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Proposal for a Council Directive

amending Directive (EU) 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and Directive (EU) 2019/997 establishing an EU Emergency Travel Document

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CONTENT

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT 4
2. PROBLEM DEFINITION 7
2.1. Preparedness to ensure the protection of fundamental rights 7
2.2. What is the problem and why is it a problem? 8
2.2.1. Overview 8
2.2.2. Limitations resulting from the lack of preceding evaluation 9
2.2.3. Imprecise definition of 'unrepresented citizens' 9
2.2.4. Unclear assignment of roles and tasks at local consular cooperation networks 10
2.2.5. Ineffective contingency planning 11
2.2.6. Ineffectiveness of Lead State concept 13
2.2.7. Legal uncertainty related to the role of the EU and EU delegations 14
2.2.8. Inconsistent information to EU citizens 16
2.2.9. Lack of reliable information on EU citizens living or traveling abroad 17
2.2.10. Complexity and ineffectiveness of reimbursement procedure 18
2.3. Magnitude of the problem 19
2.3.1. Estimated number of unrepresented EU citizens 19
2.3.2. Estimated number of cases of assistance to unrepresented EU citizens 20
2.3.3. Feedback from EU delegations 21
2.4. How will the problem evolve? 21
2.4.1. Consular networks 21
2.4.2. Unrepresented EU travellers 22
2.4.3. Number of crises requiring consular assistance 22
3. WHY SHOULD THE EU ACT? 23
3.1. Legal basis 23
3.1.1. Mandate of the EEAS and function of EU delegations 24
3.1.2. Compatibility of the role of EU delegations with the Vienna Convention on Consular Relations 25
3.2. Subsidiarity: Necessity and added value of EU action 26
4. OBJECTIVES: WHAT IS TO BE ACHIEVED? 27
4.1. General objective 27
4.2. Specific objectives ('SO') 27
5. WHAT ARE THE AVAILABLE POLICY OPTIONS? 28
5.1. What is the baseline from which options are assessed? 28
5.2. Description of the policy options per specific objective 28

5.2.1. SO1: Enhance the legal certainty for EU citizens with respect to the scope of the right to consular protection 28
5.2.2. SO2: Ensure clear roles, coordination and cooperation mechanisms between Member States and EU delegations, including in times of crisis. .29
5.2.3. SO3: Improve the information provision and communication with (unrepresented) EU citizens. 30
5.2.4. SO4: Increase the efficiency and use of the financial reimbursement procedures 30
5.3. Options discarded at an early stage 31
6. WHAT ARE THE IMPACTS OF THE DIFFERENT POLICY OPTIONS AND WHO WILL BE AFFECTED? 32
6.1. Impacts on fundamental rights 32
6.2. Economic impacts 33
6.3. Compliance with the 'Digital by Default' principle 38
6.4. Assessment of options 38
6.4.1. Assessment of options for SO1 39
6.4.2. Assessment of options for SO2 41
6.4.3. Assessment of options for SO3 46
6.4.4. Assessment of options for SO4 48
7. HOW DO THE OPTIONS COMPARE? 50
8. PREFERRED COMBINATION OF OPTIONS 53
8.1. Impacts of the preferred combination of options 54
8.2. REFIT – Preferred option 54
9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED? 55
GLOSSARY 57
ANNEX 1: PROCEDURAL INFORMATION 58
ANNEX 2: STAKEHOLDER CONSULTATION 70
ANNEX 3: WHO IS AFFECTED AND HOW? 86
ANNEX 4: ANALYTICAL METHODS 102
ANNEX 5: RELEVANT PROVISIONS OF THE DIRECTIVE AND HOW IT WORKS 111
ANNEX 6: LEVEL OF MEMBER STATES' REPRESENTATION IN THIRD COUNTRIES 113
ANNEX 7: FACTORS LIKELY TO INCREASE THE NUMBER OF CRISES WITH AN IMPACT FOR CONSULAR PROTECTION 120
ANNEX 8: INTERVENTION LOGIC 122
ANNEX 9: BASELINE SCENARIO 123
ANNEX 10: MEASURES NOT REQUIRING A POLICY CHOICE 126

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

European Union (EU) citizens travelling to or living in a third (that is, non-EU) country where their Member State of nationality is not represented ('unrepresented EU citizens') are entitled to the protection of the diplomatic and consular authorities of any other Member State under the same conditions as the nationals of that Member State. This right is set out in Articles 20(2)(c) and 23 of the Treaty on the Functioning of the European Union (TFEU) and in Article 46 of the Charter of Fundamental Rights of the European Union (the 'Charter').

This protection is an essential element attached to EU citizenship. It is an expression of EU identity and the external dimension of EU citizenship, one of the practical benefits of being an EU citizen[1], and a tangible example of European solidarity appreciated by many EU citizens[2]. On this basis of this right, unrepresented EU citizens in need of assistance abroad, be it in case of accident, illness, being victims of crime, or loss of their travel documents, can turn to the diplomatic and consular authorities of other Member States.

On 20 April 2015, the Council adopted Directive (EU) 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries (from here on *the Directive* or the *Consular Protection Directive*)[3]. This Directive lays down the coordination and cooperation measures necessary to facilitate the exercise of the right of EU citizens to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, consular protection on the same conditions as the nationals of the represented Member State providing assistance. The Member States had three years, until May 2018, to transpose the Directive into their national legislation[4].

The Directive replaced the ten-year long intergovernmental *sui generis* legal framework that used to govern the implementation of the EU citizenship right to consular protection[5]. It does not exist in a legal vacuum, however, and the following instruments are relevant to ensure effective consular protection to EU citizens:

- The **1963 Vienna Convention on Consular Relations (VCCR)**[6] as the basis for international consular cooperation between States;
- The **European External Action Service (EEAS) Decision**[7] outlining the mandate of the EU delegations (EUDEL). According to Article 5(10) of that Decision, the EU delegations are to "*acting in accordance with the third paragraph of Article 35 of the Treaty on European Union (TEU), and upon request by Member States, support the Member States*

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1 See Commission Proposal for a Council Directive on Consular protection for citizens of the European Union abroad, COM(2011)881 final, Explanatory Memorandum.

2 According to Flash Eurobarometer 485, around three quarters of respondents (76%) are aware of this right.

3 Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC (OJ L 106, 24.4.2015, p. 1).

4 Article 17(1) of the Directive.

5 See Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (OJ L 314, 28.12.1995, p. 73).

6 See at https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

7 Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis";

- **Council Directive (EU) 2019/997**[8] (the 'ETD Directive') on the issuance of **Emergency Travel Documents (ETD)**, which is a single-journey document, allowing the bearer to return home, or, exceptionally, to another destination, in the event that they do not have access to their regular travel documents, for example because they were stolen or lost. EU ETDs were first introduced by Decision 96/409/CFSP[9] in 1996. The ETD Directive provides for a modernised, harmonised and more secure EU ETD format. The issuance of ETDs is one of the six types of consular assistance expressly mentioned by the Consular Protection Directive;
- The **European Union Civil Protection Mechanism (UCPM)**, which may be used to provide civil protection support to consular assistance to the citizens of the Union in disasters in third countries[10]. During the COVID-19 crisis, the UCPM was activated an unprecedented number of times in support of consular assistance requests (408 flights, 100 313 passengers repatriated on UCPM-financed flights)[11]. The UCPM also played a significant role during the 2021 consular emergency in Afghanistan, supporting 98 flights which evacuated 10 000 passengers (including a number of eligible persons who were not EU citizens). The Union co-financed 75% of the costs of these repatriation flights. According to Article 13(4) of the Consular Protection Directive, the Lead State or the Member State(s) coordinating assistance to unrepresented citizens can resort to the UCPM for help in crisis situations. Under the UCPM, Member State(s) are directly cooperating with nine UCPM Participating States[12]. It should also be noted that in crisis situations, there is the possibility to use UCPM's co-financed flights to send teams of civil protection or consular experts to the crisis-hit third country;
- **Consular protection provisions/clauses included in several international agreements**[13] with a view to enabling represented Member States to provide consular protection to

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8 Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP (OJ L 163, 20.6.2019, p. 1).

9 Decision of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document (OJ L 168, 6.7.1996, p. 4).

10 See Article 16(7) of Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

11 Map summarising the UCPM support to Member States and UCPM Participating State in organising the repatriation of EU citizens from across the world during the COVID-19 pandemic: https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/stories/bringing-stranded-citizens-home_en

12 Albania, Bosnia and Herzegovina, Iceland, Montenegro, North Macedonia, Norway, Serbia, Türkiye and Ukraine.

13 See, for example: Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part ; Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part; Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part; Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Malaysia, of the other part; Political dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part; Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part; Cooperation Agreement on Partnership and Development between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part.

unrepresented EU citizens and dispensing with the obligation to notify the receiving State pursuant to Article 8 VCCR.

A short description of the provisions of the Directive and examples on how it works are presented in Annex 5.

As mentioned in the 2020 EU citizenship report[14], the 2021 Commission work programme[15] announced a review of the EU rules on consular protection to improve the EU's and Member States' preparedness and capacity to protect and support EU citizens in times of crisis. This would involve strengthening the EU's supporting role[16] and making best use of its unique network of EU delegations.

In addition, the Commission, in its Communication in the follow up on the Conference on the Future of Europe[17], committed to consider new areas of action, such as making "*European citizenship more tangible to citizens, including by reinforcing the rights attached to it and by providing reliable and easily accessible information about it*."

The Strategic Compass for Security and Defence – For a European Union that protects its citizens, values and interests and contributes to international peace and security adopted by the Council in March 2022[18] announced that "*the EEAS crisis response mechanisms, our consular support and field security will also be reviewed and strengthened to better assist Member States in their efforts to protect and rescue their citizens abroad, as well as to support our EU delegations when they need to evacuate personnel*"[19].

On 2 September 2022, the Commission published a report on the implementation and application of the Directive (the 'Commission Report')[20], which notes that crises resulting in requests for consular protection are increasing in number and scale. In particular, the COVID-19 pandemic (unprecedented in scale and complexity), the crisis in Afghanistan, Russia's war of aggression against Ukraine and the subsequent consular crises provided a context to identify gaps and reflect on how to strengthen Union citizens' rights related to consular protection and to further facilitate its exercise.

Improving the consular protection of EU citizens abroad by reinforcing EU solidarity and cooperation in this field would ensure that EU citizens continue to benefit from this fundamental right according to the highest standards.

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14 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: EU Citizenship Report 2020 Empowering citizens and protecting their rights (COM(2020) 730 final).

15 COM(2020) 690 final.

16 See Article 5(10) of the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU).

17 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: Conference on the Future of Europe – Putting Vision into Concrete Action (COM(2022) 404 final and Annex).

18 ST 7371/22.

19 Following on this call, an EEAS Crisis Response Centre (CRC) was created in July 2022 as the EEAS permanent crisis response capability, liaising with all EU Institutions', Member States' and partners' crisis cells.

20 Report from the Commission to the European Parliament and the Council on the implementation and application of Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC (COM(2022) 437 final).

2. PROBLEM DEFINITION

2.1. Preparedness to ensure the protection of fundamental rights

"*In times of increasingly rapid change, growing complexity, and critical uncertainty, responsible governance requires preparing for the unexpected*"[21].

Consular preparedness implies to anticipate and address the main issues related to the protection of EU citizens abroad irrespective of whether hypothetical scenarios materialise. This applies to regular consular protection but is even more relevant in crisis situations where rapidity and adequacy of response is of utmost importance for an effective assistance.

Against this backdrop, there is a need to pinpoint existing weaknesses in the Member States and EU assistance coordination in order to address them and to prevent risks for EU citizens. Crisis management is not limited to responding to emergencies, but rather is a dynamic process that includes (1) prevention, (2) preparation (also called mitigation) and (3) response and recovery actions.

Prevention activities aim to forecast critical events and identify possible crisis situations in advance to avoid that EU citizens become victims of predictable dangers. These actions mainly consist in offering travel information based on the assessment of a situation in a third country, also known as 'travel advice'. After having identified the most plausible risk scenarios, it is essential to prepare accordingly in order to be ready to act if and when the emergency actually occurs.

Good planning ahead of a possible crisis is essential to make the crisis response phase as effective as possible. Finally, the recovery phase involves the evaluation of the results achieved, thus giving the opportunity to learn from successes and failures. **It follows that while crises could appear as ad-hoc problems, since they are often unforeseen and distinct from each other, the mechanisms necessary to deal with them should not be ad-hoc ones.**

In the case of consular protection, lack of preparedness and failure to provide protection in a timely and effective manner may have serious consequences for EU citizens in a distressing or even dangerous situation, either an everyday one or, most importantly, a crisis situation.

Even though most persons do not experience any serious trouble when travelling, it can occur that a person or a group of persons suddenly face a life-or-death situation or require different types of protection at once. In particular, situations where a large number of citizens require the intervention of the diplomatic and consular representations can be particularly challenging. Failures to provide effective consular protection to EU citizens in distress not only has concrete negative consequences on the citizens concerned and their families, but it also poses a reputational risk for the Member States and the EU.

Another important aspect to consider, when analysing problems in the provision of consular protection, is the fact that from a practical point of view, consular assistance from the Member States and the support of EU delegations is a dynamic process that is not only strictly connected to the capacity of the diplomatic and consular missions on the ground, and to the resources available for managing emergencies, but also to the existence of clear procedures and legal safeguards providing a framework for an effective response.

Legal uncertainties for the actors involved in consular protection activities, including EU delegations, in particular in crisis response, undermine their capacity to respond effectively to

[21] OECD, Strategic Foresight see at https://www.oecd.org/strategic-foresight/whatisforesight/.

the situation, therefore hindering EU citizens' enjoyment of their fundamental right to consular protection.

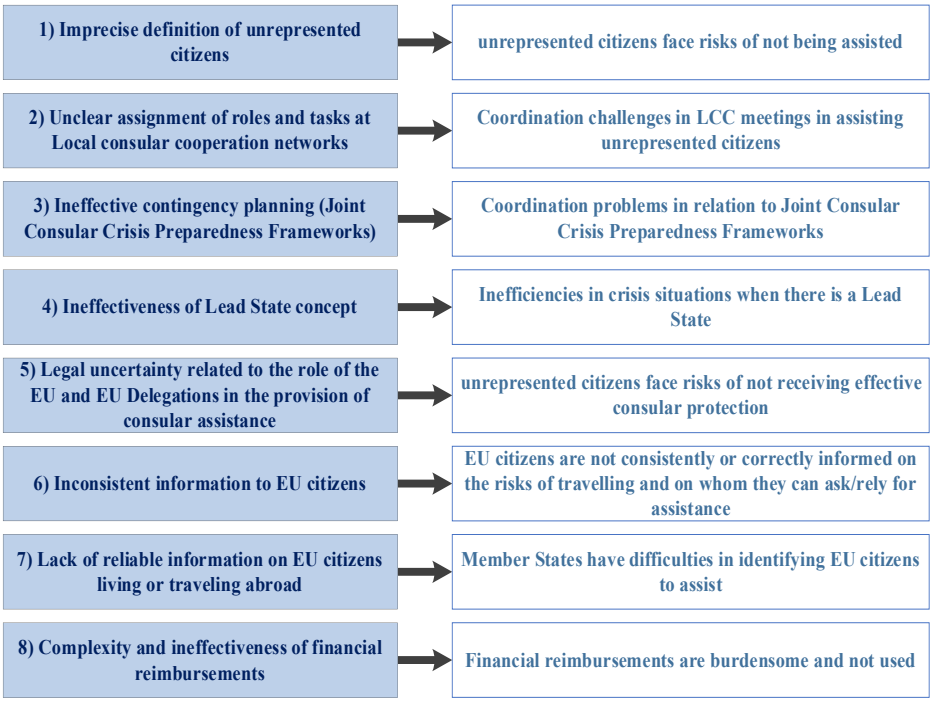
In conclusion, the context of the provision of consular protection has specific characteristics, including prevention and preparedness that are to be taken into account when illustrating the problems and their magnitude in the next sections.

2.2. What is the problem and why is it a problem?

2.2.1. Overview

The figure below presents the key problems[22] identified, as will be explained in the following sections.

Figure 1: Overview of problems identified and their consequences



In addition to the study carried out to support this impact assessment[23], the problems were identified on the basis of the Commission Report and the evidence gathered for its preparation, an inception impact assessment, the discussions among Member States in the Council Working Party on Consular Affairs (COCON) and the public consultation for the 2020 EU Citizenship report and the Flash Eurobarometer 485 on EU Citizenship and Democracy. For more information, see Annex I.

[22] Please note that an additional set of problems were investigated as part of the study. The rationale for not including these in the impact assessment is presented in Annex I and II of the study.

[23] Study supporting the impact assessment, including its annexes.

2.2.2. Limitations resulting from the lack of preceding evaluation

A derogation from the 'evaluate first' principle was granted given the preparation of the Commission Report and the fact that, shortly after the transposition of the Directive, the datasets were insufficient to carry out a fully-fledged evaluation.

However, it must be acknowledged that the absence of such an evaluation has a negative impact on the data and evaluative evidence available for this impact assessment, notably when determining the scale of the problems and subsequently the proportionality of the possible policy options. In view of these limitations, they are specifically addressed in the assessment of the proportionality of the different options.

2.2.3. Imprecise definition of 'unrepresented citizens'

In practice: *Nadine, a citizen of Member State A, was victim of a robbery on holidays in third country X. She is without travel document. The embassy of Member State A is 2 000 km away and it would be very difficult for her to reach it. Member State B consulate is in the same area where Nadine is located. When Nadine goes to the consulate of Member State B, Member State B refuses to provide consular protection because Member State A is present in the third country. Nadine is not provided with the consular protection needed.*

Articles 4 and 6 of the Directive define 'unrepresented citizen' as every citizen holding the nationality of a Member State which is not represented in a third country, which is the case if it has no embassy or consulate established there on a permanent basis, or if it has no embassy, consulate or honorary consul there which is 'effectively in a position to provide consular protection in a given case'. Accordingly, when a citizen's Member State of nationality has an embassy, consulate or honorary consul established in a third country, but these are, for any reason, unable to provide the protection the citizen concerned would otherwise be eligible to receive according to national law or practice in a given case, that citizen should also be considered 'unrepresented'.

A citizen who seeks consular protection from the embassy or consulate of another Member State should not be redirected to the embassy, consulate or honorary consul of his or her own Member State of nationality when it is not possible. This might be due to local circumstances (e.g. as a result of disruptions to the transport system due to a natural disaster) or lack of resources for the citizen to safely reach or be reached by the consular authorities of his or her Member State of nationality to receive consular protection. There are no quantitative data available on such cases as Member States do not collect such information. However, the survey of EU delegations conducted in the context of the study suggests that cases where EU citizens were wrongly considered represented and were not assisted or redirected according to the procedures of the Directive have indeed occurred [24].

In addition, as noted in the Commission Report, some Member States have voiced difficulties in determining whether an existing embassy, consulate or honorary consul is 'effectively' in a position to provide consular protection as stated in Article 6 of the Directive. While some Member States consider the issue of remoteness or capacity as a factor in the assessment, others do not. Some Member States noted difficulties in determining to what extent a lack of proximity could give rise to a lack of representation. Some Member States expect citizens to

[24] Out of the 77 EU delegations that answered the survey, 8 EU delegations stated that they had encountered such cases, of which two EU delegations stated this happened frequently. See Annex II, study, p. 38.

make an effort to access representations of their Member State of nationality, including over larger distances.

Generally, most Member States take the view that the threshold for assessing whether an individual is unrepresented varies depending on the nature and urgency of the situation. In particular in crisis situations, where Member States are faced with urgent requests for assistance, it can be very difficult for them to confirm rapidly whether a citizen is unrepresented.

For example, large land surface third countries, even while covered by Member States, raise issues due to the size of the country. That is, while Member States may be represented in the capital or in the main cities of a large country, large sections of the territory of that country may remain uncovered, resulting in the Member States not being in a position to effectively provide consular protection to citizens in those areas.

This legal uncertainty concerning representation hinders the effective exercise of EU citizens' right to consular protection as unrepresented citizens may be deprived of the provision of consular protection they are entitled to, both in crisis and non-crisis situations.

2.2.4. Unclear assignment of roles and tasks at local consular cooperation networks

In practice: *7 Member States are represented in third country X, where an EUDEL is also established. They meet every month in a local consular cooperation meeting. Since the chairing arrangements, as defined until now by the group, task the country holding the rotating Presidency of the Council to chair the group, the LCC meeting is chaired only every 2 years by a Member State present in third country X. In other instances, the group is either chaired by the EUDEL, by the incoming Presidency, when present in the country or, upon their request, by the Member States holding the Presidency accredited but not present. This situation creates confusion with regards to the respective roles within the LCC and compromises effective cooperation by failing to ensure, amongst other aspects, business continuity as well as institutional memory.*

Local consular cooperation (LCC) meetings are meetings held between consular officials of usually[25] represented Member States in a third country and the consular correspondent in the EU delegation. The purpose of these meetings is to improve communication and cooperation between local actors. In those meetings issues such as contingency planning, safety of citizens, prison conditions or consular access are typically discussed.

Article 12 of the Directive lays out that the Chair of the LCC meetings must be a representative of a Member State unless otherwise agreed, in close cooperation with the EU delegation. As per Recital 18 of the Directive, the competences and respective roles of all relevant actors should be clarified. As noted in the Commission Report, Member States with lightly staffed representations highlighted how local coordination is crucial, both as a source of information and as a practical tool to solve issues arising from the provision of consular protection. However, Member State and EU stakeholders consulted noted that it is difficult for lightly staffed Member States to participate in all LCC discussions, let alone chair meetings. This is particularly difficult for unrepresented Member States, notably due to the different time zones. The COVID-19 crisis has led to a development of remote access/videoconference format for these meetings allowing also unrepresented Member States to join when relevant.

[25] In some cases, unrepresented Member States also participate virtually in the meetings.

A few Member States noted as a shortcoming that the information discussed during LCC meetings is not always available or accessible to those Member States not present in the third country concerned (e.g. capitals or geographically close embassies). One Member State noted in this regard the lack of sharing of information about repatriation flights, which was considered an issue during the COVID-19 crisis. One Member State noted that although the minutes of meetings are uploaded into the closed online information exchange platform CoOL operated by the EEAS, in order to facilitate discussion and feedback, the EU delegations could inform unrepresented Member States capitals of agenda of LCC meetings in advance to ensure that continuous information flow takes place. In a similar vein, another Member State highlighted that the functionality of the meetings could be further improved by identifying one channel through which reporting is coordinated and disseminated to all Member States.

There does not seem to exist a clear practice of who chairs LCC meetings. In particular, the role of EU delegations in LCC is not correctly reflected in the Directive. It is important to reiterate that problems that might seem of purely administrative/technical nature in a non-crisis context can become concrete and significant obstacles to smooth operations during crisis situations. This is the case for arrangements in LCC meetings, which might lead to ineffectively assisting EU citizens due to uncoordinated actions at local level.

2.2.5. Ineffective contingency planning

In practice: *A sudden political crisis erupts in third country X, for which no Joint Consular Crisis Preparedness Frameworks (JFW) has been developed, and a military coup takes place. Borders are closed and riots erupt. EU citizens seek to leave the country. The 9 Member States represented in the country turn to the EU delegation to organize a crisis meeting, but have no updated key contact list for crisis situations, no pre-established procedures on cooperation within the LCC or with local authorities and like-minded partners, no agreed communication strategy with EU citizens and no overview of the number or location of EU citizens, including unrepresented ones. Unrepresented Member States turn to the EEAS and ask about coordination measures in third country X. As there is no joint framework in place, compiling this information takes time and hampers adequate coordination of EU efforts. EU citizens face delays in receiving adequate information and assistance.*

Joint Consular Crisis Preparedness Frameworks (JFWs) are a practical planning tool to map the risks, the presence of EU citizens and consular assets, and to establish mechanisms of consular cooperation in accordance with specific local conditions and in response to different scenarios. They are a suitable tool for LCCs to establish cooperation and response measures and the division of responsibilities in crisis situations.

As noted in the Commission Report, JFWs are considered particularly useful by the national authorities of Member States already due to the mere fact that they raise awareness of the need for crisis preparedness as such. They also allow for the different capacities, experiences, and resources of Member States to be shared. But already the simple fact that they provide contact numbers to reach representations through satellite phones is essential in cases where other channels become unavailable. A few Member States further noted that a clear division of responsibilities between represented and unrepresented Member States and the EU delegation was essential to ensure adequate crisis preparedness and crisis management.

Two thirds of Member States consulted for the study agreed to a moderate or to some extent that there are inefficiencies in the way the provision of consular protection to unrepresented

citizens is coordinated, especially in crisis situations[26]. However, as illustrated by the successful repatriation of 600 000 EU citizens at the beginning of the COVID-19 pandemic[27], such coordination mechanisms are of utmost importance to provide effective and timely assistance, all over the world.

Although JFWs have been put in place in more than 100 third countries, they do not exist for all third countries or in the same level of quality. They may not be up-to-date or may not have been subject to exercises to test their effectiveness in practice. Member States agreed to the need for the organisation of practical exercises to be held on a regular basis (due to the rotation of diplomatic personnel). The EU's COVID-19 lessons-learned exercise highlighted the need to review the JFWs locally in view of local experiences[28]. What is more, in third countries without Member State presence, the main responsibility for preparing the JFW falls on the EU delegations. This role is not adequately reflected in the Directive.

In this context, Member States consider that a certain level of universal approach should be in place and rules for the periodic assessment of JFWs should be adopted[29]. Member States recognise the role of EU delegations in coordinating the drafting of JFW and support to reflect this practical role in the Directive[30].

In addition, the COVID-19 pandemic highlighted the need for Member States to work together and support each other in the context of multi-disciplinary crisis teams also known as 'Joint Consular Teams' (JCTs). Their role can be critical in helping to prevent that Member States representations in third countries become overstretched and thereby rendered inoperable in the event of a large-scale crisis. Although the Directive already envisages the possibility of 'intervention teams' (see Articles 11 and 13), it does not provide the principles that should govern these teams[31].

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26 In this context, see also the Council conclusions on enhancing preparedness, response capability and resilience to future crises of 23 November 2021 where the Council stated that 'Many recent lessons learned derive from the COVID-19 pandemic. Despite shortcomings, the EU has coped well, thanks to coordination and solidarity. While exposing gaps in terms of preparedness and response to cross-sectoral crises, our response to the pandemic has proven the necessity and added value of working together. The use of EU consular cooperation and coordination for the successful repatriation by Member States with support from the EEAS and Union Civil Protection Mechanism (UCPM) of EU nationals stranded abroad because of emergency travel restrictions (…) underlines where relevant the importance of consular coordination and cooperation during crises and the need to draw lessons from the response to the COVID-19 outbreak and other crises, and awaits the presentation of a Commission proposal in 2022 on a revision of the EU consular protection directive.' (https://data.consilium.europa.eu/doc/document/ST-14276-2021-INIT/en/pdf).

27 https://www.eeas.europa.eu/eeas/good-stories-consular-support-eu-citizens-stranded-abroad_en.

28 EEAS: COVID-19 – The Global Joint Consular Response: Discussion Paper for the attention of Member States in the Council Working Party on Consular Affairs (WK 6381/2020 REV 1).

29 In particular in COCON discussions under Czech Presidency, see Outcome of the proceedings COCON 61 15876/22 available at: https://data.consilium.europa.eu/doc/document/ST-15876-2022-INIT/en/pdf and WK 17059/2022 in List of working papers (WK) distributed in the Working Party on Consular Affairs in 2022 https://data.consilium.europa.eu/doc/document/ST-5013-2023-INIT/en/pdf.

30 See, for example, the EU's role on Consular crisis management – Non-paper by Belgium, Finland, Luxembourg, Poland and The Netherlands, April 2022, available at: https://europeanunion.diplomatie.belgium.be/sites/default/files/2023-05/The%20EU%E2%80%99s%20role%20on%20Consular%20crisis%20management%20-%20Non-paper%20by%20Belgium%2C%20Finland%2C%20Luxembourg%2C%20Poland%20and%20The%20Netherlands.pdf

31 In that regard, Member States in COCON agreed the principles regarding the creation and operation of Joint Consular Teams, namely participation (voluntary), solidarity (opportunity for unrepresented

2.2.6. Ineffectiveness of Lead State concept

In practice: *Member State A has the largest representation in third country X. Its citizens represent 90% of EU citizens present in the country. Only three other MS are represented, with small embassies and consular sections. Member States present in country X suggest not to adopt a JFW, as Member State A plays the role of lead state and is expected to coordinate local consular cooperation, in particular should an evacuation of EU citizens be considered. Unrepresented Member States trust that Member State A will take the necessary measures in case of a crisis to provide assistance to their citizens. However, they have not pre-established procedures on cooperation with Member State A and other Member States present in the country (nor with like-minded partners), which therefore have no information about all EU unrepresented citizens present and risk being overburdened with the provision of assistance.*

The 'Lead State' concept was adopted by the Council as conclusions in June 2007[32]. According to the Council conclusions, the Lead State was responsible for transporting unrepresented EU citizens to a place of safety. Guidelines on the implementation of the consular Lead State concept were developed in 2008[33]. The Directive codifies this soft law practice, bringing the concept of the Lead State within a legally binding EU act. It defines 'Lead State' as "*one or more Member State(s) represented in a given third country, and in charge of coordinating and leading the assistance of unrepresented citizens during crises*". In practice, it seems that the Lead State concept as codified by the Directive is generally viewed favourably, particularly by Member States that are regularly unrepresented.

However, in the context of discussions in COCON, a number of Member States noted that the concept of 'Lead State' as currently referred to in the Directive is outdated. Member State considered that further clarification of the role of the Lead State within the JFWs is needed. Since the interrelation between JFWs and Lead State is not considered, overreliance on the Lead State might lead to an overall lower level of preparedness. In addition, Member States that are the only ones represented in a given third country may still decide not to assume the role of Lead State. Some Member States also question the overall feasibility of the concept, in particular in crisis situations, when the Lead State may become overburdened.

However, other Member States insisted that the Lead State remains an operational concept but stressed the need for fairer burden sharing among Member States. According to the study, some Member States are currently of the opinion that some Lead States have too many responsibilities looking after their own citizens during a crisis to effectively play the role of Lead State. In other cases, one Member State felt it had to play this role in crisis situations in practice due to the size of their consular presence. Finally, the implementation of the Lead State concept varies between countries and regions in terms of what the role entails, with little consistency in practice.

Member States to cooperate with represented ones), equality (with regard to decisions on internal working structures), simplicity (regarding composition of teams – national and EU experts – and cost-sharing - Member States answer for own operational cost), flexibility (targeted to specific needs), visibility (of the coordinated EU response) and openness (the teams should remain open to third, like-minded countries).

32 Council Conclusions on the Lead State Paper (10671/07).

33 European Union guidelines on the implementation of the consular Lead State concept (OJ C 317, 12.12.2008, p. 6).

2.2.7. Legal uncertainty related to the role of the EU and EU delegations

In practice: *A group of citizens from Member State A are travelling through third country X on a cruise. While they are supposed to transit only, they are stopped there because of a bus accident injuring many of them. Some are unable to travel for several months. The injured citizens need consular protection, but Member State A has no representation in third country X. Only Member State Z has an embassy there but with a very limited number of officials. The embassy of Member State Z requests support from the EU delegation present in country X to provide protection to the unrepresented EU citizens. The EU delegation is in principle in a position to provide support to Member State Z. However, the possibility and terms of the support to be given are not provided for in the Directive, creating legal uncertainty as to the possibility of the EU delegation to act.*

Non-crisis situation: The Directive specifies that EU delegations have a cooperation and coordinating role. However, unlike the EEAS Decision[34], it falls short from allocating responsibilities or assigning specific duties to support Member States (upon their request) in their role of providing consular protection to unrepresented EU citizens. In particular, the Directive does not provide for the conditions and boundaries of such support, including whether EU delegations can assist unrepresented EU citizens directly (even though this can be occasionally the case[35]).

A number of Member States highlighted the need to strengthen the role of EU delegations in supporting Member States providing assistance to unrepresented EU citizens. In addition, the latest Eurobarometer[36] showed that EU citizens are also in favour of support from EU delegations: respondents stated that if they were in a country outside the EU where their Member State of nationality was not represented, they would like to seek support from an EU delegation instead.

Most Member States are of the opinion that the Directive does not properly reflect the actual role played by the EU delegations in practice. Several of them consider EU delegations are well placed to provide assistance to EU citizens upon request from Member States, notably in third countries with no or low Member State representation. As the Directive does not provide for this possibility, it creates legal uncertainty as to the possibilities and conditions for EU delegations to act, effectively undermining the provision of assistance by EU delegations to the detriment of unrepresented EU citizens in need.

