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**COMMISSION STAFF WORKING PAPER**  
**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a DIRECTIVE OF THE COUNCIL**  
**on consular protection for citizens of the Union abroad**

{COM(2011) 881 final}  
{SEC(2011) 1556 final}

*This impact assessment is on coordination and cooperation measures regarding consular protection for unrepresented EU citizens.*

*An EU citizen, travelling to or living in a third country where his/her Member State is not represented by an embassy or consulate, has the right to enjoy the protection of the diplomatic and consular authorities of any other Member State under the same conditions as the nationals of that State. This right of the EU citizen is enshrined in Articles 20(2)(c) and 23 TFEU and in Article 46 of the Charter of Fundamental Rights of the European Union.*

## **1. POLICY CONTEXT AND PROCEDURE**

Recent major crises have affected a considerable number of EU citizens in third countries (for instance in Libya or Egypt after the democratic uprisings in spring 2011 or in Japan in March 2011). Yet also in day-to-day situations, for instance in case of serious illness or when being victim of a crime, assistance by consular authorities is often indispensable.

In the Stockholm Programme the European Council invited the Commission to "consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU"<sup>1</sup>. According to action 8 of the EU Citizenship Report 2010<sup>2</sup> the Commission would consider increasing the effectiveness of the right of EU citizens to be assisted in third countries, including in times of crisis, by the diplomatic and consular authorities of all Member States, by proposing legislative measures in 2011. The Commission reiterated this commitment in its Communication of 23 March 2011 on consular protection for unrepresented EU citizens<sup>3</sup>.

The Lisbon Treaty abandons the previous logic of intergovernmental decision-making and enables the Commission to propose directives, establishing cooperation and coordination measures necessary to facilitate consular protection for unrepresented EU citizens<sup>4</sup>.

For this impact assessment stakeholders were intensively consulted, including through a public consultation, two workshops, surveys and missions to selected Member States and third countries<sup>5</sup>. Four recent external studies have also contributed to this impact assessment.

## **2. PROBLEM DEFINITION**

### **2.1. Magnitude**

On the basis of the information provided by Member States, in 2009 consular protection was provided in total in almost 300.000 cases<sup>6</sup>. According to data reported in comparable situations represented EU citizens appear to ask for and obtain consular protection much more often than unrepresented EU citizens. If one assumes that represented and unrepresented EU citizens equally often get in a situation in which they could request consular protection (e.g.

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<sup>1</sup> OJ 2010/C 115/01 (Council document 17024/09).

<sup>2</sup> COM(2010) 603 final.

<sup>3</sup> COM(2011) 149 final.

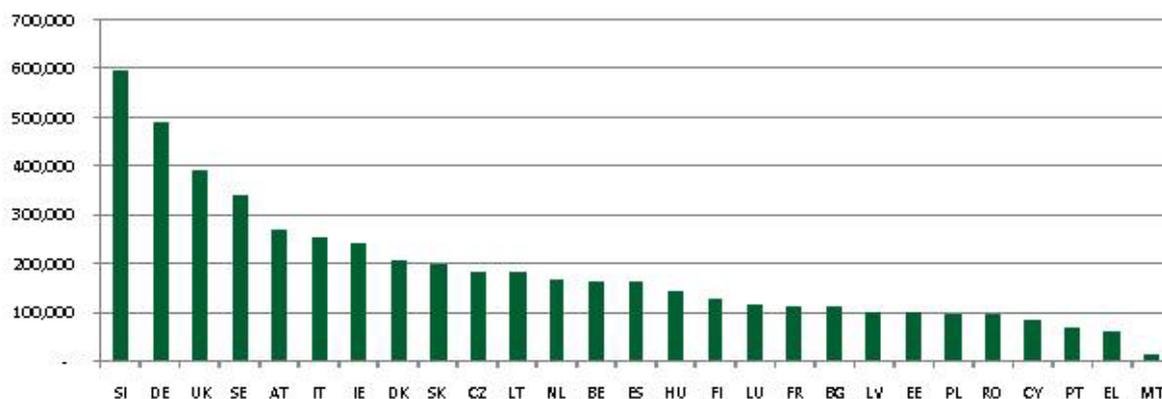
<sup>4</sup> Article 23(2) TFEU.

