field of consular protection for EU citizens which will be based on **three pillars**:

- increased awareness raising through **targeted communication measures**;
- proposals **under the new legal framework of the Lisbon Treaty**;
- **improved burden sharing and optimised use of resources**, including in crisis situations.

In preparing these proposals, the Commission will closely consult with the European Parliament and the Council, taking full account of the principle of resource neutrality with respect to the role of EU Delegations.

3.1. Increased awareness raising through targeted communication measures

3.1.1. *Awareness raising of EU citizens*

The European Council noted in the Stockholm Programme that consular protection is not well publicised and that more effort is needed to ensure its full application²⁹. The Commission is therefore launching a **dedicated website**³⁰ **on consular protection** for the citizen. The website aims to raise citizens' awareness of this right and improve access to information by

²⁸ OJ 2010/C 115/01 - The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Council document 17024/09 of 2 December 2009, p. 11.

²⁹ *Idem*.

³⁰ <http://ec.europa.eu/consularprotection>.

creating a single entry point. The website will inform EU citizens about the addresses of consular or diplomatic missions in non-EU countries to which they may turn for protection. It will also provide access to all Member States' travel advisory services. The website will facilitate citizens' access to "Europe Direct" as a single telephone line to gain information on consular protection³¹.

Communication about EU citizens' right to obtain consular protection from a Member State under the same conditions as nationals of that Member State is a **joint responsibility** of the Commission and Member States. Citizens shall be informed about what they can and cannot expect, e.g. that Member States generally do not provide intervention in legal disputes. The websites of national Foreign Ministries should provide information on this right and a link to the Commission's website. Member States could inform their citizens about this right when issuing new passports. The Commission will continue to work in close partnership with **Member States** on awareness raising, starting with a dedicated seminar organised in June 2011 together with the Hungarian Presidency. The Commission cooperates with travel and expatriate associations, employers' associations and NGOs (as many travellers and residents in third countries are there for business purposes). The Commission will also explore with publishers the possibility of giving information on consular protection as well as on passenger rights through travel guides and internet.

On the ground in third countries, **Member States' consulates and embassies** and **EU Delegations** could also disseminate information (e.g. providing information on the local websites of consulates and embassies or at their premises, contacting local multipliers like travellers' clubs, major hotels or local expat associations). They could increase awareness and understanding of third countries' authorities which should subsequently pass on the information to their local authorities (e.g. police stations).

In providing information on the right to consular protection through the awareness raising type of actions, the Commission will take due account of the variety in Member States consular laws and levels of consular protection.

3.1.2. Awareness raising of consular officials

Consular officials are still partially unaware of the Treaty provisions on consular protection. The Commission will foster more targeted training. As a first step, the Commission's services, in cooperation with the European External Action Service, are issuing a **training kit for national consular staff** which focuses on the "need to know basics" to be used by Member States in the preparatory training for staff posted abroad. The Commission supports the need for **tailor made trainings** to be offered by Member States and the EU, as agreed by the Council on 22 December 2010. These Europe-wide trainings could take the form of hands-on workshops and be cost-efficient (e.g. by using existing training facilities). Participants should include consular staff with training responsibilities to help multiply knowledge gained ("training the trainers"). Identified national **best practices** should be further discussed and promoted. In addition, consular staff will be made aware of the supportive role civil protection and the EU Civil Protection Mechanism can play during crises. A first brainstorming on an EU training for both consular and civil protection experts dealing with consular protection during crises, in conjunction with civil protection took place on 14

³¹ The phone number is 00 800 67 89 10 11 for free from anywhere in the EU, +32-2-299 96 96 from anywhere in the world. This phone number will provide general information on EU rights. It is not a 24/7 number.

February 2011. As a second step and on the basis of the experiences gained, the Commission will consider fostering continuous training modules.

3.2. Enhanced certainty under the Lisbon Treaty

Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council was adopted in 1995 and entered into force in 2002. In accordance with its Article 7, Member States should have reviewed it five years after its entry into force.

Member States' consular laws vary. Depending on which Member State an EU citizen decides to turn to, the level of protection offered may differ. These discrepancies may render **cooperation and coordination** by consular and diplomatic authorities challenging. Legal certainty and predictability for EU citizens abroad should be a primary concern. The scope and conditions of consular protection for unrepresented EU citizens should be clarified and coordination procedures among consular and diplomatic authorities simplified.

The current system of **financial advances** involves extensive cooperation. An assisting Member State has to ask prior authorisation from the citizens' Member State of origin, which then has to reimburse the assisting Member State but can ask reimbursement from his/her citizen. Member States grant financial advances mainly for small amounts (e.g. for a flight home or a hotel) and as a last resort. In a Union based on mutual solidarity cooperation could be facilitated.

The Commission will examine how to step up cooperation in areas for further **best practices**, such as assistance in cases involving mental illness, unaccompanied minors, forced marriages, during periods of quarantine and as regards the legalisation of documents.

Against this background, the Commission intends to **present legislative proposals** establishing the coordination and cooperation measures necessary to facilitate consular protection and addressing the issue of financial compensation of consular protection in crisis situations **in 12 months time**³². In this context the Commission will also consider the provision of consular assistance to **third country family members of EU citizens**.