There are 25 countries in the world which have no Member State diplomatic and/or consular representation[37]. In 2019, an estimated 12 200 EU citizens lived in these uncovered third countries and 332 600 EU citizens travelled there. In many more third countries, the consular or diplomatic presence of Member States is very low, and thus at high risk of being

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34 See Article 5(10) of the EEAS Decision: the EU delegations shall "acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, *support the Member States* in their diplomatic relations and *in their role of providing consular protection to citizens of the Union in third countries"*.

35 See Commission Report.

36 Flash Eurobarometer 485: EU Citizenship and Democracy; February/March 2020; https://data.europa.eu/data/datasets/s2260_485_eng?locale=en.

37 Six of these countries were previously covered by the UK but are now uncovered since the UK's withdrawal from the EU (Barbados, Belize, Grenada, Guyana, Solomon Islands and the Bahamas). In 2019, 2 590 EU citizens lived in these six countries and 200 625 EU citizens travelled there.

overwhelmed if a larger-scale crisis occurs: in 13 third countries, only 1 Member State is represented, and in 9 third countries, only 2 Member States are represented[38].

When compared to the consular network of EU delegations, among the 25 third countries without the Member States present, five have an EU delegations present[39]. The Directive does not address situations with no Member State embassy or consulate present, creating additional legal uncertainty as to EU delegations' role in providing assistance in such situations. In those 13 third countries where there is only one Member State, 5 countries also have an EU delegation present. Out of the 9 third countries with only two Member States represented, the EU delegations cover 7 of them[40].

Problems in the provision of consular protection in countries with low or no Member State representation do occur in particular in crisis situations, where Member States' diplomatic and consular authorities can be quickly overburdened and in no position to provide assistance to unrepresented EU citizens[41]. The five EU delegations that are present in an "uncovered country" confirmed that they occasionally receive requests from unrepresented EU citizens in need of assistance.

Several Member States highlighted that the Directive's lack of provisions regarding uncovered third countries poses particular problems, notably regarding the issuance and delivery of ETDs. Those cannot be solved efficiently by coverage from abroad by accredited embassies/consulates[42].

It has to be taken into account that the impact of the UK's withdrawal from the EU cannot yet be assessed fully, as the UK was still applying the Directive until 2020. In addition, travel outside of the EU has not fully returned to pre-pandemic levels yet. The UK's departure from the EU represents an estimated 7% loss in the overall number of Member States' embassies and consulates providing consular functions.

Finally, while some Member States have increased the use of digital tools to provide remote consular protection, this is yet to be fully developed and has its own challenges and limitations[43].

Crisis-situation: The Directive lays out that EU delegations are to closely cooperate and coordinate with Member States' embassies and consulates to contribute to local and crisis cooperation and coordination, in particular by providing available logistical support, including office accommodation and organisational facilities, such as temporary accommodation for consular staff and for intervention teams.

The Directive does not reflect the actual engagement of EU delegations in crisis situations, where they have exercised a more substantial role than the cooperation and coordinating role

38 See Table 16 in Annex 6 on the Level of Member States representation in third countries

39 Afghanistan, Barbados, Eswatini, Guyana, Lesotho. For further information, see Annex IV of the Study.

40 WK 10712/2022 INIT.

41 See concrete examples of the EU delegations' role in crisis situations in the Commission Report, p.16 https://commission.europa.eu/system/files/2022-09/1_1_196921_impl_rep_cons_en_1.pdf.

42 There are multiple limitations such as the lack of contacts with local authorities, the possible difficulties in accessing the country in times of crisis (i.e. if the borders are closed, in case of a natural disaster), the lack of situational awareness and expertise on the country, the urgent character or the complexity of the assistance required, etc., which make the provision of consular protection more difficult when there is no consular presence on the ground.

43 This is further described in section 2.7 in Annex II of the Study.

by providing substantive support to Member States in assisting EU citizens[44]. At the same time, a lack of specification of the role of EU delegations creates legal uncertainty and even incentivises inaction, thereby undermining unrepresented EU citizens' effective consular protection. For example, the EU delegations may be reluctant to provide assistance to EU citizens directly in cases where no Member State is present in a third country.

2.2.8. Inconsistent information to EU citizens

In practice: *A binational couple from Member State A and Member State B is travelling to third country X. When sudden violent riots erupt, Member State A advises its citizens to leave the country, while Member State B does not change its travel advice. Whereas Member State A is represented in country X, Member State B is not, but the agreement it has with Member State A on the consular protection of its citizens is not well known, and Member State B citizens are not necessarily aware of their right to seek assistance from other Member States. The EUDEL's website is not reflecting this arrangement either, providing incomplete information. This creates uncertainty regarding the most appropriate course of action.*

Honorary consuls: EU citizens do not always have access to up-to-date information on the extent to which honorary consuls are competent to provide consular protection. Some Member States stated that it would be helpful to have further information regarding the level of assistance provided by each Member State's honorary consuls.

Inaccurate information for unrepresented EU citizens: Article 10(4) and Recital 16 of the Directive require Member States to provide and update information on relevant contact points in the Member States through CoOL[45] in order to ensure swift and efficient cooperation. However, it does not provide any timeframes for these notifications. Member States' information on consular presence in third countries is currently not provided in machine-readable format, neither is it automatically updated on the closed CoOL platform nor on the public Commission website. As a result, outdated and inaccurate information may be provided to visitors of the Commission website.

Bilateral arrangements: To facilitate consular assistance to unrepresented EU citizens, the Directive provides that permanent or practical arrangements can be put in place between the Member State of nationality and another Member State. Article 7(2) of the Directive requires the EU and the Member States to publicise the bilateral agreements and practical arrangements concluded for the purpose of transparency to unrepresented citizens. A number of Member States noted the lack of up-to-date and centrally available information on the practical and local arrangements in place, both for Member States and EU citizens. This lack of information causes delays in receiving assistance when citizens are not aware of the existing arrangements and are redirected to another Member State embassy or consulate.

In addition, there are problems of coordination between Member States regarding travel advice. While both the EU and the Member States have websites and other platforms providing different types of information, and while discussions on travel advice for Member States' nationals take occasionally place in COCON and travel advice is shared in the CoOL platform,

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44 See concrete examples of the EU delegations' role in crisis situations in the Commission Report, p.15 https://commission.europa.eu/system/files/2022-09/1_1_196921_impl_rep_cons_en_1.pdf.

45 CoOL is also used to keep an overview of Member States travel advice to third countries, serves as a repository for the activities of LCC groups, and features a "discussion board" which Member States use in times of crises to exchange consular information.

there is currently no obligation to coordinate regarding the provision of travel advice for third countries, emergency/crisis communication, or on the provision of information on consular protection by Member States. As a result, an EU citizen assessing whether it is safe to travel to a third country may be faced with an array of different advice from different sources of information, which may not be aligned with one another and/or provide up to date information to the same extent. There could even be manifestly conflicting situations where a sole Member State represented in a third country would advise its citizens to leave the country immediately, while unrepresented Member States could still advise their citizens only against non-essential travel.

Member States consider that a harmonization of travel advice is difficult to achieve due to the difference between tourists, the regions visited, language barriers and the difference in the standards used to evaluate danger and safety. However, they raised the need for increased co-operation, both locally and at capital level, at an early stage when Member States are planning to change the level of their travel advice. They also positively assess the cooperation and exchange of information that took place during the COVID-19 crisis and highlighted their willingness for more support and coordination during crises.

2.2.9. Lack of reliable information on EU citizens living or traveling abroad

In practice: *Most Member States have encouraged their nationals permanently residing in country X to register with their embassies (for instance by making it a pre-requisite to receive consular services). However, the large majority of EU citizens travelling on short term trips (study, business, tourism) never register as they consider country X to be a safe country or have privacy concerns. When a crisis hits country X, Member States have no realistic estimate of the number of travellers present and face difficulties in assessing the scope of the response needed.*

All Member States offer the possibility for citizens to register their residence in a third country or their travel abroad. Most of the Member States (24 out of 27) offer to their nationals the possibility to register their contact details on a dedicated website/app for the purpose of emergency communication during their travel (with the exception of one Member State, which requires their nationals to send an email to the Consular Directorate General and respective diplomatic mission/consular post about the trip). These websites/apps are divided in their functionality: some are limited only to travelling citizens (six Member States), others also allow citizens living abroad to register (18 Member States)[46].

The difficulty in providing effective consular services in crisis situations is related to the lack of reliable information on EU citizens presented in the area affected by the crisis. As a result, during crises, Member States are not aware of the number of their citizens requiring assistance and thus cannot provide this information to the Lead State or the Member State(s) coordinating assistance, nor can they effectively reach these citizens through targeted communication (emergency SMS, phone calls, etc.). The Afghanistan conflict has shown that Member States' knowledge regarding the presence of their nationals who also have the nationality of the third country concerned is limited. Furthermore, according to Member States, only a minority of travelers register their trips (10-20%). The figure is higher regarding the nationals living abroad: for instance, France estimates that 60-70% of people living abroad register. This is likely due to the fact that most EU citizens are not aware of this possibility or are unwilling to register their travel abroad. In addition, the majority of the surveyed Member States were of

[46] See Annex II of the Study, section 2.4.4.

the view that the increasing number of expats and travellers creates new difficulties in reaching out to stranded citizens (see table 1) in particular due to the lack of knowledge of how many and where EU citizens are both in the world and within a third country.

Table 1: Level of agreement with "Statement 6: With the increasing number of expats and travellers, it is becoming increasingly challenging to reach out to stranded citizens in case of an emergency/crisis situation and to provide them with travel advice before departure." (N=25) (from the *Questionnaire sent to Member States*)

	Not at all	To a small extent	To some extent	To a moderate extent	To a great extent
Number	**3**	**4**	**8**	**4**	**6**
Share of total	**12%**	**16%**	**32%**	**16%**	**24%**

2.2.10. Complexity and ineffectiveness of reimbursement procedure

In practice: *Jonah, citizen of Member State A, was travelling in third country X when a tsunami struck its coast, causing serious devastation and leading to the repatriation of all tourists. While Jonah's Member State A is present in country X, Jonah has an opportunity to be repatriated in a flight made available by Member State B. However, Member State B is planning to use the reimbursement procedure provided for in the Directive, which does not apply to Jonah since he is represented in country X. This may hinder him from seizing the opportunity to be repatriated as Member State B is not accepting direct payments by citizens and it is not guaranteed to be reimbursed of the flight costs because the reimbursement procedure under the Directive only applies to unrepresented EU citizens.*

Currently, the Directive provides that Member States assisting unrepresented EU citizens may ask for the reimbursement of costs incurred from the unrepresented citizens' Member State of nationality. The unrepresented EU citizen assisted then repays his or her Member State of nationality for the cost of consular protection if so requested. The assisting Member State can also request reimbursement from the Member State of nationality for any unusually high but essential and justified costs in relation to assistance provided in cases of arrest or detention. For this, there are two standard forms in the Annexes of the Directive, one to be used by citizens and one to be used by the assisting Member States.

The financial reimbursement procedures are only applied in a very limited manner across the Member States, which could already be an indication of their complexity. The Commission Report highlighted issues with the implementation of the Directive's provisions on financial reimbursements. In fact, in those cases where reimbursement was sought, this was not done in a consistent way across the Member States: while some Member State follow the procedure outlined in the Directive (using the standard forms presented in the Annexes and requesting reimbursement from the Member State of nationality), other Member States seek direct reimbursement from the unrepresented citizens assisted, or have a hybrid approach of first seeking reimbursement from the citizen, and if they are not successful, they seek reimbursement from the Member State of nationality. There is also evidence to suggest that the standard form in Annex I is not used consistently in the regular procedure of Article 14, and that the lack of use of the Annex I form under the facilitated procedure (Article 15) may mean citizens are not always clear about the need to reimburse the costs of assistance once they are repatriated.

The scope of the Directive is limited to unrepresented EU citizens, which means the reimbursement forms in the Annex of the Directive only apply to unrepresented EU citizens. Some Member States reported having provided consular protection to represented citizens during crises due to the difficulty of distinguishing between represented and unrepresented citizens, for example when organising repatriations. Moreover, assistance to represented citizens is also possible under the UCPM, where the EU co-finances up to 75% of the costs of repatriation flights. Therefore, there is currently an uncertainty regarding the possibility of using the reimbursement forms in the Annex of the Directive when consular protection is provided to represented citizens. This has a potential disproportionate impact on those Member State with the most extensive consular network.

Furthermore, the financial reimbursement mechanism does not apply to EU delegations. This creates additional difficulties if they are requested by Member States to support the provision of assistance to unrepresented EU citizens while complying with the resource-neutrality obligation of the EEAS Decision.

According to the study, there also seems to be the perception among some Member States that the reimbursement procedure is lengthy and entails a disproportionate administrative burden when compared to the relatively low cost of providing consular assistance to a low number of unrepresented citizens. In COCON discussions, many Member States also voiced concerns regarding the absence of a timeframe for the provision of the statement of expenses for costs incurred by the assisting Member State, which has caused administrative issues between the Member States. Member States clearly expressed the need to improve and simplify the current financial reimbursement procedures.[47]

2.3. Magnitude of the problem[48]

2.3.1. Estimated number of unrepresented EU citizens

As can be seen in the table 2 below, the study estimates that of the 125 million trips that EU citizens had made to third countries in 2019, 14.2 million trips were to third countries where the EU citizens were not represented. In addition, the study estimates that 225 000 EU citizens live in third countries where their Member State is not represented[49].

This shows that the number of unrepresented EU citizens potentially impacted by the problems outlined above is significant. For example, due to the sizeable number of trips to third countries where the EU citizens' Member State of nationality is not represented, the number of EU citizens who could potentially be negatively affected by the imprecise definition of 'unrepresented citizen' is considerable. In addition, the large number of estimated trips to third countries where EU citizens are unrepresented exacerbates problems linked to insufficient or inconsistent information.

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47 See Outcome of the proceedings COCON 61 15876/22 available at: https://data.consilium.europa.eu/doc/document/ST-15876-2022-INIT/en/pdf.

48 The methodology for this chapter is presented in Annex VI of the Study, which provides more detailed analysis, including data on case number by type of protection, the number of refusals and the proportion of unrepresented EU citizens assisted. The Annex also compares the estimates against the estimates presented in the 2011 Impact Assessment.

49 I.e. unrepresented EU expatriates excluding dual nationals, who hold an EU passport but were born in the relevant third country.

Table 2: Summary table on estimated number of unrepresented citizens

	EU citizens living abroad 2019	unrepresented EU citizens living abroad (estimation)	EU citizens trips abroad (2019)	unrepresented EU citizens trips abroad (estimation)
Within the EU	16.7 million	25 000	238 million	2.6 million
Outside the EU /third countries	16.1 million	225 000	125 million	14.2 million
TOTAL	**36.2 million**	**250 000**	**363 million**	**16.8 million**

2.3.2. Estimated number of cases of assistance to unrepresented EU citizens

In the absence of a legal obligation, Member States do no collect statistics on the number of represented and/or unrepresented EU citizens assisted in a systematic or comparable way. Some Member States do not collect this data at all, while others collect it only for some types of protection (e.g. ETD or repatriations). However, based on the limited data reported by Member States on the number of unrepresented EU citizens, the following two estimates have been made:

Table 3: Estimations on the number of unrepresented EU citizens assisted[50]

	Low-end estimate	Average per MS	High-end estimate	Average per MS
Normal situation/average year[51] **(2018/2019)**	1 300	48	40 000	1 574
Global/large scale crisis situation[52] **(2020)**	6 000	222	177 500	6 574

The data shows that the number of unrepresented citizens assisted is only a fraction when compared to consular assistance provided to Member States' own citizens: Member States reported between 1-3% of cases relating to unrepresented EU citizens in 2018 and 2019. The share of unrepresented citizens assisted significantly increased in 2020 for two out of the three Member States that provided data across all 3 years. This could suggest that in a crisis such as the COVID-19 pandemic, unrepresented citizens place a higher burden on Member States.

The wide range between low-end and high-end estimate are due the limited data available, given the absence of a legal obligation to collect data in a systematic or comparable manner. By using these wide ranges, an attempt was made to ensure that when assessing the impacts of

[50] The detailed methodology used for both estimates is further outlined in Annex VI of the Study.

[51] Refers to an average year outside global pandemic. The 2018 and 2019 data was used for the estimation.

[52] This refers to situations that fall out of the norm in terms of scale, frequency, or duration. The year 2020 was used for the estimation due to the large scale and impact of the COVID-19 pandemic.

the different policy options available, the clearly existing limitations and uncertainties in assessing the scale of the problem can be taken into account adequately.

2.3.3. Feedback from EU delegations

During the survey of EU delegations conducted in the context of the study, a majority of EU delegations responded that, prior to the COVID-19 pandemic, they had sporadically received requests for assistance from EU citizens. Since the outbreak of the pandemic, there appeared to be a substantial growth in the number and frequency of EU delegations receiving requests for assistance from EU citizens directly.

The increase in requests seems to be dependent on the presence of Member States in a given third country. EU delegations in third countries were all or nearly all Member States were present did not report an increase in the number of requests, with the exception of the EU delegation in Russia. At the same time, EU delegations in third countries with a smaller Member State presence experienced an exceptionally large increase in the number of requests.

EU delegations reported that prior to the pandemic, they had been most commonly approached with requests for the issue of emergency travel documents. Not surprisingly, this changed with the outbreak of the pandemic, when the majority of EU delegations most commonly received requests concerning repatriation.

According to the survey, requests from unrepresented citizens would arise most frequently when the embassy or consulate of a Member State present in the third country had refused to provide assistance or when EU citizens did not know how consular protection was provided or which Member State they could turn to. Finally, responding EU delegations noted challenges regarding the travel information made available to and emergency communication with EU citizens.

This data supports the finding that there is a lack of clarity as regards the role of EU delegations as well the information provided to EU citizens who find themselves in a situation where they require consular assistance.

2.4. How will the problem evolve?

2.4.1. Consular networks

There are currently only four third countries – the United States of America, India, Russia and the United Kingdom – where all 27 Member States are represented[53]. It is not possible to predict if Member States will increase their consular network or not in the coming years, in which countries (i.e. countries with low or high levels of EU representation) and with what level of capacity. Only 12 Member States provided data on their consular network both in 2018 and in 2020. Of these 12 Member States, eight saw an increase in the number of embassies and consulates exercising consular functions. Two had a decrease and two remained unchanged. Together, these 12 Member States had a 7% collective increase in the number of embassies and/or consulate exercising consular functions from 786 in 2018 to 838 in 2020. While these findings are limited due to missing data, they nonetheless suggest that Member States have increased their consular footprint between 2018 and 2020.

The data collected from the questionnaire's qualitative questions confirms that, out of the 26 Member States that replied, 14 (BG, EE, FI, HR, HU, LT, LU, MT, RO, SI, PL, ES) reported an increase and only two reported a decrease (DK and FR). Seven replied "remained the same"

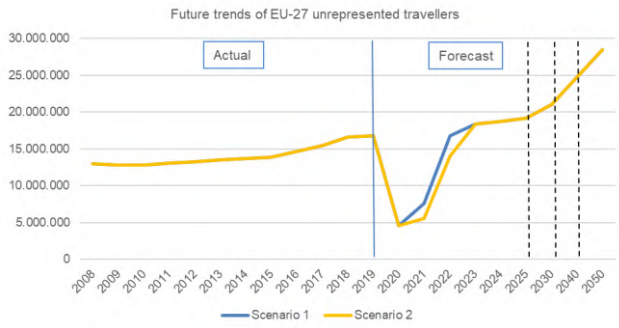
[53] Equal to around 3% of all non-EU countries.

(AT, BE, DE, PT, SE, NL, LV) and one Member State (CZ) did not know. The digitalisation of consular services, notably visa applications, could also have an impact on Member States' decisions regarding their consular networks[54].

2.4.2. Unrepresented EU travellers

The study shows that the number of EU travellers and expatriates is likely to increase[55]. In order to estimate how the number of EU travellers will evolve in the future, the study followed the two scenarios used by UNWTO in their latest update on International Tourist Arrivals dated 31 March 2021[56].

Figure 2: future trends of EU-27 unrepresented travellers[57]



Source: Annex II, section 2.7 of the underlying study.

2.4.3. Number of crises requiring consular assistance

Over the last few years, several events have posed challenges to the consular protection of EU citizens, in particular the COVID-19 pandemic, the conflict in Afghanistan and Russia's war of aggression against Ukraine and, more recently, the conflict in Sudan. When it comes to the increasing number of events requiring consular intervention, Section II of the 2021 Strategic Foresight Report[58] identifies important structural global trends towards 2050 that will affect the EU's capacity and freedom to act: climate change and other environmental challenges; digital hyperconnectivity and technological transformations; pressure on democracy and values; shifts in the global order and demography. Consular protection is prone to become more relevant in the future as the frequency, severity and duration of crises are likely to increase, including the crises related to global warming, causing unavoidable numerous climate hazards and presenting multiple risks to ecosystems and humans[59]. All these trends would impact the

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54 For additional information see Annex 6.

55 A detailed overview of the estimated evolution of the number of unrepresented EU citizens needing consular protection under the Directive over the next 10 to 30 years and their impact on the four problem areas described above, is provided under Annex II, section 2.7 of the Study.

56 The Figure above shows the number of unrepresented EU-27 travelers under these two scenarios, based on linear extrapolation of 2008-2019 trends of international visitors from the OECD outbound tourism dataset, and assuming that the consular presence of Member States in third countries will remain constant.

57 Note: the above slope appears broken after 2025 but it still follows the same trend as in the past. This apparent break is only due to the change of scale of the horizontal axis (from one year to five years).

58 https://ec.europa.eu/info/sites/default/files/strategic_foresight_report_2021_en.pdf.

59 See report of Intergovernmental Panel on Climate Change "Climate Change 2022, Impacts Adaptation and Vulnerability" page 15. See also "Summer 2022: Living in a state of multiple crises" by Hans

need for consular protection by unrepresented EU citizens as explained in more details in Annex 7.

The 2021 Strategic Foresight Report highlights that the "*EU needs to continue to play an essential role in preventive diplomacy and support, adapting and upgrading its tools to ensure effectiveness of its actions. Building trust and coordination amongst Member States, as well as the capacity to better anticipate risks, while learning from experience, could provide the EU with greater influence and the ability to act jointly on defence and security matters"*. Moreover, *"the increased likelihood of extreme weather events, future pandemics or other natural and man-made disasters reaffirms the need for a stronger EU response and cooperation on civil protection, including to improve prevention, preparedness and response to disasters such as floods, wildfires and infectious diseases*".

As noted in a recent European Parliament study[60], the "*world is increasingly characterised by challenges with cross-sectoral, trans geographical and global consequences [...]. If the different types of crisis not only coincide in time but also persist for a considerable period, it means societies move towards a paradigm of so-called 'permacrisis'*."

In this perspective, the EU's capacity and freedom to act, based on a clear understanding of megatrends, uncertainties and opportunities, should be enhanced also in relation to consular protection, as these trends will impact the way the EU is able to assist its citizens abroad.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

Article 3(5) TEU provides that "*[i]n its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens*".

Article 35, third paragraph, TEU provides that the EU delegations "*shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries*" as referred to in Article 20(2)(c) TFEU and of the measures adopted pursuant to Article 23 TFEU.

Pursuant to **Article 20(2)(c) TFEU**, EU citizens have "*the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State*".

Article 23 TFEU provides that every "*citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State*". **Article 23 TFEU** also requires Member States to "*adopt the necessary provisions and start the international negotiations required to secure this protection*" and allows the Council, "*acting in accordance with a special legislative procedure and after consulting the European Parliament*" to "*adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection*". The special legislative procedure requires **qualified majority** in Council.

Bruyninckx, European Environmental Agency Executive Director at https://www.eea.europa.eu/articles/summer-2022-living-in-a.

60 Future Shocks 2023, Anticipating and weathering the next storms, EPRS https://www.europarl.europa.eu/RegData/etudes/STUD/2023/751428/EPRS_STU(2023)751428_EN.pdf

Article 46 of the Charter provides that "*Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.*"

Article 25, second paragraph, TFEU contains a so-called "*passerelle clause*" providing for a simplified procedure for expanding EU citizenship rights under the Treaty, whereby the Council, **acting unanimously** and after obtaining the consent of the European Parliament, adopts provisions to strengthen or to add to the rights of Union citizens[61]. The use of the *passerelle clause* could first expand the scope of the EU citizenship right to consular protection, which could subsequently serve as a basis for proposing secondary legislation in line with the newly extended scope. These provisions enter into force after their approval by the Member States "*in accordance with their respective constitutional requirements*"[62].

The use of this clause must be based on reporting by the Commission on the application of EU citizenship rights. In its 2020 Citizenship Report, the Commission announced that it would reflect on whether to expand the EU citizenship right to consular protection based on Article 25(2) TFEU.

3.1.1. Mandate of the EEAS and function of EU delegations

The EEAS was established to assist the High Representative of the Union for Foreign Affairs and Security Policy in **Article 27(3) TEU**, which states that it "*shall work in cooperation with the diplomatic services of the Member States*". Its organisation and functioning is regulated by the 2010 EEAS Decision.

EU delegations are required, pursuant to Articles 4(3) and 35 TEU, to cooperate with the Member States for the purpose of ensuring the EU's objective of protecting EU citizens in the world. **Article 35 TEU** provides that that "*[t]he diplomatic and consular missions of the Member States and the Union delegations [...] shall:*

- *cooperate in ensuring that decisions defining Union positions and actions adopted […] are complied with and implemented.*
- *shall step up cooperation by exchanging information and carrying out joint assessments.*
- *shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the TFEU and of the measures adopted pursuant to Article 23 of that Treaty.*"

The mandate of the EU delegations in the field of consular protection is to "support" and "cooperate", as per the following provisions:

- **Article 221 TFEU** provides that EU delegations "*shall act in close cooperation with Member States' diplomatic and consular missions*".
- **Article 3(1) of the EEAS Decision** states that *"[t]he EEAS shall support, and work in cooperation with, the diplomatic services of the Member States*".

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61 Hilpold P. (2021) Article 25 [Monitoring and Further Development of Union Citizenship]. In: Blanke HJ., Mangiameli S. (eds) Treaty on the Functioning of the European Union – A Commentary. Springer Commentaries on International and European Law. Springer, Cham.

62 K. Lenaerts, EU Citizenship and Democracy, New Journal of European Criminal Law, Vol. 7, Issue 2, 2016, 164-175.

- **Article 5(10) EEAS Decision** provides that the "*Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis.*"

3.1.2. Compatibility of the role of EU delegations with the Vienna Convention on Consular Relations

The right to consular protection as provided by EU law is carried out in the sovereign territory of third countries. This means that it depends, for its implementation, on compliance with the applicable public international law, in this case the VCCR. Article 8 VCCR provides for the "Exercise of consular functions on behalf of a third State", specifying that: "*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*".

Consistent with this notification requirement, Article 23 TFEU requires Member States to adopt the necessary provisions and start the international negotiations required to secure this protection. With a few exceptions[63], this obligation has been mostly implemented by means of the conclusion of international agreements between the EU and third countries. In practice, Member States have experienced little to no objections by receiving third states to the exercise of consular protection on behalf of another Member State.

Presently, EU delegations have, pursuant to Article 5(10) of EEAS Decision, the obligation to support represented Member States in providing consular protection to unrepresented EU citizens, which does not require the notification of third countries. However, the question arises whether EU delegations could provide some of the consular assistance falling within the list of Article 5 VCCR directly to unrepresented EU citizens.

The EU is not a party to the Vienna Convention on Diplomatic Relations (VCDR) nor to the VCCR. However, it is widely accepted that EU delegations can rely on the VCDR by analogy (a principle generally agreed in the Establishment Agreements between the EU and the receiving States). Accordingly, diplomatic relations, including sensitive questions relating to the status of the EU delegation in the host state, immunities and privileges are governed by the rules contained in the VCDR. In view of the agreement by receiving States to grant the application by analogy of the provisions of the VCDR, it is arguable that upon request by the EU, the receiving States would likely accept that the provisions of the VCCR may also apply by analogy to the EU delegation.

If no objection is raised pursuant to Article 8 VCCR, the Delegation should, in terms of international law, in principle be able to provide certain types of consular assistance to unrepresented citizens. While some of the consular functions enumerated in Article 5 VCCR, such as issuing passports (lit. d) or acting as notary or civil registrar (lit. f), would clearly not be carried out by EU delegations, other consular functions, notably helping and assisting citizens (lit. e), could, from an international law perspective, be available to EU delegation as well.

[63] E.g. Italy and Portugal.

3.2. Subsidiarity: Necessity and added value of EU action

The legal framework for the exercise of EU citizens' right to consular protection involves the interaction of EU and (inter)national rules. Indeed, the obligation of Member States to provide consular protection to (unrepresented) nationals of other Member States has by definition a cross-border dimension. This means that it cannot effectively be addressed by Member States acting individually. The fact that the Treaty of Lisbon assigned this competence to the EU, compared to the previous intergovernmental approach, is a clear sign that further action at EU level was needed.

However, the provision of consular protection remains inherently linked to the national laws of Member States in the way they provide consular protection. Nonetheless, the provision of consular protection to unrepresented EU citizens will always require cooperation and coordination with the national authorities of the unrepresented EU citizen, and at times with the local authorities. To ensure the effectiveness of EU citizens' right to consular protection, this coordination and cooperation should be as efficient as possible. With a central role in the implementation of the right to consular protection, the EU would be best placed to further streamline the procedures to ensure that they are uniformly implemented by the Member States.

Providing for common EU standards, safeguards and clear procedures for cooperation and coordination regarding unrepresented EU citizens is better achieved at EU level. A general subsidiarity check of whether the EU is best placed to act in the field of coordination and cooperation of consular protection to unrepresented citizens was already carried out at the time of the adoption of the Directive[64], and remains valid. EU citizens' right to consular protection is still, obviously, a cross-border issue and an integral part of EU citizenship, requiring better cooperation and coordination at EU level.

Since the expiry of its transposition deadline in 2018, the Commission has closely monitored the implementation of the Directive, as demonstrated by the recent publication of the Commission Report. Combined with further consultations, the report showed that further action at EU level is needed. Without timely and effective EU action, the problems identified in the report and their causes would continue to hinder the exercise by unrepresented EU citizens of their right to consular protection.

The Treaty of Lisbon also created the legal basis for the creation of the EEAS, set up to assist the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP) in ensuring coherent and effective EU external action. Its establishment has resulted in the reallocation of certain consular coordination tasks from the Member States to the EU delegations. Subsidiarity check for these tasks, in particular EU delegations' supporting role to Member States in providing consular assistance to unrepresented EU citizens was performed at the moment of the adoption of the EEAS Decision. EU delegations' role and contribution in supporting Member States and ensuring cooperation and coordination among Member States is an essential element of the legal framework governing consular protection of unrepresented EU citizens. Improving EU delegations' functioning and the way they support Member States and EU citizens in consular protection activities could not be achieved without an EU intervention.

[64] Commission Staff Working paper – Impact Assessment accompanying the Proposal for a Directive of the Council on coordination and cooperation measures regarding consular protection for unrepresented EU citizens (SEC(2011) 1556 final).

Overall, without EU intervention, the effectiveness of EU citizens' right to consular protection as outlined in the problems sections would continue to be put at risk and the added value of EU delegations in this context would remain underexploited.

Subsidiarity check of additional coordination tasks in crisis situations: Fostering EU cooperation to support all EU citizens in need abroad can only be achieved by a coordinated EU intervention. The EU, and in particular the EEAS and its network of EU delegations around the world, are well placed to take on such a coordinating role, in a way and to an extent not possible for Member States acting on their own initiative and capacities.

Subsidiarity check of the role of EU delegations in providing direct assistance to unrepresented EU citizens on their request: in third countries where no Member State embassy or consulate is present, EU delegations would be best placed to fill in this gap and ensure that EU citizens' fundamental right to consular protection is effectively protected.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. General objective

The overarching general objective of the policy initiative in this area is to **improve the exercise of the right to consular protection by unrepresented EU citizens**.

4.2. Specific objectives ('SO')

This general objective can be broken down into four specific objectives:

- **SO1:** Enhance the legal certainty for EU citizens with respect to the scope of the right to consular protection.
- **SO2**: Ensure clear roles, coordination and cooperation mechanisms between Member States and EU delegations, including in times of crisis.
- **SO3:** Improve the information provision and communication with (unrepresented) EU citizens.
- **SO4:** Increase the efficiency and use of the financial reimbursement procedures.

The overall intervention logic and how each of the problem is linked to a specific objective is illustrated in Annex 8.

As the main objective of the initiative would be to strengthen an EU citizenship right of consular protection, it should contribute to target 10.3[65] and target 5.c[66] of the Sustainable Development Goals.

[65] "*Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard*".

[66] "*Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels*".