<sup>5</sup> Field missions to Kazakhstan, Sri Lanka, Cuba and Egypt by an external consultancy.

<sup>6</sup> As not all Member States reported cases this figure is partially based on extrapolations.

victim of robbery) around 7.300 unrepresented EU citizens could have obtained consular protection<sup>7</sup>. In fact, only 16% of these citizens actually profited from consular protection - although according to a recent Eurobarometer survey 79% of EU citizens know about the existence of this right<sup>8</sup> - a right that has however not yet been fully established<sup>9</sup>. More and more citizens will be finding themselves in situations where they are eligible for consular protection of another Member State and EU citizens abroad are increasingly exposed to crisis situations (since 1975 the recorded annual number of crises has increased fivefold and is likely to further increase)<sup>10</sup>.

**Figure: Estimate of total number of instances when travelling EU citizens are unrepresented in third countries (2009)**



## 2.2. Analysis of the problem

The implementation of EU citizenship as a concrete reality ensuring equal treatment on consular protection is currently not secured. There is no clear consensus on the content of Article 23 TFEU and about the responsibilities which this right entails.

To be effective as a right with concrete meaning, the succinct wording of the Treaty article does not suffice. Currently national laws and practices diverge considerably as do views about the underlying concepts. This is all the more important as consular cases frequently involve unrepresented EU citizens and their relatives in very difficult life situations (death, serious illness, detention, crime). Often, consular protection is the only way to get help (e.g. in cases of evacuation or detention) or at least greatly mitigates the process. Unlike when dealing with own nationals, assisting an unrepresented citizens requires cooperation between the assisting Member State present on the ground and the Member State of origin. Currently, cooperation and coordination often works on an ad-hoc basis, depending to a large extent on persons involved.

More specifically, it is currently not clear who is an unrepresented citizen. An EU citizen is not only unrepresented if his/her home Member State has no embassy or consulate at all in a given third country but also if this representation is not "accessible"<sup>11</sup>. There is no common

<sup>7</sup> Compared to how often represented nationals requested consular protection.

<sup>8</sup> Eurobarometer(2010), Flash EB No 294, European Union Citizenship.

<sup>9</sup> For the various reasons please see in the following.

<sup>10</sup> COM(2010)600 final, 26.10.2010.

<sup>11</sup> Article 1 of Decision 95/553/EC.

understanding about when a representation is accessible<sup>12</sup> as well as to which extent non-EU family member of unrepresented EU citizens, long-term residents and recognized refugees are treated on an equal footing with unrepresented EU citizens. It is also unclear which Member State has to assist an unrepresented EU citizen and how assistance is to be coordinated. This induces delays and does not safeguard efficient protection under equal conditions. According to the Treaty an unrepresented EU citizen can freely choose which embassy/consulate he/she prefers to turn to, whereas in practice derogations exist. Coordination and cooperation procedures are not sufficiently established. In practice consular officials would frequently first turn to their own authorities in the capital to ask for specific instructions. Simple forms of legalisation of third country documents and simple notary services are currently not included<sup>13</sup>. The role of the Union delegations is ambiguous and depends on persons and views represented on the ground. The current setting is thus not conducive to a fully coherent external action of the Union and induces a suboptimal use of resources.

In crisis situations the current legal cooperation framework does not sufficiently establish who assists unrepresented EU citizens, including as to the role of the so-called Lead State. Contingency planning does not specifically cater for unrepresented EU citizens. Activities are at times fragmented<sup>14</sup> and information on needs as well as available resources are (without additional support from crisis teams) not always sufficient. Current legislation and guidelines on reimbursement of assistance entail quite generic and cumbersome procedures, which are generally not applied as they are not adapted to the specific needs in times of crisis<sup>15</sup>. If financial burden-sharing is not clear and is not taking place in practice, there is less incentive to take a proactive approach which entails responsibilities not related to own nationals.

