

Consular protection for unrepresented citizens of the Union in third countries

2011/0432(CNS) - 14/12/2011 - Legislative proposal

PURPOSE: to establish a consular protection system for citizens of the Union abroad.

PROPOSED ACT: Council Directive.

BACKGROUND: the Treaty right to consular protection for unrepresented EU citizens under the same conditions as for nationals, enshrined in Articles 20(2)(c) and **23 of the Treaty on the Functioning of the European Union (TFEU)** and in Article 46 of the EU Fundamental Rights Charter, is one of the specific rights granted by EU Citizenship. It is an expression of EU solidarity and of the **identity of the Union in third countries**, as well as of the practical benefits of being an EU citizen.

Consular protection is an integral part of the Union's policy on citizens' rights. The European Council, in the Stockholm Programme, invited the Commission to "consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU". In its [Resolution](#) of 25 November 2009 the European Parliament advocated to strengthen the coordination and cooperation of consular protection, thereby following up its [Resolution](#) of 11 December 2007 which suggested common concepts and binding guidelines and called for amending Decision 95/553 /EC once the Lisbon Treaty is in place.

In the "[EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights](#)" the Commission announced it would increase 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](#) on consular protection.

Under the previous legal regime Member States were to establish the necessary rules among themselves. The Lisbon Treaty confers on the Commission the right to propose directives establishing the cooperation and coordination measures necessary to facilitate the right to equal consular protection for unrepresented EU citizens as for own nationals. The current EU instrument, [Decision 95/553/EC](#), foresees a review following five years after its entry into force in 2002.

Currently, there is scope for further improvement regarding consular protection for unrepresented EU citizens. 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. National consular laws and practices diverge as do views about the underlying concepts of consular protection for unrepresented EU citizens.

In particular in four areas further clarifications appear necessary. This is the purpose of this proposal.

IMPACT ASSESSMENT: three policy options were examined:

- **Option 1:** Retention of the status quo: no additional action at EU level.
- **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.
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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.

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.

LEGAL BASIS: Article 23 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the main objective of this proposal is to:

- clarify content and operability of right of unrepresented EU citizens to consular protection under equal conditions;
- simplify cooperation and coordination between consular authorities.

To this effect, the proposal addresses the following issues:

(1) Personal scope: the proposal clarifies that an EU citizen is to be considered as unrepresented in particular when an embassy or consulate of his/her own Member State is not "accessible". An embassy or consulate is not "accessible", **if the EU citizen cannot reach it and return to his/her place of departure** (via means of transport commonly used in the third country) at least the same day. An exception is provided for in case the urgency of the matter necessitates even swifter assistance.

The proposal further specifies that also **third country family members of EU citizens are included in consular protection for EU citizens**. Article 23 TFEU provides for non-discriminatory treatment, and in line with Articles 7 and 24 of the Charter of Fundamental Rights of the European Union and the case-law of the European Court of Justice the principal benefits of EU citizens' rights are also extended to their family members to ensure the full effectiveness of those rights. Accordingly, the proposal provides that protection must be given to third country family members of EU citizens to the same extent as Member States provide it to the third country family members of their own nationals.

(2) Access to consular protection and cooperation/coordination: the proposal stresses that EU citizens can turn to "any" other Member State's embassy or consulate; though specific arrangements by Member States are possible as long as transparency (through notification and subsequent publication on the Commission's website) and effective treatment of applications are ensured. The proposal further specifies which assistance Member States typically provide in the most frequent events (i.e. arrest or detention, victim of crime, serious accident or serious illness, death, relief and repatriation in case of distress, need of emergency travel documents), on the basis of common practices of Member States on consular protection²⁸, and the applicable procedures for cooperation and coordination between the consular authorities in these events.

To comply with the citizens' right of self-determination, the proposal provides for enquiries regarding the wishes of citizens which should be respected, including as to whether family members or other related persons should be informed (e.g. about the arrest). Similarly, in the event of death, the wishes of the next-of-kin must be duly taken into account as to how to proceed with the corpse of the deceased citizen.

(3) Local coordination/EU added value: the proposal specifies that local cooperation meetings on consular protection should include regular exchange of information on unrepresented EU citizens and that the Chair of these meetings should collect the contact details of relevance for assistance to unrepresented EU citizens (e.g. regionally responsible embassy or consulate of unrepresented Member States). It

provides that Union delegations can under specific conditions chair - or otherwise support - these meetings.

(4) Assistance in crisis situations/financial reimbursement: regarding crises situations the proposal entails the following improvements. It provides that local contingency plans must systematically include unrepresented EU citizens. The proposal underlines the importance of the Lead State(s) for protecting unrepresented EU citizens and defines its role in this respect, i.e. that the Lead State is in charge of coordinating and leading assistance of unrepresented EU citizens.

The proposal specifies that a Lead State can seek additional support from the EU Civil Protection Mechanism and the crisis management structures of the EEAS. The proposal also provides for additional support and full use of synergies by providing for the inclusion of national consular experts, notably from unrepresented Member States, in existing intervention teams at Union level.

Regarding **financial burden-sharing** a facilitated reimbursement procedure, adjusted to crisis situations is introduced. This entails simplifying the procedural exchange involving consular authorities and citizens, adding standard formats for requests and introducing an easier system for tracking the reimbursement costs (on a pro-rata basis, fixed rates - in case costs cannot be calculated). This improved reimbursement procedure complements the support available from the EU Civil Protection Mechanism and the EEAS crisis management structures.

BUDGETARY IMPLICATIONS: this proposal has no implications for the EU budget.