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?[67]

5.1. What is the baseline from which options are assessed?

The baseline is the current situation, under which the Directive and the other instruments continue in their current form as described in the problem description section, together with ongoing coordination and cooperation activities (a short summary of ongoing and future activities can be found in Annex 9). Under the baseline scenario, the existing problems outlined above would aggravate (see details in Annex 9), in particular those stemming from the current wording of the Directive or which could only be addressed through changes to the wording of the Directive (e.g. problems number 2, 3, 4, 5 and 8).

As explained in section 2.4, the need for consular protection is likely to increase as foresight studies suggest that large disruptions to travel and other human activities are likely to increase further, resulting from either man-made events (such as wars, conflicts or social unrest), phenomena linked to global warming (such as fires or floodings) or large-scale health crises and epidemics.

While the consular network of the Member States might possibly increase somewhat (see Section 2.4.2), this has to be seen together with the fact that, following the UK's withdrawal from the EU, EU citizens are no longer entitled to seek assistance from UK embassies and consulates. In addition, given that the number of unrepresented citizens is expected to increase, the number of persons potentially affected by the problems under the baseline scenario would increase as well.

The current and planned non-legislative initiatives would be able to mitigate the evolution of the problems identified only to a certain extent but will not be able to resolve them significantly, as explained in Annex 9.

5.2. Description of the policy options per specific objective

Under each objective, several options to achieve them have been identified. Measures that do not require a policy choice are described in Annex 10.

5.2.1. SO1: Enhance the legal certainty for EU citizens with respect to the scope of the right to consular protection

Option 1a) Combination of soft measures: The Commission/EEAS would develop and share guidance and best practices on the definitions and personal scope of the Directive. Recommendations on training on the definitions and personal scope of the Directive to national consular staff and training to EU delegations would also be produced.

Option 1b) Improvement to the definition through legislative amendments: Similar to option 1a), clarification of the scope of the Directive regarding the term 'unrepresented citizen' would be done through legal amendments. Rewording the current provisions would enhance legal certainty as to what it means for an EU citizen to be 'unrepresented' and in particular the types of situations in which a representation should not be considered "*effectively in a position to provide consular protection*". Indicative criteria for the assessment of those types of situations could also be added in order to further support a coherent approach to the definition. At the same time, such an amendment would not alter the geographical scope of the Directive – unrepresented citizens would continue to enjoy a right to consular protection from other Member States in each third country where their Member State of nationality is not represented.

[67] The options have been based on the three options presented in the inception impact assessment, and refined on the basis of the findings in the problem definition and the related policy objectives.

Option 1c) Introduction of the concept of "presumption of unrepresentedness": A rebuttable "presumption of "unrepresentedness" would be introduced in the Directive through amendments. The level of intervention is the same as under option 1b, but this option presents a shift in the approach. By introducing a "presumption of unrepresentedness", the burden of proof would be on the Member State, and not on the EU citizen, to demonstrate the "representativeness", otherwise the citizen will be considered to have the right to consular protection. The presumption of unrepresentedness could be linked to the urgency of the request for assistance (where it is difficult, or impossible for a Member State to confirm, in a timely manner, whether a citizen is unrepresented).

5.2.2. SO2: Ensure clear roles, coordination and cooperation mechanisms between Member States and EU delegations, including in times of crisis.

The options presented under this specific objective address separate problems, as outlined below.

Unclear responsibilities in local consular cooperation networks

Option 2a) Guidelines on local cooperation: The Commission/EEAS would adopt guidelines and best practices on local cooperation for consular staff that would better structure the different responsibilities in LCCs.

Option 2b) EU delegations to chair local consular cooperation networks meetings: EU delegations would systematically chair LCC meetings in all locations where they are present unless Member States decide otherwise. Where there is no EU delegation, Member States would agree on the local arrangements. This can be introduced through amendments to the Directive.

Ineffective contingency planning and Lead State concept

Given that the problems 'ineffective contingency planning' and 'ineffective Lead State concept' are closely related, one option is presented to address both.

Option 2c) Review of the concept of Lead State and formalisation of the JFWs and JCTs: The JFWs would establish a new division of labour, in which the responsibilities entrusted to the Lead State would be clarified. JFWs would become compulsory in all third countries and the Directive would require that the EU delegation leads on the drafting of the JFW (with input from Member States). The Directive's references to the Lead State concept would be reviewed. This option would also enhance coordination in crisis situations by including a description of the role and deployment conditions of JCTs, supported by the EEAS Crisis Response Centre and the ERCC at the EU level.

Legal uncertainty regarding the role of EU delegations in providing consular assistance

It should be noted that amendments under option 2d) can be proposed on the basis of Article 23(2) TFEU, whereas amendments under option 2e) would require the use of the *passerelle clause* under Article 25 TFEU (see section 3.1).

Option 2d) Detail the supporting role of EU delegations: Legal amendments would strengthen and clarify the supporting role of EU delegations by aligning it with the EEAS Decision. This amendment would further specify the supporting role of EU delegations to Member States in the provision of consular protection to unrepresented citizens. Member States would be able to request assistance from the EU delegations to support them in their role of providing consular protection to unrepresented citizens in third countries.

Option 2e) EU delegations can provide direct consular assistance to EU citizens in uncovered third countries: Legal amendments would be introduced to enable the EU delegations to provide direct consular protection to unrepresented EU citizens without the need for a prior Member State request in uncovered third countries. They would support Member States in covered third countries.

5.2.3. SO3: Improve the information provision and communication with (unrepresented) EU citizens.

Inconsistent information to EU citizens

Option 3a) Legal amendments with new requirements regarding the provision of information: Legal amendments would include requirements for Member States to provide the Commission and the EEAS with information within a certain timeframe and in machine-readable format, namely:

1. up-to-date lists of contacts for their consular networks, including honorary consuls and their functions if the Member State has chosen to apply Article 2(2) of the Directive;
2. information on the extent to which honorary consuls are competent to provide assistance to unrepresented EU citizens, and on the scope of such assistance;
3. bilateral and practical arrangements.

The legal amendments would explicitly assign the Commission/EEAS with the task of disseminating the information on the practical arrangements in place to all Member States on the basis of notifications received.

The legal amendments would also require the Member States to endeavour coordination on travel advice at local (LCC) and capital level (using CoOL), at an early stage when Member States are planning to change the level of their travel advice.

Option 3b) An EU travel advice portal: A European travel advice portal would be established compiling information made available from individual Member States portals.

Lack of reliable information on EU citizens living or traveling abroad

Option 3c) Communication campaign: An EU-wide campaign would be conducted to raise awareness on the consular right to consular protection and the importance of registering prior to traveling and/or living abroad.

Option 3d) Member States required to promote measures to inform on/record citizens: Through legal amendments, Member States would be required to promote measures supporting the possibility for their citizens to be able to inform consular authorities and/or record their travelling or residence abroad.

5.2.4. SO4: Increase the efficiency and use of the financial reimbursement procedures

Option 4a): Guidelines and training: The Commission would develop guidelines to clarify the process of financial reimbursement and training would be provided to the Member States.

Option 4b) Legal amendments to improve the procedure: This option proposes to introduce legal amendments adding the option for unrepresented EU citizens to pay the assisting Member State, or, as the case may be, the EU delegation directly either before or after the consular assistance has been provided. A deadline would be introduced for an assisting Member States and EU delegations to provide the statement of expenses for costs incurred to the Member State

of nationality. Finally, this option would introduce a revised form[68] in the Annex to cover reimbursement both for unrepresented EU citizens and, in crisis situation, for represented citizens when assistance is exceptionally provided. The revised standard form would also mention EU delegations.

5.3. Options discarded at an early stage

Agreements with third countries: Agreements with like-minded countries (e.g. UK) to provide consular protection to EU citizens in third countries without Member State representation were not considered as they would fail to provide unrepresented EU citizens with the guarantees ensured by the fundamental right to consular protection. This is because third countries providing assistance would not be under an EU law obligation to provide non-discriminatory treatment to EU citizens and to comply with other fundamental rights in the Charter (e.g. right to personal data protection, right to an effective remedy). In addition, such agreements would fail to deliver on the right of EU citizen to receive consular protection from other Member States. In fact, as consular affairs remain a national competence, this scenario would possibly require bilateral agreements between the Member States and the relevant third countries, which would result in different levels of consular protection to unrepresented EU citizens from the same like-minded country.

EU delegations as exclusive providers of consular protection to unrepresented EU citizens: The inception impact assessment initially foresaw an option including "provisions for local EU delegations to directly and exclusively take care of unrepresented EU citizens and provide them with all types of consular protection beyond crisis situations". However, when such an option was tested with stakeholders, it became clear that such an exclusive role for EU delegations would have a very low technical, political and legal feasibility.

Options aiming to address problems/measures that were considered outside of the scope/reach of the Directive: The problem where national authorities of third countries refuse to recognise dual nationals (EU citizenship and third country nationality), hampering their access to consular protection from Member States, was identified at the inception phase of the study and was eventually discarded as it was considered to be outside the remit of the initiative. In addition, one of the solutions considered to address the delays caused by the lack of clarity around the process of redirecting and lack of up-to-date information of bilateral agreements, was to prohibit Member States to put such agreements in place in the first place. However, it was then agreed that such a prohibition would not be legally feasible, as it is the prerogative of Member States to make such bilateral agreements.

Different combination of options: a different combination of options was not taken into account as it was considered that the best option for each problem, assessed separately, would remain the best option also when taken together with the preferred options for the other problems. Synergies between the different measures, such as on coordination and cooperation and on reimbursement procedures, have been taken into account. In addition, the assessment of each measure separately allows to cover all problems but to evaluate different levels of intervention (legislative and non-legislative) depending on the problem. **A package of all non-legislative measures** was not considered from the start, given that some of the problems could not have been solved without a legislative intervention.

[68] A procedure may be further established to facilitate future update of the forms by delegated acts.

6. WHAT ARE THE IMPACTS OF THE DIFFERENT POLICY OPTIONS AND WHO WILL BE AFFECTED?

No environmental impacts (including the climate consistency check) and impacts on SMEs and competitiveness have been identified. None of the options have social impacts, including impacts on employment, working conditions or income distribution. There are no direct impacts on access to and adequacy of social protection and inclusion, but any improvements in consular protection of unrepresented citizens can have indirect positive impact on access to social protection.

6.1. Impacts on fundamental rights

- **Article 46 of the Charter – right to consular protection**

All measures considered have a positive – albeit to a different extent – direct impact on Article 46 of the Charter, as the general objective of the initiative is to improve the exercise of that right.

Option 1a) would have a limited positive impact, as the effective application of the new definition would depend on the Member States voluntary implementation of the non-binding guidance issued under this option. On the other hand, **option 1b),** by legally clarifying the scope of the Directive, would have a more significant direct positive impact on the effective application of Article 46 of the Charter, given that unrepresented citizens would be able to rely on a new binding definition of what it means to be unrepresented. **Option 1c)** would have the strongest impact on the effective application of Article 46 of the Charter, as due to the presumption of unrepresentedness, chances are lowest that EU citizens would be denied consular protection.

Both **Option 2a)** and **option 2b)** would contribute to smoother cooperation among actors involved in the provision of consular assistance to unrepresented EU citizens. They would facilitate procedures necessary for its effective application and therefore contribute to enhancing the right to consular protection, as those actors and their collaboration are key to deliver such protection. In the same vein, **option 2c)** would have a positive impact on the provision of consular assistance to unrepresented EU citizens by improving the processes necessary for its effective application, and in particular in crisis situations. **Option 2d)** would strengthen the role of EU delegations. By resolving the legal uncertainties currently in place for the activities of EU delegations, this measure would strengthen the fundamental right to consular protection of unrepresented EU citizens. By giving a new role to EU delegations, **option 2e)** would be especially beneficial in securing the citizen's right to consular protection in uncovered third countries.

The new requirements for provision of information under **option 3a)** would allow citizens to make better informed decisions with regard to where and how they can travel and receive consular assistance. It would thus have a positive impact on their enjoyment of effective consular protection. The centralised information of travel advice under **Option 3b)** would also contribute to better informed citizens with regard to where to travel. By increasing awareness, it would improve effective consular protection in time of crisis due to better preparedness by those who decide to travel, or by limiting travel to riskier third countries.

The communication campaign in **Option 3c)** might have a positive impact on the right to consular protection of unrepresented citizens, especially in crises situation. **Option 3d)** is also considered to have a positive impact to facilitate the right of consular protection.

Finally, **Option 4a) and 4b)** do not have direct impacts on the right to consular protection.

- **Article 41 of the Charter – Right to good administration**

Article 41 of the Charter contains the fundamental right of EU citizens to have their affairs handled fairly, transparently, and efficiently by EU institutions and other bodies. Any measures taken to improve services provided by such bodies to unrepresented EU citizens would have a positive effect on the principles enshrined in Article 41.

Several measures have direct and beneficial impacts on the application of Article 41 of the Charter as they strengthen or extend, respectively, the role and the functioning of EU delegations (**option 2d)** and **option 2e)**).

Option 2b) and **option 2c)** have a positive impact on the right enshrined in Article 41 of the Charter as these options envisage smoother collaboration among different actors with a leading role for EU delegations.

Very limited impacts on the right to good administration is identified by the soft measures in **option 2a)**.

- **Article 21 – non-discrimination on the basis of nationality**

All measures considered have a positive – albeit to a different extent – direct impact on Article 21 of the Charter, as the general objective of the initiative is to improve the exercise of the right to consular protection on a non-discriminatory basis, that is, on the same conditions as the nationals of that State.

- **Other fundamental rights**

The measures outlined in Annex 10 would reinforce the right to an effective remedy and to a fair trial (Article 47 of the Charter) and the rights to respect for private and family life and data protection (Articles 7 and 8 of the Charter).

6.2. Economic impacts

When considering the economic outcomes of the options presented, it should be noted that such impacts would concern only Member States and EU delegations rather than having a direct impact on EU citizens. The economic impacts are difficult to quantify but are considered overall very limited. More information on the methodology for assessment of costs can be found in Annex 4.

Option 1a) Combination of soft measures on the scope of the right to consular protection

Costs	*Direct costs*
Member States	Member States being perceived as providing a better level of service could see an increase in the number of requests for assistance from unrepresented EU citizens, but it is not possible to estimate the recurrent costs of such increase and their different distribution, if any, among different Member States. The training to national consular staff is expected to be provided by the Member States directly as it will be recurrent. Increased participation of unrepresented Member States in LCC meetings might imply some recurrent costs in terms of time dedicated to the meetings by consular staff.
EU or	The estimated resources needed to produce guidelines from the COM/EEAS would be a maximum of 1 full-time equivalents (FTE) for one month at the

EUDELs	outset. For trainings, the training modules for EU delegations are to be developed by the EEAS internally, by existing staff involved in the current training programme (no involvement of external trainers). Some EU delegations might see an increase in the number of requests for support by Member States, but this should not imply increased costs if those costs were reimbursed by the citizens concerned.

Option 1b) Improvement to the definition through legislative amendments

Costs	*Direct costs*
Member States	Member States could see an increase in the number of requests for assistance from unrepresented citizens. It is expected that Member States with larger consular networks will be proportionally more impacted.
EU or EUDELs	Some EU delegations might see an increase in the number of requests for support from Member States due to the clarification in the definition of 'unrepresented citizen'.

Option 1c) Introduction of the concept of "presumption of unrepresentedness"

Costs	*Direct costs*
Member States	The costs related to the potential additional number of *de facto* unrepresented citizens to be assisted due to the introduction of a "presumption of unrepresentedness" is difficult to estimate. For crisis situations, it will largely depend on where those crises occur and how many consular offices are present. Member States with larger consular networks are likely to bear a bigger part of the costs associated with this measure given their denser consular footprint in larger third countries and wider presence in general. It is likely that situations will arise where it is established later that the citizen that was provided with consular assistance during the crisis was in fact not entitled to protection. These are additional costs that assisting Member States would incur.
EU or EUDELs	Some EU delegations might see an increase in the number of requests for support from Member States. The issue of costs with assisting citizens not entitled to protection would also apply to EU delegations, albeit to a lesser extent given their supporting role.

Option 2a) Guidelines on local cooperation

Costs	*Direct costs*
Member States	No costs

EU or EUDEL	The estimated resources needed to produce guidelines from the COM/EEAS would be a maximum of 1 FTE for one month at the outset.

Option 2b) EU delegations to chair local consular cooperation networks meetings

Costs	*Direct costs*
Member States	No costs. Member States are expected to make small recurrent savings in administrative burden by not having to chair these meetings.
EU or EUDEL	The additional recurrent costs to EU delegations would be marginal, as this is partially already established practice.

Option 2c) Review of the concept of Lead State and formalisation of the JFWs and JCTs

Costs	*Direct costs*
Member States	Current Lead States will see savings while other Member States might have limited costs due to the assignment of new tasks under JFWs. All Member States might face some costs for the application of these revised concepts and procedures, but these are difficult to quantify exactly, notably in view of their contingent nature.
EU or EUDELs	The only additional costs incurred could come from the mandatory annual update of all JFWs requiring only limited additional resources, given that this is to a large extent already established practice. The EEAS Consular Affairs Division would be responsible for the activity. The use of Joint Consular Teams (JCT) would be cost-neutral for the EEAS. The EEAS Consular Affairs Division (CRC2) has been reinforced with the creation of a crisis preparedness and response team. Participating in JCT is part of their duties, making this option cost-neutral.

Option 2d) Strengthen the supporting role of EU delegations

Costs:	*Direct costs*
Member States	For some Member States, the salary costs[69] of 5 seconded national experts (SNEs) to work in EU delegations (5 in total).
EU or EUDELs	The role of EU delegations to support Member States will entail a limited increase in staff and some additional training of existing staff to ensure they are able to provide these services. Assuming EU delegations would mostly receive

[69] The salaries depend on national salaries and benefits of the SNEs and a precise calculation is not possible in advance. Based on the limited data available, estimations show that a costs for Member States for 1 cost-free SNE could range from 980 EUR net per month, for a civil servant in the first grade in Bulgaria to 8 177.83 EUR gross monthly salary for a high-raking diplomat in Finland. For a detailed illustration of the data and the estimations of costs, see Annex 4.

	requests from Member States in countries with low levels of representation, this option would require at least 5 cost-free SNEs in total as stated above. In addition to the salary costs for some Member States (to be allocated accordingly to regional needs by establishing the key EU delegations), this would imply operating expenditure for the EU budget of 37 500 EUR per year for 5 SNEs[70].

Option 2e) EU delegations can provide direct consular assistance to EU citizens in uncovered third countries

Costs:	*Direct costs*
Member States	The salary costs of a total of 10 SNEs to work in EU delegations[71]. There would also be savings as consular protection would be provided directly on the spot by the EU delegation instead of being provided either remotely, by dispatching a consular officer on the field, or by the use of honorary consuls.
EU or EUDELs	The extension of the role of EU delegations to have the capacity to provide consular protection will entail an increase in staff and the training of existing staff to ensure they are able to provide these services. This option would require at least 10 cost-free SNEs: in total, this would amount to EUR 75 000 per year in terms of operating expenditure, in addition to the salary costs borne by Member States[72].

Option 3a) Legal amendments with new requirements for provision of information

Costs:	*Direct costs*
Member States	Member States would have to share additional information with the Commission and the EEAS. However, this information is already collected by the Member States and would thus not add an additional burden beyond sharing some additional data in CoOL and at local level and adjusting the information into the machine-readable format required by the Commission.
EU or EUDELs	The main costs under this option would be in enhancing the functionalities of CoOL but this option would not create additional costs as the platform is constantly upgraded with new functionalities (some recently added new functionalities refer to topic-specific collaborative tables, possibility to attach files to messages and to link messages). Updating the Europa website would require one FTE for three months at the beginning and one month per year

70 See Annex 4 for the methodology applied to estimate the additional costs.

71 The salaries depend on national salaries and benefits of SNEs and a precise calculation is not possible in advance. Based on the limited data available, estimations show that a costs for Member States for 1 cost-free SNE could range from EUR 980 net per month for a civil servant in the first grade in Bulgaria to EUR 8 177.83 gross monthly salary for a high-raking diplomat in Finland. For a detailed illustration of the data and the estimations of costs, see Annex 4.

72 See Annex 4 for the methodology applied to estimate the additional costs.

	thereafter. Using the standard rate of EUR 171 000 per year, the cost for the first year would be EUR 42 750 and then EUR 14 250 per year thereafter[73].

Option 3b) An EU travel advice portal

Costs	*Direct costs*
Member States	As the information would be gathered from Member States national travel advice websites there would be no additional costs for the Member States.
EU or EUDELs	It is estimated that one FTE at EEAS or in the Commission would be needed to collect and aggregate the information received from the Member States. This corresponds to EUR 171 000 per year. In addition, based on the yearly budget of the consular protection website operated by DG JUST, it is estimated that the operation, maintenance and development of a new dedicated website for European travel advice would amount to around EUR 80 000 per year. While the existing Europa website could be used as an alternative, the development of a tailored independent website is recommended. Information would be gathered from Member States national travel advice websites[74].

Option 3c) Communication campaign

Costs:	*Direct costs*
EU or EUDELs	An awareness campaign would cost an estimated EUR 50 000 to EUR 100 000[75]. For more effectiveness it should be recurrent.
Member States	If the campaign is also supported by Member States at national level, costs would be between EUR 500 000 and EUR 1 million.

Option 3d) Member States required to promote measures to inform on/record citizens

Costs:	*Direct costs*
Member States	As all Member States already offer some possibility for citizens to register when traveling or living abroad, no new information tools would be needed but the registration system could be expanded to the category not currently covered (residents or travellers), which could involve some marginal software costs. Additional costs would arise for the Member States to further improve the effectiveness of their registration systems by rising their citizens' awareness of the importance to register their travels/residence abroad by means of information campaigns at airports or by cooperating with insurance/travel/telecom companies. The costs of these activities will depend on Member State

73 See Annex 4 for more information on estimation of costs.
74 See Annex 4 for more information on estimation of costs.
75 See Annex 4 for more information on estimation of costs.

	capacity and the measures chosen. However, it is estimated that they would be recurrent to comply with the requirements.
EU or EUDELs	No costs.

Option 4a) Guidelines and training to increase the efficiency and use of the financial reimbursement procedures

Costs	***Direct costs***
Member States	No costs, with some very limited savings that might arise from the voluntary applications of the guidelines.
EU or EUDELs	The estimated resource needed to produce guidelines from the Commission or EEAS would be a maximum of 1 FTE for one month.

Option 4b) Legal amendments to improve the procedure of financial reimbursement

Costs:	***Direct costs***
Member States	The option would result in a considerable reduction of administrative costs for the Member States and increase the likeliness of Member States having the costs of providing consular assistance to unrepresented citizens reimbursed. This would result in savings for the Member States providing assistance. Member States would also be able to reduce administrative costs when the EU delegations support unrepresented EU citizens as EU delegations would be able to be reimbursed by citizens directly without mediation by the Member States.
EU or EUDELs	No costs, as EU delegations would be able to be reimbursed by citizens following the same procedures for reimbursement of Member States.

6.3. Compliance with the 'Digital by Default' principle

Options 3a) and **3b)** would seek to make use of the possibilities offered by digitalisation by providing for the provision of information in machine-readable format, allowing for easier and automated processing and online presentation to the public.

6.4. Assessment of options

The options are assessed against the following criteria: effectiveness, efficiency[76], proportionality, coherence and political feasibility, with a proposed scoring of low (●), medium (●●) and high (●●●)[77].

[76] For more information on the methodology for assessment of costs, see Annex 4.
[77] See Annex 4 for more information on the assessment of each criterion.

6.4.1. Assessment of options for SO1

<u>*Option 1a) Combination of soft measures*</u>

Effectiveness: This option would have a somewhat positive impact on achieving SO1 by fostering a gradual better understanding of the way in the scope of the Directive in terms of the definition of "unrepresented" is to be defined and applied. It would further help in clarifying situations in which an embassy or consulate is not "*effectively in a position to provide consular protection in a given case*", whether this is due to an honorary consul who is not authorised to undertake certain action, a remoteness issue, or because of a temporary closure (due to a man-made/natural disaster). This would support the development of a clearer understanding of when an EU citizen is to be considered unrepresented. The effects of taking such a measure would equally apply in future crisis and non-crisis situations, for the benefits of unrepresented EU citizens and Member States. Both would profit from time savings in assessing "representation". However, clarifying rules through soft measures would not fully achieve SO1. The specific objective aims at ensuring legal certainty for the unrepresented EU citizens and addresses wrong assessments of specific situations as the major cause for certain cases of non-assistance. Despite some level of compelling effect, soft measures are not legally binding and therefore cannot be directly enforced by the Commission or relied upon by citizens when seeking to uphold their rights. (Score: ●)

Efficiency: As illustrated in the previous chapter, the costs associated with the combination of soft measures are very limited. Their application would also bring some benefits to EU citizens by clarifying the Directive's scope, albeit to a limited extent only. (Score: ●●)

Coherence: Improving the definition of unrepresented citizens is coherent with the objectives of the ETD Directive as it contributes to facilitating the issuing process of an EU ETD. (Score: ●●)

Proportionality: These measures are considered fully proportionate to achieve the objectives as the very low costs for Member States and the EU correspond to a certain level of effectiveness in achieving the general objective of improving the consular assistance of unrepresented EU citizens. This is reinforced by the uncertainties regarding the scale of the problems identified resulting from the limited data available. (Score: ●●●)

Political feasibility: As guidelines are issued by the Commission or/and the EEAS, their political feasibility is very high. Their adoption will only entail some collaboration between the Commission/EEAS and the Member States. According to the study, Member States were generally in favour of receiving further guidance and training on the application of the Directive. It is thus expected that there would be support for this option 1 from a political point of view. (Score: ●●●)

<u>*Option 1b) Improvement to the definition through legislative amendments*</u>

Effectiveness: This option would achieve SO 1 and increase legal certainty for unrepresented EU citizens. Similarly to option 1a), the amendments would benefit Member States by guiding them in the assessment of concrete and quite often complex situations. This measure would help to facilitate the identification of unrepresented EU citizens, leading to a more efficient assessment by Member States regarding a citizen's situation. Legal definitions and objective criteria would produce unambiguous, enforceable results for the same set of circumstances, ensuring a coherent application of the Directive across the world, both in time of crisis and non-crisis. Transposition and application could be monitored more effectively. (Score: ●●)

Efficiency: In light of the analysis in the previous chapter, it appears that the costs of this measure, requiring the revision of the current legal framework, would be minimal for the EU and the Member States while it would deliver substantial benefits and positive impacts on the right to consular protection of unrepresented EU citizens but also for Member States, as explained above, arising in particular from the additional legal certainty. (Score: ●●●)

Coherence: Improving the definition would facilitate the cooperation and coordination between the assisting Member State and the unrepresented citizen's Member State of nationality and consequently will also contribute to achieve the objectives of the ETD Directive as they increase the security and the speed of the issuing process of an EU ETD. (Score: ●●●)

Proportionality: The evidence identified shows that this option would not require excessive effort from Member States to implement the measures and it is considered proportional to the achievement of the objective of the initiative. In addition, the changes would merely clarify the existing scope of the Directive rather than extending it. This is also in line with the estimates regarding the scale of the problem, notably on the number of trips by unrepresented citizens. (Score: ●●●)

Political feasibility: While most stakeholders consulted are content with the current wording of the definition in Articles 4 and 6 of the Directive, there appears to be agreement that further clarification would be helpful. Only two Member States stated that a revision of the measures for provision of consular protection to unrepresented EU citizens is not needed. (Score: ●●)

Option 1c) Introduction of a "presumption of unrepresentedness"

Effectiveness: The measure proposed would have a positive impact on achieving SO 1 as citizens would have greater certainty to be covered in case of need for protection. The presumption of "unrepresentedness" would accelerate the procedure of assistance as it would not require the Member States of nationality to confirm the identity of its own nationals. This can be critical for consular protection in crisis situations where assistance frequently has to be provided as a matter of urgency. At the same time, this measure could result in assistance being provided to citizens that are not legally entitled to protection (e.g. undocumented third countries nationals posing as EU citizens). (Score: ●●●)

Efficiency: This measure is particularly beneficial for unrepresented EU citizens, as it has the best and most effective impact on the improvement of their right to consular protection, hence it is the most effective to achieve the objective of the initiative. However, there is a non-negligible risk that Member States, in particular those with larger networks, might end up providing assistance to citizens who are later found not have been entitled to protection due to their Member State of nationality being represented in the third country concerned. On the basis of the assessment of costs and their distribution across actors, and taking into account the scale of the problems, the efficiency of this option is therefore considered low. (Score: ●)

Coherence: The ETD Directive allows for the issuance of EU ETDs without consulting the Member State of nationality in cases of "extreme urgency" (Article 4(6)), therefore there is not a particular conflict with the issuance of ETDs in crisis situations and the introduction of the presumption of "unrepresentedness". Some conflict might arise in non-crisis situations. (Score: ●●)

Proportionality: The introduction of a presumption of "unrepresentedness" would expose Member States and EU delegations to the risk of assisting citizens who are not entitled to consular protection under the Directive. This measure is therefore going beyond what is necessary to achieve the objective of legal certainty for unrepresented EU citizens. In addition,

the uncertainties regarding the scale of the problem make such a shift in the approach regarding the concept of 'representation' appear disproportionate. (Score: ●)

Political feasibility: The idea to introduce a presumption of "unrepresentedness" was not viewed favourably by many Member States and therefore its political feasibility is considered low. (Score: ●)

6.4.2. Assessment of options for SO2

- **Unclear responsibilities in local consular cooperation networks**

<u>*Option 2a) Guidelines on local cooperation*</u>

Effectiveness: The guidelines and best practices would have a somewhat positive impact on achieving SO2. This option would ensure that all relevant experiences are shared and would help to codify lessons learnt such as some of the difficulties experienced during the COVID-19 pandemic. Guidelines could help to strengthen some cooperation and coordination procedures in the organisation of local cooperation, such as the involvement of the unrepresented Member States, but it would still leave the chairing of the meetings to a representative of a Member State (unless otherwise agreed by Member States, see Article 12 of the Directive). Therefore, it is likely that business continuity as well as institutional memory, the two main issues linked to such meetings, might not be fully resolved. (Score: ●●)

Efficiency: Based on the assessment of limited costs and limited benefits, including limited impact on fundamental rights, the efficiency of this option is medium. (Score: ●●)

Coherence: This policy option is considered largely coherent with the Commission's priorities. (Score: ●●●)

Proportionality: This policy option is considered fully proportionate to achieve the objective. as the choice of guidelines would be very simple instrument to implement and would bring certain benefits in the definition of the roles of the actors involved in local cooperation. This is reinforced by the uncertainties regarding the scale of the problems identified. (Score: ●●●)

Political feasibility: Guidelines have a high political feasibility as they are not binding. (Score: ●●●)

<u>*Option 2b) EU delegations will chair local consular cooperation networks meetings*</u>

Effectiveness: This policy option on LCCs would have a positive impact on achieving SO2. A major benefit of this measure is the standardisation of LCC meetings (e.g. work on preparation and update of JFWs, involvement of unrepresented Member States, circulation of agendas and minutes), increasing their usefulness and overall improving consular cooperation. By giving this task to EU delegations when they are present in a third country, it would increase the consistency of the meetings and secure businesses continuity in a much more effective way than where different Member States alternate in chairing these meetings as describe in the problem section. It would strengthen EU delegation's ownership of consular coordination, therefore improving information flows on consular matters towards the EEAS CRC and Commission ERCC. The reinforcement of the overall coordination of EU delegations by EEAS headquarters on the basis of this legal amendment would create a clear benefit to the functioning of local cooperation meetings. This would be very useful in third countries where there is a very low level of representation of Member States, as EU delegations would lift the coordination burden from the few Member States present, enabling them to focus on practical assistance to EU citizens. Even in countries where almost all Member States are represented, there is space and need for better, more extensive coordination and therefore EU delegations

could be well placed to streamline LCC meetings and ensuring everyone's participation for better consular crisis preparedness and, ultimately, response. (Score: ●●●)

Efficiency: This option has low costs and only for EU delegations, while Member States will see small savings. The benefits of this measures are instead significant, including with regard to the impact on fundamental rights as explained above, the efficiency of this option is therefore scored high. (Score: ●●●)

Coherence: Giving the possibility to EU delegations to chair LCCs would increase the EU delegation's role on consular matters in third countries. It would facilitate a coherent consular coordination response at EU level and will align the practice with the chairing of Local Schengen Cooperation (LSC) meetings, which are already chaired by EU delegations and already gather consular officials from Member States to discuss the issuance of short-term visas. Therefore, this measure would be coherent with raising the profile of the EU action in third countries as per Commission's priorities. (Score: ●●●)

Proportionality: This policy option is considered fully proportionate to achieve the objective of better coordination without creating excessive burden and not requiring excessive efforts by the actors involved, in particular if Member States are given the option to agree on an alternative chair. This assessment is not affected by the uncertainties regarding the scale of the problems identified. (Score: ●●●)

Political feasibility: Member States expressed both in the study and in COCONs meetings that are favourable on the option that EU delegations chair LCC meetings. (Score: ●●●)

- **Ineffective contingency planning, Lead State concept and JCTs**

The measures for these two problems are presented together under the same option because of their correlation and synergies. As only one option is proposed, its added value is compared with the baseline scenario (description of problems section).