### **3. SUBSIDIARITY**

Assistance for unrepresented EU citizens by definition entails a cross-border dimension, extending the rights granted by EU Citizenship beyond EU borders. This initiative is on a specific right granted to the EU citizen. This right is inherently linked to concept and competences of the Union. EU action should bring about economies of scale. Streamlined coordination and cooperation procedures and a clearer role of local actors, including of the Union delegations, will reduce the need for ad hoc decisions taken and for individual instructions. EU action under the Lisbon Treaty will also allow for effective monitoring of implementation and facilitate ensuring compliance.

### **4. OBJECTIVES**

Any measure taken should achieve the following objectives.

<b>OBJECTIVES</b>
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<sup>12</sup> Representatives of Member States consulted expressed different views (e.g. travel distance of less than 400 km or on an island).

<sup>13</sup> These services may not relate to cases of immediate emergency, but having to travel to another third country to obtain this service is often cumbersome.

<sup>14</sup> Individual actions focusing on own nationals rather than coordinated approach.

<sup>15</sup> Notably high time pressure and considerable numbers of citizens to be assisted.

<b>GENERAL</b>	To foster the implementation of EU citizenship ensuring equal treatment for unrepresented EU citizens; for a high level of protection of citizens' fundamental rights and to promote EU values such as non-discrimination and mutual solidarity.
<b>SPECIFIC</b>	<ul style="list-style-type: none"> <li>• To clarify content and operationability of this right.</li> <li>• To simplify cooperation and coordination between consular authorities.</li> </ul>
<b>OPERATIONAL</b>	<p>To provide the basis for a stable framework on cooperation and coordination by defining:</p> <ul style="list-style-type: none"> <li>• who is an unrepresented EU citizen;</li> <li>• which of the Member States present in a third country has to assist an unrepresented EU citizen and how assistance is to be coordinated with the citizen's Member State of origin;</li> <li>• how the authorities present in a given third country should cooperate and coordinate amongst each other and what the role of the European Union entails;</li> <li>• how and by whom unrepresented EU citizens should be assisted in crisis situations and how financial reimbursement should operate.</li> </ul>

## 5. POLICY OPTIONS

- **Policy Option 1:** Retention of the status quo: no additional action at EU level.
- **Policy Option 2:** Directive establishing coordination and cooperation measures to further facilitate consular protection for unrepresented EU citizens, reinforced by targeted awareness-raising measures.

This option would cover the four operational objectives and ensure effective implementation due to targeted awareness-raising for citizens and practitioners.

- **Policy Option 3:** Further and tighter cooperation measures.

This option would, in addition to option 2, ensure that consular protection is also given on equal terms to long-term residents and recognised refugees; include simple forms of legalisation and of notary services and reinforce reimbursement in crisis situations by setting up a reimbursement mechanism or/and enhanced EU co-funding specifically for unrepresented EU citizens.

## 6. ASSESSMENT OF IMPACTS

The impacts of the options were assessed as follows.