Consular and diplomatic authorities issue **Emergency Travel Documents** (ETDs) to unrepresented EU citizens whose passport or travel document is lost, stolen, destroyed or temporarily unavailable, in accordance with Decision 96/409/CFSP. Some Member States would want to enhance the security features in the Emergency Travel Documents and some third countries find it problematic to accept the current ETDs without biometric features. Consideration will be given as to a possible update of the format of ETDs. This should be accompanied by a careful cost-benefit analysis.

To enhance legal security the Commission will continue to promote the inclusion of **consent clauses** (see above under point 2.2.2.) in mixed and bilateral agreements and further consider including clauses on substance, e.g. regarding access to detainees. The Commission will also engage in discussions with Member States on how to further increase legal security and visibility of Article 23 TFEU vis-à-vis third countries.

³² Commission Work Programme 2011 (COM(2010) 623 final).

3.3. Improved burden sharing and optimised use of resources

3.3.1. *In crisis situations*

The recent crises in Northern Africa and Japan have shown the risks to which EU citizens can be exposed³³. Unrepresented EU citizens are entitled to protection by the diplomatic or consular authorities of any Member State under the same conditions as their nationals. This obligation includes crisis situations. With more EU citizens expected to travel abroad in the coming years, the need for protection might become even greater and place considerable burden on assisting Member States. The Commission has been finalising a study looking into **compensation for consular protection** in times of crisis, notably as regards evacuation measures of unrepresented EU citizens. One of the results of the study is that current rules on reimbursement are frequently not applied in practice. During evacuation operations, Member States tend to offer evacuation facilities, such as available places in airplanes, to unrepresented citizens³⁴. To ensure equal assistance of unrepresented EU citizens and encourage Member States to assume an even more proactive role during crises in which own nationals are not involved, the Commission is examining how to further facilitate and simplify reimbursement procedures and encourage synergies with existing tools of financial support.

Improved burden sharing and coordination could also be brought about by considering the feasibility and added value of setting up **EU teams of national consular staff**, in coordination with the EEAS and the Commission as necessary, assisting in crisis situations. This possibility should be examined while looking into existing tools to avoid any possible overlap with existing structures. Each crisis is different. Nevertheless, anticipating crisis scenarios via sustained **contingency planning** on the ground and in capitals among the 27 Member States **which includes unrepresented EU citizens** appears crucial for effective crisis management. Member States are setting up capabilities to localise and inform consular personnel and to provide early warning for EU citizens in crisis situations (e.g. via text or email messages). The Commission is currently financing research in this area. These tools could substantially increase the security of EU citizens abroad but need to fully respect their right to privacy and data protection laws.

Better use of available civil protection assets and EU instruments, such as the EU Civil Protection Mechanism, will also contribute to optimisation of resources and improved assistance to EU citizens during crises. Further EU action on EU Disasters Response is addressed in the Communication "Towards a stronger European disaster response: the role of civil protection and humanitarian assistance"³⁵.

3.3.2. *On the ground*

Article 35 TEU provides that the diplomatic and consular missions of the Member States and the **EU Delegations shall contribute to the implementation of the EU citizens' right to consular protection as referred to in the TFEU**.

³³ See footnote 8.

³⁴ For instance in Haiti 1300 EU citizens were assisted of which around 250 were not represented by diplomatic or consular authorities in Haiti.

³⁵ COM(2010) 600 final.

Already in the past EU delegations provided logistical assistance to support consular assistance³⁶. The Council Decision establishing the organisation and functioning of the European External Action Service (EEAS)³⁷ provides in Article 5(10) that the EU Delegations shall, upon request by Member States, support them in their diplomatic relations and in their role of providing consular protection to EU citizens in third countries on a resource-neutral basis. Article 13(2) provides that the High Representative shall submit a report to the European Parliament, the Council and the Commission on the functioning of the EEAS by the end of 2011. Among other points this report shall also cover consular protection. EU Delegations could assist further in **informing unrepresented EU citizens** about protection by the consular and diplomatic missions of Member States.

4. CONCLUSIONS

The evaluation of the 2007-2009 Action Plan on consular protection showed that there is scope for further coordination and cooperation on consular protection, namely to the benefit of those citizens who face difficulties abroad and cannot turn to their own diplomatic and consular authorities. Citizens should know about their right. The Commission will step up awareness of citizens and stakeholders through **targeted communication measures** specifically addressed to potential beneficiaries. Citizens should be aided swiftly in times of crisis.

The Commission will submit **legal proposals establishing the coordination and cooperation measures** necessary to facilitate consular protection for unrepresented EU citizens and addressing the issue of financial compensation of consular protection in crisis situations in 12 months time³⁸. The Commission will engage in discussions with the European Parliament, the Council, the Member States, the European External Action Service and all other stakeholders on the actions proposed. In accordance with Article 25 TFEU, the Commission will report on the progress achieved in 2013 in the framework of the next EU Citizenship Report. The right of unrepresented EU citizens to turn to another Member State's embassy or consulate on equal terms with nationals of that State is an expression of a Union based on mutual responsibility and solidarity. With the Lisbon Treaty in force and in view of the Stockholm Programme adopted by the European Council³⁹, the Union has a mandate to further turn this right into practice.

³⁶ See point 2.3.1. *supra*.

³⁷ OJ L 201, 3.8.2010, p.30 (Council document 2010/427/EU).

³⁸ Commission Work Programme 2011 (COM(2010) 623 final).

³⁹ OJ 2010/C 115/01 – The Stockholm Programme – An open and secure Europe serving and protecting the citizens, Council document 17024/09 of 2 December 2009.