Option 2c) Review of the concept of Lead State and formalisation of the JFW and JCTs.

Effectiveness: The review of the concept of Lead State and the formalisation of JFWs and JCTs would lead to a more effective and proportionate sharing of the burden of assistance between Member States and EU delegations. It would also clarify and simplify the mechanisms of consular cooperation among Member States in third countries. Not only would this directly benefit EU citizens, but it would also reinforce solidarity among Member States. It would have a positive impact notably in crisis situations. As JFW have become the cornerstone of EU consular protection preparedness, their explicit reference in the Directive together with rules for their periodic assessment would ensure their systematic implementation, effectiveness and broaden their use. The JCTs concept brings valuable synergies for optimising Member States' and EU consular response in crises (including the participation of EEAS CRC crisis preparedness and response and Commission civil protection teams). Overall, these measures would be effective in achieving SO2.

Efficiency: based on the assessment of costs and benefits, including the impact on fundamental rights, this option is considered efficient.

Coherence: According to Article 13(4) of the Directive, Lead States or the Member State(s) coordinating assistance for unrepresented EU citizens may seek support from instruments such as the UCPM and the crisis management structures of the EEAS. Therefore, measures that are effective in simplifying and improving the procedures for cooperation and coordination between the Member States and EU delegations, in particular clarifying their tasks and roles in crisis situations would also be coherent with the EEAS Decision and the UCPM by supporting

the deployment of their capacities and capabilities for the benefit of unrepresented citizens. This measure is also coherent with the Commission's objective to increase Member States' solidarity in this field.

Proportionality: this policy option is considered fully proportionate to achieve the objective. The choice of building on and strengthening EU instruments and processes already in place would contribute to a policy intervention that remains as simple as possible, proportional and effective in achieving the policy objectives. While available data is limited, estimates show that the scale of the problems identified is likely to increase in crisis situations (see Section 2.3.2).

Political feasibility: The majority of Member States consulted during the study saw an added value in EU delegations playing a larger coordination role in implementing JFWs and in setting up JCTs. In COCON, JFW were identified by Member States as a suitable tool for LCC to appoint a leading authority (or authorities). They expressed clearly the need for further clarification of the tasks assigned to a leading authority within the JFW. Member States also expressed that a certain level of universal approach should be in place and rules for the periodic assessment of JFW should be included in the relevant provisions of the Directive. Member States also recognized and highly appreciated the leading role of EU delegations in the process of drafting JFW and some of them supported a suggestion to reflect this practical role in the Directive. The study also collected positive feedback on the changes to the Lead State, JFW and the role of EU delegations (see table below).

Table 4: Member States' opinions on the replacement of the Lead State concept (n=26)

	Yes	No	Maybe	N/A
Do you see the need to replace the concept of lead State with a system where responsibilities are shared among the represented MS and EU delegations, which are agreed upon and defined in the JFW?	12	7	-	7
Do you see the need for the EU delegations to take a greater role to support the Member States in the preparation and implementation of joint contingency plans (JFW)? If so, what specifically could be improved? Are there any barriers to an increased role for EU delegation?	14	4	-	8
Do you see the need for the JFW to also cover the provision of consular protection services in non-crisis situations?	3	13	-	10

Source: Questionnaire with Member States national authorities

The feedback received by Member States in the study also reflects the large majority of the 22 Member States that replied to the COVID-19 lessons learned questionnaire[78] that they would be open to consider a concept for a future model of JCTs. However, a few Member States raised reservations with regards to an institutionalised concept of JCTs. The majority of Member States saw an added value in EU delegations playing a larger coordination role in the LCC meetings, in implementing JFWs and in setting up JCTs.

[78] The EU's "Consular response to the COVID-19 crisis" (WK 6381/2020REV 1)" working paper highlights several lessons learned, which were validated with the Member States through a COVID-19 lessons learned questionnaire.

- **Legal uncertainty with the role of EU delegations in providing consular assistance**

Option 2d) Detail the supporting role of EU delegations through legal amendments

Effectiveness: This policy option would increase legal certainty for EU delegations and unrepresented EU citizens by providing a clearer framework for EU delegations to operate in support of Member States and aligning the role of the EU delegations as defined in the Directive with their mandate in the EEAS Decision. Under this option, in times of crisis, the EU delegations could alleviate some of the pressures faced by the Member States, especially in countries with a low level of representation. In normal times, they could usefully complement the action of Member States in those countries (which are normally staffed with very limited resources) when they provide consular assistance to unrepresented EU citizens. The position of consular correspondents would be reinforced and formalized, entrusting them with a number of key tasks and activities that would increase the EU delegations' capacity to support Member States. Overall, citizens would be better assisted by Member States with the support of EU delegations, especially in those countries with low to very low Member States presence. (Score: ●●●)

Efficiency: The costs of Member States and EU delegations would be counterbalanced with benefits for all actors involved in consular protection activities and would have significant impacts on fundamental rights. Therefore, this measure is considered efficient. (Score: ●●●)

Coherence: This measure would ensure coherence with the EEAS Decision and increase the uniformity of the EU approach in third countries. Therefore, it is highly compatible with the Commission's priorities. This measure is also coherent with the "Strategic Compass" and instruments of EU law, such as the EU ETD Directive. (Score: ●●●)

Proportionality: This policy option is considered fully proportionate to achieve the objective. The policy choice of aligning the role of the EU delegations as defined in the Directive with their mandate in the EEAS Decision is a simple choice but would satisfactorily achieve the objective of the initiative to increase legal certainty. While available data is limited, estimates show that the scale of the problems identified is likely to increase in crisis situations (see Section 2.3.2). (Score: ●●●)

Political feasibility: In the context of the COCON discussions, there was an interest among many Member States to clarify the role of EU delegations under certain conditions. Some Member States would support to identify "specific missions that the EEAS could best address"[79]. Several Member States in COCON stated their interest in the possibility to assign consular tasks (including issuance of ETD) to EU delegations in third countries with no or very low presence of Member States (often referred to as situations in which two Member States or less are present). A significant number of Member States stressed that their final position on this topic would also depend on a specific wording and proposed conditions. The majority of Member States consulted for the study were in favour of allowing EU delegations to provide some form of consular protection to unrepresented citizen directly and upon request of the Member States. On this basis, targeted legal amendments to the Directive under Article 23 TFEU as proposed in this option would require a special legislative procedure, which entail a **qualified majority** in Council and consultation of the European Parliament, which has

[79] The EU's role on Consular crisis management - Non-paper by Belgium, Finland, Luxembourg, Poland and The Netherlands, April 2022, available at: https://europeanunion.diplomatie.belgium.be/sites/default/files/content/download/files/non-paper_be_fi_lu_nl_pl_-_eu_consular_crisis_management.pdf

historically been very positive about an increased role for EU delegations[80]. Overall, the political feasibility of this is considered medium-high as the majority of the Member States are supportive of the measures proposed and the qualified majority required to adopt the proposed measures might allow for the adoption of these measures. (Score: ●●)

Option 2e) EU delegations can provide direct consular assistance to EU citizens in uncovered third countries

Effectiveness: This option would empower EU delegations, by means of the activation of Article 25 TFEU (the *passerelle clause*), to provide consular protection to unrepresented EU citizens directly, upon their own request (and not of Member States), in third countries where only EU delegations are present. It would therefore be effective in enhancing the role of EU delegations and a concrete help to EU citizens in those countries where Member States are unable to provide direct and immediate protection. The option would alleviate some of the pressures faced by the Member States (upon their request) in times of crisis, especially in countries with no or a low level of representation. In both crises and non-crises, EU delegations would be able to act within an enhanced role and with a clear legal mandate which would bolster legal certainty. As such, this would have a very positive impact on achieving SO3. (●●●)

Efficiency: The costs for EU delegations would be counterbalanced with benefits for citizens and Member States in uncovered countries, therefore this measure is considered efficient. (Score: ●●●)

Coherence: This measure is fully coherent with the Commission's objectives of strengthening the identity of the EU in third countries, reinforcing the external dimension of EU citizenship and Member States' solidarity. As the measure would require an extension of EU right to consular protection, it would not be coherent with the EEAS Decision (which provides only a supporting role to EU delegations on consular protection) nor with the other instrument of EU law, such as the ETD Directive, which would need to be amended accordingly. (Score: ●●)

Proportionality: This policy option is considered not fully proportionate to achieve the objective. The measure envisages an extension of the right to consular protection that would apply only in a limited number of countries and therefore could be considered as going beyond what is necessary to achieve the objective of effective consular protection to unrepresented EU citizens. However, the measure would be limited to those aspects that Member States cannot achieve satisfactorily on their own. In addition, the uncertainties regarding the scale of the problem raise questions whether such a shift in the approach regarding the provision of consular protection would be proportionate. (Score: ●●)

Political feasibility: Proposed measures are subject to the *passerelle clause* under Article 25 TFEU to strengthen or add to the existing right of consular protection, which would require a **unanimous decision by the Member States** which seems, for the moment, difficult to achieve giving the opposition of several Member States to the use of that mechanism to grant EU

[80] See as most recent example the European Parliament recommendation of 15 March 2023 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy taking stock of the functioning of the EEAS and for a stronger EU in the world (2021/2065(INI)) where the European Parliament calls for the establishment of *"the consular function of EU embassies in third countries and strengthen and ensure cooperation and coordination between EU Member State embassies and EU delegations in third countries, in particular in countries where Member States have no consular representation; provide delegations with sufficient means to be able to more effectively assist EU citizens, including in times of crisis, inter alia those facing criminal proceedings and those in prison or on death row;"* (see point (ai)).

delegations new competences on consular protection. In addition, the provision of assistance to unrepresented EU citizens without explicit request from a Member State is expected to have a very limited support from Member States. Therefore, the political feasibility of this option is very low. (Score: ●)

6.4.3. Assessment of options for SO3

- **Inconsistent information to EU citizens**

<u>*Option 3a) Legal amendments with new requirements for provision of information*</u>

Effectiveness: The option would ensure up to date information on the bilateral agreements and other arrangements in place in third countries, as well as travel advice. Increasing the information available to EU citizens and their clarity would make sure that EU citizens know from which Member States they can seek consular assistance and reduce the number of justified redirecting procedures by Member States. This would also help Member State staff to quicker assess whether it is appropriate to assist a citizen or if the case should be transferred to the embassy or consulate designated as competent under the terms of arrangement in place. This would have a positive impact on achieving SO3 by developing a better sharing of up-to-date information about the presence and the function of the consular presence (including honorary consuls) of Member States and EU delegations. Furthermore, the improvement of the information available on the CoOL would also be beneficial in fostering effective cooperation amongst Member States' consular networks providing consular protection to unrepresented EU citizens. What is more, the coordination of travel advice at local and capital level (e.g. exchange of primary information at an early stage or having a common structure of levels of risk) could substantially improve the quality and consistency of travel advice to EU citizens, enabling them to make better informed decisions and plans for safe travels abroad. (Score: ●●●)

Efficiency: The measures are considered to be efficient when comparing the costs involved with their advantages. The additional burden on Member States will be minimal as they already collect that information, and it will be a matter of adjusting the information into the machine-readable format required by the Commission. The impact on EU citizens will be important as receiving the correct information is essential for them in all situations. Member States will also save time and be more efficient as they will have to deal with less out-of-scope requests. (Score: ●●●)

Coherence: New standards for information to EU citizens are coherent with Commission's objectives. They are also coherent with the ETD Directive and would be very helpful for the Member States that receive ETD applications by reducing the number of out-of-scope applications. (Score: ●●●)

Proportionality: Providing comprehensive information regarding consular protection cannot be achieved by Member States on their own without coordination mechanisms. Information is key for unrepresented EU citizens and therefore the minimum costs for Member States can be seen as those necessary. This policy option is considered to be proportionate to achieve the objective, also taking into account that Member States would retain their competence to issue travel advice. While available data is limited, estimates show that the number of EU citizens travelling to third countries where they are not represented is considerable. (Score: ●●●)

Political feasibility: The political feasibility can be assumed to be average as Member States would not object to EU delegations sharing information that is already publicly available on their website regarding their consular presence, the bilateral and other arrangements in place or travel advice. As to the high-level obligation to coordinate limited aspects of travel advice,

this objective is presently actively pursued by the Member States in COCON, albeit on a non-binding level, its political feasibility is assessed as somewhat high. (Score: ●●)

Option 3b) An EU travel advice portal

Effectiveness: This option would help achieve SO3 by centralising on an EU website a comprehensive compilation of the travel advice provided by the Member States to EU citizens. It would streamline the provision of information for all EU citizens: they would be able to see, for any third country, what travel advice, if any, is being provided. With the increasing mobility of EU citizens within the EU, a single, user-friendly source of information where travel advice provided by all 27 Member States is accessible could be useful for EU citizens temporarily or permanently located outside of their country of nationality. However, information which would not be comparable, as displayed in different languages, with different levels of travel advice and details being provided, may not be of much use and even have adverse effects. Overall, the option is considered to have a positive impact to the achievement of SO3. (Score: ●●)

Efficiency: Considering the limitations outlined above, especially the non-comparability of the information, the measure is not considered particularly efficient, considering the costs. (Score: ●●)

Coherence: The measure in this option is coherent with the Commission's objectives to raise EU visibility and Member States' solidarity in the external dimension of EU citizenship. (Score: ●●●)

Proportionality: This policy option is not considered proportionate to achieve the objective, given that its administrative scope, legal complexity and costs outweigh its benefits despite the estimated number of EU citizens travelling to third countries where they are not represented. (Score: ●)

Political feasibility: The political feasibility of developing a central gateway of information on travel advice for EU citizens is considered as low. Member States saw the benefits in the EU delegations providing emergency information to (unpresented) EU citizens in crisis situations. Several countries recognised the experience of the COVID-19 crisis and repatriation exercise as a positive example of such a solution. A central web-based portal could re-use existing sources of information such as Member States own travel advice websites and CoOL. However, a number of critical issues would need to be taken into account. Where data from national sources of individual Member States would be used, questions were raised concerning responsibility for data made available, cybersecurity, language barriers. This lowers the score of political feasibility. (Score: ●)

- **Lack of reliable information on EU citizens living or traveling abroad**

Option 3c) Communication campaign

Effectiveness: Raising awareness of registration tools and their importance would increase the number of EU citizens registering when traveling, which is important to allow Member States to have a better picture of the (un)represented citizens living and/or travelling in a given third country in order to better coordinate their actions in crisis situations. DG JUST regularly runs information campaigns about consular protection rights of unrepresented EU citizens. A communication campaign tailored to the necessity and importance of registering before

travelling could have a positive impact on SO3. However, the direct effect of such a campaign is difficult to estimate[81]. (Score: ●●)

Efficiency: Considering the costs of such campaign and the uncertainty regarding the benefits, it is considered not particularly efficient. It should be considered that the more citizens register the lower would be the financial cost per citizen registered. (Score: ●●)

Proportionality: This policy option is considered fully proportionate to achieve the objective. While available data is limited, estimates show that the number of EU citizens travelling to third countries where they are not represented is considerable. (Score: ●●●)

Political feasibility: A communication campaign run by the Commission focused on supporting registrations of unrepresented EU citizens in a third country with their Member State of nationality should not pose any subsidiarity concerns. As the campaign would be run by the Commission but the registration systems are established nationally, a high level of collaboration with Member States will be necessary. (Score: ●●●)

Option 3d) Member States will be required to promote measures supporting the possibility for their citizens to inform on/record their travelling

Effectiveness: This policy option would require Member States to provide their citizens with the possibility to inform competent national authorities, by appropriate means and tools, their travels or residence abroad and would thus facilitate that these citizens receive relevant information in times of crisis. This requirement would further incentivize them to implement measures encouraging citizens to register (e.g. national information campaigns at airports, incentives, cooperation with insurance and travel companies as well as telecom providers). It would be left to the Member States to decide what are the best and most appropriate measures to implement this measure, taking into account their national circumstances. The measure is expected to contribute to a more accurate knowledge of the number and whereabouts of EU citizens traveling or residing abroad which is a crucial element for effective coordination in times of crisis. The option is considered to have a positive impact for the achievement of SO3. (Score: ●●)

Efficiency: Considering the limited costs and benefits, the option is somewhat efficient. (Score: ●●)

Proportionality: This policy option is considered fully proportionate to achieve the objective. This measure leaves as much scope for national decision on possibilities for citizens to inform on/record their travelling as possible while achieving satisfactorily the objectives set. While available data is limited, estimates show that the number of EU citizens travelling to third countries where they are not represented is considerable. (Score: ●●●)

Political feasibility: The political feasibility of this option is considered high, as it leaves a scope for Member States to implement the new requirement. (Score: ●●●)

6.4.4. Assessment of options for SO4

Option 4a) Guidelines and training

Effectiveness: The development of soft measures under policy option 4a) would have very little impact in achieving SO4. Some clarity on the procedures in place and greater awareness could promote their use and contribute to uniformity in their application both in crisis and non-crisis situations. However, this impact would be limited. Soft measures could not sufficiently solve the issues that are connected to financial reimbursement by represented citizens. Confusion

[81] Similar previous campaign run by DG JUST through social media reached 5.6 million people.

and insufficiency of procedures would partially remain and might continue to discourage the use those procedures. (Score: ●)

Efficiency: Overall, costs and benefits for this measure would be very limited. (Score: ●●)

Coherence: Since the financial procedures provided for in Article 14 of the Directive apply to the issuance of EU ETDs to unrepresented EU citizens, clarifying those procedures would ensure coherence to some extent with the ETD Directive. In addition, clarification of current procedure might help Member States to ensure that the repayment of repatriation costs does not result in double funding with co-financing received from the UCPM. (Score: ●●)

Proportionality: This policy option is considered fully proportionate to achieve the objective, also in view of the uncertainties regarding the scale of the problems identified. (Score: ●●●)

Political feasibility: Guidelines are legally non-binding documents. As they are issued by the Commission or/and the EEAS, their political feasibility is therefore very high. Their adoption would only entail some collaboration between the Commission/EEAS and the Member States. However, feedback collected by Member States highlighted their need to review the current rules and therefore, they might be less open to a solution which would simply clarify existing provisions without adjusting them. (Score: ●●)

Option 4b) Legal amendments to improve the procedure

Effectiveness: This policy option would enable assisted EU citizens to pay the assisting Member State directly for the assistance provided (or an EU delegation in case the Member State requested its support). It would considerably reduce the current administrative burden for both the assisting and the Member State of nationality. This would increase the efficiency and use of the financial reimbursement procedures, and thus achieving SO6. For EU citizens, this would also allow a better and much more efficient service, as they would not be phased with later reimbursement requests by their Member State of nationality. This measure would therefore have a very positive impact both on Member States and EU citizens. (Score: ●●)

Efficiency: Given the limited costs for Member States and the significant benefits in recovery of such costs, this option is considered very efficient. (Score: ●●●)

Coherence: Reforming and simplifying the financial procedures and making them more efficient and applicable also to represented EU citizens would be fully coherent with the objectives of the ETD Directive and with the UCPM. Presently, the UCPM allows Member States to request EU citizens to contribute to the costs of the transport while the Directive only foresees a contribution from the unrepresented citizen's Member State of nationality. It follows that this option will ensure more consistent financial procedures preventing the risk of double funding. (Score: ●●●)

Proportionality: This policy option is considered fully proportionate to achieve the objective. The choice of legal amendments to improve the financial procedures is coherent with the satisfactory achievement of the objective and could not be achieved by the Member States acting alone. While available data is limited, estimates show that the number of EU citizens travelling to third countries where they are not represented is considerable. (Score: ●●●)

Political feasibility: The majority of Member States consulted for the study were in favour of allowing EU citizens to pay for consular assistance directly, as it would reduce the administrative burden relating to the reimbursement requests. However, two Member States have national laws in place which prevent them from seeking reimbursement directly from the citizen. In addition, one Member State noted it was better left for the Member States to organise the reimbursement between themselves rather than involving individuals. One Member State

highlighted its concerns regarding the types of costs which would be reimbursed under this mechanism[82]. Five Member States stated that there is the need to incentivize financial compensation[83]. In COCON, most Member States favoured establishing a deadline for an assisting Member States to provide the statement of expenses for costs incurred to the Member State of nationality. This would complement the deadline for reimbursement already provided in Article 14(2) of the Directive. The period of 12 months seemed to be adequate to most Member States with an option for an extension in more complex cases, after prior notice of the assisting Member States. As such, there would be a strong political support for the development of a standard form for reimbursement of assistance to represented EU citizens. (Score: ●●●)

7. HOW DO THE OPTIONS COMPARE?

SO1: Conclusion/comparison of options:

	Option 1a) Combination of soft measures	Option 1b) Improvement to the definition through legislative amendments	Option 1c) Introduction of the concept of "presumption of unrepresentedness"
Effectiveness	●	●●	●●●
Efficiency	●●	●●●	●
Coherence	●●	●●●	●●
Proportionality	●●●	●●●	●
Political feasibility	●●●	●●	●
Result		*Preferred Option*	

[82] An example mentioned in this regard was that the respective Member State did not cover medical repatriation as it was considered too costly. However, some Member States did cover this type of assistance for their nationals and thus for unrepresented citizens. Therefore in theory these costs could be sought to be reimbursed if their nationals received such assistance.

[83] The EU's role on Consular crisis management - Non-paper by Belgium, Finland, Luxembourg, Poland and The Netherlands, April 2022, available at: https://europeanunion.diplomatie.belgium.be/sites/default/files/2023-05/The%20EU%E2%80%99s%20role%20on%20Consular%20crisis%20management%20-%20Non-paper%20by%20Belgium%2C%20Finland%2C%20Luxembourg%2C%20Poland%20and%20The%20Netherlands.pdf

SO2: Conclusion/comparison of options:

	Option 2a) Guidelines on local cooperation	Option 2b) EU delegations will chair local consular cooperation networks meetings
Effectiveness	●●	●●●
Efficiency	●●	●●●
Coherence	●●●	●●●
Proportionality	●●●	●●●
Political feasibility	●●●	●●●
Result		*Preferred option*

SO2: Conclusion/comparison of options:

	Option 2d) Detail the supporting role of EU delegations through legal amendments	Option 2e) EU delegations can provide direct consular assistance to EU citizens in uncovered third countries
Effectiveness	●●●	●●●
Efficiency	●●●	●●●
Coherence	●●●	●●
Proportionality	●●●	●●
Political feasibility	●●	●
Result	*Preferred option*	

Synergies among the combination of preferred options to ensure better coordination:

Option 2b) Local coordination meetings would be chaired by the EU delegations.

Option 2c) Review of the concept of Lead State and formalization of tasks under JFW and the EU delegations will lead on the drafting of the JFW.

Option 2d) Strengthen the supporting role of EU delegations and align it with the Council Decision setting up the EEAS.

A combination of the best options results in a limited increase in the role of EU delegations for coordination and cooperation purposes with specific assigned tasks, including the chair of local coordination meetings and the drafting of the JFW. Their explicit reference in the Directive

will provide a solid basis to further enhance legal certainty, consistency, business continuity, innovation and largely improve effectiveness of local coordination.

In the case of option 2d, EU delegations would enjoy of a legally certain and better-defined role for their actions in support of Member States, offsetting present concerns regarding their competences. As EU delegations' activity would primarily focus on the support to the weakest nodes of Member States' collective consular network, it would tap into unused resources, trigger synergies and improve the overall effectiveness of EU right to consular protection.

This combination of options would streamline procedures in non-crisis situations, under the lead of EU delegations, and would improve preparedness for crisis situations. Overall, the effect of these options would increase the visibility of EU delegations and EU action with the Member States and most importantly, with EU citizens, who are the ultimate beneficiaries of the right to consular protection.

SO3: Conclusion/comparison of options:

	Option 3a) Legal amendments with new requirements for provision of information	Option 3b) An EU travel advice portal
Effectiveness	●●●	●●
Efficiency	●●●	●●
Coherence	●●●	●●●
Proportionality	●●●	●
Political feasibility	●●	●
Result	*Preferred option*	

SO3: Conclusion/comparison of options:

	Option 3c) Communication campaign	Option 3d) Member States required to promote measures supporting the possibility for their citizens to inform on/record their travelling
Effectiveness	●●	●●
Efficiency	●●	●●
Proportionality	●●●	●●●
Political feasibility	●●●	●●●
Result		*Preferred option for coherence with the other measures and their level of intervention*

SO4: Conclusion/comparison of options:

	Option 4a) Guidelines and training	Option 4b) Legal amendments to improve the procedure
Effectiveness	●	●●
Efficiency	●●	●●●
Coherence	●●	●●●
Proportionality	●●●	●●●
Political feasibility	●●	●●●
Result		*Preferred option*

8. PREFERRED COMBINATION OF OPTIONS

Specific Objective	Preferred options
SO1: Enhance the legal certainty for EU citizens with respect to the scope of the right to consular protection	**Option 1b)** Legal amendments to clarify the definition of what it means for an EU citizen to be unrepresented and in particular the types of situations in which a Member State representation should not be considered "*effectively in a position to provide consular protection*".
SO2: Ensure clear roles, coordination and cooperation mechanisms between Member States and EU delegations, including in times of crisis	**Option 2b)** Local coordination meetings are chaired by the EU delegations **Option 2c)** Review of the concept of Lead State and definition of division of tasks under JFW, formalization of JFWs and JCTs **Option 2d)** Strengthen the supporting role of EU delegations and align it with the EEAS Decision
SO3: Improve the information provision and communication with (unrepresented) EU citizens	**Option 3a)** a requirement for Member States to provide the Commission and the EEAS with information in a certain timeframe and in machine readable format on honorary consuls functions and on bilateral and practical arrangements in place. **Option 3d)** Member States required to promote measures to inform consular authorities and/or record citizens' presence abroad

SO4: Increase the efficiency and use of the financial reimbursement procedures	**Option 4b)** legal amendments adding the option for unrepresented citizens to pay the assisting Member State or the EU delegation. Establish a timeframe for reimbursement procedures and clarify application to represented citizens

It is suggested to propose a targeted revision of the existing legislative framework of the Directive. Such an approach would maximise the effect of consolidating the relevant rules governing consular protection of unpresented citizens, and achieve maximum impact for the effective exercise of their fundamental right, while respecting national competences. The preferred option will be complemented by the measures presented in Annex 10.

8.1. Impacts of the preferred combination of options

The impacts of the preferred combination of options would be positive compared to the *status quo* and are expected to adapt the present consular protection framework to present and future challenges. A clarification of the scope in the Directive would bring increased legal certainty, resulting in a more effective consular assistance to EU citizens (SO1). Increased legal certainty and effectiveness of the Directive's rules applicable to crisis and non-crisis situations would result in a strengthened EU delegations' supporting role, a clearer division of tasks among Member States and EU delegations in local cooperation meetings, JFWs and JCTs (SO2). The effect of a more efficient and smooth coordination would be a better assistance to EU citizens, especially in crisis situations, making best use of all EU resources allocated to that task. In addition, a more effective and consistent communication with EU citizens on consular matters would flow from enhanced cooperation between Member States' consular networks and the EU. More registrations of citizens abroad would allow Member States to better assist them (SO3). Finally, simplification and reduction of the current administrative burden for both the assisting and the Member State of nationality would increase the usefulness of financial reimbursement procedures. What is more, the extension of the reimbursement mechanism to EU delegations would contribute to filling in a gap hindering their practical support to Member States on the provision of assistance to EU citizens on a cost-neutral basis (SO4)[84].

There are no administrative costs and savings that would fall into the 'one-in-one out' tool.

8.2. REFIT – Preferred option

Table 5 shows efficiencies for authorities due to legal certainty, increased synergies and better processes.

Table 5: REFIT - Scope for simplification and improving the efficiency of the existing legislation

Description	*Comments*
Increased clarity on various essential elements of the Directive (e.g. scope and key terms) resulting in its more efficient application and more streamlined procedures, reduction of delays, complexity and costs.	Benefitting MS consular authorities and EU citizens
Cost savings through efficiency gains realised through the improved coordination with EU delegations and improved cooperation with other Member States.	Benefitting MS consular

[84] A more complete picture of the implications of the initiative is given in Annex 3.

	authorities and EU citizens
Cost savings due to the increased legal certainty on the application of personal data protection rules in the context of consular protection.	Benefitting MS consular authorities and EU delegations
Cost savings due to the reduction in burden when allowing citizens to pay for the assistance provided directly; this would in turn increase the likeliness of Member States having the costs of providing consular assistance to unrepresented citizens be reimbursed, which result in further savings.	Benefitting MS and EU delegations

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The envisaged indicators are presented in table 6 below.

Table 6: Monitoring and evaluation indicators

SO	Indicator	Baseline	Target / How to improve	Sources of information
SO1	Number of unrepresented EU citizens assisted.	Number of unrepresented citizens assisted, based on estimations[85]: 2018: 1087 2019: 1354 2020: 6046	An increase of the overall number is expected because of the factors influencing the evolution of the problem. However, it is not possible to estimate the numbers (which will notably depend on future crises).	Member State reporting based on a legal obligation in the Directive.
SO1	Number of citizen complaints received.	Total number of complaints was 10.	No complaints received on lack of assistance to unrepresented citizens.	DG JUST Member State questionnaire Complaints received by EU delegations (collected from EU delegations directly).

[85] Table 47: Number of unrepresented EU citizens assisted between 2018-2020, as reported by Member States in Annex VI of the study.

SO2	Number and type of requests from Member State authorities to EU delegations for support.	No baseline indicators at the moment.	Data of Year 1 and increases in the following years.	Data collected by EU delegations and EEAS.
SO3	Level of awareness of EU citizens about their right to consular protection.	76% as per Flash Eurobarometer 485.	Increase to more than 80%.	Opinion polls (Eurobarometer).
SO4	Number of reimbursement requests submitted and received.	No baseline.	Baseline to be established in year 1.	Member State reporting based on a legal obligation in the Directive.

Given positive past experiences from the implementation report and preparation of this impact assessment, the proposed sources of information are considered realistic. In particular, Member States are, pursuant to Article 19(1) of the Directive, under an obligation to provide relevant information. The feasibility of conducting opinion polls will depend on available financial resources.

Pursuant to Article 19(1) of the Directive, the Commission was obliged to submit a report to the European Parliament and the Council on the implementation and application of the Directive by 1 May 2021. In that Commission Report, the Commission had to evaluate the way in which the Directive had operated and consider the need for additional measures, including, where appropriate, amendments to adapt the Directive with a view to further facilitating the exercise of Union citizens' right to consular protection.

In line with the Interinstitutional Agreement on Better Law-Making[86], the amended Directive should provide for its evaluation by the Commission. To ensure that there is enough practical experience and information available, given the time needed to carry out the evaluation, and in order not to impose unnecessary burden on national authorities, the evaluation report should be published eight years after the transposition of the amendments[87].

[86] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

[87] See also 'Better regulation' toolbox 2023, tool # 44, available at: https://commission.europa.eu/system/files/2023-09/BR%20toolbox%20-%20Jul%202023%20-%20FINAL.pdf

Glossary

Term or acronym	*Meaning or definition*
COCON	Consular Affairs Working Party of the Council of the EU
CoOL	Consular Online platform maintained by the EEAS
EUDEL	EU delegation
EUDPR	Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC
ETD	Emergency Travel Document
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
JCT	Joint EU Consular (crisis response) Team
JFW	Joint EU consular crisis preparedness frameworks
LCC	Local Consular Cooperation
SO	Strategic Objective
UCPM	European Union Civil Protection Mechanism

Annex 1: Procedural information

1. Lead DG, Decide Planning/CWP references

The Staff Working Document was prepared by the Directorate-General for Justice and Consumers (DG JUST). The Decide reference of this initiative is PLAN/2020/8637.

The preparatory work for the Commission's initiative to review the provisions to secure the protection of unrepresented EU citizens in third countries benefitted from two derogations from the Better Regulation guidelines[88].

First, the initiative was granted a derogation from the requirement of conducting a public consultation. This was due mainly to the inherent limitations in reaching out to the direct beneficiaries of the Directive[89] but also because of the evidence gathered in the public consultation for the 2020 EU Citizenship report (9 July 2020 – 1 October 2020)[90] and the Flash Eurobarometer 485 on EU Citizenship and Democracy[91], which already surveyed opinions of EU citizens on consular protection.

Nevertheless, the publication of an inception impact assessment on the Commission's website offered an opportunity for external feedback[92] and, in addition, the study developed a short survey on EU citizens' experiences on consular protection abroad[93].

Secondly, a derogation to the "evaluate first" principle was granted, taking into account the parallel delivery of the Commission Report and the limited data available soon after the transposition of the Directive.