## Effectiveness in meeting objectives

- **Policy Option 1:** This option will not contribute to further facilitating cooperation and coordination for the benefit of the unrepresented EU citizen. The right on consular protection will continue to lack clarity, hampering the full operability of this right. The spectrum of enforcement mechanisms will not be fully applied.
- **Policy Option 2:** A directive will foster the implementation of EU citizenship as a concrete reality, by clarifying the content of this right, by streamlining cooperation and cooperation procedures and by allowing for enforcement mechanisms. This will be brought about by the following measures:
  1. **Personal scope:** Clarifying when a citizen is unrepresented (in particular under which circumstances the consular and diplomatic representation of his/her home Member States is not "accessible") and to which extent also third-country family members of unrepresented EU citizens are included.
  2. **Access to consular protection and cooperation/coordination:** Specifying which Member State has to assist an unrepresented EU citizen and how this assistance is to be coordinated with the citizen's Member State of origin.
  3. **Local coordination/EU added value:** Laying down that local cooperation should systematically include collecting pertinent information and clarifying the role of the Union delegations (logistic and operational support, facilitating the exchange of information, etc.).
  4. **Assistance in crisis situations/financial reimbursement:** Fully including unrepresented EU citizens in contingency planning, clarifying responsibilities in times of crises (notably regarding the role of the Lead State), simplifying financial procedures for reimbursement.
  5. **Awareness-raising for citizens and practitioners** supporting the implementation of the Directive.
- **Policy Option 3:** The additional measures foreseen under this option would notably have the following effects:
  1. **Personal scope:** Treating refugees and long-term residents like unrepresented EU citizens would foster the implementation of EU citizenship in a large sense, however – given that Member States generally do not by law grant assistance - fixed rules would currently appear too ambitious.
  2. **Cooperation and coordination measures:** Including cooperation and coordination measures on simple forms of legalisation and notary services would increase service for the citizen and mutual trust. However Member States' rules still vary considerably, with EU legislation within the EU being foreseen for 2013.
  3. **Assistance in crisis situations/financial reimbursement:** Member States could be encouraged to ask for reimbursement if they can do so via an EU reimbursement/clearing house mechanism, however given stakeholders' views there is a risk that such a mechanism would not be sufficiently used. Enhanced financial

support at EU level would reduce inequalities between assisting and assisted Member States but synergies with existing EU instruments should be fully exploited.

### Social impacts and fundamental rights

- **Policy Option 1:** The fundamental right on consular protection will not gain full effectiveness as core concepts, responsibilities and procedures are not sufficiently clear and effective implementation and application will not be ensured. This could in turn undermine the credibility and perception of the Charter of Fundamental Rights and of a Union based on solidarity and non-discrimination.
- **Policy Option 2:** This option would enhance the fundamental right on consular protection. Including non-EU family members would strengthen the right to family life as well as the rights of the child. Clearer responsibilities and improved burden-sharing in crisis situations would ensure non-discrimination also in times of crisis when fundamental rights are a sensitive issue. Life and integrity of the person and the right of defence and of a fair trial would be reinforced.
- **Policy Option 3:** The positive impact on social considerations and fundamental rights would generally be high. Consular protection would be further reinforced (e.g. by providing for legalisation services). Facilitating reimbursement through a compensation mechanism/clearing house and/or EU funding would better safeguard non-discriminatory treatment of unrepresented EU citizens.

### Financial and economic impacts

- **Policy Option 1:** No direct new financial costs are induced by this option. However, efficiency losses will continue to occur and the use of the existing resources will not be further improved. Current inequalities in financial engagement in crisis situations will remain the same.
- **Policy Option 2:** The financial impact of the legal measures would amount to about 750,000 EUR per year for the assisting Member States<sup>16</sup>; no additional resources will be needed for the Union delegations<sup>17</sup>. Regarding facilitation of reimbursements implementation costs can be estimated at 89,610 EUR for all the Member States. The savings of the assisting Member States would depend on the individual case. The additional financial burden for unrepresented Member States would be limited and still – due to economies of scale – be more beneficial than organising assistance separately for their own unrepresented citizens. Comprehensive awareness-raising would induce costs of approximately 1 million EUR for an EU-wide information campaign. This policy option would also have a positive economic impact for unrepresented citizens who might be less inclined to seek support on their own from suboptimal alternative sources and save time<sup>18</sup> (savings would amount to more than 1,8 million EUR).

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<sup>16</sup> Due to the expected increase of cases concerning unrepresented EU citizens.

<sup>17</sup> The necessary involvement can be estimated at the level of 10 working days of an EU official per Union delegation (which would not require additional human resources).

<sup>18</sup> The benefits to unrepresented EU citizens in everyday situations were estimated using two elements: 1) time saving to previously unassisted citizens or to citizens receiving assistance quicker - this is

- **Policy Option 3:** Given the necessity of additional human and financial resources this option would generate considerably higher costs than option 2, both at EU level and for Member States. Notably a compensation mechanism/clearing house would trigger additional costs at EU level (at least 112.000 EUR a year plus additional cost of establishment of electronic files/ maintenance), EU funding would induce costs of about 16-31 million EUR for a funding period of 6-7 years<sup>19</sup>. Additional costs of managing the fund at EU level would be estimated at least at the level of 780.000 EUR.