The study includes the results of consultations with different stakeholders, such as EU delegations[94], as well as the results of a questionnaire to national authorities of the Member States[95]. In addition, the views of the Member States were available as the result of discussions at the Council working party on consular affairs ('COCON') on further facilitating the exercise of EU citizens' right related to consular protection in third countries in the context of a possible up-date of the Directive, between September and November 2022[96].

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88 SWD(2021) 305 final, https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en.

89 These are EU citizens who received assistance and their family members. The reasons for these intrinsic limitations are justified by data protection requirements.

90 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12455-EU-Citizenship-Report-2020/public-consultation_e.

91 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12455-EU-Citizenship-Report-2020/public-consultation_e.

92 The feedback period was 13 January 2021 to 10 February 2021. Only 5 contributions were received.

93 Seven EU citizens replied to the survey.

94 Overall 77 EU delegations completed the survey (response rate of 60%).

95 Data collection at Member State level includes the use of a comprehensive questionnaire to collect quantitative data on Member States' national legislation and procedures; on their consular networks and assets; on the consular protection they provided to unrepresented citizens; and on their travel and communication channels. Additionally, Member States were also asked to provide qualitative feedback on the application of the Directive; on proposed policy options; and on the COVID-19 pandemic lessons learnt.

96 Minutes of discussions at the Council working party on consular affairs are not publicly available. The Czech Presidency held three COCON meetings focusing on options to further facilitate consular protection of EU citizens in third countries based on the Commission´s report on the implementation and application of the Directive, COM (2022) 437, see Outcome of the proceedings COCON 61 15876/22

2. Organisation and timing

The Impact Assessment was prepared by DG JUST as the lead Directorate-General.

The Inter-Service Steering Group established for this initiative was associated and consulted several times in the process, under the coordination of the Secretariat-General. It included the following services: DG JUST, EEAS, ECHO, SJ, MOVE, NEAR, INTPA, SANTE, HOME and FPI. The group had four meetings: 25 November 2020, 18 March 2021, 9 December 2021 and 24 May 2023. In addition, the group was regularly consulted in writing on the progress of the study, including on the various deliverables (interim reports, final report) in both draft and final form.

3. Consultations of the Regulatory Scrutiny Board (RSB)

An upstream meeting took place on 10 March 2020, and the recommendations of the RSB were duly taken into account. DG JUST, working in close cooperation with the co-lead EEAS, submitted the draft Impact Assessment for the revision of the rules on consular protection to the RSB on 22 December 2021 and a complementary input on 1 February 2022. A hearing of the RSB took place on 2 February 2022. On 4 February 2022, the RSB issued a negative opinion.

The RSB's recommendations have been taken into account in the Impact Assessment, as outlined in the below table.

BOARD's SUGGESTED IMPROVEMENTS	IMPLEMENTATION
(1)The report lacks the solid analytical basis that an evaluation of the Directive would have provided. It should clearly explain why no evaluation has been undertaken. In its absence, the problem description should complement the lack of evaluative evidence. It should avoid drawing conclusions along the lines of evaluation criteria from the implementation report, as its findings cannot be considered as reliable evidence of a problem.	Two derogations to the "evaluate first" principle have been granted for this initiative and it is better explained in Annex 1. At the same time, on substance, a detailed assessment of the implementation and application of the Directive has been recently published. See Report issued on 2 September 2022, COM(2022) 437 final, available at: https://commission.europa.eu/system/files/2022-09/1_1_196921_impl_rep_cons_en_1.pdf Wrong references to the evaluation criteria in the report and the deriving wrong conclusions have been removed. The problem description has been expanded.
(2) The report should be clear about the existence and nature of the problem. Theoretical problems that may occur are not	Qualitative elements and examples in the problem description have been added (See sections named "in practice" at the beginning of each problem) and appropriate references are made to concrete

available at: https://data.consilium.europa.eu/doc/document/ST-15876-2022-INIT/en/pdf and WK 17059/2022 in List of working papers (WK) distributed in the Working Party on Consular Affairs in 2022 https://data.consilium.europa.eu/doc/document/ST-5013-2023-INIT/en/pdf.

substantiated with the evidence of relevant recurring cases needing further regulatory coverage. For example, there is no evidence in the report of citizens being deprived of assistance in a context of crisis; there is no evidence of citizens being deprived from receiving consular protection as a result of the practice of deferring requests either. The report should differentiate between endemic problems requiring changes to the legal framework and ad hoc, occasional problems relating to the unpredictable nature of crises. It should narrow down its scope to focus only on real general problems for which there is reliable and consistent evidence.	examples contained in the Commission's report on implementation and application of the Directive (link above). The scope and the number of problems was reduced to focus on structural problems. Explanations have been added as to why problems that can be perceived as of a small scale are, instead, of general importance. See new Section 2.1 on Preparedness for fundamental rights' protection.
(3) The report should indicate the scale of the problem. It should estimate the amount of support from UK consulates that EU citizens in distress received in countries with no other EU representation. It should provide information about bilateral agreements Member States or the EU have with third countries (e.g. Switzerland, Canada or possibly in the future also with the UK) and to what extent these mitigate the problems. It should clearly set out the relationship between the Directive and the Union Civil Protection Mechanism in crisis situations. It should substantiate with evidence, the premise that there is a growing number of crises worldwide requiring consular assistance and that existing arrangements are insufficient to address these. Finally, it should clearly demonstrate that all Member	Drafting has been improved to better present the scale of the problems. Explanations have been added why there is a question of inadequacy of bilateral agreements as a possible solution for ensuring the consular protection of EU citizens in view of the policy objective linked to the implementation of the fundamental right to consular protection for reasons related to the legal guarantees associated to that fundamental right and the consistency of the protection (see the section on disregarded policy options). Section 1 on the context and legal framework chapter has been extended and provides more detail on the use of Union Civil Protection Mechanism in crisis situations. Annex 5 contains a short overview of the provisions of the Directive and an illustrative example of a crisis and a non-crisis situation. For the increasing number of crises, megatrends as identified by the European Commission 2021 Strategic Foresight Report have been used as a driving factor of future crises. See section 2.4 and Annex 7. Finally, Member States' views have been better integrated, as expressed in the context of the Consular Affairs Working Party of the Council on the

States favour the EU taking on the coordinating role in crises.	basis of the exchanges on the Commission report on the implementation of the Directive, throughout the text and added a section on "Political Feasibility" for the assessment of options.
(4) The report should better justify the proportionality of the proposed legal basis, which, for the preferred option, includes a Treaty change via the use of the Article 25 TFEU passerelle clause. This does not seem justified by either the nature or scale of the identified problems. The report should also demonstrate that this approach would not go beyond the cited Council conclusions that advocate a potential revision of the Directive, rather than of the Treaty. It should also clearly specify upfront that recourse to this Treaty Article requires unanimity at the Council since this is relevant to both the justification of the preferred option and to the political feasibility.	Considering the review of the Impact Assessment, the preferred option is now a legislative intervention which does not require the use of Article 25 TFEU. This should resolve the proportionality concerns between the problems identified and the solutions proposed. The majorities required in the Council for both Article 25 TFEU and Article 23 TFEU have been clarified (see section on legal basis).
(5) The report should explain the role of the Vienna Convention on Consular Relations as the basis for international consular cooperation between states and how EU delegations would fit into this framework.	An explanation has been added to the section on the legal basis in the form of a dedicated paragraph.
(6) The report should be more explicit about the rationale behind the policy options and the 3 proposed packages. The options design should focus on real policy options, leaving technical choices in an annex. The baseline cannot – by definition – be a policy option and should not be discarded. The report should explain the difference between the dynamic	The policy choices have been simplified, their organisation re-structured and their presentation improved in order to be more reader-friendly. The organisation in packages has been removed. The options design now focus on real policy options and technical choices have been moved to Annexes. (See section on policy options and Annex 8 with the updated intervention logic and Annex 10 for the measures without policy choice). The reference to the baseline as policy option has been removed. A description of ongoing initiatives of

baseline and the measures proposed in the non-legislative option. It should clearly set out the extent to which the identified and substantiated problems could be addressed by the combination of the dynamic baseline and this option. It should also clearly highlight the differences and similarities between option 2B and option 3, given that both require Treaty change. It should clarify if option 3 is actually different to option 2B only because it extends beyond crisis situations. It is not clear how option 2B could work only in crisis situations given their unpredictability and the corresponding need therefore for a universal standing consular capability in all EU delegations worldwide. The proposal that the capabilities under option 2B could only be triggered ad hoc in a crisis situation by unanimity in the Council calls into question both the need for this standing capability as well as the need to revise the Treaty to provide it. The idea of rapid reaction consular crisis response teams is not covered or analysed in the impact assessment and cannot therefore be assessed.	the dynamic baseline scenario has been added to Annex 9. The options concerning the role of EU delegations has been simplified further. They are now only 2 instead of 4 (now option 2d) and 2e)) and have been differentiated more. Option 2d) does not require Treaty change while option 2e) requires the use of the passerelle clause. Option 2e) was also reconsidered and the new extended role of EU delegations is now limited to "uncovered third countries". The reference to new rapid reaction consular crisis response teams has been removed.
(7) The political acceptability by Member States of the options should be taken into account and could be used as a criterion to discard some options. It is not clear how the political feasibility of option 2B differs from that of option 3 given they both require recourse to the passerelle clause and therefore unanimity. It is not therefore clear on this basis why only option 3 is not considered	Member States' views collected through the study and as discussed in the context of the Consular Affairs Working Party of the Council on the basis of the implementation report of the Directive have been integrated better to assess the political feasibility. In the outcome of proceedings of the meeting of the Working Party on Consular Affairs (COCON) on 12 December 2022) the Czech Presidency concluded in view of the discussions held that "there is scope to review the Directive, in particular based on the experiences from consular crises in the past years." See here:

proportionate. The report should make a clear distinction between a normal and a crisis situation as this has an impact on proportionality, i.e. if the capabilities proposed in option 2B are to be triggered only on an ad-hoc basis, it is not clear why options 1 or 2A would not suffice.	https://data.consilium.europa.eu/doc/document/ST-15876-2022-INIT/en/pdf The drafting for the criterion of political feasibility to compare the remaining policy options has been improved. For option 2d) and 2e) on the role of EU delegations, the difference in terms of political feasibility has been clarified. Concretely, in option 2d) EU delegations maintain, while strengthening, their actual supporting role to Member States in providing assistance to unrepresented EU citizens while in option 2e) they are endowed with new competences and an autonomous role in uncovered third countries while keeping the supporting one in other countries. This makes a big difference in terms of political feasibility. The drafting to explain why preparedness in a non-crisis situation is important to address a crisis situation has been improved (Section 2.1 on Preparedness for fundamental rights' protection).
(8) The impact analysis should be comprehensive and clearly show the benefits and costs. The report should clarify the effectiveness assessment of the options, in particular regarding the personal and geographical scopes, accessibility and communication. It should add the cost assessment for each option issue by issue. It should indicate clearly the precise costs the initiative will entail, their amount and their timeframe. It should explain how this could be covered by redeployment and identify exactly when and where the savings would come from. If new financial resources would be required, it should set out precise costings and explain how these would fit with the budgetary ceilings of the 2021-2027 Multiannual Financial Framework. It should also address the need to revise the cost-neutrality	A comprehensive analysis of impacts has been added, which includes: effectiveness, efficiency, coherence, proportionality and political feasibility. An analysis of impacts on fundamental rights has been added as part of the effectiveness analysis. The calculation of costs has been improved and added per each policy option and measure to the extent possible. Costs and benefits are summarised in Annex 3. The costs for this initiative for the EU are limited and the majority of them is represented by one off costs. Given the tight situation of Heading 7 (European Public Administration) any additional costs will be covered by internal redeployments within the relevant entity. Therefore, there is no risk that due to this initiative the budgetary ceiling of the 2021-2027 MFF would be exceeded. In addition, an explanation has been added as to why there is no need to revise the cost-neutrality requirement of Article 5(10) of the EEAS Decision for the preferred option (see assessment of option 2d and Annex 4). However, it is also explained that, in order to ensure cost-neutrality, there is a need to

requirement of Article 5(10) of the EEAS Decision for the preferred option, given the additional human and financial resources that would be required	extend the reimbursement mechanism in the Directive to EU delegations.
(9) The report should provide the justification for the quantitative and qualitative cost assessment conclusions. The cost assessments for the preferred option lack credibility. It is not clear what the justification for low quantitative estimates and 'limited' or cost 'neutral' qualitative conclusions is and what evidence they are based on. A Treaty change to give EU delegations competence for consular assistance would give rise to a justiciable legitimate expectation on the part of EU citizens that they would be able to enjoy this right universally. That cannot by definition, and given the wide range of consular work, be achieved on a resource-neutral basis. The report should also clarify how the gradual approach would work given the universal, justiciable right the initiative would create. Such an ad hoc approach would seem to be more compatible with a non-legislative option.	The quantitative and qualitative cost assessment conclusions of the preferred option have been improved, which no longer implies a Treaty change (see methodology in Annex 4).
(10) The absence of a dedicated public consultation is problematic in terms of the evidence basis. By way of mitigation, the views of stakeholders – including dissenting ones – expressed in the public consultation for the 2020 EU Citizenship Report, the Flash Eurobarometer 485 on EU Citizenship and Democracy and in targeted consultations with Member States and EU delegations	The views of stakeholders have been included where possible and in particular those of the Member States, both in the problem description and the political feasibility sections. Additional information on the views of the Member States were gathered following discussions at the Council working party on consular affairs ('COCON') on further facilitating the exercise of the right to consular protection in third countries in the context of a possible up-date of the Directive, between September and November 2022.

should be presented throughout the report, not only in the problem analysis. The views of Member States are not sufficiently reflected in the report. The initiative by eight Member States favouring a review of the Directive is given disproportionate weight. The views of the remaining 19 Member States on the proposals in the initiative – including dissenting views – should be clearly set out.	

DG JUST, working in close cooperation with the co-lead EEAS, re-submitted the draft Impact Assessment to RSB on 8 June 2023. On 6 July 2023, the RSB issued a positive opinion with reservations. The RSB's recommendations have been taken into account in the Impact Assessment, as the table below displays.

BOARD's SUGGESTED IMPROVEMENTS	IMPLEMENTATION
(1) The scope of the initiative remains unclear, in particular in what specific circumstances the proposed legal changes on the definition of unrepresented nationals would give rise to a justiciable consular right for unrepresented EU citizens worldwide, or whether this would be limited to specific third countries where no Member States is present with consular service. This should be clarified as it could have a direct bearing on the resource implications for EU delegations and Member States. The report should demonstrate compliance with Article 10 (cost-neutrality) of the EEAS Decision.	Based on Article 23 TFEU, unrepresented EU citizens already enjoy a justiciable right to be assisted by the diplomatic and consular authorities of other Member States in third countries where their Member State of nationality is not represented. The initiative would not affect the current scope of this right as established by the Treaty. This has been clarified in the description of policy option 1b). The demonstration of compliance with Article 10 (cost-neutrality) of the EEAS Decision is outlined in Annex 4.
(2) The scale of the problem is not apparent raising doubts as to the proportionality of, or justification for, legally binding EU action. The report should present how big the	The text has been redrafted to clarify the size of the problem, in particular problem 1. In addition, further elements have been added in Section 2 on the limitations of the data available resulting from the

problems are bringing in all available evidence. If the problems are small, this should be clearly stated upfront and the scale and nature of the measures proposed should be commensurate with this.	lack of preceding evaluation and on the magnitude of the problem. The assessment of the proportionality of the different policy options has been expanded to better explain how their proportionality is impacted by the limitations and uncertainties as to the scale of the problem.
(3) The baseline is underdeveloped, insufficiently presented in the main report and not dynamic. The report is not clear on why certain non-regulatory measures presented for each problem could not already be done under the baseline scenario. This should be dynamic and go beyond a narrative on the expected continuation of the current regime. It should integrate the expected evolution of the problems covering the envisaged changes in consular network and the number of unrepresented EU travellers, the effects of the UK leaving the EU and the expected increase of crises.	The description of the baseline in the main text has been expanded, in particular by adding information from the evolution of the problem, notably in terms of the changes to consular networks and number of travellers, as well as the impact of the UK's withdrawal from the EU. In addition, explanations were added as to why some of the problems could not be addressed under the baseline scenario due to them being linked to the current wording of the Directive. See also expanded section on the baseline in Annex 9.
(4) The report should explain that not all the options are alternatives and thus comparable, as they address different problems under the same specific objective. The report should clarify whether other combinations of options have been considered, for instance a combination of exclusively non-regulatory measures only, and if not, explain why. It should make a critical assessment of the limitations of the baseline as a reliable basis for comparison of the options.	Additional explanations have been added as to why not all the options are alternatives given that they address different problems under the same specific objective (see notably specific objective 2). In the section on discarded policy options, explanations have been added an alternative combination of measures has not been considered, including a package non-legislative measures. Elements have been added to Annex 9 to reflect the uncertainties of the baseline scenario, in particular when it comes to future actions of the Member States and the need for consular protection as a result of an increase in crises with a consular element.

(5) The impact analysis should be further developed. The report should include an explicit and distinct section with the assessment of the impacts of each policy option. The report needs to distinguish clearly between the categories of impacts assessed and the criteria on which the comparison of options is based. All mandatory categories of impacts should be examined, and it should be clearly noted if they are deemed not relevant or not significant. The assessment of the costs should be further developed as they appear to be understated (see point 1), particularly if the amendments give rise to a universal justiciable right, and should be fully worked through and set out. Broad statements that the costs will be "very limited" should be sufficiently substantiated by the analysis to allow policy makers to take an informed assessment. The analysis of the benefits should be further developed to assess all relevant types of benefits.	The impact analysis has been separated from the chapter on the assessment of impacts of each policy option (Chapter 6 and 7). All mandatory categories of impacts have been added and examined in Chapter 6. It is clearly explained that no social or environmental impacts, impacts on SMEs could be identified (Chapter 6), nor impacts on competitiveness (Annex 3), given that the Directive does directly not concern commercial entities. The assessment of the costs under the economic impacts and the analysis of the benefits have been reviewed.
(6) The assessment of the options against the comparison criteria should be based on evidence. The report should elaborate on the assessment of proportionality for all options rather than merely stating 'this policy option is considered fully proportionate to achieve the objective'. The scoring of the options is arbitrary and should instead be supported by	The assessment of proportionality for each option has been expanded. The scoring has been reviewed and updated. An explanation of the scoring system can be found in Section 4 of Annex 4.

and consistent with the preceding analysis. The report should explain why the scoring of options with different characteristics is often the same, or options with similar characteristics score differently.	
(7) The report does not sufficiently reflect and take account of the views of different stakeholder groups. It should include a clear explanation why the "evaluate first" principle was not respected and how feedback from stakeholders was taken into account to compensate for the lack of evaluative evidence, particularly in the problem definition.	Additional explanations have been added to Section 2.2. as to how stakeholder feedback was considered for the problem definition. A new subsection has been added to Section 2.2 explaining why a derogation from the 'evaluate first' principle had been granted and acknowledging the limitations resulting from the subsequent lack of data and evaluative evidence. More information can be found in Annex 1.
(8) The monitoring and evaluation provisions should be further developed. The report should be more specific on the targets set for the indicators beyond an expected increase. It should re-assess the statement that there is currently no existing data for any of the proposed indicators. It should also assess how realistic are the proposed sources of information. Evaluation provisions and their timing should be added.	Where possible, targets and available baselines for the indicators have been added. An assessment of the sources of information has been added. Explanations as to the evaluation of the proposed action, with reference to existing legal provisions, have been added.

4. Evidence, sources and quality

The evidence base is drawn in particular from the following:

- the Inception Impact Assessment[97] and the responses provided by organisations in response to it;
- the Flash Eurobarometer 485 on EU Citizenship and Democracy[98];

[97] European Commission, Inception Impact assessment on Consular Protection – review of EU rules, Ref. Ares(2021)282291 – 13/01/2021.

[98] Flash Eurobarometer 485: EU Citizenship and Democracy; February/March 2020; https://data.europa.eu/data/datasets/s2260_485_eng?locale=en.

- the Joint Frameworks of four selected third countries (Costa Rica, Montenegro, Russia, Ethiopia).
- an anonymised sample of citizen's complaints received by DG JUST;
- the 2020 EU citizenship report[99], including its Open Public Consultation survey with consular questions;
- Member States' replies to the questionnaire developed by the Expert Group Meeting on Consular Protection of 8 December 2020/ Discussion Note on the implementation of Council Directive (EU) 2015/637, Chapter 1: General Provisions and Scope and Chapter 2: Coordination and cooperation measures. This dedicated questionnaire collected quantitative data on Member States' national legislation and procedures; on their consular networks and assets; on the consular protection they provide to (un)represented citizens; and on their travel and communication channels. Additionally, Member States were also asked to provide qualitative feedback, through interviews, on the application of the Directive and the problem definition; on the proposed policy options; and on the COVID-19 pandemic lessons learnt;
- an online survey sent to EU delegations (77 out of 134 responded);
- a short survey collecting anecdotal information from a sample of unrepresented citizens;
- interviews with stakeholders (citizens, industry, selected EU bodies);
- Report on the implementation and application of Directive 2015/637/EU, COM(2022) 437 final, available at: https://commission.europa.eu/system/files/2022-09/1_1_196921_impl_rep_cons_en_1.pdf
- discussions at the Council working party on consular affairs ('COCON') on further facilitating the exercise of EU citizens' right related to consular protection in third countries in the context of a possible up-date of the Directive, between September and November 2022[100].
- Data on consular activities provided by the EEAS Consular Affairs Division;
- A dedicated study from a contractor, which gathered and analysed the evidence mentioned above[101].

99 https://ec.europa.eu/info/files/eu-citizenship-report-2020-empowering-citizens-and-protecting-their-rights_en.

100 Minutes of discussions at the Council working party on consular affairs are not publicly available. The Czech Presidency held three COCON meetings focusing on options to further facilitate consular protection of EU citizens in third countries based on the Commission´s report on the implementation and application of the Directive, COM (2022) 437, see Outcome of the proceedings COCON 61 15876/22 available at: https://data.consilium.europa.eu/doc/document/ST-15876-2022-INIT/en/pdf and WK 17059/2022 in List of working papers (WK) distributed in the Working Party on Consular Affairs in 2022 https://data.consilium.europa.eu/doc/document/ST-5013-2023-INIT/en/pdf.

101 Study supporting the impact assessment, including its annexes.

Annex 2: Stakeholder consultation

This impact assessment included the following stakeholder consultations:

1. **Online survey with EU delegations**

The approved survey questionnaire was uploaded into EU survey by the contractor, and the survey link was then distributed to the EU delegations by the EEAS on 19 April 2021. The survey was live for 3 weeks, from 19 April until 10 May 2021, as the initial deadline of 3 May 2021 was extended one week upon request by a number of EU delegations.

The survey data was then reviewed in the week of 10 May 2021 and duplicate entries were clarified with the relevant EU delegations. Overall **77 EU delegations completed the survey (response rate of 60%)**. Through this survey, EU delegations were consulted on their assessment of the situation under the status quo (including under times of crisis, such as around the COVID-19 outbreak), on their views regarding the functioning of the Directive, as well as on their views regarding the policy options. The responses regarding the policy options are reported below[102].

Policy option 1: Status quo

Directive 2015/637 would remain in force and only soft measure would be introduced, like for instance providing more effective outreach for travel advice and communication channels, or carrying out better training and exercises for consular protection and joint consular crisis preparedness.

What types of soft measures would improve the way in which consular assistance is provided to unrepresented EU citizens (e.g. training for consular staff, guidelines, best practice guides, coordination exercises)? Describe and specify if these should be targeted at the Member States, the EU delegations or both.

The EU delegations identified a number of soft measures that would improve the way in which consular assistance is provided to unrepresented EU citizens. One of the most common suggestions were more training to be offered for the staff (e.g. Eswatini, Fiji), as well as clearer guidelines and instructions by the HQ (e.g. Albania). Some EU delegations also pointed out the fact that they require more personnel in order to properly perform their consular responsibilities (e.g. Malaysia). This could be potentially amended if additional resources were assigned to employ local staff and agents with consular attributions (e.g. Papua New Guinea). Furthermore, some EU delegations mentioned the need to organise joint EU delegation – Member State consular coordination exercises (e.g. Barbados, Mauritania). Lastly, there are challenges in reaching out to EU citizens in countries where local conditions make it very difficult to use modern media (e.g. Eritrea).The EU delegation in Panama proposed to create and maintain an updated database that would contain information on the citizens present in the country; and all contacts of relevant persons tasked with consular responsibilities from embassies, consulates and/or concurrent embassies.

[102] Note that the policy option descriptions presented below are those provided to the survey respondents, and differ from the policy options presented in this Impact Assessment.

Figure 3: In your opinion, does this policy option suffice to address the issues identified? (N=77)

		Answers	Ratio
Yes		28	36.36%
No		16	20.78%
Not applicable / I don't know		31	40.26%
No Answer		2	2.6%

Only around one third of the EU delegations considered soft measures as sufficient in addressing the identified issues; almost an equal number did not have an opinion or viewed soft policy options as not applicable in their case. As previously, a notable number of EU delegations claimed that the problems are due to capacity constraints which will not be solved with soft measures (Gambia, Iceland, India, Malaysia). Furthermore, some EU delegations highlighted the need for more consular tools under their disposal (El Salvador). The EU delegation in Russia also emphasised the need for Member States to persuade their diplomatic missions to make use of the Directive more actively.

Policy Option 2: Measures establishing further and tighter rules on coordination and cooperation.

A new legal instrument would amend the existing Directive and aim to achieve the following results:

- enhance cooperation among Member States

- strengthen the EU's supporting role, making best use of its unique network of EU delegations.

- preparation and implementation of joint contingency plans would be further elaborated.

- the voluntary use, by Member States, of joint consular teams in crisis situations.

- clarify the possibilities under the Union Civil Protection Mechanism,

- clarify provision of travel advice to citizens and information in times of crisis.

- financial procedures overhauled, including by adding provisions on the reimbursement of costs for the assistance provided to represented citizens in crisis situations.

Under this policy option, the scope of the Directive would be extended to also cover represented citizens in crisis situations. This would mean that any EU citizen could turn to any MS embassy/consulate present in a third country, in crisis situations, to seek consular protection, even when her/his country is represented. What would be the impact of this extended scope on your delegation, considering your current role in supporting Member States?

The proposed policy option raised certain concerns among EU delegations surveyed. In the first place, there was a shared view is a potential lack of resources to manage a new stream of requests. This is especially the case of countries with a limited diplomatic presence of Member States but with a significant population of EU citizens (e.g. Uruguay). On the other side, EU delegations in third countries with a minor population of EU citizens (e.g. Ethiopia) or with a large network of diplomatic missions of the Member States (e.g. the U.S.) did not consider this policy option as providing significant change. EU delegations in countries like Papua New

Guinea were more supportive of this policy option, as they considered it offers better protection for the citizens. The second potential concern is that the proposed policy option would lead to confusion and 'forum shopping' (e.g. Fiji), as the EU citizens would try to choose diplomatic representation that would offer better chances of receiving more comprehensive consular assistance. However, the EU delegation in Gambia considered that this policy option could offer greater visibility for the EU, provided that it will be able to meet its new responsibilities.

Figure 4: To what extent do you think the role foreseen for EU delegations as captured in the Directive is in line with the role and activities currently carried out by your Delegation in practice in non-crisis situations? (N=77)

		Answers	Ratio
To a great extent		27	35.06%
To some extent		23	29.87%
To a little extent		12	15.58%
To no extent		2	2.6%
Not applicable / I don't know		10	12.99%
No Answer		3	3.9%

The broad majority of the delegations participating from the survey agreed to a great extent or to some extent that the role foreseen for EU delegations as captured in the Directive is in line with the role and activities currently carried out by a delegation. Almost one fifth of delegations consulted were of the view that this is the case to a little or no extent.

Do you think that there is a need to strengthen the mandate and further define the role of the EU delegations in the provision of consular protection to unrepresented citizens in the Directive? If so, in what way?

The EU delegations were mostly open to new ways to strengthen their mandate and further define their role in the provision of consular protection to unrepresented citizens in the Directive. Among the suggestions, it was proposed to create a position of an EU consul recognised by the third country (e.g. Bangladesh). In view of the EU delegations, the strengthened mandate should also help in the situation where Member States are unwilling to comply with the provisions of the Directive. Furthermore, a clearer division of labour between the Member States and EU delegations would benefit every party. However, as highlighted above, there is some concern in relation to the limited resources of EU delegations for consular assistance (e.g. Iceland, Malaysia).

Do you see a role for the EU delegation in the setting up of joint consular teams in crisis situations? If yes, what would this role be? What would be the benefits and challenges? If no, why not?

The broad majority of EU delegations saw benefits in establishing joint consular teams in crisis situations. They viewed it as a chance to establish a more comprehensive assessment of the situation, to better coordinate, and share information (e.g. Cuba, Mauritania). The EU delegation in Russia was of the view that EU delegations can act as central information points - gathering all relevant information from all stakeholders, streamlining and systematising it, and then sharing it back with the Member States.

Some EU delegations raised their reservations on a more active role in the setting up of joint consular teams in crisis situations because of the perceived lack of resources (e.g. Malaysia). Others considered that the present arrangements (for e.g. the joint coordination within the LCC) offer enough coordination between the EU delegation and the Member States in crisis situations (e.g. Egypt). EU delegations in third countries with a large presence of Member States (e.g. Russia) did not see the need for additional coordination activities by the EU delegation.

If the Directive would foresee a role for the EU delegation to provide consular protection to unrepresented EU citizens directly, what would this mean for your delegation in practice? Would you need additional staff, budget, or tools? What would be the main benefits and challenges?

The great majority of EU delegations agreed that such a role would bring enhanced visibility to the work of the Delegations and provide unrepresented citizens with better and easier access to consular protection.

Most EU delegations agreed that the main challenge to exercising a more active role is the lack of resources. Some EU delegations were also concerned about potential reactions of the Member States and meeting increased expectations of EU citizens (e.g. El Salvador, Eswatini).

With the exception of Egypt – where it is stated that nothing would really change, since almost all Member States maintain their diplomatic presence – the consulted EU delegations agreed that they would need additional staff, budget and tools to provide consular protection to unrepresented EU citizens directly.

How would your answer change if the Directive would also foresee a role for the EU delegation to provide consular protection to represented EU citizens directly in crisis situations?

When consulted if they would be willing to provide consular protection to represented EU citizens, EU delegations confirmed that they would need additional resources for this, including an increased budget and more staff. Without an increase in capacity, this change would overwhelm EU delegations. However, many delegations agreed that Member States with diplomatic missions on the ground are better equipped to assist their citizens in crisis situations, which would minimise the need for such change.

Figure 5: In which types of situations do you think it is appropriate/feasible for the EU delegation to provide consular protection directly to unrepresented EU citizens? Please select all that apply. (N=77)

		Answers	Ratio
Arrest or detention		29	37.66%
Being a victim of crime		24	31.17%
Serious accident or serious illness		24	31.17%
Death		20	25.97%
Relief and repatriation in case of an emergency		36	46.75%
Need for emergency travel documents as provided for in Decision 96/409/CFSP		26	33.77%
None of the above		19	24.68%
Not applicable / I don't know		10	12.99%
No Answer		2	2.6%

The EU delegations held divergent views on the types of situations where it is appropriate for the Delegation to provide consular protection directly to unrepresented EU citizens. "Relief and repatriation in case of an emergency" was the most common response, with c. 47% of choices, followed by "arrest and detention" with c. 38% of choices. While many EU delegations chose every possible option, they also emphasised the need for greater resources. One quarter of the EU delegations did not see the need to provide consular protection directly to unrepresented EU citizens.

If the EU delegations would be responsible for providing up to date information to EU citizens (such as contacts of Member States consulates) and summarising travel advice, what would this mean for your delegation in practice? Would you need additional staff, budget, or tools? What would be the main benefits and challenges?

The great majority of the EU delegations consulted would need additional staff, budget and tools if they were responsible for providing information to EU citizens and summarising travel advice. Only 14 EU delegations stated they have adequate resources: some have mentioned that they already do this on a routine basis (e.g. Togo, Philippines).

In terms of the benefits that this could bring, most EU delegations agreed that it would bring new visibility to the delegations and provide unrepresented citizens with better and easier access to consular protection.

When asked to reflect on the challenges, the broad majority of the EU delegations consulted would have limited resources to perform these tasks and be overburdened with work. Some EU delegations mentioned difficulties associated with communicating in certain EU languages and the possible reactions of the Member States (e.g. India, Mongolia and Panama).

If in crisis situations, the EU delegations would be responsible to reach out and provide emergency communication to EU citizens, what would this mean for your delegation in practice? Would you need additional staff, budget, or tools? What would be the main benefits and challenges?

If the EU delegations were responsible to reach out and provide emergency communication to EU citizens in crisis situations, the great majority would need additional staff, budget and tools for this task. Only 4 EU delegations stated they have adequate resources (Dominican Republic, Egypt – if joint effort with the Member States, Mauritius, Togo).

In terms of the benefits that this could bring, most EU delegations agreed that it would bring new visibility to the Delegations and provide unrepresented citizens with better and easier access to consular protection.

When asked to reflect on the challenges, the broad majority of the EU delegations consulted would have limited resources to perform these tasks and be overburdened with work. Some EU delegations mentioned difficulties associated with communicating in certain EU languages and the possible reactions of the Member States (e.g. Bangladesh, Congo, El Salvador).

Can any improvements be made to the development and implementation of the joint contingency plans/joint frameworks? What additional role could the EU delegations have?

The great majority of the EU delegations consulted welcomed potential changes to the development and implementation of the joint contingency plans / joint frameworks with a view to making these plans more practical, with better defined roles for EU delegations, Lead Country, and other Member States. Some EU delegations would also seek more guidance from HQ on how to make the joint frameworks as operational as possible (e.g. Albania). However, there were a number of EU delegations that questioned the utility of having joint contingency plans/joint frameworks (e.g. Bolivia, Burkina Faso, Singapore; they all were of the view that no amount of planning can really prepare for a crisis situation) or argued that Member States did not see the real utility of the joint contingency plans/joint frameworks in real life (e.g. Malawi, Russia; they prefer to act *ad hoc* in a crisis situation).

Figure 6: To what extent do you see the need to clarify the possibilities under the Union Civil Protection Mechanism? (N=77)

		Answers	Ratio
To a great extent		19	24.68%
To some extent		27	35.06%
To a little extent		5	6.49%
To no extent		3	3.9%
Not applicable / I don't know		21	27.27%
No Answer		2	2.6%

The majority of the EU delegations consulted in the survey agreed to a great extent or to some extent on the need to clarify the possibilities under the UCPM (c. 58%). In their view, both the EU delegations and the Member States were not entirely aware of the possibilities under the UCPM. The EU delegations mentioned that the UCPM was difficult to understand (e.g. Mauritius), difficult to implement (e.g. Guyana) or that there was difficulty in finding reliable information (Bolivia). Only three EU delegations claimed to have an adequate knowledge about the UCPM (Iceland, Mozambique and Norway). One in every four delegations consulted had no opinion or considered the matter not applicable to their specific situation.

Policy Option 3: Measures enabling EU delegations to provide consular protection to EU citizens beyond crisis situations

This option would build on option 2 by introducing further elements of a harmonised approach:

- provisions for local EU delegations to directly and exclusively take care of unrepresented EU citizens and provide them with all types of consular protection beyond crisis situations.

- Creation of a common information tool to advise EU citizens travelling to third countries,

- establish a single channel for communicating with EU citizens in third countries in times of crisis.

If EU delegations would directly and exclusively take care of unrepresented EU citizens in non-crisis situations and provide them with all types of consular protection, what would this mean for your delegation in practice? Would you need additional staff, budget, or tools? What would be the main benefits and challenges?

If the EU delegations were responsible for taking care of unrepresented EU citizens in non-crisis situations and providing them with all types of consular protection, the great majority would need additional staff, budget and tools for this task.

In terms of the benefits that this could bring, most EU delegations agreed that it would bring new visibility to delegations and provide unrepresented citizens with better and easier access to consular protection.

When asked to reflect on the challenges, the broad majority of the EU delegations consulted would have limited resources to perform these tasks and be overburdened with work. They also would not have the required expertise (e.g. Eswatini), would require additional office space (e.g. Chile), would have difficulties in tracking unrepresented citizens (e.g. Ecuador), would need to set up additional representations outside the capitals (India), and would encounter potential obstacles from the resident state (Russia).

What do you see as the main benefits and challenges of this policy option (e. mandatory extension of scope, mandatory use of joint consular teams, creation of Common European Travel advice tool and crisis communication channel, direct activation of UCPM, EU consular protection fund and/or IT system to digitalise reimbursement)?

The great majority of EU delegations agreed that this policy option would bring greater clarity, better protection for citizens, greater efficacy, more visibility, and money savings.

However, they would not have sufficient resources to implement the measures in practice. Furthermore, the EU delegations mentioned that Member States are better qualified for this kind of responsibilities (Bangladesh). Also, this policy option would require overcoming cultural challenges (Cameroon), could create confusion as to the delineation of responsibilities between the Member States and delegations (Congo), would not be welcome by the Member States (e.g. Dominican Republic, Eswatini), and would create new responsibilities that would be very difficult to meet (e.g. Uzbekistan).

2. Interviews in 5 selected third countries

Table 7 below presents a detailed breakdown of the in-depth interviews carried out within the selected third countries. As no response was received from the relevant contact within the EU delegation in China, it was agreed with DG JUST and EEAS to replace this country with Russia.

Table 7: Progress interviews in selected third countries.

	Stakeholder contacted/interviewed		
Selected third country	EU delegation	MS representation (embassy/consulate)	Other (tourist or expat organisation)
Russia	Interview completed	2 interviews completed (DE and FI)	1 interview conducted with Association of European Business in Russia. Three additional organisations identified and contacted, but no response.
Ethiopia	Interview completed	2 interviews completed (FR and DE)	Two tour organisation identified and contacted (one interview conducted), one French expat organisation contacted (no response).
Costa Rica	Interview completed	1 interview completed (DE), 1 declined (ES)	No EU tourist identified. One expat organisations contacted (no response).
Montenegro	Interview completed	2 interviews completed (IT and SI)	One EU tourist organisations identified, but no response.
Fiji	Interview completed	1 interview completed (ES), 1 contacted but no response (FR)	No EU tourist or expat organisations identified.
TOTAL	**5**	**8 conducted**	**2 conducted**

Overall, 15 interviews were completed:

- **EU delegations:** All interviews with EU delegations were completed across the five selected countries.
- **Member State representations:** Member States were suggested by the EU delegations, in most cases due to their role as Lead State in the country.
- **Tourist and expat organisations**: Names of relevant organisations representing EU tourists and expats were requested from the EU delegations and Member States representations using the snowball technique, but this proved to be more challenging. In some countries the stakeholders confirmed no such organisations were present (e.g. in Costa Rica, expats rather organised themselves through a Facebook group, and tourist organisations were mainly from the US), while in other cases the organisations contacted did not reply. It was discussed with the EEAS to go back to the EU delegations once more to ask about any relevant expat organisations, even if those are

only for citizens of a specific Member State. Three further expat organisations were contacted in Russia, Ethiopia and Costa Rica in June, but no responses were received.

3. Interviews with industry stakeholders

The objective of the interviews with industry stakeholders was to gather their views and experiences in the types of challenges their passengers might have faced when seeking consular protection, and feedback on their awareness and provision of information to and communication with their passengers in the field of consular protection. During the data collection phase, the contact details in the selected organisations representing the EU private sector were identified by the contractor with the help of DG JUST, the EEAS and DG MOVE with the aim to carry out up to five interviews with these industry stakeholders.

A number of organisations were contacted, but the majority was unable to answer, due to the limited capacity they had over the period or the limited experience they had on the topic. Eight organisations did not respond to the request for an interview. It was subsequently decided to extend the scope of the exercise by contacting additional cruise line companies, and as a result a round table was organised with members of the Costa Cruises Group (AIDA cruises and Costa Cruises).

Table 8: Overview of industry stakeholders contacted and status

Type	Name	Date contacted	Number of reminders sent	Status
Tourism/Travel	The European Travel Agents' and Tour Operators' Association (ECTAA)	22/4/21		Declined
	European Tourism Association (ETOA)	27/4/21		Declined – forwarded the request to ECTAA
	European Travel Commission (ETC)	5/5/21	2	No answer
	World Travel and Tourism Council (WTTC)	5/5/21	2	No answer
Aviation	International Air Transport Association (IATA)	27/4/21		Declined
	Airlines for Europe (A4E)	22/4/21	2	No answer
	European Association of Regional Airlines (ERA)	27/4/21		Declined
	Airlines International Representation in Europe (AIR-E)	27/4/21	2	No answer
	Cruise Lines International Association Europe (CLIA)	27/4/21	2	No answer

Cruise Line industries	Carnival	20/5/21	1	No answer
	MSC	20/5/21	1	No answer
	Royal Caribbean	20/5/21	1	No answer
	Costa Cruise Line (AIDA cruises and Costa Cruises).	06/2021		Completed

4. Interviews with EU bodies with a supporting role in consular protection

Interviews were carried out with six EU officials to directly inform:

- the data collected through the document review on the EU network of consular correspondents and assets[103];
- the policy objectives and policy options.

The final list of interviewees is presented in the table 9 below. In addition, the contractor consulted extensively with DG JUST and the EEAS in relation to the feasibility of the proposed policy objectives and policy options.

Table 9: Interviews conducted with EU level stakeholders

EU	Proposed interviewee	Role/Unit	Status
EEAS	Victor Madeira dos Santos	Head of Division, Consular Affairs Division EEAS.SG.CRC.2	Completed (22/06/2021)
	Paulo Silva	Consular Affairs Division EEAS.SG.CRC.2	
Members of the Consular Task Force set up by the EEAS as part of the COVID pandemic	Soren Liborius	Information and Communication Officer, SG.AFFGEN.7; *formerly Deputy Head of the Consular Affairs Division,*	Completed (02/07/2021)
DG ECHO / European Commission's Emergency Response Coordination Centre (ERCC)	Dana Nicolau Esther El Haddad	Emergency Response Coordination Group, ECHO.A1	Completed (23/06/2021)
Council Working Party on Consular Affairs	Leni Rikkonen – Le Villain	General Secretariat of the Council, RELEX.2.C	Completed (23/06/2021)
Portuguese presidency	Ricardo Cortes Christopher Marques	Current chair of COCON	Completed (22/06/2021)

[103] See Annex III of the Study.

5. **Consultation with unrepresented EU citizens that were in need of consular protection, and with EU citizens in general**

The study originally did not foresee consultations with EU citizens directly, due to the data protection rules and other challenges foreseen in identifying and contacting such stakeholders. However, upon request of the Steering Group, the contractor agreed to replace some of the interviews foreseen with expat and tourist organisations to seek the opinions from EU citizens directly. The approach proposed as part of the revised inception report, was to organise an online focus group with up to 12 EU citizens who were stranded abroad during the COVID-19 pandemic in the five selected third countries, to discuss experiences of EU citizens related to consular protection in times of crisis, including the challenges they faced abroad, the support they received, the communication channels they identified and used, and any other additional aspects linked to their stories.

As the recruitment of participants through EU delegations and Member State representations proved to be challenging due to data protection restrictions, additional efforts to obtain this feedback were attempted:

- The contractor developed a **short survey on EU citizens' experiences on consular protection abroad**, aiming to generate real life stories which would enrich the reporting process, as well as help identify candidates for follow-up interviews if anything particularly relevant came up. It was live between 18 May and 18 June 2021 and was disseminated via **DG JUST's Twitter account**.
- The contractor reviewed **additional sources** with potential to provide feedback from the EU citizens' perspective, referenced in: the inception impact assessment document (feedback on the review of EU rules on consular protection)[104] (five responses), 2020 EU Citizenship report[105] and Flash Eurobarometer 485 on EU Citizenship and Democracy[106]). Considering the coverage that these large-scale surveys have provided in terms of consultation opportunities for the public, the impact assessment has a derogation for an Open Public Consultation ('OPC'), which is therefore not required.

The summary of these two points is presented below.

a) Complaints by EU citizens

EU citizens have the fundamental right to consular protection (as specified in Article 46 ECFR, among others) and are the ultimate beneficiaries of consular protection under the Directive. Therefore, it is important to understand how they have experienced the exercise of their right as unrepresented citizens abroad in need of assistance. The complaints revolved mostly around two main issues: lack of assistance in repatriation required in relation to the COVID-19 outbreak (4 complaints), and the impossibility to issue or renew a passport (3 complaints). The complaints involved a range of Member States and third countries, but none of them was involved more than once. The overview of the complaints is presented in the table 10 below.

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104 The OPC for the Inception Impact Assessment received feedback submissions from 5 stakeholders, which are summarised in Annex VII of the Study.

105 The public consultation for the 2020 EU Citizenship report, covering the period from 9 July to 1 October 2020 contained questions on consular protection and received 343 valid feedback instances.

106 This Flash Eurobarometer survey was carried out by the Kantar network in the 27 Member States between 27 February and 6 March 202. It was completed by 25,563 respondents in total.

Table 10: Overview of sample of EU citizen's complaints reviewed

MS in question	3rd Country	Representation in 3rd Country	Complainer's nationality	Matter of the complaint
SE	Malaysia	Present	**SE**	Impossibility to renew a passport of a Swedish national
ES	Mexico	Present	**ES**	"Ignorance" of Spanish nationals (exchange students) by the Embassy; presumably in relation to repatriation
RO	UK		**RO**	Impossibility to renew a passport and/or an ID card of a Romanian national*
FR	Tunisia	Present	**FR**	Lack of assistance in repatriation of a French national
HR	Egypt	Present	**HR**	Delayed passport issuance for a Croatian national's new-born child
ES, IT	Equatorial Guinea	a) ES: Present b) IT: No representation	**IT**	Lack of assistance in consular protection in relation to the violation of the Italian complainer's fundamental rights violation during an imprisonment – presumed non-application of the Directive 2011/95
DE	Cambodia	Present	**DE**	German embassy not willing to assist a German national "whose life was in danger"; presumed violation of Decision 1995/553 by staff
EL	Ecuador	Embassy in Peru accredited	**EL**	Lack of assistance in repatriation of a Greek national
BE, LU	Mauritius	c) BE: Embassy in Tanzania accredited; d) LU: Honorary Consulate	**BE, LU**	Lack of assistance in repatriation of a Belgian and Luxembourg national (the complaint does not address any of the respective embassies)

Source: Information provided by DG JUST

* This complaint seems to be obtained twice.

b) Inception Impact Assessment references

i. Feedback received during preparatory stages of the impact assessment

As part of the preparatory work to the impact assessment, the Commission sought feedback on the review of EU rules for consular protections as part of its consultation process. The feedback period was 13 January 2021 to 10 February 2021 and the responses were intended to feed into the preparation of the impact assessment analysis. This part of the consultation received five feedback submissions from the following stakeholders, summarised below:

- EU citizens (two);
- Non-governmental organisations (two);
- Business association (one).

Victim Support Europe (VSE) (Belgium) made the following recommendations for the review of Directive 2015/637 and provision of assistance to victims in consular services:

- Strengthening co-ordination by identifying specific co-ordination action to assist victims of crime;
- Equal access to basic standards of victim assistance irrespective of which consulate or embassy assists, by harmonisation of standards across all Member States;
- Specifically recognise planning to assist victims of terrorism, notably in contingency plans for crisis situations;
- Support exchange of best practices between Member States and with third countries and facilitate the review and development of policies and practical measures to support victims of terrorism.

At the Commission's request, the contractor contacted VSE for a follow up interview, which took place on 28 June 2021. Their additional feedback is summarised below.

Victims of crime are vulnerable by definition and the trauma experienced often warrants higher standards of care and specific steps to be taken when providing them with assistance. The Victims' Rights Directive[107] establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim to crime are recognised and treated with respect. They must also receive proper protection, support and access to justice.

VSE note that victims of crime abroad have highly variable experiences when seeking support from representations. It appears that their trauma can be compounded when facing the challenge to approach an Embassy or Consulate from a Member States which is not their own.

National representations abroad play an important role in the support that is provided to a victim of crime. The victim of a crime abroad would approach the embassy / consulate often in the immediate aftermath of the accident. It is very important that there is staff who knows how to handle people who have been the victims of crime. The embassy / consulate should know how:

- to help victim to liaise with police authorities of the third country to report the crime and start proceedings;
- to help victim find accommodation, food, flights;
- to connect the victim to services in their home country;
- (if an unrepresented citizen) to connect them with their national authorities as efficiently as possible given the situation.

[107] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

But how well do the staff in national representations of Member States across the world deal with supporting victims?

In this view, VSE consider that the Consular Protection Directive should at least make reference to the special standards of care (set in the Victims' Rights Directive) needed in the treatment of an unrepresented citizen who has been the victim of a crime, as this would be an opportunity to harmonise the legislations of Member States for the very specific cases of victims of crime abroad. VSE consider that enshrining the special standards of care for the treatment of victims of crime in legislation ensures that the regime is applied by all Member States and not only the high-performing ones. The more detailed provisions, the better as it would enable the enforcement of a general regime on victim protection (in the context of consular assistance to unrepresented citizens).

For instance, this could be done in a recital to the Consular Protection Directive, but better in the Article on the types of assistance offered (currently Article 9). It is arguable whether the Consular Protection Directive is an appropriate vehicle for such regime and whether it should include detailed provisions for such specific instances. However, the basic requirements of the Victims' Rights Directive for the safeguarding of victims of crime seeking consular assistance advocated by VSE would be helpful. These could include, but would not be limited to, these categories of the Victims' Rights Directive as can be adapted for the Consular Protection Directive context:

1) respectful treatment and recognition as victims;
2) protection from intimidation, retaliation and further harm by the accused or suspected;
3) support, including immediate assistance following a crime, physical and psychological assistance and practical assistance;
4) access to justice to ensure that victims are aware of their rights and understand them, and are able to participate in proceedings;
5) requirement for JFWs to include processes and procedures which are victim-centric.

The **German Federal Association ANUAS e.V**., also a victim support organisation, called for access to uncomplicated consular support for relatives of missing or dead persons, as well as advice and help in the respective country which should not be conditional to the involvement of lawyers and victim support organisations. Their contribution was developed in connection with a number of cases of missing or dead persons in Greece. The same issue is relayed in one of the EU citizens' contributions. The other EU citizen welcomes the initiative.

Finally, a business association from Mexico (**JFMO SERVICIOS EN INTERMEDIACIÓN PÚBLICA**) noted that guidance on consular protection should not be limited to legal guidance for criminal acts, but also cover commercial, educational, labour and social aspect, and reminded that few countries and consular services comply with legal guidance and assistance for their citizens abroad.

ii. 2020 EU Citizenship report

The public consultation for the 2020 EU Citizenship Report *Empowering citizens and protecting their rights* report took place between 9 July 2020 – 1 October 2020 and contained questions on consular protection. The 2020 EU Citizenship Report recalls that the right to equal access to consular protection is one of the specific rights that the Treaties grant to EU citizens and is a tangible example of European solidarity. The Report references the unprecedented repatriation effort, in which Member States, supported by the EC and the EEAS, managed,

between February and May 2020, to bring home over half a million European citizens affected by COVID-19 travel restrictions across the world. The report highlights that when organising the repatriation of EU citizens stranded abroad due to the COVID-19 outbreak, Member States rightly did not treat unrepresented and represented EU citizens differently. Where repatriation capacities were available, all European citizens were assisted. Finally, the Report notes that the COVID-19 crisis has demonstrated the need to further strengthen EU solidarity to better protect EU citizens abroad, in particular during crises.

The 2020 EU Citizenship Report estimated that, in 2020, 76% of EU citizens are aware of the right to seek assistance from other Member States, in case their own does not have an embassy or consulate in a third country.

iii. Flash Eurobarometer 485 on EU Citizenship and Democracy

The Commission published a survey on a range of issues associated with EU citizenship and democracy, for which fieldwork was done in 27 Member States in February/March 2020. The survey also explored Europeans' understanding of the rights conferred by EU citizenship, including to consular support while staying in a non-EU country.

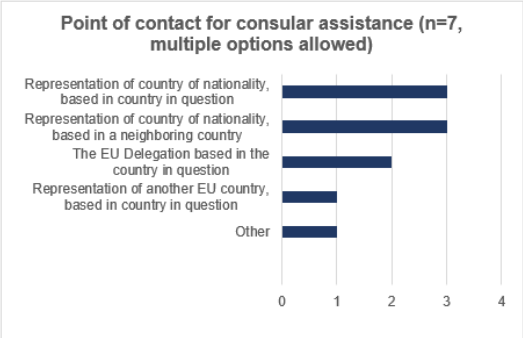
Overall, more than nine in 10 respondents agree that, if they were in a country outside the EU where their Member State of nationality was not represented, they would like to seek support from an EU delegation instead. On an individual country level, more than eight in 10 respondents in 25 Member States would seek such support if in need. Lower numbers (though still over three quarters of respondents in these countries) would be interested in doing so in Estonia (77%) and Hungary (78%). Most likely to seek such support were respondents from Portugal, Spain and Cyprus (over 96%).

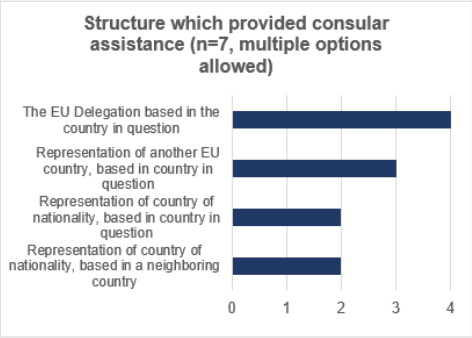
iv. Survey on EU citizens' experiences on consular protection

The contractor developed a **short survey on EU citizens' experiences on consular protection abroad**, aiming to generate real life stories which would enrich the reporting process, as well as help identify candidates for follow-up interviews if anything particularly relevant comes up. It was live from 18 May to 2 July 2021 and was disseminated via **DG JUST's Twitter account and a selection of EU delegations** (see further explained in section 1.1).

Seven EU citizens replied to the survey and were originating from five Member States (Czech Republic, Greece, Hungary and Italy) and one third country (Venezuela) (one participant did not provide their nationality). Five of the respondents sought assistance in Costa Rica and two – in Venezuela. All seven instances concerned assistance for repatriation during the COVID-19 crisis in 2020.

The main point of contact for respondents was the consulate or embassy of their Member State of nationality, located in the third country where consular assistance was sought (chosen by three survey participants each). The next popular choice was the EU delegation in the country in question. Only one respondent mentioned the representation of another Member State in the country in question. The respondent who selected "Other" initially contacted the government of their Member State of official residence, as they were a national of the third country they wanted to leave. In the end, four respondents stated that they received existence from the EU delegation in the third country, and three from the representation of another Member State in the country where they were.





Most of the respondents (four) received help in a matter of days, one in a few hours and one – a few weeks. The final respondent declined the repatriation flight as they were waiting for a direct flight to Europe which took 1.5 months. All but one respondent considered this delay as reasonable. This respondent was from Italy and reported a very negative experience with their consulate in Venezuela, tempered by the can-do attitude of the local EU delegation though the latter did not resolve their situation. Another respondent received a response on their request for consular assistance in a few days, but not solution and ended up waiting four months for a flight to Europe from Costa Rica (Hungarian national who contacted their national representation in a neighbouring country and the local EU delegation).

Two others responded noted very uplifting experiences with the representation of a Member State other than their own. For one, the contrast with the unhelpful attitude of their own representation in a neighbouring country was striking.

6. Consultation of Member States

Through the use of a comprehensive questionnaire complemented by interviews conducted by the contractor, quantitative data was collected on Member States' national legislation and procedures; on their consular networks and assets; on the consular protection they provided to (un)represented citizens; and on their travel and communication channels. Additionally, Member States were also asked to provide qualitative feedback, through follow-up interviews, on the application of the Directive and the problem definition; on the proposed policy options; and on the COVID-19 pandemic lessons learnt. The output is summarized in Annexes IV and VI of the study.

Annex 3: Who is affected and how?

Practical implications of the initiative

Non-crisis situations: First, a clearer definition of unrepresented EU citizens and the situation in which a Member State mission/consulate should not be considered effectively in a position to provide assistance **(Option 1b)** would better define the scope of the Directive and ensure that **EU citizens** in need are correctly assisted. This would be strengthened by the fact that **unrepresented EU citizens** would be better informed from the beginning, thanks to the improved quality of the information and communication channels, about the fact of being unrepresented when travelling to a third country **(Option 3a).** They could also count on clearer information on practical and bilateral arrangements between Member States and the function of honorary consuls, which would prevent them to lose time in searching for the correct authority that could help them and, at worst, avoid being redirected by different authorities (even in justified cases) **(Option 3a). Member States**, on the other hand, would have to deal with fewer out-of-scope requests for assistance and they would have the necessary legal certainty to ask support from **EU delegations (Option 2d**) in case of need. **Industrial sectors** of tourism and transport would benefit from better quality of the information as well. The clarifications on personal data protection rules would ensure smooth communication among Member States, EU delegations and other actors. All this would improve the means and quality of assistance to **unrepresented EU citizens**. EU citizens would have the option to pay immediately the assistance received (to Member States or to the EU delegation in case the support was requested by a Member State) or to pay it, in a timely manner, upon a reimbursement request from their national authorities (**Option 4b**). Should a EU citizen consider that he or she was wrongly denied the assistance requested, he/she would have the means to complain to the competent authorities and seek **legal redress** where necessary.

Crisis preparedness phase: Thanks to their leading role in local cooperation meetings, **EU delegations** would be able to foster cooperation and coordination actions and improve crisis preparedness among **Member States (Option 2b)**. In the long term, this would result in better planning and best practices shared across the world under coordination of **EEAS**. The integration of Member States duties and tasks into the JFW would be effective in providing increased coherence across the world and would allocate the different tasks according to capacity of Member States **(Option 2c).** As JFWs would be updated at least annually, they would maintain their relevance. **Member States**, included unrepresented Member States, would be assigned tasks corresponding better to their actual capacity on the ground and possible over-reliance on a lead state would cease. In the meantime, a larger number of **citizens** would be aware of the risks incurred by travelling to a zone potentially at risk of a crisis of any nature (natural disasters or political unrest for instance). **EU citizens** would also gain increased awareness of the possibility to register to be contacted by their Member State in case of a crisis (**Option 3d)**.

Crisis situations: Building on the preparation explained above, local cooperation meetings would be more effective through up-to-date procedures and sharing of information between **Member States** and unrepresented Member States and **EU delegations** would be smoother (**Option 2b and 2d).** Therefore, more coherent travel advice would be shared and updated frequently, also impacting positively the **industrial sectors** of tourism and transport linked to the provision of information **(Option 3a)**. As the JFW would be up-to-date and tasks among Member States would be distributed efficiently, no **Member State** would be overburdened with requests for assistance, making crisis response more effective (**Option 2c**). A clearer

definition of "being unrepresented" would also contribute to this increased efficiency in crisis situations **(Option 1b).** As more citizens would be informed about the importance of registering **(Option 3d)**, it would be easier to reach out to them and organise consular assistance, also thanks to the reinforced legal basis for the exchange of their personal data among all actors involved. **EU delegations** would see their coordinated role reinforced and have a solid legal basis to support Member States in providing consular assistance to **EU citizens** (**Option 2d**). **EU citizens** would receive better consular assistance in crisis situations.

Table 11 below summarize the types of stakeholders identified above as being affected by the preferred combination of options.

Table 11: Assessment of the stakeholders affected by the preferred combination of options identified

	EU delegations	Other EU stakeholders (DG JUST, EEAS, DG ECHO)	EU27 National Authorities (MFA and diplomatic representations)	Unrepresented EU citizens & their non-EU family members	Industry (tourist, travel and transport organisations)
Option 1b) Legal amendments to clarify the definition of what it means for an EU citizen to be unrepresented and in particular the types of situations in which a Member State representation should not be considered "*effectively in a position to provide consular protection*".	X		X	X	
Option 2b) Local coordination meetings are chaired by the EU delegations **Option 2c) Review of the concept of Lead State and definition of division of tasks under JFW, formalization of JFWs and JCTs**	XX	X	XX	XX	

Option 2d) Strengthen the supporting role of EU delegations and align it with the EEAS Decision					
Option 3a) a requirement for Member States to provide the Commission and the EEAS with information in a certain timeframe and in machine readable format on honorary consuls functions and on bilateral and practical arrangements in place **Option 3d) Member States required to promote measures to inform consular authorities and/or record citizens' presence abroad**	X[108]	X[109]	XX	XXX	X
Option 4b) legal amendments adding the option for unrepresented citizens to pay the assisting Member State or the EU delegation. Establish a timeframe for reimbursement procedures and clarify application to represented citizens	X		XX	X	
Updated of the rules on personal data protection	XX		XX	XX	
Measures on legal redress			XX	XX	

[108] Article 11 of the Directive specifies that Union Delegations shall also make general information available about the assistance that unrepresented citizens could be entitled to, particularly about agreed practical arrangements if applicable.

[109] Article 7(2) states that Member States shall notify the Commission and the EEAS of practical arrangements, which shall be publicised by the Union and Member States to ensure transparency for unrepresented citizens.

Given that the Directive does not directly cover commercial undertakings, there is no impact in relation to competitiveness. The impacts on such entities, mentioned in the table above, is limited to efforts of Member States to increase the awareness of the right to consular protection by cooperating with airlines, tourist, travel and transport organisations.

Summary of benefits and costs

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
	Direct benefits	
Increased legal certainty	- Legal certainty for actions of Member States and EU delegations and improves overall effectiveness on the provision of consular assistance to unrepresented EU citizens - Better protection arising from more frequent and systematic EU delegations' support to Member States both in crisis and non-crisis situations - Better protection from further development, effectiveness and innovation in local coordination in particular in crisis situations - More effective, consistent and streamlined communication with EU citizens - Reduced scope for litigation due to clearer and more adequate rules	Applies to unrepresented EU citizens in third countries, Member States and EU delegations The current legal uncertainty and administrative burden may cause emotional distress and does hinder the provision of consular assistance to EU citizens when travelling to or residing in a third country, and especially in a crisis situation. The amendments stand to tackle the existing problems by providing a more complete, clearer and sounder legal framework, thereby improving the exercise by EU citizens of their right to consular protection
Increased protection of the fundamental rights	- Strengthened and more effective right to consular protection - Higher level of compliance with the right to personal data protection - Effective access to the right to an effective remedy and to a fair trial	Applies to unrepresented EU citizens in third countries
Time and burden savings	- Less time and effort needed to be recognised as unrepresented. - Improved EU citizens' access to information on who can be assisted - Smoother and quicker financial payments - Easier registrations before travelling or when residing abroad - Better and more efficient provision of EU citizens location information during crisis situations	Applies to unrepresented EU citizens in third countries
Efficiencies for administrations	- Better service provided to unrepresented EU citizens in assessing their situation and in deciding if the person should be assisted or not. - Better distribution of the burden of assistance among Member States and between Member States and EU delegations - Smoother and more effective coordination and cooperation procedures - Improved registration procedures will result in efficiencies for administrations when contacting citizens in case of crisis situations	Member States' administrations and EU delegations

	- Easier recovery of costs incurred for assisting Member States - More coordinated and consistent travel advice	

II. Overview of costs – Preferred option							
		Citizens		**EU institutions/EU delegations**		**National Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Option 1b) Legal amendments to clarify the definition of what it means for an EU citizen to be unrepresented and in particular the types of situations in which a Member State representation should not be considered "effectively in a position to provide consular protection".	Direct adjustment costs					For Member States administration to learn and apply the new definition.	Some costs related to regular training of consular staff.
	Direct administrative costs				Time dedicated to the additional requests for support by Member States for the assistance of a potential increase of unrepresented EU citizens.		Some costs for the increased requests by unrepresented EU citizens. It is assumed that Member States with larger consular networks will be impacted more by these requests.
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Local coordination meetings are chaired by the EU delegations	Direct adjustment costs			Some additional costs for EU delegations to organise coordination of LCCs and their standardisation.			
	Direct administrative costs				Very limited costs for EU delegations linked to chairing those meetings and coordinate. As they already participate to those meeting on a regular basis,		

					the additional costs should be limited.		
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Review of the concept of Lead State and definition of division of tasks under JFW, formalization of JFWs and JCTs	Direct adjustment costs			Some costs for EU delegations for the reorganisation of tasks in relation to preparation and update of JFWs, involvement of unrepresented Member States, circulation of agendas and minutes.		Some costs related to the application of these revised concepts and procedures.	
	Direct administrative costs				Some additional costs for the EEAS Consular Affairs Division from the mandatory annual update of all JFWs.		Limited costs for some Member States due to the assignment of new tasks under JFWs.
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						

Strengthen the supporting role of EU delegations and align it with the EEAS Decision	Direct adjustment costs						
	Direct administrative costs				5 cost-free Seconded National Experts for an average estimation of costs of 145 000 euros for all 5 SNEs per year for operating expenditure and 80 000 for mission and security.		For some Member States salary costs of a Seconded National Expert (SNE) to work in EU delegations (5 in total) 1 cost-free SNE salary could range from 980 EUR net per month, for a civil servant in the first grade in Bulgaria to 8 177.83 EUR gross monthly salary for a high-raking diplomat in Finland.
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
A requirement for Member States to provide the Commission and the EEAS with information in a certain timeframe and in machine readable format on honorary consuls functions and on bilateral and	Direct adjustment costs					Marginal costs for adjusting the information into the machine-readable format.	
	Direct administrative costs			We estimate that updating the Europa website would require one FTE person for three months at the beginning. Assuming a grade AD7 Commission	One month per year following the first year for updating the Europa website. Assuming a grade AD7 Commission official would carry out the updates (average cost of		

practical arrangements in place				official would carry out the updates (average cost of the EU official, 171 000 EUR per year), the cost for the first year would be EUR 42 750. Due to the stable staffing principle, this post will be found through internal redeployment.	the EU official, which is 171.000 EUR per year), it would cost EUR 14 250 per year thereafter.		
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Member States required to promote measures to inform consular authorities and/or record citizens' presence abroad	Direct adjustment costs						
	Direct administrative costs						Additional costs to improve the effectiveness of their registration systems by rising their citizens' awareness of the importance to register their travels/residence abroad by means of information campaigns at airports or by cooperating with insurance/travel/telecom companies.
	Direct regulatory fees and charges						

	Direct enforcement costs						
	Indirect costs						
Legal amendments adding the option for unrepresented citizens to pay the assisting Member State or the EU delegation. Establish a timeframe for reimbursement procedures and clarify application to represented citizens	Direct adjustment costs					Some initial costs for Member States to adjust their procedures. 2 Member States indicated that they have to change their legislation in order to allow request of reimbursement from citizens directly and might therefore incur in more adjustment costs.	
	Direct administrative costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Updated personal data protection rules	Direct adjustment costs			Some initial costs for EU delegations to adjust their procedures.		Some initial costs for Member States to adjust their procedures. Some Member States	

						might have to adjust their legislation	
	Direct administrative costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Legal redress	Direct adjustment costs					Some initial costs for Member States to adjust their procedures. Some Member States might have to adjust their legislation	
	Direct administrative costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						

III. Application of the 'one in, one out' approach – Preferred option(s)			
[M€]	**One-off** (annualised total net present value over the relevant period)	**Recurrent** (nominal values per year)	**Total**
Businesses			
New administrative burdens (INs)	None	None	None
Removed administrative burdens (OUTs)	None	None	None
Net administrative burdens*	None	None	None
Adjustment costs**	None	None	
Citizens			
New administrative burdens (INs)	None	None	None
Removed administrative burdens (OUTs)	None	None	None
Net administrative burdens*	None	None	None
Adjustment costs**	None	None	
Total administrative burdens***	None	None	None

(*) Net administrative burdens = INs – OUTs;
(**) Adjustment costs falling under the scope of the OIOO approach are the same as reported in Table 2 above. Non-annualised values;
(***) Total administrative burdens = Net administrative burdens for businesses + net administrative burdens for citizens.