## 7. COMPARISON OF OPTIONS

Objectives/Costs:	Effectiveness in meeting objectives	Social impacts and fundamental rights	Financial and economic impacts
<b>Policy Option 1:</b> Status quo	0	0	0
<b>Policy Option 2:</b> EU Directive on cooperation and coordination measures and awareness raising	++	++	low
<b>Policy Option 3:</b> EU measures setting out further rules and further strengthening the rights of the EU citizens	++(+/-) <sup>20</sup>	++(+/-) <sup>21</sup>	medium/high <sup>22</sup>

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estimated using average daily wages and estimated to be €60; 2) avoiding an 'inconvenience' cost associated with receiving sub-optimal assistance or having to seek out other forms of assistance. Estimating this cost takes the system of compensation for air passengers as the point of departure, assuming the similarity of situation of a citizen requiring the consular assistance and a stranded air passenger.

<sup>19</sup> Depending on whether 50% or a higher percentage of the activities would be financed.

<sup>20</sup> Depending on the measure: 1. Regulating the concept of "accessibility" by laying down a specific amount of kilometres may even reduce effectiveness as local circumstances (quality of transport networks) would not be sufficiently taken into account. 2. Including long-term residents, refugees and legalisation would further enhance effectiveness (but depart too much from the current framework). 3. A reimbursement mechanism would not enhance effectiveness if only rarely used by Member States. 4. EU-funding would have a beneficial effect as Member States would be more inclined to proactively assist unrepresented EU citizens.

<sup>21</sup> *Idem.*

Following a comparison of the policy options, in view of their costs and effectiveness in attaining the objectives set, **policy option 2** (EU Directive on cooperation and coordination measures) is identified as the best placed variant and therefore constitutes the **preferred option**. A Directive entailing the proposed elements would provide the basis for a stable framework on cooperation and coordination. It would ensure equal protection, by providing for a right with a clear and reliable content based on simplified coordination and cooperation procedures. This may lead to a limited increase in requests, but requests would be more focused given the increased clarity about the content of this right. In comparison to the overall costs of assisting nationals, additional costs for assisting unrepresented EU citizens are still going to represent a minor proportion; for more costly evacuations an improved reimbursement system will be provided for. To maximise effectiveness of this option, awareness-raising measures should be included; in view of the financial impacts a fully fledged awareness-raising campaign should accompany the implementation of the Directive; a full understanding of the content of this right is a precondition.

Option 3 is effective in achieving the objectives set, whilst option 2 is only marginally less effective. Including refugees and long-term residents as well as simple legalisation of documents would however depart considerably from the current framework, which is deemed to be premature at this stage<sup>23</sup>. The costs induced by option 3 would be considerably higher than those likely to be incurred by option 2<sup>24</sup> and synergies with the European Civil Protection Mechanism would not be fully exploited.

## 8. MONITORING AND EVALUATION

The envisaged deadline for transposition of the Directive will be two years following its entry into force. Given that the Directive at least partially reflects existing practices, two years are deemed sufficient.

To make sure that the provisions of the Directive are adequately complied with, a functional monitoring and evaluation mechanism will be provided for. To remedy the current lack of comprehensive data the Directive will call on Member States to inform the Commission on the implementation of this right, including by a yearly overview on statistics and relevant cases. A report, coming after 3 to 5 years of the implementation of the Directive, should entail a specific study with emphasis on data collection.

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<sup>22</sup> Depending on whether regarding reimbursement in crisis situations only a compensation mechanism/clearing house or also EU-funding would be opted for. See Annex VI for further details.

<sup>23</sup> For further details please see above (analysis of impacts of the specific elements of option 3).

<sup>24</sup> In particular if EU co-funding would be opted for.