Sustainable Development Goals – Preferred combination of options

Table 12: Overview of relevant Sustainable Development Goals – Preferred combination of Options

Relevant SDG	Expected progress towards the Goal
SDG no – 5 Achieve gender equality and empower all women and girls	Equal consular protection for unrepresented EU citizens who are women and better consular protection in case of unrepresented EU citizens who are part of vulnerable groups.
SDG no. 10 – Reduce inequality between and within countries In particular target 3: Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.	Enhance the EU fundamental right to 'diplomatic and consular protection' under Article 46 of the Charter, by clarifying the content of this right and by facilitating the cooperation and coordination procedures necessary for its application. Ensure application of the right of non-discrimination on the basis of nationality under Article 21 of the Charter

Impact on fundamental rights – Preferred combinations of options

EU citizens' rights confer a clear individual entitlement for unrepresented citizens to be treated by the consular and diplomatic authorities of another Member State as if they were their own nationals, when in the territory of a third country.

One of the main objectives of the revision is to ensure a higher level of protection of citizens' fundamental right to consular protection and promote EU values such as non-discrimination and mutual solidarity by fostering the implementation of EU citizenship as a concrete reality for unrepresented EU citizens.

The preferred combination of option enhances the EU fundamental right to 'diplomatic and consular protection' under Article 46 of the Charter, by clarifying the content of this right and by facilitating the cooperation and coordination procedures necessary for its application.

The measures of cooperation and coordination protects the EU citizens' right to good administration by the institutions and bodies of the EU (Article 41 of the Charter). Clearer responsibilities and improved burden-sharing in crisis situations ensure non-discrimination also in times of crisis when fundamental rights are a sensitive issue.

Measures aimed to facilitate the exchange of personal data of unrepresented EU citizens between Member States, EU delegations, third countries and international organisations, contribute to implement Article 8 of the EU Charter of Fundamental Rights on the right to protection of personal data.

The measures also reinforce the right to an effective remedy and to a fair trial (Article 47 of the Charter) and contribute to the implementation of the principles of non-discrimination, life,

integrity of the person and presumption of innocence and right of defence (Articles 2, 3, 21 and 48 of the Charter).

Preferred options	Impact on Fundamental rights
Option 1b) Legal amendments to clarify the definition of what it means for an EU citizen to be unrepresented and in particular the types of situations in which a representation should not be considered *"effectively in a position to provide consular protection"*.	Direct positive impact on the effective application of Article 46 of the Charter and on the right of non-discrimination on the basis of nationality under Article 21 of the Charter. By providing better service to unrepresented EU citizens, this measure has also a positive impact on application of Article 41 of the Charter EU citizens' right to good administration.
Option 2b) Local coordination meetings are chaired by the EU delegations **Option 2c) Review of the concept of Lead State and definition of division of tasks under JFW, formalization of JFWs and JCTs** **Option 2d) Strengthen the supporting role of EU delegations and align it with the EEAS Decision**	Smoother cooperation among actors involved in the provision of consular assistance for unrepresented EU citizens will facilitate procedures necessary for its effective application and therefore contributing to enhance the right to consular protection under Article 46 of the Charter. As the measures concern better procedures among Member States and the EU delegations, they contribute directly to a positive impact on EU citizens' right to good administration (Article 41).
Option 3a) a requirement for Member States to provide the Commission and the EEAS with information in a certain timeframe and in machine readable format **Option 3d) Member States are required to promote measures to inform on/record citizens**	By providing better service with regard to information provision to unrepresented EU citizens, this measure has a positive impact on EU citizens' right to good administration (Article 41). A better sharing of information among Member States and EU delegations of the personal data of unrepresented EU citizens, ensure their protection in line with applicable rules (Article 8 of the Charter).
Option 4b) legal amendments unrepresented citizens to pay the assisting Member State. Establish a timeframe for reimbursement procedures and clarify application to represented citizens	Although the measure does not have a major impact on fundamental rights, it could contribute to EU citizens' right to good administration by improving the financial reimbursements.

Updated personal data protection rules	This measure facilitates the exchange of personal data of unrepresented EU citizens between Member States, EU delegations, third countries and international organisations, thereby contributing to applying Article 8 of the Charter on the right to protection of personal data.
Measures on legal redress	The measure reinforces the right to an effective remedy and to a fair trial (Article 47 of the Charter) and contributes to the implementation of the principles of non-discrimination, life, integrity of the person and presumption of innocence and right of defence (Articles 2, 3, 21 and 48 of the Charter).

Annex 4: Analytical methods

1. Analytical framework

The impact assessment is prepared on the basis of a supporting study, intensive direct stakeholder consultation, and the relevant literature and EU publications (reports, Eurobarometers, studies and policy documents).

2. Methodology used to collect data

Data collection at Member State level	Mapping of Member States' national legislation and procedures implementing the Directive
	Mapping of Member States' consular networks and consular assets
	Collection of quantitative data on the number of unrepresented citizens and the number and type of consular protection provided to EU citizens abroad
	Mapping of Member States' travel and communication channels
	Validation with national authorities: prefilled questionnaire and interviews

Data collection at Member State level was carried out by a team of national researchers between March and May 2021. Through the use of a comprehensive questionnaire, quantitative data was collected on Member States' national legislation and procedures; on their consular networks and assets; on the consular protection they provided to (un)represented citizens; and on their travel and communication channels. Additionally, Member States were also asked to provide qualitative feedback on the application of the Directive and the problem definition; on the proposed policy options; and on the COVID-19 pandemic lessons learnt.

To collect this information, a questionnaire was developed and prefilled by the national researchers on the basis of desk research and existing information shared by DG JUST and the EEAS. Namely:

- Member States' replies to the questionnaire developed by the Expert Group Meeting on Consular Protection of 8 December 2020/ Discussion Note on the implementation of Council Directive (EU) 2015/637, Chapter 1: General Provisions and Scope and Chapter 2: Coordination and cooperation measures;
- 2021 CoOL data on "Member States' presence in third countries" collected and provided by EEAS based on information received from EU delegations and Member States;
- Member States' replies to DG JUST's questionnaires reporting on the implementation of Directive 2015/637;
- Member States' replies to the questionnaire included in the EU Consular work during COVID-19 crisis – Discussion Paper, Consular Affairs Working Party (COCON), 23 June 2020.

On 30 March 2021, the national researchers sent the pre-filled questionnaire to the national authorities and a Q&A session was held to address any questions they might have. Once completed and returned by the national authorities, the national researchers reviewed the questionnaires and scheduled interviews with the national authorities to discuss any missing information and to elaborate on the answers provided by the national authorities. These interviews were conducted between 23 April and 7 May 2021.

Between 7 May and 21 May 2021, the completed questionnaires were reviewed by the study team. Errors, missing data, and inconsistencies were flagged and followed up with the national researchers and when relevant, with the national authorities. The data was then extracted from the questionnaires and compiled into one Excel sheet, to allow for the analysis by the study team to inform the second interim report.

Response rate and data availability / limitations

In total, twenty-six Member States completed the questionnaire[110], with only Greece declining to participate. As Greece did not provide input to the survey launched by DG JUST nor on the questions concerning the implementation of the Detective (with the exception of data for 2020), the information on Greece is limited as reflected in this report.

The following section highlights the general limitation of the quantitative and qualitative data collected:

Quantitative data

Overall, the quantitative data provided by the 26 Member States was very limited, as this information was not collected in a systematic manner by most Member States and had to be compiled specifically for the purpose of the study by contacting the Member States' individual representations in the third countries (which was challenging for Member States given the time constraints). For instance, only thirteen Member States provided data on their consular budget in 2018, 2019 and 2020, seven Member States on their number of consular staff in 2018, 2019 and 2020, and eight Member States on their number of diplomatic staff in 2018, 2019 and 2020. Additionally, the information provided by the Member States was in most cases not comparable. For instance, among the 13 Member States that provided data on their consular budget, the amount varied from EUR 3 000 to EUR 170 million as the types of expenses included when calculating the budget (i.e. staff cost, facilities cost, etc.) varied between Member States. Similarly, the type of staff that fell under the categories "diplomatic staff" and "consular staff" varied from one Member State to the next due to overlaps between both categories and diverging Member States' interpretations. Lastly, only ten Member States provided data on the total number of cases of assistance provided by Member States in third countries and only 16 provided data on the number of cases of assistance provided to unrepresented EU citizens in third countries.

Interviews conducted with the national authorities revealed that most Member States could not provide the data requested as they did not collect these statistics. The reliability of this data is further brought into question due to cases of double reporting (i.e. Member States providing the same data for the total number of cases and the total number of unrepresented cases) and instances whereby Member States reported a higher number of unrepresented citizens assisted than the total number of citizens assisted (i.e. a mathematical impossibility). However, mitigating actions were taken to caveat and address these limitations. For instance, all

[110] BE provided their input to the open questions through the interview, rather than through completing the questionnaire.

inconsistent or unexpected data was checked with the national authorities and mistakes and outliers were disregarded. Additionally, estimations such as on the number of unrepresented citizens, were calculated through a process of triangulation of data from both internal and external sources, and ranges between conservative estimate and worse-case scenario were calculated to allow for a margin of error.

Qualitative data

Regarding the mapping of Member States' national legislation and procedures implementing the Directive, all Member States provided their transposition measures in the national language. However, seven Member states (BE, CY, DE, FR, IT, LU and RO) did not provide the English translation of these transposition measures and 13 Member States did not provide the explanatory documents (AT, BE, CY, DE, DK, FR, IT, LT, LU, MT, RO, SE, and SL). Nonetheless, the validation and filling of the questionnaire by the national authorities together with the interviews conducted with them were sufficient to address these limitations and to conduct the legal mapping. The documents provided by DG JUST and EEAS were sufficient to map Member States' existing bilateral agreements on consular protection (permanent and practical arrangements). Similarly, Member States' replies to the questionnaire developed by the Expert Group Meeting on Consular Protection of 8 December 2020 and the Discussion Note on the implementation of Council Directive (EU) 2015/637 were sufficient to collect Member States feedback on the COVID-19 lessons learnt. Similar to the legal mapping, instances of missing data were addressed to a satisfactory extent during the validation of the questionnaires and the interviews conducted with the national authorities.

Overall, while all 26 Member States provided answers to the questions on the application of the Directive, the problem definition and on the proposed policy options, the feedback received to the open questions was in most cases limited to short answers and in a large number of cases left blank or answered by yes/no. Answers to the policy options were particularly limited with several Member States highlighting their reluctance to provide feedback on what they considered to be a political topic. However, during the interviews the national authorities were more open to providing feedback as interviews provided the opportunity to provide further context and nuance to their replies and the oral format of the interview was perceived as less formal and committing than written responses. The study team was thus able to caveat the limitation of the written responses.

Desk research	EU level desk research (EU legislation, EU citizens' complaints, mapping of EU consular network and assets)
	Desk research for a selection of third countries

The desk research involved a review of:

- EU-level legal and policy documents to inform the political and legal context, the intervention logic of the current Directive, the analysis on the EU legal basis for the new initiative, as well as the mapping of the EU consular network and assets;
- Data on the countries covered by the EU delegations, as well as the financial and human resources of the selected EU bodies to inform the mapping of the EU consular network and assets;
- Joint Frameworks in the four out of the five selected third countries (Fiji confirmed no such JFW is in place);

- Available documentation which reports feedback collected from EU citizens directly on their right to consular protection, including a sample of citizen's complaints received by DG JUST, the responses provided by organisations in response to the Inception Impact Assessment, the EU citizenship report and the Flash Eurobarometer 485 on EU Citizenship and Democracy.

Stakeholder consultation	Survey with EU delegations
	Interview Programme

The study included the following stakeholder consultations:

- Online survey with EU delegations;
- Interviews in selected 5 countries;
- Interviews with industry stakeholders;
- Interviews with EU bodies with a supporting role in consular protection;
- Consultation with unrepresented EU citizens that were in need of consular protection.

The stakeholder consultations are outlined in Annex 2.

3. Methodology for the calculation of costs

A detailed assessment of the costs involved – in terms of monetary cost, human resources, and organisational effort – requires a level of data that is not currently available to this impact assessment.

The below cost assessments therefore rely on a number of assumptions to provide a first indication of the range of costs that may be required. As the exact design and implementation of the measures will vary, the assessment seeks to present a range of costs, depending on how extensive the ultimate formulation of a measure is. All costs are presented as possible excess cost to the current expenditure – e.g. if a measure envisions four additional meetings, this is to be understood as four meetings in additions to those already occurring currently.

Many of the implementation costs either entail human resource costs at the EU level (Commission, EEAS) and the Member State level (competent authorities, practitioners). Costs associated with administrative burden have been estimated using the Commission's Standard Cost Model (SCM), outlined in the EU Better Regulation Guidelines.

Costs are estimated based on the amount of work required for each specific objective under each option, in light for instance of the cost of existing comparable work. Due consideration is taken regarding costs that would be one-off, recurring or absorbed in the existing work. The below table shows the costs reported by the EU and its network of delegations, on the financial and human resources dedicated to consular protection.

Table 13: Cost of consular protection incurred by key EU institutional actors

Institutional actor in consular protection	Annual budgets dedicated to consular protection (2020)	Staff involved in consular affairs (2020)
DG JUST Democracy, Union Citizenship and Free Movement unit (JUST.C.4)	Consular protection website - yearly budget around EUR 78-79 000 (operation, maintenance and development). Ad-hoc costs such as in for 2022 – Support the development of the EU Emergency Travel Document technical specifications – EUR 200 000 Resources for actions in the area of consular protection (conferences/workshops, studies and communication campaigns) – ranging from EUR 50-100 000.	1 FTE
EEAS Consular Affairs Division – EEAS CRC.2	No data available	11 positions including 2 Seconded National Experts from 1 August 2021
EU delegations	No data available. EU delegations confirmed in the survey that no specific budgets exist to support the coordination of consular protection in crisis situations. Only very few EU delegations dedicated specific parts of their budget to consular protection during the COVID-19 pandemic.	135 Consular Correspondents, which are also DG ECHO-ERCC EUCPM Focal points, and 133 Backup Consular Correspondents. This varies per EU delegation. Most consular correspondents would spend c. 20% of their time on consular matters (except in times of crisis. At the peak of the COVID-19 crisis, some EU delegations reported 3-5, or even more than 5 FTEs, spent exclusively on the provision of consular assistance).

The first assumption when evaluating costs based on additional work for EU officials (e.g. Commission official updating Europa website, etc.) is that they would be of grade AD7. In line with relevant rules and internal guidance, the average annual cost of the EU official equals EUR 171 000. The amount of work is calculated in FTE. As the principle of stable staffing continues to apply in the 2021-2027 Multiannual Financial Framework, such a post would have to be found through internal redeployment.

The second assumption when evaluating costs based on additional work for EU delegations is that the additional staff are composed by cost-free SNEs, as they would bring the necessary

consular expertise to EU delegations and expenses have only marginal impact on Heading 7 of 2021-2027 Multiannual Financial Framework. This is in line thus with the requirements of the 2021-2027 Multiannual Financial Framework.

The costs for cost-free SNEs within the EEAS budget cover operating expenditure, such as building and IT related costs, missions (EUR 5 000 per SNE) and security-related expenditure (EUR 2 500 per SNE). Applying EEAS standard budget methodology, this thus amounts to EUR 7 500 annually per cost-free SNE.

Calculation of costs of national salaries of SNEs in EU delegations.

The first factor to take into account for the calculations of the national salaries of SNEs who could be deployed in EU delegations is the **profile of the candidates**.

In this regard, SNEs usually belong to foreign services and diplomatic corps, but they can also be civil servants in other departments of national administrations.

In terms of calculation of costs, this already makes a significant difference as foreign services and diplomatic corps, depending on the Member State, can have a different salary scale to those belonging to civil servants in national administration.

Data on the average remuneration of national civil servants in central public is available in Eurostat[111]: average net remuneration per month in 2022 range from EUR 980 in Bulgaria to EUR 6 057 in Luxembourg.

Data on the remuneration of civil servant belonging to foreign services and diplomatic corps are not publicly available for many Member States. However, for illustrative purposes, some information could be gathered for:

Italy: Salaries of Italian diplomatic service and civil servants of the Foreign Ministry are publicly available[112]. The estimated gross salaries range per month from EUR 2 940.81 to EUR 7 996.70.

Finland: Salaries of Finnish diplomatic service and civil servants of the Foreign Ministry are based on the collective agreement for 2023-2025[113]. The salary is based on two factors: nature of the position (required skills, importance of the position, how demanding etc.), defined as level between 4 and 13 and personal performance, levels 1-13. Based on the combination of these two factors, the estimated gross salaries per month range from EUR 1 906.46 to EUR 8 177.83.

Austria: According to the relevant Austrian Law[114] and the information on the Ministry of Foreign Affairs, gross salary per month starts at EUR 3 289.40.

The second important factor to take into account for the calculations of the national salaries of SNEs is the **amount of benefits** that are given when the person is deployed in another country.

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111 https://ec.europa.eu/eurostat/databrowser/view/PRC_REM_AVG/default/table?lang=en

112 https://www.esteri.it/it/trasparenza_comunicazioni_legali/personale/informazioni_dirigenti/retribuzioni_dirigenziali_mae/

113 https://um.fi/documents/35732/0/Hallinnonalakohtainen+tarkentava+virkaehtosopimus+ulkoasiainhallinnon+virkamiesten+uudesta+palkkaus-j%C3%A4rjestelm%C3%A4st%C3%A4.pdf and https://um.fi/documents/35732/0/P%C3%B6yt%C3%A4kirja+ulkoasiainhallinnon+virkamiesten+palkkausj%C3%A4rjestelm%C3%A4n+uudistamisesta.pdf

114 https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008115

These amounts are extremely variable and depend notably, on the Member State of origin, the place of posting, the family situation of the individual.

Another option to estimate the SNEs' national salaries costs for the Member States is to use the **Eurostat salary calculator**[115], which provides an average gross wage according to the variables entered by the user: gender, age, education, profession, job experience, type of contract, NUTS region, NACE economic activity and enterprise size, for each Member State of the European Union (EU). The official earning statistics based on occupation come from the structure of earnings survey (SES)[116]. SES data on the economic activity sector (NACE rev.2) for Public Administration is only collected on a voluntary basis at this stage.

As all the variables of the salary calculator are mandatory, data inserted are: male, 40 years old, with Upper Tertiary Education, Senior government official, Public Administration & Defence, 10 years of experience, with indefinite contract working full time. Assuming that Member States that have high remuneration of civil servants according to Eurostat data mentioned above, also have highest remuneration for diplomats/employees of the Ministry of Foreign Affairs, calculation is made for: Germany (as Luxembourg is not available) and Bulgaria.

For Germany, the estimation of the average monthly gross salary is: EUR 7 016.

For Bulgaria, the estimation of the average monthly gross salary is EUR 3 017.

Finally, for completeness sake, we could also take as a proxy the costs of cost-shared SNEs.

According to the relevant rules and applicable guidance, average cost for 1 cost-shared SNE deployed in an EU delegation is EUR 93 000 a year, of which the salary is EUR 64 400 a year.

On the compatibility of the additional costs for EU delegations with EEAS Council Decision on cost neutrality:

Costs to support Member States under the meaning of Article 5(10) of the EEAS Decision qualify as operational costs (which involve expenses to improve the outside world for its direct benefit such as repatriating EU citizens) and are part of the operational budget. EU delegations should ask reimbursement of costs from the Member State of nationality of the unrepresented citizens when they spend parts of their operational budget for such support activities. This could be done (as proposed in option 4d) by extending the reimbursement mechanism of Articles 14 and 15 of the Directive to EU delegations. It should be noted that the costs of SNEs mentioned above are not part of the operational budget but of the administrative budget and therefore are not covered by the cost-neutrality clause. Human resources costs are part of the administrative budget as they are linked to the institution's staff (in a wide sense) working to realise its objectives and for its direct benefit (e.g. salaries, offices, missions, and IT equipment/systems).

Estimation of costs for option 2d) related to the role of EU delegations: The increase in resources is projected to be gradual and would not concern immediately the full range of identified Delegations, but rather create 5 regional pools and focus only on those locations where support is needed in practice taking into account, amongst other aspects, the represented Member States human resources. In crisis situations, the costs for the measures could be also

[115] A simple tool providing estimates of the average gross wages according to the variables entered by the user: gender, age, education, profession, job experience, type of contract, NUTS region, NACE economic activity and enterprise size, for each Member State of the European Union (EU). These estimates are based on microdata collected through the EU Structure of earnings survey (SES) 2018 and extrapolated with the Labour Cost Index (LCI) up to reference year 2022.

[116] https://ec.europa.eu/eurostat/cache/metadata/en/earn_ses_main_esms.htm#quality_mgmnt

be met through deployment of existing resources within EEAS/EU delegations. A longer-term assessment of yearly needs beyond the initial period of implementation would have to be done in light of the observed increase in the workload.

Estimation of costs for option 2e) related to the role of EU delegations: For this option the estimation costs is based on similar parameters as option 2d). However, in order to enable EU delegations in uncovered third countries to assist EU citizens, the necessary expertise on consular matters in terms of quality and quantity would need to be ensured. For instance, in a country like Barbados, a popular touristic destination among EU citizens, the EU delegation would need to be reinforced from the outset to provide assistance to EU citizens.

Estimation of costs for option 3a) related to new requirements for provision of information: As showed in the table above, past communication campaigns carried out by the EU have costed between EUR 50 000 and 100 000, therefore a similar budget is estimated for the additional campaign.

Estimation of costs for option 3b) EU travel advice portal: As showed in the table above, costs for the consular website is around EUR 80 000 therefore a similar budget is estimated for the additional campaign.

4. Methodology for comparison of options

Effectiveness: Under this section, options are evaluated for their effectiveness to achieve their specific objectives. In addition, as the main objective of the revision is to ensure a higher level of protection of citizens' fundamental rights and promote EU values such as non-discrimination by clarifying the content of the right to consular protection and by facilitating the cooperation and coordination procedures necessary for its application, impact on fundamental rights is also assessed in this section. There is a direct correlation between effectiveness of the measures and impact on fundamental rights, as the EU intervention is expected to enhance the EU fundamental right to 'diplomatic and consular protection' under Article 46 of the Charter. *Proposed scoring: ● Minor contribution towards objectives; ●● Major contribution, but without fully achieving objectives; ●●● Achieving objectives*

Efficiency: An analysis of the costs of each option and its benefits is performed under this section. This criterion also assesses positively in case an option brings a simplification to the EU legislation/removes red tape without at the same time reducing its benefits (or negatively in case it complexifies it/adds red tape). It should be noted that main costs are on the Member States and the EU/EU delegations. No costs were found for EU citizens who should, on the contrary, benefit from the measures proposed. No indirect costs were detected. *Proposed scoring: ● Considerable additional costs or effort, non-proportionate to the benefits and with difficult implementation; no simplification ●● Neutral or small increase in costs, proportionate to the additional benefits; some simplification; ●●● Any increases in costs are outweighed by the benefits, important simplification.*

Coherence: under this criterion, the analysis considers if the measures are coherent with the Commission's objectives of strengthening the identity of the EU in third countries, reinforcing the external dimension of EU citizenship and Member States' solidarity and improving Member States' cooperation with regard to consular crisis preparedness and response. In options where relevant, coherence with the EEAS Decision, the EU ETD Directive and the UCPM are analysed. *Proposed scoring: ● Lacks coherence with legislation; ●● Broadly coherent with legislation, but some gaps; ●●● Coherent with legislation.*

Proportionality: Proportionate EU action should ensure that unrepresented EU citizens receive adequate consular assistance on equal basis to own nationals without creating excessive burden on the EU and the Member States. It should further build on and integrate previous legal measures as well as recent developments. *Proposed scoring: ● Not proportionate; ●● generally proportionate ●●● Fully proportionate.*

Political feasibility: examines political support for the each of the options proposed under their respective legal basis. *Proposed scoring: ● low; ●● medium ●●● high*

Annex 5: Relevant provisions of the Directive and how it works

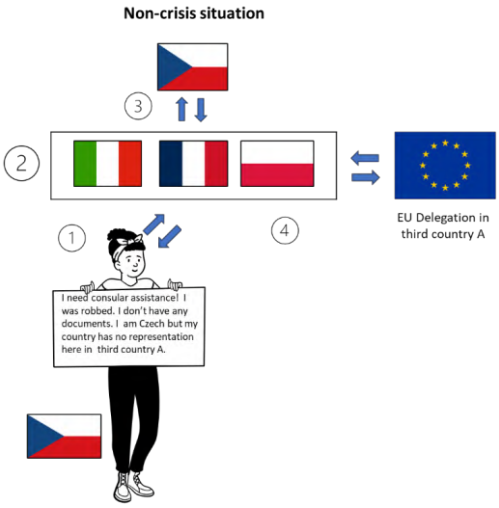
The Directive lays down the coordination and cooperation measures necessary to facilitate the exercise of the right of EU citizens to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented (i.e. where they are 'unrepresented'), the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that Member State, as set out in Article 20(2)(c) TFEU. In particular, the Directive provides the definitions and procedures necessary to implement this right.

The Directive contains the following elements:

- The general principle of consular protection by Member States to unrepresented EU citizens on the same conditions as to their own nationals (Article 2).
- The possibility that the Member State of nationality of an unrepresented citizen requests the Member State from whom an unrepresented citizen seeks or receives consular protection to redirect the case to his/her own Member State of nationality, which the requested Member State should relinquish (Article 3).
- The personal scope of the protection, determining who is entitled to consular protection (Articles 4, 5 and 6).
- The conditions to access such protection, namely which Member State and what type of body unrepresented EU citizens can seek protection from (Article 7).
- Rules on how to identify unrepresented EU citizens (Article 8).
- A non-exhaustive list of the types of situations that may give rise to the need for consular protection (Article 9).
- Rules on how Member States are to cooperate and coordinate with one another and the EU to ensure protection of unrepresented citizens (Article 10).
- Specifications regarding the role of EU delegations (Article 11).
- Requirements for local cooperation between Member States (Article 12) and for crisis preparedness and cooperation of Member States and EU delegations in third countries (Article 13).
- Rules on the reimbursement of the costs of consular protection (Articles 14 and 15).

Figure 7: An example of the provision of consular assistance under the current legal framework (Consular Protection Directive) in a non-crisis situation.

Source: European Commission



(1) Zuzana is from Czechia, and lives in third country A. She needs consular assistance as her travel documents have been stolen, but Czechia does not have a consulate or embassy in third country A.

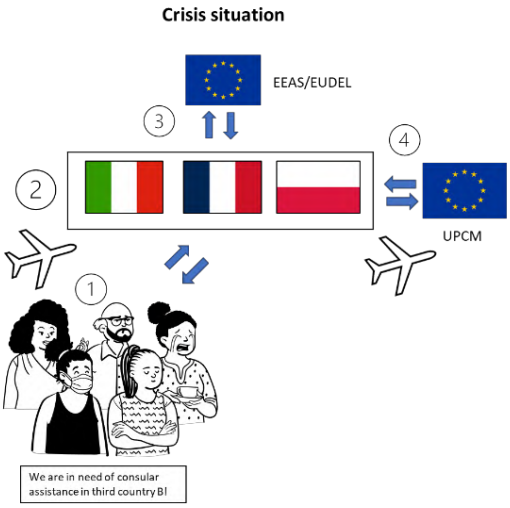
(2) Italy, France and Poland have an embassy in third country A. Zuzana decides to seek assistance from the French embassy.

(3) French embassy asks Czechia to confirm Zuzana's nationality and provide necessary information, which it does.

(4) The French Embassy delivers the required assistance to Zuzana and issues an emergency travel document allowing Zuzana to return home.

Figure 8: An example of the provision of consular assistance under the Directive in crisis situation.

Source: European Commission



(1) Many EU citizens are stranded in third country B because of a hurricane.

(2) Member States organize evacuation flights for their citizens and share with other Member States and the EEAS/EU delegations information on available evacuation capacities.

(3) The EEAS/EU delegations and Member States coordinate locally (passenger lists and other logistical aspects) and with unrepresented Member States and ensure that all EU citizens have access to evacuation flights.

(4) The UCPM can co-finance evacuation flights if citizens from more than one Member States are on board.

Annex 6: Level of Member States' representation in third countries

This Annex presents a global mapping of consular network, providing an overview of the third countries in which Member States provide consular services and the countries where no Member State is represented. It includes:

- a comparison of the CoOL data and the data collected through the questionnaire by the study;
- the evolution of Member States' consular network, including information collected in COCON in 2022;
- the impact of the UK's withdrawal from the EU on the consular network.

The table below provides an overview of Member States' level of representation in third countries, based on data collected from the Member States through the questionnaire. It shows in which third country Member States have a low presence in (0-25% of Member States represented) and a high presence (27 Member States represented) in 2021.

Methodological caveat

The overall methodology for the data collection at the Member State level, including on Member States' consular network, is presented in Annex I. This methodological box further explains the caveat of this mapping, namely that for the purpose of this mapping, only embassies and consular posts (consulates and consulates-general) have been taken into account. The following types of diplomatic presence were thus excluded:

- **Honorary consuls** were not included in the mapping as the national authorities of most Member States confirmed that these generally provide consular protection to a more limited extent when compared to the assistance provided by embassies and consulates. In addition, the legal mapping confirmed that only very few Member States have decided to extend the application of the Directive to Honorary Consuls (see Chapter 3.1) for further details.

- While an **accredited embassy and/or consular post** has the same consular protection competences in the country it is accredited to as an embassy/ consulate post located in that country would have, accredited embassies and consular posts were excluded from the mapping as they may not offer consular protection as effectively, in particular in cases of emergency requiring fast action or in times of crisis impacting transport routes such as during the COVID-19 pandemic. For instance, if travel to third country A is restricted or reduced, an accredited consul or ambassador based in third country B may not be able to assist EU citizens in third country A. As such, and according to the Directive, a Member State is not represented in a third country if it has no embassy or consulate established there on a permanent basis, or if it has no embassy, consulate or honorary consul there which is effectively in a position to provide consular protection in a given case.

According to the data collected, the following conclusions can be drawn on the level of representation of the Member States in 2021:

1. At the time, only 5 third countries (China, India, Russia, UK, and USA) were covered by all 27 Member States (3% of all third countries);
2. 41% of third countries are covered by seven Member States or less;

3. In 21 of the 173 third countries listed, Member States are not present. Thus, 12% of the 173 third countries can be considered "**uncovered**". Six of these third countries (the Bahamas, Barbados, Belize, Grenada, Guyana, Solomon Islands) were previously covered by the UK. The departure of the UK from the EU has therefore decreased Member States' consular coverage of third countries by 3%;
4. The Member States that have the largest consular network and that are therefore **represented in the most third countries** are France (present in 136 third countries), Germany (127), Spain (103), Italy (101), Sweden (95) and the Netherlands (88);
5. The Member States that have the smallest consular network and that are therefore **represented in the least third countries** are Estonia (present in 19 third countries), Luxembourg (19), Malta (19), Cyprus (22), Latvia (22) Lithuania (24), and Slovenia (24).

Table 14: level of representation based on the data collected through the Questionnaire

Level of Member States representation	Number of third countries covered (2021)	%
No Member State represented	**21 countries** (Antigua and Barbuda, the Bahamas, Barbados, Belize, Bhutan, Cook Island, Dominica, Eswatini, Grenada, Guyana, Kiribati, Lesotho, Liechtenstein, the Maldives, Marshall Islands, Micronesia, Nauru, Palau Republic, Samoa, Solomon Islands, Tonga, Tuvalu)	12% of third countries (21 out of 173)
0-25% of Member States represented (7 MS or less)	**71 countries** (Andorra, Bahrein, Bangladesh, Benin, Bolivia, Botswana, Brunei Darussalam, Burundi, Cambodia, Cameron, Cabo Verde, Central African Republic, Chad, Comoros, Congo Republic, Costa Rica, Cote d'Ivoire, Djibouti, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Fiji, Gabon, The Gambia, Guatemala, Guinee Bissau, Guinea Republic, Haiti, Holy See, Honduras, Iceland, Jamaica, Korea Pyongyang, Kyrgyzstan, Lao PDR, Liberia, Macao, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mongolia, Namibia, Nepal, Nicaragua, Papua New Guinea, Paraguay, Rwanda Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, South Sudan, Sri Lanka, Suriname, Syria, Tajikistan, Timor Leste, Togo,	41% of third countries (71 out of 173)

	Trinidad and Tobago, Turkmenistan, Vanuatu, West Bank Gaza, Yemen, and Zambia.	
All Member States represented	**5 countries** (China, India, Russia, UK and USA)	3% of third countries (5 out of 173)

Source: Study questionnaire to Member States (March 2021) providing an overview of Member States presence in 173 third countries[117] in 2021.

If honorary consulates as well as accredited embassies and consular posts are included, there are no uncovered third countries. While honorary consulates can only provide partial consular protection and accredited embassies/consular posts may not be able to provide consular protection as effectively as in-country embassies/consular posts, their presence should not be ignored.

For instance, while Bhutan may be uncovered, 16 Member States have accredited embassies and consular post in neighbouring countries. Similarly, while Lesotho and Eswatini may be uncovered, these two countries are located within South Africa from where 20 Member States have accredited embassies and/or consular post providing consular protection to EU citizens in Lesotho and 18 accredited embassies and/or consular post providing consular protection to EU citizens in Eswatini.

Additionally, while certain third countries may be uncovered, their proximity to Member State territory should not be overlooked. For instance, Dominica may be uncovered however it is situated less than 50km away from Guadeloupe and Martinique, two French departments. Similarly, Antigua and Barbuda is situated less than 100km from Guadeloupe. However, it should be stressed that proximity and/or coverage by accredited embassies/consulates is not a solution that can fully compensate the lack of in-country representation. There are multiple limitations such as the lack of contacts with local authorities, the possible difficulties in accessing the country in times of crisis (i.e. if the borders are closed), the lack of situational awareness, etc which make the provision of consular protection more difficult. Additionally, an oversea territory or department may also not have the logistic capacity to help, or to be in a position to do so for legal and/or political reasons. Notably, the local authorities of EU territories are not under a legal obligation to provide consular protection to unrepresented EU citizens of neighbouring countries.

When compared to the consular network of EU delegations, among the 21 third countries uncovered by the Member States, EU delegations are present in four (Barbados, Eswatini, Guyana, Lesotho).

Comparison of CoOL data and the data collected through the questionnaire

The data collected through the questionnaire for the purpose of the study largely corresponds to the data extracted from the CoOL tool. The table below provides an overview of the CoOL data. The differences between both data sets are the following:

1. Macao SAR, New Caledonia, Saint Kitts and Nevis, St Vincent and the Grenadines were reported as uncovered in CoOL. The study did not consider New Caledonia as a third country but as a territory of France and therefore did not include it in its mapping. Portugal reported being present and providing consular protection in Macao. Sweden

[117] Including islands (e.g. Cook Islands), and territories not formally recognized by all Member States.

reported being present and providing consular protection in Saint Kitts and Nevis and in St Vincent and the Grenadines.

2. Andorra and the Holy See were not included in CoOL. However, as both are recognised third countries, the study team has decided to include them in the mapping. Six Member States reported being present and providing consular protection in the Holy See and two Member States in Andorra.
3. Burkina Faso, Hong Kong SAR, Myanmar, and Niger were previously included in CoOL among the third countries with seven or less Member States present. However, results collected through the questionnaire revealed a higher level of representation (Nine Member States in Burkina Faso, eleven Member States in Hong Kong SAR, eight Member States in Myanmar and eight Member States in Niger.)

Table 15: level of representation based on CoOl data

Level of Member States Member States representation	Number of third countries covered (2021)	%
No Member State represented	**26 countries** (Antigua and Barbuda, the Bahamas, Barbados, Belize, Bhutan, Cook Island, Dominica, Eswatini, Grenada, Guyana, Kiribati, Lesotho, Liechtenstein, Macao SAR, the Maldives, Marshall Islands, Micronesia, Nauru, New Caledonia, Palau Republic, Saint Kitts and Nevis, St Vincent and the Grenadines, Samoa, Solomon Islands, Tonga, Tuvalu)	15% of third countries (26 out of 171)
0-25% of Member States represented (7 Member States or less)	**72 countries** (Bahrein, Bangladesh, Benin, Bolivia, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameron, Cabo Verde, Central African Republic, Chad, Comoros, Congo Brazza, Costa Rica, Cote d'Ivoire, Djibouti, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Fiji, Gabon, The Gambia, Guatemala, Guinee Bissau, Guinee Conakry, Haiti, Honduras, Hong Kong SAR, Iceland, Jamaica, Korea Pyongyang, Kyrgyzstan, Lao PDR, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mongolia, Myanmar, Namibia, Nepal, Nicaragua, Niger, Papua New Guinea, Paraguay, Rwanda Republic, Saint Lucia, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, South Sudan, Sri Lanka, Suriname, Syria, Tajikistan, Timor Leste, Togo,	42% of third countries (72 out of 171)

	Trinidad and Tobago, Turkmenistan, Vanuatu, West Bank Gaza, Yemen, and Zambia.	
All Member States represented	**5 countries** (China, India, Russia, UK, and USA)	3% of third countries (72 out of 171)

Source: EEAS 2021 CoOL data which provides an overview of Member States presence in 171 third countries[118] in 2021.

Finally, table below focuses on Member States representation with low level of representation:

Table 16: level of representation based on Member States reporting in COCON in 2022[119]

Level of Member States representation	Number of third countries (2022)
No Member State represented	**25 countries** (Afghanistan, Antigua and Barbuda, the Bahamas, Barbados, Belize, Bhutan, Cook Island, Dominica, Eswatini, Grenada, Guyana, Kiribati, Lesotho, Liechtenstein, the Maldives, Marshall Islands, Micronesia, Nauru, Palau Republic, Saint Kitts and Nevis, St Vincent and the Grenadines, Samoa, Solomon Islands, Tonga, Tuvalu)
One Member State represented	**13 countries** (Central African Republic, Comoros, Macao (SAR), Mauritius, Papua New Guinea, Saint Lucia, San Marino, Sao Tome and Principe, Seychelles, Somalia, Timor Leste, Vanuatu, Yemen)
Two Member State represented	**9 countries** (Botswana, Brunei Darussalam, Djibouti, Fiji, Madagascar, Malawi, Suriname, Tajikistan, Togo)
Between 3 and 7 Member States represented	**50 countries** (Bahrein, Bangladesh, Benin, Bolivia, Burkina Faso, Burundi, Cambodia, Cameron, Cabo Verde, Chad, Congo Brazzaville, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Gabon, The Gambia, Guatemala, Guinee Bissau, Guinee Conakry, Haiti, Honduras, Hong Kong SAR, Iceland, Jamaica, Korea Pyongyang, Kyrgyzstan, Lao PDR, Liberia, Mali, Mauritania, Mongolia, Myanmar, Namibia, Nepal, Nicaragua, Niger, Paraguay, Rwanda Republic, Sierra Leone, South Sudan, Sri Lanka, Syria, Trinidad and Tobago, Turkmenistan, West Bank Gaza and Zambia.)
All Member States represented	**5 countries** (China, India, Russia, UK and USA)

118 Including islands (e.g. Cook Islands), and territories not formally recognised by all Member States.
119 WK 10712/2022 INIT.

Evolution of the Member States consular network

In order to understand the evolution of the consular network between 2018 and 2020, it is relevant to look at the information provided by Member States to the DG JUST's survey reporting on the implementation of the Consular Protection Directive. Only 12 Member States provided data on their consular network both in 2018 and in 2020. Of these 12 Member States, eight saw an increase in the number of embassies and consulates exercising consular functions (not counting honorary consuls or countries covered from other countries). Two had a decrease and two remained unchanged. Together, these 12 Member States had a 7% collective increase in the number of embassies and/or consulate exercising consular functions from 786 in 2018 to 838 in 2020. While these findings are limited due to missing data, they nonetheless suggest that Member States have increased their consular footprint between 2018 and 2020.

This was further collaborated by the data collected from the questionnaire's qualitative questions, which asked the national authorities whether their consular network increased decreased or remained the same between 2018-2021. Out of the 26 Member States that replied, 14 (BG, EE, FI, HR, HU, LT, LU, MT, RO, SI, PL, ES) reported an increase and only two reported a decrease (DK and FR). Seven replied "remained the same" (AT, BE, DE, PT, SE, NL, LV) and one Member State (CZ) did not know.

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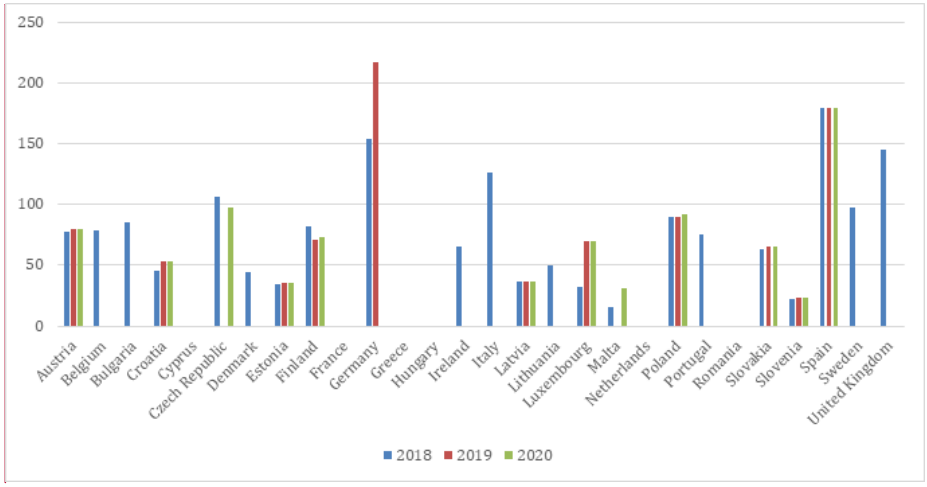

Figure 9: ***Question 1. In how many countries do you have an embassy or a consulate exercising consular functions (not counting honorary consuls or countries you cover from other countries)?***

Source: EEAS 2021 CoOL data, which provides an overview of Member States presence in 171 third countries[120] in 2021.

[120] Including islands (e.g. Cook Islands), and countries not formally recognised by all Member States (e.g. Hong Kong).

Impact of the UK's withdrawal from the EU on the consular network of Member States

Since the end of the transition period provided for in the EU-UK Withdrawal Agreement[121] on 31 December 2020, EU citizens no longer enjoy a right to request consular protection from UK embassies or consulates abroad under the Consular Protection Directive. In addition, the UK is longer able to serve as a Lead State, i.e. leading the assistance of unrepresented EU citizens during crises, and shouldering the burdens of non-crisis consular assistance.

In 2018, the UK was the third most important Member States in terms of number of embassies and consulates exercising consular functions (France did not provide replies to the 2018 questionnaire). The withdrawal of the UK from the EU therefore results in a considerable loss in consular footprint. 21 Member States and the UK indicated having 1 710 embassies and consulates exercising consular functions in 2018. Factoring in the 6 Member States[122] that did not provide data on their consular network results in an estimated 2 176 Member State embassies and consulates in 2018[123]. The UK's departure from the EU therefore represents an estimated 7% lost in the number of Member State embassies and consulates providing consular functions.

Currently, in 2021, the mapping identified 21 uncovered countries out of 173 third countries, with six of these third countries (the Bahamas, Barbados, Belize, Grenada, Guyana, Solomon Islands) having previously been covered by the UK. The withdrawal of the UK from the EU has therefore decreased the EU's consular coverage of third countries by 3%, not including third countries where the UK was one of the few Member States present.

Following the UK's withdrawal, unrepresented EU citizens need to rely on available embassies and consulates of the 27 remaining Member States, which adds additional burdens to certain Member States that are "second in line" regarding the density of their representations. At the same time, the UK's withdrawal also relieves the strain on the EU network of consular protection in that UK nationals no longer enjoy a right to consular protection by the Member States. Beyond quantitative data on the number of representations, the UK also plays an important role in many aspects of consular affairs due to its long-standing diplomatic tradition and extensive local networks, which make it an effective player in consular matters. For example, according to a final report on Consular Cooperation Initiatives (CCI) by the Council, the UK had a lead role in joint lobbying activities in Cambodia and was primarily in charge of providing assistance in Nepal, which were two out of five countries where the CCI ran.

Finally, by changing the status of the UK from Member State to third country, the UK's withdrawal also widened the territorial scope of application of the Consular Protection Directive.

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121 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C 384I, 12.11.2019, p. 1).

122 Cyprus, France, Greece, Hungary, Netherlands and Romania.

123 (1 710/22 = an estimated 78 embassies and consulates per Member State; 78*28 Member States = 2 176).

Annex 7: Factors likely to increase the number of crises with an impact for consular protection

Climate change has already impacted every region on earth in unprecedented and irreversible ways. On the current trajectory, global warming will likely surpass 1.5°C in the next two decades and head towards 2°C by 2050. Every additional 0.5°C will increase the intensity and frequency of extreme weather events, droughts, wildfires or floods, including in locations where this was uncommon in the past. Over the past decade, weather-related events have triggered an estimated displacement of around 23 million people on average each year, and the migration pressures will only increase. By 2050, over 200 million people could need humanitarian assistance every year partly due to climate-related disasters[124]. There is also an important interlinkage between climate change, biodiversity loss, environmental degradation and public health. Loss of biodiversity, pressure on animal habitats, the excessive use of antibiotics, risks relating to biological research of highly pathogenic microbes, unhealthy lifestyles – all these factors make future pandemics or diseases more likely. As showed by the COVID-19 pandemic, this triggered a global consular emergency due to the very severe transport restrictions, quarantine measures and border closures which created a need to urgently repatriate EU citizens (tourists and short-term travellers) stranded in third countries.

Hyperconnectivity is another force of current transformations. It results in an increased convergence of industries, products, technologies and services. The number of connected devices globally might increase from 30.4 billion in 2020 to 200 billion in 2030. Increased connectivity of objects, places and people will result in new products, services, business models, life and work patterns. At the same time, it results in the increased risk of cyber-attacks and network outages, in both digital and physical world, e.g. essential infrastructures like pipelines and hospitals. Hyperconnectivity has only accelerated with the pandemic and its social impact needs to be carefully monitored. The impact on consular protection is yet to be felt but should not be underestimated. In this regard, by allowing us to connect and stay in touch without much effort, technology has increased the possibility of working remotely, including from third countries (e.g. digital nomads). This could contribute to more EU citizens travelling abroad. Against this background, the digitalization of consular services may allow Member States to provide some types of assistance even where they are not present on the ground.

Democratic governance is also declining globally[125] and its consequences are likely to lead to an increase demand for action at consular level. 2020 was the 15th consecutive year of a decline in political rights and civil liberties at a global level, exacerbated by the COVID-19 pandemic in many regions. Zones of instability and conflict close to the EU and beyond are likely to persist and may even grow. Repression of freedoms and democratic reforms, as well as continued instability in countries and regions in near and further EU neighbourhood, will continue to have an impact on consular protection.

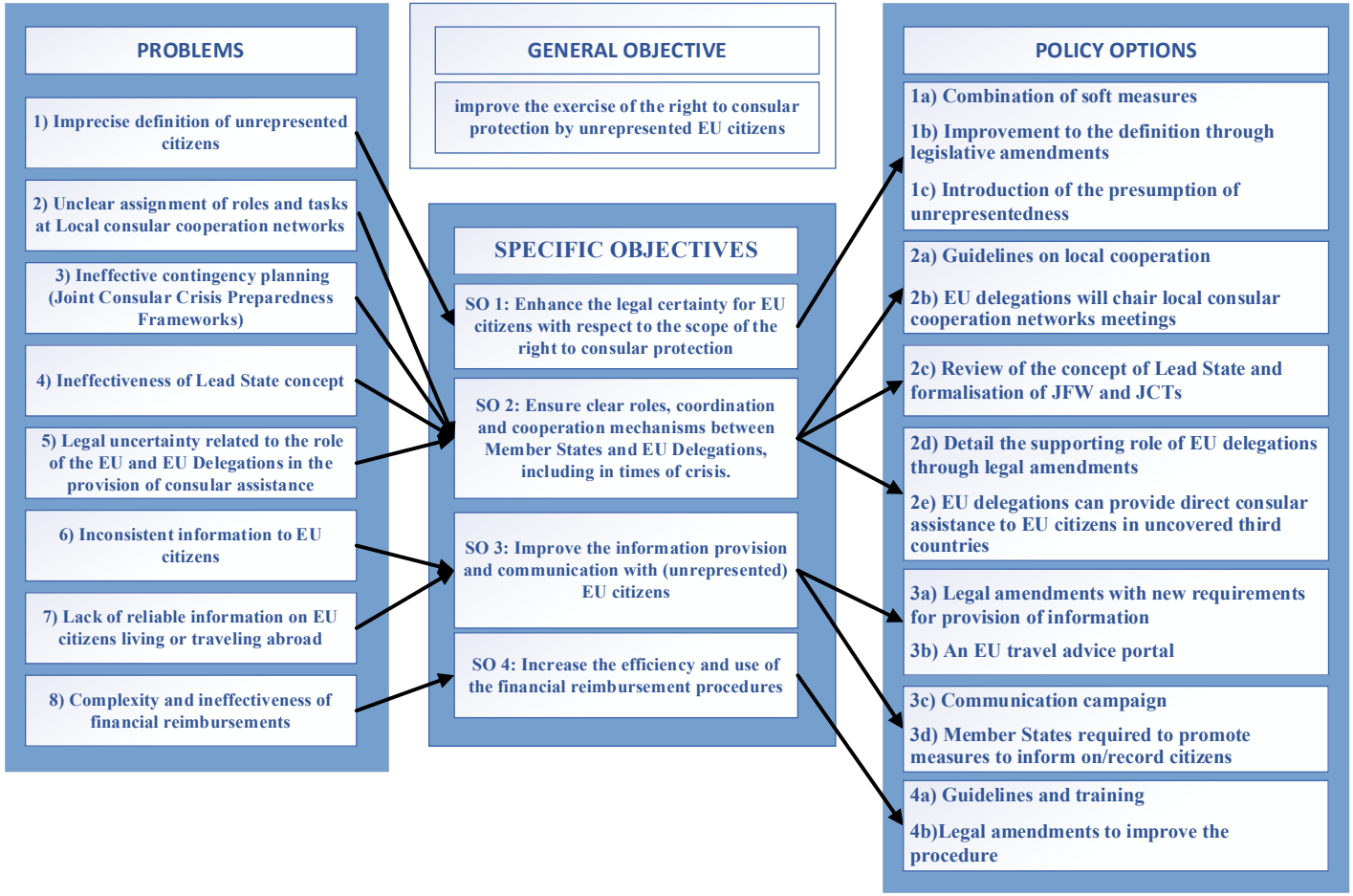
Global rivalry and fragility are likely to increase. The USA-China competition could become a defining feature of the geopolitical landscape. The energy transition will further contribute to the redistribution of power. The EU can expect continued tensions and adverse competition (including from China and Russia), requiring robust policies to project stability

[124] International Committee of Red Cross and Red Crescent Societies (2019), The Cost of Doing Nothing.

[125] Also: "The global state of democracy 2021, building resilience in a pandemic era", 2021, International Idea. The study concludes that 'more countries are moving towards authoritarianism that at any other point since 1995'.

and prosperity, particularly in its neighbourhood. Increasing threats from organised crime, corruption, extremism, terrorism, and hybrid threats, including the use of migration for political purposes, could increasingly threaten EU security and raise the need for contingency planning, including at consular level.

Annex 8: Intervention Logic



Annex 9: Baseline Scenario

The baseline scenario assumes that ongoing coordination and cooperation activities will continue to be carried out, as outlined below.

Member States will continue to meet regularly in COCON to discuss common approaches on consular protection (including the sharing of best practices), coordinate consular crisis response and related consular crisis preparedness issues, such as by:

- identifying and addressing so-called "consular hotspots", where certain types of consular issues or problems arise regularly;
- discussing ways to exchange information on travel advice;
- identifying ways to improve crisis preparedness and response, including through the development of JFWs and local consular exercises.

Consular dialogues with like-minded third countries (currently USA, Canada, Australia and New Zealand), chaired by the Council Presidency, will continue.

Member States will start using the new uniform EU Emergency Travel Document format established by the ETD Directive as of December 2025. This will improve the security features of the documents and simplify the formalities to obtain them.

The Expert Group on Consular Protection will continue to meet to exchange on development of national policies and implementation of the Directive.

The EEAS will continue developing its key activities, notably:

- responding to consular crises, with the recently established EEAS Crisis Response Centre as the permanent crisis response capability and the single entry point on all crisis related issues in the EEAS, bringing together diplomatic, security and intelligence capabilities, and ensuring a close interaction between delegations, missions and operations on the ground when facing a consular crisis;
- developing strategies, policies and tools to facilitate access to consular protection for EU citizens through EU cooperation and coordination (e.g. rollout of joint frameworks, management of the Consular Online platform);
- supporting EU delegations, in particular the network of consular correspondents in EU delegations, to play their coordination role at local level (e.g. contingency planning, training, sharing of best practices, advice);
- working with Member States to facilitate access to consular protection for EU citizens (e.g. in COCON);
- engaging with like-minded third countries to exchange and cooperate on consular matters of mutual interest (e.g. in consular dialogues with Australia, Canada, New Zealand and the USA);
- addressing, together with the Commission, legal issues relating to consular protection (e.g. negotiation and applications in international agreements, joint consular démarches, notes verbales);
- contributing to informing EU citizens of the right to consular protection for unrepresented citizens.

Ahead of touristic seasons, the Commission and the EEAS run social media campaigns, also is relayed through EU delegations. The EEAS also supports EU delegations in including locally-tailored information on the right to consular protection on their website and/or to adapt this information in case of a consular crisis.

In 2023, the Commission will conduct an awareness raising initiative on EU citizenship rights, including consular protection, at the occasion of the 30th anniversary of the establishment of EU citizenship by the Maastricht Treaty.

It has to be noted that activities outlined above, such as the exchanges of best practices among relevant Member States' authorities in COCON, are part of the baseline scenario and are not new activities. In the current scenario, where the measures are in place, the problems identified in section 2 have already materialised. This means that by themselves, the measures outlined are insufficient to address the problems identified, which will instead continue. In particular, where these problems are linked to current wording of the Directive, they cannot be sufficiently addressed through non-regulatory measures.

In addition, in a situation where all activities described above would continue to be carried out, but no further action is taken, all problems identified under Chapter 2 will not only persist but will worsen. The external factors described in Chapter 2 and Annex 7, such as the increase of the number and frequency of crisis and the increase in the number of unrepresented residents and travellers in third countries would put at risk the effective exercise of the right to consular protection. Larger number of EU citizens would be affected by an increased number of crisis, and the scale and the nature of the problems identified would increase as per below:

- Based on the predicted increasing number of crises and on the increasing number of EU travellers, with more cases of 'unrepresentedness' and no precise definition in the wording of the Directive, the currently few reported cases of refusal of assistance and 'redirection' of EU citizens considered 'unrepresented' would likely become more frequent. As a result, the risk of cases of EU citizens left without effective consular assistance would increase. As outlined above, such a situation is also likely to cause reputation risks for Member States and the EU. Due to the absence of a clear definition in the Directive, even a possible increase in the consular network of Member States is unlikely to compensate this problem, in particular when difficult cases arise.
- In absence of clear assignments of tasks to the different actors, including EU delegations, and the absence of a clear structure for Joint Consular Crisis Preparedness Frameworks, coordination at local level is likely to become more and more difficult at a time of 'permacrisis' as described by a recent European Parliament study[126]. A legal clarification of such processes and clarification of roles is important to save time and efforts in a likely scenario of increased crises and reduced timeframe for anticipation and preparedness – as well as to provide the impetus to invest in the necessary preparedness, notably through the drawing up of JFWs, even in third countries historically seen as less prone to consular crises. Especially for lightly staffed Member States and in third countries with low Member States presence, coordination is likely to become more burdensome. Digitalisation and remote meetings could help to alleviate the burden but would not solve the underlying issues.

[126] Future Shocks 2023, Anticipating and weathering the next storm, EPRS: https://www.europarl.europa.eu/RegData/etudes/STUD/2023/751428/EPRS_STU(2023)751428_EN.pdf

- Aspects of administrative/technical nature, such as organisation of LCCs, minutes of meetings, sharing of information and burden between Member States and EU delegations and business continuity in a non-crisis context have the potential to become concrete obstacles to smooth operations in crisis situations if they are not streamlined sufficiently.
- Organisation and provision of information in situations that are likely to evolve more rapidly is essential. Problems with EU citizens not being able to find the right information about their rights and who could and should offer help in a situation of need will likely increase with an increasing number of travellers and number of unrepresented citizens in non-crisis situation. This will likely be exacerbated in crisis situations. Use of websites and online information channels is widespread in the field of provision of information on consular protection. With the increased use of digital tools and services in the next years by citizens, the need for reliable, unique source of information will also increase. Member States will have to adapt to the requirements of such environment.
- The problem of lack of reliable information on EU citizens living or traveling abroad would also pose more risks to effective provision of consular protection by Member States. At this stage, it cannot be predicted if Member States would, absent an intervention at EU level, take coordinated measures to improve the level of information they have on their nationals living or travelling abroad. If that is not the case, the coordination of actions at EU level on how to best assist citizens would become more and more challenging, given their increasing number. Reaching out to people will become more difficult especially in crisis situations. In situations where a Member State is not aware of the presence of an increased number of its nationals in a certain third country where it is not represented, it might not help be able to support the Member States present on the ground that are seeking to provide consular protection to its nationals.
- Finally, the complexity and ineffectiveness of reimbursement procedures is likely to also worsen as more unrepresented EU citizens seek to be assisted with consular protection. In the view of rising costs of provision of consular protection, inefficient reimbursement procedures are likely to strain the budgets of those Member States more frequently requested to provide consular protection due to their larger consular networks. This could result in undermining the spirit of solidarity and collaboration among Member States that is the foundation for the fundamental right to consular protection.

The evolutions of the problems under the baseline scenario will necessarily depend on outside factors – notably the number, scale and geographical distribution of future crises with a consular element – that cannot be predicted with certainty at this stage (see also Section 2.4.3).

Annex 10: Measures not requiring a policy choice

1) **EU citizens' right to an effective legal remedy and redress**

Article 2(1) of the Directive provides that Member States' embassies or consulates must provide consular protection to unrepresented citizens on the same conditions as to their own nationals.

Article 47 of the Charter provides that '*[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal*'. The provisions of the Charter are also addressed to the Member States when they are implementing EU law (Article 51 of the Charter).

Consequently, Member States should provide explicit access to effective legal remedy and redress mechanisms to unrepresented EU citizens, to ensure they have a venue to seek legal remedy when their EU citizenship rights related to consular protection have been violated.

In this regard, although they did not identify many cases in which EU citizens were refused assistance or treated in a discriminatory manner when receiving consular assistance, it seems that such cases do exist.

The lack of official complaints and court cases could indicate that such problems are not frequent. Alternatively, this could be an indication that unrepresented EU citizens face barriers in accessing the national redress mechanisms in place. In COCON, Member States indicated that they provide unrepresented citizens with access to means of redress already available to their own citizens, noting though that, in some cases their national legislation does not contain any specific provisions to that effect. Some Member States reported an increase in litigation associated to the provision of consular assistance to represented EU citizens.

Absence of national rules explicitly enabling redress for unrepresented EU citizens is not in line with the requirements of the Charter and the case law of the Court. What is more, such absence creates legal uncertainty and hinders unrepresented EU citizens' exercise of their fundamental right to a legal remedy as they might not have or be sufficiently aware of the avenues available to them to complain to the assisting Member State (they may instead choose to turn to their own Member State or simply wave on the exercise of their right).

MEASURE PROPOSED: Introduction of legal amendment that would require Member States to provide access under equal conditions to an effective legal remedy and redress to unrepresented citizens.

2) **Legal uncertainty on conditions to process personal data for consular protection purposes**

Article 10 of the Directive provides for the exchange of information on the unrepresented EU citizen between the Member State of nationality and the assisting Member State (including honorary consuls who may be nationals of a third country) and, as the case may be, the EU delegation, when a request for assistance is submitted by an EU citizen or when a Member State is informed of an individual emergency situation. Personal data of EU citizens will also need to be processed and exchanged by Member States (and possibly EU delegations) and possibly transferred from Member States to third country authorities (including like-minded countries) and international organisations (e.g. United Nations), in particular in the context of crisis situations.

Some Member States refuse to share information on unrepresented (and represented) EU citizens, arguing that this would be in breach of data protection requirements[127]. Although bilateral cooperation between Member States was assessed to be good, some problems remain due to the lack of legal clarity in the Directive as to the processing of personal data. *A fortiori*, this also applies to personal data transferred to third countries and international organisations.

While Articles 11 and 13 of the Directive and Article 5(10) of the EEAS Decision assigns certain tasks to EU delegations to be carried out in the public interest, EU delegations could benefit from the introduction, in the Directive, of a clear legal basis to process personal data.

Finally, while GDPR and EUDPR provide a legal basis for processing personal data in cases necessary to protect the vital interests of the data subject, this only covers situations where processing is "*necessary to protect an interest which is essential for the life of the data subject or that of another natural person*"[128]. However, this legal basis could be relied on in crisis situations only if there is a concrete or imminent danger to a data subject or a third person and no another legal basis, such as data subject's consent, could be used to justify the processing.

In addition, asking EU citizens for consent in crisis situations, where their safety/health/integrity might be at risk or where the Member State representative is not in a position to inform the data subjects at least of the identity of the controller and the purpose of the processing due to the prevailing security/logistical conditions in the area of operations, would not be appropriate, since the requirements of a freely-given and/or informed consent required by EU data protection rules will not be met.

MEASURE PROPOSED: amendments to the Directive to introduce provisions on the processing by, exchange or transfer of personal data among Member States, EU delegations, third countries and international organisations.

3) Other amendments

In addition, some other **clarifications** will be needed to ensure uniform application of the Directive as identified in the Commission Report:

- Overall, there appears to be a lack of clarity and understanding regarding the procedure for redirecting applications from unrepresented EU citizens. In addition, although the Directive allows for bilateral agreements to be put in place between Member States, there seems to be a need to further clarify that this is not a precondition for providing consular assistance to unrepresented EU citizens;
- The Directive itself is silent on the accessibility of consular protection for certain vulnerable groups among unpresented citizens. This may include, *inter alia*, demands for consular protection by pregnant women, unaccompanied minors, persons with reduced mobility (PRM), persons with disabilities, or individuals subject to discrimination on any ground. Moreover, the Directive does not outline a specific regime for the consular assistance of victims of crime, which may include victims of domestic and gender-based violence (though such assistance is included in the types of assistance which can be provided as per Article 9 of the Directive). Wording to the Directive would be strengthen in line with the priorities of the EU Victims' Rights Strategy[129].

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127 Study.

128 See recital 46 GDPR.

129 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy On Victims' Rights (2020-2025), COM/2020/258 Final EUR-Lex - 52020DC0258 - EN - EUR-Lex (europa.eu).